

STAFF REPORT

Department of Metropolitan Development Division of Planning Current Planning Section

Case Number: 2022-DV1-063
Address: 114 East 49th Street (4901 North Pennsylvania Street Parcel Address)
(approximate address)
Location: Washington Township, Council District #7
Zoning: C-3 (MSPC)
Petitioner: Patachou, Inc., by Jonathan W. Hughes
Request: Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the enlargement of an outdoor sidewalk cafe area from 777 square feet to 1,142 square feet (not permitted), with a permanent awning.

This petition was automatically continued by a registered neighborhood organization from the January 3, 2023 hearing to the February 7, 2023 hearing.

This petition was automatically continued by the petitioner from the February 7, 2023 hearing to the March 7, 2023 hearing.

RECOMMENDATIONS

Staff **recommends approval** of this request subject to the petitioner's seven submitted commitments.

SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

LAND USE

EXISTING ZONING AND LAND USE

C-3	Compact	Commercial
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SURROUNDING ZONING AND LAND USE

North	D-4	Residential (Single-family dwelling)
South	C-3	Commercial
East	D-4	Residential (Single-family dwelling)
West	C-3/D-2	Commercial

NEIGHBORHOOD PLAN

Meridian Kessler Neighborhood Plan (2016) recommends village mixed-use development.

- ◇ The subject site is within the boundaries of the Meridian Street Preservation District (MSPC), a state-regulated historic district requiring design review of proposed developments prior to issuance of permits or land use approvals by the City of Indianapolis. The site is located in the Secondary Preservation Area, so only variance petitions and rezoning requests are reviewed by the Commission.

(Continued)

STAFF REPORT 2022-DV1-063 (Continued)

- ◇ This request received MSPC approval on November 15, 2022, which was subject to the site plan and commitments submitted November 15, 2022 from Meridian Kessler Neighborhood Association. The amended proposed site plan is substantially similar to that initially proposed with labels provided for additional clarity.
- ◇ This site is currently improved with a 13,444-square foot multi-tenant retail commercial building with the associated parking. The existing sidewalk café and all existing development on site was permitted through 2009-UV1-025. The site was granted a variety of development standards in 2009, including a total of 777 square feet of outdoor seating areas adjacent to the building. Specifically, the site plan indicated a 140-square foot seating area located on the 49th Street frontage of the site. The second area was a 513-square foot seating area located at the northeast corner of the intersection of 49th Street and Pennsylvania Streets. A third, 99-square foot seating area was adjacent to the Pennsylvania Street façade of the building, directly east of the largest outdoor seating area. An Administrative Approval in 2010 (2010-ADM-039) allowed for the rearrangement of the seating areas, but still limited the total outdoor café area to 777 square feet.
- ◇ The site was also the subject of variance approvals in 1945 and 1947. The 1945 and 1947 variances allowed for the construction and subsequent expansion of the parking lot on the D-4 zoned portion of the site.

VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The grant of the request would allow the enlargement of an existing outdoor sidewalk café from 777 square feet to 1,142 square feet with a permanent awning, as approved by the Meridian Street Preservation Commission, per the plans submitted.
- ◇ The site is subject to a zoning violation (VIO22-006968) for encroaching into the right-of-way with additional tables, chairs, and planters without an outdoor seating encroachment license. The petitioner has already removed some of the street furniture and existing landscape planters that were non-compliant. The other remedy for the violation is the grant of a variance which the petitioner is seeking from this Board.
- ◇ The grant of the request would allow for an additional 365 square feet along 49th Street for a total of 514 square feet along 49th Street that will only serve Café Patachou. The remaining, legally established 628 square feet, located at the southeast corner of the site and along the western building façade, will remain unchanged.
- ◇ Outdoor seating at this site is appropriate because this type of outdoor use is common in neighborhood commercial areas. The impact of the proposed outdoor seating area on surrounding uses would be limited because the nearest seating area would provide an approximately 25-foot setback from the property line of the nearest dwelling to the east. That dwelling is also setback approximately 30 feet from the 49th Street right-of-way, while the commercial structure features a three-foot setback. The building wall would therefore visually screen and mitigate noise that might emanate from the outdoor area.

(Continued)

STAFF REPORT 2022-DV1-063 (Continued)

- ◇ Some outdoor seating areas approved by variance in this portion of the city have been enclosed with walls and roofs and even in some cases heated to serve as temporary rooms that can be used throughout the year independent of temperature or weather conditions. Such dining areas are essentially permanent structures that are not required to comply with typical commercial building codes and are generally constructed of non-durable, tent-like materials. Staff once included a condition of approval to prohibit a structural addition to the site of such nature, but the proposed awning would not have the same effect as an enclosed area.
- ◇ The petitioner has proposed a commitment that the seating area within the public right-of-way could be removed within seven days of notification to do so by the Department of Public Works (DPW) or the City Controller. This provision is intended to ensure that outdoor cafés do not interfere with the City's ability to properly maintain its infrastructure.
- ◇ The grant of this variance doesn't absolve the owner of future violations; encroachments beyond what is allowed by this grant—even if they are temporary—are subject to enforcement.
- ◇ The amended site plan calls out existing speakers along the southern building façade. It is common for outdoor seating areas to provide outdoor musical entertainment for the enjoyment of customers. Given the proximity of residential development to the east of the site, such activity could represent an unwarranted intrusion into the quiet enjoyment of those residential properties.
- ◇ The petitioner has submitted a proposed commitment, which would prohibit outdoor live entertainment and conclude the broadcasting of prerecorded music by 8:00 p.m. during the week and 9:00 p.m. on weekends. The condition would also limit the volume of any music so that it would not be audible from the adjacent residential properties. Staff is satisfied that the proposed condition would adequately address the concern about music on the site disturbing the enjoyment of the adjacent residential property.
- ◇ Staff would note that there is some practical difficulty with the location of the existing building being approximately three feet from the right-of-way that previously limited the outdoor seating within the property boundary, where now sidewalk cafés would otherwise be permitted with the updated Ordinance.
- ◇ For these reasons, staff is recommending approval of this request.

