



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of September 16, 2017

DATE: September 7, 2017

SUBJECT: U-3452-16-1 USE PERMIT REVIEW for an outdoor café within a portion of public right-of-way at BrickHaus; located at 2900 Columbia Pike (RPC# 32-006-011).

Applicant:
BrickHaus

By:
Mr. Tony Wagner, Owner
2900 Columbia Pike
Arlington, VA 22204

C.M. RECOMMENDATION:

Renew the use permit, subject to all previously approved conditions, revised Conditions #3 and #4, new Conditions #6 and #7, and with a County Board review in six (6) months (March 2018).

ISSUES: This is a one (1) year review of a use permit for an outdoor café that is located within a portion of the public right-of-way at 2900 Columbia Pike. During the use permit review, staff learned that the applicant had affixed a fire pit to the ground, and installed an underground gas line, in the outdoor café area, within the public right-of-way. The fire pit and gas line were not shown on the plats submitted with the use permit approved by the County Board in September 2016. The fire pit and gas line raise safety, liability, and indemnification issues, and the affixed fire pit is inconsistent with Arlington County Guidelines for Outdoor Cafés which states that “outdoor cafés shall not have permanent fixtures.” Staff is recommending a new condition (Condition #6) requiring the applicant remove these fixtures prior to the issuance of a Certificate of Occupancy.

County Manager:

County Attorney:

CR Sanders

Staff: Adam Watson, CPHD, Planning Division
Robert Gibson, DES, Transportation

PLA-7621

In addition to the fire pit and gas line, the Real Estate Bureau found that the applicant made other improvements to a portion of the outdoor café area within the public right-of-way, including affixing stone pavers, without obtaining an Ordinance of Encroachment from the County Board. The applicant received a building permit, issued in error, to place the pavers in early 2017; however, the pavers are not consistent with originally proposed materials (terra cotta colored brick) submitted on the plats for County Board approval last September. These improvements raise liability issues, especially since a County-maintained sanitary sewer line runs under a portion of the outdoor café area. To address this issue, staff recommends adding another new condition (Condition #7), requiring that the applicant obtain an Ordinance of Encroachment prior to the issuance of the Certificate of Occupancy for the outdoor café. These issues effect only the outdoor café area; the Certificate of Occupancy for the indoor restaurant was issued on August 23, 2017, and the restaurant opened on September 4, 2017.

SUMMARY: The applicant, BrickHaus, is seeking renewal of its existing use permit for a 32-seat outdoor café within a portion of the public right-of-way along South Walter Reed Drive, near the intersection with Columbia Pike. BrickHaus, a new restaurant, which opened on September 4, 2017. Under the approved conditions of the use permit, the outdoor café may operate until 11:30 p.m., Sundays through Wednesdays, and 12:30 a.m., Thursdays through Saturdays and on evenings before all major federal holidays. The applicant was approved by the Historical Affairs and Landmark Review Board (HALRB) in September 2016 to install four (4) building-mounted speakers facing the outdoor café, which the applicant has agreed to operate in compliance with the [Arlington County Zoning Ordinance \(ACZO\)](#) regulations regarding audio entertainment on outdoor cafes (ACZO Section 12.9.15.A.6; use permit Condition #4).

Staff contacted the Presidents of the Douglas Park, Penrose, Columbia Heights, and Arlington Heights civic associations, as well as the Manager of the abutting Avalon apartment building (formerly known as the Halstead), for comments on the use permit. The Presidents of the Douglas Park, Penrose, and Arlington Heights civic associations responded that they are “highly supportive” of the use. During a phone conversation in August 2017, the Manager of the Avalon apartments informed staff that they were not aware of any resident issues with the subject use. As of the date of the staff report, no response has been received from the Columbia Heights Civic Association.

Staff recommends revising Conditions #3 and #4 to remove language referring to an obsolete section number of the ACZO, and to clarify the ACZO requirements that apply to the outdoor café. In addition, staff recommends adding new conditions (Conditions #6 and #7) to address the possible encroachment, safety, and liability issues aforementioned in the Issues Section of this report. Specifically, these new conditions require that the applicant remove the fire pit and gas line from the café, and obtain an Ordinance of Encroachment for fixed improvements in the public right-of-way.

Since the initial use permit approval in September 2016, no other issues or violations were reported by Zoning Enforcement, Code Enforcement, the Police Department, the Fire Marshal’s Office, or the Virginia Alcoholic Beverage Control Board (ABC). However, the use had not yet been established. Staff recommends a six (6) month County Board review to allow time for the applicant to address the encroachment issues into the public right-of-way, and to assess

compliance with the proposed revisions to the use permit conditions. Therefore, staff recommends that the County Board renew the use permit, subject to all previously approved conditions, revised Conditions #3 and 4, new Conditions #6 and #7, and with a County Board review in six (6) months (March 2018).

BACKGROUND: The subject building at 2900 Columbia Pike was constructed circa 1920 and is the oldest commercial building on Columbia Pike. In July 1993, the County Board approved a use permit (U-2773-93-1) for live entertainment at the address for Ristorante Michelangelo, and later renewed it for Bohsali Lebanese Cuisine (1997 and 1998). The use permit was discontinued in 2001 when the new tenant, Blanca's, Salvadorian and Mexican Cuisine restaurant, decided to no longer extend the use permit. Blanca's later closed the space which remained vacant for several years. In 2014, the property owner, Darcey, LLC, filed for a use permit for an outdoor café; however, the application was placed on hold because no restaurant tenant had been secured. In 2016, the property owners filed the subject use permit on behalf of their new restaurant tenant (BrickHaus), which has the same ownership as the Twisted Vines Bistro (located at 2803 Columbia Pike). The County Board subsequently approved the subject use permit in September 2016.

Figure 1: Location of BrickHaus (2900 Columbia Pike)



Source: Pictometry (Apr. 2017)

DISCUSSION: A new restaurant, BrickHaus (owned by Twisted Vines Bistro, LLC), will be located within the existing 2900 Columbia Pike building, and the approved outdoor café will be in a portion of the public right-of-way on South Walter Reed Dr. The indoor restaurant Certificate of Occupancy was approved on August 23, 2017 for 78 seats.

The approved use permit for the outdoor café will permit 32 seats. The applicant has installed a non-fixed, metal barrier that separates the outdoor café from the sidewalk adjacent to the café.

There is a six (6) foot unobstructed clear zone on the sidewalk surrounding the café space, per the use permit conditions. Historical Affairs and Landmark Review Board (HALRB) approved a request by the applicant in September 2016 to install four (4) building-mounted speakers facing the outdoor café, which the applicant has agreed to operate in compliance with the [ACZO](#) regulations regarding audio entertainment in outdoor cafes (ACZO Section 12.9.15.A.6; use permit Condition #4).

The applicant is approved to operate the outdoor café until 11:30 p.m., Sundays through Wednesdays and until 12:30 a.m., Thursdays through Saturdays, as well as on evenings before all major federal holidays.

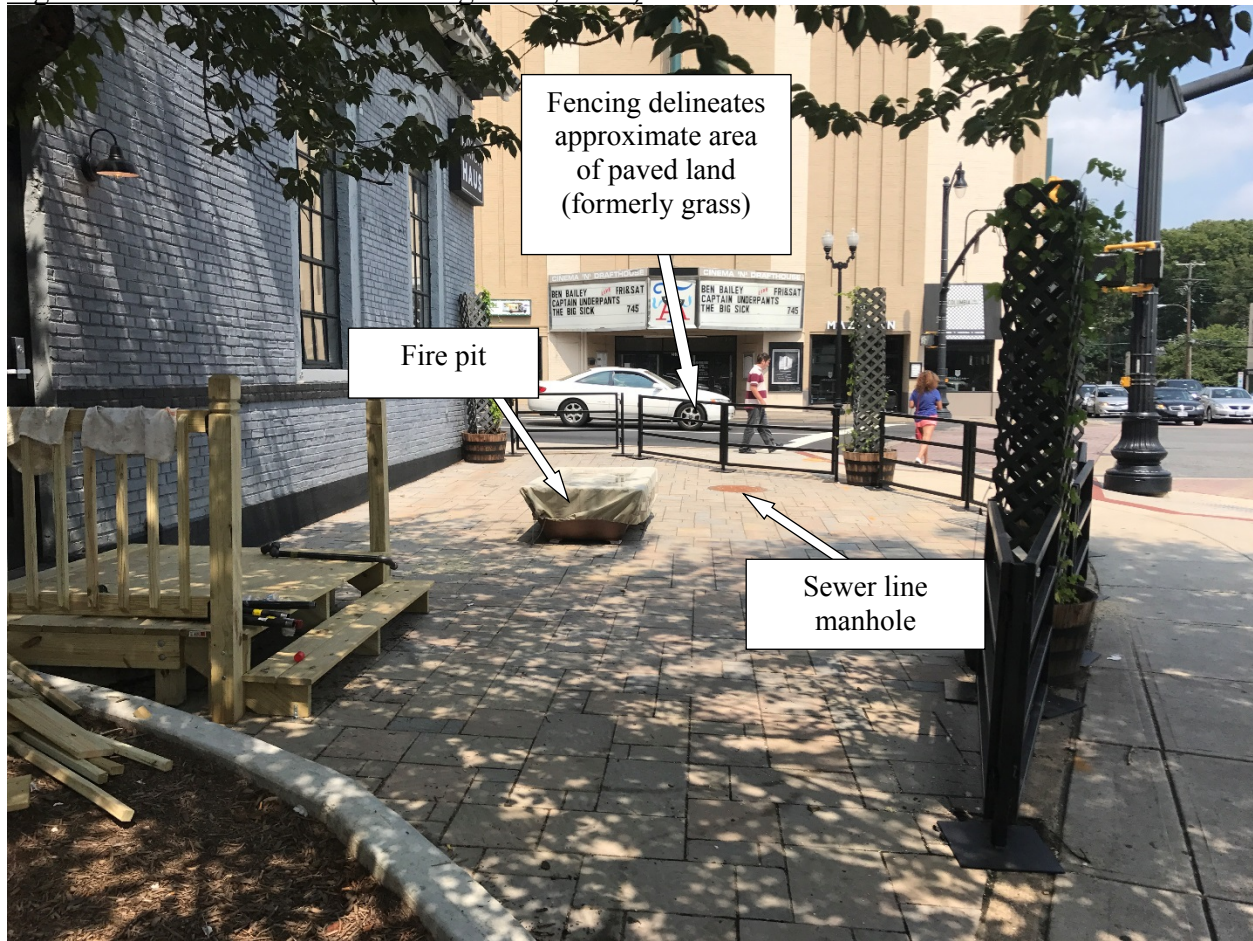
Since the last County Board review (September 24, 2016):

During the use permit review staff learned that the applicant had installed a fire pit, and an associated gas line within the public right-of-way (see Figure 2 below). The fire pit and gas line were not shown on the plats submitted with the use permit approved by the County Board in September 2016 (see attached plats, and Figure 3 below). The fire pit and gas line raise safety, liability, and indemnification issues and need to be removed. Staff is recommending a new condition (Condition #6) requiring the applicant remove these features prior to the issuance of the Certificate of Occupancy for the outdoor café. In addition to the liability issues, an affixed fire pit is inconsistent with the [Arlington County Guidelines for Outdoor Cafés](#), which states “outdoor cafés shall not have permanent fixtures.”

In addition to the fire pit and gas line, the Real Estate Bureau found during the review that the applicant made other improvements to a portion of the outdoor café area within the public right-of-way, including installation of fixed stone pavers, without obtaining an Ordinance of Encroachment from the County Board, which is required for private improvements within publically-owned County right-of-way. The applicant received a building permit, issued in error, to place the pavers (B1603242) in early 2017; however, the pavers are not consistent with the plats that were submitted in connection with County Board approval last September. These improvements raise liability issues, especially since a County-maintained sanitary sewer line runs under a portion of the café area. To address this issue, staff recommends adding new condition language (Condition #7) requiring that the applicant obtain an Ordinance of Encroachment prior to the issuance of the Certificate of Occupancy for the outdoor café.

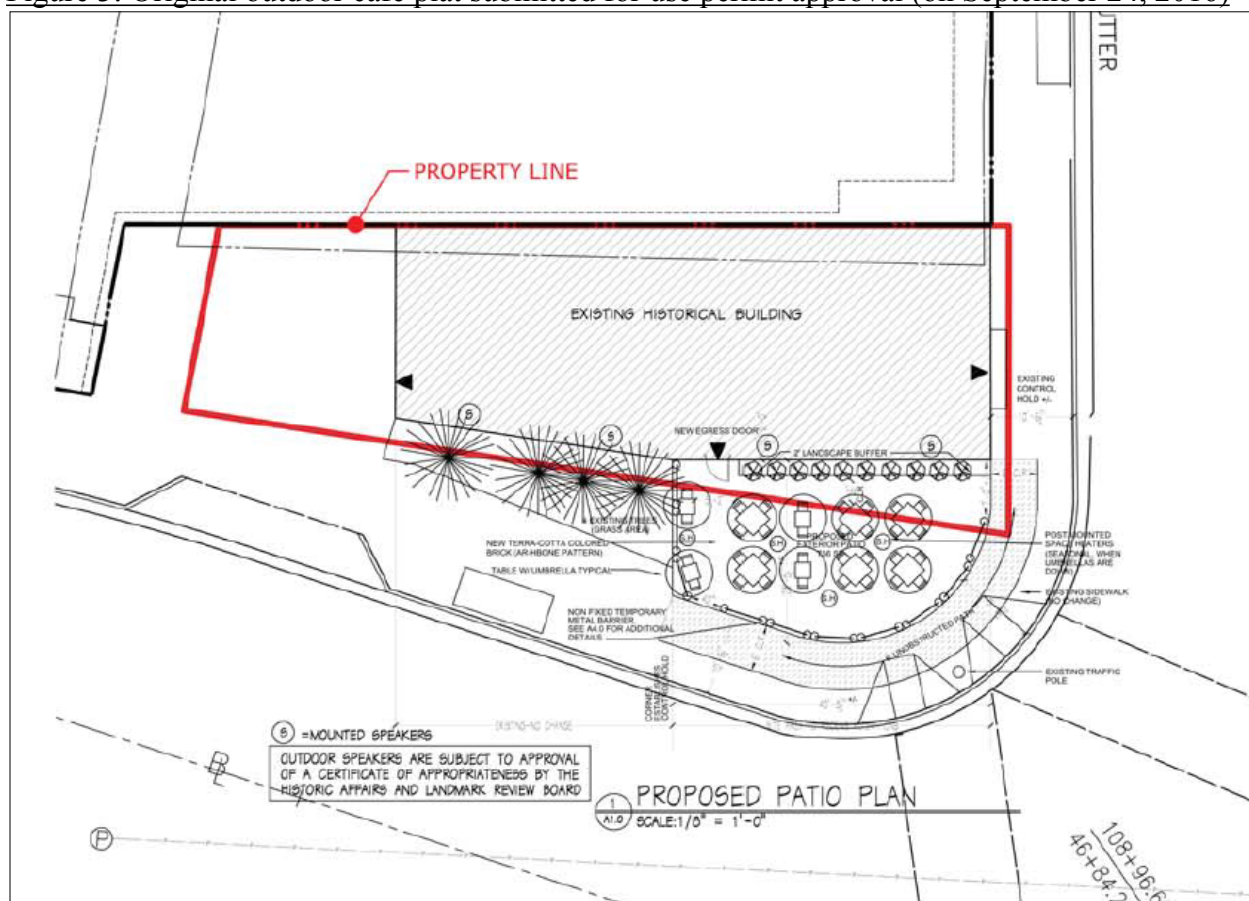
During a phone conversation on August 30, 2017 the applicant agreed to these proposed new conditions, and will be removing the fire pit as soon as possible. Staff also provided the applicant with an application for the Encroachment Ordinance and points-of-contact in the Real Estate Bureau for assisting with the filing.

Figure 2: Outdoor café area (on August 17, 2017)



Source: Arlington County

Figure 3: Original outdoor café plat submitted for use permit approval (on September 24, 2016)



Source: Applicant

Staff also recommends revising Conditions #3 and #4 to remove language referring to an obsolete section number of the ACZO, and to clarify the ACZO requirements that apply to the outdoor café.

Since the initial use permit approval in September 2016, no additional issues or violations were reported by Zoning Enforcement, Code Enforcement, the Police Department, the Fire Marshal's Office, or the Virginia Alcoholic Beverage Control Board (ABC), since the outdoor café has yet to open. Staff recommends a six (6) month County Board review to allow time for the applicant to address all encroachment issues, and to assess compliance with the proposed revisions to the use permit conditions. Therefore, staff recommends that the County Board renew the use permit, subject to all previously approved conditions, revised Conditions #3 and 4, new Conditions #6 and #7, and with a County Board review in six (6) months (March 2018).

PUBLIC ENGAGEMENT: Staff contacted the Presidents of the Douglas Park, Penrose, Columbia Heights, and Arlington Heights civic associations, as well as the Manager of the abutting Avalon apartment building (formerly known as the Halstead), for comments on the use permit on August 4, 2017. The Presidents of the Douglas Park, Penrose, and Arlington Heights civic associations responded that they are "highly supportive" of the use. During a phone

conversation in early August 2017, the Manager of the Avalon apartments informed staff that they were not aware of any resident issues with the subject use. As of the date of the staff report, no response has been received from the Columbia Heights Civic Association.

CONCLUSION: Staff recommends that the County Board renew the use permit, subject to all previously approved conditions, revised Conditions #3 and 4, new Conditions #6 and #7, and with a County Board review in six (6) months (March 2018).

Proposed Revised Conditions:

3. The applicant agrees to comply with all requirements set forth in all applicable ordinances and regulations, including, by way of illustration and not limitation, those administered by the Zoning Office (including the ~~applicable~~ requirements listed in the Arlington County Zoning Ordinance in Section-12.9.14. 12.9.15.A for “Outdoor Cafes” (as amended), the Department of Environmental Services, Inspection Services Division, the Community Code Enforcement Office, the Police Department, and the Fire Marshal's Office.
4. The applicant agrees that no live entertainment or dancing are permitted in the outdoor café area at any time. The applicant agrees to follow the requirements listed in the Arlington County Zoning Ordinance (~~ACZO~~) Section-12.9.14. 12.9.15.A for “Outdoor Cafés” (as amended) as they relate to “sound or audio or video entertainment”.

Proposed New Conditions:

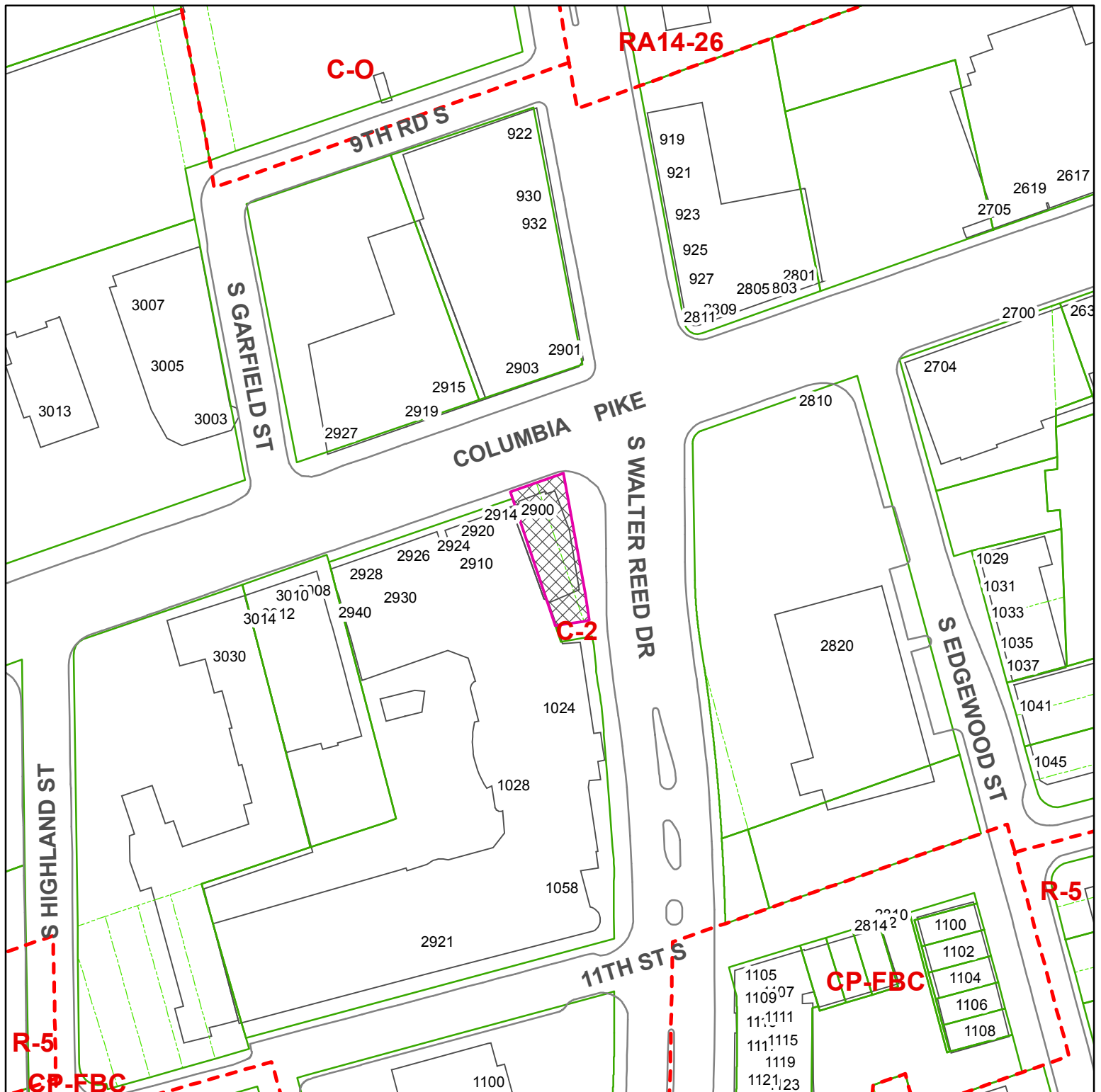
6. Prior to the commencing the use of the outdoor café, the applicant agrees to remove the fire pit, and remove or abandon-in-place the associated gas line (whichever is determined most appropriate by Inspection Services Division and the Fire Marshal) located in the publically owned right of way, and to obtain a Certificate of Occupancy for the outdoor café. The applicant agrees that it shall not ignite, or operate the fire pit prior to its removal.
7. Prior to the issuance of the Certificate of Occupancy for the outdoor café, the applicant agrees to obtain an Ordinance of Encroachment from the County Board for all improvements or permanent features located within the public right-of-way, including but not limited to any fixed pavers or stairs.

