



STAFF REPORT COVER SHEET

February 26, 2020

Address:	405-409 Maple Avenue West	Case Number:	PF-09-20-CUP/PF-10-20-SP
Public Meeting Date:	2/26/2020	Applicant:	Thomas F. Kylo
Board/Commission:	Planning Commission	Owners:	George Bilidas
Existing Zoning:	C-1	Existing Land Use:	Commercial
Brief Summary of Request:	<p>Recommendation to Board of Zoning Appeals for a conditional use permit for live entertainment.</p> <p>Recommendation to Town Council for a modification of requirement for parking in the front yard setback.</p>		
Site Improvements:	Improvements include proposed outdoor patio area in the front of the building, increase in parking spaces, and relocated trash enclosure.		
Size of Property:	12,693 square feet/0.29 acres		
Public Notice Requirements:	Advertisement for two successive weeks of meeting in a newspaper having paid general circulation in the Town prior to Board of Zoning Appeals meeting	To be published in Washington Times on March 4, 2020 and March 11, 2020. BZA meeting scheduled for March 18, 2020.	
	Posting of the property at least ten days prior to the BZA public hearing	Sign posted along Lewis Street on February 14, 2020 with dates of Planning Commission, Board of Zoning Appeals and Town Council meetings and hearings.	
	Written notice by registered or certified mail of hearing to property owners of subject site and property owners/agents/occupants abutting and immediately across from subject site at least 5 days prior to public hearing	On February 18, 2020, 6 certified letters were sent to adjacent, abutting and immediately across the street property owners/agents/occupants and certified letters were sent to subject property owners, applicant and agents.	
	Written notice by certified mail to County Executive/Designee at least 10 days prior to hearing/meeting for conditional use permits.	On February 14, 2020, a certified letter was sent to Fairfax County Department of Planning & Development.	

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Brief Analysis	
<p>PROPERTY HISTORY</p> <p>The subject site is approximately 0.29 acres, located along Lewis Street Northwest. A one-story brick commercial building, built in 1988, currently occupies the site.</p>	
<p>COMPATIBILITY WITH THE COMPREHENSIVE PLAN</p> <p>One of the goals listed in the Comprehensive Plan (Page 19) is to encourage a vibrant Central Business District. Staff believes that a restaurant of this size will help encourage a more vibrant Central Business District.</p>	
<p>COMPATIBILITY WITH THE ZONING ORDINANCE</p> <p>The proposed restaurant use is allowed. The proposal is compatible with the Zoning Ordinance with the approval of a modification per Section 18-131 for parking in the front yard setback and a conditional use permit per Section 18-74.B for live entertainment.</p>	
<p>Attachments:</p>	<p>Applications <input checked="" type="checkbox"/> Project Narrative <input checked="" type="checkbox"/> Modification Request Letter <input checked="" type="checkbox"/> Live Music Schedule <input checked="" type="checkbox"/> Site Plan with Proposed Improvements <input checked="" type="checkbox"/> Proposed Architecture <input checked="" type="checkbox"/> Tenant Floor Plan <input checked="" type="checkbox"/> Existing Survey <input checked="" type="checkbox"/> Approved Site Plan – October 1987 <input checked="" type="checkbox"/> Public Comment <input checked="" type="checkbox"/> Public Notification Affidavit <input checked="" type="checkbox"/></p>
<p>Author: Kelly O’Brien, AICP, Principal Planner</p>	

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ITEM NO. 1:

Recommendation by the Planning Commission to the Board of Zoning Appeals for conditional use permit for live entertainment for a restaurant use, located at 405-409 Maple Avenue West, in the C-1 Local Commercial zoning district. Application filed by Thomas F. Kylo.

ITEM NO. 2:

Recommendation by the Planning Commission to the Town Council for modification of requirement to allow parking between the building setback line and the street line in the C-1 Local Commercial zoning district, for the property located at 405-409 Maple Avenue West. Application filed by Thomas F. Kylo.

Introductory Comments & Background:

The subject site is approximately 0.29 acres, located along Lewis Street Northwest. A one-story brick commercial building, built in 1988, currently occupies the site. The building is currently occupied by two tenants, Amphora Bakery and Beirut Butcher & Grocery. The subject building and the adjacent building at 401-403 Maple Avenue West are connected by a covered walkway along the façade facing the parking lot. The two buildings are otherwise separated by a courtyard located on the adjacent property. The property is surrounded by commercial uses to the rear, front and east side. The west and northwest adjacent properties are residential. The residential properties across Lewis Street NW are in the Windover Heights Historic District.