GENERAL INFORMATION

THOROUGHFARE PLAN

49th Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a primary collector street, with a 53-foot existing right-of-way and a 56-foot proposed right-of-way.

THOROUGHFARE PLAN

Pennsylvania Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 61-foot existing right-of-way and a 48-foot proposed right-of-way.

(Continued)

STAFF REPORT 2022-DV1-063 (Continued)

SITE PLAN	File-dated December 1, 2022.
AMENDED SITE PLAN	File-dated February 17, 2023.
ELEVATIONS	File-dated December 1, 2022.
PROPOSED COMMITMENTS	File-dated December 1, 2022.
FINDINGS OF FACT	File-dated December 1, 2022.

ZONING HISTORY – SITE

EXISTING VIOLATIONS

1. **VIO22-006968:** 645-571 Encroachment (means an intrusion by an inanimate objection, in, under, above or upon the right-of-way) - outdoor seating including chairs, tables and decorative planter boxes on the sidewalk.

PREVIOUS CASES

2022-MO1-002; Modification of Conditions related to 2009-UV1-025 to terminate the first sentence of Condition One prohibiting the enclosure of the outdoor seating area with roofing or walls in a temporary or permanent manner, **withdrawn**.

2021-MO3-002; 114 East 49th Street (subject site), Modification of Condition One of 2009-UV1-025 to provide for an awning over an existing sidewalk café (outdoor seating area shall not be enclosed by roof or walls, temporary or permanent), **withdrawn**.

2013-UV1-042; 4901 North Pennsylvania Street (subject site), Variance of use of the Commercial Zoning Ordinance to provide for an event center (not permitted), **withdrawn**.

2012-DV1-011; 4901 North Pennsylvania Street (subject site), Variance of development standards of the Commercial Zoning Ordinance to provide for 280 square feet of additional outdoor seating area along 49th Street (777 square feet of outdoor seating area approved by 2009-UV1-025, outdoor seating not permitted in the C-3 district) and extending two feet into the right-of-way of 49th Street (outdoor seating not permitted in the public right-of-way), **denied**.

2010-ADM-039; 4901 North Pennsylvania Street (subject site), Amended plans including the relocation of 149 square feet of outdoor dining along 49th Street.

(Continued)

STAFF REPORT 2022-DV1-063 (Continued)

2009-UV1-025; 4901 North Pennsylvania Street (subject site), Variance of Use of the Dwelling Districts Zoning Ordinance to legally establish a parking lot associated with commercial uses (not permitted) with a zero-foot north side setback and a six-foot east side setback and Variance of Development Standards of the Commercial Zoning Ordinance to:

- a. provide for an approximately 777-square foot outdoor seating area (not permitted), portions of which encroach nine feet into the right-of-way of 49th Street (not permitted)
- b. being located within the clear sight triangle at the intersection of the 49th and Pennsylvania Streets (not permitted),
- c. legally establish a zero-foot front landscape strip along North Pennsylvania Street (minimum ten-foot front landscape strip required),
- d. legally establish a zero-foot front landscape strip along 49th Street (minimum ten-foot front landscape strip required),
- e. provide for a 12,964-square foot integrated center, including a 777-square foot outdoor seating area with 42 off-street parking spaces (minimum 55 off-street parking spaces required),
- f. legally establish ten parking spaces within the right-of-way of Pennsylvania Street (not permitted) with maneuvering area within the right-of-way of Pennsylvania Street (not permitted), being located within the clear-sight triangle (not permitted) at the north and south end of the parking area,
- g. legally establish 22 parking spaces having a usable area of 162square feet and with eighteen parking spaces having a usable area of 139.5 square feet (minimum 180 square feet of usable area required for each parking space),
- h. legally establish two parking spaces reserved for the physically handicapped having dimensions of twelve by eighteen feet (minimum thirteen-foot width and minimum twenty-foot length required),
- i. with six parking spaces along the east property line having deficient maneuvering area (proper maneuvering area required), and
- j. legally establish a minimum 1.5-foot east side transitional yard (minimum twenty-foot east side transitional yard required), with parking having a 1.5-foot east side setback, a trash enclosure having a five-foot east side setback and the existing building having a three-foot east side setback, with deficient landscaping (not permitted), **granted with seven conditions.**

47-V-256; 4917-4921 North Pennsylvania Street, requested a variance of use to provide for the expansion of a commercial parking lot, **granted, subject to the installation of landscaping and screening to the north and east.**

45-V-209; 4917-4921 North Pennsylvania Street, requested a variance of use to provide for a commercial parking lot on the southern 50 feet of the property, with the remainder of the lot to be landscaped, **granted.**

37-V-145; 4913-4919 North Pennsylvania Street, requested a variance of use to provide for the erection of a retail building, **denied.**

32-V-94; 4915-4921 North Pennsylvania Street, requested a variance of use to provide for the erection a retail building, **denied.**

(Continued)

STAFF REPORT 2022-DV1-063 (Continued)

ZONING HISTORY – VICINITY

2009-DV1-040; 4838 North Pennsylvania Street (southwest of site), Variance of development Standards of the Commercial Zoning Ordinance, to provide for the construction of a 3,018-square foot greenhouse addition and a 503-square foot deck with a zero-foot setback from 49th Street, resulting in an accessory use area of 54.2% of the primary structure, with a zero-foot landscape strip along 49th Street and two parking spaced within the required setback, with reduced off-street parking provided, **granted**.

2000-DV1-012; 111 East 49th Street (south of site), Variance of development standards of the Commercial Zoning Ordinance to provide for the carry-out sales of specialty wines and beer for an existing catering business, within seven feet of a protected district, **granted**.

97-Z-12 / 97-CV-1; 4930 North Pennsylvania Street (west of site), requested a rezoning of 0.722 acre, being in the D-2 District, to the C-3C classification, to provide for the development of a neighborhood retail center, and variances of development standards to provide for reduced front, rear and side transitional yards, **approved**.

