



Wayzata Planning Commission

Meeting Agenda

Monday, June 4, 2018
7:00 p.m.

Community Room
600 Rice Street East
Wayzata, Minnesota 55391

1. **Call to Order & Roll Call**
2. **Approval of Agenda**
3. **Consent Agenda**
 - a. Approval of May 21, 2018 Meeting Minutes
 - b. Adoption of Report and Recommendation of Approval of Conditional Use Permit and Variance for Benedict's at 845 Lake St E
 - c. Adoption of Report and Recommendation of Denial of Conditional Use Permit and Variance for Baja Haus at 830 Lake St E
4. **Old Business Items**
 - a. None
5. **Public Hearing Items**
 - a. Right of Way Ordinance
6. **Other Items:**
 - a. Review of Development Activities
 - b. Rescheduling July 2nd Planning Commission Meeting
 - c. Next Meeting is June 18, 2018
7. **Adjournment**

NOTES:

- ¹ Members of the Planning Commission and some staff may gather at the Wayzata Bar and Grill immediately after the meeting for a purely social event. All members of the public are welcome.

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
MAY 21, 2018**

AGENDA ITEM 1. Call to Order and Roll Call

Chair Buchanan called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Plantan, Murray, Young, Buchanan, Iverson, and Flannigan. Absent: Douglas. Director of Planning and Building Jeff Thomson and City Attorney David Schelzel were also present.

AGENDA ITEM 2. Approval of Agenda

Commissioner Flannigan made a motion, seconded by Commissioner Young, to approve the May 21, 2018 agenda as presented. The motion carried unanimously.

AGENDA ITEM 3. Consent Agenda

a.) Approval of May 7, 2018 Meeting Minutes

Commissioner Iverson made a motion, seconded by Commissioner Flannigan, to approve the Consent Agenda as presented. The motion carried unanimously.

AGENDA ITEM 4. Old Business Items:

a.) Benedict's Patio – 845 Lake St E

a. Conditional Use Permit and Variances

Director of Planning and Building Jeff Thomson stated the applicant, Benedict's Morning Heroes, and the property owner, Wayzata Bay West Retail LLC, have submitted a development application to construct and operate an outdoor dining café on the sidewalk adjacent to the restaurant at 845 Lake St E. The development applications includes requests for approval of a conditional use permit and a variance from the distance requirement from residentially-zoned properties for establishments that hold a liquor license. The Planning Commission reviewed the development application and held a public hearing at its May 7, 2018 meeting. At that meeting, the Planning Commission expressed concerns about the internal layout of the patio, number of tables, and safely maintaining pedestrian circulation on the sidewalk. Mr. Thomson noted that since the May 7th meeting, the applicant submitted a revised plan in which the number of tables is reduced from 20 to 11, and which adds planters and ropes to enclose the patio and segregate it from the public walkway. There would be a 6-foot pedestrian walkway between the outside of the planters and the edge of the sidewalk, which exceeds the City's 5-foot minimum requirement. The City sent

1 notices to properties along Shady Lane E regarding the requested conditional use permit and
2 variance since these residential properties are within the 500-foot separation requirement for liquor
3 license holders under the CUP requirements but outside of the 350-foot public notice area for
4 development applications. The City received one public comment in support of the application.
5

6 Commissioner Flannigan asked Mr. Thomson if the Planning Commission could grant the
7 application for a one-year term, and then review it again next year to determine if there are any
8 problems with pedestrian traffic.
9

10 Mr. Thomson explained that the City regulates sidewalk cafes through a conditional use permit. A
11 conditional use permit, when approved, runs with the property as the use meets the conditions
12 specified in the City's CUP ordinance. Once this land use approval is given, a CUP cannot be
13 revoked unless there has been a violation to one of the conditions of approval. He recommended
14 the Planning Commission consider recommending conditions of approval that address the
15 concerns and potential impacts that the sidewalk café could have.
16

17 Commissioner Flannigan asked what the distance was between the patio and the planters that are
18 along the sidewalk.
19

20 Chair Buchanan stated the proposed walkway was 6-feet, and there was additional space from
21 the planting to the curb. He noted that the proposed walkway is larger than the walkway provided
22 at Gianni's or McCormick's sidewalk cafe.
23

24 Chair Buchanan recommended adding a condition that limited the hours of operation for the
25 sidewalk cafe to start time of 8 am.
26

27 Commissioner Flannigan stated he would like to see a one-year review to allow the residents the
28 opportunity to get a feel for the operation, and how it would impact the pedestrian traffic in that
29 area.
30

31 Mr. Thomson suggested adding a condition that the patio could not unreasonably obstruct
32 pedestrian flows, and if it does the City reserves the right to review the pedestrian separation
33 between the enclosure and the edge of the sidewalk.
34

35 There being no further questions for staff or the Applicant, Chair Buchanan asked for a motion
36 on the Application.
37

38 Commissioner Young made a motion, seconded by Commissioner Murray, to direct staff to
39 prepare a draft Planning Commission Report and Recommendation, recommending approval of
40 conditional use permit and variance for a patio at Benedict's located at 845 Lake St E, including
41 the conditions discussed by the Commission. The motion carried unanimously.
42
43

44 **AGENDA ITEM 5. Public Hearing Items:**

45

46 **a.) Benton Harbor – 310Benton Ave N and 1023 Gardner St E**

1 **i. Preliminary and Final Plat Subdivision**
2

3 Chair Buchannan stated that staff had determined that the application is incomplete, and thus the
4 Planning Commission will open the public hearing on the application but continue it the next
5 meeting, when a complete application should be presented.
6

7 Director of Planning and Building Jeff Thomson stated the applicant and property owner, Invest
8 Capital Group, LLC, has submitted a development application to subdivide the properties at 310
9 Benton Ave N and 1023 Gardner St E. The applicant is proposing to subdivide the two existing
10 properties into four single-family residential lots. The existing homes would be demolished and
11 four new homes would be constructed. The applicant has submitted a preliminary plat which
12 shows the proposed lot layout. However, the application does not include several items required
13 by the City's subdivision ordinance, including a grading, drainage and erosion control plan, a
14 utility plan, and a tree preservation plan.
15

16 Applicant's representative, Mr. Mike Sharratt, Sharratt Design, 464 2nd St, Excelsior, stated they
17 are trying to make the best use of the property that is not being utilized. They had been unaware
18 that a concept plan had to be provided. He asked for clarification on what this would look like,
19 since each house would be custom and what they show may not be what is built on the property.
20

21 Mr. Thomson stated the Commission would not be looking for the final house design or footprint
22 for each lot, but rather a general building pad and grading plan for each lot. This allows the
23 Commission to see what impacts the subdivision may have on the surrounding neighborhood. The
24 final plans should be consistent with the general plans that are submitted to the City for approval
25 but the City is aware that there might be some changes to the final design because these would be
26 custom homes.
27

28 Commissioner Iverson asked how large the homes were expected to be.
29

30 Mr. Sharratt stated there would not be basements to these homes and they would be 1-1/2 to 2
31 story homes. He would expect the mass of the buildings to be based on economics. The footprint
32 and driveway would be determined by hardcover.
33

34 Chair Buchannan asked if these properties were difficult to build on.
35

36 Mr. Sharratt stated based on the construction going on across the street, there are likely
37 questionable soils for these properties, which means either there is not adequate bearing capacity
38 or they have organic material.
39

40 Commissioner Flannigan asked what the elevation change would be from the back of the properties
41 to the front of the properties and the highway.
42

43 Mr. Sharratt stated he did not have a topography of the highway at this time, so he would not be
44 able to answer this.
45

1 Commissioner Flannigan asked if there would be something to visually screen the highway and
2 buffer the noise.

3
4 Mr. Sharratt stated that these would be custom homes, and this would be something that would be
5 determined by the home buyer for each lot. He stated that there would not be a sound wall
6 constructed.

7
8 Chair Buchannan asked if the applicant would consider three lots instead of four.

9
10 Mr. Sharratt stated there is a compromise in development approach because of the lot quality, and
11 in order to make it economically viable, they really need to do four lots.

12
13 Chair Buchannan opened the public hearing at 7:28 p.m.

14
15 Alex Hoag, 264 Benton Ave, Wayzata, stated there is not a lot of highway traffic noise because
16 the property is lower than the highway. She expressed concerns about the flow of the water
17 impacting the property. She stated that the City is responsible for the maintenance of the ditches,
18 and she has been talking to staff about this. She is excited about having the new homes in the
19 neighborhood.

20
21 Commissioner Iverson stated it was nice that someone was interested in developing these lots.

22
23 Commissioner Flannigan stated the density and traffic do not appear to be impacted with this
24 development, and four lots do fit in this area.

