



Staff Report

PLANNING DIVISION
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Planning Commission
From: Krissy Gilmore, Principal Planner, (801) 535-7780
Date: April 28, 2021
Re: PLNPCM2020-00858 Outdoor Dining Special Exception

Special Exception

PROPERTY ADDRESS: 1693 S 900 E
PARCEL ID: 15-01-152-021-0000
MASTER PLAN: Central City Master Plan
ZONING DISTRICT: CN (Neighborhood Commercial)

REQUEST: The petitioner, Robert Plumb, is requesting approval for an outdoor dining patio within the buildable area associated with a restaurant located at 1693 S 900 E. The subject property is located in the CN (Neighborhood Commercial) zoning district. Outdoor dining in the CN zoning district requires 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. The outdoor dining area may only be occupied during regular business hours and must be managed so that the patio can be closed at the designated restaurant closing time.
2. The north property line landscape buffer shall be replanted in accordance with 21A.48.080 before the outdoor dining patio is permitted to open.

PROJECT DESCRIPTION

This is a request by Robert Plumb, the owner of property located at approximately 1693 S 900 E, to install an outdoor dining patio for patrons of the Red Moose Coffee Company. The property is located in the CN (Neighborhood Commercial) Zoning District. Outdoor dining for the restaurant requires special exception approval.

Existing Outdoor Dining

The property is currently under Civil Enforcement for outdoor dining without a special exception. The current tenant of 1693 S 900 E, Red Moose Coffee Company, placed several tables on a concrete pad within the north property line landscape buffer area, as shown on the site plan on the following page in blue. Under Mayor Erin Mendenhall's Proclamation to allow outdoor dining in required yards and the public way, due to the Covid-19 Pandemic, the outdoor dining area was moved in front of the

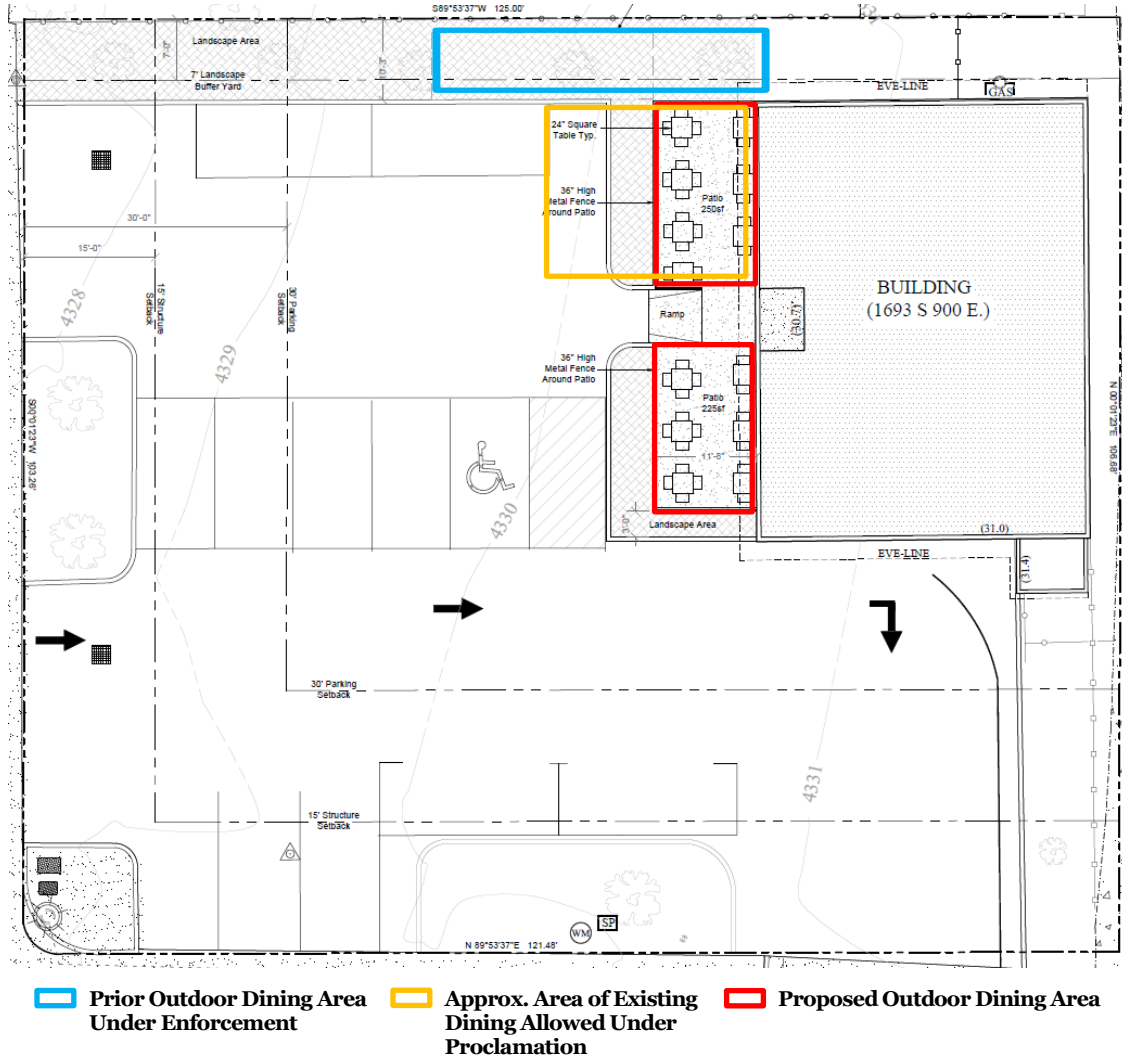
restaurant. The tables in their current location in front of the restaurant are allowed without a Special Exception until the Mayor's Proclamation expires. If the property would like to continue operating outdoor dining once the Mayor's Proclamation expires, special exception approval is required.



Existing Outdoor Dining Area

Proposed Outdoor Dining Location

The outdoor dining is proposed to be in front of the restaurant, to both sides of the entrance. The area is split into a north and a south section, as illustrated below in red. The area proposed for outdoor dining is approximately 475 square feet in size and 11' 8" deep. 13 tables are proposed with 38 chairs. The north section is approximately 250 SF and the south section is approximately 225 SF. Outdoor dining is not proposed to be located outside of this area and will be surrounded by a 36" metal fence and landscape buffer.



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. The proposed patio area would remove two existing parking stalls. The proposal will still meet, and exceed, the parking requirements of the CN zone with a total of 12 stalls and space for 5 stacked drive-through vehicles. The CN zone requires 2 spaces per 1,000 square feet of usable floor area and 5 stacked spaces for the drive-through. The restaurant is 1,950 SF, which requires 4 parking stalls.

Hours of Operation

The current business hours of the Red Moose Coffee Company are Monday through Saturday 6:30 AM-6 PM. Smoking is not be permitted in the outdoor dining space or within 25 feet of the dining area under State Law. No outdoor music is proposed at this time. The outdoor dining areas will be required to comply with the 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. Nuisance Concerns
2. Issue 2. Mayor Mendenhall's Proclamation

1. Nuisance Concerns

Public activity outdoors on smaller properties can have an impact on abutting property owners. The subject property does abut residential uses to the north and east. The most impacted by the proposed outdoor dining is the property to the north. The abutting residential property is approximately 20' from the proposed outdoor dining area. There is a 6' chain link slatted fence on the north property line between the two properties. Additionally, a 7' landscape buffer is required in the CN zoning district when adjacent to a residential zoning district.



Photos showing the existing fence and prior outdoor dining area in the landscape buffer area

The proposed outdoor dining area will be surrounded by a 36" in height metal fence. Staff believes this will prevent patrons of the outdoor dining area from moving the tables closer to the property line, which has been an issue with the current location of the tables.

While the fence and the separation between the use and the residential structure on the abutting property is a helpful distance, Staff is recommending conditions to further limit potential impacts to the abutting property. Staff recommends that a condition of approval is that, following the expiration of the Mayor's Emergency proclamation, the outdoor dining area proposed under this special exception cannot reopen until the landscape buffer is replaced in accordance with 21A.48.080 to further buffer and screen the residential use from the proposed outdoor dining area. This will also prevent tables or gathering within the landscape buffer. The requirements of 21A.48.080 include:

- a) Shade trees shall be planted at the rate of one tree for every thirty (30) linear feet of landscape buffer;
- b) Shrubs, having a mature height of not less than four feet (4'), shall be planted along the entire length of the landscape buffer;

Neighbors have also 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, external speakers are prohibited, which was established under PLNPCM2009-0003: Conditional Use to allow the drive-through.

Concern was also raised regarding dogs on the outdoor patio. Dogs are generally prohibited in Salt Lake County Restaurants but may be allowed on an outdoor patio with a permit from the Salt Lake County Health Department. If the applicant wishes to allow dogs on the patio, they will need to apply with Salt Lake County and must provide an approved safety plan and pay a yearly fee. The County also lists nine specific rules that must be followed.

2. Mayor Mendenhall's Proclamation

In response to the Covid-19 pandemic, Mayor Mendenhall issued a proclamation on June 11, 2020 and extended the proclamation on December 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. The existing business located at the site has several tables in front of the restaurant operating under the Mayor's proclamation. Please note, the requested outdoor dining is a long term proposal, which requires special exception approval.