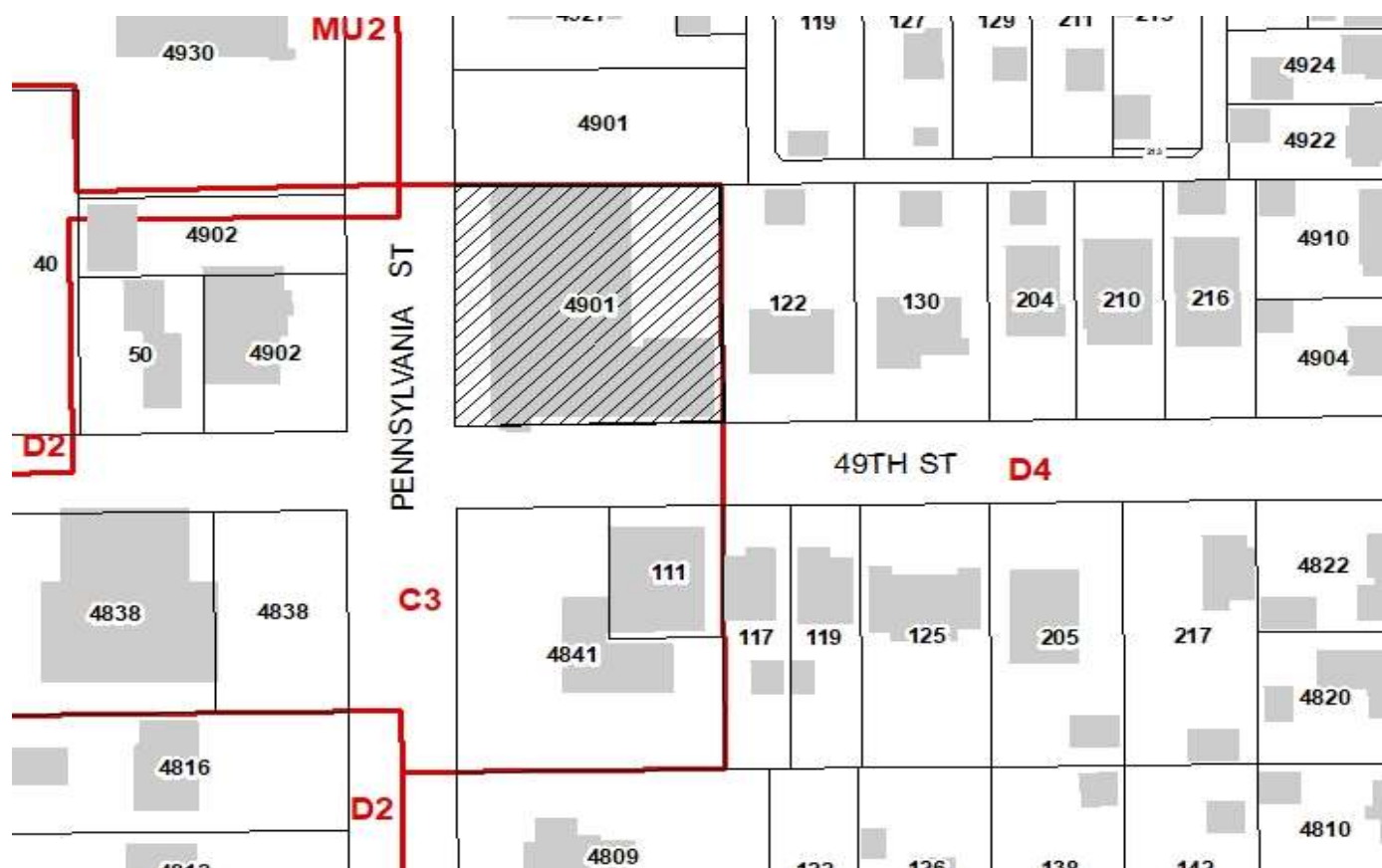
94-HOV-93; 4838 North Pennsylvania Street (southwest of site), Variance of development standards of the Commercial Zoning Ordinance, to provide for the construction of a 6,500-square foot building with 19 parking spaces provided (minimum 33 spaces required) and an outdoor storage area for seasonal items such as flowers, plants, garden supplies and Christmas trees (outdoor storage/display not permitted) with outdoor storage area being zero feet from East 49th Street, **granted**.

93-V1-112; 115 East 49th Street (south of site), Variance of development standards of the Commercial Zoning Ordinance to permit a restaurant with carryout within 100 feet of a residential district (not permitted), without the required number of off-street parking spaces, **granted**.

93-V1-73; 4930 North Pennsylvania Street, (west of site), Variance of development standards of the Dwelling Districts Zoning Ordinance to provide for a ground sign, 4 feet by 8 feet, in the front yard (not permitted), **granted**.

91-V2-59; 4841 North Pennsylvania Street (south of site), Variance of development standards of the Sign Regulations of Marion County to permit the relocation of a pole sign 5 feet from the right-of-way of Pennsylvania Street and 49th Street (15 foot setback required from each right-of-way) with gasoline pricing panels and information about available service (principle identification only, permitted) and to legally establish an existing 44 x 70-inch sign on a light fixture on Pennsylvania Street and a variance of development standards of the Commercial Zoning Ordinance to permit the outdoor display/storage of tires, **granted**.

