

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ARTYA, INC., D/B/A FAIROUZ MEDITERRANEAN CAFE, SP 2011-MA-068 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a commercial recreation facility (hookah bar). Located at 3815 A/F South George Mason Drive, Falls Church, 22041, on approx. 2,350 sq. ft. of land zoned C-6, CRD and SC. Mason District. Tax Map 62-3 ((13)) 9 and 22. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 5, 2011; and

WHEREAS, the Board has made the following findings of fact:

1. The present zoning is C-6, SC, and CRD.
2. The gross area of the lot is 2,350 square feet.
3. This is a somewhat difficult case.
4. The parking poses a number of different challenges.
5. There are 311 parking spaces at this shopping center.
6. The Board needs to be consistent with how they are handling these cases.
7. The Board looked at the others similarly with a shopping center rate. It is how the Board reviewed them.
8. There was some conflicting testimony.
9. County staff went out on a Friday night and saw the lot at what is understood to be one of the peak hours at 60 percent use.
10. We heard from a Fire Marshall Lieutenant that talked about being out there maybe a half a dozen times and it has not been 100 percent full, although it is getting close.
11. John Farrell went out and had seen where it has been full.
12. In this case, the Board does not have any other opposition.
13. There is a dense residential area out there; Mr. Smith is familiar with it and used to work out there in the summer at Skyline.
14. There was some conflicting testimony with different experiences from the Aladdin Restaurant than the applicant, who referenced the 20 to 30 percent of patrons who are walking.
15. The Board was not particularly surprised by that number.
16. The Bailey's Crossroads Revitalization Corporation has submitted a letter endorsing and supporting the application.
17. There was no other opposition other than the Aladdin Restaurant, which is a similar use in proximity.
18. The Board gave great deference to the experts.
19. The County has analyzed this, and the Board wants to treat it consistently.
20. The Board notes that the County has recommended approval in this case and will adopt their rationale.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Artya, Inc. d/b/a Fairouz Mediterranean Café and is not transferable without further action of this Board, and is for the location indicated on the application, 3815-A/F South George Mason Drive, and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the special permit site layout plan provided by the applicant, approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The use shall be in general conformance with the floor plan, included as Attachment 1. Minor modifications to the floor plan may be permitted.
6. Maximum occupancy shall be based on the approved Non-RUP occupancy as issued by the Fairfax County Department of Public Works and Environmental Services, and subject to final approval by the Fire Marshal's office, but under no circumstances shall the occupancy exceed 88.
7. The maximum hours of operation of the use shall be limited to 11:00 a.m. to 2:00 a.m., daily.
8. Employees shall be a minimum of eighteen (18) years of age.
9. Entry to the establishment shall be limited to customers who are eighteen (18) years of age and older. A door counter shall be present during the hours of operation to validate the age of patrons and to ensure compliance with the maximum occupancy permitted.
10. The number of required parking spaces shall be provided in conformance with the provisions of Article 11 of the Zoning Ordinance, as determined by DPWES. All parking for the use shall be on site of the BuildAmerica shopping center.
11. If alcohol is served, the applicant shall maintain a valid ABC liquor license at all times, and the site shall be in conformance with the provisions of said license.

12. If food is served, the applicant shall maintain a valid food handler's permit with the Virginia Department of Health at all times, and the site shall be in conformance with the provisions of said permit at all times.
13. The applicant shall maintain the designation of a "private club," whereby the clean air act provisions exempt the subject property from separate ventilated spaces for food sales, at all times and maintain conformance with said designation at all times. In the event the applicant loses the exemption of clean air act provisions, the applicant shall amend the interior site layout to become in conformance with all applicable provisions of the Virginia Department of Health for Eating Establishments and apply for all applicable permits from Fairfax County. In the event the Clean Air Act is amended to allow facilities to operate through exemptions, the applicant can continue to operate even if it ceased its private club designation.
14. Live entertainment shall be limited to Friday and Saturday, as well as special occasions such as New Year's Eve, Christmas Eve, Halloween, St. Patrick's Day, Valentine's Day, Martin Luther King Jr. Day, President's (Washington's) Day, Easter, Labor Day, Memorial Day, Mother's Day, Independence Day, Eid Al Fitr, Eid Al Adha, Columbus Day, and Thanksgiving, between the hours of 10:00 p.m. and 2:00 a.m., and the applicant shall amend the building plan and install a double-door vestibule system to reduce noise spillage to areas outside of the premises walls. The applicant shall also install triple pane glass on the front façade of the building to reduce noise from exiting the interior of the premises.
15. The applicant shall provide appropriate ventilation for a smoking lounge to prevent smoke infiltration into adjacent units through the building plan review process to the Department of Public Works and Environmental Services.
16. The site shall be available for inspection by the Fairfax County Office of the Fire Marshal during the hours of operation.
17. All exit doors shall be installed with panic hardware, to the satisfaction of the Fairfax County Office of the Fire Marshal.
18. The applicant shall reduce the GFA of the subject property in order to meet all parking requirements. Prior to the issuance of a new Non RUP, the interior space shall be altered as per the floor plan included in Attachment 1, and/or any other floor plans approved by DPWES, and all building permits and final inspections shall be obtained.
19. The use shall be open to inspection by all departments of the County of Fairfax during the hours of operation.
20. The applicant shall complete a Fire Safety Technical Inspection once a year. A copy of the inspection shall be filed with the Fairfax County Department of Planning and Zoning.
21. Prior to approval of a new Non-RUP, a tenant layout plan shall be submitted for review in accordance with the currently adopted Virginia Construction Code.
22. The Non-RUP shall include restrictions on the maximum occupancy permitted, number of permitted tables and the maximum hours of operation.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Byers voted against the motion.

