



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of February 24, 2018

DATE: February 13, 2018

SUBJECT: Request to Authorize Advertisement on the County Board's "Own Motion" a public hearing of the County Board to consider a new use permit for an outdoor café (U-3510-18-1) and a use permit amendment for live entertainment (U-3297-11-1) for Westover Market; located at 5863 Washington Blvd. (RPC# 10-027-012, -013).

C.M. RECOMMENDATION:

Adopt the resolution (attached to the staff report) to authorize advertisement of a public hearing "On the County Board's Own Motion" to consider a new use permit for an outdoor café and a use permit amendment for live entertainment for Westover Market at the March 17, 2018, County Board meeting.

ISSUES: County Board authorization is required to advertise these public hearings so that the subject use permit applications can be considered within less than 360 days of last consideration of a use permit on the property. There are no known issues with the requested advertisement as of the date of this report.

SUMMARY: This is a request for the County Board to authorize "on its own motion" advertisement for a public hearing to consider two (2) use permits for Westover Market ("the applicant"), located at 5863 Washington Blvd. The applicant filed an application for a new use permit for an outdoor café, and an amendment application for an existing live entertainment use permit. The [Arlington County Zoning Ordinance](#) (ACZO §15.4.6) prohibits consideration of similar use permit applications for the same lot within 360 days from its last County Board consideration, unless the County Board brings a use permit "on its own motion." The County Board last considered a use permit amendment for live entertainment for Westover Market on April 22, 2017. Therefore, this request to advertise (RTA) is required for the applicant's requests to be heard by the County Board at the March 17, 2018 County Board meeting.

County Manager: *mgs/smb*

County Attorney: *[Signature]* *CR Sanders*

Staff: Adam Watson, DCPHD, Planning Division

PLA-7752

BACKGROUND: The applicant operates a by-right outdoor café as an accessory use to its restaurant, and holds a use permit for live entertainment that was originally approved in 2011. In April 2017, the County Board approved a live entertainment use permit amendment for Westover Market. However, during the review of the application, both the Police Department and Zoning Enforcement staff observed multiple use permit violations. On April 26, 2017, Zoning Enforcement staff issued a Notice of Violation (ZCE170058) citing, among other things, the presence of over 50 seats on the by-right outdoor café at Westover Market (only 29 seats were permitted outdoors). At the time, the ACZO required that outdoor cafes (not governed by a site plan) have fewer seats outdoors than indoors – a requirement that the County Board did not have the authority to modify. Following a Board of Zoning Appeals (BZA) hearing in October 2017, at which the BZA affirmed and upheld the Zoning Notice of Violation, the applicant removed the excess seating on the outdoor café to conform with ACZO and use permit conditions.

In May 2017, the County Board directed the County Manager to undertake a process to revisit and revise the ACZO as it related to outdoor seating – specifically, to provide more flexibility and equity between establishments governed by site plans and those governed by use permits. In November 2017, the County Board adopted a Zoning Ordinance Amendment (ZOA) giving the County Board authority to modify certain standards for outdoor cafes on private property by use permit (as allowed by site plan), and clarifying which standards for outdoor cafes on private property may be modified by use permit or by site plan. Under the revised ACZO, two (2) such modifiable standards are §12.9.15.A.7 and §12.9.15.A.8, which pertain to the hours for sound, audio and video entertainment on outdoor cafes, and the number of seats permitted on outdoor cafés, respectively.

In December 2017, the applicant filed a new use permit (U-3510-18-1) for an outdoor café, specifically requesting that the County Board grant modifications to the §12.9.15.A.7 and §12.9.15.A.8 standards, to allow for expanded seating on the outdoor café. Westover Market also filed a separate amendment application for the existing live entertainment use permit (U-3297-11-1), requesting revisions to the approved conditions. These two (2) use permits are the subject of this RTA.

DISCUSSION: The following provides more information on the applicant’s proposal and staff’s assessment thereof.

PROPOSED USE:

Outdoor Café: There are 28 seats on the existing by-right outdoor café. The applicant requests a use permit for an outdoor café (U-3510-18-1) with a maximum seating capacity of 102 seats; modifying ACZO §12.9.15.A.8 to permit a greater number of outdoor seats than indoor seats. In addition, the applicant requests a modification of ACZO §12.9.15.A.7, so that “the “piped-in” music shall comply with the noise ordinance and cease at the close of business hours.”

Live Entertainment: The applicant also requests an amendment to its existing use permit for live entertainment (U-3297-11-1). This request includes modifying the days/hours of outdoor live entertainment, permitting amplification/electronic instruments on a greater number of days, and reducing the number of required independent noise tests stipulated in the use permit conditions.

Currently, the existing live entertainment use permit (U-3297-11-1) contains conditions applying both to live entertainment and the by-right outdoor café. The following table (Table 1) summarizes and compares the existing conditions to the applicant's proposal.

Table 1: Existing Conditions (U-3297-11-1) and Applicant's Proposal

Feature	Existing Conditions	Applicant's Proposal
Number of seats (outdoor café)	29 (Condition #10.a)	102
Sound/audio/video hours (outdoor café)	"Radio, recorded, or "piped-in" music shall not be played in the outdoor café/Beer Garden on evenings (6 p.m. to closing time) that live music is not permitted, and during evening hours may only be played during permitted live entertainment hours of operation." (Condition #13)	"Piped-in" music shall comply with the noise ordinance and cease at the close of business hours.
Outdoor live entertainment days/hours	Permitted only from April 1 to October 31, three days a week: on Wednesdays from 6 p.m. to 8 p.m., Fridays from 6 p.m. to 10 p.m., and Saturdays from 5 p.m. to 9 p.m. (Condition #8.a)	Permitted only from April 1 to October 31: on Wednesdays from 6 p.m. to 8 p.m., Thursdays from 6 p.m. to 9 p.m., Fridays from 6 p.m. to 10 p.m., Saturdays from 5 p.m. to 9 p.m., and Sundays from 5 p.m. to 9 p.m. only when the following Monday is a federal holiday.
Outdoor amplified instruments (live entertainment)	Permitted only Fridays and Saturdays (Condition #8.a)	Permitted Wednesday through Sunday
Independent noise tests	There shall be a minimum of four (4) tests between April and October. (Condition #6)	There shall be a minimum of two (2) tests between April and October.

ASSESSMENT

The ACZO (§15.4.6) states that:

"No application for a use permit for the same lot shall be considered by the County Board within a period of 360 days from its last consideration. This provision, however, shall not impair the right of the County Board to propose a use permit on its own motion."

The County Board last considered a use permit amendment for live entertainment for Westover Market on April 22, 2017. Therefore, this request to advertise (RTA) is required for the applicant's use permit requests to be heard by the County Board at the March 17, 2018 County Board meeting. Otherwise, the earliest that the applicant's requests could be considered by the

County Board is April 2018. The applicant requests that the use permits be considered before April 2018, when its permitted outdoor live entertainment season begins, so that it can make seating adjustments to the outdoor café.

Staff reviewed the existing use permit performance and, to date, no documented issues or violations of the use permit conditions or State regulations were reported by County agencies or the Virginia Alcoholic Beverage Control (ABC) Board since the applicant complied with the October 2017 BZA ruling. Staff will fully evaluate the applicant's use permit proposals for the March 2018 County Board meeting, pending County Board adoption of the subject RTA.

Given that the applicant is in compliance with the approved use permit conditions, paid for and filed the requisite use permit applications; and given the nature of this specific request, as it relates to the recently adopted ZOA pertaining to outdoor cafes, and the timing of the applicant's live entertainment season; staff finds that this RTA is in accordance with the General Land Use Plan, the public health, safety, and welfare, and convenience and good zoning practice. Staff therefore recommends that the County Board adopt the resolution (attached to the staff report) to authorize advertisement of a public hearing "On the County Board's Own Motion" to consider the applicant's use permit requests.

PUBLIC ENGAGEMENT:

Westover Village Civic Association (WVCA): The subject site is within the WVCA boundary. The WVCA submitted to staff a Letter of Support for the applicant's proposal (see attached letter). On January 11, 2018 staff contacted the WVCA President to explain the need for a February 2018 RTA, before the use permits could be considered in March 2018.

Other: Staff contacted the presidents of the nearby Tara-Leeway Heights Civic Association (TLHCA) and Highland Park-Overlee Knolls Civic Association (HPOKCA) on January 11, 2018 to explain the applicant's request, the RTA process, and solicit comments. As of the date of this report, staff received no response from these associations.