2022-DV1-063; Location Map



2022-DV1-063; Aerial Map



A1

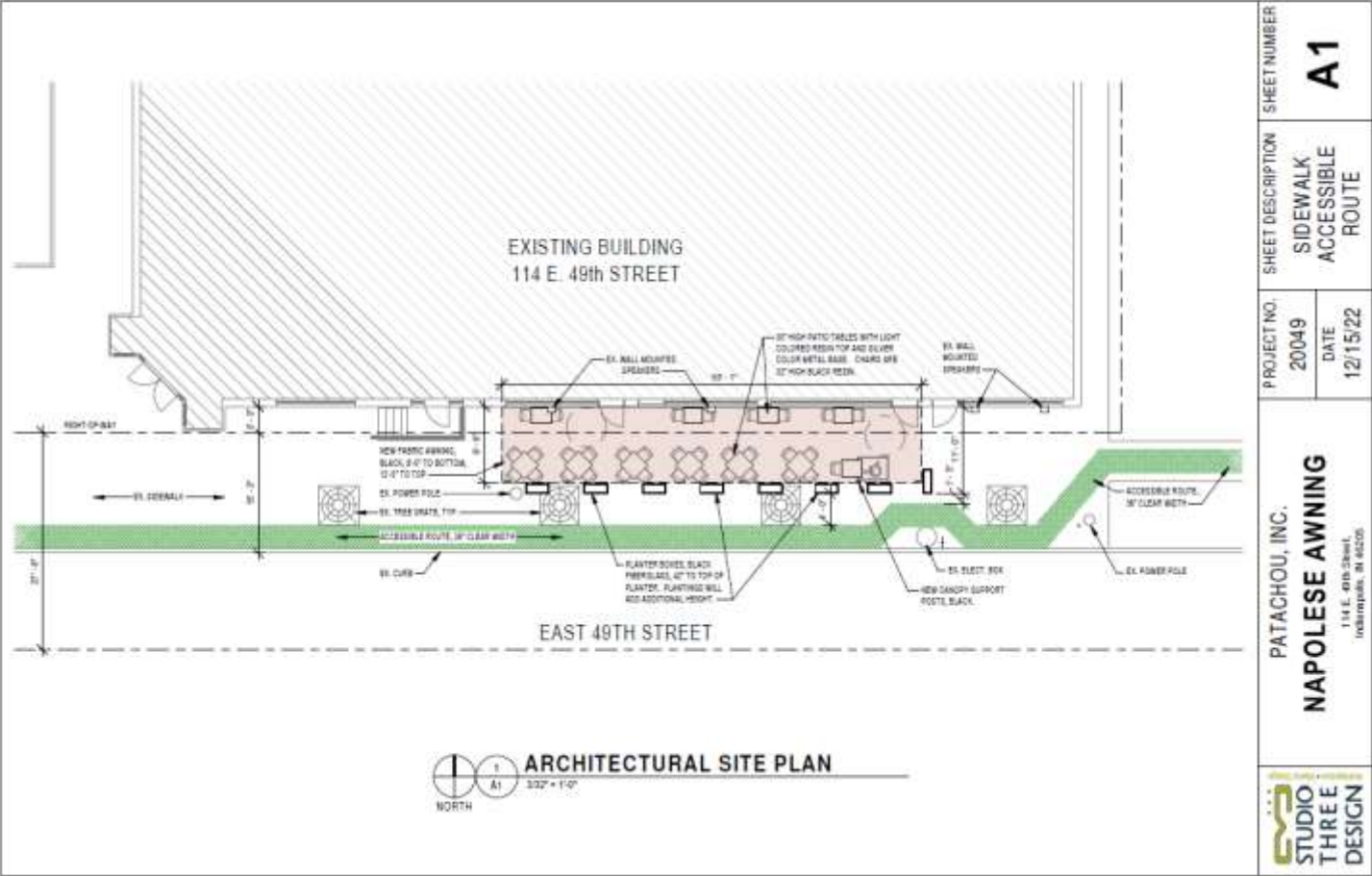
**SIDEWALK
ACCESSIBLE
ROUTE**

PROJECT NO.	20049
DATE	11/10/22

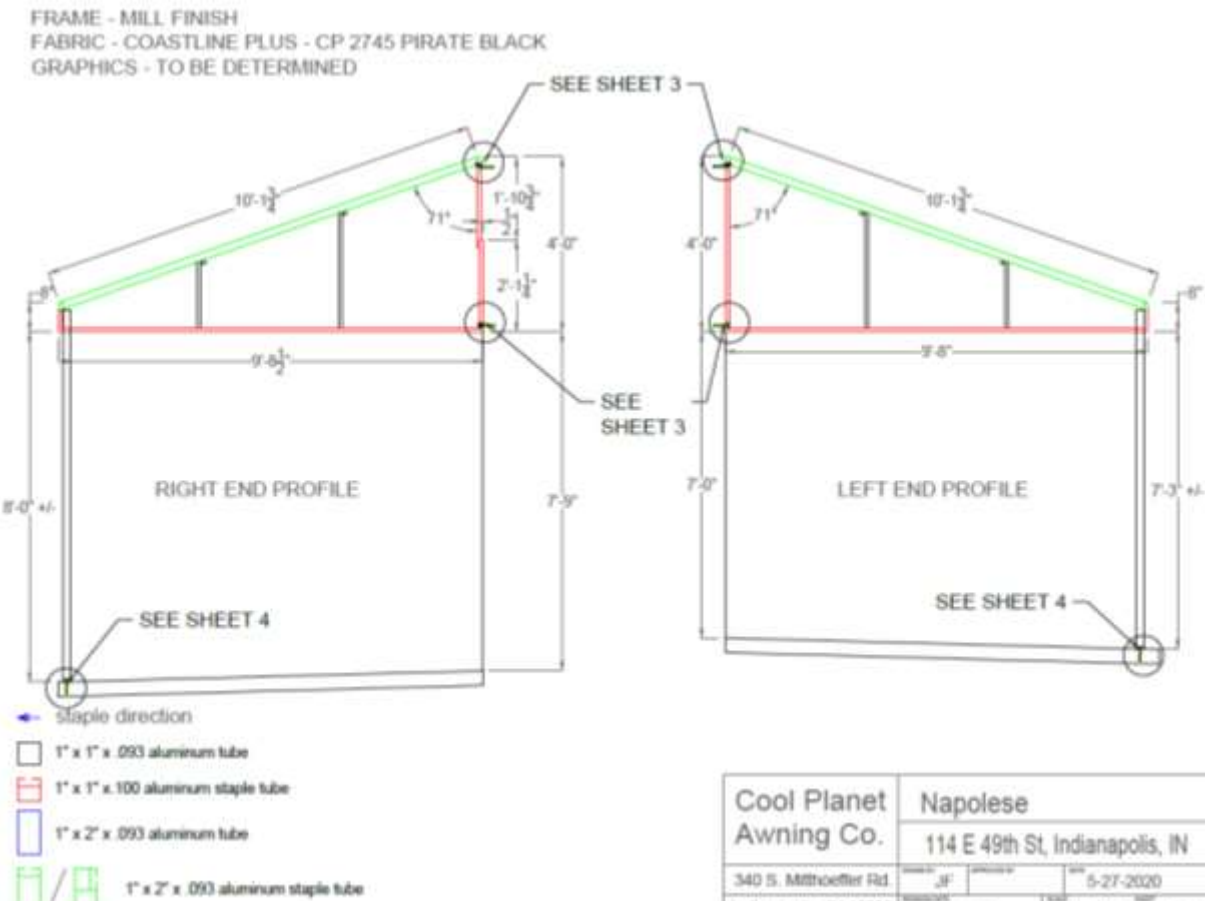
PATACHOU, INC.
NAPOLESE AWNING
114 E. 48th Street,
Indianapolis, IN 46205