25
26 Chair Buchannan asked for a motion to continue the public hearing and further consideration of
27 the application until a complete application is submitted.

28
29 Commissioner Young made a motion, seconded by Commissioner Flannigan, to continue the
30 public hearing and further consideration of the application for the Benton Harbor subdivision to
31 the next Planning Commission meeting and request the applicant provide a complete application.
32 The motion carried unanimously.

33
34 **b.) Baja Haus Patio – 830 Lake St E**

35 **i. Conditional Use Permit and Variance**

36
37 Director of Planning and Building Jeff Thomson stated the applicant Baja Haus, and the property
38 owner, Bar Lazy H Three, LLC, have submitted a development application to construct and
39 operate an outdoor dining patio within the parking lot adjacent to the restaurant at 830 Lake St E.
40 The applicant is requesting approval of a conditional use permit for outdoor services or sales as
41 an accessory use and a variance from applicable parking requirements. The conditional use
42 permit standards for outdoor services or sales state that the use may not take up parking space
43 that is required by the zoning ordinance. The proposed patio would occupy two stalls that are
44 needed to meet the minimum parking requirement for the shopping center. The applicant has
45 provided renderings of the proposed patio. The pergola would not be included in the
46 construction, as this had not been approved by the property owner, and revised plans would be

1 submitted by the applicant. The patio would be open during their regular business hours of
2 Monday to Thursday 4 pm to 9 pm and Friday and Saturday from 4 pm to 10 pm. This patio
3 would not be located within the City's right-of-way. The City's parking ordinance requires one
4 parking stall for each 150-square feet of floor area of the shopping center, which is
5 approximately 43,200-square feet. Based on this the property is required to have 259 parking
6 stalls and there are only 164 on-site parking stalls provided. Therefore, the property is non-
7 conforming and does not meet the minimum parking requirements. The City did receive one
8 public comment via email expressing concerns about parking.

9
10 Commissioner Flannigan asked what type of safety measures would be taken because there
11 would be cars passing within 2 to 3 feet of the patio.

12
13 Mr. Thomson stated the patio would be on a platform surrounded by railings, similar to the patio
14 at Gianni's. The patio is directly adjacent to two parking stalls. The property owner has agreed
15 to the removal of only the two parking stalls for the proposed patio.

16
17 Chair Buchannan asked where the lights would be hung since the pergola would not be included.

18
19 Applicant, Billy Tserenbat, 830 Lake Street, Wayzata, stated the lights would be hung from the
20 posts along the patio. The lights would be hooded since the pergola would not be included in the
21 project.

22
23 Chair Buchannan opened the public hearing at 7:41 p.m.

24
25 There being no one wishing to speak on the application, Chair Buchannan closed the public
26 hearing at 7:42 p.m. and opened the discussion to the commissioners.

27
28 Commissioner Plantan expressed concerns about removing two more parking stalls from this
29 property.

30
31 Commissioner Young expressed additional concerns with other restaurants wanting to use their
32 parking lots for patio space, especially in areas that are already deficient in the parking available.

33
34 Chair Iverson stated the Commission received a letter from another business owner on the
35 property, Jim Wessling from Village Meats and Deli, expressing concerns his clients have about
36 the parking issues they experience currently.

37
38 Mr. Tserenbat stated Baja Haus is not open for lunch so that they do not impact Village Meats
39 and Deli's daily clientele and lunch traffic. Each business has two designated parking stalls for
40 quick in and out customers. Baja Haus would be giving up these two stalls.

41
42 Commissioner Iverson stated the increased seating that the patio would provide would also
43 require additional parking stalls, and this requirement would not be met.

44

1 Commissioner Flannigan expressed empathy for Mr. Wessling but stated his concerns were more
2 of a property management issue than a City issue. He expressed concerns for the safety of
3 patrons with having a patio in the parking lot.

4
5 Chair Buchanan agreed with the Commissioners in that this is not a good solution for this
6 property.

7
8 There being no further discussion, Chair Buchanan asked for a motion on the application.

9
10 Commissioner Young made a motion, seconded by Commissioner Iverson, to direct staff to
11 prepare a draft Planning Commission Report and Recommendation recommending denial of the
12 conditional use permit and variance for a patio for Baja House located at 830 Lake St E.

13
14 Commissioner Murray asked if this proposal would be possible if there were a different parking
15 mitigation plan in place, or if the other restaurants in the building agreed to not request patios.

16
17 Chair Buchanan stated precedent of granting approval in this case does not matter because the
18 Commission would not have to approve any subsequent applications.

19
20 Mr. Thomson stated staff had discussed the fee in lieu of parking policy the City has as a
21 possible way to address the parking requirements. This policy allows applicants to use public
22 parking to meet their parking requirements. But there is no guarantee that the City would
23 approve the application, and staff had difficulties in identifying the public facilities that could be
24 used in place of the impacted parking stalls.

25
26 Chair Buchanan called for a vote on the motion. The motion carried unanimously.

27
28
29 **AGENDA ITEM 6. Other Items:**

30
31 **a.) May 15th City Council Meeting Report – Commissioner Plantan**

32
33 Commissioner Plantan provided a report on the May 15, 2018 City Council meeting. She noted
34 that the Council workshop meeting included a presentation by Barry Petit representing the
35 Museum of Minnetonka, of conceptual plans for a new proposed facility to house the Minnehaha
36 steamboat. The Council discussed whether this would be something the City would be interested
37 in having included in the Lake Effect project with Civitas. Topics taken up at the regular meeting
38 included the introduction of two new firefighters, concerns brought forward by a resident regarding
39 developer's tree removal in the City, the approval of the CUP for a fence on Bushaway Road, and
40 the continuation of the public hearing for the vacation of the easement on North Beach Road. The
41 City also approved a permit for the Bash for the Boardwalk event scheduled for June 21 to June
42 24.

43
44 **b.) Review of Development Activities**

45

1 Director of Planning and Building Jeff Thomson stated five development applications have been
2 submitted in the last week, and these will be scheduled during the June and early July Planning
3 Commission meetings. He stated staff would check to see if there would be a quorum present for
4 the Planning Commission meeting scheduled for July 2 or if it would need to be rescheduled.
5
6

7 **c.) Next Meeting is June 4, 2018**
8

9 Director of Planning and Building Thomson noted the next regular meeting of the Planning
10 Commission is scheduled for June 4, 2018 at 7:00 p.m. and would include the Planning
11 Commission Reports for two of the applications reviewed at this evening's meeting.
12

13 Commissioner Flannigan stated he would agree with Commissioner Iverson that it would be
14 beneficial for the City to go to the developments that are occurring in the City, and make sure they
15 are complying with the submitted tree preservation plans. He expressed specific concerns with the
16 project on Central Avenue.
17

18 **AGENDA ITEM 7. Adjournment.**
19

20 There being no further business on the agenda, Chair Buchanan asked for a motion to adjourn.
21

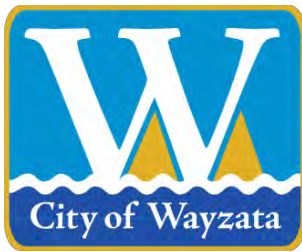
22 Commissioner Flannigan made a motion, seconded by Commissioner Murray, to adjourn the
23 Planning Commission meeting. The motion carried unanimously.
24

25 The Planning Commission meeting was adjourned at 7:58 p.m.
26

27 Respectfully submitted,
28

29 Tina Borg

TimeSaver Off Site Secretarial, Inc.



City of Wayzata Planning Commission Agenda Report

MEETING DATE: June 4, 2018	AGENDA ITEM: 3b
TITLE: Adoption of Report and Recommendation of Approval of Conditional Use Permit and Variance for Benedict's at 845 Lake St E	
PROJECT NAME: Benedict's Patio	
ADDRESS: 845 Lake St E	
PREPARED BY: Jeff Thomson, Director of Planning and Building	

BACKGROUND:

Application Overview

The applicant, Benedict's Morning Heroes, and the property owner, Wayzata Bay West Retail, LLC, have submitted a development application to construct an outdoor dining café on the sidewalk adjacent to the restaurant at 845 Lake St E. The development application requests approval of a conditional use permit and a variance from the distance requirement from residentially-zoned properties.

Planning Commission Review

The Planning Commission reviewed the development application and held a public hearing at its meeting on May 7th. Based on the concerns and feedback from the Planning Commission, the applicant submitted revised plans for the sidewalk café that were reviewed at the May 21st meeting. After discussing the application, the Planning Commission voted six (6) in favor and zero (0) opposed to direct staff to prepare a Report and Recommendation of approval of the development application for adoption at the next Planning Commission meeting.

