



Staff Report

PLANNING DIVISION
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Planning Commission
From: Kelsey Lindquist (801) 535-7930
Date: August 6, 2020
Re: PLNHL2020-00578 Outdoor Dining Special Exception

Special Exception

PROPERTY ADDRESS: 89 North D Street
PARCEL ID: 09-31-455-011-0000
MASTER PLAN: Avenues Master Plan
ZONING DISTRICT: RMF-35 (Moderate Density Multi-Family Residential)

REQUEST: The petitioner, Suzette Eaton, is requesting approval for an outdoor dining patio within the buildable area and the required front and corner side yards associated with a restaurant located at 89 D Street. The subject property is located in the RMF-35 zoning district. According to current land use regulations, restaurants are not an allowed use in the RMF-35 zone; therefore, the restaurant is considered a legal nonconforming use. Outdoor dining, associated with legal nonconforming restaurants require special exception approval. The Planning Commission has final decision-making authority for special exceptions.

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

1. 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 11 am to 8 pm.
2. No amplified music shall be permitted.
3. That a fence be located along the southern property line to shield the abutting property from the outdoor dining use.
4. Wood fence to be located in front of the dumpster and trash location to the west.
5. Plantings or planters must be located along the southern property line to help buffer noise.
6. Obtain a Certificate of Appropriateness for fencing and other site improvements.

PROJECT DESCRIPTION

This is a request by Suzette Eaton, the owner of property located at approximately 89 N. D Street, to install three areas of outdoor dining for patrons of the Foodie & Sweetie D Market. The property is a legal nonconforming restaurant (Foodie & Sweetie D Market) located in the

RMF-35 (Moderate Density Multi-Family) Zoning District. Outdoor dining for the nonconforming restaurant requires special exception approval.



Aerial of Subject Property

Legal Nonconforming Restaurant Uses

The subject property located at 89 N. D Street, according to Salt Lake County records, was constructed as a commercial market building in 1875. The subject property initially became a nonconforming use in 1941. The subject property is still considered to be a legal nonconforming restaurant use. The Salt Lake City Zoning Ordinance defines nonconforming use 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.

Legal nonconforming uses are regulated by chapter 21A.38 Nonconforming Uses and Noncomplying Structures. Legal nonconforming uses are allowed to remain in operation, expand and change business types, per the regulations stipulated in 21A.38.040. The proposed outdoor dining is not considered to be an expansion of the nonconforming use, since there is no associated structural addition for the outdoor dining.

While this property became nonconforming in 1941, many commercial uses within Salt Lake City's residential neighborhoods became nonconforming uses in 1995, after the city-wide rezone took place. Salt Lake City's policy towards nonconforming uses didn't formally adjust, until the Small Neighborhood Business Amendment proposal was conducted in 2010. The Small Neighborhood Business Amendment was conducted in order to identify nonconforming neighborhood-scale commercial buildings and uses throughout Salt Lake City. Once identified, the study determined whether the property was a candidate for the SNB (Small Neighborhood Business) zoning district. The subject property located at 89 N. D Street is identified in the SNB study. Salt Lake City recognizes the importance of neighborhood commercial uses and walkability and support that they offer to neighborhoods.

Existing Outdoor Dining

The current tenant of 89 D Street, Foodie & Sweetie D Market, has located two picnic tables in the public way in front of the existing building. The two picnic tables are allowed under Mayor Mendenhall's Proclamation to allow outdoor dining in required yards and the public way, due to the Covid 19 Pandemic. The two tables are a temporary measure to provide a small outside dining area for patrons. If the requested special exception is approved, the existing picnic tables would be removed and the proposed tables would be installed.

Proposed Outdoor Dining Locations

The outdoor dining is proposed to be located in the following three areas on the subject property: the buildable area (south), required front yard (east) and the corner side yard (north).

The following photo illustrates the proposed outdoor dining area in the buildable area. The buildable area in the southern yard is the area between the nook and the front façade. This area proposed for outdoor dining is approximately 73 square feet in size. The outdoor dining use is not proposed to be located outside of the nook area.



Photo of the Proposed Location within the Buildable Area



Photo of Proposed Outdoor Dining Area

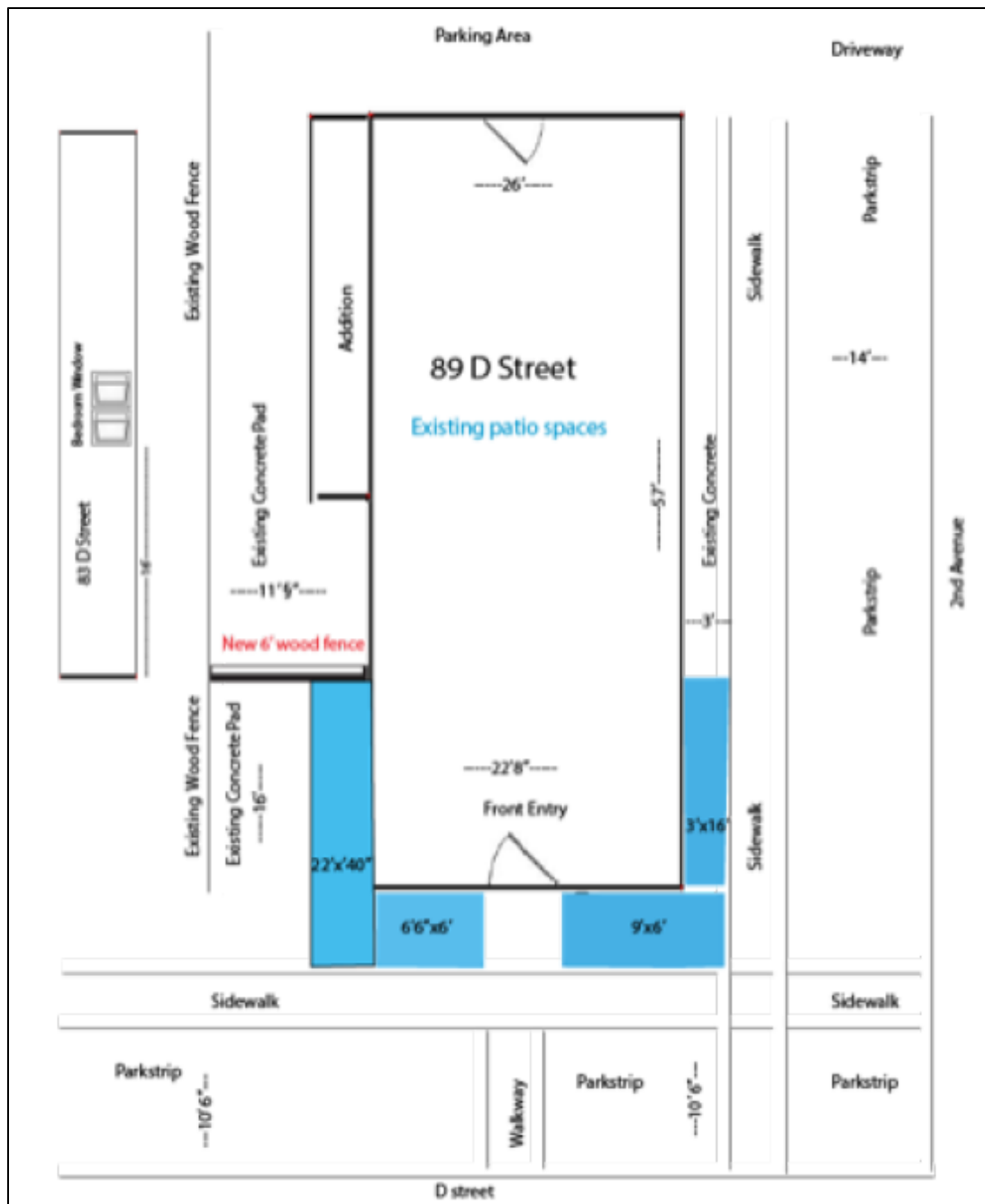
The proposed outdoor dining area in the front yard and is located between the front elevation and the sidewalk, as illustrated in the photo. The proposed outdoor dining area located in the front yard is approximately 94 square feet in size.



Photo of Proposed Outdoor Dining Area

Additionally, the outdoor dining area located in the corner side yard is located between the northern building wall and the side walk, as illustrated in the photo. The proposed outdoor dining area to the north is approximately 48 square feet in size.

The total outdoor dining area proposed is approximately 215 square feet.



Required Parking

Outdoor dining under 500 square feet in size is not required to provide any additional off street parking. The proposed outdoor dining at the subject property is under the 500 square foot requirements, thus it does not need any additional off street parking for the proposed dining area.

Hours of Operation

The current business hours of the Foodie & Sweetie D Market are Tuesday through Sunday 11 AM-8 PM. Smoking will not be permitted in the outdoor dining space or within 25 feet of the dining area. No outdoor music is proposed at this time. Additionally, staff is recommending that the Planning Commission prohibit music in the southern outdoor dining area. The outdoor dining areas will be required to comply Salt Lake County Health Department Noise Ordinance. Any compliance issues could jeopardize any approvals associated with the outdoor dining.

KEY ISSUES:

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

1. Issue 1. Privacy Concerns
2. Issue 2. Off Street Parking
3. Issue 3. Noise
4. Issue 4. Mayor Mendenhall's Proclamation

1. Privacy Concerns

Public activity outdoors on smaller properties can have a perceived impact on abutting property owners. The subject property does abut a residential use to the south. According to the applicant, the abutting residential property contains windows on the northern elevation that are approximately 16' west from the proposed outdoor dining area. While the 16' separation between the use and the existing windows on the abutting property is a helpful distance, Staff is recommending conditions to further limit potential impacts to the abutting property. Staff recommends that the property owner install a 6' fence along the southern property line, plantings or planters along the new 6' fence, and a 6' screen or gate along the western border of the outdoor dining. The listed conditions are to buffer and screen the residential use from the proposed outdoor dining area.

2. Off Street Parking

Staff understands that on-street parking is a concern within the lower Avenues neighborhoods due to the lack of off-street parking for many of the existing properties. The existing nonconforming restaurant has two off-street parking stalls. Customers of the restaurant who arrive by vehicle generally use the public street for parking, which is allowed. 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 1424 square feet in size. The required off street parking standard for restaurants is two parking spaces per 1,000 square feet, this restaurant space requires 3 off-street parking stalls. The subject property currently contains two off-street parking stalls to the North West. Thus the existing off-street parking for this restaurant is considered to be noncomplying. However, 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.

3. Noise

Neighbors have raised concerns about noise related to the outdoor dining activity. The Salt Lake County Health Department regulates noise levels within Salt Lake City. The special exception for outdoor dining requires that the activity comply with the limited 50 decibel allowance for residential areas. No outdoor music is being proposed as part of the outdoor dining use, so the decibel restriction will mainly apply to noise associated with the diners. Additionally, Staff is recommending that outdoor music be prohibited in the southern dining area, as well as conditions for additional buffering measures to further mitigate potential impacts to the abutting residential use.

4. Mayor Mendenhall's Proclamation

In response to the Covid 19 pandemic, Mayor Mendenhall issued a proclamation on June 11, 2020 to allow outdoor business operations. Due to safety concerns with indoor business operations and Covid 19, the Mayor's proclamation permits outdoor business activity on private property, as well as in the right-of-way. Any business activity on the City right-of-way must ensure a 6' foot clearance for pedestrians on the sidewalk. The existing business located at 89 D Street has two picnic tables within the required front yard. These two picnic tables are currently operating under the Mayor's proclamation. Please note, the requested outdoor dining is a long term proposal, which requires special exception approval.

DISCUSSION:

In the review and analysis of the standards for special exceptions and outdoor dining staff has identified conditions to mitigate potential impacts to the abutting property. Staff is of the opinion that with the conditions for additional buffer requirements to the west and the south, the outdoor dining proposal meets the outdoor dining special exception criteria and standards.

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.

