



## Legislation Text

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**File #:** ORD. 2020-218, **Version:** 1

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To authorize the special use of the properties known as 1829 West Cary Street and 1831 West Cary Street for the purpose of outdoor dining areas, upon certain terms and conditions.

WHEREAS, the owner of the properties known as 1829 West Cary Street and 1831 West Cary Street, which are situated in a UB Urban Business District and the Main Street/Uptown Parking Overlay District PO-3, desires to use such property for the purpose of outdoor dining areas, which use, among other things, is not currently allowed by section 30-433.2(21)(a), concerning the requirement that no deck, patio, terrace or other area outside a completely enclosed building and used for the service or accommodation of patrons shall be situated within 100 feet of any property in any R district, of the Code of the City of Richmond (2015), as amended;

WHEREAS, in accordance with section 17.11 of the Charter of the City of Richmond (2018), as amended, it has been made to appear that, if granted subject to the terms and conditions set forth in this ordinance, the special use granted by this ordinance will not be detrimental to the safety, health, morals and general welfare of the community involved, will not tend to create congestion in streets, roads, alleys and other public ways and places in the area involved, will not create hazards from fire, panic or other dangers, will not tend to overcrowding of land and cause an undue concentration of population, will not adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements, and will not interfere with adequate light and air; and

WHEREAS, (i) the City Planning Commission has conducted a public hearing to investigate the circumstances and conditions upon which the Council is empowered to authorize such use, (ii) the City Planning Commission has reported to the Council the results of such public hearing and investigation and its

recommendations with respect thereto, and (iii) the Council has conducted a public hearing on this ordinance at which the person in interest and all other persons have had an opportunity to be heard;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. **Finding.** Pursuant to section 30-1050.1 of the Code of the City of Richmond (2015), as amended, the Council hereby finds that the special use set forth in and subject to the terms and conditions of this ordinance will not (i) be detrimental to the safety, health, morals and general welfare of the community involved, (ii) tend to create congestion in streets, roads, alleys and other public ways and places in the area involved, (iii) create hazards from fire, panic or other dangers, (iv) tend to overcrowding of land and cause an undue concentration of population, (v) adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements, or (vi) interfere with adequate light and air.

§ 2. **Grant of Special Use Permit.**

(a) Subject to the terms and conditions set forth in this ordinance, the properties known as 1829 West Cary Street and 1831 West Cary and identified as Tax Parcel Nos. W000-0808/003 and W000-0808/001, respectively, in the 2020 records of the City Assessor, being more particularly shown on a survey entitled “Survey of Lot & Improvements Thereon Located at #1829, #1831, & #1833 W. Cary Street, Richmond, Virginia,” prepared by A.G. Harocopos & Associates, P.C., and dated July 31, 2001, hereinafter referred to as “the Property,” is hereby permitted to be used for the purpose of outdoor dining areas located within 100 feet of property in an R district, substantially as shown on the plans entitled “Site Plan for 1831-23 West Cary Street Illustrating Tent Layouts, Remaining Parking, and Occupancy,” prepared by Irby Architects, PC, and dated August 24, 2020, hereinafter referred to as “the Plans,” copies of which are attached to and made a part of this ordinance.

(b) The adoption of this ordinance shall constitute the issuance of a special use permit for the

Property. The special use permit shall inure to the benefit of the owner or owners of the fee simple title to the Property as of the date on which this ordinance is adopted and their successors in fee simple title, all of which are hereinafter referred to as “the Owner.” The conditions contained in this ordinance shall be binding on the Owner.

