

**New Castle, Colorado
Planning and Zoning Commission
Wednesday, April 10, 2024, 7:00 PM**

Call to Order

Commission Chair Apostolik called the meeting to order at 7:02 p.m.

Roll Call

Present	Chair Apostolik
	Commissioner Martinez
	Commissioner Carey
	Commission Alternate Rittner (Coin Toss Alternate)
	Commissioner Alternate Parks
	Commissioner Sass
	Commissioner McDonald
	Commissioner Westerlind
Absent	Commissioner Cotey

Also present at the meeting was Town Administrator David Reynolds, Town Planner Paul Smith, Assistant Town Attorney Haley Carmer, Deputy Town Clerk Remi Bordelon, and members of the public.

Meeting Notice

Deputy Town Clerk Bordelon verified that her office gave notice of the meeting in accordance with Resolution TC 2024-1.

Conflicts of Interest

There were no conflicts of interest.

Citizen Comments on Items NOT on the Agenda

There were no citizen comments.

Public Hearing

Chair Apostolik opened the public hearing at 7:03 p.m.

Consider Resolution PZ2024-2, A Resolution of the New Castle Planning and Zoning Commission Recommending Approval of a Conditional Use Permit for Mobile Vending Carts or Stands (I.E., Food Trucks) on Property Located in the C-1 Zone District

Town Planner Paul Smith introduced the landowners of 589 W Main St. He introduced partners of Family Matters, LLC as Joe Hemelt, Brad Williams, and Alex Polly. He said the Conditional Use Permit (CUP) was intended to consider the use of mobile vending carts/stands as a retail food option on commercial property for the business Colorado Drifters, LLC.

Mr. Hemelt introduced his team and partners. He explained the intent of the mobile food vendors in relation to the microbrewery business. He said the business would be described as a family friendly coffeehouse/taproom with open mic nights, trivia nights

and soon to come - beer brewing known as Colorado Drifters & Down Valley Brewing. He said they were not interested in being in the food business which was why the mobile food vendor option was a good fit.

Planning Commission – Public Hearing
Wednesday, April 10th, 2024
Resolution PZ 2024-2
Staff Report

Name of Applicant	Colorado Drifters, LLC
Mailing Address	600 Ginseng Rd, New Castle, CO 81647
Property Address	589 W Main St, New Castle, CO 81647
Name of Property Owner	Family Matters, LLC
Existing Zoning	C-1 Commercial
Surrounding Zoning	Commercial (C-1), Residential (R-1), Performance (P)
Surrounding Land Uses	Public parking, Residential, Hotel, Mercantile, Public ROW - Railroad, and Public Works Facility
Most Recent Uses of Property	U-Haul Business - B; Storage - S-1; Auto Repair - F-1; Currently being remodeled as microbrewery - A-2;
Proposed Use of Property	Two (2) mobile food vendors on property, Thursday - Sunday weekly
Property Size	0.229 acres

I. Background:

The Applicant proposes the use of mobile food vendors for the property located at 589 W Main St. in downtown New Castle. "Mobile vending carts or stands," are listed as conditional uses in the Commercial C-1 district (MC Section 17.36.050). There are currently no conditional use permits for mobile food vendors in New Castle, except temporary permits issued during organized events in public open space such as Burning Mountain Park or VIX Park.

The application submittal, **Exhibit A** provides context for the request: The Applicant is currently repurposing the existing "Texaco" structure for a brewery and tavern. Presently no bona fide restaurant is anticipated on the premises but, per state statute, food will be available for purchase within the brewery itself or from the proposed food vendors. A small music venue is also being considered for the front exterior sitting area. **Exhibit A, Page 6**, shows the proposed food truck locations positioned directly west of the existing building.

The Applicant seeks the Planning Commission's endorsement to improve dining options and provide a rotating selection of food options for patrons of the brewery. If approved, Colorado Drifters anticipates having at least one food truck regularly available for breakfast and dinner during the week and implementing a lunch option on a later date. The food truck/trailer location will be prepped and ready by July 2024. No more than two (2) food trucks would be in operation on the premises at any one time.

As a conditional use application, the Planning Commission (P&Z) is required to hold a public hearing in accordance with the procedures set forth in Municipal Code Chapter 16.08. The hearing has been noticed, **Exhibits C & D**. Within 30 days of the special hearing, P&Z must make one of these three recommendations:

- 1) Approve the CUP unconditionally;
- 2) Approve the CUP with conditions;
- 3) Deny the CUP.