PLANNING COMMISSION ACTION:

City Staff has drafted the attached Planning Commission Report and Recommendation which recommends approval of the development application. The Report and Recommendation reflects the vote of 6-0, and includes the findings and conditions of approval discussed by the Planning Commission.

ATTACHMENTS:

1. Draft Planning Commission Report and Recommendation



WAYZATA PLANNING COMMISSION

June 4, 2018

REPORT AND RECOMMENDATION OF APPROVAL OF CONDITIONAL USE PERMIT AND VARIANCE FOR OUTDOOR SIDEWALK CAFÉ AT 845 LAKE ST E

SUMMARY OF RECOMMENDATION

1. **Approval*** of CUP for outdoor sidewalk café
2. **Approval*** of Variance from the CUP standard for outdoor sidewalk cafes requiring that the café be at least 500 feet from a residential zoning district if the restaurant has a liquor license

**subject to certain conditions noted in this Report*

REPORT AND RECOMMENDATION

Section 1. BACKGROUND

- 1.1 **Proposed Use.** Benedict's Morning Heroes, and the property owner, Wayzata Bay West Retail, LLC (the "Applicant"), have submitted a development application (the "Application") to construct and operate an outdoor dining café on the sidewalk adjacent to the restaurant at 845 Lake St E (the "Property") as depicted on the plans included as Attachment A to this Report (collectively, the "Proposed Use".)
- 1.2 **Approvals Requested.** The Application requests approval of the following:
 - A. **Conditional Use Permit.** A conditional use permit for an outdoor sidewalk café (the "Sidewalk Café CUP").
 - B. **Variance.** A variance from the conditional use permit standard for outdoor sidewalk cafes that requires that an outdoor sidewalk café be at least 500 feet from a residential zoning district if the restaurant has a liquor license (the "Variance").
- 1.3 **Property.** The street address, property identification number and owner of the Property are:

845 Lake St E	06-117-22-42-0105	Wayzata Bay West Retail, LLC
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- 1.4 Land Use Designations. The Property falls within the following land use districts:

Zoning:	PUD/Planned Unit Development District
Comp plan designation:	Downtown Mixed Use District
Overlay districts:	Shoreland Overlay District

- 1.5 Notice and Public Hearing. Notice of a public hearing on the Application was published in the *Wayzata Sun Sailor* on April 19, 2018. A copy of the notice was mailed to all property owners located with 350 feet of the Property on April 19, 2018. The public hearing was held at the May 7, 2018 Planning Commission meeting.

Section 2. STANDARDS

- 2.1 Outdoor Sidewalk Café Requirements. Under City Code Section 801.90.2 and the other sections referenced therein, outdoor sidewalk cafes are permitted as an accessory conditional use in the PUD District provided the provisions of Section 801.04.2.F of the Zoning Ordinance governing all CUPs are considered and satisfactorily met, as well as the following specific standards for outdoor sidewalk cafes:

A. Functional Requirements.

1. Existing and/or proposed principal use shall conform to existing City zoning regulations.
2. Cafe shall be a minimum distance from a R-1A, R-1, R-2, R-3, and R-4 residential zoning district:
 - (a) 200 foot minimum for non-alcoholic cafes.
 - (b) 500 foot minimum for alcoholic establishments.
3. Cafe area shall be limited to the public right-of-way abutting the lot front as defined by the Zoning Ordinance.
4. Cafe area shall be segregated from through pedestrian circulation by means of temporary fencing, bollards, ropes, plantings, etc. Segregation device(s) must not cause destruction to the sidewalk or other elements within the public right-of-way.
5. Minimum clear passage zone for pedestrians at the perimeter of the café shall be at least five (5) feet without interference from parked motor vehicles, bollards, trees, treegates, curbs, stairways, trash receptacles, street lights, parking meters, etc.

6. Overstory canopy of tree/umbrellas extending into the pedestrian clear passage zone or pedestrian aisle shall have a minimum clearance of seven (7) feet above sidewalk.
7. A minimum of forty-two (42) inches shall be provided within aisles of cafe.
8. Furniture and enclosed perimeter shall be movable to allow for seasonal changes.
9. No storage of furniture on sidewalk shall be allowed between the months of October and April.
10. No outside bar, cooking facility, food preparation or holding area, or wait station shall be established.
11. Any lighting used to illuminate the cafe area shall be so arranged as to reflect the light away from the adjoining property and public streets or alleys, and be in compliance with this Ordinance.
12. No electronically amplified outdoor music, intercom, audio speakers, or other such noise generating devices shall be allowed in the cafe area.

B. Liability Requirements.

1. The property owner, restaurant operator and the City shall enter into a hold harmless agreement, as provided by the City, exempting the City from all liability claims associated with the cafe use.
2. Maintenance of public right-of-way, including landscaping, for which the cafe is located upon shall be the property owner's responsibility.
3. Security of the cafe area shall be the responsibility of the property owner.
4. Property owner shall pick up litter within one hundred (100) feet of the cafe on a daily basis.
5. A special license for outdoor sidewalk cafe shall be renewed no later than November 1st of each year.

C. Aesthetic Requirements.

1. Furniture shall be washable, constructed of metal, plastic or other weather resistant materials and maintained in a safe and sanitary condition.
2. Plant material shall be in containers to allow for movement.
3. Annual/perennial flowers shall be used to enhance streetscape aesthetics.
4. Canopies/umbrellas shall be used for summer sun protection subject to the provisions of this Ordinance.
5. One (1) covered trash receptacle matching appearance of other furniture shall be provided for every eight (8) tables.
6. Design of site furnishings and cafe layout shall be reviewed prior to installation by the City subject to the above provisions.

2.2 CUPs. Under Section 801.04.2.F of the Zoning Ordinance, the Planning Commission and City Council shall consider possible adverse effects of the proposed conditional use. Their judgment shall be based upon (but not limited to) the following factors:

- A. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.
- B. The proposed use's compatibility with present and future uses of the area.
- C. The proposed use's conformity with all performance standards contained in the Zoning Ordinance (i.e., parking, loading, noise, etc.).
- D. The proposed use's effect on the area in which it is proposed.
- E. The proposed use's impact upon property values in the area in which it is developed.
- F. Traffic generated by the proposed use is in relation to capabilities of streets serving the property.
- G. The proposed use's impact upon existing public services and facilities including parks, schools, streets and utilities, and the City's service capacity.

2.3 Variance. The criteria for granting a variance from the standards of the Zoning Ordinance under Sec. 801.05.1.C. are:

- A. Variances shall only be permitted when they are:

- (i) in harmony with the general purposes and intent of the Zoning Ordinance; and
 - (ii) consistent with the Comprehensive Plan.
- B. Variances may be granted when the Applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance.
- C. “Practical difficulties,” as used in connection with the granting of a variance, means that:
 - (i) the property owner’s proposal for the property is reasonable but not permitted by the Zoning Ordinance;
 - (ii) the plight of the landowner is due to circumstances unique to the property, and not created by the landowner; and
 - (iii) the variance, if granted, will not alter the essential character of the locality.
- D. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- E. The City Council shall not permit as a variance any use that is not allowed under the Zoning Ordinance for property in the zoning district where the affected person’s land is located, except the City Council may permit as a variance the temporary use of a one family dwelling as a two family dwelling.
- F. An application for a variance shall set forth reasons that the variance is justified under the criteria of this section in order to make reasonable use of the land, structure or building.

Section 3. FINDINGS

Based on the Application materials, staff reports, public comment presented at the public hearing, and Wayzata’s Zoning Ordinance, the Planning Commission of the City of Wayzata makes the following findings:

- 3.1 Outdoor Sidewalk Café. Provided the Variance is granted, and all of the conditions listed in Section 4.2 of this Report are met and continue to be met, the Proposed Use would meet the functional, liability, and aesthetic requirements for an outdoor sidewalk café, as detailed in Section 2.1 of this Report and the Staff Report on the Application.
- 3.2 CUP Standards. The Proposed Use would meet the provisions of Section 801.04.2.F of the City Code:

- A. The Proposed Use does not contravene any specific policies or provisions of the official City Comprehensive Plan. The Property is guided for single family estate usage, and the Proposed Use will not change that principal use.
- B. The Proposed Use conforms to present and future land uses in the area. The Property is currently guided for downtown mixed uses in the City Comprehensive Plan, and outdoor sidewalk cafes are a conditional accessory use in the applicable Zoning District.
- C. Provided all of the conditions in Section 4.2 of this Report are met, the Proposed Use conforms with all performance standards except that for which a Variance is requested.
- D. The Proposed Use will not have a negative effect on the area, as it will add to the mixture of downtown commercial uses in the area.
- E. The Proposed Use will not have any known impact upon property values in the area.
- F. The Proposed Use will not generate additional traffic that would have a negative impact on the surrounding area.
- G. The Proposed Use will not have a negative impact upon existing public services and facilities including parks, schools, streets, and utilities, and the City's service capacity.