CONCLUSION: Staff recommends that the County Board adopt the resolution (attached to the staff report) to authorize advertisement of a public hearing "On the County Board's Own Motion" to consider a new use permit for an outdoor café and a use permit amendment for live entertainment for Westover Market at the March 17, 2018, County Board meeting.

RESOLUTION TO AUTHORIZE ADVERTISEMENT OF A PUBLIC HEARING BY THE COUNTY BOARD ON MARCH 17, 2018 TO CONSIDER APPROVAL OF A USE PERMIT FOR AN OUTDOOR CAFÉ (U-3510-18-1) AND A USE PERMIT AMENDMENT FOR LIVE ENTERTAINMENT(U-3297-11-1) AT WESTOVER MARKET, LOCATED AT 5863 WASHINGTON BOULEVARD (RPC#10-027-012, -013) IN ACCORDANCE WITH THE GENERAL LAND USE PLAN, THE PUBLIC HEALTH, SAFETY, WELFARE, AND CONVENIENCE AND GOOD ZONING PRACTICE.

The County Board of Arlington County hereby resolves to authorize advertisement of a public hearing on March 17, 2018 for the County Board to consider approval of a use permit for an outdoor café (U-3510-18-1) and a use permit amendment for live entertainment (U-3297-11-1) at Westover Market, located at 5863 Washington Boulevard (RPC#10-027-012, -013) in accordance with the General Land Use Plan, the public health, safety, welfare, and convenience and good zoning practice.

PREVIOUS COUNTY BOARD ACTIONS:

June 23, 1956	Approved use permit (U-1222-56-1) for a parking lot as a transitional use, subject to conditions.
September 14, 1957	Amended use permit (U-1222-56-1) for a parking lot as a transitional use to eliminate the requirement for fencing in a portion of the rear yard, at the discretion of the Zoning Administrator.
June 7, 1958	Adopted a master plan for the Westover Shopping Area.
June 13, 1992	Approved a use permit (U-2741-92-1) for construction and operation of a United States Post Office and associated parking, subject to conditions and a review one year after issuance of the certificate of occupancy.
June 5, 1993	Renewed a use permit (U-2741-92-1) for construction and operation of a United States Post Office and associated parking, subject to all previous conditions and a review one year after issuance of the certificate of occupancy.
May 17, 2011	Approved a use permit (U-3297-11-1) for live entertainment in an existing restaurant outdoors, subject to conditions and a County Board review in February 2012.
February 11, 2012	Approved a use permit amendment (U-3297-11-1) to amend conditions #6, 8, and 14 to permit continued live entertainment and amplified entertainment after an administrative review, with an administrative review in June 2012 and a County Board review in November 2012.
November 17, 2012	Renewed a use permit for live entertainment and amended condition #8 and deleted condition #14, with a County Board review in nine (9) months (July 2013).
July 13, 2013	Renewed a use permit for live entertainment and amended condition #6 with a County Board review in one (1) year (July 2014).

July 19, 2014

Renewed a use permit for live entertainment and amended Condition #13 with a County Board review in three (3) years (July 2017).

April 22, 2017

Approved a use permit amendment to allow indoor live entertainment, and permit furniture on the outdoor café year-round, subject to all previously approved conditions, revised Conditions #1, #2, #5, #8 (a. and b.), #9, and #10 (a. and b.), with an Administrative Review in six (6) months (October 2017) and a County Board review in one (1) year (April 2018).

January 4, 2018

To: Adam Watson

RE: Westover Market and Beer Garden Use Permits

On behalf of the Westover Civic Association Board, I would like to register our support for the new/revised use permits for the Westover Market and Beer Garden. The market is a vital part of our community and serves as a gathering place for many that we would like to see continue to thrive in the neighborhood.

We support the outdoor café use permit request which would allow the Beer Garden to maintain the 102 seats outside which have been in use for much of the time and meets the requirements of the fire marshal. Maintaining this capacity is important for them to meet the demand of the area without turning away patrons, which in turn allows the business to succeed.

Additionally, we support the change to the music permit that would allow for piped in music during times when live music is not being played. It is common for restaurants to have background music playing and this establishment should be allowed to do the same without tying it to the live music rules. The Italian Store at the opposite end of the shopping center currently plays piped in music and serves as a precedent in the Westover area.