Approval Criteria: An approved application shall:

- 1.) be eligible for conditional review under § 17.84.040;
- 2.) be generally compatible with adjacent land uses;
- 3.) meet all requirements of § 17.84.020 of the Code, is in compliance with Title 17 of the Code, and minimizes potential adverse impact of the conditional use on adjacent properties and traffic flow;
- 4.) be consistent with the comprehensive plan; and
- 5.) show that the Town has the capacity to serve the proposed use with fire and police protection ~~and is not required to provide water or sewer service.~~

Planner Smith reminded the commission that they were responsible for making a recommendation regarding the CUP for either approval, denial or approval with conditions that would then go to Council for consideration. He said the commission's consideration would be based on the approval criteria that he outlined in the staff report. Planner Smith identified that approval criteria #5 had an error and clarified that the town would be providing services for water, sewer, police and fire protection.

II. Application Requirements:

The purpose of a conditional use permit is to determine if the nature of the proposed use is appropriate for the location and character of surrounding land uses and poses little negative impact to the health and wellbeing of New Castle residents.

a. Site Plan: Adjacent land uses and location of adjacent structures; Land uses surrounding the property vary. Single-family homes exist to the north across US 6 and immediately to the east. The Town's public parking lot ("Kamm Lot") is found west off of Kamm Ave. To the south, the property is separated from the railroad tracks by an alleyway. Elsewhere in the vicinity are a restaurant, a hotel, and the Town's sewer treatment facility.

Staff Comment – *The C-1 zone allows for a diverse mix of businesses and services, including restaurants. Though food trucks operate similarly to restaurants, they are unique by virtue of their outdoor service component. Food trucks at the proposed location are generally consistent with the C-1 zoning but, like any establishment, may be prone to adverse effects on the immediate surroundings if not properly managed. Therefore, compliance with the attached performance standards (**Exhibit E**) will be enforced throughout the life of the CUP.*

Planner Smith commented on the application process and highlighted staff comments for each area of the application that was reviewed administratively for meeting the approval criteria. He identified one factor that was not mentioned in the approval criteria as being business competition between mobile food vendors and brick and mortar businesses. Town Administrator Dave Reynolds clarified that the physical business of Drifters was a brick and mortar, so the mobile food vendors were supporting the primary business of that property.

*b. Boundary and size of lot; 589 W Main Street is 100ftx100ft (about twice the area of a basketball court). The Applicant plans for the mobile food vendors to be situated on the southwest corner of the property at a right angle (**Exhibit A, pg. 6**, see rectangles labeled "1" and "2"). The vendors have been purposely located off the main corner of Kamm Ave. & US 6 in order to preserve the line of sight for vehicle and pedestrian safety (See MC Section 17.72.110). Note also that the submitted site plan shows the food truck footprint only, and omits generators, signage, tables or other accessory items common with these establishments.*

Staff Comment – *Positioning the vendors on the southwest corner of the lot will help limit the impacts of light, sound, and smells on neighboring residential properties. The food trucks will also be set back from the existing building a minimum of 10ft for purposes of life safety. Staff further recommends, in lieu of fixing the location to the west side of the building, that a 20-25 ft wide parking envelope be considered on the south and west property boundaries, (**Exhibit B**). This alternative will provide flexibility of service for both larger events and/or patio dining in the rear of the property. The Applicant is still finalizing plans for the brewery remodel, including outdoor dining. It may be helpful for the Applicant to specify the remaining use of the outdoor space so that the Planning Commission may ascertain whether the lot size is adequate for the concurrent operation of the brewery and two mobile food trucks.*

Planner Smith said the property was a 10,000 square foot lot. He identified the location of the mobile food vendors as being on the southwest side of the property, along Kamm Avenue, with a maximum of two mobile food vendors on site at one time. He

said that per town code, there was a requirement termed 'vision triangle' referencing adequate pedestrian and vehicle vision from any property obstructions (such as a mobile food vendor) that Family Matters, LLC agreed with. He explained the location of the mobile food vendors as being southwest, providing support for the vision triangle as well as equipment aesthetics and any generator noise nuisances. He elaborated that the 'L' shape orientation of the mobile food vendors provided a better outdoor dining experience. He clarified that the orientation of the mobile food vendors had flexibility of positioning, per staffs' recommendation, by providing a larger operating zone behind the building, outlined in green on the staff recommended site plan (Exhibit A). He said the green zone, mobile food vendor parking, could be extended south and east if needed.

