



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of May 20, 2006

DATE: May 8, 2006

- SUBJECTS:**
- A. SP #194 Site Plan Review for live entertainment and dancing; 3100 Clarendon Blvd. (SoBe Seafood Co., Mr. Days, RPC #19-002-007).
 - B. SP #339 Site Plan Review for live entertainment; 2800 Clarendon Blvd. (Harry's Tap Room, RPC #18-016-019).
 - C. SP #362 Site Plan Review for live entertainment; 2900 Wilson Blvd. (La Tasca, RPC #18-011-001).
 - D. U-2861-95-1 and U-2886-96-3 Use Permit Amendment and Review to review live entertainment and outdoor seating and to amend condition #4 regarding off-duty police officer; 2854 Wilson Blvd. (Whitlow's on Wilson, RPC #18-010-008).
 - E. U-2873-95-2 Use Permit Review for live entertainment; 1101 N. Highland St. (Clarendon Grill, RPC #18-013-010).
 - F. U-2984-00-1 Use Permit Review for live entertainment; 3185 Wilson Blvd. (Clarendon Ballroom, RPC #15-075-003).
 - G. U-3046-02-1 Use Permit Review for live entertainment and dancing; 2901 Wilson Blvd. (Boulevard Woodgrill, RPC #15-066-019).
 - H. U-3050-02-1 Use Permit Review for live entertainment; 2933 Wilson Blvd. (Mexicali Blues, RPC #15-006-001).
 - I. U-3114-04-1 Use Permit Review for live entertainment; 3207 Washington Blvd (Molly Malone's, RPC #15-078-001).
 - J. U-3134-05-2 Use Permit Review for live entertainment; 1041 N. Highland St. (RTM Investment Group LP, RPC#18-026-004).

County Manager: _____

Staff: Jill Griffin, DCPHD, Planning Division

PLA-4325

Applicants:

SoBe Seafood Company, Mr. Days, Harry’s Clarendon, LLC, La Tasca, Whitlow’s on Wilson, Clarendon Grill, Clarendon Ballroom, Boulevard Woodgrill, Mexicali Blues, Molly Malone’s, RTM Investment Group.

C.M. RECOMMENDATIONS:

A., C, E – J. Renew, subject to all previous conditions, with a review by the County Board in one (1) year (May 2007);

B. Discontinue the use for live entertainment.

D. Renew 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

Renew the use permit for outdoor seating (Whitlow’s on Wilson), subject to all previous conditions and with no further review; and

Approve the request to delete Condition #4 (Whitlow’s on Wilson) regarding an off-duty police officer effective July 1, 2006.

ISSUES: None.

SUMMARY: This staff report covers three items: review of existing use permits and site plan amendments for live entertainment in the Clarendon area, review of existing outdoor seating at Whitlow’s on Wilson and a use permit amendment request by Whitlow’s on Wilson to amend the condition requiring an off-duty police officer on-site. The existing live entertainment uses and outdoor seating area have functioned generally in compliance with the conditions of approval. Most active live entertainment uses continue to participate in the quarterly meetings of the Neighborhood Advisory Group (the “Group”) and are in compliance with the conditions of approval. However, neighborhoods’ concerns persist in trash pick-up and policing. During the last review, a proactive, County-led approach had been requested to resolve these issues in the Clarendon area. The County Board, in adopting the recent budget, has indicated its commitment to such an approach by placing additional police during the evening hours and additional waste receptacles in the area.

Based on the County Board commitment, the continued work and support of the Group, staff recommends that the use permits and site plan amendments be renewed, with the exception of Harry’s Tap Room (SP #339), with a County Board review in one (1) year (May 2007). Since approval in 2003, Harry’s Tap Room has not been a venue for live entertainment and does not intend to have any live entertainment. Therefore, staff recommends the site plan amendment be discontinued. In addition, Whitlow’s on Wilson has requested an amendment to delete Condition #4 regarding an off-duty police officer. Based on the continuing work and support of the Group and the commitment of the County Board for two additional full-time police officers

in the Clarendon area, staff recommends that the condition requiring an off-duty police officer be removed effective July 1, 2006.