ATTACHMENTS:

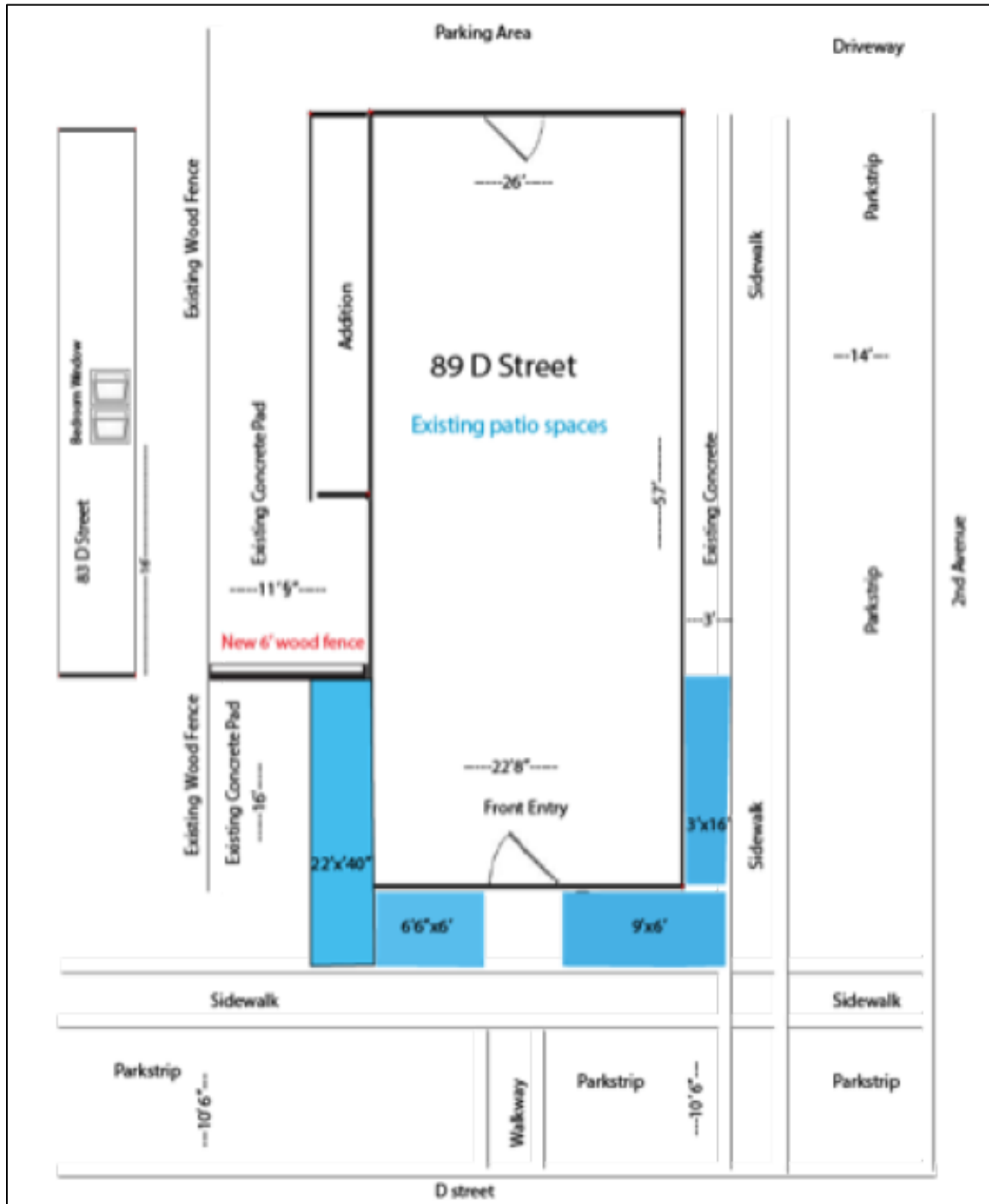
- A.** Vicinity Map
- B.** Site Plan
- C.** Photos
- D.** Additional Applicant Information
- E.** Analysis of Standards
- F.** Public Process and Comments
- G.** Dept. Comments

ATTACHMENT A: VICINITY MAP

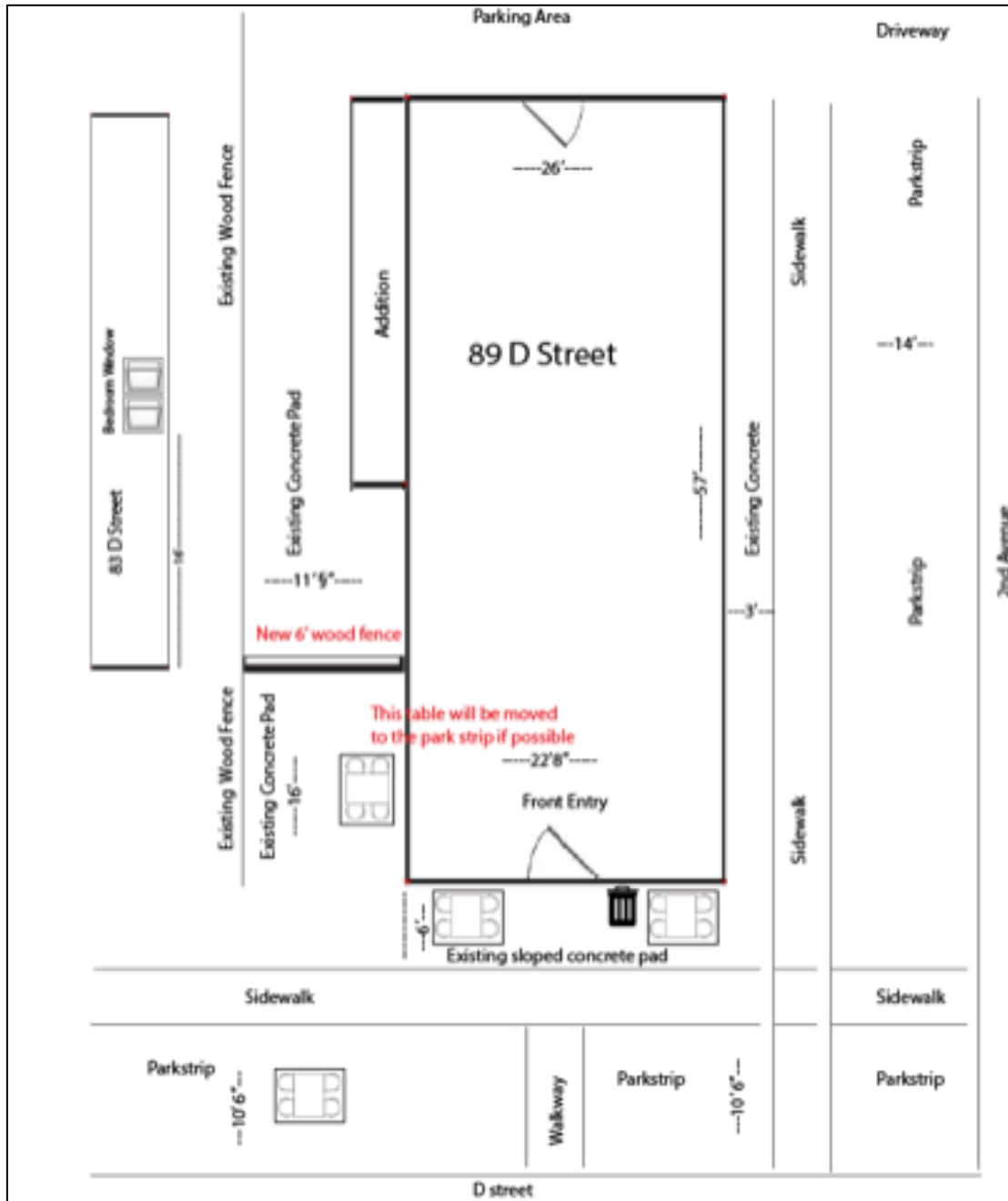


ATTACHMENT B: SITE PLAN

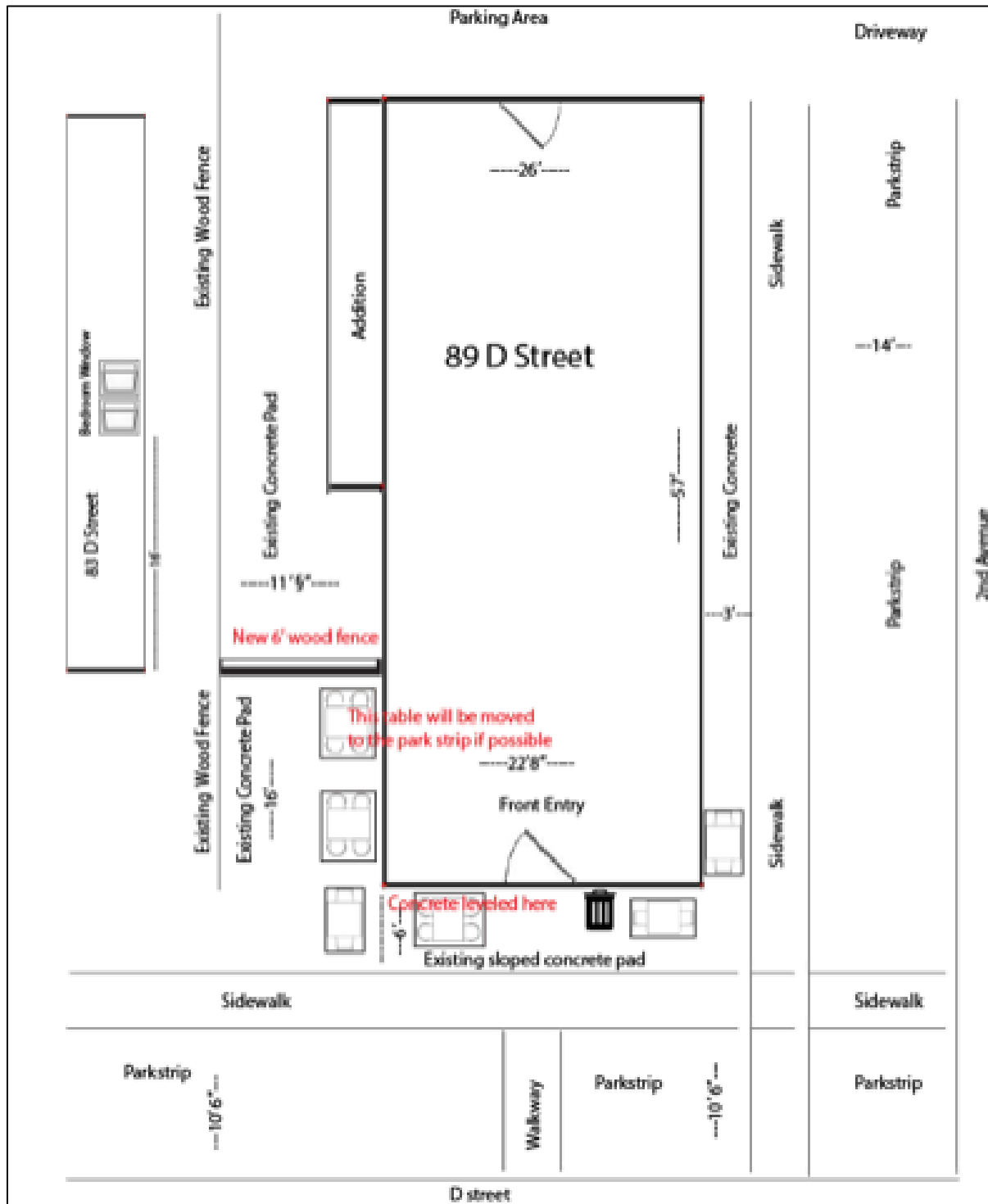
Site Plan Illustrating the Area Proposed for Outdoor Dining



Proposed Site Plan for Covid 19 Requirements



Proposed Site Plan for Post Covid 19



ATTACHMENT C: PHOTOGRAPHS



Photo of the Southern Area of the Subject Property



South West Photo of the Subject Property



South West Photo of the Subject Property



Photo of North Side of the Subject Property



West Side of the Subject Property



Photo of the North Side of the Subject Property

ATTACHMENT D: ADDITIONAL APPLICANT INFORMATION

JL Eaton LLC
89 D street
Salt Lake City, Utah 84103

May 18, 2020

We are proposing to add 6 outdoor patio tables to existing patio spaces on the North and South side of 89 D street. No construction of any kind is needed. There are no changes to the existing structure or design.

On the South east side of the building we plan to add (3) 36"x36" aluminum exterior grade tables with 2 matching chairs each. We will also use 3 umbrellas on that side during the afternoon. Please see the site plan with the tables drawn in red. The entire South side of the building is existing concrete pad 11'6" wide by 28' deep with no need of alterations. There is an existing wood fence separating the property next door.

On the North side of the building is an existing 35" wide and 57' long concrete pad between the length of the building and the sidewalk along 2nd avenue. We would like to put (3) 24"x24" exterior aluminum tables with 2 matching chairs each up against the building towards the East/ front end of the market/deli.

As the property owner I am assisting the current tenant, the market/deli Foodie Sweetie with this application. They have been in operation for over a year at this location. Note that this is primarily a casual take-out style cafe with no alcohol served as this is located near a school. It is well suited to the quiet avenues neighborhood. Additionally, the outdoor seating would help the company to operate more safely during Covid19 conditions.

Thank you,
Suzette Eaton
JL Eaton LLC


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EXISTING CONCRETE PAD 36" WIDE

Server
Arch
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SIDNEY

← 14' 4" →

← SIDEWALK →

$$\in 10^6 \rightarrow$$

GRAVEL
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August 6, 2020









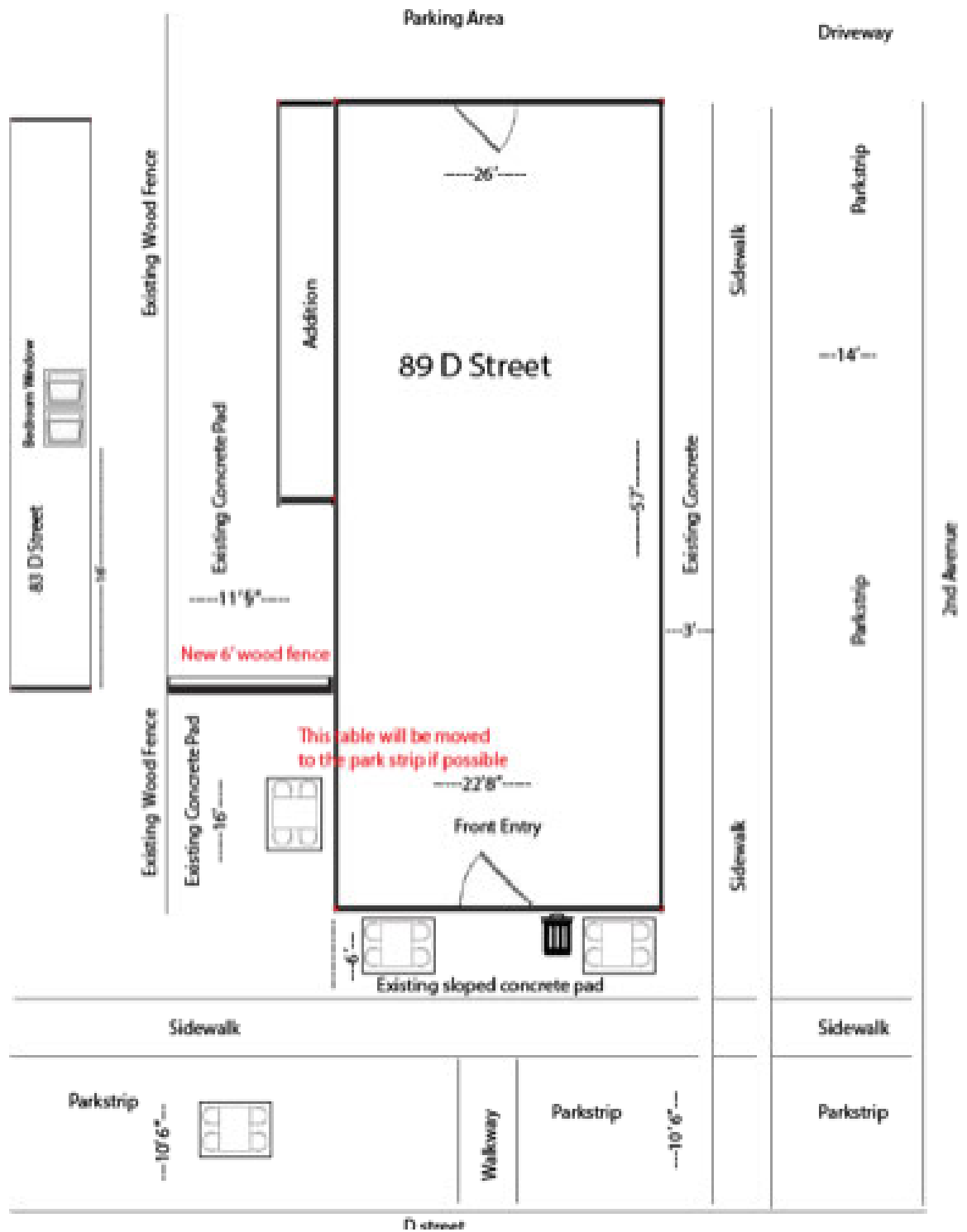
This is the proposed furniture although each table will have 2 chairs.