Photo of the existing outdoor dining tables moved in front of restaurant, and the concrete landscape buffer area to be restored as a condition of 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 the outdoor dining proposal meets the outdoor dining special exception criteria and standards.

NEXT STEPS:

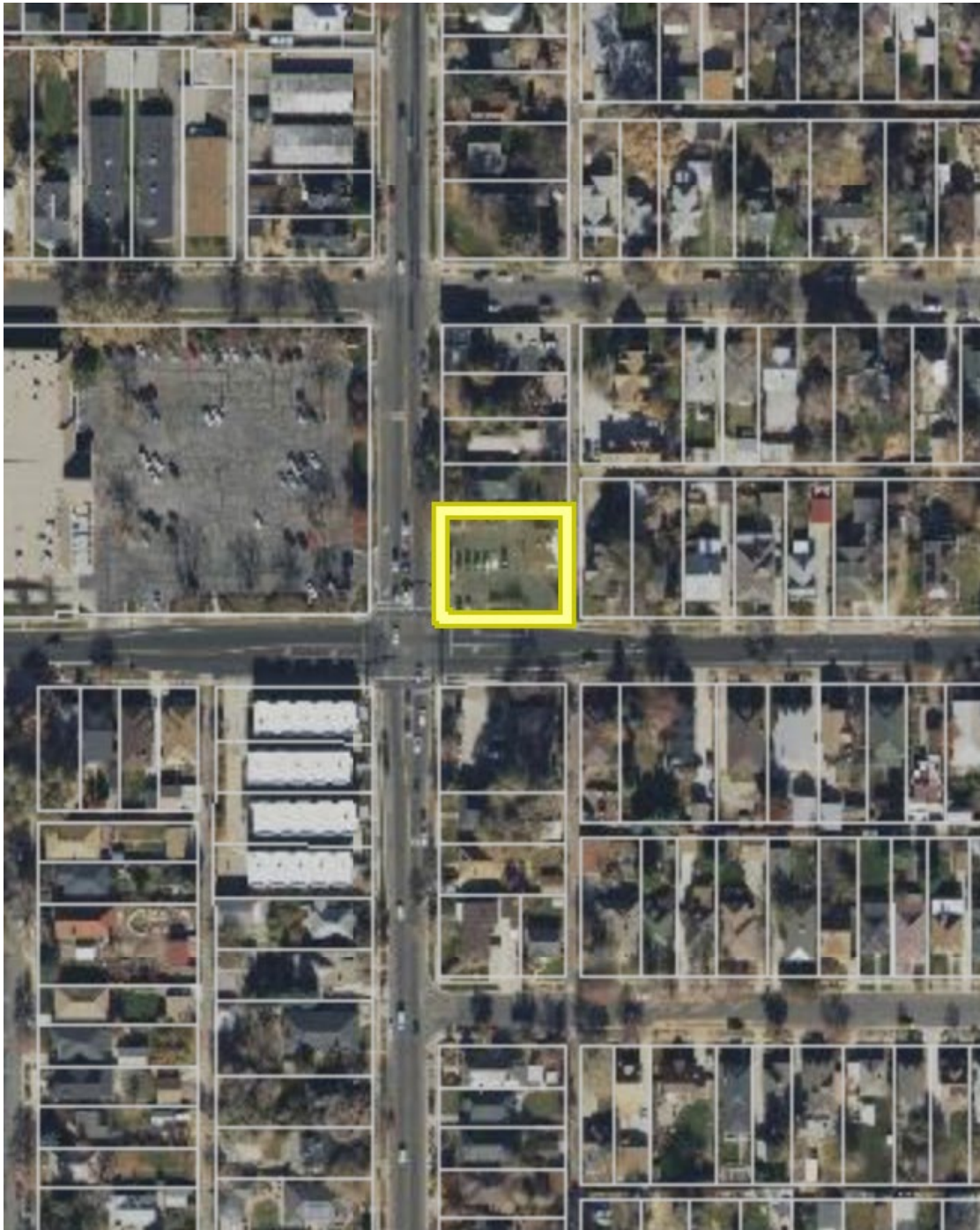
If the project is approved, the applicant will need to comply with any conditions made as part of the approval before the Planning Division will sign off on building permits for outdoor dining improvements. Should the project be approved and it is not appealed, the applicant will need to apply for a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

ATTACHMENTS:

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

ATTACHMENT A: VICINITY MAP



Site Plan Illustrating the Area Proposed for Outdoor Dining





ATTACHMENT C: PHOTOGRAPHS



Property looking east



Property looking north



Existing Outdoor Dining Area

ATTACHMENT D: ADDITIONAL APPLICANT INFORMATION



Special Exception

NOTICE OF APPLICATION

☐ Planning Commission

☐ Historic Landmark Commission

OFFICE USE ONLY

Project #:	Received By:	Date Received:	Zoning:
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Project Name:

PLEASE PROVIDE THE FOLLOWING INFORMATION

Type of Special Exception Requested:
Outdoor Patio Area at the Red Moose Restaurant

Address of Subject Property:
1693 South 900 East

Name of Applicant: Robert Plumb	Phone: 801-580-8149
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Address of Applicant:
1468 East Harvard Ave Salt Lake City Utah 84105

E-mail of Applicant: [REDACTED]	Cell/Fax: 801-580-8149
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Applicant's Interest in Subject Property:

☒ Owner ☐ Contractor ☐ Architect ☐ Other:

Name of Property Owner (if different from applicant):
Same

E-mail of Property Owner: plubob221@gmail.com	Phone: 801-580-8149
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Please note that additional information may be required by the project planner to ensure adequate information is provided for staff analysis. All information required for staff analysis will be copied and made public, including professional architectural or engineering drawings, for the purposes of public review by any interested party.

WHERE TO FILE THE COMPLETE APPLICATION

Mailing Address: Planning Counter PO Box 145471 Salt Lake City, UT 84114	In Person: Planning Counter 451 South State Street, Room 215 Telephone: (801) 535-7700
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REQUIRED FEE

Filing fee of \$265 plus additional cost of postage for mailing notice to abutting property owners and tenants

SIGNATURE

If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.

Signature of Owner or Agent:

Date:

9/24/2020

To whom it may concern

City has notified me that the patio at 1693 So 900 E Salt Lake City UT 84105 was done without a permit and that I need a Special Exception Application.

The previous tenant said they put the patio in when they 1st open the Red Moose Restaurant in 2009. They had put down pavers for the patio surface. When I bought the property in April of 2012 the tenants ask me to replace the pavers with a concrete surface so that it would be more stable for the tables and chairs. I had the pavers taken out and the concrete patio put in May of 2012. I did not know that I needed a permit to have that work done.

Because of Covid-19 Virus this has been the eating area the restaurant feels they can still use for sit down seating. They haven't had any inside seating since Covid-19 started. The Red Moose Restaurant has 14 Employees and like a lot of restaurants is struggling to stay in business by taking away the patio area is only going to make it more difficult for them to stay in business.

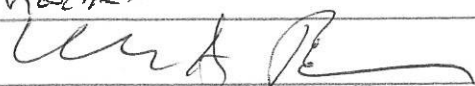
I feel like the Restaurant is an asset to the Sugarhouse Community. The City has promoted walkable local business and this Restaurant is a good match for what the City is looking for.

With most commercial tenants the tenant pays the maintenance, property taxes and building insurance. I have absorbed these costs to try to help keep the Restaurant business. I also have felt a responsibility to the community to have a unique character business in Sugarhouse instead of another apartment building. I've also made sure the property has been well maintained during my ownership.

