April 8, 2015 Public Hearing

APPLICANT: EAT THE STREETS 757
PROPERTY OWNER: MIKE STANDING

REQUESTS:
1. Alternative Compliance to the Oceanfront Resort District Form-Based Code
2. Conditional Use Permit for Open Air Market and Outdoor Entertainment

ADDRESS / DESCRIPTION: 712 Atlantic Avenue

GPIN: 24272359400000 ELECTION DISTRICT: BEACH SITE SIZE: 39,537 square feet AICUZ: 65-70 dB DNL Sub Area 1

BACKGROUND

REQUEST: The applicant is requesting a Conditional Use Permit (CUP) for Open Air Market and Outdoor Entertainment to allow use of the site as a “Hub” for local food trucks and small vendors or artists. The CUP for the Open Air Market will allow for goods to be sold from food trucks and small tents or stands on site. The CUP for the Outdoor Entertainment will allow the applicant to also provide acoustic and amplified music on site.

[NOTE – During the review of these applications, it was determined that there is no need for an application for Alternative Compliance, as the use occurs in movable vehicles that are not permanently attached to the ground. Accordingly, the following consists of a review and evaluation of a Conditional Use Permit only.]

SITE: The site is located between Pacific Avenue and Atlantic Avenue at the 800th block. As shown on the aerial, there is approximately 3,600 square feet of paved open space located between a 9,293 square foot one-story masonry building and 7,300 square feet of turf and landscaped open space. On the western portion of the site, there is a 1,963 square foot two-story masonry building, 1,500 square foot
fenced in storage area, and an enclosed dumpster. This half of the site is currently used for private parking and is unpaved.

To the north of the site but located within the subject parcel is a closed portion of the right-of-way of 8th Street. The subject site is accessed by vehicles from Atlantic Avenue by use of this closed portion of right-of-way.

**PROPOSED USE:** The applicant is proposing to use the site as an Open Air Market that will primarily accommodate food trucks but also local artists and vendors. The applicant will be leasing the property from the owner and subletting Open Air Market “spaces” to interested food truck operators, and small scale local artists and vendors. Separate from the food trucks, beer, wine, and food will be sold from a structure located on the site. The proposed use will operate Wednesday through Sunday between the hours of 12:00 noon and 12:00 midnight. The food trucks will not be kept on site during the days the proposed use is not operating. Food truck operators may choose to leave the truck/trailer on site overnight when they are operating the next day.

As shown on the conceptual site plan exhibit, a total of 6 trucks and trailers are capable of comfortably fitting on the site. A standard food truck is 8’ x 22’ in dimension; a standard food trailer may be as small as 7’ x 6’ in dimension. The applicant would like to use a pre-designed cabana-like structure to serve beer and food, and use trellises and existing landscaping to define certain seating areas and provide shade. Concrete tables and seating is currently available on the site; additional movable tables and chairs will be added. Six existing light posts and string lighting will be used as well as lower ancillary lighting per vendor. Ancillary to the primary proposed use, the applicant would like to provide acoustic or amplified music from a small stage, and space for ancillary recreation such as corn-hole.

**DETAILS OF PROPOSAL**

For fire safety reasons, there will be a minimum of three feet between each of the food trucks/trailers. Each truck/trailer will have their own Virginia Beach business license, certificate of insurance, completed fire inspection, and health permit. Additionally, the trucks/trailers will be covered as a general liability under a contract with the applicant.

Being that the applicant will be technically subletting small portions of the site as well as selling food, beer, and wine on site, the applicant’s City of Virginia Beach business license will be for Real Estate Management as well as a Bar and Restaurant.

The Virginia Alcohol Beverage Control (ABC) considers the proposed use a restaurant that sells wine and beer ‘on premise.’ To meet ABC requirements, a minimum of $2000 worth of food must be sold from the structure that is selling the beer and wine, each month (shown as ‘Beer Structure’ on plan on page 8). The food sold from food trucks does not count towards meeting this ABC requirement. The existing picket fence and buildings will surround the proposed use entirely, further meeting ABC requirements.

There are three bathrooms located inside the existing one-story masonry building that will be made available for the proposed use. Should these bathrooms become unavailable, the applicant will apply for a Special Event Permit to allow the temporary use of portable restrooms on site.

No parking is required for the proposed use. The Oceanfront Resort District (ORD) Form-Based Code (FBC) Section 6.2.2 does not require any parking for office, retail, mixed-use, or restaurant uses east of
Pacific Avenue. Vendors will not be provided parking and will instead rely on the public parking structure to the north or commercial parking lots.

'Sandwich Board' signage and small menu signs will be used by each food truck/trailer or vendor. These signs will only face the interior of the lot and will not be counted as part of the site’s total sign allowance. The applicant will be using the existing free-standing sign at the northwest corner of the site. This sign does not meet the signage requirements of the FBC. The proposed cabana-like structure will have a wall sign that will meet the signage requirements of the FBC.