Revised Project Description

Our proposal includes the following changes to the property to give the home at 83 D street more privacy and security.

- Installation of a 6' fence (the current height limit), 16' west of the front facade of 89 D street, running north/south from the 89 D street building to the property line and attached to the existing fence at 83 D street. (This is just behind the front facade of 83 D street to accommodate the 6' fence height.)
- Installation of a maximum of 6 dining tables in the locations in the attached site plan. (No more than 2 in the enclosed patio area. The current tenant of 89 D street does not intend to utilize all of these tables at this time, but they may be used at a future time.
- The table furthest to the south and west will be moved to the front park strip on the south end if allowed by the city.
- Leveling the concrete at the south east corner in the front of the building to accommodate one table.
- The tables will be either removed or chained up, with chairs taken inside at night to avoid use by transients.
- The patio will stop seating patrons after 8pm.
- No lighting will be installed except motion detectors for security.
- No music will be installed or played outside.
- An attractive garbage receptacle will be placed near the front of the building and emptied frequently to avoid smells.
- Upgrade to materials/repair existing fence from the sidewalk west to the new fence installed across the patio.



ATTACHMENT E: 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 purposes;
- 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 area is less than 500 square feet and the existing restaurant area is 1,200 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	<p>The proposed Special Exception for outdoor dining is generally in harmony with, and does not hinder, the overall intent of the zoning ordinance found in 21A.02.030.</p> <p>The purpose statement of the RMF-35:</p> <p><i>“The purpose of the RMF-35 Moderate Density Mutli-Family Residential District is to provide an environment suitable for a variety of moderate density housing types, including single-family, two-family, and multi-family dwellings with a maximum height of thirty five feet (35’). This district is appropriate in areas where the applicable Master Plan policies</i></p>

		<p><i>recommend a density of less than thirty (30) dwelling units per acre. This district includes other uses that are typically found in a multi-family residential neighborhood of this density for the purpose of serving the neighborhood. Uses are intended to be compatible with the existing scale and intensity of the neighborhood. The standards for the district are intended to provide for safe and comfortable places to live and play, promote sustainable and compatible development patterns and to preserve the existing character of the neighborhood.”</i></p> <p>The existing property is a nonconforming use that is not consistent with the base zoning purpose statement. 21A.38 of the Salt Lake City Zoning Ordinance allows for the continuance of nonconforming uses. Outdoor dining is an accessory use that is permitted through the special exception process.</p> <p>Additionally, this property is located within a local historic district. All site improvements will be subject to a separate certificate of appropriateness, if the outdoor dining is approved.</p>
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	Nonconforming restaurant uses are allowed to have outdoor dining as a special exception. The special exception process addresses operational impacts to abutting and adjacent properties, which are addressed through the proposed conditions of approval. There has been no evidence submitted that specifically identifies that the outdoor dining will substantially diminish or impair property values within the neighborhood.
C. No Undue Adverse Impact: The proposed use and development will not have a material adverse effect upon	Complies	The proposed outdoor dining area will be required to comply with recently mandated Covid 19 restrictions. The restrictions are required to protect the

the character of the area or the public health, safety and general welfare.		<p>public health, safety and general welfare.</p> <p>In the future when the Covid 19 restrictions are removed, the outdoor dining will still be located in the area identified on the site plan. The proposed conditions that staff identified, reduce the potential for material adverse effect upon the character of the area.</p>
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 with Conditions	The proposed outdoor dining is associated with an existing nonconforming restaurant use. No addition or structural elements are proposed for the outdoor dining use. Staff is recommending conditions to increase compatibility with neighboring residential uses. The proposed outdoor dining is located in areas that setback from the neighboring properties. Staff finds that the proposal is compatible with the use and development of neighboring properties with the listed conditions.
E. No Destruction Of Significant Feature: 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 consists of movable tables on existing concrete in the buildable area, front and corner side yards.</p> <p>The proposed outdoor dining will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance.</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	The outdoor dining will not result in any air, water or soil pollution. Outdoor dining is regulated by the Salt Lake County Health Department noise ordinance. The proposed use will be required to comply with the noise regulations.
G. Compliance With Standards: the proposed use and development complies with all additional standards imposed pursuant to this chapter.	Complies	See the specific additional standards addressed below.
Section 21A.40.065: Outdoor Dining		

A. All requirements of chapter 21.48 and section 21A.36.020 of this title are met.	Complies	Nonconforming uses are authorized to continue under chapter 21A.38 of the Salt Lake City Zoning Ordinance. All of the applicable requirements in 21A.48 and 21A.36.020 are generally met.
B. All required business, health and other regulatory licenses for the outdoor dining have been secured.	Complies	The existing restaurant has the required license to operate. A modification to the existing business license will be required to reflect the outdoor dining, if the requested special exception is approved.
<p>C. A detailed site plan demonstrating the following:</p> <ol style="list-style-type: none"> 1. All the proposed 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. 	Complies	A site plan has been submitted to show that the outdoor dining area is less than 500 square feet in area. The majority of the outdoor dining area is located on private property. The applicant is requesting approval from Real Estate Services to move one table into the park strip along D Street. The proposed layout does not impede or impact pedestrian or vehicular traffic. This restaurant does not have a liquor license.
D. The proposed outdoor dining complies with all conditions pertaining to any existing variances, conditional uses or other approvals granted for property.	Complies	There are no variance or conditional uses associated with this property.

E. Live music will not be performed nor loud speakers played in the outdoor dining area unless the decibel level is within conformance with Salt Lake City noise control ordinance, title 9, chapter 9.28 of this code.	Complies	Staff has identified a condition to prohibit outdoor music associated with the outdoor dining.
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.	Complies	The proposed outdoor dining area is under 500 square feet. No additional off-street parking is required for the requested special exception.
G. Smoking shall be prohibited within the outdoor dining area and within twenty five feet (25') of the outdoor dining area.	Complies	Smoking will be prohibited within the outdoor dining area and within 25 feet of the dining area.
H. The proposed outdoor dining complies with the environmental performance standards as stated in section 21A.36.180 of this title.	Complies	The restaurant and requested outdoor dining use is required to operate 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 would create compliance issues with those standards.
I. Outdoor dining shall be located in areas where such use is likely to have the least adverse impacts on adjacent properties.	Complies	The requested outdoor dining is located in areas that are well setback from the abutting residential use to the south. Additionally, Staff is recommending conditions to limit and reduce potential impacts to the abutting and adjacent properties.

ATTACHMENT F: PUBLIC PROCESS AND COMMENTS

The subject application was initially processed under PLNHLC2020-00383. The applicant submitted a Historic Landmark Commission Special Exception Application because the subject property is located in the Avenues Local Historic District. Staff began processing the requested special exception under the PLNHLC petition. Staff fixed the application error and continued processing the requested special exception.

Notice of Application to the abutting and adjacent property owners and tenants was mailed on June 10, 2020.

Notice of the Planning Commission Hearing was mailed on July 31, 2020.

Property posted for Planning Commission on July 30, 2020.

Staff has received several public comments regarding the requested special exception. The comments received are addressed in the Key Issues section of this report. All emailed comments are attached.

Phone call comments not associated with an email:

7/6/2020 Resident of 333 2nd Avenue: concerned with the proposed space for the outdoor dining. Parking is concerns, since there is only street parking available. Additionally, there are people smoking outdoors.

8/3/2020 William Littig: Expressed concerns with the current property owner and tenant. The tenant hasn't made interior dining available with Covid19 restrictions. The lot has a significant amount of hardscape. Has been under enforcement in the past for hardscaping. Has concerns with the proposal visually impacting the neighborhood. Has concerns about the impacts to the property to the south. Additionally, there is zero landscaping on the property.

PETITION TO THE SALT LAKE CITY PLANNING DIVISION AND PLANNING COMMISSION

We, the undersigned residents of the Avenues, while not objecting to the operation of the property as an indoor restaurant, do hereby, strongly object to the application PLNPCM2020-00578, by Suzette Eaton, the owner of 89 D Street, for an outdoor patio within the buildable area and the required front and corner side yards associated with a nonconforming restaurant, for the following reasons;

Itemized violations of the special exception standards 21A.52.060 :

- A. **The proposed use and development is NOT in harmony with the immediate zoning,** The property is located in the RMF-35 (Moderate Density Multi-Family Residential) zone. Single and two-family residential. The corner of D Street and 2nd Avenue has always been a quiet corner, used by families and residents. The proposed 18-seat patio is a clear aberration. The proposed outdoor patio with 6 tables and 18 seats is not compatible with the surrounding quiet residential neighborhood and the zoning requirements.
- B.
- C. **Impairment of property value:** The proximity of the patio on the south side to the bedrooms of the adjacent property on D Street will result in the impairment of the property value as a result of noise, smell, parking problems, loss of privacy and gathering of unknown people in the vicinity of residential properties. Neighbors immediate to 89 D Street will be adversely affected because 89 D Street never had an outside use. Both as “Peoples Market” and “Sunrise Market and Grill”, the business was conducted INSIDE the property and not OUTSIDE.



Proximity of the proposed dining tables (where the metal structure is) on the south side, to the adjacent building.

- D. **Undue adverse impacts:** The proposal is asking to place 6 tables and 18 seats for take-out. There will be no waiters and no table service. There will be no control on who would sit. In restaurants with dine-in service, the entrance of the patio is from inside the restaurant. Therefore the traffic of people and the cleanliness of the tables is under control. In the proposed application tables will be placed outside the building with no such control. This poses health and security hazards to the neighborhood and immediate residences. D street on the way from LDS hospital's emergency and methadone clinics. Chair and tables placed outside with no control, will be an attractive nuisance. It is worth mentioning that there is an elementary school on the other corner of 2nd Ave. and D Street. The uncontrolled patio can be used by anyone to stalk and potentially harm residents and school children.

[illegible]

Salt Lake County Tax Appraisal Photographs, 1936. Parcel 09-31-455-011, serial 04-0192.



89 D Street

This commercial structure is representative of many small grocery stores that served the Avenues from the late nineteenth century until the 1950s. This building has remained open as some type of store since its construction.

Romney Brothers and Company opened this general store about 1890. The company was led by three brothers, Heber J., George J., and Miles A. Romney, and family friend, Nephi Y. Scofield. In 1898 the Romney family sold the store. A later owner was William Lloyd, who was an early professional baseball player in Salt Lake City. He lived at 357 Second Avenue when he purchased the business. He lost the store during the Great Depression. In the 1930s and 1940s the store was known as the Peoples Market.

August 6, 2020



Picture of the front of the property, showing that the sidewalk is only 4 ft wide and the pavement is sloped. Tables placed on the 5.9 ft area will not have enough clearance from pedestrians or the curb. This will make the commute on the sidewalk impossible, especially during the pandemic.

Health concerns:

- The pandemic guidelines require a minimum of 6 ft distance between two persons. The tables in the front and side of the building will not have a 6 ft clearance from the pedestrians using the sidewalk. Pedestrians will be forced not to use the sidewalks.
- The tables will not be manned. There will be no control on the cleaning or usage of the tables. The current temporary picnic-style tables in front of the building are not cleaned or disinfected after the customers.
- Additional 18 seats will add to the garbage, noise, food smell and smell from the food waste in the trash cans, which is already a problem with the current restaurant and has been communicated with the renters and the owner.

Escalating parking problems: Parking has been a constant problem with this restaurant. The property has only two parking spots that are being used by the renters 24/7. The customers often park in front of adjacent properties or their driveways. The current business is already operating without customer parking as a non-conforming business. A crowded outdoor patio as a special exception will only exacerbate current parking problems.