3.3 Variance Standards.

- A. The Variance requested is (i) in harmony with the general purposes and intent of the Zoning Ordinance in that it would be used for an accessory use that is compatible with the principal use and the mixture of downtown commercial uses in the area, and (ii) consistent with the Comprehensive Plan's guidance for the area as noted in this Report.
- B. The Applicant in the narrative of its Application has established that there are practical difficulties in complying with the strict standards of the Zoning Ordinance as they relate to conditional accessory use permit standard for outdoor sidewalk cafes that requires that an outdoor sidewalk café be at least 500 feet from a residential zoning district if the restaurant has a liquor license.
- C. A finding of "Practical difficulties" is supported by the following:
 - (i) The Applicant's proposal for the Property is reasonable in that it reflects the character of the surrounding PUD and downtown commercial areas of mixed uses. In addition, the Proposed Use with

the conditions specified in Section 4.2 of this Report would not have a significant impact on the residential properties within 500 feet of the Proposed Use.

- (ii) The patio would be separated from the residential properties by another commercial property, and the patio would not be visible or audible from the residential properties due to the commercial building between the uses. This is unique to the Property and not common to other properties in the City.
 - (iii) The Variance would not alter the essential character of the locality but will instead improve the mixed use character of this part of downtown.
- D. The practical difficulties necessitating the Variance are not solely economic in nature.
- E. The proposed use for the Property is permitted within the PUD District as a conditional accessory use.
- F. The conditions for granting approval of the Variance listed in Section 4.2 of this Report should be considered by City Council.
- G. The Applicant has provided the reasons that the Variance is justified under applicable criteria in order to make reasonable use of the Property.

Section 4. RECOMMENDATION

4.1 Planning Commission Recommendation. Based on the findings in section 3 of this Report, the Planning Commission recommends **APPROVAL** of the Outdoor Sidewalk Cafe CUP and Variance for the Proposed Use, subject to the following conditions:

- A. SAC Charges. Prior to operating the Outdoor Sidewalk Café, the Applicant must pay the City for any SAC units for the Outdoor Sidewalk Cafe.
- B. Installed and Operated According to Approved Plans. The Outdoor Sidewalk Cafe must be built, operated and maintained in accordance with the plans submitted with the Application and attached to this Report as Attachment A.
- C. Functional, Liability, and Aesthetic Requirements. The Applicant must meet and continue to meet all functional, liability, and aesthetic requirements listed in Section 3 of this Report (other than that for which a variance has been granted), including annual renewal of a special license and execution of the hold harmless agreement provided by the City for the Proposed Use.
- D. Hours of Operation. The Outdoor Sidewalk Café may only be operated from 8:00 a.m. to 6:00 p.m. daily.

- E. Pedestrian Access. The Outdoor Sidewalk Café must not unreasonably obstruct pedestrian traffic on the sidewalk. The City may require revisions to the Outdoor Sidewalk Café to address any impacts to the public's use of the sidewalk.
- F. Recording of Approvals. In accordance with City Code, the Applicant must record the Conditional Use Permit and Variance with the County Recorder within thirty (30) days of the City Council approval date, and as soon as reasonably possible thereafter, furnish the City proof of recording.
- G. Costs. All expenses of the City of Wayzata, including consultant, expert, legal, and planning incurred must be fully reimbursed by the Applicant.

Adopted by the Wayzata Planning Commission this 4th day of June 2018.

Voting For Approval Recommendation:

Plantan, Murray, Young, Buchannan, Iverson, and Flannigan

Voting Against Approval Recommendation:

none

Abstaining:

none

Absent:

Douglas

Attachment A
Plans for Outdoor Sidewalk Cafe
(“Proposed Use”)

DRAFT



10 South Eighth Street
Minneapolis, MN 55402

t 612 339-2257
f 612 349-2930
sheadesign.com

consultant

project title

BENEDICT'S
883 County Rd 16
Wayzata, MN 55391

client

PRESBYTERIAN HOMES
THE PROMENADE OF WAYZATA

seal

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION,
OR REPORT WAS PREPARED BY ME OR UNDER MY
DIRECT SUPERVISION AND THAT I AM A DULY
LICENSED ARCHITECT UNDER THE LAWS OF THE
STATE OF MINNESOTA.

PRINTED NAME David A. Shea III

SIGNATURE

DATE ISSUED

REG. NO.

12982

SIDEWALK SEATING PERMIT 04/02/2018

no. date issued for

project no.

7506.00

date

04/02/2018

drawn

Author

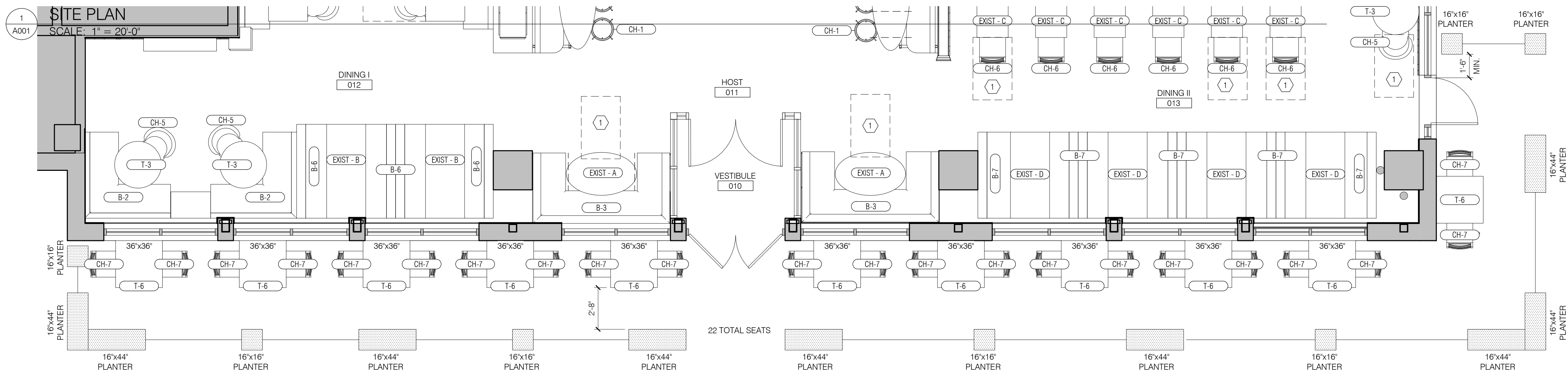
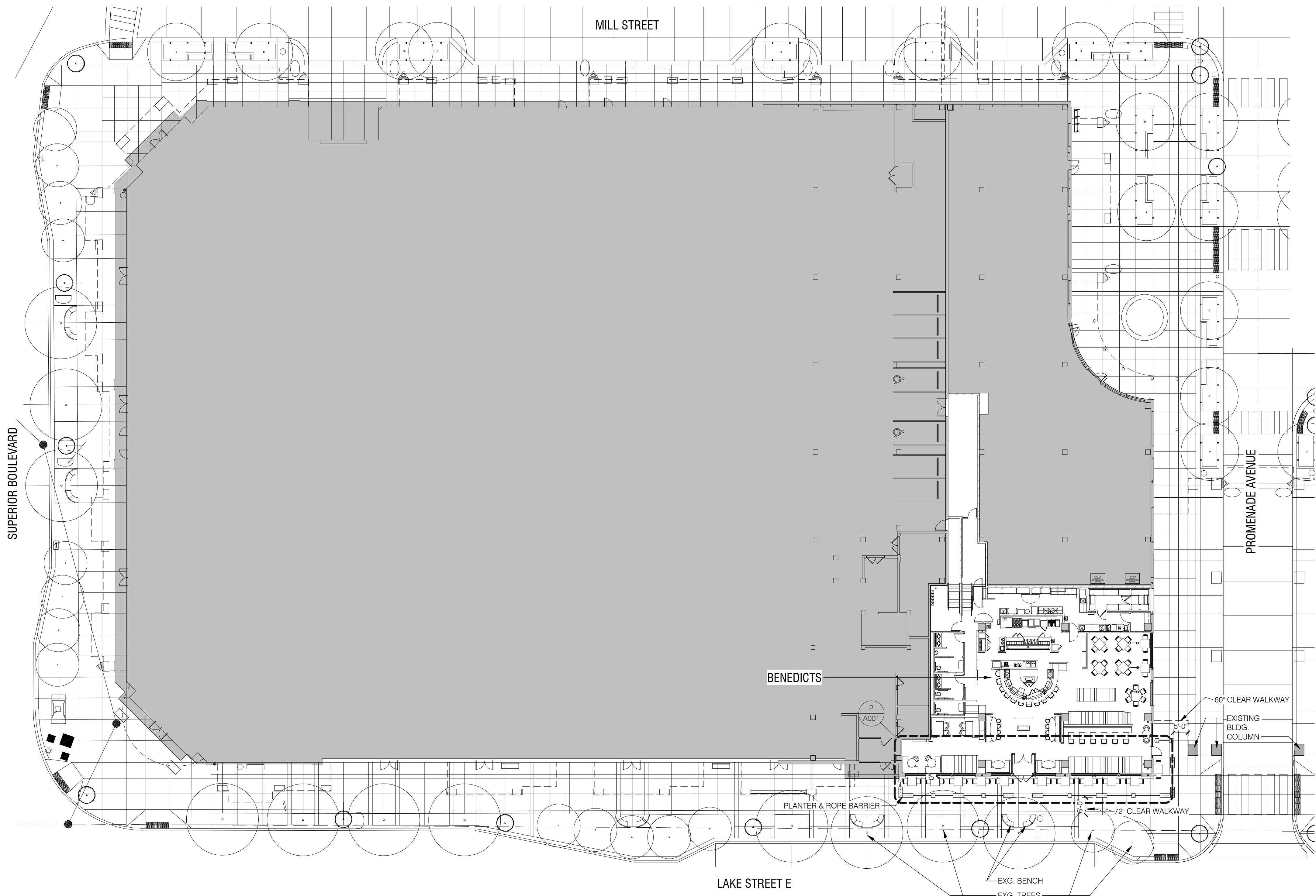
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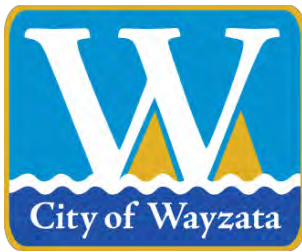
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SITE PLAN WITH PATIO

