



Staff Report

PLANNING DIVISION
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Appeals Hearing Officer

From: Diana Martinez, Principal Planner, (801) 535-7215 or diana.martinez@slcgov.com

Date: May 5, 2022

Re: PLNZAD2022-00275–Nonconforming Change of Use –Retail Goods Establishment to Alcohol Bar Establishment – 1058 East 900 South

Determination of Nonconforming Use Change

PROPERTY ADDRESS: 1058 East 900 South

PARCEL ID: 16-08-259-002-0000

ZONING DISTRICT/ORDINANCE SECTION: SR-1 (Special Development Pattern Residential) District / Zoning Ordinance Section 21A.38.040.H, Nonconforming Uses and Noncomplying Structures

APPLICANT: Will Hamill, TN Broadway Properties, LLC

DETERMINATION ISSUE:

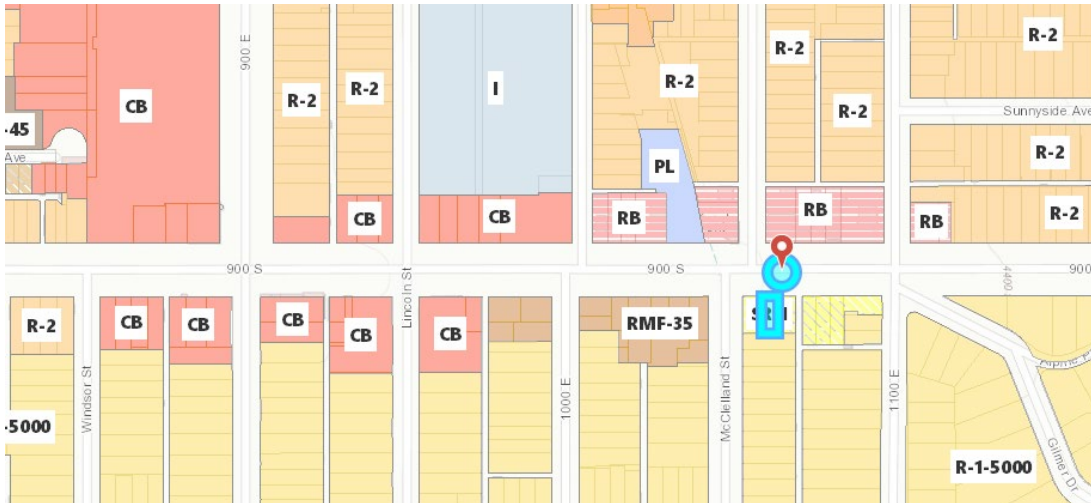
Whether the proposed use of Alcohol Bar Establishment is sufficiently similar to an existing nonconforming use of Retail Goods Establishment to allow the change of use on the subject property. Changing from one nonconforming use to another nonconforming use is a determination that is made by the Appeals Hearing Officer per ordinance section 21A.38.040.H.1 of the Salt Lake City Zoning Ordinance.

RECOMMENDATION:

The Planning Division recommends that the Appeals Hearing Officer deny the proposed change from Retail Goods Establishment to Alcohol Bar Establishment based on the findings in this Staff report.

ATTACHMENTS:

- A. [Vicinity map](#)
- B. [Photos – Site and Surrounding Development](#)
- C. [Applicant Information](#)
- D. [Comments](#)



PROJECT DESCRIPTION:

The request is to change the existing nonconforming use of a retail goods establishment to alcohol bar establishment at the property located at 1058 East 900 South. The subject property is not in the immediate vicinity of the CB (Community Business) zoning district of the 9th east and 9th south intersection. The subject property is three and a half blocks east of the 9th/9th intersection in a more residentially focused area.

The applicant is proposing a wine bar on the main floor of the building. As part of the wine bar, an outdoor dining patio area is proposed for customers to drink and dine. The proposed outdoor patio would be approximately 340 square feet (see Attachment C) and would be located in the front yard of the building.



Proposed outdoor patio would be located on the elevated area

There are residential dwellings on all sides of the subject building. The rear yard of the subject property abuts the side yard of the single-family dwelling to the south, which is approximately 45 feet away. The two residential dwellings to the east and west sides of the subject property are approximately 15 feet from the subject building.

The building, which was built in 1960, has continually had retail services and retail goods establishments in it, uses which typically have only a couple customers patronizing at the same time. Currently, there is a salon on the second floor of the building, and until recently there was an antique store on the main floor.

In 1995, the subject property was zoned RB (Residential/Business District). Sometime before 2002, the subject property was rezoned to the SR-1 (Special Development Pattern Residential District) zone. The current zoning of SR-1 does not permit retail goods establishments or alcohol bar establishments. Since the retail goods establishment use had been in the building, and business licensing for this use had remained active since before the zoning change to SR-1, the use is now legal nonconforming and can continue to operate in perpetuity or until that use is abandoned.

ANALYSIS:

To assist the Hearing Officer in reviewing this request, the Planning Division has provided the following analysis and findings related to the regulations in 21A.38.040.H.1 for a change of nonconforming use to another nonconforming use.

The proposed use, Alcohol Bar Establishment is not permitted in the SR-1 (Special Development Pattern Residential) zoning district where the property is located but could be allowed if found to be a similar land use type to the existing use and is able to meet the required off street parking requirements. According to Section 21A.38.040.H.1 of the Zoning Ordinance, if the uses are determined to be similar by the Appeals Hearing Officer, then the proposed use may operate on the property as a nonconforming use, subject to the regulations in Section 21A.38 of the city zoning ordinance.

In this case, the Zoning Ordinance in Section 21A.38.040.H.1 refers questions of changes of nonconforming uses to the Appeals Hearing Officer. The ordinance language states the following:

1. *Change of Nonconforming Use to Another Nonconforming Use: Any change of an existing nonresidential nonconforming use to another nonconforming use that is listed as a permitted use in the small neighborhood business district or the neighborhood commercial district in Section 21A.33.030, "Table of Permitted and Conditional Uses for Commercial Districts", of this title, is permitted. Any other change of a nonconforming use to another nonconforming use is subject to determination by the Appeals Hearing Officer as to the new use being a similar land use type as the existing use as defined in chapter 21A.62, "Definitions", of this title, and subject to the site being able to provide required off street parking within the limits of existing legal hard surfaced parking areas on the site.*

Because the proposed change of use to a Wine Bar (Alcohol Bar Establishment) is not listed as a permitted use in the Small Neighborhood Business District (SNB) or the Neighborhood Commercial District (CN), the above underlined guidelines are to be considered.

KEY CONSIDERATIONS AND FINDINGS:

CONSIDERATION 1: Existing Nonconforming Use

A nonconforming use is defined by the zoning ordinance as:

Any building or land legally occupied by a use at the time of passage of the ordinance codified herein or amendment thereto which does not conform after passage of said ordinance or amendment thereto with the use regulations of the district in which located.

The existing building on the subject property was built in 1960. Based on available records, the structure was constructed as a two-story building for neighborhood commercial use. In 1960, the zoning for the subject property was Business “B3” (Limited business/Neighborhood Shopping) and it remain that zoning until prior to 2002, when the subject property was rezoned to SR-1 (Special Development Pattern Residential District). At that time, the building had a salon (retail service establishment) on the second floor, and an antique store (retail goods establishment) on the main floor.

Most of the businesses in the subject building between 2002 and present, have been retail goods establishments or retail service establishments - business uses that generally have a low impact on neighboring property owners.

Finding: Staff believes the previous use of Retail Goods Establishment qualifies as a legal nonconforming use since retail goods establishments have been at this location prior to the rezoning from neighborhood commercial zoning to the current residential zoning.

CONSIDERATION 2: Similar Land Use Types

The definition of *Similar Land Use Type* is defined in the Definitions Chapter 21A.62:

“Land uses shall be considered to be similar land use types, if the uses are listed as a permitted or conditional use in the same land use tables within chapter 21A.33 of this title and the uses have similar off-street parking requirements as defined in chapter 21A.44, “Off Street Parking, Mobility and Loading”, of this title.”

Staff analyzed retail goods establishments and alcohol bar establishments within three zoning districts where both uses were allowed either as a “permitted use” or as a “conditional use”.

The three zoning districts chosen as comparable zoning districts that allow a mix of residential zoning and neighborhood business are the following: RB (Residential/Business), R-MU-35 (Residential/Mixed Use), R-MU-45 (Residential/Mixed Use). Like the CN (Neighborhood Commercial) zone, the three chosen zones also allow retail goods establishments as a permitted use, and alcohol bar establishments as conditional uses. The SNB (Small Neighborhood Commercial) zone does not allow alcohol bar establishments.

Unlike permitted uses, conditional uses that abut residential uses require Planning Commission approval and are subject to specific conditional use standards under Ordinance 21A.54.080, business licensing procedures and requirements under the “Alcohol Related Establishments” Ordinance 21A.36.300.

Based on these additional requirements that a conditional use must abide by Staff believes land uses that are listed as “conditional uses” tend to have unique characteristics that can potentially impact the surrounding properties and neighborhoods in a detrimental way. The conditional use

process is intended to decrease the negative impacts on the adjacent properties and the neighborhood as a whole by adding additional requirements or conditions of approval that will lessen the impacts to the area.

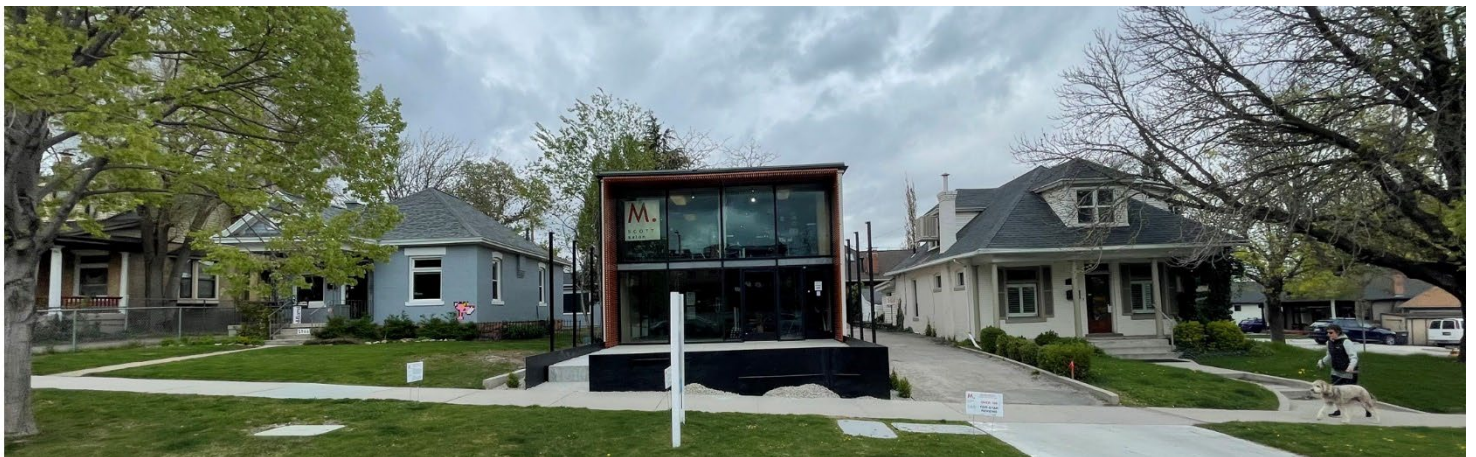
Land Use Districts that allow both Retail Goods Establishment and Alcohol Bar Establishment as Permitted and/or Conditional Uses (Table information from tables in 21A.33.030.

Use	Permitted and Conditional Uses by District				
	RB	R-MU-35	R-MU-45	CN	SNB
Retail Goods Establishment	P	P	P	P	P
Alcohol Bar Establishment	C ⁹	C ⁹	C ⁹	C ^{10,11}	

Legend:	P =	Permitted		
	C =	Conditional	C ⁹ =	9. Subject to conformance with the provisions in section 21A.36.300 , "Alcohol Related Establishments", of this title.
			C ¹⁰ =	10. Subject to conformance with the provisions in section 21A.36.300 , "Alcohol Related Establishments", of this title.
			C ¹¹ =	11. In CN and CB Zoning Districts, the total square footage, including patio space, shall not exceed 2,200 square feet in total. Total square footage will include a maximum 1,750 square feet of floor space within a business and a maximum of 450 square feet in an outdoor patio area.

Finding: Planning Staff finds that the existing and proposed uses are both listed in at least three zoning districts that allow residential uses with neighborhood commercial mix. However, Staff does not believe that the two land uses (retail goods establishment and alcohol bar establishment) are similar since the proposed is a conditional use in all four zones (RB, R-MU-35, R-MU-45 and CN), which makes it more intense and would require additional requirements and standards.

Staff also believes that the proposed use of alcohol bar establishment could potentially bring a detrimental impact to the neighborhood, which is primarily residential dwellings surrounding the subject property. The proposal of an outdoor dining patio would intensify this use. The possible noise levels of patrons and music played on the patio could be bothersome to the residents that live within 15 feet of the establishment. Although the applicant is proposing to put in a “wine bar”, if this change of use was allowed, any type of alcohol bar establishment could be located there and could serve beer, wine, and liquor.



The subject property is more than three and a half blocks from the CB zones to the west (9th East/9th South neighborhood commercial area). The immediate area of the subject property is more residentially focused and has very small commercial uses located on the north side of 900 South adjacent to these residential land uses.

The nearest alcohol bar establishment is located at 850 East 900 South, at the 9th S/9th E intersection, which is in the CB (Community Business) zone. This bar was required to go through the Conditional Use application process and was subjected to the Conditional Use standards and alcohol related establishment requirements.

CONSIDERATION 3: Required Off-Street Parking

As indicated in table 21A.44.030, minimum off Street Parking Requirements, the proposed use of Alcohol Bar Establishment requires “2 parking space per 1,000 square feet of useable floor area”. This is the same requirement for the previous use: Retail Goods Establishment.

The applicant wants to add outdoor dining to the proposed use. The proposed patio area would be less than 350 square feet. Under Ordinance 21A.40.065.B.6. “Outdoor Dining”, outdoor dining shall be considered an expansion of the use for purpose of determining if additional parking is required. Since the patio is under 350 sq. ft. this would not require additional parking on-site.

The existing retail services establishment (salon) on the second floor and the proposed use would be able to share parking under Ordinance 21A.44.040.B.1 “Shared Parking”. Where multiple uses share the same off-street parking facilities, reduced total demand for parking spaces may result due to differences in parking demand for each use during the course of the day.

FINDING:

Planning Staff finds that subject site is able to provide the required off street parking in accordance with the requirements in 21A.44, within the limits of existing legal hard surfaced parking areas on the site.

SUMMARY:

Although Staff believes the previous use on the property, retail goods establishment (antique store) qualifies as a legal nonconforming use and the parking requirements are equivalent between the previous and the proposed uses, Staff's analysis of the proposed use (alcohol bar establishment) is that it is **not** a similar land use to the previous land use.

Alcohol bar establishments are more intense uses that would require additional requirements and standards. To reiterate the verbiage from the 2nd consideration: staff believes that the proposed use of alcohol bar establishment could potentially bring a detrimental impact to the neighborhood, which is primarily residential dwellings surrounding the subject property. The proposal of an outdoor dining patio would intensify this use. The possible noise levels of patrons and music played on the patio could be bothersome to the residents that live within 15 feet of the establishment. Although the applicant is proposing to put in a "wine bar", if this change of use was allowed, any type of alcohol bar establishment could be located there and could serve beer, wine, and liquor.

Staff believes that the use of an alcohol bar establishment should not be considered to be a similar use to a retail goods establishment and therefore, a change of use from retail goods establishment to alcohol bar establishment should not be approved.

NEXT STEPS:

If the appeals hearing officer determines the proposed change from the existing nonconforming use Retail Goods Establishment (Antique store) to the proposed use of Alcohol Bar Establishment (Wine bar) meets the requirements of section 21A.38.040.H.1, the applicant will be able to apply for a business license for the alcohol bar establishment and would need to meet all other city and state standards related to alcohol related businesses.

If the appeals hearing officer determines the proposed change from the existing nonconforming use Retail Goods Establishment (Antique store) to the proposed use of Alcohol Bar Establishment (Wine bar) does not meet the requirements of section 21A.38.040.H.1, the proposed alcohol bar establishment will not be given a business license.

Any person adversely affected by a final decision made by the appeals hearing officer can be appealed to Third District Court within 30 days after the decision is rendered.

ATTACHMENT B: PHOTOS – SITE AND SURROUNDING DEVELOPMENT

View of the front patio pad of subject building



View of the subject building from the rear yard (looking north)

Parking in the rear of the subject building



Driveway to rear yard of subject building





Residential dwelling to the west



Residential dwelling to the east



Building across the street to the north (restaurant use)



Dwellings to the east of the subject building

ATTACHMENT C: APPLICATION INFORMATION

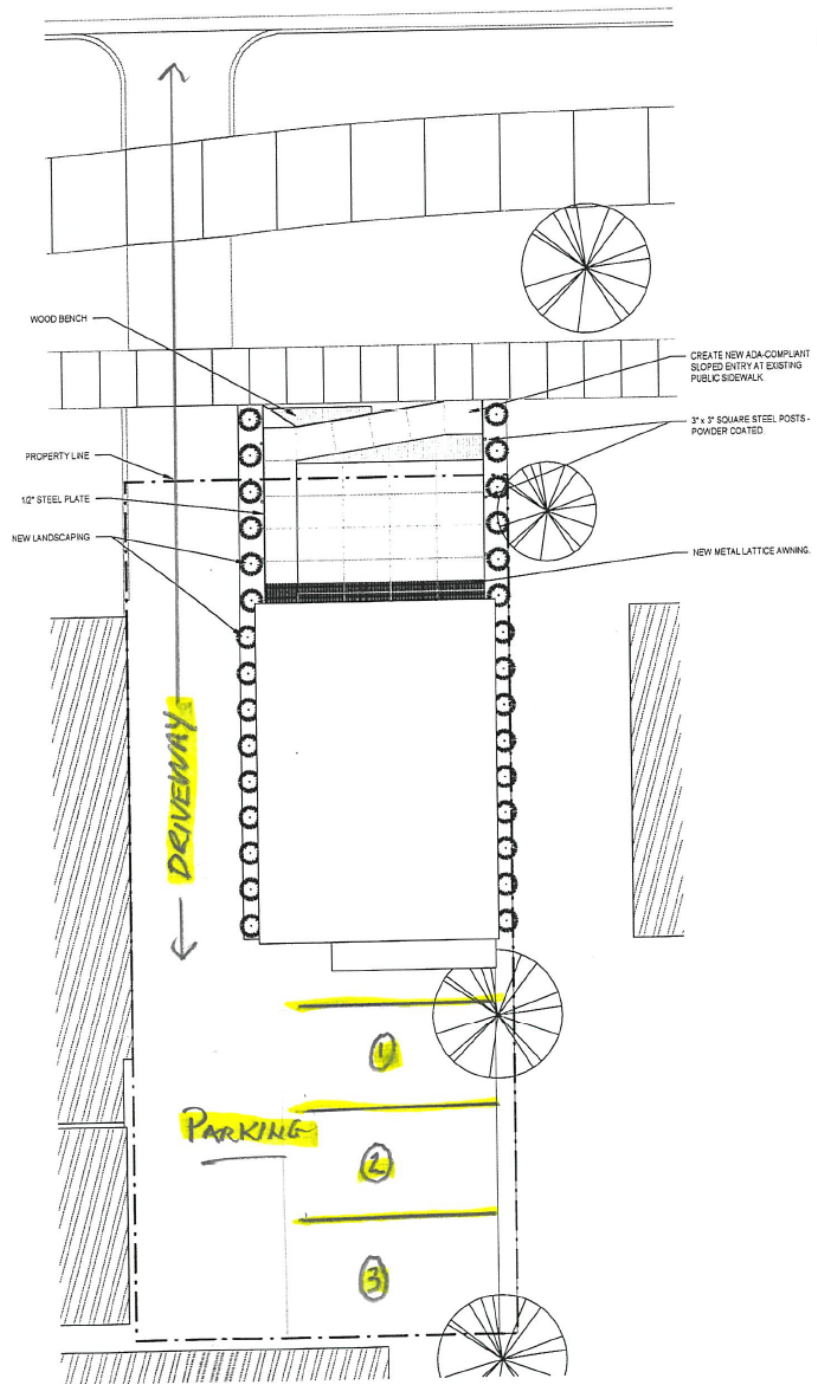
SUBMITTAL REQUIREMENTS

1. Project description for 1058 east 900 south SLC

1058 East 900 South was built in 1961. For the past 32 Years the main level has been an Antique Store and for the past 14 years the upstairs has been the thriving M Scott hair Salon. It is our hope to embrace the 9th and 9th commercial vibrancy and open a Wine Bar with a kitchen to prepare foods that delicately complement the wines. Currently the building is undergoing an extensive renovation to embrace its mid Century roots (please see building plans). The main Level wine bar is 740 square feet indoors with 28 seats and an outdoor patio comprising of 310 square feet with seating for 16. The rear of the building is accessed by a driveway to the west which has access to 3 parking stalls and a rear door entry to main level. This is a small intimate space and will be a wonderful meeting place for our neighborhood friends. The property will have an upscale appeal and will embrace its neighbors successes including Tsunami restaurant to the north. We realize this is a change of retail services under a Nonconforming use, however we hope this change would be perceived as an asset to the neighborhood with a similar land use type. Thank you for your consideration.

SITE PLAN NOTES

1. COORDINATE NEW EXTERIOR CONCRETE PAD WITH FLOOR PLAN
2. EXISTING CONCRETE DRIVEWAY - PROTECT FROM CONSTRUCTION DAMAGE. ELECTRICAL METER TO REMAIN.
3. PROTECT TREE FROM CONSTRUCTION DAMAGE..



SITE AREA:
 .09 ACRE [app. 3,920 SQ.FT.]

BUILDING FOOTPRINT:
 882 SQ. FEET

HARDSCAPE AREA (WALKS, DRIVEWAY, DECKS, TERRACE ETC.):
 2,688 SQ. FEET

LANDSCAPED AREA:
 350 SQ.FEET [app. 9% of SITE AREA]

EXISTING FIRST FLOOR AREA:
 768 SQ. FEET - MAIN FLOOR [REMAINS UNCHANGED]

EXISTING SECOND FLOOR AREA:
 768 SQ. FEET - MAIN FLOOR [REMAINS UNCHANGED]

EXISTING BASEMENT AREA:
 768 SQ. FEET [REMAINS UNCHANGED]

TOTAL EXISTING AREA:
 2,304 SQ. FEET [REMAINS UNCHANGED]

TOTAL REMODELED AREA:
 54 SQ. FEET

ZONE:
 SR-1

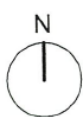
USE:

MAIN FLOOR AND BASEMENT:
 RETAIL/COMMERCIAL (ART, ANTIQUES, COFFEE SHC)

SECOND FLOOR:
 RETAIL/COMMERCIAL (SALON, DAY SPA)

PARKING

3 OFF-STREET PARKING STALLS



New Site Plan
1/8" = 1'-0" **A4**



ATTACHMENT D: COMMENTS

PUBLIC INPUT:

Staff has received three emails in concern/opposition from the public:

1st email:

“Thanks for the info. Im NOT in favor of a bar staying open till 1am. Okay w bar but closing by 930 pm like tsunami across street.

Im okay w bar staying open till 10pm. But not any longer than that.”

2nd email:

case number PLNZAD2022-00275

I am against the nonconforming change of use from Retail Goods Establishment to Alcohol Bar Establishment at 1058 East 900 South, Salt Lake City, Utah.

An alcohol establishment is hardly sufficiently similar to an existing non-conforming use of retail goods establishment, especially because, unlike a retail goods establishment, an alcohol establishment will attract and create a steady stream of traffic and noise during hours well outside of those for a typical retail goods establishment, as well as potentially unruly and enebriated persons intruding onto adjoining residential private property and an overburden on the few remaining parking spaces in a residential neighborhood, all amounting to a public nuisance. And, a bar is more closely related to an entertainment establishment than to a retail goods establishment and thus has no place in the neighborhood.