- E. **The proposed patio is not at all compatible with the surrounding development:** The property at 89 D Street was historically the “Peoples Market” that was later used as an Indian market /indoor restaurant (Sunrise Market). The property at 89 D Street never had an outdoor patio and the corner of D St and 2nd Ave., was never crowded with chairs, tables and a crowd.
Similar surrounding developments include Jack Mormon Coffee Shop on 82 E Street. The coffee shop is built and painted in harmony with the other buildings on E street. The surrounding is beautifully landscaped and there no outdoor patio. Einstein Brothers’ and Domino’s on the corner of South Temple and E street have ample parking. Domino’s is a takeout and does not have a patio. Einstein Brother’s is a dine-in and has an outdoor patio on the commercial establishment. There is no intrusion by any of the abovementioned businesses to the immediate residences and there is no alteration of building history.
- F. **Significant features of the building are being destroyed:** The current owner of the property has already removed the established landscaping. Graveled the park-strips and has planted the minimum necessary for compliance only after the neighbors complained. The traditional and 20-year old awning which was a staple of the building has been removed and the skeleton is still on the south side of the property.
- G. **Poor maintenance of the property imposes an environmental hazard:** The exterior of the building is not being cleaned or maintained. Smelly garbage cans, flies and empty boxes are left on the parking area and on the south side. The two picnic tables left on the front of the building are not being maintained or cleaned. During this pandemic area, such ignorance poses a sever danger to public health. The problem will likely escalate if the number of tables increase from two to 6 and chairs to 18! Even now, the garbage is not being handles properly. Smell of the rotten food in the garbage cans travels to the adjacent houses, especially in summer. The renters and the owner have been alerted of the problem but the renters washed the cans minimally after 3 days. This exception will bring all mentioned pollutants to the exterior of the building to include the waste and new need for water to clean the tables, chairs and the pavements, especially during this COVID-19 vigilance. Noise pollution will be another nuisance for the surrounding residences.
- H. **No guarantee and monitoring of the compliance with standards:** Currently the owner is in violation of standards because of the poor maintenance of the inside and outside of the building. This problem will not alleviate with the addition of 18 more seats outside the building. In addition, the area around the building is 100% paved in clear violation of the city rules.
Insufficient sidewalk clearance: The tables proposed in the north and south sides will not have the minimum sidewalk clearance (6 or 10 ft). The sidewalk is only 5 ft wide.

Itemized violations of the additional requirements and standards for outdoor dining: 21A.40.065

- A. Chapter 21A.48 states: *“The landscaping and buffering requirements specified in this chapter are intended to foster aesthetically pleasing development which will protect and preserve the appearance, character, health, safety and welfare of the community.”*
The current owner has replaced the landscaping in the park strip landscaping with gravel, which is not aesthetically pleasing and not at all in harmony with the surrounding environment and its character. Minimal plants were planted only after the neighbors complained. The gravel is now full of weeds and is not being maintained.
- B. The owner is using a special exception and is planning to have outdoor dining with no obligation to maintain and control the tables. It is unclear what licenses are needed and how the regulations would be enforced.
- C. Outside dining at this location is problematic as it is difficult to define. The sidewalk has always been part of the public way (see pictures of the historic building). According to the neighbors who have lived here for forty years and have served on the Historic Landmark Commission for Salt Lake City, the building sidewalk has always been used for shelter from sun, snow, and rain as a bus stop is immediate to this property.

Curbing, steps, and definition of space are not part of this proposal and need to be compliant with the ADA. The sidewalk must consider our neighbors with sight or mobility limitations. However, Curbing or any other alteration will further change the historic character of the property.

Seating proposed on 2nd Avenue and D Street will impede historic pedestrian traffic. This property does not have a bike rack or public seating now (common to small restaurants with limited parking). Additional fixtures or trees would be used to secure bicycles, further impacting pedestrian traffic.

The main entrance with proposed dining immediate to it, is a congested choke point, not designed for this new "take Out".

- D. The only existing variance has been the generous allowance of neighbors during COVID-19 to assist this impacted restaurant as we wait them to adjust the interior space for distancing and other health requirements. We were not consulted about the non-compliant picnic benches placed at the entrance. We assumed they would have a facility for waste and there has been none. The tables have become a health hazard in this pandemic time, as the tables are not disinfected or cleaned. They have become a hangout place for people on scooters or random pedestrians. With new health standards posted, we hope the location becomes a safe restaurant as it was before and move the dining to inside only.
- E. Live music brought by customers has been tolerated up until now as the operators have not enforced any standard of discipline.
- F. The regulation specifies "additional parking". This implies that the business should have had initial customer parking. The site has NO PARKING for automobiles, bicycles or scooters. The restaurant is already operating with ZERO customer parking using a nonconforming status. The two parking spots in the west side are used by the tenants to park their own cars, sometimes for days and weeks, because there is a problem with off-street parking. Residents have to pay to buy permit to park their cars on the street. The application is using a "special" status to add another of 18 seats and at least double the capacity of a restaurant, where there is no provision for customer parking.
- G. There has not been any enforcement of smoking. There is no signage and the picnic tables have not been identified as for patrons. There are residences 20 ft from the door.
- H. *The environmental performance standards listed in section 21A.36.180 states: "The purpose of environmental performance standards is to help ensure that the activities and processes employed by any use protect the environment, and the use and enjoyment of nearby properties by limiting the emission of potentially harmful noise, vibration, air pollution, odor and other forms of environmental impacts."* Owners of the nearby properties have lost the quiet enjoyment of their residences already because of the noise, parking problems, poor cleaning practices by the tenants, destruction of the park strip, gathering of random people at odd times, etc. Cars often park in front of the store with their light or music on, with complete disregard to the well-being of the residents. Garbage has been left on the lawns of the nearby residents after patrons eat on the picnic tables. The new application with has no provision for monitoring the patrons and these problems are likely to get worse.
- I. The proposed dining is designed on historic rights of way and immediate to a private residence. Those rights of ways, that have been used by Avenues residents for decades cannot be deemed private now. Even so, the proposed usage area does not have enough clearance from the sidewalk, the curbside or the immediate resident. Putting tables anywhere around the restaurant will mean that pedestrians will not be able to use the sidewalks. This is even more difficult for people with disabilities.
The area on the south side is in violation of the city ordinances because of the 100% cement coverage. The previous owner was once cited for violation of percentage of hard surfaces. Cement removed and was later paved again. The south area of the property was fenced with planting in the past.

The proposed patio is a business decision by the owner to increase the capacity of the restaurant and the value of the commercial property. However, the proposed plan will have a significant adverse impact on the immediate residence, the neighborhood and the Avenues.

As residents immediately impacted by the restaurant and this new application, we understand adaptive reuse. But changing the visual appearance, culture and moving the business model to the outside of this small store is not compatible with its history, the neighborhood, traffic, or hours. A new interior design, allowing the current standards should keep the business viable and we wish to see them flourish.

Name	Address	Signature
Shoeleh Assemi	83 D Street, Salt Lake City, Utah 84103	A scan of the document will be sent to the commission
Soheyl Tadjiki	83 D Street, Salt Lake City, Utah 84103	scan of the document will be sent to the commission
Feri Nasiri	83 D Street, Salt Lake City, Utah 84103	scan of the document will be sent to the commission
Arash Tadjiki	83 D Street, Salt Lake City, Utah 84103	A scan of the document will be sent to the commission
William Littig	121 D Street, Salt Lake City, Utah 84103	scan of the document will be sent to the commission
Pam Littig	121 D Street, Salt Lake City, Utah 84103	scan of the document will be sent to the commission
Susan Black	74 D Street, Salt Lake City, Utah 84103	scan of the document will be sent to the commission
Leonard Black	74 D Street, Salt Lake City, Utah 84103	scan of the document will be sent to the commission
Judith Adolohson	80 D Street, Salt Lake City, Utah 84103	A scan of the document will be sent to the commission
Don Adolphson	80 D Street, Salt Lake City, Utah 84103	scan of the document will be sent to the commission
Jo LLOYD	335 East, 2 nd Ave., Salt Lake City, Utah 84103	scan of the document will be sent to the commission
Josh LLOYD	335 East, 2 nd Ave., Salt Lake City, Utah 84103	scan of the document will be sent to the commission
More signature will be added.		

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: (EXTERNAL) 89 D street proposed patio
Date: Thursday, July 9, 2020 4:49:57 PM

Hi Kelsey,

I saw the owner of 89 D street yesterday outside and talked to her. She told me she is redrawing the plans. I think we still differ on some points but I'm hoping that we can come to a mutual agreement.

She told me that she will appear in front of the planning division on August 12. Had the hearing been postponed or is it a different hearing?

Thank you,

Shoeleh

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Cc: [REDACTED]
Subject: (EXTERNAL) 89 D Street
Date: Tuesday, June 23, 2020 5:49:10 PM
Attachments: [Shoeleh letter.docx](#)

Please see attached letter.
Thank you.

Crystal Richardson
Chapman Richards & Associates

[REDACTED]



June 23, 2020

Kelsey Lindquist
Senior Planner

Dear Kelsey,

I am writing on behalf of Shoeleh Assemi who resides at 83 D Street. I am a full time Realtor since 1988 and I have resided in the Avenues for almost 30 years. Shoeleh asked me to look at the Restaurant next to her home at 89 D Street and give my opinion on allowing the Restaurant to have tables on the south side for customers to dine. It is my opinion that it would negatively impact the value of 83 D Street by **15-20%**. By allowing customers to dine within feet of the bedrooms of 83 D Street is certainly not ideal and would be much better in front of the restaurant.

I also feel the parking is not adequate. It is permit parking on D St. and loading and unloading on 2nd Ave which at that point is a one-way street.

As an Avenues resident I am usually all for new business and restaurants in the Aves, but I feel Shoeleh Assemi is paying a too big of price for this one.

Thank you for your consideration.

Crystal Richardson

Chapman Richards & Associates

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Cc: [REDACTED]
Subject: (EXTERNAL) 89 D Street
Date: Thursday, June 25, 2020 1:08:37 PM

Kelsey- I appreciate your quick response. Real Estate is not an exact science it is all about meeting of the minds between a buyer and seller. It is my professional opinion (30+ years)that a house that has people dining 2 feet from their bedroom window costs less and takes longer to sell than one that does not.

I think the burden of proof that this will not harm the neighbors lies with the Cafe owner.

Crystal Richardson
Chapman Richards & Associates

[REDACTED]

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: (EXTERNAL) 89 North D Street Petition #PLNHLC2020-00383
Date: Thursday, June 18, 2020 9:57:56 PM

I am writing to express concern over the application for outdoor dining within the south side yard of Foodie Sweetie Restaurant.

While we want the restaurant to succeed, there are several concerns:

The house immediately to the south has bedroom windows for the owners and an elderly mother that are directly facing the alley where we believe the owners would want to place tables. The primary concerns are:

Proximity for the occupants of that house including the elderly woman. The owners already hear people talking when they are standing outside the restaurant. This becomes a problem later in the night. Not a major serious problem yet but would be if there were outdoor dining along the south wall. There is also a line-of-sight problem for that house, i.e., greatly compromised privacy, especially for the bedrooms.

There has been some problem with littering, but that has not been extreme.

The business is open very late at night - sometimes as late as after 11:00 pm. This is probably mostly people using the wifi to communicate with family and friends in China, which is approximately 14 hours ahead of SLC. Frankly, although the front lights are very bright, that is not a major concern for us across the street. But it is the nature of the business to stay open very late at night, and that would be a great concern if there were outdoor customers sitting in the south side alley. Even a normal volume conversation would be heard through the windows and added lights would be a problem - again a problem of proximity.

While it is obvious why the owners want to place tables on the south side, the design of the house immediately to the south is such that after the first 6-8 feet in the front, things get very close beyond that front area adjacent to the sidewalk. This is a concern if they wanted to place tables along the entire - front to back - south side of the restaurant.

For those of us who live across the street, there would be less problem with noise and light as long as the restaurant closed at around 9:00 PM. But understandably they would probably like later outside dining during warm weather. So therein lies the problem.

The main problem that we already have had to handle and continue to confront is that people will park at the end of our driveway, completely blocking our egress from our property at 80 D Street, which is across the street, one house in from the SE corner. This means that I have to hunt down the owners of the vehicle and, with the exception of one van whose driver was rushing to Lowell Elementary School, all of those vehicles have belonged to customers of Foodie Sweetie.

None of us has any objection to outdoor dining on the 2nd Avenue side of the restaurant, which is more public and not as desirable but would not cause privacy, light and noise problems.

Unless the restaurant owners would be willing to put up and maintain an attractive (on both sides) much taller side fence enclosure at the front of the property at their expense that would satisfactorily solve these problems, especially for the properties in the immediate vicinity, it is difficult to see how this will work successfully. The existing fence is old and has some spaces that would allow diners or internet users to see directly into the windows of the adjacent home. This obviously would be a very big privacy issue. The current fence was built by previous owners.

The big front windows of the restaurant reveal an unattractive, rather junky interior. This was definitely not the case before Covid-19 forced closure and the owners changed to take-out only. The interior before

was very neat and attractive. Hopefully, that situation will be rectified whether or not they resume indoor dining soon. (I suspect they are trying to survive.) Other than what has been addressed above, the owners have certainly not been a problematic addition to the neighborhood and are, indeed, very pleasant. Again, we do want them to succeed in their venture.

Thank you.

Judith Adolphson
80 D Street
SLC UT 84103-2639



Thank you for considering these concerns. We realize these are difficult times.

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: (EXTERNAL) Dining area on the north side of 89 D street
Date: Tuesday, June 16, 2020 12:59:04 PM

Hi Kelsey,

Thank you for replying to my phone call. Is there a phone number that I can reach you? The phone number "801-535-7930" goes to voice mail all the time. I would appreciate it if you can e-mail me back with the following information

1-I cannot enter the websites mentioned on that notice. Can you please send me the plans, the zoning information for D street, and special exceptions for the COVID-19?

2- Usually there are hearings and enough time for input from the residents on matters like this. Why is there no hearing on such an important matter and why is a decision being made so quickly? (within two weeks of the note). If there will be one, please let me know when and where.

3-Is the restaurant required to put fences or curtains in the back of their dining area on the nook to block lights and protect our privacy? From the middle of that nook, our bedroom window is in completely the vision.

4-What is the time window for the outdoor patio during the day? The patio, even with two tables will introduce noise, smell, light, and potential material pollution and will cause constant conflict. Can the customers bring dogs with them to the patio? The nook is too narrow and it is unlikely that a table (I assume for four) can fit there. Who is going to monitor the violations?

Even right now, I have to deal with the noise from the customers standing or sitting in front of the building waiting for their takeout. I have collected garbage and cigarette butts from my lawn. The parking has been a constant problem for me and my neighbors. we have tolerated all this because we want the owners to succeed. I would like them to also consider the well-being of their neighbors as well. This is a residential area and people should be able to rest in their house after a day of work.