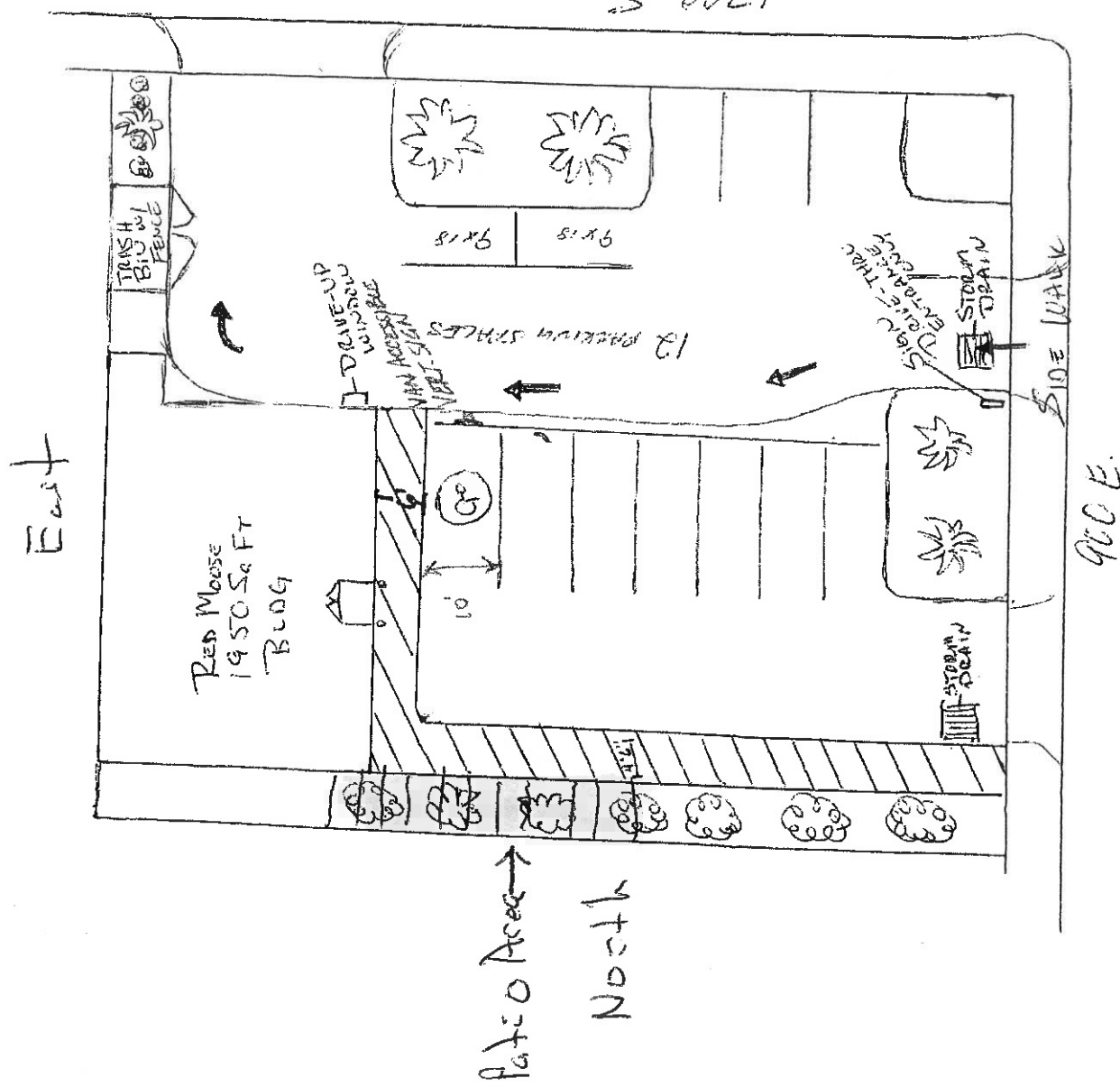
Bottom line is the tenant would like to be able to keep the patio where it is now. Changing the location of the patio would require a lot of expense and would require giving up parking spaces.

Let me know what you need for a site plan

Thanks



Revised Site Plan



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 CN zone is:</p> <p><i>“The CN Neighborhood Commercial District is intended to provide for small scale, low intensity commercial uses that can be located within and serve residential neighborhoods. This district</i></p>

		<p><i>is appropriate in areas where supported by applicable master plans and along local streets that are served by multiple transportation modes, such as pedestrian, bicycle, transit and automobiles. The standards for the district are intended to reinforce the historic scale and ambiance of traditional neighborhood retail that is oriented toward the pedestrian while ensuring adequate transit and automobile access. Uses are restricted in size to promote local orientation and to limit adverse impacts on nearby residential areas.</i></p> <p>The existing property is a permitted use in the CN zone. Outdoor dining is an accessory use that is permitted through the special exception process. Outdoor dining meets the purpose of the CN zone by creating an ambiance of traditional neighborhood retail that is oriented to the pedestrian, and helps provide pedestrian interest through the parking.</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	Restaurants in the CN zone 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 the character of the area or the public health, safety and general welfare.	Complies	The proposed conditions that staff identified, along with the fence between the properties, and fence surrounding the outdoor dining area, reduce the potential for material adverse effect upon the character of the area.
D. Compatible With Surrounding Development:	Complies with Conditions	The proposed outdoor dining is associated with an existing restaurant

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.		use. The proposed outdoor dining is located in front of the restaurant and is setback from the neighboring properties. It is approximately 20 feet from the single family home to the north. 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	The proposed outdoor dining consists of movable tables on a new concrete pad in the buildable area. The outdoor dining will be surrounded by a 36" fence and a landscape area. The proposed outdoor dining will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance. The lot is fully developed with no natural features on the property.
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. Noise and dogs are regulated by the Salt Lake County Health Department. Smoking is regulated by the Utah Department of Health. The proposed use will be required to comply with the noise, dog, and smoking 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	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.
C. A detailed site plan demonstrating the following:	Complies	A site plan has been submitted to show that the outdoor dining area is less than 500 square feet in area. The outdoor

<p>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;</p> <p>2. The location of any paving, landscaping, planters, fencing, canopies, umbrellas or other table covers or barriers surrounding the area;</p> <p>3. The proposed outdoor dining will not impede pedestrian or vehicular traffic; and</p> <p>4. The main entry has a control point as required by State liquor laws.</p>		<p>dining area is located on private property. The outdoor dining is surrounded by a 36" fence and landscaped area, as shown on the site plan. The proposed layout does not impede or impact pedestrian or vehicular traffic.</p> <p>This restaurant does not have a liquor license.</p>
D. The proposed outdoor dining complies with all conditions pertaining to any existing variances, conditional uses or other approvals granted for property.	Complies	The proposed outdoor dining complies with PLNPCM2009-0003 Conditional Use for a drive-through associated with the restaurant. Specifically, the outdoor dining does not impede the required 5 parking stalls and drive aisle designated to the drive-through.
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	Outdoor music is prohibited per PCMPLNPCM2009-0003.
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)	Complies	The proposed outdoor dining area is under 500 square feet. No additional off-street parking is required for the requested special exception.

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.	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 in an area that is approximately 12' from the closest (north) property line. While looking at alternative locations for the outdoor dining on the site, there is potentially space available along the south property line for outdoor dining, this could mean unsafe conditions if patrons are crossing cars in the drive-through line. The proposed location in front of the restaurant provides a visible and accessible area for employees and management to monitor the patrons of the patio for disturbance. Additionally, Staff is recommending conditions to limit and reduce potential impacts to the abutting and adjacent properties.

ATTACHMENT F: PUBLIC PROCESS AND COMMENTS

Notice of Application to the abutting and adjacent property owners and tenants was mailed on November 25, 2020.

Notice of the Planning Commission Hearing was mailed on April 16, 2021.

Property posted for Planning Commission on April 16, 2021.

Staff received several comments from the neighbor adjacent to the proposal. The comments expressed detailed concern and logs of a nuisance related to the outdoor dining. While many of the comments are related to the prior location of the outdoor dining in the landscape buffer, the neighbor also expressed concern that the new location under the Mayor's Proclamation in front of the restaurant did not improve the situation. The neighbor expressed that they believe there are too many tables and chairs proposed, and that the patio should only extend south of the entrance, among other concerns. A record of those emails is attached.

Staff received one comment in support of the proposal.

Gilmore, Kristina

From: Jordan Kohl [REDACTED]
Sent: Friday, April 16, 2021 11:39 AM
To: Gilmore, Kristina
Subject: (EXTERNAL) Planning Committee Meeting on April 28th, Red Moose Coffee

Hi Kristina,

This is RE: Case number PLNPCM2020-00858.

I saw this case number is on the agenda for the April 28th planning meeting. I won't be able to attend, but I live 3 blocks from the property (Red Moose Coffee Company) and wanted to urge the council to approve the owner's project. Red Moose is a great spot, and I can't imagine why a special exception is needed for a restaurant to build a patio, but please pass on to Councilman Mano that I'd very much like him to vote to approve the special exception.

Thanks and have a great day!

Jordan Kohl
808 E Kensington Ave
SLC, 84105

From: [David](#)
To: [Gilmore, Kristina](#)
Subject: RE: (EXTERNAL) Update: PLNPCM2020-00858
Date: Wednesday, April 21, 2021 10:46:34 AM

Krissy,

we appreciate the update about the table but are livid that this scenario would even be considered. The plan calls for 38, yes 38 chairs in that area. There are 20 chairs between the entrance and the buffer zone. The problem all along with the outdoor seating has been the noise and now it is being proposed to add even more people to the area. There would be almost as many people sitting in the area between the entrance and the buffer as there previously was when the buffer zone was being used.

The people sitting in the current location, between the entrance and buffer are often VERY loud and they continue to sit where ever they want. Again, the main issue is the noise and putting 20 people between the buffer and the entrance, sitting a few inches to several feet from the buffer is not doing anything about the noise. Code 21A.40.065 I. "Outdoor dining shall be located in areas where such use is likely to have the least adverse impacts on adjacent properties. This is very clear is outdoor dining shall be in the area where there will be the least adverse impacts to the adjacent property. The proposed location is actually the area where the MOST adverse impact will occur. There is zero justification for even considering outdoor seating near the adjacent property. Based on the prior and current statements, activities, and use of the outdoor seating it is 100% guaranteed that noise and adverse impacts will continue if seating is permitted in the area between the entrance and the buffer.