The applicant has met with the City Permits and Inspections Administrator regarding the requirements of minor and temporary structures. The applicant will be keeping the height of the stage below 24-inches to avoid the need for guard rails as well as ensuring all structures can withstand wind loads of 110 miles per hour. Additionally, the applicant will follow standard City operation by ensuring that all temporary structures and furniture are appropriately disassembled or removed when winds greater than 60 miles per hour are predicted.

**LAND USE AND COMPREHENSIVE PLAN**

**EXISTING LAND USE:** Resort Commercial; Wedding Venue / OR Oceanfront Resort District

**SURROUNDING LAND USE AND ZONING:**
- **North:** Closed right-of-way, private surface parking
- **North:** Parking Structure / OR Oceanfront Resort District
- **South:** Commercial / OR Oceanfront Resort District
- **East:** Hotel / OR Oceanfront Resort District
- **West:** Pacific Avenue / OR Oceanfront Resort District

**NATURAL RESOURCE AND CULTURAL FEATURES:** There do not appear to be any significant cultural or environmental features on the site.

**COMPREHENSIVE PLAN:** The site is located in the Oceanfront Resort Strategic Growth Area (SGA). Land use is regulated by the Oceanfront Resort District Form-Based Code (FBC), which was approved on July 10, 2012 as part of the implementation of the recommendations of the Comprehensive Plan for this SGA. The Resort Area Strategic Action Plan (RASAP), adopted in December, 2008, is the guiding planning policy for land use and development in this area. The RASAP calls for improved transit and pedestrian connections between destinations, and a transition in use and design from the Resort Area to the neighborhoods. The Shopping 2 Street Frontage type allows for mixed-use and walkability, but does not require the shopfront building element.

**EVALUATION AND RECOMMENDATION**

The applicant desires to use the site as a “hub” for food trucks and small local vendors and artists. The proposed use will additionally include amplified and acoustic music. The site is zoned OR Oceanfront Resort District; within this District, each of the proposed uses requires a Conditional Use Permit; ‘Outdoor
Entertainment’ and ‘Open Air Market.’ Food, beer, and wine will be sold from a structure on site. This portion of the use is allowed by-right as an Eating and Drinking Establishment.

The applicant understands this is an atypical use in the Oceanfront Resort SGA. The applicant is also aware of the desire of the Virginia Beach Restaurant Association’s for a “food truck ordinance.” For these reasons, the applicant has volunteered the addition of a condition that the proposed use be limited to one year (Condition 1). For the proposed use to continue after this one-year time limit, the applicant will need to apply for a Modification to Conditions.

In an effort to ensure the frontage of the site remains integrated with the activity of the sidewalk environment, food trucks and vendors will not be located along the eastern lot line. Instead, the eastern portion of the site will be occupied by tables with seating or standing space, acoustic or amplified music, or games like corn hole. Condition 10 ensures that the level of noise produced by the subject use does not disturb surrounding land uses.

The applicant will use the existing legally nonconforming sign structure for the one year duration of the use. After the one year time limit, the sign will need to be removed, and it cannot be used in conjunction with any use that takes place on the subject site thereafter (Condition 6).

Being that the use is temporary, and that the way in which the site is organized will most likely change depending on the level of interest of customers, Condition 3 requires that the materials, landscaping, lighting, and structures substantially follow the Design Guidelines included near the end of this report. This condition is intended to provide a general understanding of the quality of materials and design that should be used and to allow the applicant flexibility to adjust the layout as needed. Specific requirements including the use of existing landscaping, fencing, and lighting is covered in Condition 2.

For the reasons listed above, as well as the general consistency of the request with the Comprehensive Plan, Staff recommends approval of Conditional Use Permits for an Open Air Market and Outdoor Entertainment, subject to the conditions below:

**CONDITIONS**

1. The Conditional Use Permits for an Open Air Market and Outdoor Entertainment will be void one (1) year after the approval date of these Use Permits by the City Council.

2. The use and improvement of the site shall substantially conform to the “Conceptual Site Plan Exhibit, 712 Atlantic Avenue,” which has been exhibited to the City Council as page 8 of the Staff Report.

3. No food trucks shall be located parallel to Atlantic Avenue within 50 feet of the eastern lot line.

4. The use, materials, and improvements made to the site shall substantially follow the “Open Air Market Design Guidelines, 712 Atlantic Avenue,” which have been exhibited to the City Council as pages 11 through 13 of the Staff Report.

5. The use shall not be in operation between 12:00 a.m. (midnight) and 8:00 a.m.

6. A written agreement shall be submitted to the City of Virginia Beach Planning Department /
Permits and Inspections Division pertaining to the availability of restrooms on site. The use may not operate without providing restroom facilities.

7. The existing free-standing sign at the northeastern corner of the site does not meet the signage requirements of the Oceanfront Resort District Form-Based Code. Accordingly, said sign shall be removed within one (1) year of the approval date of these Use Permits by the City Council.

8. No merchandise, produce, or food shall be displayed or sold along the street frontage or outside of the existing fenced-in area covered by this Conditional Use Permit.