5-Will the city or the owners be responsible for the depreciation in the value of my property? A licensed real estate agent told me that my house value will depreciate significantly as no one wants to live next to a noisy outdoor patio of a restaurant.

6-I should mention that the restaurant has remained closed during COVID-19. They have been doing very well selling takeout food. Have they tried to open the restaurant and see if they can get enough business without disturbing the neighborhood with an outdoor dining area?

Many Thanks,

Shoeleh Assemi
83 D Street
Salt Lake City, Utah 84103

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: (EXTERNAL) petition PLNHLC2020-00383
Date: Tuesday, June 16, 2020 12:13:48 PM

Hi Kelsey,

It was brought to my attention yesterday about the proposed outdoor seating for the small restaurant on the corner of 2nd ave and D Street. I wonder why none of my neighbors were made aware of the proposed application being considered by the planning division and why there is no hearing planned before its approval. I have talked with my neighbors on D Street between 1st and 2nd ave and those along 2nd ave. and to the person, they are all apposed to this outdoor seating. We already have a terrible parking problem on our street and the additional noise and congestion and smoking and lighting late into the night is not desired in our neighborhood.

We all strongly oppose the petition and encourage the planning division to deny this request.

Sincerely,

Leonard Black
74 D Street

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: (EXTERNAL) PLNHLC2020-00383 89 North D Street
Date: Monday, June 22, 2020 5:09:53 PM

Dear Kelsey-

We were surprised to learn recently from a neighbor about an application to add outdoor dining at 89 D Street. I am wondering why we didn't receive notice from the Planning Department given that we live on the same block of D Street where this property is located. Neighbors on D Street have concerns about the impacts of the current proposal for adding outdoor dining on noise and parking on our block, especially if this approval continues beyond the period of COVID-19 social distancing restrictions. Before any action is taken on this application, the neighbors' concerns should be explored and addressed so that a solution that benefits the business at 89 D Street with the least impact on the neighborhood can be reached.

I look forward to hearing how neighbors' concerns will be addressed.

Thank you,

Lisa Thompson
69 D Street

From: [Shoeleh Assemi](#)
To: [Lindquist, Kelsey](#)
Subject: external patio on the south side of 89 d street
Date: Thursday, June 18, 2020 2:33:37 PM

Kelsey,

Thank you for the reply and for attaching the proposed plan.

What is the special exception? Is this something due to COVID-19? Do they have a time limit? What are the requirements to apply for a special exception? What are the rights of those being affected?

You wrote:

3. There appears to be an existing fence that separates your front and side yard from the abutting property which will provide separation and privacy from the proposed tables.

The fence is 5-6 ft tall maximum and is falling apart. We had to secure the fence with extra wood last year. In places, the slabs are parted and our property can be seen. The fence does not provide privacy or protection from noise/light/smell. We have two bedrooms are above the fence and one is in complete view from the nook. Please see the third picture in the application.

Please also see that there is no fence on the first six feet between the two properties.

4. The applicant is proposing a time frame of 11 am – 9 pm. The business is required to comply with the Salt Lake County noise ordinance to limit any noise impacts to the surrounding properties. Additionally, music and outdoor smoking is not permitted as part of the outdoor dining use.

Can you please send me the noise ordinance for a residential area of south lake county?

It means we have to put up with noise and invasion of privacy seven days of the week. Does 11am-9pm include setup and cleanup time or do we need to put up with additional noise before and after these hours?

6. The property owner informed me that dining inside is not permitted, due to the Covid restrictions. I believe they are proposing the tables to provide a place for patrons to dine with their take out.

That is not correct. As a city official you probably know better than me that all restaurants can operate under COVID-19 but have to comply with special regulations (clean up chairs/tables, keep the dining tables a reasonable distance apart, wear masks, have disposable menus, etc.) There are many restaurants around us and they all have inside dining (Cuccina's, Oasis Cafe,... to name a couple).

I should also point out that in the application, the owner describes the restaurant as a "takeout". That is not correct either. The restaurant has at least 4 large tables inside and people (including me) used to dine in all the time.

Please forward any additional comments and concerns. Thank you.

Several of my questions from my previous e-mail have remained unanswered. I would appreciate if you can answer those concerns as well;

4-What is the time window for the outdoor patio during the day? The patio, even with two tables will introduce noise, smell, light, and potential material pollution and will cause constant conflict.

Can the customers bring dogs with them to the patio?

The nook is too narrow and it is unlikely that a table (I assume for four) can fit there.

Who is going to monitor the violations?

5-Will the city or the owners be responsible for the depreciation in the value of my property? A licensed real estate agent told me that my house value will depreciate significantly as no one wants to live next to a noisy outdoor patio of a restaurant.

6-I should mention that the restaurant has remained closed during COVID-19. They have been doing very well selling takeout food. **Have they tried to open the restaurant and see if they can get enough business without disturbing the neighborhood with an outdoor dining area?**

Instead of introducing a plan that is going to upset the whole neighborhood, why don't they try to use the existing inside space? The property has at least four large tables inside and has a basement as well.

7- In the application, there is no mention of having outdoor lights, so I assume there will be no additional outdoor lights on the south side. Please confirm.

Additionally;

8- The parking has been a constant problem for me and my neighbors. The restaurant has no parking space for the customers. Isn't parking a requirement for a restaurant? Overuse of the parking space in front of our houses has been a constant problem and this addition is going to make the problem even worse.

9- How will the owners prevent passerby and homeless people from camping on those chairs after 9 pm?

10- How will the city monitor this project? Who can we contact in case of violations and what are the consequences for the owners if they do not comply?

I understand that you are trying to accommodate and help a small business. However, this is a residential area. The whole neighborhood is extremely unhappy about the problems (especially parking) imposed by this restaurant in D street. This additional inconvenience and with the fact that it is happening so quickly without giving any notice to the residents has not helped at all. Please wait to hear and

address our concerns before making a decision that is going to have a huge negative impact on me personally and on this quiet neighborhood in general.

Thanks for all your help,

Shoeleh

On Wednesday, June 17, 2020, 04:23:15 PM MDT, Lindquist, Kelsey
<kelsey.lindquist@slcgov.com> wrote:

Shoeleh,

Thank you for sending you comments and concerns. The following should address your questions.

1. I apologize that there is difficulty in accessing the information. I attached the application to this email. The request is for 3 relatively small tables next to the northern side of the building, in the buildable area. See the attached photo below.
2. Special exceptions are generally reviewed at an administrative level, if they are in compliance with the standards of review. Special exceptions require a 12-day noticing period. Please note, due to Covid19 this period has been extended.
3. There appears to be an existing fence that separates your front and side yard from the abutting property which will provide separation and privacy from the proposed tables.
4. The applicant is proposing a time frame of 11 am – 9 pm. The business is required to comply with the Salt Lake County noise ordinance to limit any noise impacts to the surrounding properties. Additionally, music and outdoor smoking is not permitted as part of the outdoor dining use.
5. I will inform the property owner of the garbage concern. I do not see a dumpster onsite. I will see if the applicant can move the trash cans or a smaller receptacle to a more convenient location for customers.
6. The property owner informed me that dining inside is not permitted, due to the Covid restrictions. I believe they are proposing the tables to provide a place for patrons to dine with their take out.

Please forward any additional comments and concerns. Thank you.



Sincerely,

Kelsey Lindquist

Senior Planner

COMMUNITY AND NEIGHBORHOODS

PLANNING DIVISION

SALT LAKE CITY CORPORATION

TEL 801-535-7930

FAX 801-535-6174

WWW.SLC.GOV/PLANNING

From: Shoeleh Assemi [REDACTED]
Sent: Tuesday, June 16, 2020 12:59 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: (EXTERNAL) Dining area on the north side of 89 D street

Hi Kelsey,

Thank you for replying to my phone call. Is there a phone number that I can reach you? The phone number "801-535-7930" goes to voice mail all the time. I would appreciate it if you can e-mail me back with the following information

1-I cannot enter the websites mentioned on that notice. Can you please send me the plans, the zoning information for D street, and special exceptions for the COVID-19?

2- Usually there are hearings and enough time for input from the residents on matters like this. Why is there no hearing on such an important matter and why is a decision being made so quickly? (within two weeks of the note). If there will be one, please let me know when and where.

3-Is the restaurant required to put fences or curtains in the back of their dining area on the nook to block lights and protect our privacy? From the middle of that nook, our bedroom window is in completely the vision.

4-What is the time window for the outdoor patio during the day? The patio, even with two tables will introduce noise, smell, light, and potential material pollution and will cause constant conflict. Can the customers bring dogs with them to the patio? The nook is too narrow and it is unlikely that a table (I assume for four) can fit there. Who is going to monitor the violations?

Even right now, I have to deal with the noise from the customers standing or sitting in front of the building waiting for their takeout. I have collected garbage and cigarette butts from my lawn. The parking has been a constant problem for me and my neighbors. we have tolerated all this because we want the owners to succeed. I would like them to also consider the well-being of their neighbors as well. This is a residential area and people should be able to rest in their house after a day of

work.

5-Will the city or the owners be responsible for the depreciation in the value of my property? A licensed real estate agent told me that my house value will depreciate significantly as no one wants to live next to a noisy outdoor patio of a restaurant.

6-I should mention that the restaurant has remained closed during COVID-19. They have been doing very well selling takeout food. Have they tried to open the restaurant and see if they can get enough business without disturbing the neighborhood with an outdoor dining area?

Many Thanks,

Shoeleh Assemi

83 D Street

Salt Lake City, Utah 84103

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Cc: [Kimmel, Austin](#); [REDACTED]
Subject: Re: (EXTERNAL) 89 D street proposed patio
Date: Monday, July 20, 2020 12:34:44 PM

Kelsey,

Thank you. I am sorry but I need more straight answers.

What is the “special exception “ based on? The business is already operating as nonconforming. What special exception are they allowed to use to expand even further and cram 18 people in such a small area?

Can you explain this special exception more clearly? Who is allowed to apply and under what conditions?

The numbers are increased to 8 in the buildable area plus 4 on the front and south side of the building. There are also another 6 , increasing the numbers from 12 to 18. Do you think having 10-12 people in the south side next to my window and 18 people instead of 12, a compromise? Please give me your expert opinion.

I should also add that the 6 foot fence proposed by the owner will not block the view to my bedroom nor the noise. I feel that at lease in this case the city planning division is completely oblivious to the well-being of citizens and tax payers.

I see from your email that the special exception looks to be already approved (“ The special exception process will allow the approved outdoor dining beyond the Mayor’s proclamation”.)without even understanding how it impacts me as the immediate neighbor and the whole neighborhood. I can see where the owner’s confidence comes from. I find this bias toward businesses very unfortunate.

Shoeleh

On Jul 20, 2020, at 09:53, Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com> wrote:

Shoeleh,

<!--[if !supportLists]-->1. <!--[endif]-->The special exception is for outdoor dining. The special exception will allow the outdoor dining beyond the expiration date of the Mayor’s proclamation.

<!--[if !supportLists]-->2. <!--[endif]-->The special exception process for outdoor dining is separate from the Mayor’s proclamation. The Mayor’s proclamation allows outdoor dining but only during the specific time period for the proclamation. The special exception process will allow the approved outdoor dining beyond the Mayor’s proclamation.

<!--[if !supportLists]-->3. <!--[endif]-->The proposal increased from 6 to 8 in the buildable area. The 2 person table to the east is located in the front yard. I will ask the applicant for clarification on the increase of 2 people.

<!--[if !supportLists]-->4. <!--[endif]-->Planning Commission Meetings start at 5:30 and they are being held virtually. Unfortunately, you cannot request an alternate date for the hearing. However, you can supply written comments that can be read into the record. Additionally, the public comments that you have provided will be attached in the Public Comment portion of the staff report.

Please let me know if you have additional questions.

Sincerely,

Kelsey Lindquist
Senior Planner

COMMUNITY AND NEIGHBORHOODS
PLANNING DIVISION
SALT LAKE CITY CORPORATION

TEL 801-535-7930
FAX 801-535-6174

www.SLC.GOV/PLANNING

From: Shoeleh Assemi [REDACTED]
Sent: Friday, July 17, 2020 2:05 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: Re: (EXTERNAL) 89 D street proposed patio

Kelsey,

Thank you for your reply. Can you please clarify a few more points so I can get ready for the hearing;

1-Can you please confirm that the owner is applying for 18-person outdoor dining under the Mayor's special exception process for COVID-19? If not, can you please clarify what is the special exception? I am still not clear on this.

2-You mentioned previously that the proposed outdoor dining is going to be permanent. Is this allowed under the special COVID-19 exception?

3-Do you think to change the plans from 12-person dining to 18 people, having 10 people on the south side a compromise by the owner?

4-What time of the day would the hearing be? If I have a conflict on one of the hearing times can I ask for a change in day or time?

Many Thanks,

Shoeleh

On Wednesday, July 15, 2020, 04:14:20 PM MDT, Lindquist, Kelsey
<kelsey.lindquist@slcgov.com> wrote:

Shoeleh,

1. Yes, the outdoor dining would be permitted through the current special exception process. Outdoor dining under 500 square feet in size is not required to provide any additional off street parking.
2. That is correct. Any proposed table would need to fit the dimensions of the nook.
3. You can find information on this property through the citizens access portal:
<https://citizenportal.slcgov.com/citizen/Default.aspx>
4. The property owner has suggested that she would close the outdoor dining at sun down. However, the current operating hours are Monday through Sunday 11am-9pm.

If you have additional questions, please let me know.

