

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Request for approval of a conditional use permit for live entertainment for Bey Restaurant & Lounge, located at 303 Mill Street NE, in the CM, Limited Industrial zoning district; filed by Rawad Hasrouni of Wooden Bakery and Bey Restaurant and Lounge USA.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on November 18, 2015, for request of approval of a conditional use permit for live entertainment for Bey Restaurant & Lounge, located at 303 Mill Street NE, in the CM, Limited Industrial zoning district; filed by Rawad Hasrouni. Based upon testimony offered by the applicant, exhibits offered into evidence, comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

The 27,400 square foot property has four separate tenant spaces, A-D; Wooden Bakery occupies suite A and Wooden Café/Bey Lounge occupies suite B. The two suites are leased and occupied as one entity. Wooden Bakery must be open to serve food and Wooden Café/Bey Lounge operates as a café/bar to meet the Virginia Department of Alcohol Control alcohol to food ratio. The applicant is currently seeking a conditional use permit for live entertainment to allow belly dancing, jazz bands, live bands and DJ's.

The Planning Commission reviewed the application on November 4, 2015. It was noted the applicant required 41 parking spaces but provided a site plan showing only 25 spaces. There was discussion regarding Fire Marshall approval and noise levels. Upon conclusion of their analysis, the Planning Commission recommended approval of the conditional use permit with the following conditions:

- Applicant must submit a signed, off-street parking agreement from the owners of the adjacent properties
- Applicant must provide an approval letter from the Fire Marshalls Office stating Bey Lounge has been approved to operate as a place of assembly
- Applicant must provide a third party sound study submitted by a Sound Engineer
- Additionally, the Planning Commission recommended the conditional use permit be valid for one year only to allow the application to be reviewed in one year

Prior to the Board of Zoning Appeals meeting on November 18th the applicant had provided staff with an approval letter from the Fire Marshall's Office and a sound study done by a Sound Engineer. The applicant brought to the meeting updated parking agreements that had been acquired that day.

As of the Board of Zoning Appeals hearing, it was noted that since August 1, 2015 the Vienna Police Department has been called to the Bey Lounge seven times in regard to noise complaints. Management was asked to turn music volume down in a few instances, but no citations were given. The applicant has taken some steps to add insulation in the building. The applicant also stated that they did have a volume control that they could implement to assist in noise control.

Several residents gave testimony expressing concerns or experiences with noise from music, patrons entering and exiting the establishment and cars. Other concerns included hookah and cigar smoke, increased traffic and the fear of reduced property values.

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AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning Appeals makes the following conclusions of law:

The Board determined granting the conditional use permit would not adversely affect the health or safety of those in the neighborhood, nor would it be detrimental to public welfare or injurious to property or improvements in the neighborhood and it was in accord with the purpose of the Town's master plan. The Board voted unanimously to approve the conditional use permit for live entertainment for Lela LLC DBA Bey, located at 303 Mill Street NE suite B, and in the CM, Limited Industrial Zone with the following conditions:

- The applicant files paperwork staff requires to deem the parking agreements valid and appropriate
- The parking agreements be maintained
- The applicant minimizes the sound from live entertainment and respond to complaints to keep sound levels at an appropriate level
- The applicant provides personnel in the parking lot at closing time to assist patrons leaving and keep noise to a minimum
- The conditional use permit is valid for one year from the date staff determines the parking agreements are valid. At that time the conditional use permit will need to be revisited and modified as necessary.

The Board noted the applicant had provided everything the Town requested, and in doing so, showed a willingness to work with the community. While the Board respects the neighbors' concerns regarding noise, since sound proofing the establishment, sound levels were measured at 47-49 decibels, which is below normal conversation level and the Fairfax County 55 decibel standard. It is also important to note the business exists within the Limited Industrial zone. Limiting the conditional use permit to one year gives the community the opportunity revisit the issue and set more restrictive conditions if necessary. The Board felt the addition of businesses providing live entertainment improves the quality of life and adds cultural benefit to the Town.

IT IS, THEREFORE, ORDERED, this 30th day of NOVEMBER, 2015, that the request for approval of a conditional use permit for live entertainment for Bey Restaurant & Lounge, located at 303 Mill Street NE, in the CM, Limited Industrial zoning district, be approved.