The regulations and purpose for Code 21A.40.065 I. are not being followed if seating is allowed in this area. We have been subjected to untold amounts of noise, disturbance, and harassment and there is no reason why this should continue. Moving people a few inches or feet and doubling the number of people is not an option. The report needs to remove seating north of the entrance.

Sincerely,

David and Nancy Davis

On 04/21/2021 9:33 AM Gilmore, Kristina <kristina.gilmore@slcgov.com> wrote:

Hi David,

The tables are 24" square tables. The applicant feels that they will fit because the patio is 'self-serve' and will not have table service. The staff report should be published tomorrow or Friday, and I will send you a link once it is posted.

Thank you,

KRISSY GILMORE, AICP

Principal Planner

Planning Division

DEPARTMENT of COMMUNITY and NEIGHBORHOODS

SALT LAKE CITY CORPORATION

TEL 801-535-7780

CELL 385-214-9714

From: David <[REDACTED]>
Sent: Wednesday, April 14, 2021 2:54 PM
To: Gilmore, Kristina <Kristina.Gilmore@slcgov.com>
Subject: RE: (EXTERNAL) Update: PLNPCM2020-00858

Thank you very much.

Sent from Xfinity Connect Application

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

From: Kristina.Gilmore@slcgov.com
To: dbdavis@comcast.net
Sent: 2021-04-14 2:50:29 PM
Subject: RE: (EXTERNAL) Update: PLNPCM2020-00858

David,

I'm confirming with the applicant on the size of the tables to see if the number is accurate/if they would actually fit.

Thank you,

KRISSY GILMORE, AICP

Principal Planner

Planning Division

DEPARTMENT *of* COMMUNITY *and* NEIGHBORHOODS

SALT LAKE CITY CORPORATION

TEL 801-535-7780

CELL 385-214-9714

From: David <[REDACTED]>
Sent: Wednesday, April 14, 2021 12:47 PM
To: Gilmore, Kristina <Kristina.Gilmore@slcgov.com>
Subject: RE: (EXTERNAL) Update: PLNPCM2020-00858

Krissy,
thank you for the update. We do have a question, that was mentioned previously. The proposal shows a total of 38 chairs with the corresponding tables in the site plan drawing. It is physically impossible to fit that many tables and chairs in that space. It is also a redicules number of people, especially considering the horrible record of intentional disturbance and lack of compliance of the business owner, employees, and customers. Please confirm with us if the number of tables and chairs is accurate and whether or not this high number would be accepted in the report sent to the planning commission.

We can not stress enough the concern about allowing seating between the

property boundary and the business entrance. The current seating has already clearly shown the level of noise and lack of compliance of outdoor seating in this area. It can be resolved now or will have to be dealt with later when the inevitable disturbance and compliance issues occur. Even now, knowing that the circumstances for outdoor seating is being decided, the business owner, employees, and customers make no effort to comply. There are noise issues and/or use of the buffer area on a daily basis. They either do not care if they can have outdoor seating or believe they are untouchable and can do whatever they want. Please reconsider allowing seating north of the business entrance.

Sincerely,
David & Nancy Davis

Sent from Xfinity Connect Application

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

From: Kristina.Gilmore@slcgov.com
To: [REDACTED]
Sent: 2021-04-14 8:33:37 AM
Subject: RE: (EXTERNAL) Update: PLNPCM2020-00858

Hi David,

Thank you for your comments. These are helpful. I've discussed with my manager, and staff will be recommending approval with conditions to the Planning Commission. Your email is very helpful in outlining where conditions are necessary. Similar to a Conditional Use, a Special Exception can be revoked if the conditions of approval are not adhered to. We have the item scheduled for the April 28th Planning Commission meeting that begins at 5:30 PM. The meeting will be held via WebEx, and a link to join the meeting will be generated when the agenda is posted. I am preparing my staff report now, and you will be able to review a copy before the meeting. It will be published next Thursday or Friday.

Please let me know if you have any questions.

Thank you,

KRISSY GILMORE, AICP

Gilmore, Kristina

From: David Davis <[REDACTED]>
Sent: Monday, April 12, 2021 9:00 AM
To: Gilmore, Kristina; Padilla, Antonio
Subject: RE: (EXTERNAL) Update: PLNPCM2020-00858

Krissy,

thank you very much for keeping us informed during this process. Listed below are some comments regarding the proposed plans for the outdoor seating at the Red Moose. Main bullet points are listed followed by more detailed information and comments. This should provide ample information for you and the commission regarding the situation. Please let us know if there are questions or comments.

Sincerely,
David and Nancy Davis

- Confirm the number of tables and chairs in the proposed plan. Appears to be physically impossible and far too many seats even if it is a correct representation.
- Proposed area includes second worst location for adverse impact to adjacent property.
- Special exemption. The benefits should FAR outweigh the adverse impacts to the adjacent property. As drawn this is not the case. "Adverse impacts" would continue.
- We experience 100% of the "adverse impacts on adjacent properties" and 0% of benefits.
- Seating area should not be allowed next to the buffer zone.
- Ongoing use of the buffer area.
- Non compliance by business owner, employees, and customers. Noise, buffer area, other adverse impacts.
- Conditional use of outdoor seating. If not compliant permission should be revoked.
- Solid fence needed due to noise from outdoor seating, drive through, and overall parking lot noise.
- 21A.40.065 I. Adverse impact, 21A.52.060 B. Impairment of property value, 21A.40.065 G. Smoking
- Dogs. No permit but dogs are continuously brought into the seating and buffer zone areas.
- Audio recordings and photos supporting various occurrences are available.
- Business owner has not offered to mitigate the adverse impacts.
- Based on past experience and repeated occurrences one can determine future results. From the previous and ongoing lack of enforcement, lack of concern, and intentional actions by the business owner, employees, and customers it is evident that noise, use of the buffer zone, dogs, smoking/vaping, and other adverse impacts and compliance will continue.

1. Is the drawing accurate regarding the number of tables and chairs shown? We do not believe this many tables and chairs can fit into the area. We also do not believe that this many people should be seated in the area. Site plan shows 38 chairs. This is far too many people, and will most certainly result in high amounts of noise and disturbance.

2. There should be no seating between the adjacent property buffer and the coffee house building entrance. If outdoor seating is permitted it should be south of the coffee house entrance. After the outdoor seating was prohibited from the buffer zone the business moved the seating to an area between the buffer zone and the coffee house main entrance. This has resulted in the placement of chairs and tables ranging from a few inches up to several feet from the buffer zone. The subsequent noise and disturbance from the current seating in the

area north of the coffee house entrance is not acceptable. The level of noise heard from inside of our home and of course in our yard is most certainly an adverse impact.

Basically the site plan does not comply with the requirement 21A.40.065 I. "Outdoor dining shall be located in areas where such use is likely to have the least adverse impacts on adjacent properties." As noted the current seating area is directly adjacent to the former location (buffer zone). Moving people a few inches or feet does not resolve the issue of people talking, laughing, and yelling at full volume. It moves people from the area with the most adverse impact to the area with the second most adverse impact. Seating should be in an area "likely to have the least adverse impacts on adjacent properties" not the most.

3. People have continued to sit and congregate wherever they please. This has resulted in people moving the tables and chairs from the new outdoor seating area back to the buffer zone. This has occurred almost daily. Tables and chairs have also been moved to various locations in the parking lot. On at least one occasion a group of people set up their own folding chairs. They sat in several locations in the buffer zone from lunch time or earlier and did not leave until after 6:00 pm. The employees see the tables and chairs moved to the buffer zone and interact with the customers but do not ask the people to move back to the designated area. Generally they do not move the chairs and tables back to the designated area until closing time or even until the following day. It is abundantly clear that the business owner, employees, and customers have no intention or concern for following the regulations. They have in the past and continue to do what they want, where they want. The unacceptable noise and disturbance continues. The past and current actions are a clear indication of what will happen in the future.

4. If outdoor seating is allowed, it should be done as a conditional permit. There should be very clear, concise requirements with very clear, concise consequences if there is not compliance with the requirements. If the requirements are not followed, the permission for any outdoor seating should be revoked. As noted many times, based on the previous and current lack of enforcement and concern by the business owner, employees, and customers there will not be compliance with the regulations. With such ample amounts of evidence there is no logic or reasoning to believe that the outcome will be any different with the proposed seating design.

5. There should be a solid, ideally a concrete, fence to block the noise and disturbance. A chain-link fence is certainly not suitable for the amount of sound from not only the outdoor seating but also the cars coming and going, the vehicle radios, barking dogs, vehicle alarms, and the drive through noise. The vehicle headlights also shine through our windows morning and night. The solid fence would be even more of a requirement if the seating area includes the space between the buffer and the building entrance.

6. The noise and disturbance is not only annoying and makes it difficult to work from and enjoy our home. It also impacts the value of our home and property. 21A.52.060 B. states: "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."

Loud noise by customers, foul language, harassment, barking dogs, headlights shining on our house morning and night, smoking/vaping, cigarette buttes/food/garbage in our property, people parking too close or actually blocking our driveway, and so forth all diminish and impair the value of our home and property. The outdoor seating, particularly next to the buffer zone results in noise, disturbance, and other adverse impacts to the value of our home and property. The previous and current actions of the business owner, employees, and customers clearly show that there will not be compliance with the regulations and the disturbance will continue.