Sincerely,

Kelsey Lindquist

Senior Planner

COMMUNITY AND NEIGHBORHOODS

PLANNING DIVISION

SALT LAKE CITY CORPORATION

TEL 801-535-7930

FAX 801-535-6174

From: Shoeleh Assemi [REDACTED]
Sent: Wednesday, July 15, 2020 3:59 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: Re: (EXTERNAL) 89 D street proposed patio

Kelsey,

Thank you. In the previous plan the tables on the south side were for two people. Now they are for 4. Instead of 6 people sitting, now there are 10 people on the south side and a total of 18 people around the restaurant, where the previous plan was for 12 sittings. I appreciate that the owner has moved the tables forward and had considered the 6 ft wall, but there is a 50% increase in the number of sittings.

My questions are;

- 1) Is the 50% increase in the sittings allowed by the city, considering the parking problems with this restaurant and with the COVID-19 social distancing requirements?
- 2) You mentioned before that the tables on the south side are allowed only in the buildable nook area. Is that still valid? If so, what is the size of the 4-seat tables?
- 3) Where can I access the original permits (operation, parking, type of business) granted to this business?
- 4) What are the proposed operation days and times?

Thank you,

Shoeleh

On Wednesday, July 15, 2020, 02:05:29 PM MDT, Lindquist, Kelsey
<kelsey.lindquist@slcgov.com> wrote:

Shoeleh,

I had a chance to review the revised site plan. I attached the revised proposal to this email. As part of the revisions, the applicant has moved two tables to the east and will locate one table in the park strip on the east (depending upon Real Estate Services approval). Additionally, the applicant is proposing to construct a new wood fence to keep individuals from wondering between the two buildings. As of right now, the soonest that this item could be heard by the Planning Commission is August 26, 2020. If there is an opening on the agenda, the item could be heard on August 12, 2020. You would receive a notice for the public hearing for either date. If you have additional questions, please let me know.

Sincerely,


Kelsey Lindquist
Senior Planner

COMMUNITY AND NEIGHBORHOODS
PLANNING DIVISION
SALT LAKE CITY CORPORATION

TEL 801-535-7930
FAX 801-535-6174

WWW.SLC.GOV/PLANNING

-----Original Message-----

From: Shoeleh Assemi [mailto:
Sent: Thursday, July 9, 2020 4:50 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: (EXTERNAL) 89 D street proposed patio

Hi Kelsey,

I saw the owner of 89 D street yesterday outside and talked to her. She told me she is redrawing the plans. I think we still differ on some points but I'm hoping that we can come to a mutual agreement.

She told me that she will appear in front of the planning division on August 12. Had the hearing been postponed or is it a different hearing?

Thank you,

Shoeleh

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: Re: (EXTERNAL) 89 D street proposed patio
Date: Wednesday, July 15, 2020 3:58:50 PM

Kelsey,

Thank you. In the previous plan the tables on the south side were for two people. Now they are for 4. Instead of 6 people sitting, now there are 10 people on the south side and a total of 18 people around the restaurant, where the previous plan was for 12 sittings. I appreciate that the owner has moved the tables forward and had considered the 6 ft wall, but there is a 50% increase in the number of sittings.

My questions are;

- 1) Is the 50% increase in the sittings allowed by the city, considering the parking problems with this restaurant and with the COVID-19 social distancing requirements?
- 2) You mentioned before that the tables on the south side are allowed only in the buildable nook area. Is that still valid? If so, what is the size of the 4-seat tables?
- 3) Where can I access the original permits (operation, parking, type of business) granted to this business?
- 4) What are the proposed operation days and times?

Thank you,

Shoeleh

On Wednesday, July 15, 2020, 02:05:29 PM MDT, Lindquist, Kelsey <kelsey.lindquist@slcgov.com> wrote:

Shoeleh,

I had a chance to review the revised site plan. I attached the revised proposal to this email. As part of the revisions, the applicant has moved two tables to the east and will locate one table in the park strip on the east (depending upon Real Estate Services approval). Additionally, the applicant is proposing to construct a new wood fence to keep individuals from wondering between the two buildings. As of right now, the soonest that this item could be heard by the Planning Commission is August 26, 2020. If there is an opening on the agenda, the item could be heard on August 12, 2020. You would receive a notice for the public hearing for either date. If you have additional questions, please let me know.

Sincerely,

Kelsey Lindquist
Senior Planner

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-----Original Message-----

From: Shoeleh Assemi [mailto: [REDACTED]]
Sent: Thursday, July 9, 2020 4:50 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: (EXTERNAL) 89 D street proposed patio

Hi Kelsey,

I saw the owner of 89 D street yesterday outside and talked to her. She told me she is redrawing the plans. I think we still differ on some points but I'm hoping that we can come to a mutual agreement.

She told me that she will appear in front of the planning division on August 12. Had the hearing been postponed or is it a different hearing?

Thank you,

Shoeleh

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: Re: (EXTERNAL) 89 d street
Date: Tuesday, June 30, 2020 12:43:54 PM

Hi Kelsey,

Thank you very much for your reply.

I am glad that the owner has finally decided to work on a compromise. I have already sent you a file with my proposal on June 22nd 2020. Initially, the owner disputed that plan by saying that the slope in front of the store needs to be fixed. However, we all see now that two large picnic-style tables are staying there comfortably. The use of the front of the store is obviously possible and hopefully will be considered by the owner.

Please let me know if the two picnic-style benches in the front of the store are permitted and legal as of now.

Thank you for clarifying the parking situation. As I understand, when the business opened as a market (not a restaurant) probably about 80-100 years ago, there was no need for customer parking. Now it cannot be changed. (Am I correct?)

Please guide me on how and where I can access the business permit history for 89 D Street. That would help me understand the parking situation better.

You mentioned that the restaurant is a takeout. **Then why do they need an outdoor patio? They already have put two picnic-style benches in front which seats 12 people. Why do they need extra seats on the south side?** Especially when the tables are not going to be monitored during this COVID-19 pandemic?

It seems like the proposed outdoor takeout patio is going to be a situation similar to the parking. a few years from now, if the owner wants to expand the patio, we won't be able to dispute, because they already got the permit. **Please clarify that this will not happen.**

Please let me know if the hearing on July 22nd will be online or in a building.

How can people participate? I hope we can resolve this issue before the hearing but I would like to be prepared in case we do.

Also, several of my neighbors are concerned and would like to file a petition. **Is there a formal petition we need to sign or can we write it ourselves? If there is a formal petition form, can you please forward it to me?**

I believe the Mayor and the city have the special order with the best intentions to help small businesses survive. We all do, and we all want our community to survive this pandemic. However, there should be some regulations to prevent conflicts like this, when a business operation results in the discomfort and invasion of the privacy of

their neighbors. The restaurant at 89 D Street is obviously not suffering because the takeout customers do not have a patio to sit on the south side. The restaurant is open. People go inside and can wait and there are now 12 seats in the front that can be used for waiting or eating.

Thanks again for your patience and for your help,

Shoeleh

On Monday, June 29, 2020, 08:26:21 AM MDT, Lindquist, Kelsey <kelsey.lindquist@slcgov.com> wrote:

Shoeleh,

1. There is not a specific distance requirement from a property line or an abutting property. However, there are permitted areas where dining can be located. For example, the proposed dining is permitted in the buildable area. The “nook” is buildable area. People could walk in the area where the tables are not located. The business does not have any servers, since it is a take-out style restaurant.
2. As explained in previous emails, the business is not required to provide any off street parking. The business is a nonconforming use and has been in existence before parking requirements were adopted by the city and is allowed to remain. Additionally, the proposed outdoor dining is under 500 square feet in size, so no additional parking is required. The business is operating legally. The parking situation for the business is legal.
3. I will forward your concerns to the property owner about the proposed time of operation.
4. A nonconforming use is defined as the following:

NONCONFORMING USE: 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.

Nonconforming uses are located throughout the city. They are uses that were permitted the time when they were constructed and then the property was later rezoned, to a district that does not allow the use. The Nonconforming Uses and Noncomplying Structures Chapter is attached through the following link:

https://codelibrary.amlegal.com/codes/saltlakecityut/latest/saltlakecity_ut/0-0-0-68239

5. A restaurant use is not permitted in the RMF-35 zoning district, so you wouldn't be allowed to change the use of your property. The property located at 89 D Street has been a commercial use, since construction and was later rezoned to a residential zoning district. The use, since it was existing prior to a rezone, is allowed to remain.

6. Yes, she has expressed that the outdoor dining will be during the nicer weather months. It will not be only during Covid, but will remain when the pandemic eventually clears.

7. The property owner has expressed that she would like to compromise on a solution. I believe there is adequate room to push the tables closer to the sidewalk on the south side. Once I receive the requested updated site plan from the property owner, I can check the dimensions and distance from the windows on your property. I have been working with both you and the property owner to find a solution, since the Notice of Application was mailed. The property owner is allowed to request the special exception and to go through the process. Additionally, your concerns have been heard. No decision has been made and a Planning Commission Hearing has been scheduled for July 22nd.

8. https://codelibrary.amlegal.com/codes/saltlakecityut/latest/saltlakecity_ut/0-0-0-68436 and https://codelibrary.amlegal.com/codes/saltlakecityut/latest/saltlakecity_ut/0-0-0-70622

9. The cleanliness of the temporary tables on the east are the responsibility of the tenant. If you have concerns about the tables and Covid, you can make a complaint with the County Health Department and they will investigate. For future breaches, you can contact the Health Department or Business Licensing with Salt Lake City.

I understand the concerns you have regarding the proposal. I have been working with you and the property owner to address potential solutions. No decision has been made and the application has been deferred to Planning Commission.

If you have additional questions, please let me know.

Sincerely,

Kelsey Lindquist

Senior Planner

COMMUNITY AND NEIGHBORHOODS

PLANNING DIVISION

SALT LAKE CITY CORPORATION

TEL 801-535-7930

FAX 801-535-6174

From: Shoeleh Assemi [REDACTED]
Sent: Friday, June 26, 2020 3:25 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: Re: (EXTERNAL) 89 d street

Hi Kelsey,

Thank you. I just need to clarify a few more points. Please see my comments in red below your answers (in black).

On Friday, June 26, 2020, 09:27:36 AM MDT, Lindquist, Kelsey <kelsey.lindquist@slcgov.com> wrote:

1. There is not a minimum distance required.

The above sentence implies that the restaurant can have a table next to the fence because no distance to my house is required. However, in the next sentence, you state that dining is only allowed in the nook area. Can you please clarify?

The dining located in the "nook" in the southern yard between the building and property line is considered the buildable area. Outdoor dining located in the buildable area is an allowed location. The standards specific to outdoor dining are copied in this email.

If I understand correctly, the outdoor dining is allowed only in the nook area. Does this mean only the sitting or does it include the area the server or diners walk to and from the tables?

2. In districts where parking is required for a restaurant use, 2 spaces per 1,000 square feet of usable floor area is the requirement. However, the requirements differ in different zoning districts.

Currently and without the outdoor patio, the restaurant has been operating before the COVID-19 as a dine-in with no customer parking and no disabled parking. Is that legal? Shouldn't a restaurant have parking for the customers and disabled?

As stated in a previous email, this is a nonconforming use. This building and the established legal nonconforming use does not require any increase in parking.

Can you please explain what does "nonconforming use" mean? Does it mean a one-off use?

Please note that even without the increase, the restaurant was operating with no parking and the burden was on the neighborhood. Is that legal and permitted? What is the law? Can you please attach it?

Additionally, the outdoor dining is under 500 square feet in size, which does not increase any parking requirements. For your reference, I attached the link to the parking ordinance, here: [Salt Lake City, UT Laws](#)

Thank you. The regulations in that link were for off-street parking. My question is that is it legal for the restaurant at 89 D Street to operate with zero parking to begin with?

If I want to open a restaurant now in the avenues and my restaurant has zero customer parking, will I get a permit?

3. The proposal is have the outdoor dining on the north and the south while the weather permits. There would be no enclosure, so it wouldn't be a year round use. The time proposed for closure would be at sun down.

Kelsey, such arbitrary measures makes my life even more difficult. In summer the sundown can be 9:30 -10: pm. Please make a restriction on when the outdoor area can be open. (e.g 11 am-7 pm).

4. There are several examples of restaurants or cafes within neighborhoods that have outdoor dining. You can find several examples within the Avenues, such as: Avenues Bistro and Publik. There are other examples within other residential areas of the City, as well. Please note, I do not have the measurements from these buildings to abutting structures.

The patio dining for the avenues Bistro is a large yard and is next to a garage, not a bedroom. The dining area for Publik also a very large yard and is far away from the bedroom windows of their neighbor. Currently, there is no patio dining in Publik. Publik has ample customer parking, the 89 D St has zero customer parking. Cuccina has a huge parking lot and the outdoor dining area is within the parking lot, far away from the neighbors. None of the examples you provided is remotely comparable to the small area

next to my bedroom window and within that proximity. Please provide the name and address of a restaurant that has the same specification so I can compare. (e.g less than 8 ft to the neighbor's fence, zero customer parking)

If you have additional questions, please let me know.

Yes, I would like to know if this is a permanent or temporary measure, as per my previous question:

3- is the application by 89 d street to have a patio dining on the south side temporary and only for this summer or is it going to be permanent? If it is permanent what are the plans?
In the first letter, it was cited as a temporary and a special case. From your last email, I gathered that the owner wants to put a permanent patio dining. Which one is correct?

I understand that Mayor Mendenhall wants the businesses to thrive, but I am positive that she also cares about the well-being of salt lake city residents. You visited the site and you could easily see how close the proposed dining area is to my bedroom. The best example you could find was Publick which has a s not even close to this small area.

I am proposing a compromise in the form that the owner could use the first 1/3 of the proposed patio where there are no bedrooms in addition to the front of the restaurant. That way they can do their business and I can have my privacy. However, it looks like the business owner, relying on support from the city is not willing to negotiate anything. This is a very sad and frustrating situation that should have been resolved much earlier.

21A.40.065: OUTDOOR DINING:

"Outdoor dining", as defined in chapter 21A.62 of this title, shall be allowed within the buildable lot area, in all zoning districts where such uses are allowed, as either a permitted or conditional use. Outdoor dining in the public way shall be permitted subject to all City requirements.