George J. Creed, Vice-Chairman
Board of Zoning Appeals
Town of Vienna, Virginia

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Conditional Use Permit Application for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE and in the CM, Limited Industrial zone. Application filed by Rawad Elhasrouni, owner.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on November 16, 2016, for a conditional use permit in accordance with Sections 18-210S and 18-74B of the Code of the Town of Vienna, Virginia. Based upon testimony offered by the applicant, exhibits offered into evidence, comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

The subject property is situated on the eastern side of Mill Street NE, near the intersection of Mill Street NE and Ayr Hill Avenue NE. The current property owner is listed in Fairfax County Tax records as William and Judith Weber. This 27,400 square foot property is zoned CM, Limited Industrial and currently has four separate tenant suites. The Wooden Bakery occupies suite A, Wooden Café/Bey Lounge occupies suite B, Persico Rugs occupies suite C and Billy Webber Tire occupies suite D.

Currently, suites A and B are leased and operated as one entity. Suite A, The Wooden Bakery, must be open to serve food in order to meet their Virginia Department of Alcoholic Beverage Control alcohol to food ratio requirements while the adjoining business, Wooden Café/Bey Lounge operates as a café/bar.

In October 2015, an occupancy permit was issued to Lela LLC DBA Bey for a lounge/restaurant with a maximum seating capacity of 162 seats. In November 2015 the applicant requested a conditional use permit for live entertainment, which included belly dancing, jazz bands, live bands and DJ's. The conditional use permit was approved by the Board, subject to review after one year.

AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning Appeals makes the following conclusions of law:

The applicant has taken steps to mitigate noise and has plans to continue to do so. There was no evidence that lead Board members to believe that noise issues were the direct result of live entertainment. It was also noted that without a numerical decibel limitation, the Town's current noise ordinance could be considered subjective.

The Board voted 7-0 to approve the request for a conditional use permit for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE and in the CM, Limited Industrial zone, with the following conditions:

1. The hours of operation be limited to midnight Sunday - Thursday and to 2:00 AM Friday and Saturday
2. The conditional use permit is conditioned upon the completion of recommendations dated November 7, 2016 from acoustic consultants Martin, Beam and Paganelli, or to make such reasonable attempts to limit noise as subject to Fire Marshall approval
3. The conditional use permit be valid for one year

IT IS, THEREFORE, ORDERED, this 23 day of November, 2016, that the application requesting a conditional use permit for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE and in the CM, Limited Industrial zone be approved as submitted.



Robert Petersen
Board of Zoning Appeals
Town of Vienna

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Conditional Use Permit for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St NE, in the CM, Limited Industrial zone. Application for renewal filed by Rawad Hasrouni, owner.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on November 15, 2017 for a Conditional Use Permit from Sections 18-209 to 216 of the Vienna Town Code. Based upon testimony offered by the applicant, exhibits offered into evidence, comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

- A. The subject property is situated on the eastern side of Mill Street NE, near the intersection of Mill Street NE and Ayr Hill Avenue NE. The current property owner is listed in Fairfax County Tax records as William and Judith Weber. This 27,400 square foot property is zoned CM, Limited Industrial and currently has four separate tenant suites. The Wooden Bakery occupies suite A, Wooden Café/Bey Lounge occupies suite B, Persico Rugs occupies suite C and Billy Webber Tire occupies suite D.
- B. Currently, suites A and B are leased and operated as one entity. Suite A, The Wooden Bakery, must be open to serve food in order to meet their Virginia Department of Alcoholic Beverage Control alcohol to food ratio requirements while the adjoining business, Wooden Café/Bey Lounge operates as a café/bar.
- C. In October 2015, an occupancy permit was issued to Lela LLC DBA Bey for a lounge/restaurant with a maximum seating capacity of 162 seats. In November 2015 the applicant requested a conditional use permit for live entertainment, which included belly dancing, jazz bands, live bands and DJ's. The conditional use permit was approved by the Board, subject to review after one year.
- D. In November 2016 the applicant requested renewal a conditional use permit for live entertainment, which included belly dancing, jazz bands, live bands and DJ's. The conditional use permit was approved by the Board, subject to review after one year.
- E. It was documented on June 1, 2017 that Bey Lounge was open past midnight, a violation to a condition of the 2016 BZA order. In July of 2017 the Town's Zoning Administrator requested that the Board of Zoning Appeals revoke the conditional use permit for live entertainment after it was discovered that the applicant had been violating the hours of operation condition. The item was deferred and scheduled on the November agenda for the Board of Zoning Appeals.