STUDIO
THREE
DESIGN

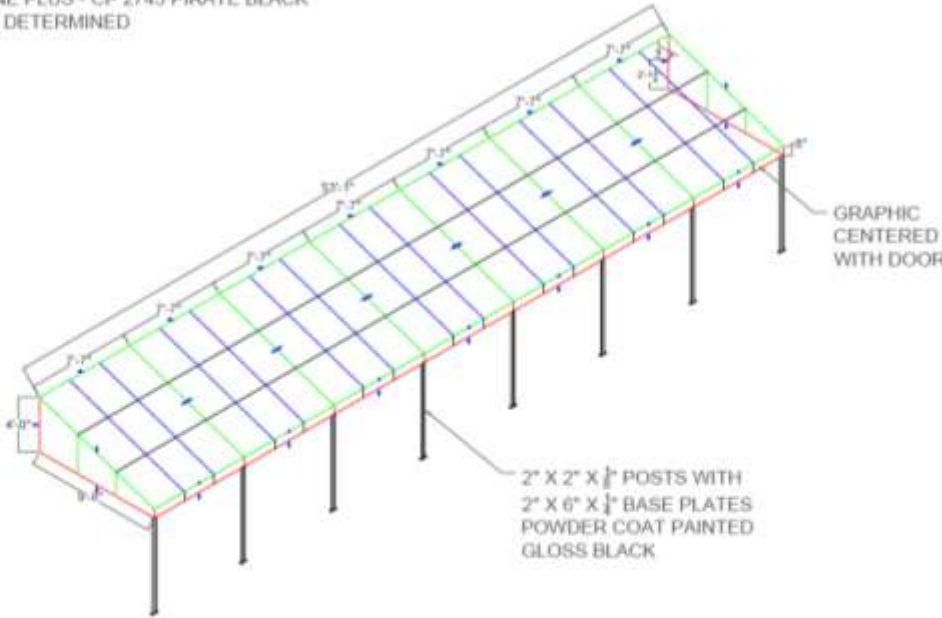


2022-DV1-063; Elevations



Cool Planet Awning Co.	Napolese		
	114 E 49th St, Indianapolis, IN		
340 S. Mitthoeffer Rd.	JF	5-27-2020	
Indianapolis, IN 46229	6-26-2020	3/8" x 1'-0"	1 of 4
SOUTH PATIO CANOPY			

FRAME - MILL FINISH
FABRIC - COASTLINE PLUS - CP 2745 PIRATE BLACK
GRAPHICS - TO BE DETERMINED



Cool Planet Awning Co.	Napolese		
	114 E 49th St, Indianapolis, IN		
340 S. Mitthoeffer Rd.	JF	5-27-2020	
Indianapolis, IN 46229	6-26-2020	1/8" x 1'-0"	2 of 4

2022-DV1-063; Proposed Elevation Renderings



Proposed awning.



View of the building façade today.

2022-DV1-063; Proposed Elevation Renderings (Continued)





MERIDIAN STREET PRESERVATION COMMISSION

In the matter of an application filed by
Patachou, Inc.
for a Prior Approval of a Variance for the
property located at 114 E. 49th Street

**FINAL ORDER GRANTING PRIOR
APPROVAL OF A VARIANCE
#V-MSPC 22-12**

The Meridian Street Preservation Commission, at a meeting held at 4:00 p.m. on November 15, 2022, in the second floor conference room of the Meridian Street United Methodist Church at 5500 N. Meridian Street, and heard evidence and considered an application for a Prior Approval of a Variance filed by Patachou, Inc., for improvements to be made at the property located at 114 E. 49th Street.

Being duly advised in the premises, the Commission, by a vote of 7-0 of its seven (7) members present and voting AYE: (Norman, Fujawa, Hess, Welling, Colby, Vanderstel, Bennett), NAY: (None), ABSTAIN: (None) finds that:

1. The Commission has jurisdiction of this matter under Indiana Code 36-7-11.2-61.
2. The Certificate of Appropriateness requested approval for the:
 - Enlarge outdoor sidewalk café area from 777 sf. to 1142 sf. (addition of 365 sf.)
 - Construct a permanent awning to cover the enlarged outdoor seating area.
3. Such improvements shall be per plans on file with the Commission, except as amended below.
4. Said improvement is appropriate to the preservation of the area comprised of Meridian Street and bordering properties and complies with the architectural and construction standards in said area.
5. The Certificate of Appropriateness requested by the applicant should be **GRANTED**, with the following commitment(s): Per the site plan and commitments submitted 11.15.22.