Approved Conditions:

1. The applicant agrees that the outdoor café is permitted only until 11:30 p.m., Sundays through Wednesdays, and 12:30 a.m., Thursdays through Saturdays and on evenings before all major federal holidays.
2. The applicant agrees that the outdoor café is approved for up to 32 seats located in accordance with the attached plan entitled “Proposed Tenant Alterations – 2900 Columbia Pike, Arlington, VA 22204 – Patio Plan” dated August 23, 2016. The applicant further agrees to maintain a minimum six (6) foot clear sidewalk along the S. Walter Reed Drive and Columbia Pike frontages outside the barrier of the outdoor café, which shall include a minimum four (4) foot clear path from the back of the two (2) curb ramps adjacent to the café at the corner.
3. The applicant agrees to comply with all requirements set forth in all applicable ordinances and regulations, including, by way of illustration and not limitation, those administered by the Zoning Office (including the applicable requirements listed in Section 12.9.14. for “Outdoor Cafes”), the Inspection Services Division, the Community Code Enforcement Office, the Police Department, and the Fire Marshal's Office.
4. The applicant agrees that no live entertainment or dancing are permitted in the outdoor café area at any time. The applicant agrees to follow the requirements listed in the Arlington County Zoning Ordinance (ACZO) Section 12.9.14. for “Outdoor Cafés” as they relate to “sound or audio or video entertainment”.
5. The applicant agrees to designate a neighborhood liaison to communicate with the nearby residents and neighbors to address concerns which may be related to the outdoor café and an on-site liaison (this may be the same person) that shall be available during the hours of the business operation to receive and respond to developer/landlord and community concerns. The name, telephone number and electronic mail address (if available) of the on-site liaison shall be submitted to the Zoning Administrator and a copy sent to the Douglas Park Civic Association, Arlington Heights Civic Association, Penrose Neighborhood Association, Columbia Heights Civic Association, the Columbia Pike Revitalization Organization (CPRO), and to the management of the Halstead Arlington apartment building prior to the issuance of a certificate of occupancy for the outdoor café.

PREVIOUS COUNTY BOARD ACTIONS:

January 13, 1940	The County Board denied a rezoning (Z-46-39-1) from “Res. A” to “Local Business” district.
July 27, 1993	Approved a use permit (U-2773-93-1) for live entertainment at Ristorante Michelangelo (2900 Columbia Pike) from 9 p.m. to 2 a.m., Fridays and Saturdays, subject to the conditions found in the use permit jacket and review in one year.
July 9, 1994	Renewed a use permit (U-2773-93-1) for live entertainment at Ristorante Michelangelo (from 9 p.m. to 2 a.m., Fridays and Saturdays), subject to all previous conditions and review in three years (July 1997).
July 19, 1997	Renewed a use permit (U-2773-93-1) for live entertainment at Bohsali Lebanese Cuisine (from 9 p.m. to 2 a.m., Fridays and Saturdays), subject to all previous conditions and review in one year (July 1998).
July 11, 1998	Renewed a use permit (U-2773-93-1) for live entertainment at Bohsali Lebanese Cuisine (from 9 p.m. to 2 a.m., Fridays and Saturdays), subject to all previous conditions and review in three years (July 2001).
July 28, 2001	Discontinued the use permit (U-2773-93-1) for live entertainment (for the tenant, Blanca’s, Salvadorian and Mexican Cuisine).
September 24, 2016	Approved a use permit (U-3452-16-1) for an outdoor café partially within the public right-of-way for Darcey, LLC (Twisted Vines Bistro, tenant).