7. Based on past experience and repeated occurrences one can determine future results. If you hold out your hand and release an apple you know that it will not shoot off to the side or float upward. It always will fall to the ground. The same can be inferred with the outdoor seating of the coffee house. The prior and current actions of the business owner, employees, and customers has clearly shown that noise and disturbance will occur and that there will be a lack of compliance. Even now, with the seating removed from the buffer zone the customers continue to move the tables and chairs into that area. The employees and business owner have done nothing to stop this. The tables and chairs will often be left for hours or even until the following day, after repeated observations by the employees. There is no logic or reason to believe that allowing seating directly adjacent to the buffer zone will not result in adverse impacts. Allowing the seating in that area is no different than believing that an apple will float up into the sky rather than falling to the ground.

8. 21A.40.065 G. "Smoking shall be prohibited within the outdoor dining area and within twenty five feet (25') of the outdoor dining area."

Will smoking/vaping actually be prohibited in the new area? It occurred in the buffer zone (even under no smoking signs) and has continued in the temporary location. Based on the previous and current lack of enforcement and concern by the business owner and employees it is anticipated that smoking/vaping would continue in the proposed seating area.

9. Dogs: The business has never had a permit for dogs, this has been noted multiple times, yet people continue to bring their dogs to the property. Will this continue under the new seating arrangement? Will people bring their dogs into the designated seating area as well as tie them up in the landscape buffer area. The business has supported this by placing water dishes in the buffer area and employees petting the animals and talking with the customers about their dogs. The customers and business have not complied with the regulation.

Based on the previous and current lack of enforcement and concern by the business owner and employees it is anticipated that people would continue to bring their dogs into the proposed seating area as well as the landscaped buffer zone.

10. The overall lack of concern and inaction to mitigate the noise and disturbance by the business owner, employees, and customers has been bad enough. It has been quite another thing when much of the disturbance has been intentional, deliberate, and even mean spirited.

The experience from the comments and actions of the business owner, employees, and customers has been incredibly disheartening. The simple requests to please keep it down was generally met with words of hate, anger, and ridicule. Some of the people seem to genuinely enjoy the harassing behavior. The level of mean spirited and hateful actions and words has been utterly surprising from people that are supposedly educated adults and based on their bumper stickers and the coffee house website profess to believe in being kind to others. It has impacted me at multiple levels and brought much sadness. Many of the people have been enthusiastic and intentional in this hateful and hate filled activities and words. We should not and will not be subjected to this treatment and circumstances. Our home and surroundings should be a place where we feel safe and secure, not a place where we are subjected to intentional and mean spirited hatred and disturbance.

11. It needs to be remembered that my wife and I are the sole recipients of these "adverse impacts on adjacent properties". We have been subjected to ever increasing levels of disturbance and adverse impacts over the years. The business owner, employees, and customers have shown no concern, made zero effort to resolve or minimize the issues, and in many circumstances have been deliberate, intentional, and enthusiastic in mean spirited word and deed. Why would preferential or positive treatment be made in allowing them to

continue with this adverse impact from a new, city sanctioned outdoor seating area. The seating area needs to be in an area that will truly have the "least adverse impacts on adjacent properties". They have done absolutely nothing to merit any consideration or belief that they can be trusted to be a good neighbor. The prior and current actions clearly show who they are and what they will do.

12. Customer and employee comments: When the noise has gotten so loud that we are unable to work or simply relax at home, we have asked people to please keep it down. We do not do this very often because the people can be very mean spirited and angry. We have been told to "be quite", "get used to it, because we will talk as long as we want", "get over it", "go to work", "go to another part of the house", "this is public property", been laughed at, and on more than one occasion told to "move". One person told us that we needed to leave because he "could outlast us". Another person said "we heard you and will take it under consideration" (they and the others continued talking as loud or louder than before). Several people have said "this is a business" or "this is an establishment", so I guess they believe that being at a business means they have the right to talk as loud as they want and harass us knowing that it is disturbing our work and home life. Others have told us to "call the cops".

An employee even said "city ordinance allows us to be as loud as we want" and that I should "mind my own business."

A couple of years ago we installed several security cameras because of a burglary. These cameras also have recorded some of the comments listed above. Let me know if you would like a copy of any comments.

None of this would be considered having "the least adverse impacts on the adjacent property". It's intentional, deliberate, repeated, and easily qualifies as harassment.

NOBODY should be harassed at their own home and property and told that if they don't like it they can move.

From: [David Davis](#)
To: [Gilmore, Kristina](#)
Subject: (EXTERNAL) Update: PLNPCM2020-00858
Date: Thursday, April 1, 2021 10:26:05 PM

Krissy,

we very much appreciate being able to review the site plan. We are still reviewing the plan and compiling comments and will send these to you in the next day or so.

At this time however we need to point out the increasing noise and total lack of compliance with the seating area. In your email it was noted that the report could go to the planning commission the end of April or mid May. The ongoing, absolute lack of compliance needs to be address now. Almost everyday there are people not only making a disturbance but also moving tables and chairs and using the buffer zone. In almost all situations the employees have observed the activities and seating in the buffer zone and/or in the parking lot but do nothing about it. Since there have been so many issues we will just list some examples from the past week or so:

3/26 Continues laughing for 1 1/2 hours (3:00 - 4:30). No kidding, it went on for 90 minutes.

3/27 Four women and their four dogs moved a table and four chairs onto the concrete in the buffer zone directly adjacent to our kitchen window. Lots of barking, loud talking and laughing. After quite some time my wife had to ask them to move into the designated area. They did move but kept up all of the noise for quite a bit longer.

3/27 Another table and chairs was moved into the parking lot area outside of the designated area. Later that day Bob Plumb came by and moved the table and chairs back into the designated area. He also moved a chair from the buffer zone.

3/27 People were talking and laughing so loud that I finally had to ask them to keep it down. They were sitting in the area furthest from the property boundary, fairly close to the business entrance. That's how loud some of these people are, and remember we hear the noise inside of our home through closed windows.

3/28 Table and chairs as well as other chairs in different parts of the buffer zone. Employees saw these multiple times during the day but did not move them back until closing time.

3/29 Guy sitting in outdoor seating vaping for some time. People vaping have been observed several other times.

3/30 Man and woman talking loudly in the designated area until nearly 7:30 pm. Lots of foul language with ample use of the F word. We could hear them clearly inside of our home and they were sitting at the table furthest from the property line. People talk LOUD. It's fairly common that people stay after business hours and talk loudly.

3/31 People sitting and standing in the buffer zone and parking area outside our kitchen window. Not only loud talking but loud talking about vaginas by one of the women.

4/01 Loud talking and people moving in and out of the buffer zone. At approximately 12:45 I went outside to put stuff in the recycle can and noticed three guys in the buffer zone sitting near the building on their own folding chairs. These three guys were there until after 6:00. They spent most of the day in the grassy part of the buffer zone closer to our kitchen window. Their vehicle was there since mid morning so it looks like they may have been there for possibly 8 hours. They were using the electrical

outlet to keep their computer and phones charged while they talked loudly between themselves as well as with other people. There were quite a few others during the day talking and laughing very loudly. We also observed a couple of people sitting in the grassy area across the parking lot near 17th South. They had moved a couple of the chairs from the designated area to that grassy area. This is actually where the outdoor seating should be located. That grassy area and the parking spots would provide ample space and the people will not be in the buffer zone and they would not be a disturbance to the "adjacent property".

The weather is going to be even warmer, record breaking in fact, so we are anticipating even more people making noise and sitting wherever they want. Based on the previous and current lack of enforcement and concern by the business owner and employees it is anticipated the situation will just get worse. We ask that you please make the necessary contacts or measures to enforce the stipulations of the current seating area. We do not plan to be subjected to the ongoing noise and disturbance as well as the continued use of the buffer zone. We have some photos as well as recordings if evidence or examples are needed.

Once again thank you for all of your assistance and concern with this matter.

David & Nancy Davis

From: [David Davis](#)
To: [Gilmore, Kristina](#); [Padilla, Antonio](#)
Subject: RE: (EXTERNAL) Update: PLNPCM2020-00858
Date: Wednesday, March 24, 2021 9:44:06 AM

Krissy,
thank you so much for the update and assistance. Probably the main item to share with the Planning Commission regarding this situation would be that past and current actions are a clear indication of future expectations. The ongoing disturbance and harassment from the coffee house side of the property boundary has been intentional and there has been no desire or effort to resolve the issue by the business, employees, or customers. As such if outdoor seating is allowed it should be in a location where disturbance and harassment to the adjacent property is not possible. A few inches or feet from the prior location is most certainly not the appropriate location. The south side of the property, near 1700 South seems to be much more suitable for all concerned.

Once again, thank you for the update and work on this issue.

