




STAFF REPORT COVER SHEET

July 17, 2019

Address:	303A Mill Street, NE	Case Number:	BZA-04-19
Public Meeting Date:	7/17/2019	Applicant:	Francis Simeck, Zoning Administrator agent for the Town Of Vienna
Board/Commission:	Board of Zoning Appeals	Business Owner:	Lela, LLC DBA Bey c/o Rawad Hasrouni
Existing Zoning:	CM (Limited Industrial)	Existing Land Use:	Commercial
Brief Summary of Request:	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.		
Site Improvements:	No site improvements proposed.		
Size of Property:	Total land area 27,400 square feet with 4 tenant spaces in the building		
Public Notice Requirements:	Code requires 10 days written notice shall be given to the owner of the property and posting Ads in local newspaper for two successive weeks prior to Board of Zoning Appeals meeting; advertisement published in Washington Times newspaper on July 3, and July 10, 2019. Public notice placard on July 3, 2019.		
Staff Recommendation: Approve Revocation of CUP			
Brief Analysis			
<p>RECENT PROPERTY HISTORY</p> <ul style="list-style-type: none"> • BZA granted a CUP for live entertainment for a one-year term on November 2015. • BZA granted a CUP for the continuation of live entertainment for a one-year term on November 2016. • BZA denied the request from the Town to revoke the CUP for live entertainment on November 2017. • BZA granted a CUP for continuation of live entertainment for a six-month term on November 2017. • BZA granted a CUP for continuation of live entertainment with no term limit on May 2018. <p>COMPATIBILITY WITH THE COMPREHENSIVE PLAN</p> <p>The Future Land Use Plan designates the area industrial, which consists of light industrial uses, and other manufacturing activities that are not appropriate or feasible for the Town's main commercial corridors, Church Street Commercial Corridor and Maple Ave Commercial Corridor, as well as auxiliary commercial activities, such as restaurants, fitness centers, and retail, where they can be accommodated. The current use is compatible with the Comprehensive Plan.</p> <p>COMPATIBILITY WITH THE ZONING ORDINANCE</p> <p>The restaurant/bar known as Bey Restaurant and Lounge is a permitted use in the CM (Limited Industrial) Zone. However, a CUP is required for live entertainment per Section 18-210.S.</p>			
Attachments:	CUP Application <input checked="" type="checkbox"/> BZA Orders 2015, 2016, 2017 & 2018 <input checked="" type="checkbox"/> General District Court cases <input checked="" type="checkbox"/>		

ITEM NO. 3:

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.

Introduction/Characteristics of Existing Property:

The subject parcel, 303 Mill Street NE, is situated on the eastern side of Mill Street NE, near the intersection of Mill Street NE and Ayr Hill Avenue NE. The current owner of this property is listed in Fairfax County tax records as William B. and Judith B. Weber. This 27,400 square foot property is zoned CM, Limited Industrial and currently includes a cinder block building, approximately 159' long by 80' deep, with four separate tenant suites "A-D".

The Wooden Bakery occupies suite "A", Wooden Café/Bey Restaurant and Lounge occupies suite "B", Persico Rugs occupies suite "C" and Billy Weber Tire occupies suite "D". Currently the two suites A&B are leased and operated as one entity; the Wooden Bakery suite "A" must be open to serve food while the adjoining business Wooden Café/Bey Lounge suite "B" operates as a Café/Bar to meet Virginia Department of Alcoholic Beverage Control (VABC) alcohol to food ratio requirements.

History:

BZA granted a conditional use permit (CUP) for live entertainment on **November 18, 2015**. Live entertainment included belly dancing, jazz bands, live bands, and DJ's. The CUP was approved 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.

Planning & Zoning Staff Report to the Board of Zoning appeals
Meeting of July 17, 2019
Page 3 of 4

BZA granted a CUP for the continuation of live entertainment for Bey Lounge on **November 16, 2016**. These approvals were subject to the applicant agreeing to and abiding by CUP conditions including but not limited to;

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

The request for revocation from the Town to revoke the CUP for the continuance of live entertainment was denied on **November 15, 2017**.

At the same meeting, the BZA granted a CUP for continuation of live entertainment for Bey Lounge on **November 15, 2017**. The Board of Zoning Appeals granted the re-approval of the CUP with the following conditions:

- All previous conditions from the November 2015 order still apply.
- All previous conditions from the November 2016 order still apply.
- The Board of Zoning Appeals granted an addendum to the above previous conditions 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 the residences.
- The CUP is good for 6 months. At the end of 6 months, there is a required re-application for continued CUP for live entertainment.

BZA granted a CUP for continuation of live entertainment for Bey Lounge on **May 22, 2018**. The Board of Zoning Appeals granted the re-approval of the CUP 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 the 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 business hours of operation be limited to midnight Sunday – Thursday and to 2:00 AM Friday and Saturday.

Planning & Zoning Staff Report to the Board of Zoning appeals
Meeting of July 17, 2019
Page 4 of 4

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

Sec. 18-209. - Use permit subject to certain conditions.

The board of zoning appeals may issue a use permit for any of the uses enumerated in section 18-210 in response to an application therefor, provided the use for which the permit is sought:

- (1) Will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;*
- (2) Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and*
- (3) Will be in accord with the purposes of the Town's master plan.*

In granting any use permit, the board of zoning appeals may impose such conditions as it may deem in the public interest, including limiting the duration of a permit, and as will ensure that the use will conform to the foregoing requirements and that it will continue to do so, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with. The board may revoke a use permit if the board determines that there has not been compliance with the terms and conditions of the permit. No permit may be revoked except after notice and hearing as provided by Code of Virginia, § 15.2-2204.

Findings of Facts:

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 Lounge, 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.

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.