Is the buildable area the 36" within the nook? Are the waiters and customers allowed to use the area outside this "buildable " area?

Outdoor dining is allowed within the required landscaped yard or buffer area, in commercial and manufacturing zoning districts where such uses are allowed. Outdoor dining is allowed in the RB, CN, MU, R-MU, RMU-35 and the RMU-45 Zones and for nonconforming restaurants and similar uses that serve food or drinks through the provisions of the special exception process (see chapter 21A.52 of this title). All outdoor dining shall be subject to the following conditions:

A. All requirements of chapter 21A.48 and section 21A.36.020 of this title are met.

What are the requirements of chapter 21A.48 and section 21A.36.020 ?

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;

The owner has already breached this by putting two picnic benches in front of the building. These benches are not getting cleaned or monitored and will likely be magnets for COVID-19. Who is responsible?

Who should I contact for further breaches?

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. 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.

G. Smoking shall be prohibited within the outdoor dining area and within twenty five feet (25') of the outdoor dining area.

H. The proposed outdoor dining complies with the environmental performance standards as stated in section 21A.36.180 of this title.

I. Outdoor dining shall be located in areas where such use is likely to have the least adverse impacts on adjacent properties. (Ord. 58-41, 2014)

The least adverse impact on my property would be the area closer to the street or the front/northern area. The proposed area looks directly to my bedroom and will deprive me of my privacy and peace.

Thank you again for your response and sorry for the long reply. I am really surprised that my rights as a taxpayer have no bearings in this matter. That is why I need to be clear on all this so that I can understand why.

I hope you can talk to the owner to come to an agreement, so we all use our time on other life matters. I have been a good neighbor to them (you can ask the owner or the tenant) and I expect them to be the same. A mutual agreement will save all of us lots of time and emotional distress.

Have a great weekend,

Shoeleh Assemi

83 D Street

-----Original Message-----

From: Shoeleh Assemi [mailto: [REDACTED]]
Sent: Thursday, June 25, 2020 4:36 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: (EXTERNAL) 89 d street

Hi Kelsey,

Can you please help me with the following information?

1- what is the minimum distance required between a dining area Of a restaurant and the closest residence?

2-what are the Salt Lake City ordinances for restaurant parking? How many parking spots should a restaurant have per customer and per employee?

3- is the application by 89 d street to have a patio dining on the south side temporary and only for this summer or is it going to be permanent?

In the first letter it was cited as temporary and a special case. From your last email I gathered that the owner wants to put a permanent patio dining . Which one is correct?

4-is there another example of a restaurant in the avenues with a dining patio this close to the neighboring bedrooms? If so, please provide the name and address so I can go and look.

I would appreciate it if you can reply to each item so I can be more clear about my course of action.

Thanks,

Shoeleh

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: Re: (EXTERNAL) Dining area on the north side of 89 D street
Date: Tuesday, June 16, 2020 4:57:26 PM

Hi Kelsey,

Thanks a lot.

My additional question is that what are the owners going to do so that the chairs are not used by passersby and homeless people during non-operating hours. We had that problem before when the ally was used as for sleeping and resting etc.

Thanks a lot.

Shoeleh

On Tuesday, June 16, 2020, 03:46:53 PM MDT, Lindquist, Kelsey <kelsey.lindquist@slcgov.com> wrote:

Shoeleh,

I received your email. I will send you a detailed response to all of your questions tomorrow. In the meantime, please send any additional questions or comments to me. Thank you.

Sincerely,

Kelsey Lindquist

Senior Planner

COMMUNITY AND NEIGHBORHOODS

PLANNING DIVISION

SALT LAKE CITY CORPORATION

TEL 801-535-7930

FAX 801-535-6174

WWW.SLC.GOV/PLANNING

From: Shoeleh Assemi [mailto: [REDACTED]]
Sent: Tuesday, June 16, 2020 12:59 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: (EXTERNAL) Dining area on the north side of 89 D street

Hi Kelsey,

Thank you for replying to my phone call. Is there a phone number that I can reach you? The phone number "801-535-7930" goes to voice mail all the time. I would appreciate it if you can e-mail me back with the following information

1-I cannot enter the websites mentioned on that notice. Can you please send me the plans, the zoning information for D street, and special exceptions for the COVID-19?

2- Usually there are hearings and enough time for input from the residents on matters like this. Why is there no hearing on such an important matter and why is a decision being made so quickly? (within two weeks of the note). If there will be one, please let me know when and where.

3-Is the restaurant required to put fences or curtains in the back of their dining area on the nook to block lights and protect our privacy? From the middle of that nook, our bedroom window is in completely the vision.

4-What is the time window for the outdoor patio during the day? The patio, even with two tables will introduce noise, smell, light, and potential material pollution and will cause constant conflict. Can the customers bring dogs with them to the patio? The nook is too narrow and it is unlikely that a table (I assume for four) can fit there. Who is going to monitor the violations?

Even right now, I have to deal with the noise from the customers standing or sitting in front of the building waiting for their takeout. I have collected garbage and cigarette butts from my lawn. The parking has been a constant problem for me and my neighbors. we have tolerated all this because we want the owners to succeed. I would like them to also consider the well-being of their neighbors as well. This is a residential area and people should be able to rest in their house after a day of work.

5-Will the city or the owners be responsible for the depreciation in the value of my property? A licensed real estate agent told me that my house value will depreciate significantly as no one wants to live next to a noisy outdoor patio of a restaurant.

6-I should mention that the restaurant has remained closed during COVID-19. They have been doing very well selling takeout food. Have they tried to open the restaurant and see if they can get enough business without disturbing the neighborhood with an outdoor dining area?

Many Thanks,

Shoeleh Assemi

83 D Street

Salt Lake City, Utah 84103

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: Re: Automatic reply: external patio on the south side of 89 d street
Date: Wednesday, June 24, 2020 1:19:11 PM

Kelsey,

Thank you very much.

The conflicting measurements on the plan was not accidental. Please check the proportions of the front area and the sides.

I don't have a problem with the picnic tables in the front in exchange for the owner to respect my privacy and does not build a patio on the south side under my bedroom window.

Please negotiate with the owner to come to a compromise. Looks like for her it is all or nothing. I really don't want to escalate this matter but I will and would take it to the highest levels possible if I have to. Everyone should have the right to rest in their home. Please put yourself in my place. I am sure you would have fought for your privacy as well.

Thanks again,

Shoeleh

On Jun 24, 2020, at 13:00, Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com> wrote:

Shoeleh,

There was no prior application. The property owner indicated that she has personally been planning on submitting an application for outdoor dining. The special exception that is being processed is the only application submitted for outdoor dining related to this property.

I cannot say why the site plan had incorrect measurements. The two conflicting measurements is why I went out on site to measure. The portion of the property to the north is approximately 35", it's possible that the property owner mixed up the measurements. I truly cannot say why the measurements are incorrect on the site plan.

The property owner can submit a special exception for outdoor dining in the buildable area, front and corner side yards. The proposal meets this requirement.

The two tables were not there when I visited the site yesterday. I believe that the concern is that the tables proposed are much smaller with less broad of a base. I will be checking with building code to see if the outdoor dining space needs to be ADA compliant, which could conflict with the required flat work, if the dining was to be

located on the east.

I am waiting for confirmation on possible hearing dates. When the item is scheduled I will inform you of the date and time for the hearing.

Sincerely,

Kelsey Lindquist
Senior Planner

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From: Shoeleh Assemi [REDACTED]
Sent: Wednesday, June 24, 2020 12:53 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: Re: Automatic reply: external patio on the south side of 89 d street

Kelsey,

This is completely different to what the application says. There was no mention of a long term patio plan and no mention of a prior application. You wrote to me that the reason neighbors were not notified was because this was a special application.

Thanks for measuring the front of the building. Then why in the application it was written and drawn as 24 inches? The narrower drawing shows that was deliberate. Why then the application was even considered?

If this is a long term plan, with measures to soundproof the patio and have vines, where are the plans? And why was there no hearing to get the input from me and other neighbors? Does our opinion not matter at all?

If you came yesterday you probably saw the proximity of the proposed patio to our bedroom. We have lived here for years with no conflict with the neighbors. Please do not approve something that is likely going to be a source of long term friction in the neighborhood.

Lastly you perhaps saw yesterday that the picnic tables can sit steadily on the concrete. Other restaurants like Avenues Proper have opted to use the front as an outdoor dining area rather than being a constant nuisance to their neighbors. If the owner is not considerate, I hope the city would be protective of my rights of privacy and quiet enjoyment.

Thank you for referring this matter to a planning commission meeting. Please let me know of the time and date so me and some of the neighbors can attend as well.

Thank you,

Shoeleh

On Jun 24, 2020, at 11:03, Lindquist, Kelsey
<Kelsey.Lindquist@slcgov.com> wrote:

Shoeleh,

I measured the property yesterday. The front of the building to the side walk is approximately 6 ft. Like many projects, the plans come prior to the submittal of an application.

Per the Mayor Mendenhall's declaration, businesses are allowed to have outdoor dining without a special exception, if one was needed. This property owner is looking for a long term solution for outdoor dining. The tables in front are likely a temporary solution to comply with the Mayor's proclamation.

Due to the concern, I will likely be scheduling this item for a Planning Commission meeting.


Sincerely,

Kelsey Lindquist
Senior Planner

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SALT LAKE CITY CORPORATION

TEL 801-535-7930
FAX 801-535-6174

www.SLC.GOV/PLANNING

From: Shoeleh Assemi [<mailto:> 
Sent: Wednesday, June 24, 2020 10:56 AM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: Re: Automatic reply: external patio on the south side of 89 d

street

Kelsey,

This seems to be getting more complicated by the day. It looks like the owner of this property is fermented to do whatever she wants no matter what. The application has numerous incorrect facts, including citing the length of the front as 24 inches instead of 7 ft. Yet it goes through with no difficulty and no verification. Why?

If the patio was planned before covid 19 , why no one knew about it? Neither I, nor my neighbors didn't get a notice. So please dismiss that.

Yesterday the restaurant put two large wooden picnic style tables on either side in the front. None was shown in the plans. The tables are steady even on the slope. So the slope is not a problem now. The slope will not be a problem also if they put tables apart from each other.

Please don't tell me that the owner should not be bothered dealing with a slope but I should be bothered 24/7 with people looking at my bedroom window and talking.

Please let me know if the owner has decided to use these two picnic tables in the front instead of the south patio or is she going to use both front and the south side?

Kelsey,

You as the senior city planner have the power and responsibility to look after all the citizens and not just the business owners. I am asking you to deny the application for the patio on the south side and ask them to use the front. I will not dispute that. I want this matter to end without need to take further action.

Thank you,

Shoeleh

<image001.jpg>

<image002.jpg>

<image003.jpg>

On Jun 24, 2020, at 09:30, Lindquist, Kelsey
<Kelsey.Lindquist@slcgov.com> wrote:

Shoeleh,

I spoke with the property owner this morning. She explained that the east side of the property is uneven for patio tables and would require quite a bit of flat work. The south side is flatter and provides additional room. The property owner expressed that there would be no lights, and the patio would close when the sun goes down. Additionally, she understands the noise concerns and is willing to construct a sound wall. It would be a thicker barrier and would enclose the space to provide some privacy and noise protection for you. She expressed that she would likely grow some attractive vines or vegetation to help with the aesthetics of the wall. Let me know your thoughts on this.

In regard to the questions about dogs, service dogs would be allowed on the patio.

In regard to tables, they are 2 person tables.

In regard to Covid 19, the property owner expressed that the outdoor dining was planned prior to the outbreak of Covid 19. However, the outdoor dining will be beneficial during the current and future Covid 19 outbreaks.

In regard to parking, the property has been a commercial use since its construction. The city did not have parking requirements when this building was constructed. Change of use within a list of nonconforming use does not require any parking increases. Additionally, outdoor dining that is less than 500 square feet in size does not require any additional parking.

I believe that the above paragraph addresses the remaining questions in your email.

Sincerely,

Kelsey Lindquist
Senior Planner

COMMUNITY AND NEIGHBORHOODS
PLANNING DIVISION
SALT LAKE CITY CORPORATION

TEL 801-535-7930
FAX 801-535-6174

www.SLC.GOV/PLANNING

From: Shoeleh Assemi [[mailto: \[REDACTED\]](#)]
Sent: Monday, June 22, 2020 2:45 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: Re: Automatic reply: external patio on the south side of 89 d street

Thanks a lot, Kelsey. I think that would solve a lot of problems and will save all of us lots of time and anxiety.

Shoeleh

On Monday, June 22, 2020, 02:24:32 PM MDT, Lindquist, Kelsey <kelsey.lindquist@slcgov.com> wrote:

Shoeleh,

Thank you for your email. I sent the proposed idea to move the dining to the front of the building. I will follow-up with an email shortly, once I hear back from her. I will also respond to your additional questions. Thank you for your patience.

Sincerely,

Kelsey Lindquist

Senior Planner

COMMUNITY AND NEIGHBORHOODS

PLANNING DIVISION

SALT LAKE CITY CORPORATION

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From: Shoeleh Assemi [[mailto:\[REDACTED\]](mailto:[REDACTED])]
Sent: Monday, June 22, 2020 11:04 AM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: Re: Automatic reply: external patio on the south side of 89 d street

Hi Kelsey,

I hope you had a great weekend. Please see attached pictures and my notes. The area in front of the restaurant is 7ft(excluding the sidewalk). Including the sidewalk, the length is ~12ft.

The owner also has used dash marks that misleadingly imply the area in front of the restaurants is smaller than those on the north and the south.

The owner has also written that this is a take-out restaurant. It is incorrect, as the restaurant is dine-in (see google). I can send you pictures from the tables inside.

The owner also has claimed that the restaurant cannot be opened due to COVID-19. This is not correct either. The restaurant can open. They need to observe the regulations.