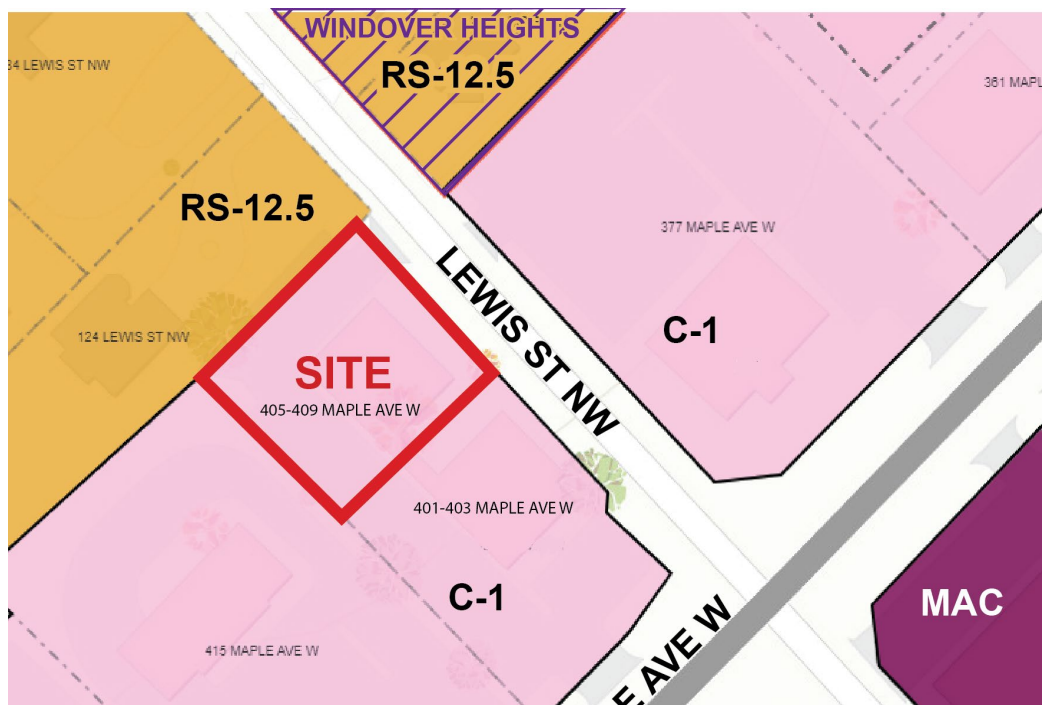


Figure 1 – Zoning Map with highlighted site location.

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Current Proposal:

The applicant has submitted a revised site plan separate from the shared site plan approved in October 1987 for lots 0383 02 0091 and 0383 13 0004, 401-403 Maple Avenue West and 405-409 Maple Avenue West respectively, and was identified on the site plan as “The Amphora Center”. The proposed site plan will be solely for lot 0383 13 0004 at 405-409 Maple Avenue West.

The applicant is proposing to combine the three tenant spaces of the existing building into one new restaurant fronting onto Lewis Street Northwest. The proposed restaurant includes approximately 2,970 square feet and proposes 72 seats for the interior. The façade of the building will be modified, including enclosing a portion of the covered walkway adjacent to the parking lot. The yard between the building and Lewis Street Northwest is proposed as a patio area where three separate walkways and landscaping exist currently.

Improvements to the site also include a reconfiguration of the parking lot to increase the available parking from 15 to 18 parking spaces, including upgrading the existing handicapped parking space to meet current ADA regulations. The applicant also proposes to relocate the dumpster enclosure and loading space.

Request for Conditional Use Permit

The applicant is requesting a conditional use permit for live entertainment for the proposed permitted restaurant. The applicant has submitted a music schedule that details the type of entertainment and times proposed. The applicant has stated that the restaurant does not intend to become a music venue. Locations for the proposed solo and small group acoustic performances are identified as the stage, shown on the proposed interior plan, and the front patio area on the proposed site plan. The applicant is not currently requesting a conditional use permit for outdoor seating, but has expressed interest in requesting such at a later date.

Performances on the patio, identified as the “Porch” in the music schedule, are proposed as seasonal. Dates and times proposed are as follows:

Thursday - 6pm-9pm or 9pm-12am (seasonal)

Friday - 6pm-9pm or 9pm-12am (seasonal)

Saturday - 6pm-9pm or 9pm-12am (seasonal)

Request for Modification of Requirement

In addition to the conditional use permit, the applicant is also requesting a modification of requirement to allow parking between the setback line and street line. Per [Section 18-131](#) of the Town Code, parking is not permitted between the building setback line and the street line within the C-1 Local Commercial zoning district. The front setback is 15 feet and the proposed parking will encroach 7.3 feet into the setback.

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The existing parking lot matches the joint site plan approved in October 1987. The approved site plan front yard is Maple Avenue West and Lewis Street Northwest is a side yard for both lots. However by creating a separate site plan for 405-409 Maple Avenue West, the proposed change of use for the subject building and proposed layout now makes Lewis Street Northwest the front and therefore the proposed parking in the front setback area requires a modification of Section 18-131.

The applicant has stated that a reason for the expansion of the parking into the front yard setback is due to modifying the site to update the handicap space to meet current ADA van accessible requirements and adding three additional spaces for the seating proposed. The restaurant proposes to have 72 seats. Parking requirement for restaurants is 1 space per 4 seats per [Section 18-130](#), which would require 18 parking spaces for 72 seats. The lot currently has 15 spaces.

Separating the previously approved joint site plan will create a non-conformity for the 401-403 Maple Avenue West lot, as the approved site plan assumes the two lots share the loading space and dumpster enclosure located on the 405-409 Maple Avenue West lot. There is no formal agreement in writing regarding the sharing of the dumpster and loading space between the two lots, however, the site plan identifies “one loading space provided” and “large outdoor container” for solid waste. The proposed site plan does not include the continued shared use of the trash enclosure and loading space.

Town Code [Section 18-132](#) requires a loading space for every commercial building and [Section 18-252](#) requires site plans to identify all off-street loading and pick-up spaces. [Section 13A-5](#) requires each business to be equipped with adequate refuse containers or storage areas. Containers must have tight lids and be kept closed at all times. All storage areas must be enclosed by adequate walls or opaque fencing. If a storage area is proposed, it is required to be shown on the site plan.

Required Commission/Board approvals:

The Planning Commission is tasked with making a recommendation to Board of Zoning Appeals for conditional use permits per [Section 18-210.S](#) for live entertainment.

Per [Section 18-256](#), the Planning Commission is required to make a recommendation to the Town Council on any requests for modifications.

Staff notes that the applicant will also be required at some point to apply for a conditional use permit for consumption of meals that occurs outdoors.

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Staff Analysis:

The restaurant use is permitted per Section [18-72.A](#). The live entertainment proposed will be subject to regulation by the Town's noise ordinance, [Section 10-20.1](#). The proposed restaurant and patio is located within 300 feet of eight residences. The noise ordinance identifies time periods where loading or unloading of commercial vehicles within 300 feet of any residence is not permitted. Staff has received one comment at this time from a resident who supports the application. However other residences near the restaurant may have a concern with outdoor music during these restricted hours, even if acoustic is proposed.

The proposed modification of requirement for parking in the front setback is an expansion of an existing condition 3.5 feet further into the setback for a total of 7.3 feet of encroachment into the 15 foot setback. The encroachment is for one parking space only. The front yard landscape area requirement is still being met with this expansion of parking.