§ 3. **Special Terms and Conditions.** This special use permit is conditioned on the following special terms and conditions:

- (a) The Special Use of the Property shall be as outdoor dining areas, substantially as shown on the Plans.
- (b) The hours of operation of the Special Use shall be limited to 7:00 a.m. through 11:00 p.m., daily, or the closing time of the restaurant, whichever is earlier.
- (c) A final plan for the outdoor dining areas, showing privacy screening, location and materials of covered trash containers, height and materials of tents, shall be subject to the approval of the Director of Planning and Development Review in accordance with applicable laws and regulations. Privacy screening shall be provided on the Property to prevent refuse from blowing onto adjacent properties and rights-of-way.
- (d) No live entertainment or amplified public address system shall be allowed with the Special Use.
- (e) All mechanical equipment serving the Property shall be located or screened so as not to be visible from any public right-of-way.
- (f) No more than 48 persons may occupy each outdoor dining area at a time, provided that such a limit does not exceed the maximum capacity allowed by the Virginia Uniform Statewide Building Code.
- (g) No less than two covered trash containers shall be provided in each outdoor dining area.
- (h) No parking shall be required for the Special Use of the Property.

§ 4. **Supplemental Terms and Conditions.** This special use permit is conditioned on the following

supplemental terms and conditions:

(a) All required final grading and drainage plans, together with all easements made necessary by such plans, must be approved by the Director of Public Utilities prior to the issuance of the building permit.

(b) Storm or surface water shall not be allowed to accumulate on the land. The Owner, at its sole cost and expense, shall provide and maintain at all times adequate facilities for the drainage of storm or surface water from the Property so as not to adversely affect or damage any other property or public streets and the use thereof.

(c) Facilities for the collection of refuse shall be provided in accordance with the requirements of the Director of Public Works. Such facilities shall be located or screened so as not to be visible from adjacent properties and public streets.

(d) Any encroachments existing, proposed on the Plans or contemplated in the future shall require separate authorization and shall be subject to the applicable provisions of the Code of the City of Richmond (2015), as amended, and all future amendments to such laws.

(e) Any improvements and work within the public right-of-way shall be completed in accordance with the requirements of the Director of Public Works.

(f) In all other respects, the use of the Property shall be in accordance with the applicable underlying zoning regulations.

**§ 5. General Terms and Conditions.** This special use permit is conditioned on the following general terms and conditions:

(a) No permit implementing this special use permit shall be approved until satisfactory evidence has been presented to the Zoning Administrator that any delinquent real estate taxes applicable to the Property have been paid.

(b) The Owner shall be bound by, shall observe and shall comply with all other laws, ordinances,

rules and regulations applicable to the Property, except as otherwise expressly provided in this ordinance.

(c) Words and phrases used in this ordinance shall be interpreted to have the meanings ascribed to them by section 30-1220 of the Code of the City of Richmond (2015), as amended, unless the context clearly indicates that a different meaning is intended.

(d) Notwithstanding any other provision of law, this special use permit is being approved due, in part, to the mitigating effects of each and every condition attached hereto; consequently, if any portion of this ordinance is determined to be invalid for any reason by a final, non-appealable order of any Virginia or federal court of competent jurisdiction, the invalidity shall cause the entire ordinance to be void and of no further effect from the effective date of such order.

(e) The privileges granted by this ordinance may be revoked pursuant to the provisions of sections 30-1050.7 through 30-1050.11 of the Code of the City of Richmond (2015), as amended, and all future amendments to such laws. Failure to comply with the terms and conditions of this ordinance shall constitute a violation of section 30-1080 of the Code of the City of Richmond (2015), as amended, and all future amendments to such law, or any other applicable laws or regulations.

(f) When the privileges granted by this ordinance terminate and the special use permit granted hereby becomes null and void, whether as a result of the Owner relinquishing this special use permit in a writing addressed to the Director of Planning and Development Review or otherwise, use of the Property shall be governed thereafter by the zoning regulations prescribed for the district in which the Property is then situated.

§ 6. **Implementation.** The Commissioner of Buildings is authorized to issue a building permit substantially in accordance with the Plans for the Special Use subject to the terms and conditions set forth in this ordinance. An application for the building permit shall be made within 730 calendar days following the date on which this ordinance becomes effective. If either the application for the building permit is not made within the time period stated in the previous sentence or the building permit terminates under any provision of

the Virginia Statewide Building Code, this ordinance and the special use permit granted hereby shall terminate and become null and void.

§ 7. **Effective Date.** This ordinance shall be in force and effect upon adoption.