Although restaurants also serve alcohol, they are primarily in the business of serving food; alcohol is ancillary to their business. In contrast, a bar is in the business of primarily serving alcohol, which in the end is more like offering a form of entertainment rather than sustenance. A bar is entirely out of character for the neighborhood and as such would place an intolerable burden on local residents.

3rd email:

about the proposal to develop a alcohol establishment on 9th South.

Aside from changing the atmosphere of the neighborhood parking is a major issue both on 9th South and the residential area of McClelland.

CITY REVIEWER COMMENTS:

Transportation Review Comments//Kevin Young, Deputy Director:

- Parking calculations for the proposed uses (hair salon and wine bar), to include standard passenger vehicle parking spaces and ADA parking spaces
- Dimensioned drawing of parking layout, including driveway width, aisle width, and parking stall length and width.

Public Utility Comments // Jason Draper, Development Review Manager:

- The proposed kitchen will require a grease removal device (GRD)
- Please submit plans for building permit review including a GRD and sizing criteria.
- Change of use application approval does not provide building or utility permit.

Building Code and Fire Code Comments // Steven Collett, Senior Plans Examiner:

A Building permit and new Certificate of Occupancy is required to memorialize the change of occupancy from a retail Group M occupancy to a Group A-2 occupancy intended for food and/or drink consumption. The following is required by the International Existing Building Code for a change of occupancy.

A building/space code analysis is required. This information is to include but not limited to the following: Type of construction, occupancy classification, applicable building codes, fire protection information, the documents shall show in sufficient detail the location, construction, size and character of all portions of the means of egress including the path of the exit discharge to the public way, construction documents shall also designate the number of occupants to be accommodated in all rooms and spaces.

1007.2 Unsafe conditions.

Where the occupancy of an existing building or part of an existing building is changed, all unsafe conditions that pertain to the change of occupancy shall be corrected of the electrical system to comply with NFPA 70.

1008.1 Mechanical requirements.

Where the occupancy of an existing building or part of an existing building is changed such that the new occupancy is subject to increased mechanical ventilation requirements in accordance with the International Mechanical Code, the new occupancy shall comply with the respective International Mechanical Code provisions.

1009.1 Increased plumbing demand.

Where the occupancy of an existing building or part of an existing building is changed such that the new occupancy is subject to increased or different plumbing fixture requirements or to increased water supply requirements in accordance with the International Plumbing Code, the new occupancy shall comply with the intent of the respective International Plumbing Code provisions.

1009.3 Interceptor required.

If the new occupancy will produce grease or oil-laden wastes, interceptors shall be provided as required in the International Plumbing Code.

305.4.1 Accessibility Partial change of occupancy.

Where a portion of the building is changed to a new occupancy classification, any alterations shall comply with Sections 305.6, 305.7 and 305.8.

305.4.2 Accessibility Complete change of occupancy.

Where an entire building undergoes a change of occupancy, it shall comply with Section 305.4.1 and shall have all of the following accessible features:

1. Not fewer than one accessible building entrance.
2. Not fewer than one accessible route from an accessible building entrance to primary function areas.
3. Signage complying with Section 1111 of the International Building Code.
4. Accessible parking, where parking is being provided.
5. Not fewer than one accessible passenger loading zone, where loading zones are provided.
6. Not fewer than one accessible route connecting accessible parking and accessible passenger loading zones to an accessible entrance.

Where it is technically infeasible to comply with the new construction standards for any of these requirements for a change of group or occupancy, Items 1 through 6 shall conform to the requirements to the maximum extent technically feasible.

1004.1 General Fire Protection.

Fire protection requirements of IEBC Section 1011 shall apply where a building or portions thereof undergo a change of occupancy classification or where there is a change of occupancy within a space where there is a different fire protection system threshold requirement in Chapter 9 of the International Building Code.

1001.3 Certificate of occupancy required.

A certificate of occupancy shall be issued where a change of occupancy occurs that results in a different occupancy classification as determined by the International Building Code.