A001



2 FLOOR PLAN - LEVEL 0.5
SCALE: 1/4\"/>



City of Wayzata Planning Commission Agenda Report

MEETING DATE: June 4, 2018	AGENDA ITEM: 3c
TITLE: Adoption of Report and Recommendation of Denial of Conditional Use Permit and Variance for Baja Haus at 830 Lake St E	
PROJECT NAME: Baja Haus Patio	
ADDRESS: 830 Lake St E	
PREPARED BY: Jeff Thomson, Director of Planning and Building	

BACKGROUND:

Application Overview

The applicant, Baja Haus, and the property owner, Bar Lazy H Three, LLC, have submitted a development application to construct an outdoor dining patio within the parking lot adjacent to the restaurant at 830 Lake St E. The development application requests approval of a conditional use permit and variance for outdoor sales and service.

Planning Commission Review

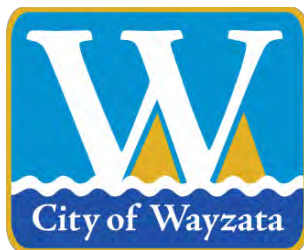
The Planning Commission reviewed the development application and held a public hearing at its meeting on May 21st. After discussing the application, the Planning Commission voted six (6) in favor and zero (0) opposed to direct staff to prepare a Report and Recommendation of denial of the development application for adoption at the next Planning Commission meeting.

PLANNING COMMISSION ACTION:

City Staff has drafted the attached Planning Commission Report and Recommendation which recommends denial of the development application. The Report and Recommendation reflects the vote of 6-0, and includes the findings discussed by the Planning Commission.

ATTACHMENTS:

1. Draft Planning Commission Report and Recommendation



WAYZATA PLANNING COMMISSION

June 4, 2018

REPORT AND RECOMMENDATION OF DENIAL OF CONDITIONAL USE PERMIT AND VARIANCE FOR OUTDOOR SERVICES AND SALES AT 830 LAKE ST E

SUMMARY OF RECOMMENDATION

1. Denial of CUP for outdoor services and sales as an accessory use
 2. Denial of Variance from the CUP parking standard for outdoor services and sales
-

REPORT AND RECOMMENDATION

Section 1. BACKGROUND

- 1.1 Proposed Use. Baja Haus, and the property owner, Bar Lazy H Three, LLC (the "Applicant") have submitted a development application (the "Application") to construct and operate an outdoor dining patio within the parking lot adjacent to the restaurant at 830 Lake St E (the "Property") as depicted on the plans included as Attachment A to this Report (collectively, the "Proposed Use".)
- 1.2 Approvals Requested. The Application requests approval of the following:
 - A. Conditional Use Permit. A conditional use permit for outdoor services and sales (the "Outdoor Services and Sales CUP").
 - B. Variance. A variance from the conditional use permit standard for outdoor services and sales that require the use not take up parking space that is required by the Zoning Ordinance (the "Variance").
- 1.3 Property. The street address, property identification number and owner of the Property are:

830 Lake St E	06-117-22-42-0044	Bar Lazy H Three, LLC
---------------	-------------------	-----------------------

- 1.4 Land Use Designations. The Property falls within the following land use districts:

Zoning:	C-2/Shopping Center District
Comp plan designation:	Downtown Mixed Use District
Overlay districts:	Shoreland Overlay District

- 1.5 Notice and Public Hearing. Notice of a public hearing on the Application was published in the *Wayzata Sun Sailor* on May 3, 2018. A copy of the notice was mailed to all property owners located with 350 feet of the Property on May 3, 2018. The public hearing was held at the May 21, 2018 Planning Commission meeting.

Section 2. STANDARDS

- 2.1 Outdoor Services and Sales Requirements. Under City Code Section 801.76.5.I, open or outdoor services, sale and rental as a principal or accessory use are permitted as a conditional use in the C-2/Shopping Center District provided the provisions of Section 801.04.2.F of the Zoning Ordinance governing all CUPs are considered and satisfactorily met, as well as the following specific standards:
- A. Outside services, sales and equipment rental connected with the principal use is limited to thirty (30) percent of the gross floor area of the principal use. Uses specified as requiring a separate conditional use permit shall be exempted from this provision.
 - B. Outside sales areas are landscaped and fenced or screened from view of neighboring residential uses or an abutting "R" District.
 - C. All lighting shall be hooded and so directed that the light source shall not be visible from the public right-of-way or from neighboring residences.
 - D. Areas are asphalt or concrete surfaced.
 - E. The use does not take up parking space or loading areas as required for conformity to the Zoning Ordinance.
 - F. Additional parking, pursuant to Section 801.20 of this Ordinance is provided for said space.
 - G. The provisions of Section 801.04.2.F of this Ordinance are considered and satisfactorily met.
- 2.2 CUPs. Under Section 801.04.2.F of the Zoning Ordinance, the Planning Commission and City Council shall consider possible adverse effects of the

proposed conditional use. Their judgment shall be based upon (but not limited to) the following factors:

- A. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.
- B. The proposed use's compatibility with present and future uses of the area.
- C. The proposed use's conformity with all performance standards contained in the Zoning Ordinance (i.e., parking, loading, noise, etc.).
- D. The proposed use's effect on the area in which it is proposed.
- E. The proposed use's impact upon property values in the area in which it is developed.
- F. Traffic generated by the proposed use is in relation to capabilities of streets serving the property.
- G. The proposed use's impact upon existing public services and facilities including parks, schools, streets and utilities, and the City's service capacity.

2.3 Variance. The criteria for granting a variance from the standards of the Zoning Ordinance under Sec. 801.05.1.C. are:

- A. Variances shall only be permitted when they are:
 - (i) in harmony with the general purposes and intent of the Zoning Ordinance; and
 - (ii) consistent with the Comprehensive Plan.
- B. Variances may be granted when the Applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance.
- C. "Practical difficulties," as used in connection with the granting of a variance, means that:
 - (i) the property owner's proposal for the property is reasonable but not permitted by the Zoning Ordinance;
 - (ii) the plight of the landowner is due to circumstances unique to the property, and not created by the landowner; and
 - (iii) the variance, if granted, will not alter the essential character of the locality.
- D. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

- E. The City Council shall not permit as a variance any use that is not allowed under the Zoning Ordinance for property in the zoning district where the affected person's land is located, except the City Council may permit as a variance the temporary use of a one family dwelling as a two family dwelling.
- F. An application for a variance shall set forth reasons that the variance is justified under the criteria of this section in order to make reasonable use of the land, structure or building.

