



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of July 21, 2012

**DATE:** July 12, 2012

**SUBJECT:** SP #397 SITE PLAN AMENDMENT for an outdoor cafe in the right-of-way for Circa, located at 3030 Clarendon Blvd. (RPC# 18-013-011).

**Applicant:**  
The MHG Group

**By:**  
Nan E. Walsh, Esq.  
Walsh, Colucci, Lubeley, Emrich & Walsh  
2200 Clarendon Blvd., 13<sup>th</sup> Floor  
Arlington, Virginia 22201

#### **C.M. RECOMMENDATIONS:**

Adopt the attached ordinance to approve a site plan amendment to SP #397 for two (2) years, five (5) months (December 31, 2014) of outdoor café seating for Circa, located at 3030 Clarendon Blvd., subject to all previously approved conditions, and an amended Condition #65; with a County Board review in two (2) years, five (5) months (December 2014).

**ISSUES:** This is a one (1) year review of outdoor café seating in the public right-of-way and no issues have been identified.

**SUMMARY:** This is a one (1) year review of outdoor café seating in the public right-of-way for Circa at Clarendon. The subject outdoor seating is located along the South side of Clarendon Boulevard. In July 2011, the applicant agreed to a site plan amendment to close the outdoor café in December, January and February and to remove a fence they had attached to the public sidewalk. The applicant has been in compliance with the conditions of approval. Staff recommends the next review fall in the period when the outdoor cafe is closed for the season and the furniture is removed. Therefore, staff recommends adoption of the attached ordinance to

County Manager:

*BMD/GA*

County Attorney:

*[Signature]*

*[Signature]*

Staff: Peter Schulz, DCPHD, Planning Division

PLA-6250

5.

approve a site plan amendment to SP #397 for two (2) years, five (5) months (December 31, 2014) of outdoor café seating for Circa, located at 3030 Clarendon Blvd., subject to all previously approved conditions and an amended Condition #65: with a County Board review in two (2) years, five (5) months (December 2014).

**BACKGROUND:** The Clarendon Center site plan (SP #397), like most site plans between 2000-2010 permitted outdoor cafes in the public right-of- way by a standard condition (in this case, Condition #65). Circa has occupied outdoor seating in the right-of-way of Clarendon Boulevard and in the public access easement in the plaza since March 2011. The applicant had installed permanent fencing in the public right-of-way along Clarendon Boulevard, attached into the sidewalk. In June 2011 the County Board approved an encroachment ordinance for a canopy and for permanent anchor sleeves for the fencing, with the understanding that the fencing be removed seasonally. In July 2011 the County Board approved a site plan amendment to require the fencing, tables and chairs in the public right of way along Clarendon Boulevard to be removed and that the sleeve holes be capped in the months of December, January, and February of each year.

**DISCUSSION:** The applicant has been compliant with the conditions of approval. The outdoor café area in the Clarendon Boulevard right-of-way was completely removed, and the sleeve holes in the sidewalk were capped as required by the site plan amendment in the months of December, January and February. Instead of the normal three (3) year review, staff is recommending a review in December 2014 in order that the review period comes up when the applicant is required to remove the furniture from the street right-of-way.

The County Board has directed staff to no longer approve outdoor cafés located within the public right-of-way with the original Site Plan approval. This was because the community was interested in reviewing the details of each outdoor café approval, which could get lost if considered within the larger site plan issues being discussed at the time of the Site Plan approval. The general direction provided by the County Board was that outdoor cafes in the public right-of-way should be reviewed and approved by Use Permit. As staff has explored this, it was determined that in districts where the zoning does not refer back to “C-2” and which therefore don’t allow outdoor cafes by Use Permit, a different approach was needed. As a result, it was determined that the use must be approved by Site Plan Amendment, which is the only way the use is allowed by zoning. However, since Site Plans do not expire once they are vested, staff needed to develop a different approach to the review and extension of uses approved by Site Plan Amendment. Therefore, staff is recommending that these uses be approved by Site Plan Amendment and that the use be approved as a temporary use and expire automatically unless the County Board reapproves the use.