BACKGROUND: The County Board approved the use permits and site plan amendments for live entertainment in conjunction with existing restaurants for the subject establishments between 1995 and 2004 (Mr. Days, formerly Blue-N-Gold Brewing Company – 1995, Whitlow’s on Wilson - 1995, Clarendon Grill - 1996, Clarendon Ballroom – 2000, Boulevard Wood Grill – 2002, Mexicali Blues – 2003, Harry’s Taproom – 2003, La Tasca – 2004, Molly Malones – 2005, SoBe – 2005, and eleventh street - 2005). The uses operate in the Clarendon area within a few blocks of each other. During past reviews, similar issues and concerns including noise, inadequate parking, and trash were identified as areas requiring mitigation. It was agreed that given the similarities of the uses, the concerns expressed, and the proximity of the uses to each other, it was reasonable to consolidate their review periods and develop an ongoing, joint neighborhood advisory process. The applicants agreed to participate in a Neighborhood Advisory Group (the “Group”) effort that included neighborhood representatives, the Clarendon Alliance, and County staff. The Group agreed to meet quarterly and continues to do so since its beginnings in 2002.

DISCUSSION: Quarterly meetings of the Group have been attended by the community, County staff, and most of the business establishments. The interaction has generally been cooperative and cordial. There has been good faith demonstrated by the establishments and the neighbors who have given their time and energy to attend these meetings for the past four (4) years. That good faith has resulted in the establishments paying more attention to the neighborhoods’ concerns, assuming responsibility for their patrons and taking corrective measures to address the Group’s concerns. While there appears to be better communication and efforts on behalf of the establishments, neighborhood concerns still arise in the area of trash, noise and parking.

Staff established an internal working group involving the departments with oversight over the issues of public safety and trash in the Clarendon area. Included in this group were representatives from the Police Department; Department of Environmental Services; Parks, Recreation, and Cultural Resources; Community Planning, Housing and Development; and the Department of Management and Finance. This working group evaluated the magnitude of the issues and made several recommendations to the County Manager while continuing to coordinate with the Group.

Staff reviewed a variety of options to recommend to the County Manager which would address the needs and concerns of the Clarendon area. Staff concluded that the recommendations including additional police presence and waste receptacles throughout the Clarendon area were the most appropriate, particularly for the police element, as it maximizes flexibility, increases efficiency, provides additional visibility and enhances not only Clarendon but the entire Rosslyn-Ballston corridor. Recently the County Board adopted the 2007 budget which included funds toward these recommendations: two full-time police officers within the area and additional waste receptacles.

The following is a discussion of the broader review of live entertainment in the Clarendon area.

Since the Last Review (October 18, 2005):

Use Permit and Site Plan Amendment Conditions: The uses have generally operated in compliance with the conditions of approval.

Community Code Enforcement and the Site Plan Inspection: In general, Community Code Enforcement and Site Plan Inspection staff have found the establishments to be in compliance with the conditions of their use permits or site plan amendments. Further, if there was any concern, staff found the applicants to be cooperative and receptive to corrective measures. Community Code Enforcement and Site Plan Inspection staff continues to participate in the Group process and are aware of ongoing discussions within the Group.

Fire Marshal's Office: The Fire Marshal's Office has not reported concerns with the live entertainment uses. The owners have cooperated with the Fire Marshal's Office to address any identified concerns.

Police Department: The Police Department has been an integral part of the Group process. Communication between the establishments and the Police Department has been open and productive during the Group meetings.

The Police Department has not expressed objection to renewal of the subject special exceptions for live entertainment. The department is aware of the neighborhood representatives' continued concerns and desire to have greater police presence in the Clarendon area.

State ABC Board: ABC Board staff have not reported concerns with any of the establishments.

Civic Associations: The Lyon Village Citizens Association, the Lyon Park Citizens Association, the Clarendon-Courthouse Civic Association and the Clarendon Alliance were notified of the use permit and site plan amendment reviews. The neighboring civic associations and the Alliance have participated fully in the Group efforts. The associations continue to identify noise from persons returning to their cars, inappropriate behaviors, trash and parking in the neighborhood as ongoing problems. The Group effort has resulted in more open communication to address concerns and additional clean-up efforts by the establishments. It is generally agreed that the Group effort continues to be an essential vehicle for communication and addressing concerns. The Group supports the continued use of live entertainment with a yearly review and the restaurants continued participation.

The discussion below is focused on the review of Harry's Tap Room.

Subject Item B (Harry's Tap Room): SP #339 Site Plan Review for live entertainment located at 2800 Clarendon Blvd. (RPC #18-016-019).