Please see that the fence is not tall enough to block the view. The area is not being enough to reduce the noise. My other concerns are listed in the notes. This will be a 24/7 torture for us. I really don't understand the disregard shown by the city to this important matter, where none of the neighbors are happy about it. I have lived here for 15 years and know a lot of restaurants in this area. None have a patio this close to a bedroom. If you know one, please give me the name and address.

Please see in the pictures that three 36" tables can easily fit in front of the restaurant (which is 7 ft wide) without depriving me and my family of our privacy and tables would be far enough from our bedrooms. There is also a large tree that can provide shade. I talked about it with one of the tenants on Friday. I think this is a good compromise for both sides.

I am counting on your help to resolve this matter, without any need for further escalation.

Thank you,

Shoeleh

On Thursday, June 18, 2020, 04:48:32 PM MDT, Lindquist, Kelsey <kelsey.lindquist@slcgov.com> wrote:

I will be out of the office until Monday June 22, 2020. I will reply to your email when I return. If you need immediate assistance, please contact the Planning Counter at 801-535-7700.

Sincerely,

Kelsey Lindquist

From: [REDACTED]
To: [Lindquist, Kelsey](#)
Subject: Re: external patio on the south side of 89 d street
Date: Thursday, June 18, 2020 4:48:31 PM

Kelsey,

Thank you very much for your quick reply and for the information.

I probably have to describe our neighborhood. This is a purely residential area. From the top to the bottom of D Street, there are no restaurants or shops. There are other streets that have commercial properties (E street), but nowhere there is a restaurant patio in such close vicinity to a house and with no parking!

Yes, a few questions have still remained unanswered. I would appreciate it if you could address those as well;

- 1) Please confirm that there will be no outdoor lights in the south of 89D street. The lights are not mentioned in the application.
- 2) Please confirm that there will be only two persons on each table. The tables will not be attached to have large groups.
- 3) Please confirm that the existing restaurant has no limitations to open regularly and use inside tables as long as they comply with the COVID-19 regulations. It is their choice now to provide take out instead of complying with COVID-19 regulations and use their existing tables inside.
- 4) Please confirm that no dogs of any sort will be allowed in the outdoor dining area. (In addition to the barking noise, I don't want our lawn to be used for dog defecation).
- 5) The restaurant has zero parking spaces. What are the regulations on parking space? **Can you send me information on the regulations? Is a restaurant allowed to operate with no parking for customers?** The burden of the six extra tables will be on the neighborhood and mainly for us as the adjacent building.
- 6) Does the 11 am-9 pm include Sundays? Can we at least have one day of quiet time?
- 7) My main bedroom window is in front of that nook and the fence does not provide privacy. The small distance also does not protect us from the potential noise. How will the owners protect our privacy?

Thanks again for all your help,

Shoeleh

On Thursday, June 18, 2020, 03:17:15 PM MDT, Lindquist, Kelsey <kelsey.lindquist@slcgov.com> wrote:

Shoeleh,

Thank you for the reply. Hopefully, I address the remaining questions in this email.

In regard to the outdoor dining in this zoning district, it is permitted through the special exception process. Due to the Covid 19 pandemic, Mayor Mendenhall published a proclamation that permits outdoor dining without special exception approval, with a list of specific standards that must be complied with. At this time, the property owner/applicant wishes to still seek the special exception approval for the outdoor dining.

In regard to the rights, if the application is approved, an affected individual may appeal the decision to the Planning Commission. Additionally, if the business is a nuisance Salt Lake City's Business Licensing and Civil Enforcement would get involved to ensure that the business is in compliance with the standards for outdoor dining.

I can check with the applicant on the status of the fence. I will need to follow-up with you on this.

The Salt Lake County Noise Ordinance can be found here: <https://slco.org/globalassets/1-site-files/health/regs/noise.pdf>

This is the general noise information provided by the City with contact information:

NOISE

The noise regulation prohibits loud noise at night between the hours of 10:00 p m. and 7:00 a.m.

The regulation also sets limits for extremely loud noise during daytime hours.

Exemptions – Emergency services, HVAC systems, portable mechanical equipment during day, municipal approved events with special permission, public assemblies/crowds, and snow removal.

See regulation for details.

Motor Vehicles – Must have muffler meeting mfr. specs.

Noise complaints – After hours/weekends: (801) 799-3000 Contact SLC Police Dispatch: (801) 799-3000

I will also see what the anticipated set-up and clean-up time is for this business.

I believe that dogs are not permitted to be on the outdoor dining area. This is generally not allowed in most outdoor dining spaces and is enforced and regulated by the Salt Lake County Health Department.

The proposed tables sit two people, which will require a smaller table than a four person table. The provided site plan indicates that the northern wall to property line is approximately 11'6". This would accommodate the proposed 3 36x36 tables.

Violations can be provided by anyone within the city and will always be investigated by Salt Lake City Business Licensing and Civil Enforcement. Any approval can be retracted based on enforcement and compliance issues.

In regard to the stated depreciation, you will need to provide evidence that your property value will be directly impacted by the proposed outdoor dining.

In regard to people experiencing homelessness utilizing the tables or chairs, I can inform the applicant that there is concern of access and utilization of the use. Potentially, the tables can be brought in every night to minimize this potential issue. I will follow-up on this concern.

You are correct, this area is generally residential in nature. The restaurant has a business license, issued in 2019, with no existing violations. As previously mentioned, special exceptions are required to provide notice to adjacent and abutting property owners and tenants, which was done on June 10, 2020. Public comments and concerns are still be reviewed and the standards are being analyzed. A decision has not yet been made regarding this request.

I will follow-up with an additional email, once I hear back from the property owner/applicant. If you have additional questions, please forward them to me at your convenience. Thank you.

Sincerely,

Kelsey Lindquist

Senior Planner

COMMUNITY AND NEIGHBORHOODS

PLANNING DIVISION

SALT LAKE CITY CORPORATION

TEL 801-535-7930

FAX 801-535-6174

WWW.SLC.GOV/PLANNING

From: Shoeleh Assemi [mailto: [REDACTED]]
Sent: Thursday, June 18, 2020 2:33 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: external patio on the south side of 89 d street

Kelsey,

Thank you for the reply and for attaching the proposed plan.

What is the special exception? Is this something due to COVID-19? Do they have a time limit? What are the requirements to apply for a special exception? What are the rights of those being affected?

You wrote:

3. There appears to be an existing fence that separates your front and side yard from the abutting property which will provide separation and privacy from the proposed tables.

The fence is 5-6 ft tall maximum and is falling apart. We had to secure the fence with extra wood last year. In places, the slabs are parted and our property can be seen. The fence does not provide privacy or protection from noise/light/smell. We have two bedrooms are above the fence and one is in complete view from the nook. Please see the third picture in the application.

Please also see that there is no fence on the first six feet between the two properties.

4. The applicant is proposing a time frame of 11 am – 9 pm. The business is required to comply with the Salt Lake County noise ordinance to limit any noise impacts to the surrounding properties. Additionally, music and outdoor smoking is not permitted as part of the outdoor dining use.

Can you please send me the noise ordinance for a residential area of south lake county?

It means we have to put up with noise and invasion of privacy seven days of the week. Does 11am-9pm include setup and cleanup time or do we need to put up with additional noise before and after these hours?

6. The property owner informed me that dining inside is not permitted, due to the Covid restrictions. I believe they are proposing the tables to provide a place for patrons to dine with their take out.

That is not correct. As a city official you probably know better than me that all restaurants can operate under COVID-

19 but have to comply with special regulations (clean up chairs/tables, keep the dining tables a reasonable distance apart, wear masks, have disposable menus, etc.) There are many restaurants around us and they all have inside dining (Cuccina's, Oasis Cafe,... to name a couple).

I should also point out that in the application, the owner describes the restaurant as a "takeout". That is not correct either. The restaurant has at least 4 large tables inside and people (including me) used to dine in all the time.

Please forward any additional comments and concerns. Thank you.

Several of my questions from my previous e-mail have remained unanswered. I would appreciate if you can answer those concerns as well;

4-What is the time window for the outdoor patio during the day? The patio, even with two tables will introduce noise, smell, light, and potential material pollution and will cause constant conflict.

Can the customers bring dogs with them to the patio?

The nook is too narrow and it is unlikely that a table (I assume for four) can fit there.

Who is going to monitor the violations?

5-Will the city or the owners be responsible for the depreciation in the value of my property? A licensed real estate agent told me that my house value will depreciate significantly as no one wants to live next to a noisy outdoor patio of a restaurant.

6-I should mention that the restaurant has remained closed during COVID-19. They have been doing very well selling takeout food. **Have they tried to open the restaurant and see if they can get enough business without disturbing the neighborhood with an outdoor dining area?**

Instead of introducing a plan that is going to upset the whole neighborhood, why don't they try to use the existing inside space? The property has at least four large tables inside and has a basement as well.

7- In the application, there is no mention of having outdoor lights, so I assume there will be no additional outdoor lights on the south side. Please confirm.

Additionally;

8- The parking has been a constant problem for me and my neighbors. The restaurant has no parking space for the customers. Isn't parking a requirement for a restaurant? Overuse of the parking space in front of our houses has been a constant problem and this addition is going to make the problem even worse.

9- How will the owners prevent passerby and homeless people from camping on those chairs after 9 pm?

10- How will the city monitor this project? Who can we contact in case of violations and what are the consequences for the owners if they do not comply?

I understand that you are trying to accommodate and help a small business. However, this is a residential area. The whole neighborhood is extremely unhappy about the problems (especially parking) imposed by this restaurant in D street. This additional inconvenience and with the fact that it is happening so quickly without giving any notice to the residents has not helped at all. Please wait to hear and address our concerns before making a decision that is going to have a huge negative impact on me personally and on this quiet neighborhood in general.

Thanks for all your help,

Shoeleh

On Wednesday, June 17, 2020, 04:23:15 PM MDT, Lindquist, Kelsey <kelsey.lindquist@slcgov.com> wrote:

Shoeleh,

Thank you for sending you comments and concerns. The following should address your questions.

1. I apologize that there is difficulty in accessing the information. I attached the application to this email. The request is for 3 relatively small tables next to the northern side of the building, in the buildable area. See the attached photo below.
2. Special exceptions are generally reviewed at an administrative level, if they are in compliance with the standards of review. Special exceptions require a 12-day noticing period. Please note, due to Covid19 this period has been extended.
3. There appears to be an existing fence that separates your front and side yard from the abutting property which will provide separation and privacy from the proposed tables.
4. The applicant is proposing a time frame of 11 am – 9 pm. The business is required to comply with the Salt Lake County noise ordinance to limit any noise impacts to the surrounding properties. Additionally, music and outdoor smoking is not permitted as part of the outdoor dining use.
5. I will inform the property owner of the garbage concern. I do not see a dumpster onsite. I will see if the applicant can move the trash cans or a smaller receptacle to a more convenient location for customers.
6. The property owner informed me that dining inside is not permitted, due to the Covid restrictions. I believe they are proposing the tables to provide a place for patrons to dine with their take out.

Please forward any additional comments and concerns. Thank you.



Sincerely,

Kelsey Lindquist

Senior Planner

COMMUNITY AND NEIGHBORHOODS

PLANNING DIVISION

SALT LAKE CITY CORPORATION

TEL 801-535-7930

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www.SLC.GOV/PLANNING

From: Shoeleh Assemi [mailto: [REDACTED]]
Sent: Tuesday, June 16, 2020 12:59 PM
To: Lindquist, Kelsey <Kelsey.Lindquist@slcgov.com>
Subject: (EXTERNAL) Dining area on the north side of 89 D street

Hi Kelsey,

Thank you for replying to my phone call. Is there a phone number that I can reach you? The phone number "801-535-7930" goes to voice mail all the time. I would appreciate it if you can e-mail me back with the following information

1-I cannot enter the websites mentioned on that notice. Can you please send me the plans, the zoning information for D street, and special exceptions for the COVID-19?

2- Usually there are hearings and enough time for input from the residents on matters like this. Why is there no hearing on such an important matter and why is a decision being made so quickly? (within two weeks of the note). If there will be one, please let me know when and where.

3-Is the restaurant required to put fences or curtains in the back of their dining area on the nook to block lights and protect our privacy? From the middle of that nook, our bedroom window is in completely the vision.

4-What is the time window for the outdoor patio during the day? The patio, even with two tables will introduce noise, smell, light, and potential material pollution and will cause constant conflict. Can the customers bring dogs with them to the patio? The nook is too narrow and it is unlikely that a table (I assume for four) can fit there. Who is going to monitor the violations?

Even right now, I have to deal with the noise from the customers standing or sitting in front of the building waiting for their takeout. I have collected garbage and cigarette butts from my lawn. The parking has been a constant problem for me and my neighbors. we have tolerated all this because we want the owners to succeed. I would like them to also consider the well-being of their neighbors as well. This is a residential area and people should be able to rest in their house after a day of work.

5-Will the city or the owners be responsible for the depreciation in the value of my property? A licensed real estate agent told me that my house value will depreciate significantly as no one wants to live next to a noisy outdoor patio of a restaurant.

6-I should mention that the restaurant has remained closed during COVID-19. They have been doing very well selling takeout food. Have they tried to open the restaurant and see if they can get enough business without disturbing the neighborhood with an outdoor dining area?

Many Thanks,

Shoeleh Assemi

83 D Street

Salt Lake City, Utah 84103

ATTACHMENT G: DEPARTMENT REVIEW COMMENTS

Zoning Review (Katilynn Harris):

There does not appear to be any zoning issues based on the non-scaled site plan. However, based on the provided images and Geocortex, there does not appear to be adequate space on the north side of the building to accommodate outdoor dining without encroaching into the right of way. This likely will need to be verified.

Fire Code Review (Doug Bateman):

Will furniture be secured in place? No additional fire code comments at this time

Engineering (Scott Weiler):

No objections provided the 2nd Ave. sidewalk can be safely used by the public.

Public Utility Review (Jason Draper):

No comments received.