*It is, therefore, ORDERED AND DECREED by the Meridian Street Preservation Commission that the Certificate of Appropriateness for the aforesaid construction is hereby **GRANTED**, to be evidenced solely by this Final Order. This Final Order must be acted upon within 2 years of the hearing date of the Meridian Street Preservation Commission and all aspects must be completed in whole.*

Shannon Norman
Shannon Norman, Chair

November 21, 2022
Date

2022-UV1-029; MSPC Approval Letter and MKNA Support (Continued)



October 29th, 2022

Ms. Shannon Norman
Department of Metropolitan Development
200 E. Washington Street
Indianapolis, IN 46204

Re: Patachou Inc./Napolese/Bar One Fourteen – 114 East 49th Street
VMSPC-22-12

Ms. Norman,

The Meridian Kessler Neighborhood Association Land Use Committee met with the petitioner to discuss a petition to allow for an expansion of an existing sidewalk café to 1,144 square feet and permanent awning structure. The subject property is zoned C-4, and is a multi-tenant commercial building within the Secondary District of the Meridian Street Preservation District. It has been noted that MSPC is seeking MKNA input ahead of their hearing on November 15, 2022.

At the presentation, the petitioner presented site plans, photography of the existing structure, and drawings of the planned awning. It was noted by the MKNA Land Use Committee that the current use of the seating area in front of Napolese/Bar One Fourteen has “organically” grown over time and has taken away the public accessible route to the east nearly completely save for approximately 18” of sidewalk.

The MKNA Land Use Committee reviewed the petition as submitted, and there is not enough information shown on the site plan or elevations to fully confirm the requests. We believe that at least two, and potentially three, variances are required under 743 Article III Section 06.HH - Sidewalk Café.

- Item #5 under the aforementioned section indicating that "a sidewalk cafe enclosed by a barrier cannot be within at least 8' of any standpipe, hydrant, crosswalk, driveway, alleyway, access ramp, parking meter, landscape bed, street tree, sign post, utility pole, or similar obstacle. In this case, street trees and a utility cabinet for the BlueIndy service are within this 8' boundary.
- Item #6: the depth of the sidewalk cafe as enclosed cannot be greater than 50% of the overall depth of the right of way extending from the edge of pavement to the lot line. As submitted, there are not enough dimensions able to confirm this either way.
- Item #7: in no instance shall the width of the sidewalk available for use outside the sidewalk cafe area be less than 8' in the CBD districts and 5' in the Commercial and MU districts (5' minimum applies in this instance). It appears that the street trees measured from the tree grate may not comply. Currently the use of the planters framing the sidewalk café has taken out the accessible route and is in violation of city code; this will be remediated with this Petition.

The LUC considered the existing conditions, impact to the community, and scrutinized the petition carefully to ensure the response was appropriate. LUC unanimously voted to support the petition with conditions as follows and have received full support from the MKNA Board.

- the site plan needs revised to show accurate site conditions, including dimensions as required from the edge of pavement and right-of-way, full extent of the enclosure (outside edge of planters, which lay beyond the footprint of the awning), and additional labels as necessary indicating dimensions to all obstructions.
- exterior elevations are required of the awning on all 3 sides to indicate which, if any, sides are to ever receive clear vinyl panels. MKNA would not support fully enclosing the awning due to life safety and fire codes that would require the building to be fully sprinkled per Indiana Building Code section 903.2.1.2.

2022-UV1-029; MSPC Approval Letter and MKNA Support

- Application and Findings of Fact would need to be revised to cite the correct section as well as the items under that section that a variance is required.
- Confirm that the awning will not affect the street trees. As it looks that the bottom 2' or more would need to be cropped. An arborist should be consulted.
- Site plan as submitted shows planters outside the boundary of the awning. As in the ordinance, the "enclosure" of the patio is the mechanism by which the area is being enclosed. In this case, the outside face of the planters are the boundary and the plans should reflect that.
- MKNA is not requiring an amended petition to be presented to the Land Use Committee, but should be amended ahead of the MSPC Hearing

Sincerely,

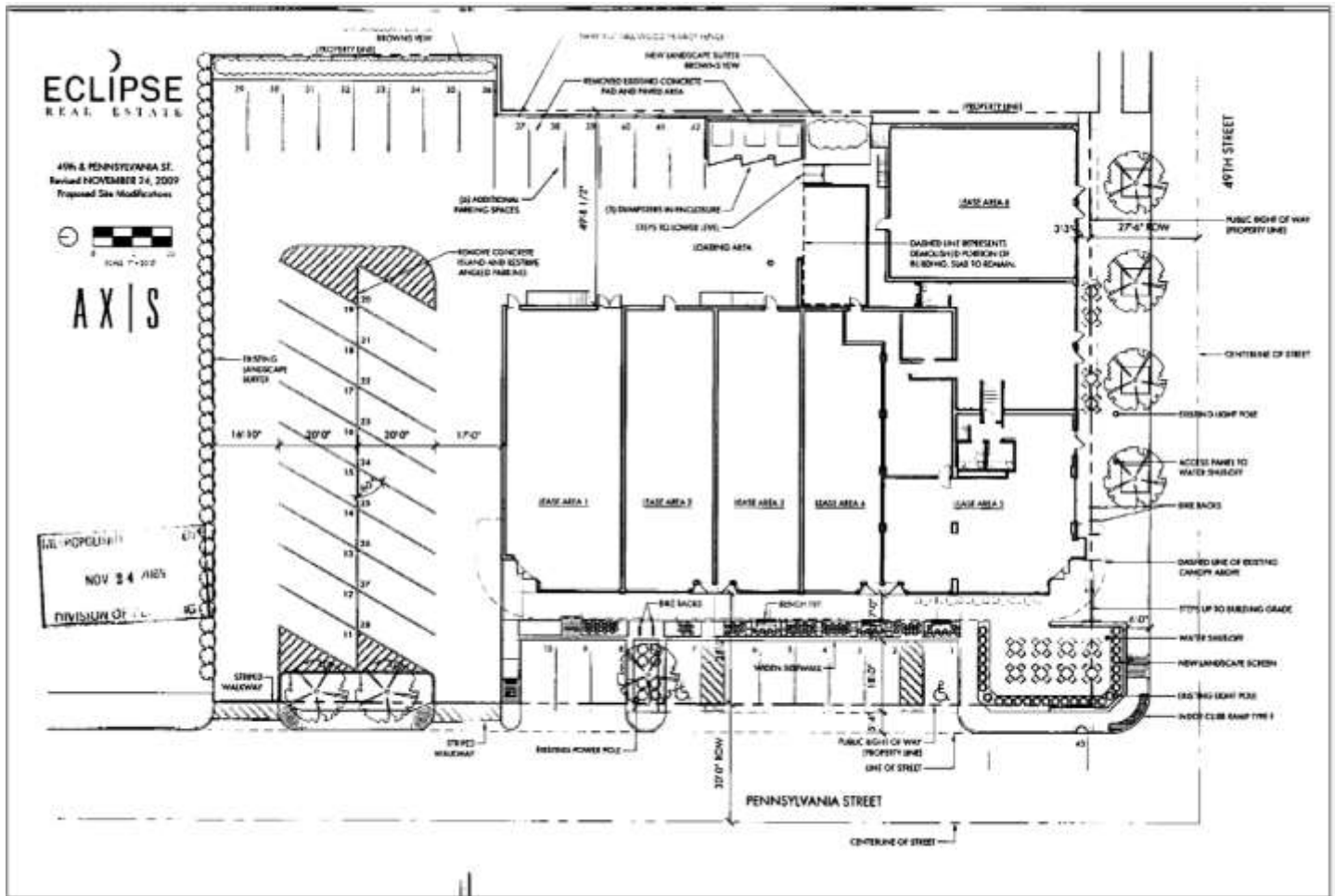
Matthew Albaugh
Board President
Meridian-Kessler Neighborhood Association
CC: Jonathan Hughes, Bose McKinney & Evans LLP, Petitioner
Emma Clust, MKNA Land Use Chair