### **O & R Request**

**DATE:** September 2, 2020

**EDITION:** 1

**TO:** The Honorable Members of City Council

**THROUGH:** The Honorable Levar M. Stoney, Mayor (Patron: Mayor, by Request)  
(This is no way reflects a recommendation on behalf of the Mayor.)

**THROUGH:** Lenora G. Reid, Acting Chief Administrative Officer

**THROUGH:** Sharon L. Ebert, Deputy Chief Administrative Officer for Economic  
Development and Planning

**FROM:** Mark A. Olinger, Director, Department of Planning and Development Review

**RE:** To authorize the special use of the properties known as 1831 and 1829 West Cary Street for the  
purpose of an outdoor dining area, upon certain terms and conditions.

**ORD. OR RES. No.**

**PURPOSE:** To authorize the special use of the properties known as 1831 and 1829 West Cary Street for the  
purpose of an outdoor dining area, upon certain terms and conditions.

**REASON:** The applicant is proposing outdoor dining at the front of 1829 West Cary Street and to the rear of  
the building located at 1831 West Cary Street. The properties are located in the Urban Business Zoning District.  
Section 30-433.1(21)(a) of the Zoning Ordinance states that “no deck, patio, terrace or other area outside a  
completely enclosed building and used for the service or accommodation of patrons shall be situated within 100  
feet of any property in any R district.” Adjacent properties are zoned R-7 Single and Two-Family Urban  
Residential. A special use permit is therefore required.

**RECOMMENDATION:** In accordance with the requirements of the City Charter and the Zoning Ordinance,  
the City Planning Commission will review this request and make a recommendation to City Council. This item  
will be scheduled for consideration by the Commission at its October 19, 2020, meeting.

**BACKGROUND:** The subject properties consist of a combined 10,135 SF, or .232 acre parcels of land  
improved with a 4,514 SF 2 story building constructed, per tax assessment records, in 1900 and a surface  
parking lot at 1829 West Cary Street built in 1985. Both parcels are a part of the Fan neighborhood in the Near  
West Planning District. The properties front Cary Street between South Granby and South Allen Avenue.

The City of Richmond's Master Plan designates the subject property for Single Family (Medium Density) land use. Primary uses are single family and two family dwellings, both detached and attached, at densities of 8 to 20 units per acre. Includes residential support uses such as schools, places of worship, neighborhood parks and recreation facilities, and limited public and semi-public uses. Typical zoning classifications that may accommodate this land use category: R-5A, R-6 and R-7 (City of Richmond, Master Plan, p. 133).

The current zoning for this property is UB Urban Business.

Properties to the West along West Cary Street are located in the same Urban Business District as the subject property while properties to the East along West Cary Street, and towards the South, are zoned R-7 Single and Two-Family Urban Residential. A mix of single, two, and multi-family residential, commercial, mixed use, and institutional land uses are present in the vicinity.

**FISCAL IMPACT / COST:** The Department of Planning and Development Review does not anticipate any impact to the City's budget for this or future fiscal years.

**FISCAL IMPLICATIONS:** Staff time for processing the request; preparation of draft ordinance; and publishing, mailing and posting of public notices.

**BUDGET AMENDMENT NECESSARY:** No

**REVENUE TO CITY:** \$300 application fee

**DESIRED EFFECTIVE DATE:** Upon adoption

**REQUESTED INTRODUCTION DATE:** September 28, 2020

**CITY COUNCIL PUBLIC HEARING DATE:** November 9, 2020

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** None

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** City Planning Commission  
October 19, 2020

**AFFECTED AGENCIES:** Office of Chief Administrative Officer  
Law Department (for review of draft ordinance)

**RELATIONSHIP TO EXISTING ORD. OR RES.:** None

**REQUIRED CHANGES TO WORK PROGRAM(S):** None

**ATTACHMENTS:** Application Form, Applicant's Report, Draft Ordinance, Survey, Map

**STAFF:** Jonathan Brown, Senior Planner, Land Use Administration (Room 511) 804-646-5734

Key Issues:  
Retain on Consent Agenda

Move to Regular Agenda

Refer Back to Committee

Remove from Council Agenda

Strike

Withdrawn

Continue to: