ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of December 9, 2006

DATE: December 1, 2006

SUBJECT: U-2886-93-3 USE PERMIT REVIEW of condition #4 pertaining to the off duty police officer at premises known as 2854 Wilson Blvd. (Whitlow's) (RPC #18-10-008)

Applicant:
Whitlow's on Wilson
2854 Wilson Boulevard
Arlington, VA 22201

By:
Greg Cahill

C.M. RECOMMENDATION:

Delete Condition #4 (Whitlow's on Wilson) regarding an off-duty police.

SUMMARY: This is a review of Condition #4 of the use permit that required the presence of an off-duty police officer at the restaurant on evenings when live entertainment was provided. In May 2006, the County Board suspended the requirement of Condition #4. Since July 1, 2006, the effective date of the condition suspension, there has not been an increase in calls for service related to the live entertainment use permit. Response times have been reported to have decreased and the visibility of the police has increased. Therefore, staff recommends that the County Board delete Condition #4 which required an off-duty police officer.

BACKGROUND: In the fall of 2005, the applicant submitted an application for a use permit amendment to eliminate Condition #4 which required an off-duty police officer to be stationed outside of the restaurant on evenings when live entertainment was provided. The condition reads as follows:

4. During evenings of live entertainment, the applicant shall provide at least one off-duty police officer between the hours of 11 p.m. and 2:30 a.m. The officer shall be assigned specifically to the applicant's business. No officer is necessary during those evenings when exclusively acoustic or primarily acoustic performances are scheduled.

County Manager: _____

Staff: Jill Griffin, DCPHD, Planning Division

PLA-4571

At its public hearing in October 2005 to address the applicant's request, the County Board deferred action to the May 2006 meeting and requested that staff work with the community and the applicant to determine an appropriate solution which could be met within the budget. In May 2006, the County Board, after approving budget items for additional police officers, suspended the requirement for the applicant to have an off-duty police officer for a period of six months, effective July 1, 2006, and with a review in December 2006.

DISCUSSION: In May 2006, the County Board suspended the requirement to allow the applicant, the Neighborhood Advisory Group, nearby civic associations and staff to more closely monitor the impacts, if any, of releasing Whitlow's from the requirement of an off-duty officer. In suspending the condition, the County Board recognized that the additional county resources in the Police Department would maximize flexibility, increase efficiency, and provide greater visibility not currently provided through a stationary off-duty police officer.

Upon reviewing police records for the past six months and meeting with community representatives, staff has determined that relief of the condition has not contributed to any additional calls for service. In fact, there have been reports that the response time is greater and police visibility has increased since July 2006.

CONCLUSION: With the added police presence in the Clarendon area, the continued discussion with the Clarendon Live Entertainment Neighborhood Advisory Group, and annual reviews of the use permits and site plan amendment for live entertainment, staff concludes that the requirements of Condition #4 are not necessary. Therefore, staff recommends that the County Board delete Condition #4.

PREVIOUS COUNTY BOARD ACTIONS:

October 14, 1995	Approved Use Permit (U-2861-95-1) for live entertainment in a restaurant, seven days a week, from 11 a.m. to 2 a.m., subject to conditions and a review in one (1) year.
October 14, 1995	Approved Use Permit (U-2862-95-1) for a comprehensive sign plan for three (3) signs containing a total of 110 square feet of sign area, subject to conditions.
July 20, 1996	Approved Use Permit (U-2886-96-3) for an outdoor café with 32 seats operating between 11 a.m. and 12:30 a.m., subject to conditions and a review in one (1) year.
October 5, 1996	Continued Use Permit (U-2861-95-1) for live entertainment in a restaurant, seven days a week, from 11 a.m. to 2 a.m., subject to conditions and a review in nine months.
July 19, 1997	Continued a Use Permit (U-2861-95-1) for live entertainment in an existing restaurant and Use Permit (U-2886-96-3) for an outdoor café subject to all previous conditions, new Condition #4, administrative reviews in two months, and a review by the County Board in two (2) years.
July 14, 1999	Continued use permits for live entertainment (U-2861-95-1) in an existing restaurant and for café seating (U-2886-96-3), subject to all previous conditions, and with a review in one (1) year. (July 2000)
July 31, 2000	Adopted motion to amend use permit (U-2881-95-1) for live entertainment to include dancing but accepted withdrawal by applicant. Continued (U-2881-95-1), subject to previous Condition #2, amended Conditions #1 and #3, and additional Conditions #4 through #7, and with a review in six (6) months (January 2001). Continued use permit (U-2886-96-3) for outdoor café seating, subject to all previous conditions, and with a review in six (6) months. (January 2001)