2022-UV1-029; Petitioner's Proposed Commitments

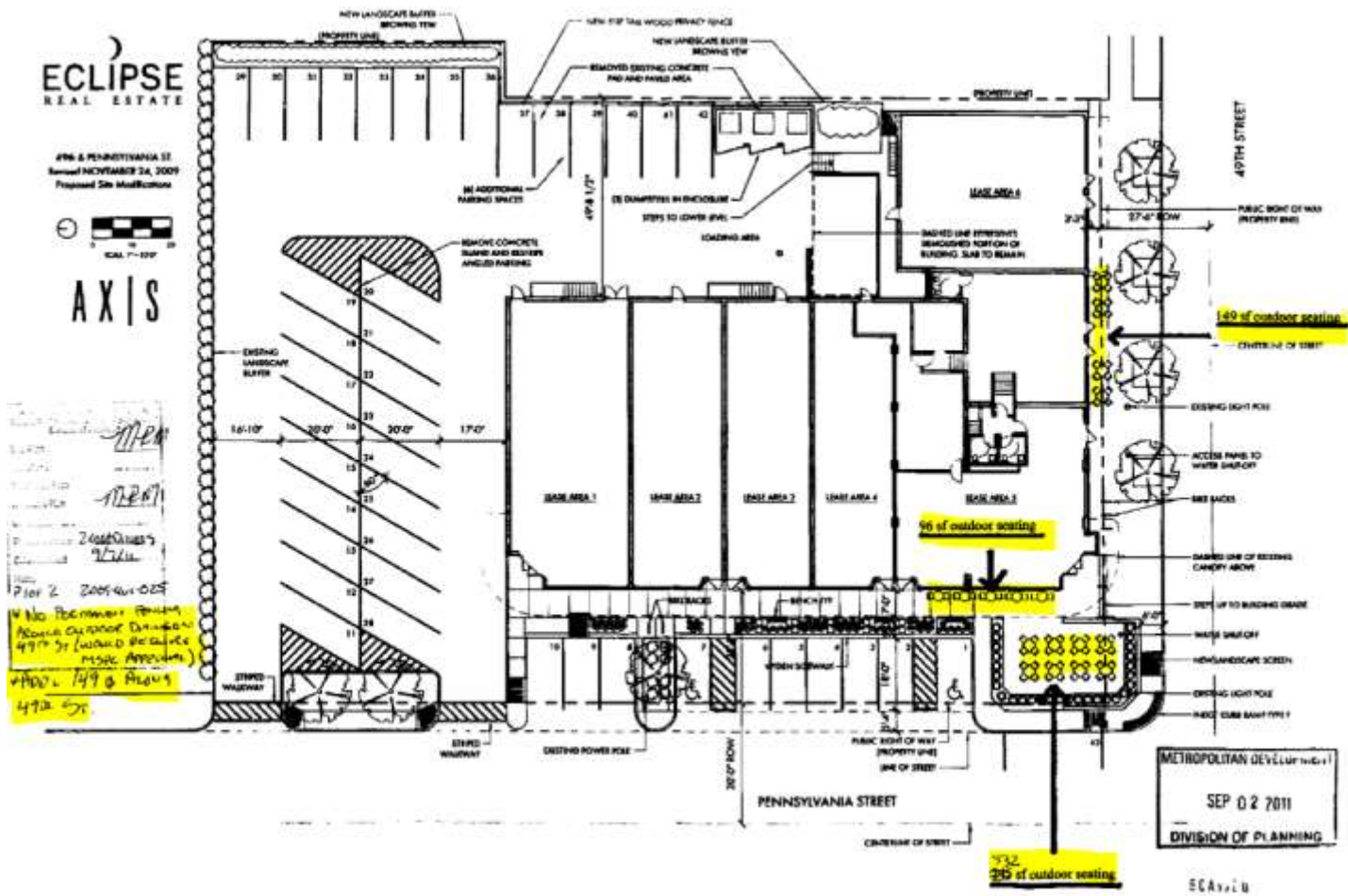
Statement of Modification or Termination of CONDITIONS:

1. Variance 2009-UV1-025, which permitted 777-square feet of outdoor seating is hereby expanded to a total of 1,142 square feet of seating. The entire expansion of 365 square feet shall be as shown in the site plan and only for that seating area that borders 49th Street. The proposed outdoor seating area along 49th Street shall be designed as per the attached Site Plan and shall be enclosed with a permanent awning. There shall be no walls of either temporary or permanent construction. This condition shall not prohibit the erection of a typical rail or fence, less than four feet in height, around the perimeter of the seating area. All other conditions of Variance 2009-UV1-025 shall remain in full force and effect.
2. Architectural plans for the proposed outdoor seating area shall be subject to Administrator's Approval, with documentation provided to substantiate that the portion of the seating area within the public right-of-way could be removed within seven days.
3. Outdoor prerecorded music shall cease by 8 p.m. in the evening Sunday through Thursday and by 9 p.m. in the evening on Fridays and Saturdays. No outdoor live music will be allowed at the site. In addition, any music provided shall not violate the provisions of the Marion County, Indiana noise ordinance as set out in the Revised Code of the Consolidated City and County of Indianapolis/Marion County, Indiana. In no event shall any music provided upon the property be plainly audible from the nearby residentially zoned properties.
4. In the event that the primary structure on the site is demolished, removed, or otherwise determined to be unsuitable for reuse, as reasonably determined by a certified design professional, the parking area shall be reconfigured to eliminate the maneuvering of vehicles within the right-of-way of North Pennsylvania Street unless such maneuvering is required to provide on-site parallel parking adjacent to the existing public street. This condition shall only be applicable so long as a structure containing roughly the same amount of square footage is permitted to be rebuilt upon the property and parallel parking is allowed in front of the site along Pennsylvania and 49th Streets.
5. There shall be a maximum of 6,000 square feet of the structure devoted to restaurant use on the site at any time.
6. Bicycle racks shall be provided on-site to accommodate a minimum of 10 bicycles, with the racks locations being subject to Administrative Approval.
7. A landscape plan shall be submitted for Administrator's Approval. The Plan shall indicate the size and species of proposed plantings and shall include the replacement of the four existing street trees along East 49th Street. The improvements indicated in the landscape plan shall be installed within six months of the approval of the petition and maintained thereafter.

2022-DV1-063; Staff Exhibit 1: Approved Site Plan per 2009-UV1-025



2022-DV1-063; Staff Exhibit 2: Approved Site Plan per 2010-ADM-039



2022-UV1-029; Photographs



View of site's 49th Street frontage, proposed outdoor seating in background.



Proposed outdoor seating expansion area.



Photo of the subject site in violation.

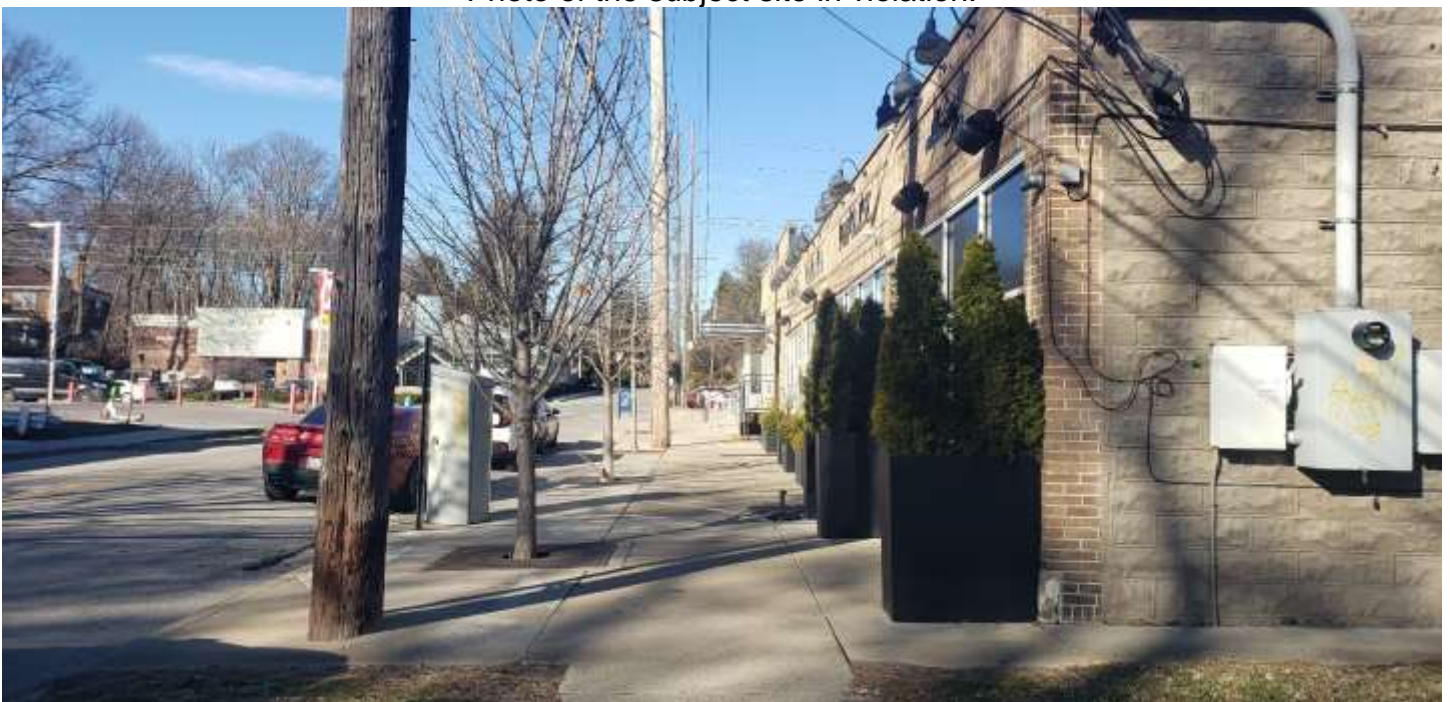


Photo of the subject site now.



A 3-foot wide access will be proposed and the large planters have been removed.



No planters will be proposed near Grate 1 per the submitted site plan.



Existing outdoor seating to remain.



Existing outdoor seating to remain.



Outdoor seating for the property south of the subject site.