



Staff Report

PLANNING DIVISION
COMMUNITY & ECONOMIC DEVELOPMENT

To: Salt Lake City Planning Commission
From: Everett Joyce 801-535-7930
Date: October 22, 2014
Re: PLNPCM2014-00529 Outdoor Dining Third Avenue Bistro

Special Exception-Outdoor Dining

PROPERTY ADDRESS: 564 E Third Avenue

PARCEL ID: 09-31-479-002

MASTER PLAN: Avenues – Future Land Use designation is Special Development Pattern Residential

ZONING DISTRICT: SR-1A and H Historic Preservation Overlay

REQUEST: The petitioner, Jude Rubadue, is requesting approval for an outdoor dining patio within a required yard area that will be associated with a nonconforming restaurant located at 564E. Third Avenue. Outdoor dining, as an accessory use is allowed as a special exception. The Planning Commission has final decision making authority for special exceptions.

RECOMMENDATION/MOTION: Based on the information in this staff report, Planning Staff recommends that the Planning Commission approve the proposed outdoor dining with conditions.

The motion to approve is below:

Based on the findings listed in the staff report, public testimony, and discussion by the Planning Commission, I move that the Planning Commission approve special exception PLNPCM2014-00529, a outdoor dining at 564 E. Third Avenue, subject to complying with all applicable regulations. Due to the potential for detrimental impacts identified in this report, the Planning Commission applies the following conditions to the approval of the project:

1. Proposed lighting is to be subdued, however if it causes glare onto adjacent properties then a lighting type that can be shielded will need to be installed rather than the proposed lighting.
2. Seating customers in the outdoor dining area must be managed in a manner that the patio can be closed and shut down at the designated closing time. The hours of operation for the patio shall be limited to 9 am to 9 pm.
3. Outdoor special events are restricted to the 500 square foot outdoor dining area and not allowed in other areas of the yard.
4. No amplified music shall be permitted.
5. That the outdoor dining area be gated from access to the balance of the side and rear yard areas of the property. Entrance and exiting are to take place at the existing front entrance gate.
6. Submittal and approval of a detailed landscape buffer and screening plan.
7. Place a wood screen fence in front of the existing storage area facing the street.
8. Obtain a Certificate of Appropriateness for outdoor lighting, trellis, fencing and other site improvements.

ATTACHMENTS:

- A.** Vicinity Map
- B.** Site Plan
- C.** Building and Site Photos
- D.** Additional Applicant Information
- E.** Existing Conditions
- F.** Analysis of Standards
- G.** Public Process and Comments
- H.** Department Comments
- I.** Recommended Site Improvements
- J.** Motions

PROJECT DESCRIPTION:

This is a request by Jude Rubadue, the owner of property located at approximately 564 E 3rd Avenue. The property is a legal nonconforming restaurant (Avenues Bistro) located in the SR-1A Zoning District. Outdoor dining for the nonconforming restaurant requires special exception approval.

The outdoor dining area will not exceed 500 sq. ft. The outdoor dining area consists of two separate areas; the north area is 236 sq. ft. and the south area is 244 sq. ft. All tables are proposed to have sun shade umbrellas. There is an existing storage area located between the two dining areas that will remain as storage. The north dining area will contain three tables with twelve chairs and south area will contain four tables with 16 chairs for a total capacity of 28 persons.

The proposed days and hours of patio operations are: 5 days a week (Currently, Wednesday through Sunday) from 9 am to 9 pm with occasional, small, special events such as birthday parties. Maintenance work will be performed on Monday and Tuesday.

No smoking will be permitted in the outdoor dining space or within 25 feet of the dining area.

Outdoor lighting will be solar lamps at 2 foot intervals in the planter beds and string patio lighting, 18 inches apart, strung from existing posts. Lights will be subdued, but bright enough to allow persons to move about safely and to adequately read menus.

Occasionally, there will be acoustic music provided. There will be no amplification permitted, the decibel level will be in conformance with the Salt Lake City noise control ordinance title 9, chapter 9.28.

A site plan of the patio area is provided in Attachment B on page 7.

21A.40 Accessory Uses, Buildings and Structures

Outdoor dining for restaurants and facilities that serve food or drink are addressed within 21A.40 Accessory Uses, Buildings and Structures chapter of the zoning ordinance. This chapter is intended to provide general regulations, applicable to all zoning districts, for accessory uses, buildings and structures which are customarily incidental and subordinate to the principal use and which are located on the same lot. It is further intended to provide specific standards for certain accessory uses, buildings and structures.

The outdoor dining area is located in the required front and side yard setback areas which require a special exception approval to allow the outdoor dining. The special exception standards and specific standards for outdoor dining must be met to receive approval. These standards are addressed in Attachment F – Analysis of Standards on page 12.

KEY ISSUES:

The key issues discussed below have been identified through the analysis of the project, neighbor and community input and department review comments.

Issue 1 Parking

The existing nonconforming restaurant does not have any off-street parking. Customers of the restaurant who arrive by motor vehicle use the public street for parking. There are concerns that the additional outdoor dining, adding to the capacity of the restaurant, may impact adjacent streets as more customers may need on street parking. The existing restaurant area consists of approximately 1,400 square feet within the first floor of the building. The required off street parking standard for restaurants is two parking spaces per 1,000 square feet. The required off-street parking for a restaurant is three parking spaces. However, the existing restaurant is noncomplying with respect to required off-street parking and does not have to provide the three parking spaces. The parking requirement for an outdoor dining area is two parking spaces per 1,000 square feet. No additional parking is required if the outdoor dining area is less than 500 square feet. The proposed outdoor dining area is less than 500 square feet, therefore there is no additional off-street parking required.

On-street parking is a concern within the lower Avenues neighborhoods due to many of the properties historically developed without off-street parking. This issue is common to the area. The proposed use may add additional demand to on-street parking but the standards applicable to outdoor dining areas, less than 500 square feet, do not require additional off-street parking to be provided.

Issue 2 Noise

There has been concern raised about noise related to music and also related to the outdoor dining activity itself. The City code regulates noise levels through the Salt Lake City noise control ordinance, title 9, chapter 9.28.

The special exception for outdoor dining requires that the activity complies with title 9, chapter 9.28 of the City code. This code prohibits noise levels in residential use areas that exceed 50 dBA from 9:00 P.M. to 7:00 A.M. and 55 dBA from 7:00 A.M. to 9:00 P.M. The noise level measurement dBA is an A-Weighted Sound Pressure Level. As a comparison motor vehicles are limited to 80 dBA. Noise is also regulated through chapter 21A.36 General Provisions section 21A.36.180 Environmental Performance Standards.

The applicant has stated that they would have live acoustic music, no amplified music nor loudspeakers will be used. The proposed location of the outdoor dining area is configured in a manner that minimizes the impact on adjacent properties. The dining area is adjacent to a detached garage and driveway located in the corner side yard of the adjacent property to the west which should buffer noise created by customers of the patio.

Live music or the playing of loudspeakers is only permitted if in conformance with the decibel levels of the noise control ordinance. Enforcement action and potential revocation of the special exception approval are the key mechanisms to assure compliance with the noise control ordinance. If music becomes a nuisance and does not meet noise standards that element of the outdoor dining operations could be revoked.

Staff recommends that additional landscaping planters and screening materials be provided along the perimeter of the dining areas to help mitigate potential noise. A recommended condition of approval is:

- Submit a landscape buffer and screening plan that places plant and screen materials at the following locations:

South Dining Area:

- a. Provide plant materials on the inside of the dining area along the west and south perimeter.
- b. Provide a planter and trellis along the west building wall across from the dining area.