David & Nancy Davis

On 03/24/2021 8:53 AM Gilmore, Kristina <kristina.gilmore@slcgov.com> wrote:

David,

Speaking to only the Special Exception, I spoke with the architect Bob hired a few weeks ago. They were still finishing up their plans for a new seating area under the Special Exception. I have not seen the updated plans yet, but I do believe it will be in the location they moved to now. Once I receive the new plan set, it will be sent to Building Services and the Transportation Division for their review. It will also be reviewed against the Special Exception standards, and I will make a recommendation to the Planning Commission. I will follow up with Bob for an update on when I will receive the new plans. If the Mayor's Proclamation expires and they have not received Special Exception approval from the Planning Commission, they will need to close the patio and it will continue to be enforced upon if they do not.

I have saved this email to include as feedback for the Planning Commission, but I will also update you once I receive the new plan set. Please let me know if you have any questions.

Thank you,

KRISSY GILMORE, AICP

Principal Planner

Planning Division

DEPARTMENT *of* COMMUNITY *and* NEIGHBORHOODS

SALT LAKE CITY CORPORATION

TEL 801-535-7780

CELL 385-214-9714

From: David Davis <[REDACTED]>
Sent: Wednesday, March 24, 2021 8:29 AM
To: Padilla, Antonio <Antonio.Padilla@slcgov.com>; Gilmore, Kristina <Kristina.Gilmore@slcgov.com>
Subject: (EXTERNAL) Update: PLNPCM2020-00858

Krissy and Antonio,

we just wanted to check back with both of you regarding the status of the outdoor seating area of the Red Moose coffee house. While removing the tables and chairs from the buffer zone along the property boundary was the right decision and an improvement the disturbance continues. Yelling, laughter, and LOUD talking that could be heard throughout our home from the buffer zone area can still be heard clearly from the new seating area. Moving the seating a few inches has very little impact on the level of disturbance.

People also continue to use the buffer zone, often times moving tables or chairs into the area on a regular basis. The employees see this and interact with the customers but do nothing about it. Customers also walk or stand in the buffer talking with others or on their phone. They also tie up their dogs in the area so we hear talking and barking dogs. I spoke with the property owner, Bob Plumb about the issues. He is planning to restore the landscaping to the buffer zone however in the mean time the business is doing little or nothing about the continued use of the buffer zone nor the overall disturbance.

The main reason for this message is regarding the new seating area. People that often times intentionally, knowingly, and deliberately make noise and cause a disturbance are not impacted by a move of a few inches. The seating has been moved from the absolute worst to the second absolute worst location on the coffee house property. It is still a major source of negative impact to the adjacent property. The coffee house business, employees, and customers have shown no concern or intention of resolving the negative impact. As such, the outdoor seating needs to be in a location where it cannot be a source of negative impact to the adjacent property. Moving the outdoor seating as little as a few inches does not resolve the problem.

Please provide us with an update on the proposed outdoor seating area.

Sincerely,

David & Nancy Davis

Gilmore, Kristina

From: David Davis [REDACTED] >
Sent: Wednesday, February 10, 2021 9:37 AM
To: Padilla, Antonio; Gilmore, Kristina
Cc: Garback, Robert
Subject: RE: (EXTERNAL) Update: PLNPCM2020-00858

Thank you very much. There was a group of guys earlier this morning sitting in the new area talking very loudly and yelling. One of the guys was actually yelling from their truck on the other side of the parking lot to the guys in the seating area. Please require that the seating area be located on the south side of the property. There is no way that outdoor seating anywhere on the north side of their property will not have major "adverse impacts" on the "adjacent property" (our home).

Thank you for copying this to the inspector and for any additional updates.

David & Nancy Davis

On 02/10/2021 9:11 AM Padilla, Antonio <antonio.padilla@slcgov.com> wrote:

Mr. Davis,

I'm copying the assigned inspector, Rob Garback, for review.

Thanks,

Antonio Padilla

Civil Enforcement Manager

BUILDING SERVICES DIVISION

DEPARTMENT *of* COMMUNITY *and* NEIGHBORHOODS

SALT LAKE CITY CORPORATION

TEL 801-535-6042

FAX 801-535-6131

From: David Davis <[REDACTED]>
Sent: Tuesday, February 9, 2021 9:36 PM
To: Padilla, Antonio <Antonio.Padilla@slcgov.com>; Gilmore, Kristina <Kristina.Gilmore@slcgov.com>
Subject: (EXTERNAL) Update: PLNPCM2020-00858

Antonio and Krissy,
we appreciate all of your assistance regarding the noise and harassment issues. Through the GRAMA process we were able to receive a copy of the notice to "Please discontinue the use of outdoor dining in the current location and remove all related furniture." The notice to vacate the landscape buffer area is an improvement and we are very grateful for this first step. We do have a number of questions and concerns regarding the new arrangements.

21A.40.065 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)".

1. The former seating area located in the landscape buffer zone was in the absolute worst location possible, resulting in the the maximum "adverse impacts on adjacent properties". The new outdoor seating area is in the second worst location possible, resulting in the second biggest "adverse impacts on adjacent properties". The new outdoor seating is in the parking lot adjacent to the former location. Some of the seating is mere inches from the former seating.

2. The notice states "Please take any necessary actions to bring your property into compliance with the above referenced code. Compliance must be attained on or before January 26, 2021. Failure to comply will result in the initiation of appropriate legal action." Placing the new seating directly adjacent to the former location does not satisfy the requirement to comply with the reference code regarding "adverse impacts on adjacent properties." It is certainly not a location that "is likely to have the least adverse impacts." As noted, it is in the second worst possible location. Loud talking, laughter, and yelling can still be heard in many parts of our home, even on the opposite side of the interior of the house.

3. The new seating area AND existing concrete patio area in the buffer zone are now facilitating additional places for people to sit, stand, walk, congregate and make noise.

A. People continue to sit on the the concrete pad in the pad buffer zone, either on the concrete or on chairs on the concrete.

B. Sunday, Monday, and Tuesday of this this week, people have been sitting at a table and chairs in two different locations on the concrete pad in the buffer zone. Additional tables and chairs are conveniently stacked in the buffer zone between the coffee house and fence so it is surprising that even more people are not doing this. Today (Tuesday) a couple of people sat at the table in the buffer zone and talked loudly for well over two hours. We can provide photos and sound recording in a separate email.

C. People walk around on the concrete of the buffer zone talking to each other or often on their phones. Either way, the noise can be rather loud and a source of disturbance since they are often walking or standing right next to the fence. The only way to talk closer to our home would be to enter our property.

D. Dogs are also barking and making noise along with the owners. Dos are not even supposed to be there since the restaurant does not have a permit.

4. People are sitting on the curb between the buffer zone and the parking lot. Again, they are only a few inches from the former seating area, so the sound is just as pronounced.

5. The handicapped parking spot is now occupied by the new seating area in the parking lot.

6. The location of the new outdoor seating area makes it more difficult and dangerous for pedestrians and vehicles.

7. The GRAMA request did not include any information regarding the proposed location or any details of the new outdoor seating area. The last time I checked the status of the proposal, available on the Citizen Access Portal, it noted that multiple items were due on 11/24/2020. That date has long passed. How long is this process allowed to go over the due date? Two and a half months past the due date seems to be much too long and is an indication of the lack of concern or seriousness by the business and property owners. Again the question, why are these extensive delays allowed?

8. As long as the the concrete pad is present it will be used, especially when additional tables and chairs are readily available. The concrete pad needs to be removed and the appropriate landscaping and ground cover put into place.

9. This change in outdoor seating should not be done half hearted. It should not only resolve the issue of the landscape buffer but also the overall issue of the noise and harassment. Moving the seating a few inches does not resolve the problem of "Outdoor dining shall be located in areas where such use is likely to have the least adverse impacts on adjacent properties." The track record and statements by the business owner, employee, and many customers have clearly shown that locating the outdoor seating anywhere near the adjacent properties will result in major adverse impacts. We are already being subjected to loud noise and distraction from people in the new area (and people still using the former area). It is abundantly clear what will happen with warmer weather and more people. Only a couple of weeks have passed since the notice and compliance is being ignored. We can assure everyone involved that we will not tolerate a repeat of the previous year. We will not be subjected to the loud noise and disturbance, but even more so the hatred, mean spirited, intentional and often enthusiastic harassment. This is the opportunity to resolve the problem and do it right.

The south side of the the coffee house property along 1700 South includes a landscaped area with a tree as well as several parking stalls, one of which is permanently occupied by the Red Moose van. These areas would accomodate a large number of tables and chairs and offer true sidewalk seating, which is more common for outdoor seating for restaurants. This would also allow for much more efficient and safer parking, seating, and pedestrian and vehicle traffic. And even more clearly would resolve the issue of "adverse impact to the adjacent properties". The customers could enjoy the outdoor seating and talk freely without intentionally or unintentionally causing an "adverse impact on adjacent properties". It's a win-win scenario.

Thank you once again for everything you have done and for your continued assistance. We look forward to the clarification and updates on these and any other items pertaining to this situation.

Sincerely,
David & Nancy Davis

Gilmore, Kristina

From: David Davis <[REDACTED]>
Sent: Thursday, December 10, 2020 10:06 AM
To: Gilmore, Kristina
Subject: (EXTERNAL) Perspective: PLNPCM2020-00858

Krissy,
a perspective on the impact of the outdoor seating area. Imagine sitting at your desk at work or at home if teleworking and there are people sitting at the desks around you that are constantly making noise. They talk loud, laugh, yell, and often bring their dogs which like to bark and whine. Would that impact your ability to work? Well, imagine if you asked them to please keep it down and instead they told you that they can be as loud as they want, that you should be quiet and to mind your own business, that it's public property, to get used to it or get over it, if they laughed at you, talked even louder, or told you to move. How would that impact your ability to work and your general well being?

How about if when the work day ended the same people making noise around your work area followed you home and continued making noise. How about if on weekends when you want to do your household chores in the house or yard and these same people were there making noise and continuing to harass you. What if you just wanted sit and relax in your home or yard to read a book, talk with your family, or just have some peace and quiet, but those same people were there making noise and giving you a bad time. Do you think that would impact your life? Do you think that would be fair or justified? Do you think a city should approve and sanction such activity? Well that is what we go through almost everyday.

Would you allow this to happen to yourself, to your family, to your parents, to friends, or anybody else for that matter? It should not be the case for us or anybody.

That's our perspective and there is no possible way to put a positive spin on the situation.

Sincerely,
David & Nancy Davis

Gilmore, Kristina

From: David Davis [REDACTED] >
Sent: Thursday, December 10, 2020 9:26 AM
To: Gilmore, Kristina
Subject: (EXTERNAL) Photos & Comments: PLNPCM2020-00858
Attachments: DJI_0175.JPG; DJI_0177.JPG; DJI_0149.JPG

Krissy,
enclosed are a few photographs which show the proximity and linear extent of the outdoor seating area to our home. Also enclosed is a photo of the entire coffee house property. If they want an outdoor seating area they can use the grassy area along 1700 South. People often sit there and it is not in the buffer zone with our "adjacent property".

I just wanted to share these photos because as they say "a picture is worth a thousand words."

Thank you,
David Davis

On 12/07/2020 12:26 PM Gilmore, Kristina <kristina.gilmore@slcgov.com> wrote:

David,

Thank you. I will review and will let you know if I have any questions. I am still waiting on additional information from the applicant, so I don't anticipate an administrative decision being made this week. I will keep you informed.

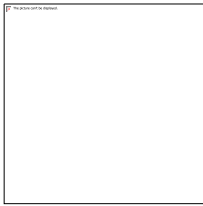
Thank you,

KRISSY GILMORE, AICP

Principal Planner

Planning Division

DEPARTMENT of COMMUNITY *and* NEIGHBORHOODS



From: [David Davis](#)
To: [Gilmore, Kristina](#)
Subject: (EXTERNAL) Comments: PLNPCM2020-00858
Date: Friday, December 4, 2020 5:44:26 PM
Attachments: [Comments - PLNPCM2020-00858.doc](#)

Krissy,

I appreciated your prior comments and information. Enclosed are comments regarding the notice of application PLNPCM2020-00858. The comments are extensive, but then again so are all of the issues with this outdoor seating area. One item not mentioned in the document is in regards to if this were to go to the planning commission. People in a 300 ft radius would be able to comment. The problem with this scenario is that none of these people have any skin in the game. Only my wife and I, nobody else are subjected to the adverse impacts of this outdoor seating area. Over the years and especially this year many people have shown by their actions and rude comments that they are in favor of the outdoor seating area being used for noisy conversations and harassing the household of the adjacent property. They can have a coffee, make noise, tell us "to move" and then go to their home or apartment and experience absolutely none of the adverse impacts. Some of them have been causing the adverse impacts but not a single one is subject to the consequences. Why would they be notified and why would they be able to provide comments. Their comments are already clearly known.

Please review the document and let me know if there are any questions or comments. We have put a lot of effort into trying to clearly and substantially explain the extent of this issue. It is not just about a permit for a patio area and some table and chairs. The noise and harassment has progressively gotten worse over the past few years, particularly this year and nobody seems to think there is a problem. I had no idea that there were so many mean spirited people that believe it's fine to say hateful things and treat people so horribly because they are on the other side of the fence, nor a business that supports or at least allows it to occur or thinks they have no obligation in the matter.

Please consider our plight and review carefully the information. There is actually much more that could be shared but I felt this should be sufficient. As mentioned in the document, we have audio and video to support much of the items if copies are needed. We would also be able to talk on the phone if that would help. [REDACTED]

[REDACTED]
Sincerely,
David & Nancy Davis

Comments Regarding PLNPCM2020-00858

As noted in a previous email, this is not just an issue of whether or not a building permit was granted for putting in a patio and setting up some tables and chairs for outdoor seating. For the homeowners of the adjacent property, us, this is a case of extreme adverse impacts and harassment. As described in the following pages, the noise, and outright harassment made possible by the outdoor seating is impacting our health, our ability to work, and our right to enjoy our home and property. It would be difficult to picture a scenario that is less in compliance or intent of a special exception than the current or proposed outdoor seating.

The definition and intent of the term “Special Exceptions” should be carefully contemplated.

- Special is something that is not common and highly valued. It is “better, greater, or otherwise different from what is usual.”
- Exception is something that is not the norm, that is against regulations, and accepted usage.
- Special Exception is both of these but at a much more rare occurrence or right. It is not something to take lightly and should have overwhelming reason for being granted, I repeat, it should be overwhelming.
- Special exceptions are most certainly not intended for enabling and sanctioning harassment by a business and their customers upon the household of the adjacent property.
- A special exception should come with special obligations and responsibilities. The business and customers in this case however seem to believe they have no responsibility and the right to do whatever they want irregardless of the consequences. They have clear demonstrated and stated that they have no intentions of fulfilling any societal or common decency. Their actions and words are equally clear indicators that the intentional harassment would continue if a special exception were to be provided. The only difference being that it would then be approved and sanctioned by Salt Lake City.

The coffee house already has an exception, the drive through. This was granted when the Red Moose coffee house originally opened. The Scandia Coffee House prior to that time did not have a drive through. It is a source of lots of business for the Red Moose coffee house. We often see 4-5 cars lined up, all the way to 9th East with people waiting in line. It has been a wonderful resource for the business owner and customers, particularly during the COVID pandemic. It can be a source of disturbance fairly often, due to people playing loud music or loud engines, especially when it is very early in the morning. Our main concern at this time however is with the outdoor seating area. It just needs to be pointed out that the coffee house already has a special exception and that the outdoor seating area does not merit an additional special exception.

In this case the buffer between the business and the adjacent property is the standard, the norm, the accepted, and best way of doing things. A buffer is mandated for real and purposeful reasons. A business and residential property are drastically different and there absolutely needs to be a transition area, a buffer zone between the two. These regulations were not just randomly put into place, it has been developed over many years and many locations using best practices and common decency. If ever there was a situation where the buffer zone is not being implemented correctly, it is this case. The immense disturbance, adverse impact, and harassment of the current use of the buffer zone as outdoor seating is abundantly clear. It is not and cannot work not only because of the extreme proximity of the seating area and the home and property of the adjacent property but equally because of the lack of decency and in many cases the enthusiastic and intentional harassment by the customers, the users of the outdoor seating area. The history, words, and actions of the business and customers clearly show how believe the outdoor seating area can be used. It is not and has not been working and should not be continued.

One of the arguments for the outdoor seating is that it is needed for the business to function, particularly during the pandemic. First it should be noted that many people will buy a cup of coffee and then sit there for multiple hours, often talking loudly the whole time. The coffee house gets the benefit of selling a cup of coffee and then we have to listen to them for hours. An interesting cost/benefits ratio to say the least. Well, we also

work from home and the noise and adverse impacts on many occasions makes it impossible for us to do our work. On many occasions we have had to go outside and ask the people to please keep it down, that we work from home and cannot work with the loud noise. The responses have been overwhelmingly negative and mean spirited (see next paragraph). Is the right of people to make noise and harass people more important than our right to work? Is harassment and the overall noise of the outdoor seating area in the buffer zone required and needed for the coffee house to do business? We have to work from home. They have the drive through, take out, some indoor areas, and soon with the COVID vaccine coming will have their full indoor seating. We work from home but do not claim the right to cause the coffee house business and customers anguish and harassment in doing so. We have paid our property taxes for 28 years in a row. This should count for something and should allow us the ability to use and enjoy our home and property with security and tranquility, not intentional harassment and disturbance.

Customer and employee comments:

- When the noise has gotten so loud that we are unable to work or simply relax at home, we have asked people to please keep it down. We do not do this very often because the people can be very mean spirited and angry. We have been told to "be quiet", "get used to it, because we will talk as long as we want", "get over it", "go to work", "go to another part of the house", "this is public property", been laughed at, and on more than one occasion told to "move". One person told us that we needed to leave because he "could outlast us". Another person said "we heard you and will take it under consideration" (they and the others continued talking as loud or louder than before). Several people have said "this is a business" or "this is an establishment", so I guess that believe that being at a business means they have the right to talk as loud as they want and harass us knowing that it is disturbing our work and home life. Others have told us to "call the cops".
- An employee even said "city ordinance allows us to be as loud as we want" and that I should "mind my own business."
- A couple of years ago we installed several security cameras because of a burglary. These cameras also have recorded some of the comments listed above. Let me know if you would like a copy of any comments.
- None of this would be considered having "the least adverse impacts on the adjacent property". It's intentional, deliberate, repeated, and easily qualifies as harassment. Would this be tolerated if it was about our race, ethnicity, or sexual orientation? Why is this tolerated? Harassment is harassment no matter the form.
- NOBODY should be harassed and told that if they don't like it they can move. Multiple people at the city have been made aware of this harassment and still nothing has been done. The time has come to do what is right.