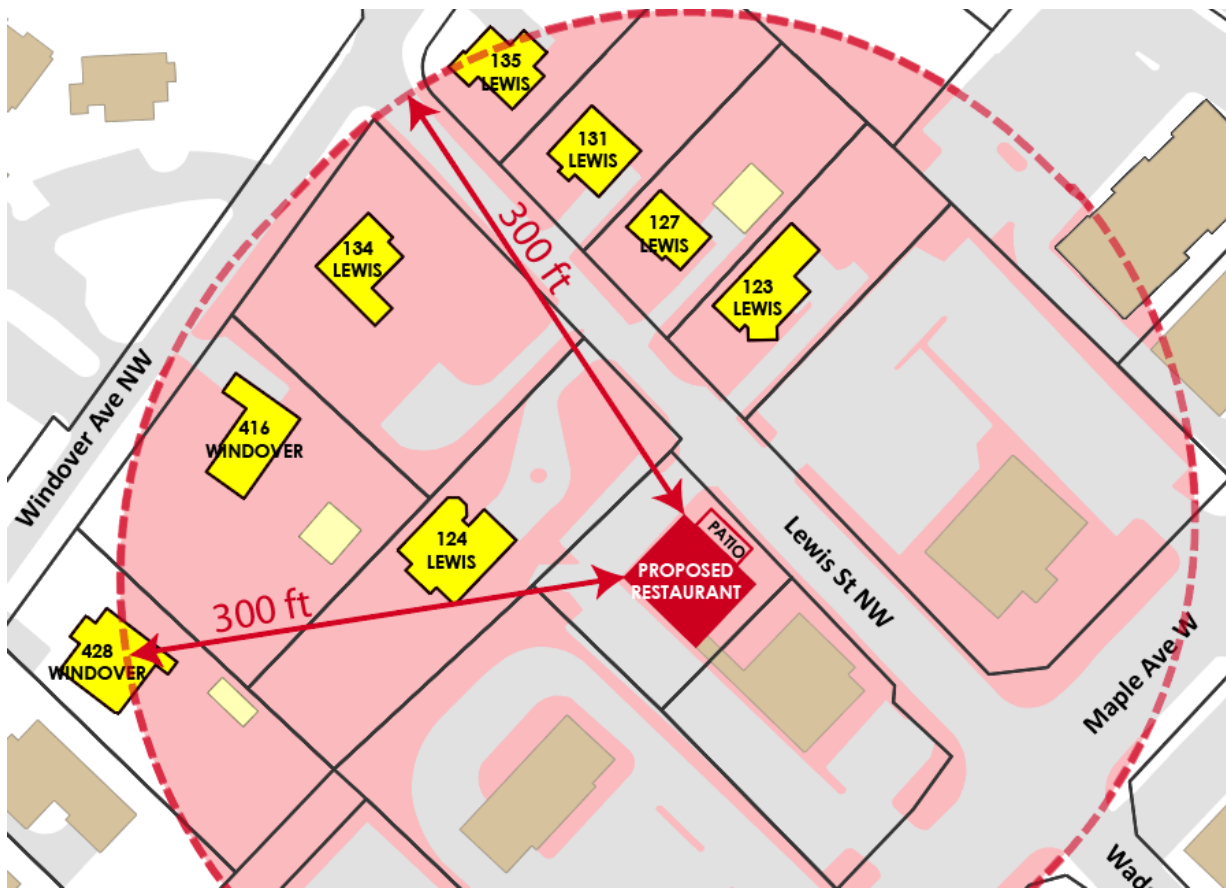


Figure 2 – Residences within 300 feet of proposed restaurant.

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Relevant Code Sections

Sec. 18-74. - Use permit required.

- A. Each separate use conducted within a building in the C-1 zone and each accessory use to any such primary use conducted in a building in this zone shall require a separate use permit before such separate primary or accessory use shall be engaged in.
- B. Restaurants offering live entertainment, including patron dancing, shall be subject to the granting of a conditional use permit.
- C. Consumption of meals on a roof garden of an enclosed building in which a restaurant is located, or at sidewalk tables directly adjoining such building, shall be subject to the granting of a conditional use permit.

Sec. 18-132. - Loading space.

Every hospital, institution, commercial or industrial building hereafter erected shall provide indoor or outdoor space for the loading and unloading of goods and materials. Such space shall be at least 25 feet in depth; such space, if located within a building, shall be at least 15 feet in height; such space also shall have a width of at least 15 feet for every 50 feet or fraction thereof of building width.

Sec. 18-210. - Use permits required.

A use permit is required for any of the following uses (see regulations for zone in which the use is proposed to be located):

- S. Live entertainment and patron dancing in restaurants.

Sec. 18-252. - Site plan specifications.

Any person, corporation, firm or other organization or association, shall, prior to or at the time of filing application for a building permit to erect or alter any structure in a C-1, C-1A, C-1B, C-2, CM, T, RTH, RM-2, or PR zone, submit to the director of public works a site plan prepared by a registered architect, registered engineer or certified land surveyor authorized by the commonwealth to practice as such. Additionally, the provisions for replacement of trees as set forth in section 18-252 E shall apply to any of the following located in the RS-16, RS-12.5, and RS-10 zones: the development of an undeveloped tract; the redevelopment of any existing tract by removal of a dwelling and replacement with a new dwelling; or the addition to an existing dwelling that results in an area of disturbed soil exceeding 2,500 square feet.

Such plan shall include the following data:

- A.
 - 13. All off-street loading and pickup spaces.
 - 18. Fencing and walls to be erected; type, height and location.

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Sec. 18-256. - Modification of requirements.

Where an applicant for a building permit subject to the requirements of this article can demonstrate to the council that the most practical, efficient or aesthetic development of the site involved cannot be achieved within the requirements of this chapter, the council, after receiving the recommendation of the planning commission, or not less than 30 days after requesting such recommendation in writing, may modify such requirements upon a finding that the integrity of this chapter and the health, safety and morals of the Town will not be thereby impaired.