North Dining Area:

- c. Provide a screen wall on storage area facing the street.
- d. Place taller planting materials outside of the sight distance triangle of the adjacent driveway and public sidewalk.

Issue 3: Hours of Operation

Concern has been brought regarding the hours of operation and the impact on adjacent properties. Allowing the operation of outdoor dining during the week nights could significantly impact adjacent properties. Neighbors identified that outdoor dining activity during week nights Sunday, Monday, Tuesday, Wednesday and Thursday should be curtailed by 9:00 p.m.

The applicant's proposed days and hours of patio operations are: 5 days a week (Currently, Wednesday through Sunday) from 9 am to 9 pm with occasional, small, special events. Maintenance work will be performed on Monday and Tuesday. Staff recommends the following condition for the hours of operation as a condition of approval.

- Seating customers in the outdoor dining area must be managed in a manner that the patio can be closed and shut down at the designated closing time. (This means stop serving customer at 8:30 pm.) The hours of operation shall be limited to 9 am to 9 pm.

Issue 4: Odor

Smoking and food odors were identified as a concern. The special exception for outdoor dining prohibits smoking.

Food odors are already regulated through chapter 21A.36 General Provisions section 21A.36.180 Environmental Performance Standards. This section requires compliance with applicable performance standards governing noise, vibration, air pollution, odors, fire and explosion hazards and toxic substances.

Issue 5: Loss of Privacy

Public activity outdoors on smaller properties can have a potential to create a loss of privacy for abutting property owners. Location of such facilities should be properly screened from adjacent residential properties. The location of the proposed outdoor dining area is based upon existing site layout, adjacent buildings and existing screening and input from adjacent neighbors. Staff is of the opinion that the location requested for the outdoor dining reasonably minimizes the potential adverse effects upon adjacent properties. Elements that help in the loss of privacy are the location of an existing building (adjacent garage), existing landscaping and fencing along the west property line.

Additional screening is proposed along the south end of the outdoor dining area. A condition of approval identified in issue 2 is to submit a landscape buffer and screening plan that adds additional materials to address potential noise impacts that will also help to mitigate the loss of privacy.

Issue 6: Special Events

Special events function similarly to outdoor dining activity. However, they may have to potential to also increase the activity level beyond the capacity of the number of diners that ordinarily use the patio for dining purposes.

The applicant has identified that special events will operate solely within the building and the patio area but not beyond those identified areas. The patio area will function similarly to regular dining activities that would take place in the outdoor dining area. Special events will not extent the hours of operations beyond what would be permitted for the outdoor dining use itself. To ensure this issue is addressed the following condition of approval is recommended.

- Outdoor special events are restricted to the outdoor dining areas and limited to the operational seating capacity of the dining area.

Issue 7: Scale: Patio Size and Occupancy

The existing restaurant's capacity is approximately 40 seats. The proposed outdoor dining area has a maximum capacity of 28 seats. The outdoor dining area will be less than 500 square feet, which under the zoning requirements would not require any additional off-street parking. The applicant has stated that the outdoor dining activity would generally consist of existing customers that would otherwise use the indoor dining area.

Issue 8: Lighting

There is concern that additional lighting for outdoor dining areas would impact adjacent properties. Lighting is addressed in chapter 21.A.24, the general provisions of residential districts of the zoning ordinance. Requirements are that on site lighting shall be located, directed or designed in such a manner as to contain and direct light only to the property on which it is located and not to glare onto adjacent properties.

The proposed lighting is to be subdued however the string lighting may not be able to be shielded to prevent glare onto adjacent properties. To prevent potential glare of lighting onto adjacent properties staff recommends a condition of approval that if the operation levels of the proposed dining is causing impacts on adjacent properties, then the applicant will need to devise a way to shield glare or replace the lighting with appropriately controlled lighting or limit hours of operation.

DISCUSSION:

In the review and analysis of the standards for special exceptions and outdoor dining staff has identified additional landscape and screening elements as well as management of the outdoor dining area such as the additional access control gate at the south end of the dining area and elimination of the curb cut on 3rd Avenue. Staff is of the opinion that the additional site improvements required and the conditions of approval, that the outdoor dining proposal meets the outdoor dining special exception criteria and standards.

A diagram indicating where site improvements are recommended as a condition of approval is located in Attachment I - Recommended Site Improvements on page 24.

NEXT STEPS:

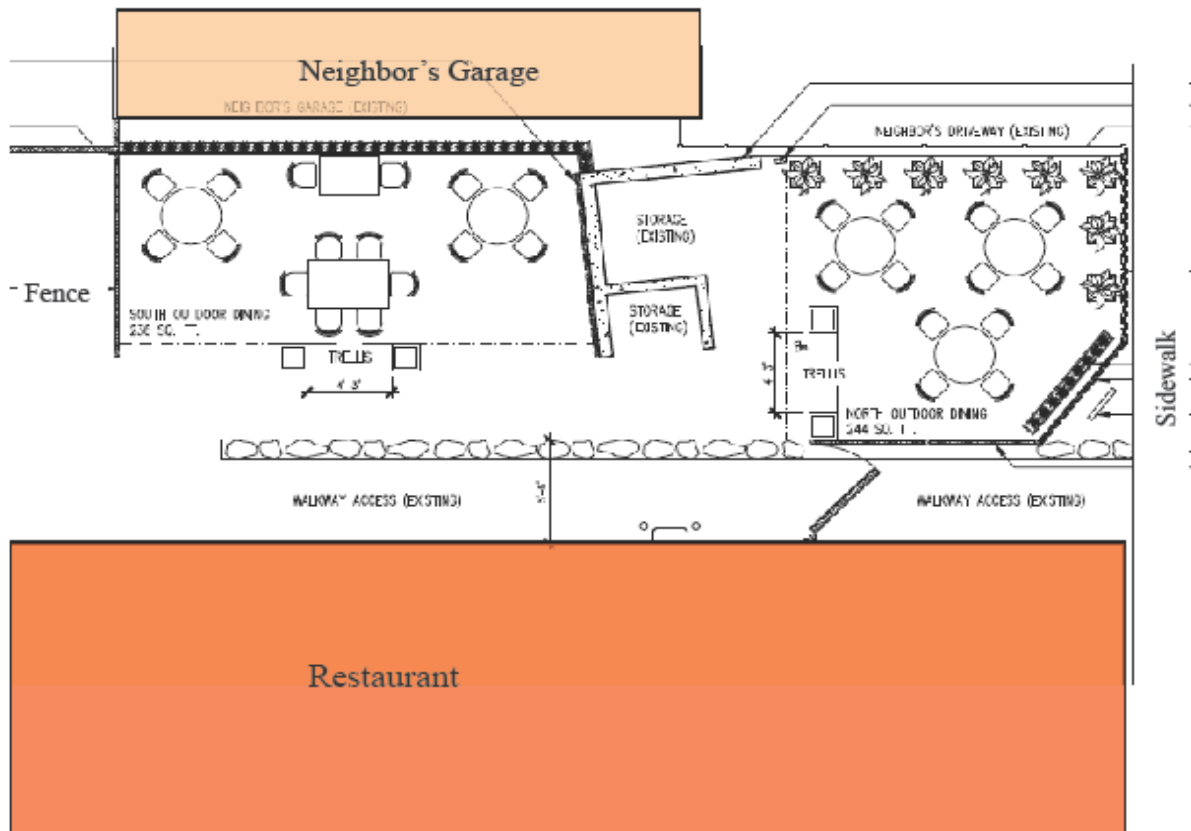
If the project is approved, the applicant will need to comply with any conditions made as part of the approval before the Planning Division will sign off on building permits for outdoor dining improvements. Should the project be approved and it is not appealed, the applicant will need to apply for a building permit for site improvements and amend their business license to include the outdoor dining area.