Section 3. FINDINGS

Based on the Application materials, staff reports, public comment presented at the public hearing, and Wayzata's Zoning Ordinance, the Planning Commission of the City of Wayzata makes the following findings:

- 3.1 Outdoor Services and Sales Requirements. Without the requested Variance, the Proposed Use would not meet the parking requirements for an outdoor services and sales use in that it would seasonally obstruct parking spaces that are needed to meet the Zoning Ordinance's minimum parking requirement for the Property.
- 3.2 CUP Standards. The Proposed Use would not meet all of the provisions of Section 801.04.2.F of the City Code for CUPs, and adversely affect the area in which it is proposed, namely:
 - A. The Proposed Use will not comply with the parking standards of the Zoning Ordinance.
 - B. The Proposed Use will have a negative effect on the area, in that it will compound existing parking deficiencies and problems for the Property and the other businesses on the Property.
 - C. The Commission is concerned that the area and construction plans for the Proposed Use, and its close proximity to adjacent parking stalls in the parking lot, may present safety issues for patrons of the business on the Property.
- 3.3 Variance Standards.
 - A. The Applicant has not established that there are practical difficulties in complying with the strict standards of the Zoning Ordinance.
 - B. The Applicant has not provided sufficient reasons that the Variance is justified under applicable criteria in order to make reasonable use of the Property.

Section 4. RECOMMENDATION

- 4.1 Planning Commission Recommendation. Based on the findings in section 3 of this Report, the Planning Commission recommends **DENIAL** of the Outdoor Sales and Service CUP and Variance for the Proposed Use.

Adopted by the Wayzata Planning Commission this 4th day of June 2018.

Voting For Denial Recommendation:

Plantan, Murray, Young, Buchannan, Iverson, and Flannigan

Voting Against Denial Recommendation:

none

Abstaining:

none

Absent:

Douglas

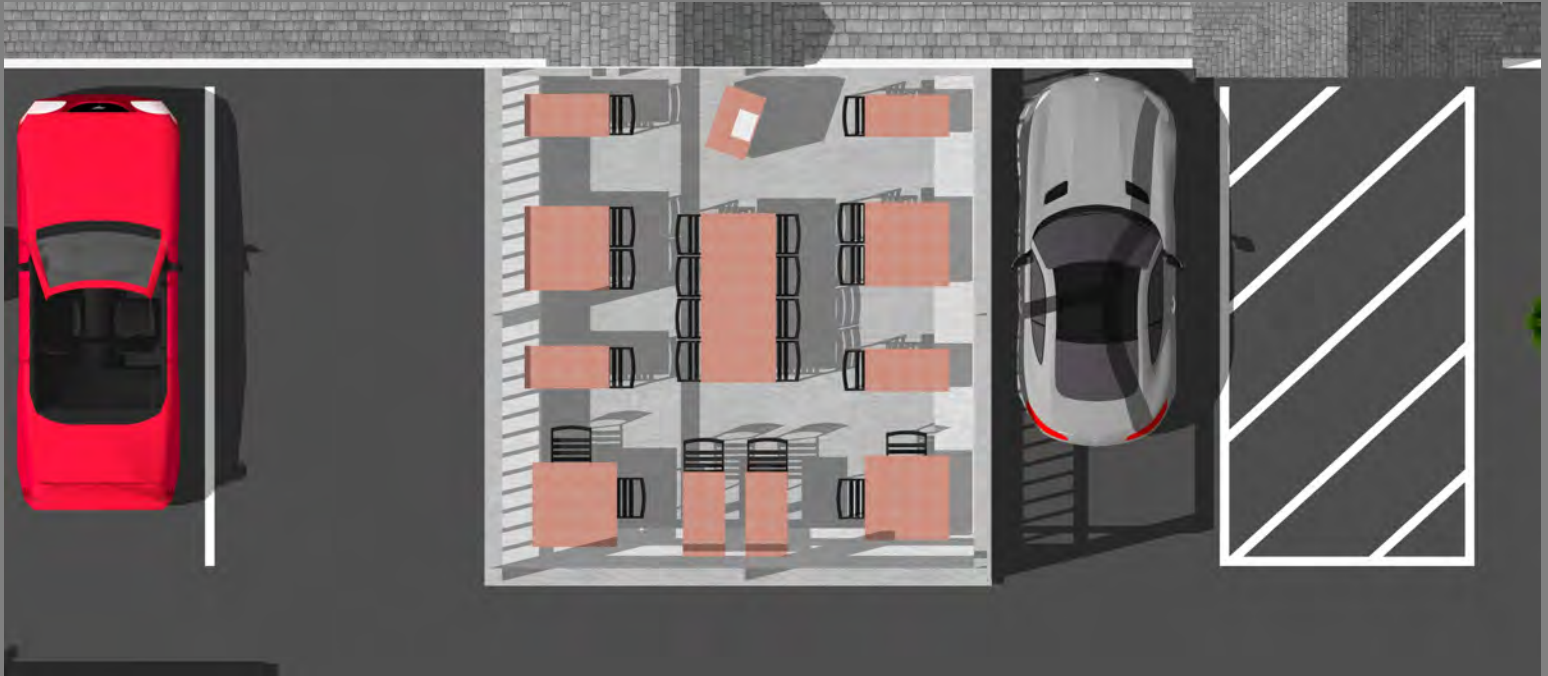
Attachment A
Plans for outdoor dining patio within the parking lot
("Proposed Use")

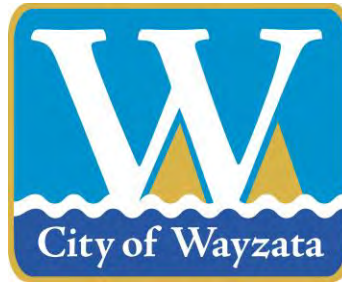
DRAFT











City Council
Mayor Ken Willcox
Dan Koch
Johanna McCarthy
Alex Plechash
Steven Tyacke

City Manager
Jeffrey Dahl

Date: June 1, 2018

To: Planning Commission

From: Jeff Thomson, Director of Planning and Building

Subject: Right of Way Management Ordinance

Introduction

During the 2017 legislative session, the State enacted a new law amending Minnesota's Telecommunications Right of Way User Law to clarify whether wireless providers are treated the same as other telecommunications right of way uses under State law. The law creates a separate streamlined permitting system for placement of small wireless facilities on city-owned structures in rights of way. In order to be consistent with the change in State law, the City needs to amend its Right of Way ordinance.

Proposed Ordinance Amendment

The City Attorney has drafted an amendment to the City Code that incorporates the changes for small wireless facilities located in the City's right of way. There are several other items related to the management of the City's right of way that staff has identified for incorporation into the ordinance amendment. These additional items are based on staff's experience with administering the current ordinance and recent applications:

- Sidewalk Cafes: The City currently regulates outdoor dining patios located on the public sidewalk via the zoning ordinance through the conditional use permit process. City staff thinks that dining patios located on City right of way are best regulated through the right of way ordinance. If regulated through the right of way ordinance, the use can be reviewed and approved annually, rather than granting a land entitlement through approval of a conditional use permit.
- Trees and Landscaping: With the 2015 amendment to the tree ordinance, a permit is no longer required to remove trees on private property. However, the City has the ability to regulate removal and planting of trees and other landscaping located in the City's right of way through issuance of a right of way permit
- Encroachments: The City Code currently regulates encroachments of structures into the right of way. However, the current regulations do not cover

all types of improvements and structures located in the City's right of way, including irrigation systems, walkways, stairs, retaining walls, driveway monuments, and fences.

- Vacation of Right of Way: The City Charter outlines the requirements for vacation of highway, streets and alleys within the City. The Charter also states that, "such vacations may be made only after notice and hearing of affected property owners and upon such further terms and by such procedure as the Council may, by ordinance, prescribe." The City Code does not currently outline the procedure for processing vacation requests.

Action Steps

The Planning Commission should: (1) hold the public hearing on the draft Right of Way Management ordinance; (2) review and discuss the draft Right of Way Management ordinance; (3) continue the public hearing to June 19, 2018 to consider the draft amendments to the Zoning Ordinance which would incorporate the changes to the Right of Way ordinance.

Attachments

Draft Right of Way Management Ordinance

CITY OF WAYZATA
HENNEPIN COUNTY, MINNESOTA

ORDINANCE NO. _____

**AN ORDINANCE TO ADMINISTER AND REGULATE
THE PUBLIC RIGHT-OF-WAY**

THE CITY OF WAYZATA ORDAINS:

Section 32 of Chapter 801 of the Wayzata City Code of Ordinances (Public Property / Rights-of-Way) and Chapter 315 of the Wayzata City Code (Right-of-Way Encroachment) are hereby repealed in their entirety, and are replaced by the following new Chapter 315 of City Code:

CHAPTER 315

RIGHT-OF-WAY MANAGEMENT

315.01 Election to Manage the Public Rights of Way. In accordance with the authority granted to the City under state and federal statutory, administrative, and common law, the City hereby elects, pursuant to this Chapter, to manage rights of way within its jurisdiction.