9. There shall be no less than one (1) trash receptacle per one thousand (1,000) feet of sales area. All trash receptacles shall be regularly emptied so as not to overflow, and litter and debris shall not be allowed to accumulate.

10. Merchandise, stalls, or other materials shall not be stored outdoors when the use is not open for business.

11. The operation shall not disturb the tranquility of residential areas or other areas in close proximity or otherwise interfere with the reasonable use and enjoyment of neighboring property by reason of excessive noise, traffic, or overflow parking.

12. In accordance with the Building Code, all temporary structures and furniture will be appropriately disassembled or removed when winds equal to or greater than 60 miles per hour are expected.

13. All applicable requirements of the Health Department shall be adhered to at all times.

NOTE: Further conditions may be required during the administration of applicable City Ordinances and Standards. Any site plan submitted with this application may require revision during detailed site plan review to meet all applicable City Codes and Standards. All applicable permits required by the City Code, including those administered by the Department of Planning / Development Services Center and Department of Planning / Permits and Inspections Division, and the issuance of a Certificate of Occupancy, are required before any uses allowed by this Use Permit are valid.

The applicant is encouraged to contact and work with the Crime Prevention Office within the Police Department for crime prevention techniques and Crime Prevention Through Environmental Design (CPTED) concepts and strategies as they pertain to this site.
CONCEPTUAL SITE PLAN EXHIBIT (Condition #2)
DESIGN OF PROPOSED TEMPORARY BEER STRUCTURE
DESIGN GUIDELINES (Condition #3)

- STRING LIGHTING
- INCORPORATING EXISTING BUILDINGS
- OPEN AND VERTICAL ELEMENTS
- TALL OPAQUE WALLS SHOULD BE AVOIDED
- A MIXTURE OF STURDY HIGH-QUALITY MATERIALS
- INCORPORATING MATURE LANDSCAPING
- LANDSCAPING AROUND POSTS
- QUALITY FURNITURE MATERIALS
DESIGN GUIDELINES (Condition #3)

- Use of storage containers is not appropriate for this area of the resort district.
- Palettes are typically not made of high quality or treated material and should be limited.
- Resort appropriate umbrellas.
- Heavy, sturdy, and wooden furniture.
- Use of recycled shipping materials is not appropriate in this area of the resort district.
DESIGN GUIDELINES (Condition #3)

- Advertising on furniture
- Lack of vertical elements or shade
- Advertising on tents
- Semi-transparent boundaries
- Trellis structures
ZONING HISTORY

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**APPLICANT DISCLOSURE**

If the applicant is a corporation, partnership, firm, business, or other unincorporated organization, complete the following:

1. List the applicant name followed by the names of all officers, members, trustees, partners, etc. below: *(Attach list if necessary)*

   Eat The Streets 757 - Nicole Malbon, Cassandra
   Alysa + John Malbon

2. List all businesses that have a parent-subsidiary\(^1\) or affiliated business entity\(^2\) relationship with the applicant: *(Attach list if necessary)*

   

☐ Check here if the applicant is *NOT* a corporation, partnership, firm, business, or other unincorporated organization.

**PROPERTY OWNER DISCLOSURE**

*Complete this section only if property owner is different from applicant.*

If the property owner is a corporation, partnership, firm, business, or other unincorporated organization, complete the following:

1. List the property owner name followed by the names of all officers, members, trustees, partners, etc. below: *(Attach list if necessary)*

   Mike Stanford Jr.

2. List all businesses that have a parent-subsidiary\(^1\) or affiliated business entity\(^2\) relationship with the applicant: *(Attach list if necessary)*

   

☐ Check here if the property owner is *NOT* a corporation, partnership, firm, business, or other unincorporated organization.

\(^1\) & \(^2\) See next page for footnotes

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Does an official or employee of the City of Virginia Beach have an interest in the subject land? Yes ☐ No ☒

If yes, what is the name of the official or employee and the nature of their interest?

**DISCLOSURE STATEMENT**

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*EAT THE STREETS 757*

*Agenda Item 11*

*Page 15*
ADDITIONAL DISCLOSURES

List all known contractors or businesses that have or will provide services with respect to the requested property use, including but not limited to the providers of architectural services, real estate services, financial services, accounting services, and legal services: (Attach list if necessary)

1 “Parent-subsidiary relationship” means "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

2 “Affiliated business entity relationship” means "a relationship, other than parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities." See State and Local Government Conflict of Interests Act, Va. Code § 2.2-3101.

CERTIFICATION: I certify that the information contained herein is true and accurate.
I understand that, upon receipt of notification (postcard) that the application has been scheduled for public hearing, I am responsible for obtaining and posting the required sign on the subject property at least 30 days prior to the scheduled public hearing according to the instructions in this package. The undersigned also consents to entry upon the subject property by employees of the Department of Planning to photograph and view the site for purposes of processing and evaluating this application.

[Nichole Malbon] [Nichole Malbon]
Applicant's Signature Print Name

[Nichole Malbon] [Mike Stading]
Property Owner's Signature (if different than applicant) Print Name

DISCLOSURE STATEMENT