Commissioner McDonald asked if the applicant planned to have dining tables within the green zone. Mr. Williams confirmed there would be outdoor seating and the option for customers to eat inside as well. Alternate Commissioner Rittner asked about the impedance of southwest corner of the green zone. Planner Smith said staff did not feel the traffic load was significant enough to cause interference with the mobile food vendors. Commissioner Carey asked the applicant if they planned to utilize the extra parking space in the back of the building (green zone) for other uses such as storage. Mr. Hemelt said they had formed an agreement with the previous owner, Jim Shrull, to use, temporarily, as storage. He said, after Mr. Shrull's use, they planned to landscape that space behind the building next summer and provide more dining seating.

c. Building location, height and setbacks;

*The setbacks for C-1 zone are zero feet in the front/sides and five (5) feet in the rear. Vendors will be parked along the side or rear property lines. Also, the Texaco building is approximately 18 ft tall whereas a typical food truck/trailer is about 10 ft tall. **Exhibit B** depicts the various distances between the existing building, lot lines, and the mobile food vendors.*

Staff Comment – Mobile food vendors range in size. Staff recommends retaining the aesthetic of downtown by restricting the truck/trailer heights to no more than that of the existing building. If operations are kept to the perimeter of the property, Staff believes the trucks/trailers will act as an enclosure that enhances the dining appeal and life safety of the rear (south) space.

Planner Smith said the only setback was the south boundary behind the building. He remarked that staff suggested adding a height limit to mobile food vendors as there was currently no limit. He suggested the limit not to exceed the building height which, in code, was eighteen feet.

d. Off-street parking and loading areas;

*Off-street parking is not a requirement of the C-1 zone district and is therefore not depicted on the site plan. Off-street parking is provided in the nearby Kamm lot (10 total spaces of which two are EV; one is veteran parking). On-street parking is limited to only those spaces on US 6. Public Works is agreeable to two, 30-minute loading spaces on the east side of Kamm Ave. south of the 30' vision triangle illustrated in **Exhibit B**. No loading areas are discussed in the application.*

Staff Comment – Kamm Avenue is roughly 34ft wide from face of curb-to-face of curb. Assuming two 12 ft drive lanes, 10 ft may be available for vehicle parking along the street's east side. These few spaces may be advantageous for temporary loading and stocking of the trucks/trailers. Loading areas may also be available in the rear of the lot. Staff recommends that the Applicant specify the use of the south side of the lot (patio seating, food vendors, parking, temp loading, etc.) to aid the Planning Commission's assessment.

The trucks/trailers themselves may access the premises from either Kamm Ave. or the alleyway. In no instance shall vendors use the public rights-of-way for business operations unless approved as part of the CUP.

Planner Smith said C-1 commercial uses did not require off-street parking on the lot. He identified the neighboring Kamm Lot had 10 public parking spaces which included two EV charging spaces and one veteran parking space. Planner Smith said he discussed with Public Works the option for patrons to park along Kamm Avenue. He said Public Works staff were concerned as they use that road daily. He reported that Public Works suggested a temporary loading area instead of parking spaces. Commissioner Rittner suggested incorporating directional parking signs to assist patrons in finding parking as well as directing them to the local businesses. Administrative Reynolds said staff could look into options based on parking demands. Commissioner Carey added the need for parking signs related to the railroad, thinking patrons may be inclined to park along the fence by the railroad, unknowingly illegally.

e. *Points of ingress and egress;*

The property will have an open site plan for dining. Patrons will generally access food vendors from the front (north) side of the premises with some emerging from the rear building exit. Adequate egress from the brewery building is anticipated during all hours.

Staff Comment – In terms of safety and aesthetics, Staff preferences the general southwest lot area for vendor operations. It is possible to stage on the north side of the property, however, this area was rendered less desirable to the Applicant. The mobile food vendors will be prohibited from parking in a manner which interferes with the exit pathway from the south exit of the existing building (**Exhibit B**).

f. *Service and refuse areas;*

The Applicant has not included location of trash receptacles on the site plan. All food preparation is expected to occur within the trucks/trailers or off-site in a commissary kitchen.

Staff Comment – Trash pick-up should take into consideration refuse volumes from both brewery and food trucks. Ideally the refuse containers will be located on the southeast corner of the lot (**Exhibit B**) to facilitate ease of access for trash collectors and help with curb appeal. Grease or extraneous food waste produced by the mobile food vendors shall be disposed of off-site.