U-3452-16-1

2900 Columbia Pike

RPC # 32-006-011



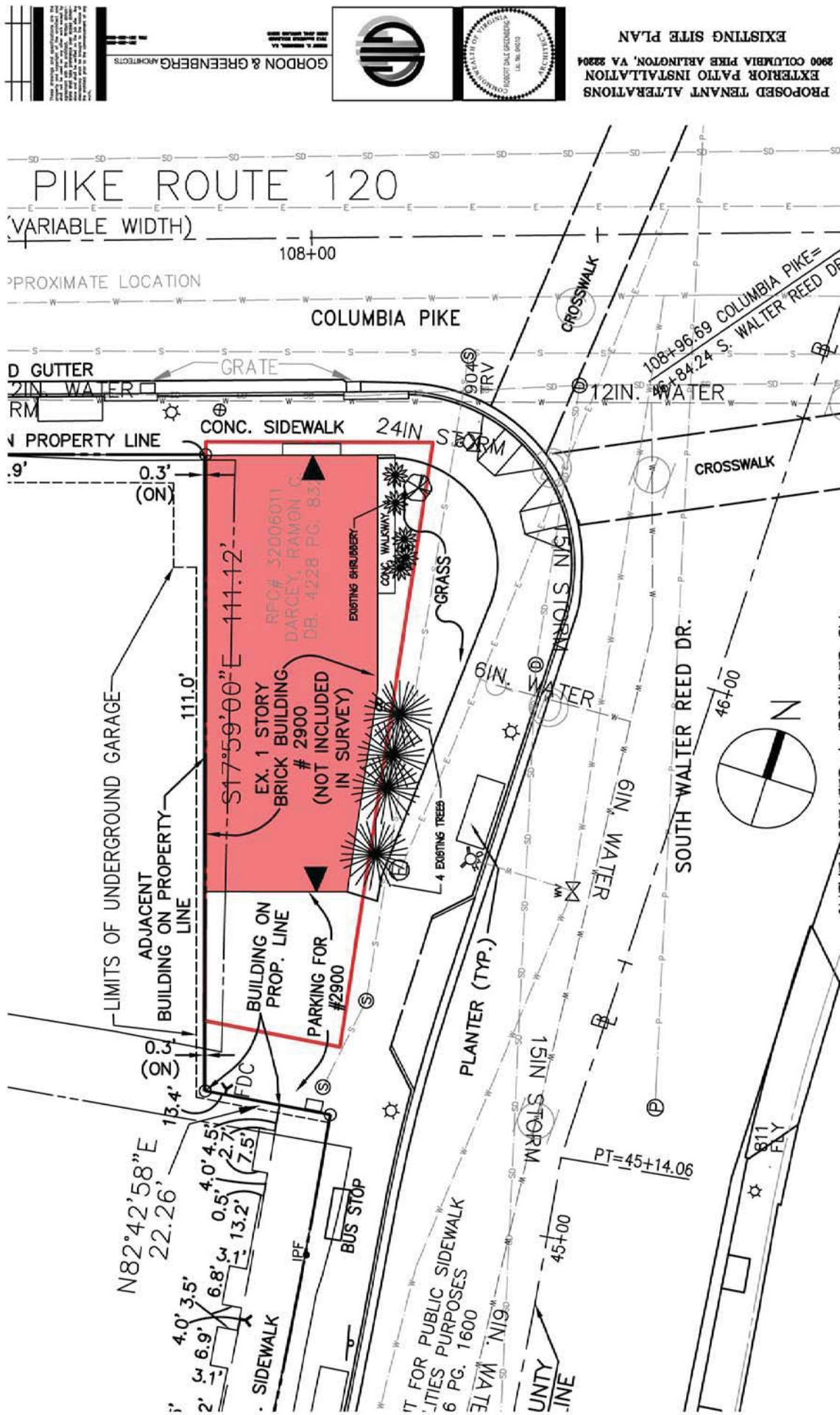
Case
Location(s)

Scale: 1:1,200

Note: These maps are for property location assistance only. They may not represent the latest survey and other information.