Health issues and impacts:

- I have an autoimmune disease which is heavily impacted by stress. The symptoms of this disease, often initiated by or exacerbated by stress can put me in the hospital or at a minimum require bed rest and missing days of work. The noise and harassment from the people in the outdoor seating area is incredibly stressful. Many days it has been difficult or impossible to concentrate on my work and has impacted my overall health.
- My wife had many days when she also was unable to concentrate on her work. She also has health issues that are greatly impacted by stress. One particularly noisy, harassing day she had what could only be described as a nervous breakdown. She had to take several hours off to escape the noise and regain her composure before being able to resume her work. You can imagine how this also impacted me seeing the impact on her.
- Stress is bad enough when it happens occasionally or when you can do something about it. In this case, the noise and harassment is basically everyday, and can occur from early morning until late at night. We rarely get a break. Basically the only days people are not making noise is if the weather is really bad or the restaurant is closed, which is not very often. And even then people will sometimes sit there when it's closed, or in bad weather, including when it's below freezing. During times when it's quiet it is still difficult to relax because you know that at any time the noise and disturbance can and will return. Every day of the week, whether we are working or just trying to enjoy a relaxing day at home, the outdoor seating area is there and people are making noise or harassing us. We rarely feel safe, secure, or calm in our own yard and home. Constant, uncontrollable

stress can and does cause both physical and mental health problems. We have experienced various levels of impact to our health due to the harassment from the people and circumstances of the outdoor seating area.

- In addition to the stress caused by the noise and harassment, many studies have shown that loud talking, laughter, and yelling can all spread the COVID virus. We are subjected to multiple people doing this throughout the day. With a chain link fence as a "barrier" we are concerned that if we go outside we could be infected with the virus. On a related note, the chairs from the various tables in the outdoor seating area are mere inches from our fence and perhaps one foot between each table. The six foot distance is not generally practiced in the seating area. Most of the people are not wearing masks when not eating or drinking. The whole area is a concern as a source of spreading COVID to us as well as between the customers.

Noise Pollution

- 21A.52.060 Item F. Noise pollution is included. The noise, disturbance, and harassment from the people in the outdoor seating area is certainly a major source of pollution.

- Central air conditioning units are required to be a certain distance from a property boundary due to noise. Why then is it allowed to have people to be located inches from our property line making far more noise than an air conditioning unit?

Dogs: Dogs are often in the outdoor seating area. This occurs either with people sitting there or dogs that are tied up or left in the area while the owner is inside the restaurant. The restaurant supports and enables this by placing one or more water bowls in the outdoor seating area and providing dog biscuits to customers. The dogs often bark and whine, especially if left alone. On quite a few occasions dogs have gotten into fights or acted aggressively, even barking or growling at us through the fence when we are in our own yard. People will also leave their dog(s) in their vehicle where they will bark and whine. All of this can be heard in our yard and in our home causing disturbance and stress. The Red Moose is not listed on the Salt Lake County Health Department website of restaurants approved for dogs. <https://slco.org/health/food-protection/dog-patio/>

Smoking/Vaping:

- The outdoor seating area is on the property boundary and approximately 15 feet from our back door or windows. Utah law states that they must be 25 feet from the business entrance but there appears to be no problem if it is 15 feet from our door or a few inches from our yard.

- On a related note, I have talked with Matt, the business owner several times about the smoking/vaping and even asked him if he could place a no smoking sign on the fence. He said no. I have since learned that smoking is NOT allowed in outdoor dining areas, so it should never have been occurring to begin with. However like many things with the Red Moose, the rules don't matter (dogs, smoking, extension cords, permits, noise, etc.).

- 21A.40.065 Item G states "Smoking shall be prohibited within the outdoor dining area and within twenty five feet (25') of the outdoor dining area."

Extension Cords:

- The Red Moose illuminated sign near the sidewalk/north entrance is powered by an extension cord that runs along the ground, up a tree, and to the pole approximately 4 or 5 feet in the air. It is a safety hazard for people walking in the area and a possible fire hazard.

Outdoor electrical outlets:

- These outlets in the seating area were previously used for lights on the trees. Now however the extension cord for the sign is plugged into one of the outlets. It is also a convenient charging station for homeless people in the area. On many occasions during or outside of business hours I have seen people stop there to charge a phone or other device. They are not customers, but do bring another level of uncertainty to the area. We never know who will be on the other side of the fence, day or night, due to the seating area.

Outdoor area used as a bathroom:

- The seating area, particular between the fence and the north side of the building has on many occasions been used as an encampment for homeless people. It is also used as a bathroom by the homeless or people walking or driving by that need a pit stop. I have heard and seen people using the area for these purposes on many occasions. One morning I was walking to car getting ready to go to work and heard on the other side of the fence a man ask a women if she needed any toilet paper (she said no). Numerous times I have called the police due to the homeless activity. On multiple occasions the people have been found to be in possession of drugs or related paraphernalia. Drug addicts using the bathroom in public locations has been a major cause of spreading hepatitis and other diseases in many cities including Salt Lake. This is not what I want next to my yard.

- I have notified Matt, the business owner on several occasions in the past about the homeless using the area for camping or as a bathroom. The last time he responded I was talking with the police so he left a message on my phone. He said that he had a gate he was going to install to keep people out of the area. He actually told me on three different occasions that he would install the gate in the next few weeks, but it never happened. I even offered to help him with the installation. In his message he said that I should install sprinklers on the fence and get the people wet if they returned. I actually still have a digital copy of that recording if you would like to hear it. Needless to say, I did not install the sprinklers, but that was what he thought was a good solution.

Fence:

- The fence along the property boundary is chain link. As you might imagine, this does not block the sound from the other side. Not only is the noise coming from what should be a buffer zone, but there is basically nothing stopping the sound. We can clearly hear every voice, laugh, phone conversation, metal chair scrapping on the concrete patio, car door slamming, car horn, car alarm, car radio, barking dog, etc. The proximity of the outdoor seating area to the property boundary and our home is certainly not conducive to a chain link fence.

- In the morning and evening we are also subjected to vehicle lights shining in our windows from people in the parking lot. Like other factors, this can be during or outside of business hours. Again, a chain link fence, even with the narrow slats, does not stop the headlights from coming in our windows.

- 21A48.080 D, 3, d States that "A solid fence six feet (6') in height shall be located on the property line along the required landscape buffer unless waived by the Zoning Administrator."

- Properties located next to a major road have solid concrete fences that are 10 to 20 feet tall to block the noise. Our home is 15 feet from a major source of noise but the business only has a 6' chain link fence. This is not a good combination and should not be acceptable.

Communications:

- For the first few years the business owner, Matt and I would talk on the phone and in person on a regular basis. We got along fairly well, I even bought him and Magali some moose and red truck related Christmas decorations one year. However, beginning about two years ago he has stopped answering my calls. I do however know that he receives the calls. On a couple of occasion I called to let him know that one of his employees had left the window by the main entrance open. He did not answer the phone and did not return my call, but the window was closed shortly after my call.

- Over the years I have spoken with him about the noise, the homeless, smoking, and other issues but things did not improve. My wife also spoke with Magali earlier this year regarding the noise, and still, nothing changed. The noise and harassment has continued as loud as ever. They are aware of the disturbance but it has never been a concern to them.

- In many discussions over the years regarding noise, disturbances, smoking, in the outdoor seating area Matt, the business owner has never expressed concern or offered suggestions or willingness to address these problems. The closest would be his recommendation that I install sprinklers on the top of the fence to force the homeless people to leave. Perhaps that is what needs to be done for the noise problem? I believe the comment by his employee that "they can be as loud as they want" is the general communication or message that the business is communicating to us on the adjacent property.

Property value

- 21A.52.060 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."
- Who would want to buy or rent a home located directly adjacent to a source of loud noise and mean spirited, harassing people? Who would want no peace and quite in all corners of their yard and home? Who would want people telling you to "be quiet", that they "can be as loud as they want", and "to move"?
- Of course this source of noise and harassment would "substantially diminish or impair the value of the property." It has already greatly impaired the value to us. We cannot enjoy our own home and yard.

Adverse Impact

- 21A.40.065 I. "Outdoor dining shall be located in areas where such use is likely to have the least adverse impacts on adjacent properties."
- The outdoor seating is indisputably in the location that has the most adverse impact on the adjacent property. The outdoor seating area is comprised of approximately 2/3 of the entire frontage of the property line and is the closest to our home. The entire back and south side of the home has direct line of site/sound to the seating area while the remainder of the home can be impacted indirectly. There is no other location on the entire coffee house property that has such a profound, adverse impact on the adjacent property. It is in the absolute worst location possible.
- The term "likely" could not even be used in this scenario. It is impossible for this outdoor seating to not have adverse impacts to the adjacent property.