November 18, 2000	Deny amendment request to amend hours of live entertainment for Wednesday through Thursday from 6 p.m. to 12 midnight, to 6 p.m. to 12:30 a.m. for Sunday through Tuesday from 6 p.m. to 2 a.m. to 6 p.m. to 1:30 a.m., for holiday eves and holidays treat the same as Friday and Saturday in terms of type of entertainment and hours from 6 p.m. to 1 a.m. Review in six (6) months.
December 18, 2000	In reconsidering the November 18, 2000 action on live entertainment use permit (U-2881-95-1) at the December 18, 2000 recessed County Board meeting, continued subject to revised conditions and with a review in six (6) months.
January 27, 2001	Continued a use permit (U-2886-96-3) for outdoor restaurant seating, subject to all previous conditions, and with a review in five (5) months.
June 9, 2001	Continued use permits (U-2861-95-1) for live entertainment and (U-2886-96-3) for outdoor restaurant seating, subject to all previous conditions, and with a review in six (6) months. (December 2001)
December 8, 2001	Continued use permits (U-2861-95-1) for live entertainment and (U-2886-96-3) for outdoor restaurant seating, subject to all previous conditions with a new condition #8 and with a review by the County Board in eleven (11) months. (November 2002)
October 19, 2002	Continued use permits (U-2861-95-1) for live entertainment and (U-2886-96-3) for outdoor restaurant seating (Whitlow's on Wilson) with a review in one year. (October 2003)
October 18, 2003	Continued use permits (U-2861-95-1) for live entertainment, (U-2861-95-1) (Whitlow's on Wilson) for live entertainment and (U-2886-96-3) for outdoor restaurant seating (Whitlow's on Wilson) with a review in one year. (October 2004)

October 2, 2004	Continued use permits (U-2861-95-1) (Whitlow's on Wilson) for live entertainment and (U-2886-96-3) for outdoor restaurant seating (Whitlow's on Wilson) with a review in one year. (October 2005)
October 18, 2005	Renewed use permits Whitlow's on Wilson (U-2861-95-1) subject to all previous conditions and with a review in seven (7) months. (May 2006) Approved a use permit amendment to increase outdoor seating from 40 to 48 seats for Whitlow's on Wilson (U-2886-96-3) subject to all previous conditions and amended condition #1, with a review by the County Board in seven (7) months. (May 2006) Deferred a use permit amendment for Whitlow's on Wilson (U-2861-95-1) to eliminate condition #4 regarding off-duty police officer to the May 2006 County Board meeting.
May 20, 2006	Renewed the use permit for live entertainment (Whitlow's on Wilson), subject to all previous conditions, with a review by the County Board in one (1) year (May 2007); and Renewed the use permit for outdoor seating (Whitlow's on Wilson), subject to all previous conditions and with no further review; and Suspended the requirements of Condition #4 (Whitlow's on Wilson) regarding an off-duty police officer for a period of six (6) months effective July 1, 2006 and with a review in December 2006.

Approved Conditions:

1. On Sundays, Mondays, and Tuesdays, live entertainment shall be limited to exclusively acoustic music. On Wednesdays, live entertainment shall be limited to primarily acoustic music ("Primarily acoustic" envisions a mixture of acoustic and electric instruments playing in what would still be considered an "acoustic" setting where non-acoustic instruments would play softly enough so as not to overwhelm the acoustic instruments in the group. One example is a Jazz combo with an electric guitarist. Another is a Bluegrass band with an electric bass.) Live entertainment shall be limited to the hours between 6:00 p.m. and midnight on Sundays, Mondays, Wednesdays, and Thursdays. All amplified live entertainment shall be limited to Thursday, Friday, and Saturday evenings and New Year's Eve. Live entertainment on Fridays, Saturdays and New Year' s Eve shall be limited to the hours between 6:00 p.m. and 1:00 a.m. There shall be no amplified music after 11:00 p.m. in rooms, such as the Sand Bar, which have not received the full noise abatement treatment ("Full noise abatement treatment" includes two layers of acoustic draping, double-glazed tempered glass, and acoustical sound tiles).

2. The applicant shall post signs inside the restaurant that are clearly visible to patrons, discouraging parking within the residential neighborhood across Wilson Boulevard from the site. Information on parking should also be posted on their website.

3. The applicant shall designate a neighborhood liaison or liaisons to communicate with nearby residents and neighbors to address concerns, which may be related to the live entertainment. Whitlow's will address late-night complaints about loud music immediately upon receiving the complaint. The restaurant owner, manager, or other company representative shall be available during the hours of live entertainment to address concerns from citizens by telephone or in attendance. The name and telephone number of the liaison(s) shall be submitted by the applicant to the President of the Clarendon-Courthouse Civic Association, the Lyon Village Citizens Association, and the Zoning Administrator.

4. During evenings of live entertainment, the applicant shall provide at least one off-duty police officer between the hours of 11:00 p.m. and 2:30 a.m. The officer shall be assigned specifically to the applicant's business. No officer is necessary during those evenings when exclusively acoustic or primarily acoustic performances are scheduled.

5. All bands shall use the Whitlow's side door on Fillmore Street to load their equipment after completing their performance(s).

6. All doors, windows, or other openings shall remain closed during the hours of live entertainment. All acoustic drapes shall also remain closed during hours of live entertainment.

7. The applicant shall agrees to pick up litter along North Fillmore Street between Clarendon Boulevard and North Franklin Street, on Monday and Friday, Saturday and

Sunday mornings. Such trash shall be picked up following close of business on Thursday, Friday and Saturday nights and before 9:00 a.m. the following morning. Trash will include bottles, cans, and any other trash that can be reasonably linked to the applicant's patrons.

8. Whitlow's will work with the Lyon Village Citizens Association to develop a sound management plan which assures that sound from all live entertainment does not create a noise disturbance, as determined in accordance with measurement standards agreed upon by Whitlow's and the Lyon Village Citizens Association, within the nearby residential area. More specifically:
    a. Whitlow's will work with nearby neighbors to pre-determine which frequency/decibel levels can be heard within their homes and/or cause a noise disturbance in the neighborhood.
    b. Whitlow's will use these pre-determined levels to monitor and adjust the live entertainment sounds.
    c. Whitlow's will respond immediately to complaints from neighbors about music emanating from Whitlow's and take measures to adjust the live entertainment sounds to acceptable levels.
    d. Whitlow's will book bands according to their ability to comply with these noise requirements.
    e. Monitoring of and compliance with the sound management plan shall be the responsibility of the Lyon Village Citizens Association, and not Arlington County, in accordance with measurement standards agreed upon by Whitlow's and the Lyon Village Citizens Association, and as set forth in the sound management plan. The sound management plan does not exempt Whitlow's from compliance with applicable Arlington County Code ordinances and enforcement.

9. The applicant agrees to participate in the establishment of a neighborhood advisory group consisting of representatives of the Clarendon Grill, Whitlows on Wilson, Mr. Days Sports and Rock Cafe, the Clarendon Alliance, the Clarendon-Courthouse Civic Association, the Lyon Village Citizens Association, the Lyon Park Civic Association and representatives of various County staff including Police, Code Enforcement, and Planning. The proposed advisory group would meet quarterly to work through issues associated with the live entertainment uses.