**Since the last review (July 12, 2011):**

Site Plan Amendment Conditions: The subject use is in compliance with the approved conditions of the site plan amendment.

Community Code Enforcement: Community Code Enforcement has not expressed any concerns regarding the subject use permit.

Civic Association: The Clarendon-Courthouse and Lyon Park Civic Associations have been notified of the site plan renewal request; but no comments have been received as of the date of this report.

**CONCLUSION:** The applicant is compliant with the conditions of approval, and the outdoor café is consistent with current practices for approval of new outdoor cafes in the public right-of-way. Furthermore, renewal of the site plan amendment approval of an outdoor café in the right-of-way will further the goals of the *Clarendon Sector Plan 2006* which describes outdoor cafes as “provid[ing] for both active and passive social interaction and add visual appeal, variety and interest to the streets of Clarendon (p.137).” Staff, therefore, recommends adoption of the attached ordinance to approve a site plan amendment to SP #397 for renewal for two (2) years, five (5) months (December 31, 2014) of outdoor café seating for Circa, located at 3030 Clarendon Blvd., subject to all previously approved conditions and an amended Condition #65; with a County Board review in two (2) years, five (5) months (December 31, 2014).

## **SITE PLAN AMENDMENT ORDINANCE**

WHEREAS, an application for a Site Plan Amendment dated June 10, 2011 for Site Plan #397, was filed with the Office of the Zoning Administrator: and

WHEREAS, as indicated in Staff Report prepared for the July 21, 2012 County Board meeting and through comments made at the public hearing before the County Board, the County Manager recommends that the County Board approve the Site Plan Amendment subject to all previous conditions with Condition 65 revised as shown below; and

WHEREAS, the County Board held a duly-advertised public hearing on that Site Plan Amendment on July 21, 2012 and finds, based on thorough consideration of the public testimony and all materials presented to it and/or on file in the Office of the Zoning Administrator, that the improvements and/or development proposed by the Site Plan as amended:

- Substantially complies with the character of master plans, officially approved neighborhood or area development plans, and with the uses permitted and use regulations of the district as set forth in the Zoning Ordinance; and
- Functionally relates to other structures permitted in the district and will not be injurious or detrimental to the property or improvements in the neighborhood; and
- Is so designed and located that the public health, safety and welfare will be promoted and protected.

NOW THEREFORE, BE IT ORDAINED that, as originally requested by an application dated June 10, 2011 for Site Plan #397, and as such application has been modified, revised, or amended from time to time through drawings and other documentation, and to include the revised Condition 65 as set forth below (which drawings, etc... are hereafter collectively referred to as “Revised Site Plan Application”), for a Site Plan Amendment for an outdoor café in the

public right-of-way until December 31, 2014, for the parcels of real property known as 3030 Clarendon Blvd. (RPC# 18-013-011), approval is granted and the parcel so described shall be used according to the Site plan as approved June 13, 2006 and amended from time to time as shown in the records of the Office of Zoning administration, and as amended by the Revised Site Plan Application, subject to all previous conditions with Condition #65 revised as follows:

65. Outdoor cafés shall be permitted in the public right-of-way or within public easements along Clarendon Boulevard, Wilson Boulevard, North Highland Street, North Garfield Street, 11<sup>th</sup> Street North and for the plaza area at the southwest corner of the intersection of Clarendon Boulevard and North Garfield Street (the “Plaza”) in accordance with the applicable provisions of the Zoning Ordinance, with a maximum seating area and all other applicable requirements as set forth in the Zoning Ordinance and as determined by the Zoning Administrator. Unless otherwise specified by the Clarendon Sector Plan, in effect at the time of the issuance of the Clearing and Grading Permit, the following minimum sidewalk widths, which may not include a two foot shy zone adjacent to the buildings, shall be maintained even where outdoor cafes are established: A minimum of 8 feet of clear sidewalk width must be maintained along Wilson Boulevard, Clarendon Boulevard, and North Highland Street (with the exception of the sidewalks in front of the Underwood Building and the Old Dominion Building). A minimum of 6 feet of clear sidewalk width must be maintained along North Garfield Street and 11<sup>th</sup> Street North (with the exception of sidewalks in front of the Old Dominion Building). A minimum of 6 feet of clear sidewalk width must be maintained adjacent to the public art in the Plaza and a minimum of 6 feet of clear sidewalk width must be maintained between the building and the Plaza easement. With the exception of outdoor seating areas existing at the time of site plan approval, a minimum of 6 feet of clear sidewalk width must be maintained along the sidewalks fronting the Underwood Building and the Old Dominion Building. Plans for all outdoor cafes shall be subject to prior administrative approval by the Zoning Administrator for consistency with County ordinances, regulations and policies. Any outdoor café shall be administratively reviewed one year following its approval to evaluate it after a season of operation. At that time and at any time thereafter, the Zoning Administrator may review the approval, and the County Board may impose conditions on the operation of the outdoor café, or revoke the prior approval. The applicant further agrees that the outdoor tables and seating, and the fencing and other barriers located in the public right-of-way along the South side of Clarendon Boulevard must be completely removed from the Clarendon Boulevard frontage, and plugs shall be inserted in the barrier sleeve holes, each year during the months of December, January and February. Said plugs shall be flush with the sidewalk grade, and shall not constitute a tripping hazard.

A. The applicant agrees that the outdoor café use in the public right-of-way permitted at Circa located at 3030 Clarendon Boulevard is a temporary use only that has been approved for a limited two (2) year, five (5) month period, and not longer. During the

two (2) year, five (5) month period, the use is permitted subject to all site plan conditions, and subject to the same reviews that could otherwise be made of any site plan use. The applicant further agrees that approval for the use will terminate after a period of two (2) year, five (5) months, on December 31, 2014, without further action by the County Board, unless otherwise approved prior to that date. The applicant agrees that it will cease use of the space for the purposes of an outdoor café in the public right of way, and shall convert the space to another approved use, or fully vacate the space, on or before December 31, 2014. The applicant acknowledges and agrees that after December 31, 2014, it shall have no right to use the space for outdoor cafe purposes unless specific approval for that use is obtained from the County Board.

PREVIOUS COUNTY BOARD ACTIONS:

- April 2, 1977                      Approved a use permit U-2105-77-1 to permit a private music school at 1137 North Highland Street.
- September 9, 1978                Approved a use permit U-2170-78-2 to permit a dance studio at 1137 North Highland Street with conditions and a review in one year.
- October 13, 1979                  Continued U-2170-78-2 to permit a dance studio at 1137 North Highland Street with conditions and a review in three years.
- October 16, 1982                  Continued U-2170-78-2 to permit a dance studio at 1137 North Highland Street with conditions and a review in three years.
- October 5, 1985                   Continued U-2170-78-2 to permit a dance studio at 1137 North Highland Street with conditions and a review in three years.
- April 15, 1986                    Approved a use permit U-2506-86-1 to permit live entertainment and customer dancing at 3012 Wilson Boulevard subject to conditions and a review in one year.
- October 18, 1986                  Approved a use permit U-2528-86-1 to permit the operation of a photography studio on the second level of 3019 Clarendon Boulevard.
- April 4, 1987                     Continued U-2506-86-1 to permit live entertainment and customer dancing at 3012 Wilson Boulevard subject to all previous conditions and a review in two years.
- April 25, 1987                    Continued U-2528-86-1 to permit the operation of a photography studio on the second level of 3019 Clarendon Boulevard.
- February 11, 1989                 Approved a use permit U-2615-89-1 to permit a food delivery service at 3014 Wilson Boulevard with conditions and a review in one year.

April 8, 1989	Continued U-2506-86-1 to permit live entertainment at 3012 Wilson Boulevard subject to all previous conditions with the elimination of customer dancing and a review in three years.
February 10, 1990	Continued U-2615-89-1 to permit a food delivery service at 3014 Wilson Boulevard with amended conditions #1 and #2 and deletion of #3 and a review in three months.
May 22, 1990	Continued U-2615-89-1 to permit a food delivery service at 3014 Wilson Boulevard subject to all previous conditions with a review in one year.
June 4, 1991	Discontinued U-2615-89-1 for food delivery service at 3014 Wilson Boulevard.
April 3, 1993	Continued U-2506-86-1 to permit live entertainment at 3012 Wilson Boulevard subject to all previous conditions and one new condition regarding the noise ordinance and a review in five years.
September 9, 1995	Approved a use permit (U-2859-95-1) for the Leadership Institute for a dormitory at 1101 North Highland St., subject to conditions and County Board review in March 1997.
March 8, 1997	Renewed a use permit (U-2859-95-1) for a dormitory at 1101 North Highland St., with a County Board review in three years (March 2000).
September 18, 1999	Approved a use permit U-2968-99-1 to permit outdoor seating with 14 seats at 3028 Wilson Boulevard subject to conditions and a review in one year.
March 11, 2000	Renewed a use permit (U-2859-95-1) for a dormitory at 1101 North Highland St., with no further County Board review.
September 9, 2000	Continued U-2968-99-1 to permit outdoor seating with 14 seats at 3028 Wilson Boulevard subject to all previous conditions and a review in three years.

September 13, 2003	Continued U-2968-99-1 to permit outdoor seating with 14 seats at 3028 Wilson Boulevard subject to all previous conditions, revised condition #1 and a review in September 2008.
July 14, 2004	Denied Z-2501-03-1 Rezoning from C-3” General Commercial Districts to “C-O” Commercial Office Building, Hotel and Multiple-Family Dwelling Districts and SP #372 Site Plan for approximately 279 dwelling units, approximately 156,689 square feet of retail, modifications of use regulations for building setbacks, parking, width of parking aisle, density, coverage, storage, mechanical systems within units and ducts to roof exemptions from FAR, and loading dock length
June 13, 2006	Approved Site Plan #397 to permit approximately 244 dwelling units, 220,919 sq ft of office, 61,380 sq ft retail with modification to use regulations for density, coverage, parking ratio, compact parking, tandem parking, and drive aisle width.
February 26, 2008	Approved Site Plan Amendment to amend project phasing.
March 15, 2008	Approved Site Plan Amendment to permit permanent preservation easements on the Underwood Building and the Old Dominion Building, required to run to the benefit of the Northern Virginia Conservation Trust (NVCT), could also run to the benefit of another entity identified and mutually acceptable to the landowners and the County Manager.
September 13, 2008	Approved a Site Plan Amendment to modify Condition #33 (plat of excavated area), and Condition #42 (wall check survey), and to amend Conditions #77 and #78 (permanent preservation easements).
September 16, 2008	Renewed a use permit for an outdoor café (U-2968-99-1) subject to all previous conditions with a review in one year (September 2009).
September 29, 2009	Renewed a use permit for an outdoor café (U-2968-99-1) subject to all previous conditions with a review in one year (September 2010).

November 17, 2009	Approved a site plan amendment for live entertainment and dancing at Hard Times Café, subject to conditions and review in one year (November 2010).
May 22, 2010	Approved temporary signs at Clarendon Center, subject to all previous conditions and revised condition #47.
July 10, 2010	Approved the site plan amendment request for a comprehensive sign plan at Clarendon Center, subject to all previous conditions and revised condition #47.
September 28, 2010	Renewed a use permit (U-2968-99-1) for an outdoor café at Hard Times Café, subject to a revised condition #1, new conditions, all previous conditions and review in six months (March 2011).
November 13, 2010	Renewed a site plan amendment for live entertainment and dancing for Hard Times Café, subject to all previously approved conditions and revised condition #2 and eight new conditions, with a review in two years (November 2012).
January 22, 2011	Approved a site plan amendment for a rooftop sign for Airlines Reporting Corp., subject to an amended condition #47.
March 12, 2011	Renewed a use permit (U-2968-99-1) for an outdoor café at Hard Times Café, subject to a revised condition #1, all previous conditions and review in one year (March 2012).
July 12, 2011	Approved a site plan amendment (SP #397) to amend condition #65 relative to outdoor cafes, with a review in one year (July 2012).
March 10, 2012	Renewed a use permit (U-2968-99-1) for an outdoor café at Hard Times Café with a review in three years (March 2014).