Department of Community Planning, Housing and Development

County Use Only
Date Placard Posted _____
By _____
Removed _____

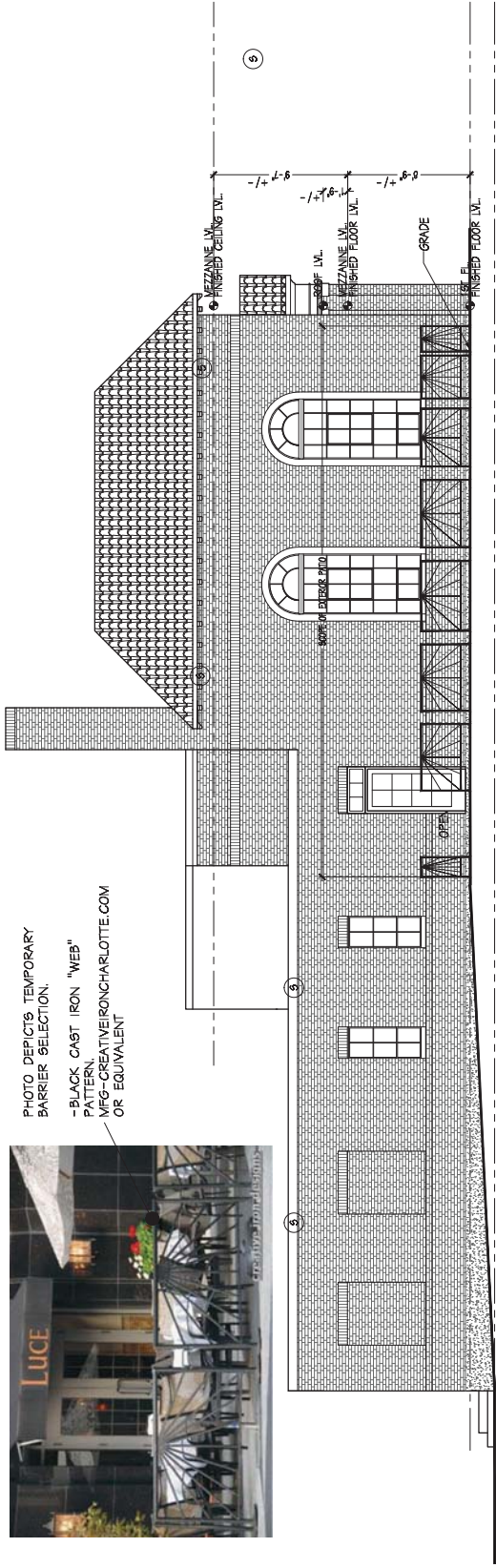


SURVEY CREATED & PROVIDED BY:
VIKA
8180 GREENSBORO DR, SUITE #200
TYSONS CORNER, VA 22102
SURVEYOR: J THOMAS HARDING
TAKEN: AUG. 23, 2012

5 = MOUNTED SPEAKERS



PHOTO DEPICTS TEMPORARY
BARRIER SELECTION.
-BLACK CAST IRON "WEB"
PATTERN.
MFG-CREATIVEIRONCHARLOTTE.COM
OR EQUIVALENT

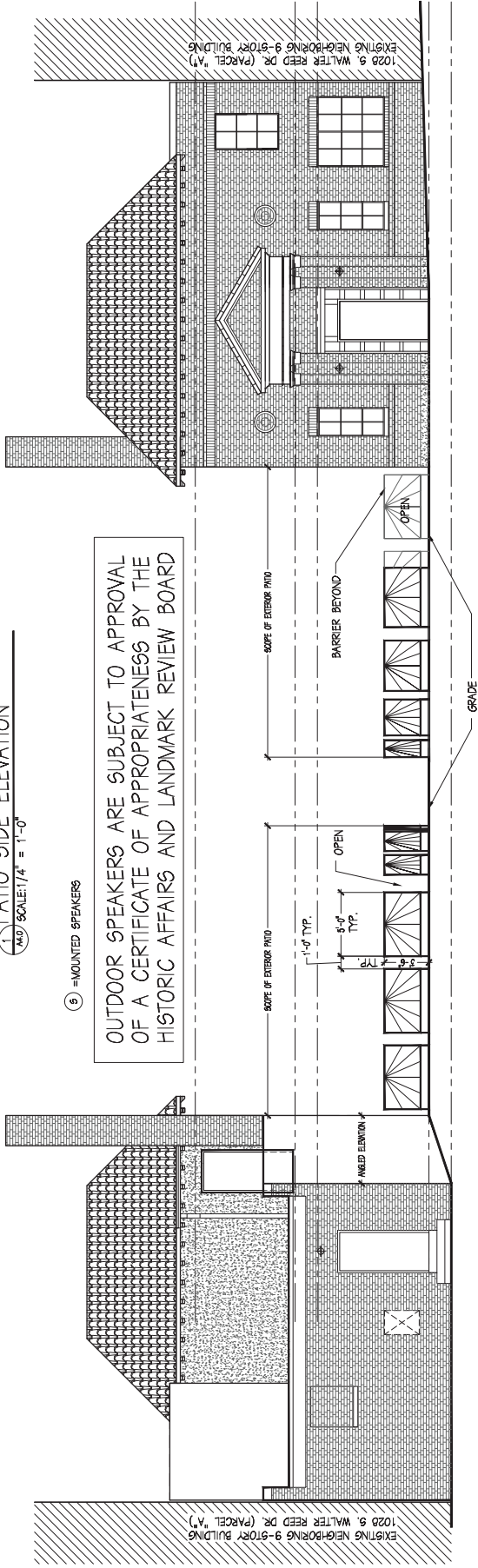


1 PATIO SIDE ELEVATION

MAD SCALE: 1/4" = 1'-0"

5 = MOUNTED SPEAKERS

OUTDOOR SPEAKERS ARE SUBJECT TO APPROVAL
OF A CERTIFICATE OF APPROPRIATENESS BY THE
HISTORIC AFFAIRS AND LANDMARK REVIEW BOARD



2 PATIO REAR ELEVATION

MAD SCALE: 1/4" = 1'-0"

3 PATIO FRONT ELEVATION

MAD SCALE: 1/4" = 1'-0"

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PROPOSED TENANT ALTERATIONS
2900 COLUMBIA PIKE ARLINGTON, VA 22204
PATIO ELEVATIONS

DATE: 07/23/15
SCALE: AS NOTED
SHEET: 15
PROJECT: 2900 COLUMBIA PIKE
CLIENT: LUCY KASSEBAUM
ARCHITECTS
GORDON & GREENBERG