Since the original approval of live entertainment in 2003, Harry's Tap Room has never been a venue for live entertainment. Management does not intend to provide live entertainment nor is interested in participating with the Group. Therefore, it is recommended the site plan amendment for live entertainment be discontinued.

The discussion below is focused on the specific request for Whitlow's on Wilson.

Subject Item D (Whitlow's on Wilson): U-2861-95-1 and U-2886-96-3 Use Permit Amendment and Review to review live entertainment and outdoor seating and to amend condition #4 regarding off-duty police officer review; 2854 Wilson Blvd. (Whitlow's on Wilson, RPC #18-010-008).

The area of Whitlow's outdoor seating is located in the public right of way and the Zoning Ordinance requires use permit approval for outdoor cafés in the public right of way. The existing restaurant seats approximately 198. The outdoor café has 48 seats.

The County's current standard for clear aisle widths adjacent to outdoor cafés is a minimum of six feet measured from the tree grates, poles, other obstacles, or from the curb in the absence of street trees or other obstacles in the sidewalk. The minimum clear aisle requirement increases to eight feet at sidewalk corners due to the potential increased congestion at a corner. Since the approval in October to increase the number of seats from 40 – 48, the applicant has maintained the appropriate clear aisle widths. Staff recommends that the outdoor seating be renewed, subject to all previous conditions, with no further review.

Whitlow's has also requested an amendment to delete Condition #4 of the live entertainment use, which requires an off-duty police officer. 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.

Based on the discussions and general support of the Group, the findings of the interdepartmental staff working group and its recommendations, and the commitment indicated by the County Board in its adoption of the 2007 budget, staff concludes that the two new police officers will eliminate the need for this condition. As stated previously, the additional county resources in the Police Department will maximize flexibility, increase efficiency, and provide greater visibility not currently provided through a stationary off-duty police officer. Therefore, staff recommends that the request to delete Condition #4 be approved effective July 1, 2006 which is the beginning of Fiscal Year 2007.

CONCLUSION:

Existing Live Entertainment Uses: The live entertainment establishments in the Clarendon area generally comply with the conditions of approval. The County's health and safety agencies,

including the Fire Marshal's Office, the Police Department and the Code Enforcement Office, have not identified threatening safety hazards or discrepancies occurring in any of the establishments and have not objected to renewing the live entertainment uses. The owners of the establishments continue to display a spirit of cooperation in their relationships with County staff and the nearby neighborhoods. The neighborhoods and the owners continue to identify areas of impact that require attention by the County and the applicants. The Group meetings continue to keep lines of discussion open and participants working toward resolutions. With the continued work and support of the Group, staff recommends that the County Board renew the live entertainment uses, with the exception of Harry's Tap Room, subject to all previous conditions, with a review by the County Board in one (1) year (May 2007).

Subject Item B (Harry's Tap Room):

Because the site plan amendment for live entertainment has not been used since its approval in 2003 and the management has no intention of having live entertainment at this time, staff recommend that the use be discontinued.

Subject Item F (Whitlow's on Wilson):

Since the approval in October to increase the number of seats from 40 – 48, the applicant has maintained the appropriate clear aisle widths and in compliance with conditions. Therefore, staff recommends that the outdoor seating be renewed, subject to all previous conditions, with no further review.

In addition, Whitlow's on Wilson has requested an amendment to delete Condition #4 regarding an off-duty police officer. Based on the continuing work and support of the Group and the commitment of the County Board for two additional full-time police officers in the Clarendon area, staff recommends that the condition for an off-duty police office be removed effective July 1, 2006.

Whitlow's On Wilson (U-2861-95-1 & U-2886-96-3)

- 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)

Clarendon Grill (U-2873-95-2)

February 3, 1996

Approved a Use Permit (U-2873-95-2) for live entertainment in conjunction with an existing restaurant, seven days a week, from 6 p.m. to 2 a.m., Monday through Friday and from 11 a.m. to 2 a.m. on Saturday and Sunday with a review in one (1) year. (February 1997)

February 08, 1997	Continued use permit (U-2873-95-2) for live entertainment and dancing in an existing restaurant subject to all previous conditions and review in three (3) years. (February 2000)
February 12, 2000	Continued use permit (U-2873-95-2) for live entertainment and dancing in an existing restaurant subject to all previous conditions and review in nine months. (November 2000)
November 18, 2000	Continued use permit (U-2873-951-2) for live entertainment and dancing with a review in one (1) year. (November 2001)
November 17, 2001	Continued use permit (U-2873-951-2) for live entertainment and dancing with an new condition #6 and with an administrative review in six (6) months and a review by the County Board in one (1) year. (November 2002)