If denied the applicant would not have City approval to do outdoor dining on the site.

ATTACHMENT A: VICINITY MAP



ATTACHMENT B: SITE PLAN



Proposed Outdoor Dining

Outdoor Dining Areas total 480 square feet

ATTACHMENT C: BUILDING AND SITE PHOTOS



Street Front



North outdoor dining area behind the existing fence and the public entrance and gate



View from proposed front outdoor dining area to the 3rd Avenue.



Existing planting bed to be converted to the south outdoor dining area

ATTACHMENT D: ADDITIONAL APPLICANT INFORMATION

The following additional information was provided by the applicant in response to items listed below:

1. What is the seating capacity of the existing restaurant and the square footage of the existing restaurant use and square footage of the inside dining areas.

There are approximately 40 seats - approved by all departments, permitted and licensed. Please note, this did come up at the hearing, as a general rule, this restaurant and other restaurants with outside dining will have a full patio and the inside will be sparsely populated. People just want to sit outside.

Attachment 1: Drawing as requested- except, the "back bar" cabinet (against the East Wall- shown on the drawing as a black space) will be moving just south of the lovely, ceramic counter to add 25 sq. ft. - to have a total of 605 square ft. inside.

2. Define special events: How these function, the similarities and differences from outdoor dining activity. Would special events have different hours than outdoor dining and would they occur beyond the boundaries of the specifically defined outdoor dining areas. Would special events have live music or use loudspeakers?

Special events will take place within the area requested on the special exception application. It may be a meal for a visiting dignitary. It may be a birthday party. On our application, it is perfectly clear that music or sounds will not be amplified.

3. New site improvements: I need more detailed information regarding the new fence and the proposed trellises. This is for Historic district review for property improvements. Please provide the dimensions and material to be used. If the trellis is an existing item, a photograph would be helpful besides the dimensions and materials of the trellis.

The trellis is to be a simple gateway. Two upright pieces of wood with a crossbeam. The front fence was built in 2012 at the request of the DABC. There is not a new fence planned as yet.



Proposed Trellis

ATTACHMENT E: EXISTING CONDITIONS

The existing use is a nonconforming restaurant. The restaurant use and scale is similar to what is allowed within the CN – Neighborhood Commercial or the RB – Residential Business Zoning Districts. The subject property is zoned SR-1A. The existing development is a nonconforming use and the site dimension setbacks are noncomplying. The proposed outdoor dining is permitted within the required landscaped yards and buffer yards subject to special exception approval. Outdoor dining is permitted within the buildable lot area in all zoning districts.

The existing site has a principal structure that has no front yard setback, has a side yard on the west of approximately 20 feet and rear yard of approximately 15 feet.

Zoning Requirement Comparisons					
Zoning Standard	CN	RB	SNB	Existing Site	SR-1A
Front Yard Setback	15'	20'	Equal to abutting zoning district	0'	Average of block face
Side Yards Setback	None	6' / 10' – No greater than existing yard	Equal to abutting zoning district	1 ^{1/2} ' / 20'	4' / 10'
Rear Yard Setback	10'	25'	Equal to abutting zoning district	15'	25'
Landscape Buffer	7'	None	None	None	None

Adjacent Land Uses		
Adjacent Property	Location from subject property	Use
134 H St	West	Single Family
566 3rd Ave	East	Retail
126 H St	South	Single Family

Surrounding uses are residential consisting of single family and multi-family properties with other nonconforming commercial use directly to the east.

ATTACHMENT F: ANALYSIS OF STANDARDS

21A.40.040: USE LIMITATIONS:

In addition to the applicable use limitations of the district regulations, no accessory use, building or structure shall be permitted unless it complies with the restrictions set forth below:

- A. An accessory use, building or structure shall be incidental and subordinate to the principal use or structure in area, extent and purpose;
- B. An accessory use, building or structure shall be under the same ownership or control as the principal use or structure, and shall be, except as otherwise expressly authorized by the provisions of this title, located on the same lot as the principal use or structure;
- C. No accessory use, building or structure shall be established or constructed before the principal use is in operation or the structure is under construction in accordance with these regulations; and
- D. No sign, except as expressly authorized by this chapter or by the provisions of chapter 21A.46 of this title, shall be maintained in connection with an accessory use or structure.

Analysis: The outdoor dining area is less than 500 square feet and the existing restaurant area is 1,400 square feet. The accessory outdoor dining is under the same control as the restaurant. The principal use, the restaurant is established and under operation. No new signs are proposed, any signs related to the outdoor dining area will need to meet the standards of chapter 21A.46.

Finding: The proposed outdoor dining meets the use limitation restrictions.

21a.52.060: General Standards and Considerations for Special Exceptions: No application for a special exception shall be approved unless the planning commission or the planning director determines that the proposed special exception is appropriate in the location proposed based upon its consideration of the general standards set forth below and, where applicable, the specific conditions for certain special exceptions.

Standard	Finding	Rationale
A. Compliance With Zoning Ordinance And District Purposes: The proposed use and development will be in harmony with the general and specific purposes for which this title was enacted and for which the regulations of the district were established.	Complies	The existing property is a nonconforming use that is not consistent with the base zoning. Chapter 38 of the zoning ordinance allows for the continuance of nonconforming uses. Recent text amendment was adopted to allow outdoor dining related to nonconforming restaurants and similar uses that serve food or drink. Outdoor dining is an accessory use that is permitted through the special exception process. The property is within a historic preservation overlay district and certain site improvements will be subject to a separate Certificate of Appropriateness approval is the proposed outdoor dining is approved.
B. No Substantial Impairment Of Property Value: The proposed use and development will not substantially diminish or impair the value of the property within the neighborhood in which it is located.	Complies	Restaurants within existing CN - neighborhood commercial and RB – residential business districts as well as nonconforming restaurants in all zones are allowed to have outdoor dining as a special exception. The special exception process addresses operation impacts on adjacent properties. There is no evidence submitted that specifically identifies that outdoor dining substantially diminishes or impairs the value of property within the neighborhood.
C. No Undue Adverse Impact: The proposed use and development will not have a material adverse effect upon the character of the area or the public health, safety and general welfare.	Complies	No structural additions will be made to the existing building. The proposed use is an accessory use limited to a 500 square foot patio and will share the restaurant kitchen and restrooms spaces of the existing Third Avenue Bistro restaurant. There are no proposed changes to the exterior of the building. The patio use is configured in a manner that should protect the health,

		safety and general welfare of the area.
D. Compatible With Surrounding Development: The proposed special exception will be constructed, arranged and operated so as to be compatible with the use and development of neighboring property in accordance with the applicable district regulations.	Complies	<p>The use is compatible in intensity, size, and scale to existing commercial uses either in neighborhood commercial zoning districts or nonconforming within the residential areas of the lower Avenues. The site consists of a commercial use and the proposed outdoor dining would be part of an existing restaurant. The outdoor dining area is located in a manner that the existing adjacent garage structure helps to screen the activity. Additional screening materials, fencing and landscaping are being proposed to mitigate potential impacts on adjacent properties. There is no evidence to suggest that there would be an impairment to value to properties in the neighborhood.</p> <p>The outdoor dining area is limited to less than 500 square feet and the recommended conditions of approval should mitigate impacts so that the use is compatible with the nonconforming use and outdoor dining regulations.</p>
E. No Destruction Of Significant Features: The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance.	Complies	<p>The proposed outdoor dining will be located in the side yard. The front outdoor dining area is located on an existing patio area. The rear dining area is located where an existing planter is located. The landscaped planter area will be relocated immediately to the south. The purpose of placing the dining area where the existing planter is located is to locate the dining activity adjacent to the neighbor's garage to help minimize the impact of the outdoor dining area. The proposed use will not affect any natural, scenic or historic features of significant importance. The existing building in the historic district is no changing. The proposed changes are compatible with the overlay and have adverse effect on the streetscape.</p>
F. No Material Pollution Of Environment: The proposed use and development will not cause material air, water, soil or noise pollution or other types of pollution.	Complies	<p>The outdoor dining will not result in any air, water or soil pollution. Outdoor dining is regulated by the noise control ordinance and properly located and operated outdoor dining should not create a noise pollution level above ordinance limitations. No environmental damage will be done.</p>
G. Compliance With Standards: The proposed use and development complies with all additional standards imposed on it pursuant to this chapter.	Complies	See the specific additional standards addressed below.
Section 21A.40.065 - The following conditions apply to a Special Exception for Outdoor Dining		
Condition	Finding	Rationale
A. All requirements of Chapter 21A.48 and Section 21A.36.020 of this title are met.	Complies	Legal nonconforming uses and noncomplying lots have established uses and lot and bulk controls that do not conform to district requirements. The continuation of nonconforming uses and noncomplying structures are authorized to continue under chapter 21A.38 Nonconforming Uses and Noncomplying Structures of the zoning ordinance.
B. All required business, health and other regulatory licenses for the outdoor dining have been secured.	Complies	The existing restaurant has the required licenses to operate. A modification to the existing business license will be required to reflect the additional restaurant seating as part of the approval of the outdoor dining special exception.
C. A detailed site plan demonstrating the following: <ol style="list-style-type: none"> 1. All the proposed outdoor dining activities will be conducted on private property owned or otherwise controlled by the applicant and that none of the activities will occur on any publicly owned rights of way unless separate approval for the use of any such public rights 	Complies	Detailed plans have been submitted that show that the proposed outdoor dining area is less than 500 square feet in area. The outdoor dining is located on the applicant's property and not in the public right of way. The proposed site plan depicts the location of paving, planters, fencing, tables and umbrellas. The layout proposed does not impede pedestrian or vehicular traffic. The existing fencing and gate provides a controlled entry point to the outdoor dining area.

<p>of way has been obtained from the city;</p> <p>2. The location of any paving, landscaping, planters, fencing, canopies, umbrellas or other table covers or barriers surrounding the area;</p> <p>3. The proposed outdoor dining will not impede pedestrian or vehicular traffic; and</p> <p>4. The main entry has a control point as required by state liquor laws.</p>		
<p>D. The proposed outdoor dining complies with all conditions pertaining to any existing variances, conditional uses or other approvals granted for property.</p>	<p>Complies</p>	<p>The subject property received a variance, Case 668-B in 1988 to enlarge an existing nonconforming restaurant, delicatessen, takeout without the required side and rear yards and off-street parking and to install an ice machine and dumpster enclosure and six foot high fence in the required front yard. The conditions related to the building additions have been met. The dumpster enclosure exists however, it no longer functions for this purpose and is used for storage. The existing front and side yard area consists of patio which is permitted within the required setback areas. The proposed outdoor dining complies with existing variances and approvals granted for the property.</p>
<p>E. Live music will not be performed nor loudspeakers played in the outdoor dining area unless the decibel level is within conformance with the Salt Lake City noise control ordinance, Title 9, Chapter 9.28 of this code.</p>	<p>Complies</p>	<p>The applicant proposes the use of acoustic music only, no use of loud speakers or amplified music will be used. Related noise levels will be in conformance with the Salt Lake City noise control ordinance, Title 9, Chapter 9.28.</p>
<p>F. No additional parking is required unless the total outdoor dining area ever exceeds five hundred (500) square feet. Parking for outdoor dining areas in excess of five hundred (500) square feet is required at a ratio of two (2) spaces per one thousand (1,000) square feet of outdoor dining area. No additional parking is required in the D-1, D-2, D-3, D-4, TSA, or G-MU zone.</p>	<p>Complies</p>	<p>The outdoor dining areas total 480 square feet which does not require additional off-street parking. The Transportation Division addressed the issue of a traffic impact analysis; it is recommended that the dead drive approach be removed in order to better define on-street parking at this location rather than a driveway.</p>
<p>G. Smoking shall be prohibited within the outdoor dining area and within twenty five feet (25') of the outdoor dining area.</p>	<p>Complies</p>	<p>Smoking will be prohibited within the outdoor dining area and within 25 feet of the dining area.</p>
<p>H. The proposed outdoor dining complies with the environmental performance standards as stated in Section 21A.36.180 of this title.</p>	<p>Complies</p>	<p>Outdoor dining is an accessory use to the principal restaurant use. The restaurant and outdoor dining use is required to be operated in compliance with applicable performance standards governing noise, vibration, air pollution, odors, fire and explosion hazards and toxic substances. There has been no evidence submitted that would determine that the proposed use is would not be in compliance with environmental performance standards.</p>
<p>I. The outdoor dining shall be located on the site where it would have the least adverse impacts upon adjacent properties.</p>	<p>Complies</p>	<p>The proposed outdoor dining area is closest to the adjacent single family property located to the west. The south dining area is adjacent to a detached garage. The north dining area is adjacent to the driveway to the neighboring garage. A six foot fence is proposed along the south end of the outdoor dining area to screen the dining area from the adjacent residential properties located to the west and south. The outdoor dining area is located on the site where it would have the least adverse impacts upon adjacent properties. Staff has identified in the staff report the need to submit a detailed landscape buffer and screening plan that provides additional landscape and screening materials to help mitigate potential impacts of the outdoor dining area. The location of the outdoor dining area is located on the site where it would have the least impact upon adjacent properties.</p>

ATTACHMENT G: PUBLIC PROCESS AND COMMENTS

October 12, 2014

Re: Case# PLNPCM2014-00529 Application for Outdoor Dining at 564 3rd Avenue

To Whom It May Concern,

I am writing to ask that you deny this application for the following reasons.

1. Substantial negative impacts to neighbors occur when outdoor dining operates at this site. We know these impacts because they were experienced by neighbors when unauthorized outdoor dining occurred at this location during 2012 and 2013. These impacts were intense and disruptive to residential activities. (*See section: Factors Contributing to Disruptive Impacts*)
2. The negative impacts generated by outdoor dining at this site are very difficult to mitigate. We know this as efforts to mitigate impacts through communications with the property and business owner proved unsuccessful and the City was contacted for assistance. The negative impacts experienced by neighbors continued until the City determined the patio was unauthorized and it was closed. (*See section: Factors Contributing to Disruptive Impacts*)
3. This application seeks to (a) authorize a patio of a size and scope known to generate negative impacts; (b) authorize operations and high-impact uses, without clearly defined limits, that proved highly problematic during 2012 and 2013; and (c) attempts to do this without any meaningful limitations, new strategies, or plan for mitigating the known negative impacts generated by outdoor dining at this site. (*See: A Neighbor's Response to the Application*)

Thank you,
Kristen Stowell and Eric Wiseman

Factors Contributing to Disruptive Impacts

Site Features that Contribute to Disruptive Impacts

Unique features of this property make outdoor dining at this location problematic. These features both contribute to the intensity of impacts experienced by neighbors and make mitigation particularly challenging.

- A. This property has no existing buffer between the proposed patio and residential uses. A review of two of the City's nonconforming restaurants with outdoor dining patios of similar size and scope shows (a) Em's outdoor dining patio is separated from nearby residential uses by the business's driveway, the business's 11 car parking lot and the street and (b) Cafe Niche's outdoor dining patio is distanced from neighboring residential uses by the business's driveway, landscaped areas, and two streets.

The petitioner's small, mid-block property has no such buffers that would distance the outdoor dining activities from neighboring residential uses. The only location for outdoor dining at this site is on the property's driveway/side yard which directly abuts two residential properties (and is the only space that serves to buffer the residences from the restaurant itself). Outdoor dining at this site (a) eliminates this space as a buffer and (b) moves dining activities closer to homes with tables

immediately against residential property lines. This property's lack of existing buffers increases the impacts of noise and odors on nearby residential uses and makes it significantly more difficult to mitigate those impacts.

- B. This property's long, narrow driveway/side yard, defined on one side by the restaurant building's brick exterior and on the other by a 6-foot-high wood fence and three-story residence creates a sound chute that directs noise toward residential properties. The physical space and the materials defining the space serve to increase the noise experienced by neighbors and make it more difficult to mitigate the resulting noise-related impacts.
- C. The restaurant's shape, structure and layout leads to a draft that is created when exterior doors are opened that negatively impacts the restaurant's ventilation system. This has continued even after upgrades were made to the ventilation system. When the front and side/kitchen doors are continuously opened and closed (as inevitably happens when serving diners on the outdoor patio), the restaurant's ventilation system cannot adequately vent smoke and odors and the nearby residential uses are flooded with the odors of cooking meat and fish. The fact that the ventilation system is negatively impacted every time doors are opened increases the impacts of odors on nearby residential uses and makes it impossible to mitigate those impacts.

Operations and Uses that Lead to Disruptive Impacts

During 2012 and 2013, poorly defined operations and high-impact uses created conditions that contributed to the intensity of noise experienced by neighbors and made mitigation difficult. A patio that grew in size and occupancy without limits, poorly defined hours of operation, the hosting of live music, the hosting of special events and seating of large parties led to noise 15-18 hours a day that often exceeded permissible levels. (Outdoor dining at this site led to noise of up to 70 decibels from outdoor dining activities and up to 80 decibels when live music was performed).

The noise and odors generated from unauthorized outdoor dining at this site disrupted sleep, reading, conversations and other residential activities. We closed windows, turned off the swamp cooler, and sometimes moved our child to the room farthest from the outdoor dining activities to sleep in an attempt to mitigate the negative impacts stemming from the outdoor dining occurring on the adjacent property. These impacts continued, unmitigated, until the City determined the patio was unauthorized and it was closed.

A short video clip documenting noise related impacts can be found at <http://vimeo.com/68933111> (the password to view the video is 3EgszMA023). This recording, taken in my backyard, demonstrates noise from the patio (no live music – just voices, laughter, and dining noises) that bounced between 55 and 65 decibels with peaks at 70 decibels.

A Neighbor's Response to the Application

1. This application seeks to reinstate a patio of size and scope known to generate negative impacts.

A. Some emphasize that this proposed patio is a reduction from the size and scope of the unauthorized patio. While it is a reduction from the patio at it's largest, this statement fails to recognize that the negative impacts of noise and odor were noted when the patio first opened. (The patio, upon opening was 244 sq. ft. with seating for 12, half the size and occupancy of the currently proposed patio). The proposed patio is of a size and scope that has been previously attempted and found to produce disruptive noise and odors that were difficult to mitigate.

B. The current application does not state a specific maximum occupancy. While the site plan shows seating for 28. The text indicates that "maximum outdoor dining capacity will be as permitted within 500 sq. ft." Can the business add more tables and diners than what is shown? Does this mean a banquet or

cocktail party for 60+ patrons can be held on the patio? Without further clarification, definition, and limitations, this vague statement could lead, once again, to an excessive number of patrons dining outside at this small mid-block location surrounded by residential uses.

2. This application seeks to reinstate operations and high-impact uses, without clearly defined limits, that proved highly problematic during 2012 and 2013.

A. The current application does not clearly define or regulate hours of operation. The application states that the proposed patio will be open 5 days a week from 9am to 9pm. Without further clarification or regulation regarding hours of operation (including set-up and take-down activities and the practice of seating parties just prior to closing) 12 hours a day/60 hours a week quickly turns into 15+ hours a day/70+ hours a week, with disruptive noise beginning early in the morning and continuing to late in the evening.

B. The current application seeks approval for live music at this site. The application reads, “occasionally, there will be acoustic music.” Live music has been attempted at this site and was highly disruptive. Salt Lake County responded twice to complaints stemming from live music and told the business owner “they couldn’t have amplified (sic) music on the patio.” Music (acoustic or amplified) in this space has always exceeded permissible decibel levels.

C. The current application seeks authorization for “occasional, small special events.” The hosting of special events and seating of large parties at this location during 2012 and 2013 was one of the uses that led to significant noise disruption. This request lacks the specificity, clarification, and regulation needed to (a) determine if a special event use is appropriate at this site and (b) if so, to determine what conditions might be needed to mitigate impacts generated by seating large parties and hosting special events in such close proximity to residential uses.

D. The current application reads that “smoking shall be prohibited in the outdoor dining space and within 25 feet of the outdoor dining area. Without further clarification, this seems to permit patrons and staff to once again smoke in the back of the building. Nothing in the current application prohibits or discourages outdoor dining patrons from going to the back of the property or to the adjacent urban farm to smoke (both of which are known past problems).

E. Rather than placing tables against the restaurant (which might leave room for some buffering between the outdoor dining patio and residential uses to the west), the tables are placed immediately against a residential property line.

F. The current application specifies what type of lighting will be used, but offers no regulations regarding lights shining on residential uses or when lights will be turned off. Lighting from the 2012 and 2013 unauthorized patio shone into residential living and sleeping spaces as late as 1am and were sometimes left on all night.

3. The application seeks authorization for outdoor dining at this site without any meaningful limitations, new strategies, or plan for mitigating the known negative impacts generated by outdoor dining at this site.

A. Nothing in the current proposal addresses or attempts to mitigate restaurant odors.

B. There is nothing in this proposal that addresses sound absorption or sound blocking strategies that would serve to mitigate the impacts of excessive and disruptive noise experienced by neighbors during 2012 and 2013.

C. There is no new screening or landscaping suggested in this proposal that would serve to mitigate the impacts of excessive and disruptive noise experienced during 2012 and 2013. Screening and landscaping would also provide some separation from residential uses, define the outdoor dining space to restrict the movement of patrons along residential property lines and protect neighbors' privacy.

D. The addition of one, partial, 6-foot-high wood fence will do little to mitigate known impacts. The current application indicates a 6-foot-high wood fence will be placed at the south end of the dining patio. (This seems to be the only “new” addition to the proposed patio from its 2012 and 2013 iteration that attempts to mitigate negative impacts). As this wood fence (a material not known for its sound absorption or blocking properties) only extends halfway across the outdoor dining space, it will do little to mitigate noise, define the outdoor dining space, or discourage movement toward residential uses at the back of the property.

E. The current application does not include any physical separation that would deter or prohibit patrons from accessing the urban farm from the restaurant's outdoor dining patio. While the City clarified the need for separation between the restaurant and urban farm uses and explained that the urban farm could not be accessed through the restaurant space, this practice continued until the City determined the patio was unauthorized and it was closed. A lack of physical separation between these uses will lead curious patrons to once again move along residential property lines to access the adjacent urban farm.

RE: Case# PLNPCM2014-00529

September 2, 2014

Hello Everett,

Thank you for meeting with me last week. I appreciated the opportunity to share my concerns in person. Here is a summary of my thoughts regarding the special exception application for outdoor dining at 564 Third Avenue.

I believe that this location is unsuitable for outdoor dining and would ask that the request be denied.

Assurances and City determinations (some citing parking problems) have prevented outdoor dining at this site for more than 25 years. Unauthorized outdoor dining (beginning small and eventually encompassing the side and rear yards) was offered at this location in 2012 and 2013. The impacts of noise, odor, loss of privacy and others were intense, highly disruptive, and, despite efforts, were not mitigated until the patio was closed.

If the City is inclined to approve the petitioner's application for outdoor dining in spite of the negative impacts experienced by neighbors during 2012 and 2013, I would ask that you do so with the following conditions in place.

1. Reduce the size of the proposed patio by half.
2. Identify a maximum occupancy for the patio of 10 to 15 patrons.
3. Reduce patio hours to breakfast and lunch service. Dinner on Friday and Saturday nights only.
4. Define closing hours. Closing time should mean the patio is closed - no patrons or staff, lights out and quiet. Final seatings should be arranged accordingly.
5. No music.
6. No special events or seating of large parties.
7. Restrict use of side/kitchen door to ensure ventilation system runs effectively. Door should not be propped open for ventilation or used to serve the patio. It should remain closed when the kitchen is in use.
8. Require additional landscaping/screening to buffer noise, protect privacy of neighbors, and prevent patrons from accessing the adjoining urban farm from the restaurant's patio.
9. Require a traffic/parking impact analysis.

Thank you,

Kristen Stowell

kstowell@xmission.com

Mon 9/1/2014 6:22 PM

This email is to express our strong support for the Avenues Bistro on 3rd, specifically to allow outdoor dining in nonconforming restaurants as proposed in the petition under consideration.

Our family recently purchased a home across the street from the Avenues Bistro (577 3rd Ave.), and we have found them to be thoughtful and good neighbors. In fact, we were attracted to the location for its vibrant urban culture and mixture of residential homes dotted with unique local businesses. We enjoy having this healthy food option nearby and wish to see it succeed and thrive. While there are a great number of people do walk to the Bistro (we see people trot in on foot all the time), others do drive, and we believe in sharing our street with people who park here to support our locally owned businesses. The truth is we have witnessed nothing but considerate behavior from patrons of the restaurant (on foot or by car), and have seen none of the "issues" mentioned in some complaints (i.e., no beer cans, no cigarette butts, no excessive loudness).

Thank you very much. We appreciate having an opportunity to support our neighborhood restaurant.

Sincerely,

Jerry Petersen Ph.D
Stephanie Petersen
Ariane Petersen

Tue 9/2/2014 8:26 AM

We need to develop policy that encourages more outdoor dining options in Salt Lake City, and certainly need to protect those we already have. Hands down, having these options, particularly in walkable neighborhoods/locations, are top on the list of what makes a city attractive and livable to residents.

Jamie McDonald Kamm
1136 Alton Way
Salt Lake City, UT 84108

TO: Mr. Everett Joyce, Planning Division

RE: NOTICE OF APPLICATION CASE # PLNPCM2014-00529- Avenues Bistro

FROM: Judi Bergslien

DATE: 29 August 2014

I am writing to express my opposition to granting the Special Exception for outdoor dining for the Avenues Bistro. My house is directly across the street from this business at 559 Third Avenue. I have lived here since 1985. I am opposed to any additional seating being granted at this location.

This location is unsuitable for a restaurant of any kind. Historically, the business at this location was not a restaurant. It was a small pharmacy for many years, followed by a catering/take out deli (Ruby's Catering). Shortly after I purchased my home, Ms. Rubadue requested approval from residents to change the existing non-conforming use permit to allow a catering and take-out deli service. This was agreed to with the understanding there would only be a few seats inside for customers waiting for take-out orders because the property had no off-street customer parking. Delivery vans were to be kept in the driveway to the west of the property. For years this business operated under this arrangement. There was no history of outside dining or a full service restaurant business at this location.

I understand that the city granted the non-conforming use change to a full-service restaurant at this property unilaterally, with no notice or opportunity for comment to area residents, falling under new zoning for Small Neighborhood Businesses done in 2011, with a permit for inside dining only. I believe the city was negligent in allowing this permit change without allowing any comment from the neighborhood at the time and seemingly ignoring the problems associated with restaurants in these small embedded business areas. The city planning commission staff report itself noted that restaurants are inherently problematic in these areas. Following is an excerpt from the Planning Commission Staff Report Legislative Item: Small Neighborhood Business Amendment Zoning Text Amendment PLNPCM2009-0615 City Wide, August 10, 2011, page 3:

Add Restaurants to the Table of Permitted Uses as a Conditional Use with qualifying provisions:

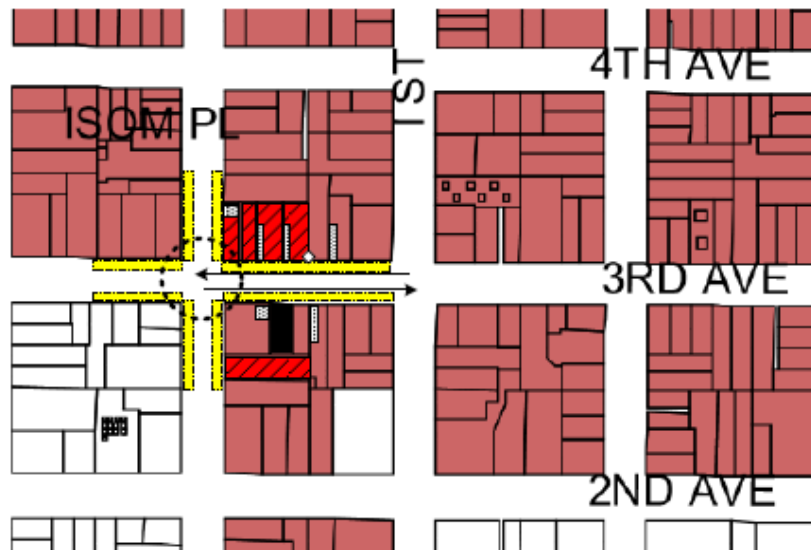
- Staffs opinion on why restaurants were **not included** is that the smells, noise and traffic would be difficult to mitigate in respect to the close proximity and unique locations of the properties deemed appropriate for the SNB district.
- Staff believes that properties deemed suitable for restaurant uses could be zoned to a more intensive zoning classification such as CN or a Mixed Use zone based upon; existing use, availability of parking and existing separations and buffers between the property and residential uses.
- Conditional Uses are difficult to deny and as such we should consider them as permitted subject to the established qualifying provisions. The provisions that were suggested were specific to parking management restrictions. Based on the survey of residents and from our discussions with the public, the parking and transportation impacts of restaurants is a major concern.
- Restaurants as a use have not been added to the proposed table of Permitted and Conditional Uses. Retail Service which allows for coffee and light food service has been listed as a permitted use in the table.

When the Avenues Bistro first opened, I was disturbed to learn that the restaurant was going to have about 40 seats inside. After opening in March 2012, we started noticing the negative impacts immediately to our residential neighborhood in the historical area of the Avenues. As the business grew, outside dining was added to the driveway, then a greenhouse structure was installed extending outside dining into cold weather for a few more weeks. (Incidentally, the roof of this greenhouse collapsed under snow in January of 2013 and was removed.) Then the Speakeasy was added to the basement. When re-

opened in the spring of 2013, the patio was in full swing with more tables being added on a regular basis, totaling at least 36 seats, doubling their capacity. At its peak, the Bistro had the ability to serve 80+ customers, plus the staff required to serve these customers. At least half of the seating was operating outside the boundaries of the permit.

With the current proposal before the planning division, 28 seats will be added in the patio. Including the approximate 36 seats inside, the Bistro will be able to serve 64+ people. The operator of the business has told me that she is trying to reopen the Speakeasy, which could bring the capacity to 76 plus staff. **These actions appear to be escalating the activities on this .1 acre property in our residential neighborhood back to the level that caused so many problems in 2012-2013.** How can this not impact street noise, congestion and parking? How can the continuous on-street parking demands of 40-80 non-residents on our block be totally ignored? Or the impact of my 'neighbor', The Bistro, having an outdoor party with 28 guests every night? Last year, The Bistro was open 7 days a week until 10 p.m. They seated until the last minute, some stayed until midnight. Even with closing at 9 p.m., if a large party is seated at 8:59 p.m. they might stay until well after 11 p.m. I often heard people talking at their cars very late at night after leaving the Bistro.

When I first asked Mr. Joyce about the parking situation at the open house last April, I was informed that the owners had indicated it would serve mostly foot traffic and parking would not be a problem. I heard that stated again at the planning commission meeting by Ms. Rubadue's lawyer. **That is absolutely not the case.** The majority of customers drive their cars and the Bistro itself has no off-street parking to accommodate them. We have often observed parties of multiple people meeting here after each has driven and parked their own car. Demand for parking in our neighborhood regularly leads to 1) customers parking in front of the fire hydrant, 2) customers obstructing the driveways of residents, 3) customers parking over the crosswalk sidewalk, and 4) U-turns at the intersections. At busy times, the entire block of Third Avenue and H Street between Second and Fourth Avenues is monopolized by the customers and employees of the Bistro. This is not an occasional problem, but was far worse last summer when the patio was open. The following illustration shows the impacted areas:



Since the restaurant opened, all the issues that the planning commission stated in its staff report (quoted above) as inherent problems with restaurants in small commercial pockets embedded within residential neighborhoods are apparent. This issue is not about the merits of outdoor dining. This is about having to live directly across the street where you are impacted every morning, afternoon, evening, and night.

We find the current conditions barely tolerable. If the patio re-opens, the impact is significantly worse. We oppose any changes that will further impact the area.

We expressed our concerns at the planning commission meeting in May and were very disappointed that not one question regarding the impact on the neighborhood was even asked by the commission members. We were somewhat supportive of Mr. Joyce's modified amendment if it had strict conditions, but in reviewing the special exception request, it appears our concerns were totally dismissed and we are heading back to almost everything that caused the problems last year. I will let my city council member Stan Penfold know that I do not support the city-wide amendment, PLNPCM2014-00106 NON CONFORMING RESTAURANT USES – OUTDOOR DINING TEXT AMENDMENT, that would allow this special exception application to go forward.

If the city council passes this amendment and the planning division grants a permit for an outside patio, several additional conditions must be required:

- Do not allow ANY outside music.
- Do not allow special events.
 - o Can special events be used to circumvent or exceed the permitted conditions?
 - o Would special events allow outdoor dining outside the boundaries of the defined 500 sq. ft. area on the site plan?
 - o Would special events be allowed to exceed normal business hours or days of operation?
 - o Would special events allow more than the permitted seating occupancy in the outdoor dining or patio area?
 - o Is there a frequency limit to special events?
- Require additional privacy screening and sound mitigation in the front seating area along the sidewalk. A few potted plants and a 3 foot fence is totally inadequate.
- Restrict patio hours significantly. Require that the patio be cleared at the stated closing time and allow no last minute seating.
- State a maximum occupancy based on the number of people, not the square footage.

Again, I do NOT support granting an outside dining expansion to this restaurant at all. As the city-wide amendment seems to really pertain just to this one business, I will voice my opinion to the City Council that the amendment itself should not be passed.

// SIGNED //

Judith C. Bergslien and Ronald A. DeMass
559 Third Avenue
Salt Lake City, UT 84103

ATTACHMENT H: DEPARTMENT REVIEW COMMENTS

Joyce, Everett

From: Walsh, Barry
Sent: Wednesday, October 08, 2014 2:41 PM
To: Joyce, Everett
Subject: Department comments on PLNPCM2014-00529 Outdoor Dining Third Avenue Bistro

October 8, 2014

Everett Joyce, planning

Re: Department comments on PLNPCM2014-00529 Outdoor Dining Third Avenue Bistro.

To address the issue of a Traffic impact analysis, it is recommended that the dead drive approach be removed in order to provide added on street parking on order to reduce any added impact on abutting properties.

Sincerely,

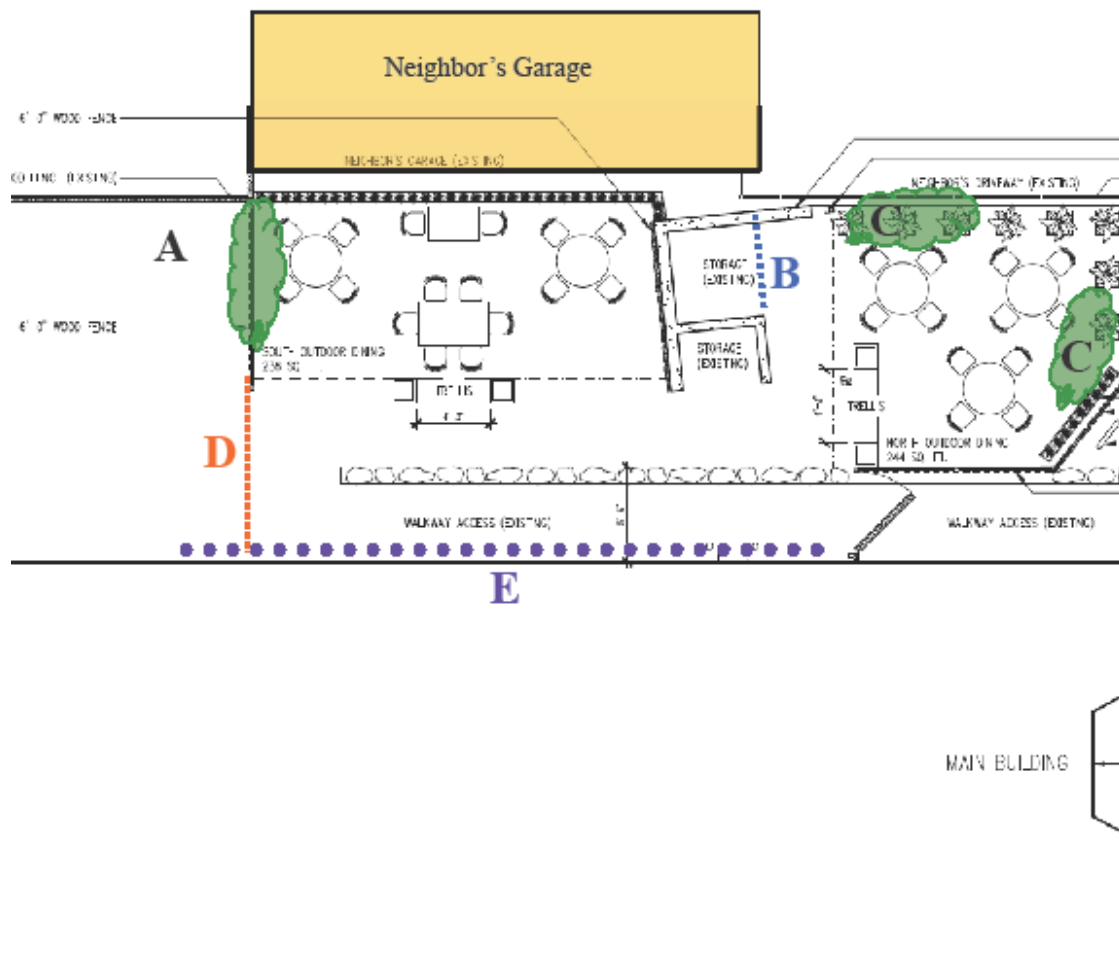
Barry Walsh
Engineering Technician VI

TRANSPORTATION DIVISION
COMMUNITY *and* ECONOMIC DEVELOPMENT
SALT LAKE CITY CORPORATION
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ATTACHMENT I: RECOMMMEDED SITE IMPROVEMENTS



Recommended Additional Site Improvements

- A**—Additional landscape planters
- B**—Screen wall for storage area
- C**—Taller plant material outside of sight distance triangle
- D**—Service access control gate
- E**—Additional planter and trellis with planting or ornamental materials to absorb and deflect noise.

ATTACHMENT J: MOTIONS

Commission Options

No application for a special exception shall be approved unless the Planning Commission determines that the proposed special exception is appropriate in the location proposed based upon the consideration of the general standards and the specific conditions for certain special exceptions.

Conditions and limitations necessary or appropriate to prevent or minimize adverse impacts upon other property and improvements in the vicinity of the special exception or upon public facilities and services may be imposed on each application. These conditions may include, but not limited to, conditions concerning use, construction, operation, character, location, landscaping, screening and other matters relating to the purposes and objectives of this title. Such conditions shall be expressly set forth in the approval record of the special exception.

Potential Motions

The motion recommended by the Planning Division is located on the cover page of this staff report. The recommendation is based on the staff report analysis.

Consistent with Staff Recommendation: Based on the testimony, plans presented and discussion by the Planning Commission, I move that the Planning Commission approve PLNPCM2014-00529 special exception to allow the operation of an outdoor dining area, located at approximately 564 3rd Avenue. Due to the potential for detrimental impacts created by the proposal identified in this report, staff recommends the Planning Commission applies the following conditions to the project:

1. Proposed lighting is to be subdued, however if it causes glare onto adjacent properties then a lighting type that can be shielded will need to be installed rather than the proposed lighting.
2. Seating customers in the outdoor dining area must be managed in a manner that the patio can be closed and shut down at the designated closing time. The hours of operation for the patio shall be limited to 9 am to 9 pm.
3. Outdoor special events are restricted to the 500 square foot outdoor dining area and not allowed in other areas of the yard.
4. No amplified music shall be permitted.
5. Outdoor dining will eliminate the existing service driveway, therefore the dead end drive approach on 3rd Avenue needs to be removed to better define on-street parking.
6. That the outdoor dining area be gated from access to the balance of the side and rear yard areas of the property. Entrance and exiting are to take place at the existing front entrance gate.
7. Submittal and approval of a detailed landscape buffer and screening plan.
8. Place a wood screen fence in front of the existing storage area facing the street.
9. Obtain a Certificate of Appropriateness for outdoor lighting, trellis, fencing and other site improvements.

Not Consistent with Staff Recommendation: Based on the testimony, plans presented and the following findings, I move that the Planning Commission deny the special exception to allow an outdoor dining area, located at approximately 564 3rd Avenue. The proposed special exception is not compliant with 21a.52.060: General Standards and Considerations for Special Exceptions and Section 21A.40.065 Outdoor Dining.

The following standards apply to this application:

1. A. Compliance With Zoning Ordinance And District Purposes: The proposed use and development will be in harmony with the general and specific purposes for which this title was enacted and for which the regulations of the district were established.
2. No Substantial Impairment Of Property Value: The proposed use and development will not substantially diminish or impair the value of the property within the neighborhood in which it is located.
3. No Undue Adverse Impact: The proposed use and development will not have a material adverse effect upon the character of the area or the public health, safety and general welfare.
4. Compatible With Surrounding Development: The proposed special exception will be constructed, arranged and operated so as to be compatible with the use and development of neighboring property in accordance with the applicable district regulations.
5. . No Destruction Of Significant Features: The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance.
6. No Material Pollution Of Environment: The proposed use and development will not cause material air, water, soil or noise pollution or other types of pollution.
7. Compliance With Standards: The proposed use and development complies with all additional standards imposed on it pursuant to this chapter. (Section 21A.40.065)
 - a. All requirements of Chapter 21A.48 and Section 21A.36.020 of this title are met.
 - b. All required business, health and other regulatory licenses for the outdoor dining have been secured.
 - c. A detailed site plan demonstrating the following:
 1. All the proposed outdoor dining activities will be conducted on private property owned or otherwise controlled by the applicant and that none of the activities will occur on any publicly owned rights of way unless separate approval for the use of any such public rights of way has been obtained from the city;
 2. The location of any paving, landscaping, planters, fencing, canopies, umbrellas or other table covers or barriers surrounding the area;
 3. The proposed outdoor dining will not impede pedestrian or vehicular traffic; and
 4. The main entry has a control point as required by state liquor laws.
 - d. The proposed outdoor dining complies with all conditions pertaining to any existing variances, conditional uses or other approvals granted for property.
 - e. Live music will not be performed nor loudspeakers played in the outdoor dining area unless the decibel level is within conformance with the Salt Lake City noise control ordinance, Title 9, Chapter 9.28 of this code.
 - f. No additional parking is required unless the total outdoor dining area ever exceeds five hundred (500) square feet.
 - g. Parking for outdoor dining areas in excess of five hundred (500) square feet is required at a ratio of two (2) spaces per one thousand (1,000) square feet of outdoor dining area. No additional parking is required in the D-1, D-2, D-3, D-4, TSA, or G-MU zone.
 - h. Smoking shall be prohibited within the outdoor dining area and within twenty five feet (25') of the outdoor dining area.
 - i. The proposed outdoor dining complies with the environmental performance standards as stated in Section 21A.36.180 of this title.
 - j. The outdoor dining shall be located on the site where it would have the least adverse impacts upon adjacent properties.