Conditional Use Permit for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St NE, in the CM, Limited Industrial zone. Application for renewal filed by Rawad Hasrouni, owner.
November 15, 2017

AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning Appeals makes the following conclusions of law:

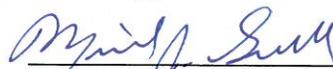
The Board voted 7-0 to approve the request for a Conditional Use Permit for continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St NE in the CM, Limited Industrial zone, with the following conditions:

1. All previous conditions from the November 2015 order still apply.
2. All previous conditions from the November 2016 order still apply.
3. The Board of Zoning Appeals granted an addendum to the above previous conditions that between the hours of 11pm to 2am Friday and Saturday all noise cannot exceed 51 decibels at the back property line of Bey Lounge facing the residences.
4. This CUP is good for 6 months. At the end of the 6 months, there is a required re-application for a continued CUP for live entertainment.

If the terms and conditions are not met, then this order may be revoked per the Town Code Section 18-209 to 216.

The Board supported the application because; it felt the issue of the hours of operation violation was corrected. The fighting that occurred happened after the hours of operation and was out of the applicant's control. The Board also found that the noise is not a product of only the live entertainment. They decided that if DJ's replaced live entertainment that the issue of noise will not be corrected nor put residents in a better position.

IT IS, THEREFORE, ORDERED, this 22nd day of NOVEMBER, 2017 that the application requesting approval of renewal of Conditional Use Permit from Section 18-209 to 216 of the Vienna Town Code for live entertainment at Bey Lounge located at 303 Mill St, in the CM Limited Industrial zone. Application for renewal filed by Rawad Hasrouni, owner of Lela LLC DBA Bey Lounge, to be approved.



Michael Gadell
Board of Zoning Appeals, Vice Chair
Town of Vienna

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Request for revocation/non-renewal of a Conditional Use Permit for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St NE, in the CM, Limited Industrial zone. Application for revocation/non-renewal filed by the Department of Planning and Zoning.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on November 15, 2017 for a Conditional Use Permit from Sections 18-209 to 216 of the Vienna Town Code. Based upon testimony offered by the applicant, exhibits offered into evidence, comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

- A. The subject property is situated on the eastern side of Mill Street NE, near the intersection of Mill Street NE and Ayr Hill Avenue NE. The current property owner is listed in Fairfax County Tax records as William and Judith Weber. This 27,400 square foot property is zoned CM, Limited Industrial and currently has four separate tenant suites. The Wooden Bakery occupies suite A, Wooden Café/Bey Lounge occupies suite B, Persico Rugs occupies suite C and Billy Webber Tire occupies suite D.
- B. Currently, suites A and B are leased and operated as one entity. Suite A, The Wooden Bakery, must be open to serve food in order to meet their Virginia Department of Alcoholic Beverage Control alcohol to food ratio requirements while the adjoining business, Wooden Café/Bey Lounge operates as a café/bar.
- C. It was documented on June 1, 2017 that Bey Lounge was open past midnight, a violation to a condition of the 2016 BZA order. In July of 2017 the Town's Zoning Administrator requested that the Board of Zoning Appeals revoke the conditional use permit for live entertainment after it was discovered that the applicant had been violating the hours of operation condition. The item was deferred and scheduled on the November agenda for the Board of Zoning
- D. During the past two years of operation there has been considerable concern from neighbors and citizens in regards to the noise associated with Bey Lounge. Multiple noise violations have been issued by the Police Department. Additionally, neighbors along Park Street NE signed a petition "to reconsider [the] Bey Lounge [live] music permit." In 2016 the applicant requested a renewal of a conditional use permit for live entertainment, which included belly dancing, jazz bands, live bands and DJ's. The conditional use permit was approved by the Board, subject to review after one year.

Request for revocation/non-renewal of a conditional Use Permit for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St NE, in the CM, Limited Industrial zone. Application for revocation/non-renewal filed by the Department of Planning and Zoning.

November 15, 2017

- E. The applicant has made several attempts to mitigate the noise with soundproofing per recommendations provided by an acoustics consultant. It had appeared that the implementation of the noise control recommendations worked in mitigating noise, as evidenced by the lack of noise violations since the last one in January. However, on October 1, 2017, the Police Department received a complaint of loud music coming from the area of Bey Lounge. Bey Lounge management was cited for the noise violation.

AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning Appeals makes the following conclusions of law:

The request for revocation / non-renewal of a Conditional Use Permit was denied due to the Board of Zoning Appeals vote, 7-0, to approve the request for a Conditional Use Permit for continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St NE in the CM, Limited Industrial zone, with the following conditions:

1. All previous conditions from the November 2015 order still apply.
2. All previous conditions from the November 2016 order still apply.
3. The Board of Zoning Appeals granted an addendum to the above previous conditions that between the hours of 11pm to 2am Friday and Saturday all noise cannot exceed 51 decibels at the back property line of Bey Lounge facing the residences.
4. This CUP is good for 6 months. At the end of the 6 months, there is a required re-application for a continued CUP for live entertainment.

If the terms and conditions are not met, then this order may be revoked per the Town Code Section 18-209 to 216.

The Board supported the application because; it felt the issue of the hours of operation violation was corrected. The fighting that occurred happened after the hours of operation and was out of the applicant's control. The Board also found that the noise is not a product of only the live entertainment. They decided if DJ's replaced live entertainment the issue of noise will not be corrected nor put residents in a better position.

Request for revocation/non-renewal of a conditional Use Permit for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St NE, in the CM, Limited Industrial zone. Application for revocation/non-renewal filed by the Department of Planning and Zoning.

November 15, 2017

IT IS, THEREFORE, ORDERED, this 22nd day of NOVEMBER, 2017 that the application requesting for revocation/non-renewal of a Conditional Use Permit from Section 18-209 to 216 of the Vienna Town Code for live entertainment at Bey Lounge located at 303 Mill St, in the CM Limited Industrial zone. Application for revocation/non-renewal filed by the Department of Planning and Zoning, to be denied.



Michael Gadell
Board of Zoning Appeals, Vice Chair
Town of Vienna

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Conditional Use Permit (CUP) for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St, NE in the CM, Limited Industrial zone. Application for renewal filed by Rawad Hasrouni, owner.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on May 22, 2018 for a CUP from § 18-209 to 216 of the Vienna Town Code. Based upon testimony offered by the applicant, exhibits offered into evidence, comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

- A. The subject property is situated on the eastern side of Mill Street NE, near the intersection of Mill Street NE and Ayr Hill Avenue NE. The current property owner is listed in Fairfax County Tax records as William and Judith Weber. This 27,400 square foot property is zoned CM, Limited Industrial and currently has four separate tenant suites. The Wooden Bakery occupies suite A, Wooden Café/Bey Lounge occupies suite B, Persico Rugs occupies suite C and Billy Webber Tire occupies suite D.
- B. Currently, suites A and B are leased and operated as one entity. Suite A, The Wooden Bakery, must be open to serve food in order to meet their Virginia Department of Alcoholic Beverage Control alcohol to food ratio requirements while the adjoining business, Wooden Café/Bey Lounge operates as a café/bar.
- C. In October 2015, an occupancy permit was issued to Lela LLC DBA Bey for a lounge/restaurant with a maximum seating capacity of 162 seats. In November 2015 the applicant requested a CUP for live entertainment, which included belly dancing, jazz bands, live bands and DJ's. The CUP was approved by the Board, subject to review after one year.
- D. In November 2016, the applicant requested renewal of a CUP for live entertainment, which included belly dancing, jazz bands, live bands and DJ's. The CUP was approved by the Board, subject to review after one year.
- E. The CUP for Bey Lounge was renewed on November 22, 2017. The Board of Zoning Appeals granted the re-approval of the CUP stating the conditions from 2015's and 2016's CUP still applied. The Board added that between the hours of 11 pm to 2 am Friday and Saturday all noise cannot exceed 51 decibels at the back property line of Bey Lounge facing and the CUP was subject to review after six months.

AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning

CUP for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St, NE in the CM, Limited Industrial zone. Application for renewal filed by Rawad Hasrouni, owner.

Appeals makes the following conclusions of law:

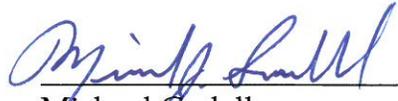
The Board voted 4-0 (Chumley, Dowler, and Daly absent) to approve the request for a CUP for continuation of live entertainment for Lela, LLC DBA Bey, located at 303 Mill St, NE in the CM, Limited Industrial zone, with the following conditions:

- I. The applicant files paperwork staff requires to deem the parking agreements valid and appropriate
- II. The parking agreements be maintained
- III. The applicant minimizes the sound from live entertainment and respond to complaints to keep sound levels at an appropriate level
- IV. The applicant provides personnel in the parking lot at closing time to assist patrons leaving and keep noise to a minimum
- V. The business hours of operation be limited to midnight Sunday – Thursday and to 2:00 AM Friday and Saturday

If the terms and conditions are not met, then this order may be revoked per the Town Code § 18-209 to 216.

The Board supported the application because; it felt the owner had done all that was necessary to go along with what was previously required by the Board and that he had successfully adhered to those requirements.

IT IS, THEREFORE, ORDERED, this 25 day of JUNE, 2018 that the application requesting approval of renewal of CUP from § 18-209 to 216 of the Vienna Town Code for live entertainment at Bey Lounge located at 303 Mill St, in the CM Limited Industrial zone. Application for renewal filed by Rawad Hasrouni, owner of Lela LLC DBA Bey Lounge, to be approved.



Michael Gadell
Board of Zoning Appeals, Chairman
Town of Vienna

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Request the revocation of a conditional use permit (CUP) for live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE, in the CM, Limited Industrial zone. Application for revocation filed by Francis Simeck, Zoning Administrator for the Town of Vienna.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on July 17, 2019 for a Conditional Use Permit from Sections 18-209 to 216 of the Vienna Town Code. Based upon testimony offered by the applicant, exhibits offered into evidence, comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

- A. There has been considerable concern from neighbors and citizens in regard to the noise associated with Bey Lounge. Several noise violations have been issued by the Police Department. Since the BZA issued the most recent CUP on May 22, 2018, there have been three (3) Town noise ordinance convictions during times of live entertainment against Bey Lounge. They are as follows:

Date of Offense	Date of Trial/Court	Disposition
Sunday, Nov. 18, 2018 - 12:15AM	Feb. 11, 2019	Guilty
Saturday, Dec. 29, 2018 - 1:20AM	Feb. 11, 2019	Guilty
Sunday, Jan. 6, 2019 - 12:30AM	March 18, 2019	Guilty*

*Mr. Rawad Elhasrouni, the part owner and manager of Bey, appeared with legal counsel for the first two charges and was found guilty after a trial. At the March 18 hearing, Mr. Elhasrouni did not appear in Court and was tried in his absence.

- B. Based on the three (3) recent live entertainment noise violations and convictions, the Town of Vienna Zoning Administrator is recommending a revocation of the Conditional Use Permit for live entertainment for Bey Lounge.

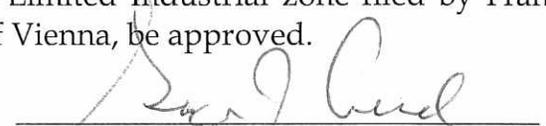
AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning Appeals makes the following conclusions of law:

The Board of Zoning Appeals voted, 6-0, to approve the request to revoke a Conditional Use Permit for live entertainment for Lela, LLC DBA Bey, located at 303 Mill St NE in the CM, Limited Industrial zone.

The Board supported the application because: the owner of Lela, LLC DBA Bey agreed to the revocation; the town had good reason based on the court convictions and repeated violations, and they had been before the Board five times.

Request the revocation of a conditional use permit (CUP) for live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE, in the CM, Limited Industrial zone. Application for revocation filed by Francis Simeck, Zoning Administrator for the Town of Vienna.

IT IS, THEREFORE, ORDERED, this 19th day of July, 2019 that the application, to request the revocation of a conditional use permit (CUP), agreed to by Lela, LLC DBA Bey during hearing testimony, for live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE, in the CM, Limited Industrial zone filed by Francis Simeck, Zoning Administrator for the Town of Vienna, be approved.


George J Creed
Board of Zoning Appeals, Vice-Chair
Town of Vienna