Clarendon Ballroom (U-2984-00-1)

July 31, 2000	Approved use permit (U-2984-00-1) for live entertainment in a new restaurant, seven days a week from 6 p.m. to 2 a.m., Mondays through Fridays, and from 11 a.m. to 2 a.m., Saturdays and Sundays with a review in one (1) year. (July 2001)
July 28, 2001	Continued use permit (U-2984-00-1) for live entertainment in a new restaurant, seven days a week from 6 p.m. to 2 a.m., Mondays through Fridays, and from 11 a.m. to 2 a.m., Saturdays and Sundays with a review in one (1) year. (July 2002)
July 20, 2002	Continued use permit (U-2984-00-1) for live entertainment in a new restaurant, seven days a week from 6 p.m. to 2 a.m., Mondays through Fridays, and from 11 a.m. to 2 a.m., Saturdays and Sundays with a review in three (3) months. (October 2002)

Other restaurants in Clarendon & continued reviews of Mr. Days, Clarendon Ballroom, Clarendon Grill, and Whitlow's on Wilson (from October 2002)

- October 19, 2002 Approved use permit (U-3046-02-1) for live entertainment and dancing; with a review in one (1) year. (October 2003) (Boulevard Woodgrill)
- October 19, 2002 Continued use permits and site plans (SP #194) for live entertainment and dancing (Mister Days), (U-2873-95-2) for live entertainment (Clarendon Grill), (U-2984-00-1) for live entertainment (Clarendon Ballroom), (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)
- January 11, 2003 Approved use permit (U-3050-02-1) for live entertainment with a review in nine (9) months (October 2003). (Mexicali Blues)
- October 18, 2003 Approved a site plan amendment request (SP #339) for live entertainment with a review in one year (October 2004). (Harry's Tap Room)
- October 18, 2003 Continued use permits and site plans (SP #194) for live entertainment and dancing (Mister Days), (U-2873-95-2) for live entertainment (Clarendon Grill), (U-2984-00-1) for live entertainment (Clarendon Ballroom), (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), (U-3046-02-1) (Boulevard Wood Grill) for live entertainment and (U-3050-02-1) (Mexicali Blues) for live entertainment with a review in one year. (October 2004)
- June 26, 2004 Approved site plan amendment (SP #194) for outdoor seating for the Mister Days Sports Rock Café with a review in October 2004.
- July 10, 2004 Approved site plan amendment request (SP #362) for the La Tasca Restaurant to offer live entertainment with a review in three (3) months October 2004.

October 2, 2004	Continued use permits and site plans (SP #194) for live entertainment and dancing (Mister Days), (U-2873-95-2) for live entertainment (Clarendon Grill), (U-2984-00-1) for live entertainment (Clarendon Ballroom), (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), (U-3046-02-1) (Boulevard Wood Grill) for live entertainment, (U-3050-02-1) (Mexicali Blues) for live entertainment, (SP #362) (La Tasca) for live entertainment, and (SP #339) (Harry's Tap Room) for live entertainment with a review in one year. (October 2005)
March 12, 2005	Approved a use permit (U-3114-04-1) for live entertainment with a review in six months (October 2005). (Molly Malones)
June 18, 2005	Deferred a site plan amendment request (SP #194) for live entertainment to the July 9, 2005 County Board meeting.
July 9, 2005	Approved a site plan amendment request (SP #194) for live entertainment and dancing inside and outside the restaurant with a review in three months (October 2005). (SoBe)
	Approved a use permit request (U-3125-05-1) for live entertainment, with a review in October 2006. (RiRa)
October 18, 2005	Renewed use permits and site plans for live entertainment for the following establishments in Clarendon: SoBe Seafood Co (SP #194); Mr. Days (SP #194); Harry's Taproom (SP #339); LaTasca (SP #362); Clarendon Grill (U-2873-95-2); Whitlow's on Wilson (U-2861-95-1); Clarendon Ballroom (U-2984-00-1); Boulevard Woodgrill (U-3046-02-1); Mexicali Blues (U-3050-02-1); Molly Malone's (-3114-04-1) subject to all previous conditions and with a review in seven (7) months. (May 2006)

Approved a use permit for live entertainment for RTM Investment Group LP “eleventh street” (U-3134-05-2), subject to 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.