315.02. Definitions. The definitions included in Minnesota Statute Section 237.162, Minnesota Rules 7810.0100, subps. 1 through 23, and Minnesota Rules 7560.0100 subps. 1 through 12 are hereby adopted by reference and are incorporated into this Chapter as if set out in full.

315.03. Prohibition; Permit Requirement.

- A. **Permit Required.** Except as otherwise provided in this Code, no person may obstruct, encroach upon, encumber, interfere with, or excavate any right of way or install or place facilities in the right of way without first having obtained the appropriate permit from the City.
1. Excavation Permit. An excavation permit is required to excavate that part of the right of way described in such permit and to hinder free and open passage over the specified portion of the right of way by placing facilities or any other encroachment described therein, to the extent and for the duration specified therein.
 2. Obstruction Permit. An obstruction permit is required to hinder free

and open passage over the specified portion of right of way by placing equipment or any other encroachment described therein on the right of way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

3. **Small Wireless Facility Permit.** A small wireless facility permit is required to place a new wireless support structure (collocate) in the right-of-way managed, with the exception that a permit is not required for the installation, placement, maintenance, operation, or replacement of micro wireless facilities suspended on cables strung between existing utility poles in compliance with national safety codes.
4. **Small Wireless Special or Conditional Land Use Permit.** A conditional land use permit issued pursuant to Chapter 801 of this Code is required to install a new wireless support structure in a right-of-way where the underlying district is zoned for single-family residential use or is in a historic district established by federal or state law or city ordinance.
5. **Outdoor Sidewalk Café Permit.** An outdoor sidewalk café permit is required to operate an outdoor sidewalk café in the right-of-way where the underlying zoning district allows an outdoor sidewalk café as a permitted accessory use.
6. **Landscaping Permit.** A right of way landscaping permit is required to plant, trim, replace or otherwise impact any tree or other plantings in the right of way as described in such permit and to hinder free and open passage over the specified portion of the right of way by placing trees or any other plantings described therein.

B. **Exceptions.** The following are exceptions to the permit requirements of this Chapter:

1. Any activities undertaken by the City;
2. The displacement of snow and ice by snow and ice removal operations of the City, County or State;
3. The displacement of snow and ice from privately owned property, provided that such snow and ice are deposited only upon boulevards which are adjacent to and not separated by the traveled portion of the street from the private property from which the snow or ice is removed;

4. Vehicles lawfully parked on streets;
5. Trees and other plantings made by the City, provided that such plantings are approved by the City Forester;
6. Trees and other plantings on private property which overhand the traveled portion of streets or sidewalks, provided that no portion of such tree or planting is less than 16 feet above the traveled portion of the street or less than 8 feet above the sidewalk, provided such does interfere with the use of the right of way, or present a health or safety issue, in the judgment of the City Engineer;
7. Privately owned bus stop benches and street furnishings and publicly owned bus stop shelters placed on streets, sidewalks and boulevards, subject to the written approval of the City Engineer as to location;
8. Newspaper vending machines and U.S. Postal Service drop boxes placed on sidewalks and boulevards, subject to the written approval of the City Engineer as to location;
9. Mailboxes subject to U.S. Postal Service standards, provided that mailboxes which are integral to a structure must be approved in writing by the City Engineer;
10. Wires or cables installed by a public utility

C. **Permit Extensions.** No person may excavate or obstruct the right of way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

D. **Delay Penalty.** In accordance with Minnesota Rule 7819.1000, subp. 3 and notwithstanding any other part of this Chapter, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

E. **Permit Display.** Permits issued under this Chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

315.04. Permit Applications. An application for a permit issued under this

Chapter shall be complete only upon meeting all of the following requirements:

- A. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed location in the right of way, and the following information:
1. Each permittee's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
 2. The name, address and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of Application.
 3. A certificate of insurance or self-insurance:
 - a) Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the City.
 - b) Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:
 - 1) Use and occupancy of the right of way by the permittee, its officers, agents, employees, and permittees, and
 - 2) Placement and use of facilities and equipment in the right of way by the permittee, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;
 - c) Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - d) Requiring that the City be notified thirty (30) days in advance of cancelation of the policy or material modification of a coverage term;

- e) Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the City in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Chapter.
 - 4. A copy of the actual insurance policies.
 - 5. If the applicant is a corporation, a copy of the certificate required to be filed under Minnesota Statutes Section 300.06 as recorded and certified to by the Secretary of State.
 - 6. If applicable, a copy of the order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the applicant is lawfully required to have such certificate from said commission or other state or federal agency.
- B. A Small Wireless Facility Permit applicant may file a consolidated Small Wireless Permit Application to collocate up to 15 small wireless facilities provided that all the small wireless facilities in the application:
- 1. are located within a two-mile radius;
 - 2. consist of substantially similar equipment; and are to be placed on similar types of wireless support structures.
- C. Payment of money due the City for:
- 1. permit fees, estimated restoration costs and other management costs;
 - 2. any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City;
 - 3. franchise fees, or other charges, if applicable;
 - 4. inspection fees, if applicable and if not included in the permit fee.

315.05. Review and Issuance of Permit; Conditions.

- A. **Application Review and Permit Issuance.** All applications for permits under this Chapter shall be reviewed by the Director of Public Works. If the applicant has satisfied the requirements of this Chapter, the City shall

issue a permit.

- B. **Permit Conditions Generally.** The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right of way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minnesota Statutes Section 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minnesota Rules, Chapter 7560.
- C. **Additional Small Wireless Facility Conditions.** In addition to the conditions for permits generally in Sec. 315.05.b, the erection or installation of a wireless support structure, or the collocation of a small wireless facility, in the right of way shall be subject to the following conditions:
1. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
 2. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the City's written authorization, and further provided that an applicant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
 3. No wireless facility may extend more than 10 feet above its wireless support structure.
 4. Where an applicant proposes to install a new wireless support structure in the right-of-way, the City may impose separation requirements between such support structures and any existing wireless support structure or other facilities in and around the right-of-way.
 5. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the City may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
 6. Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of

such structure.

7. The execution of a Small Wireless Facility Collocation Agreement that incorporates any additional terms and conditions mutually agreed upon by the City and the applicant. A small wireless facility collocation agreement is considered public data not on individuals and is accessible to the public under Minnesota Statutes Section 13.03. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the City and applicant.

C. **Additional Outdoor Sidewalk Café Conditions.** In addition to the conditions for permits generally in Sec. 315.05.b, the placement and operation of an outdoor sidewalk café in the right of way, shall be subject to the following conditions:

1. Functional Requirements.
 - a) Existing and/or proposed principal use shall conform to existing City zoning regulations.
 - b) Café shall be a minimum distance from a R-1A, R-1, R-2, R-3, and R-4 residential zoning district:
 - 1) 200 foot minimum for non-alcoholic cafes.
 - 2) 500 foot minimum for alcoholic establishments.
 - c) Café area shall be limited to the public right-of-way abutting the lot front as defined by the Zoning Ordinance.
 - d) Café area shall be segregated from through pedestrian circulation by means of temporary fencing, bollards, ropes, plantings, etc. Segregation device(s) must not cause destruction to the sidewalk or other elements within the public right-of-way.
 - e) Minimum clear passage zone for pedestrians at the perimeter of the café shall be at least five (5) feet without interference from parked motor vehicles, bollards, trees, treeguards, curbs, stairways, trash receptacles, street lights, parking meters, etc.
 - f) Overstory canopy of tree/umbrellas extending into the pedestrian clear passage zone or pedestrian aisle shall have a minimum clearance of seven (7) feet above

sidewalk.

- g) A minimum of forty-two (42) inches shall be provided within aisles of cafe.
- h) Furniture and enclosed perimeter shall be movable to allow for seasonal changes.
- i) No storage of furniture on sidewalk shall be allowed between the months of October and April.
- j) No outside bar, cooking facility, food preparation or holding area, or wait station shall be established.
- k) Any lighting used to illuminate the cafe area shall be so arranged as to reflect the light away from the adjoining property and public streets or alleys, and be in compliance with the Zoning Ordinance.
- l) No electronically amplified outdoor music, intercom, audio speakers, or other such noise generating devices shall be allowed in the cafe area.

2. Liability Requirements.

- a) The property owner, restaurant operator and the City shall enter into a hold harmless agreement, as provided by the City, exempting the City from all liability claims associated with the cafe use.
- b) Maintenance of public right-of-way, including landscaping, for which the cafe is located upon shall be the property owner's responsibility.
- c) Security of the cafe area shall be the responsibility of the property owner.
- d) Property owner shall pick up litter within one hundred (100) feet of the cafe on a daily basis.