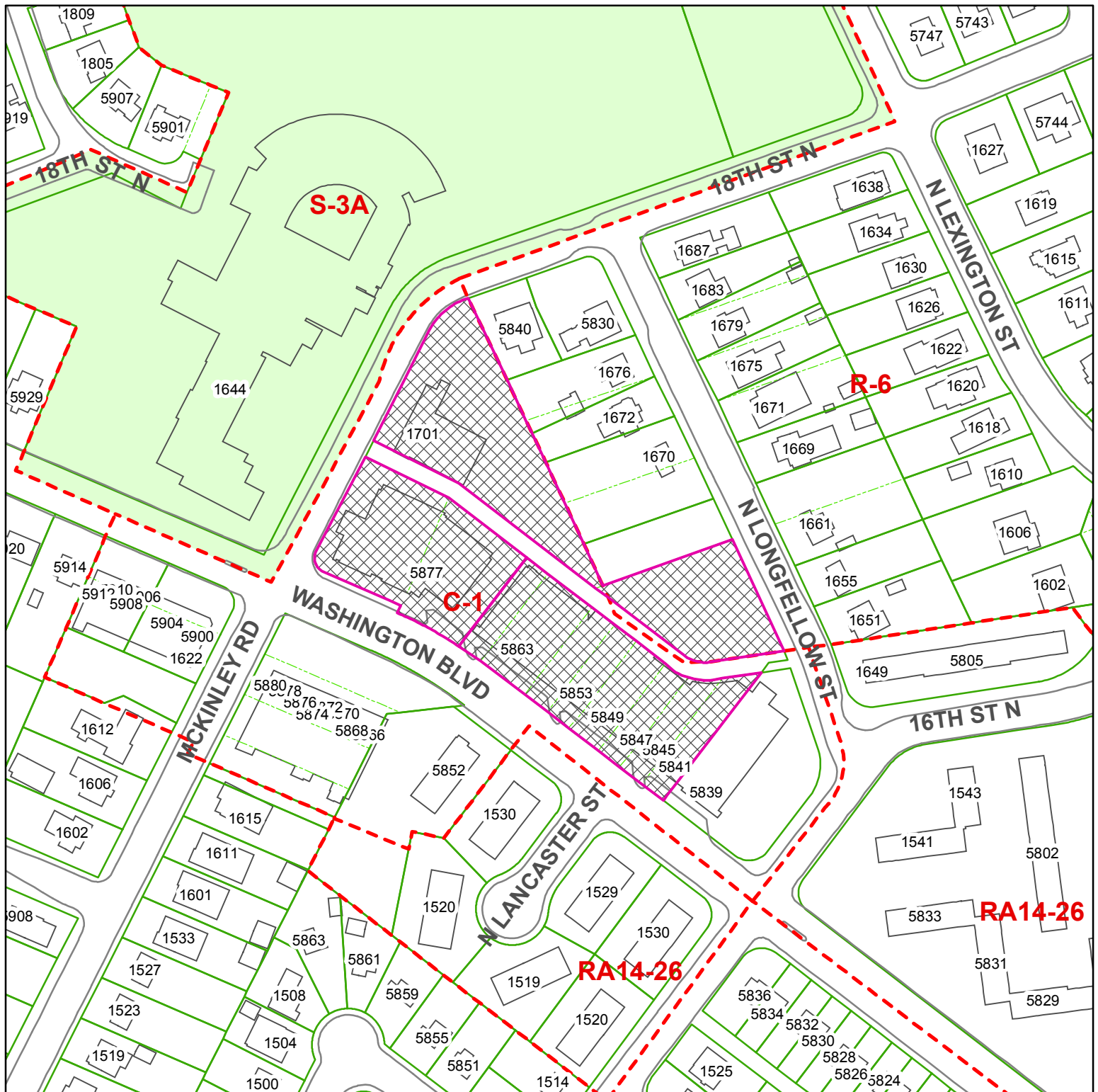
Lastly, we also support the Market's proposed change for decreased acoustical testing.

Overall, we believe the market is an important part of our community and serves as a gathering place for many. We look forward to seeing them continue to thrive and be a strong part of what makes Westover such a desirable place to live and visit.

Thank you for your consideration,

Lilith A Christiansen

WVCA President




U-3297-11-1 and U-3510-18-1

5863 Washington Blvd

RPC #s 10-027-012 & -013



 Case Location(s)
Scale: 1:1,800

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 _____