Sec. 10-20.1. - Same – Noise.

- (a) It is declared as a matter of legislative determination and public policy that the making, creation or maintenance of excessive, unnecessary or unusual loud noises, unusual and unnatural in their time and place and which disturb the usual peace, quietude, tranquility and normal enjoyable use of any residential area are detrimental to the public health, safety, convenience, welfare and prosperity of the residents of the Town of Vienna and constitute a public nuisance.
- (b) Any person, firm or corporation which permits, allows or suffers any such excessive, unnecessary, loud or unusual noise or noises as referred to in subsection 10-20.1(a) above, to emanate from his property or place of business so as to disturb the usual peace, quietude, tranquility and normal enjoyable use of any residence or residences in the Town shall be guilty of a civil offense with a penalty of \$250.00 for the first offense and \$500.00 for each subsequent offense. This section shall not apply to noise generated in connection with a business conducted on property zoned CM or CMP.
- (c) In addition to any other excessive, unnecessary or unusually loud noises as referred to in subsection 10-20.1(a) above, and not to the exclusion of such, the following acts are specifically declared to be excessive, unnecessary and unusually loud noises, unusual and unnatural in their time and place and disturbing to the usual peace, quietude, tranquility and normal enjoyable use of residential area; are detrimental to public health, safety, and welfare of the residents of the Town of Vienna, and constitute a public nuisance:
 - (1) The loading or unloading of commercial vehicles within 300 feet of any residence between the hours of 11:00 p.m. and 6:00 a.m. Monday through Saturday, or between 11:00 p.m. and 8:00 a.m. on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day;
 - (2) The repair, collection from, or servicing of any trash or garbage compaction, processing, or disposal equipment located on the exterior of any building between the hours of 11:00 p.m. and 7:00 a.m. within 300 feet of any residence, or between 11:00 p.m. and 8:00 a.m. on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day;
 - (3) The erection (including excavation), demolition, alteration, or repair, and any and all activity necessary or incidental thereto, of any building between 8:00 p.m. and 7:00 a.m., Monday through Friday or between 8:00 p.m. and 9:00 a.m. on Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day; and except during any emergency caused necessity to protect the public health and safety as determined by the director of public works, chief of police, Town Manager or his/her designee, Fairfax County Building Inspector, or Fairfax County Fire Marshal or his/her designee. Notwithstanding the foregoing, no contractor or person performing the activities

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listed above for remuneration shall be permitted to engage in such activity on Sunday;

- (4) The operation between the hours of 8:00 p.m. and 7:00 a.m., or between 8:00 p.m. and 9:00 a.m. on Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day of any pile driver, hammer, chain saw, steam, diesel, or gasoline powered shovel, derrick or hoist, lawnmowers, lawn maintenance equipment, or other equipment, the use of which is attended by loud and unusual noise, except during any emergency caused necessity to protect the public health and safety as determined by the director of public works, chief of police, Town Manager or his/her designee, Fairfax County Building Inspector, or Fairfax County Fire Marshal or his/her designee. The time limitations for Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day shall not apply to usual and customary maintenance activities associated with recreational uses as defined in Town Code section 18-4. Notwithstanding the foregoing, no contractor or person performing the activities listed above for remuneration, except when it relates to a recreational use, shall be permitted to engage in such activity on Sunday;
 - (5) The operation of any propulsion engine of a commercial motor vehicle for more than three minutes when the vehicle is parked, left unattended, or is stopped for other than traffic or maintenance reasons;
 - (6) The operation of internal combustion powered refrigeration equipment on trucks, trailers or other vehicles between the hours of 11:00 p.m. and 7:00 a.m. when the same are parked for more than ten minutes.
- (d) Any person, firm or corporation which permits, allows or suffers any such acts set forth in subsection 10-20.1(c) shall be guilty of maintaining a public nuisance and, upon conviction thereof, shall be punished as provided in section 10-20 of this Code.

Sec. 13A-5. - Commercial refuse.

- A. Each business establishment shall be equipped with adequate refuse containers or storage areas. All containers, except those for storage of bulky refuse, shall be vermin and water proof, of non-corrosive material and equipped with tight lids which shall be kept closed at all times except when filling or emptying the container.
- B. Containers and storage areas shall be emptied regularly and cleaned sufficiently often to keep them free of obnoxious odors and vermin.
- C. All storage areas shall be enclosed by adequate walls or opaque fencing and shall be well drained and fully accessible to collection equipment and to public health inspection and fire inspection personnel. Said areas shall protect refuse from dispersal by wind or otherwise and must be kept free of litter and refuse overflow.