3. Aesthetic Requirements.

- a) Furniture shall be washable, constructed of metal, plastic or other weather resistant materials and maintained in a safe and sanitary condition.

- b) Plant material shall be in containers to allow for movement.
- c) Annual/perennial flowers shall be used to enhance streetscape aesthetics.
- d) Canopies/umbrellas shall be used for summer sun protection subject to the provisions of the Zoning Ordinance.
- e) One (1) covered trash receptacle matching appearance of other furniture shall be provided for every eight (8) tables.
- f) Design of site furnishings and cafe layout shall be reviewed prior to installation by the City subject to the above provisions.

D. Payment of Rent.

- 1. For collocations of small wireless facilities, the City can, either in its permit or in a standard collocation agreement, require annual rental payments for the small wireless collocations of up to:
 - a) \$150 per year for rent to collocate on the City structure.
 - b) \$25 per year for maintenance associated with the collocation.
 - c) A monthly fee for electrical service as follows:
 - 1) \$73 per radio node less than or equal to 100 maximum watts;
 - 2) \$182 per radio node over 100 maximum watts; or
 - 3) The actual cost of electricity if the actual cost exceeds the foregoing
- 2. For collocations or placements, other than of small wireless facilities, the City can charge a mutually agreed upon rent reached between the City and the applicant.

- E. Trenchless Excavation.** As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter. 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating as determined by the City.

315.06. Timeline for Action on Permit Applications.

- A. **Denial in General.** The City may deny a permit for failure to meet the requirements and conditions of this Chapter or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.
- B. **Procedure for Denial on Permits other than Small Wireless Facilities Permits.** The denial of a permit must be made in writing and must document the basis for the denial. The City must notify the applicant or right-of-way user in writing within three business days of the decision to deny a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the City and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The City must approve or deny a resubmitted application within 30 days after such application has been received by the City and deemed complete.
- C. **Procedure for Denial on Small Wireless Facilities Permits.** The City shall approve or deny a small wireless facility permit application within 60 days after receiving a complete application, unless the collocation is on a support structure that already qualifies as an existing wireless tower or base station under Section 6409(a), codified at 47 U.S.C. 1455(a), which, in those instances, the City shall approve or deny the small wireless facility permit within 60 days after receiving a complete application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the City fails to approve or deny a complete application within the review periods established in this section.
- D. **Tolling of Deadline on Small Wireless Facility Permit.** The deadline for action on a small wireless facility permit application may be tolled if:
 - 1. The City receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the City may extend the deadline for all such applications by 30 days and shall inform the affected applicant in writing of such extension.
 - 2. The applicant fails to submit all required documents or information and the City provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the City shall have ten days to notify the applicant in writing of any still-missing information.

3. The City and a small wireless facility applicant agree in writing to toll the review period.

315.07. Permit Fees.

- A. **Excavation Permit Fee.** The City shall establish an excavation permit fee in an amount sufficient to recover the following costs:
 1. the City management costs;
 2. degradation costs, if applicable.
- B. **Obstruction and other Permit Fees.** The City shall establish an obstruction and other permit fees in an amount sufficient to recover the City management costs.
- C. **Small Wireless Facility Permit Fee.** The City shall impose a one-time small wireless facility permit fee at the time of approval of the collocation application in an amount sufficient to recover:
 1. management costs;
 2. restoration costs or degradation fee, if applicable;
 3. inspection fees, if applicable;
 4. city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

The City will not impose a small wireless facility permit fee for any of the following activities:

 1. routine maintenance of a small wireless facility;
 2. replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or
 3. installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.
- D. **Payment of Permit Fees.** No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees.

The City may allow applicant to pay such fees within thirty (30) days of billing.

- E. **Non-Refundable.** Permit fees that were paid for a permit that the City has revoked for a breach as stated in Section 315.14 are not refundable.
- F. **Application to Franchises.** For right-of-way users subject to a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise, unless otherwise agreed to in the franchise.
- G. **Rules.** All permit fees shall be established consistent with the provisions of Minnesota Rule 7819.1000, when applicable.

315.08. Right-of-Way Patching and Restoration.

- A. **Timing.** The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable.
- B. **Patch and Restoration.** Permittee shall patch its own work. The City may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
 - 1. **City Restoration.** If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.
 - 2. **Permittee Restoration.** If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.
 - 3. **Degradation Fee In lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

- C. **Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100
- D. **Duty to correct defects.** The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee, upon notification from the City, shall correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable.
- E. **Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

315.09. Permit Limitations.

- A. **Limitation on Area.** A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area:
 - 1. Submit an application for a permit extension and pay any additional fees required thereby; and
 - 2. be granted a new permit or permit extension.
- B. **Obstruction from Small Wireless Facility Work.** City will not require an additional small wireless facility permit fee or require a new collocation agreement for routine maintenance of a small wireless facility, for replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or for installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes. The City may require advance notification, however, of these activities if the work will obstruct the public right-of-way.

- C. **Limitation on Dates.** A right-of-way permit is valid only for the dates specified in the permit. For a Small Wireless Facility Permit, the term of the permit is equal to the length of time that the small wireless facility is in use, unless the permit is revoked under this section. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

315.10. Installation Requirements. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100, when applicable, and other local requirements, when applicable, and in so far as they are not inconsistent with the Minnesota Statutes Sections 237.162 and 237.163.

315.11. Inspection.

- A. **Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules 7819.1300.
- B. **Site Inspection.** Permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- C. **Authority of City.**
1. At the time of inspection, the City may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well-being of the public.
 2. The City may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit pursuant to Sec. 1.215

315.12. Work Done Without a permit.

- A. **Emergency Situations.** Each person with facilities in the right-of-way shall immediately notify the City of any event regarding its facilities that it considers being an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Chapter for the actions it took in response to the emergency.

If the City becomes aware of an emergency regarding facilities, the City will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

- B. **Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this Code, deposit with the City the fees necessary to correct any damage to the right-of-way and comply with all the requirements of this Chapter.

315.13. Supplementary Notification. If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the City of the accurate information as soon as this information is known.

315.14. Revocation of Permit.

- A. **Substantial Breach.** The City reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
1. The violation of any material provision of the right-of-way permit;
 2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 3. Any material misrepresentation of fact in the application for a right-of-way permit;
 4. The failure to complete the work in a timely manner; unless a

permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or

5. The failure to correct, in a timely manner, work that does not conform to a condition of the permit

- B. **Written Notice of Breach.** If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations might be cause for revocation of the permit.
- C. **Procedural Requirements.** If the City decides to revoke the permit, the revocation must be made in writing and must document the basis for the revocation. The City must notify the right-of-way user in writing within three business days of the decision to revoke a permit.
- D. **Reimbursement of City Costs.** If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

315.15. Mapping Data.

- A. **Information Required.** If allowed by statute, each permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100.
- B. **Service Laterals.** Permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the City reasonably requires it. Permittees or their subcontractors shall submit to the City evidence of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals install after December 31, 2005, shall be a condition of any city approval necessary for:
 1. payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and
 2. City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The City shall reasonably determine the appropriate

method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

315.16. Location of Facilities.

- A. **Placement.** Placement, location, and relocation of facilities must comply with the Minnesota Statutes Sections 237.162 and 237.163, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
- B. **Corridors.** The City may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
- C. **Limitation of Space.** Subject to Minnesota Statutes Section 237.163, to protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the City shall have the power to deny permits and the City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

315.17. Damage to Other Facilities. When the City does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the City shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency occasioned by that owner's facilities.

315.18. Right-of-Way Vacation. Vacation of any portion of a City street, highway and alley in the City shall be governed by City Charter and the notice and hearing requirements of Minnesota statutes for vacation of rights-of-way generally. At a minimum, notice of any proposed vacation shall be given to all owners of property (i) abutting the area to be vacated, and (ii) within 350 feet of the area to be vacated. If the

City vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rule 7819.3200.

315.19. Indemnification and Liability. By applying for and accepting a permit under this Chapter, a permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

315.20. Abandoned Facilities. Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the City waives this requirement.

315.21. Appeal. A right-of-way user that: (1) has been denied a permit; (2) has had permit revoked; or (3) believes that the fees imposed are invalid may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

315.22. Reservation of Regulatory and Police Powers. A permittee's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

315.23. Effective Date. This Ordinance will become effective upon passage and publication.

Adopted by the City Council this ____ day of _____, 2018.

Ken Willcox
Mayor

ATTEST:

Jeffrey Dahl
City Manager

First Reading:

Second Reading:
Publication:

DRAFT