Commissioner McDonald asked if the zoned refuse area was planned to be enclosed. Planner Smith said he did not reference that specifically. Planner Smith said staff asked for a ten-foot buffer between the building and the mobile food vendors as well as pedestrian access. He said for emergency exits, the southeast corner of the lot would need to remain open, and he added that was an ideal spot for the enclosed refuse.

g. *Signs and exterior lighting;*

Section 17. 40.130 requires that exterior lighting in the C-1 district encourage pedestrian activity and, at the same time, limit lighting trespass. The application does not provide lighting specifics, indicating only that signage and lighting will be mounted to the food trucks.

Staff Comment – Exterior lighting shall be downcast and fully shrouded per dark-sky design specifications. "New Castle will require lighting design that minimizes lighting trespass while meeting appropriate safety standards," as well as "minimize after-hours business lighting," (Goal EN-4, Comprehensive Plan pg. 66). Flood lights would typically not be permissible. In most cases the proprietor of the truck/trailer will be responsible for a sign permit.

h. Fencing, landscaping and screening;
Town code prohibits (Section 17.40.120) exposed mechanical and electrical equipment from undermining the historic character of the district. The submittal does not indicate locations of auxiliary equipment (e.g. generators, power cords, propane tanks), items often indispensable to the operation of a mobile food vendor. Also, food trucks commonly cordon off space around the vehicle with a combination of cones, ropes, flags, or fencing framing the dining location and buffering patrons from ambient street noise.

Staff Comment – Staff recommends that the Applicant provide means and methods for managing any auxiliary equipment or any other apparatus which may detract from the downtown character.

Planner Smith said the expectation was that the applicant meets the dark sky compliance requirements. Planner Smith spoke of requiring generators to be concealed/enclosed for the applicants benefit of being able to enforce that requirement with any mobile food vendors.

i. Compliance with performance standards;
Compliance with performance standards is required in the Municipal Code, Section 17.72.090. Performance standards protect the public against nuisances such as smoke, particulate matter, odors, glare, vibration, radiation, electrical disturbances, noise and water pollution. Per Town code (and state statute), the noise produced in a commercial zone shall not exceed the limit of 60 db(A) during 7am-7pm and 55 db(A) during 7pm to 7am, in commercial zones.

Staff Comment – The application is silent on potential noise from generators, fumes from cooking, and exhaust from various equipment. Noise and odors are potential nuisances relevant to this CUP. Staff recommends that the Applicant provide strategies for managing potential generator noise and cooking odors as necessary. The Applicant has signed the Performance Standards (**Exhibit E**).

j. Anticipated utility requirements;
Utility requirements of food trucks are normally self-reliant with a generator or battery. In some cases electricity may need to be supplemented from the existing building. Propane is the traditional fuel for cooking.

Staff Comment – Other than what is discussed in sections (h.) and (i.), staff does not have further comment on this item.

Planner Smith confirmed the applicant had signed the performance standards. Commissioner Rittner asked if the applicant was agreeable to the 7 p.m. noise decibel compliance. Mr. Williams stated they did not anticipate any issues as the mobile food vendors had a concealed generator. Commissioner Rittner asked if that performance standard would affect any planned events or schedule bands performing at the site. Mr. Hemelt clarified that the CUP for the mobile food vendors would not be affected. Planner Smith confirmed special events and music performances were outside of the scope of the CUP for the mobile food vendors. Assistant Attorney Carmer said they would address special events and music performances separately from the mobile food vendors CUP and discuss it with Council.

Commissioner McDonald asked in the event of losing mobile food vendor business, did the applicant plan to provide food within their business establishment? Mr. Hemelt confirmed they planned to provide food within the establishment as well since that was a requirement with their liquor license.

Commissioner Parks inquired about the longevity of each mobile food vendor. Mr. Hemelt stated they planned to have a permanent mobile food vendor on site as a reliable, fixed establishment in tandem with a rotating option of vendors for variety.

III. Staff Recommendations:

Staff recommends approval of Resolution 2024-02 with the following conditions:

- 1. No more than two mobile food vendors will be permitted on the premises within the allowable parking location as depicted in green on **Exhibit B**. Other types of mobile vendors are not authorized to operate under this conditional use permit.*
- 2. Provide a schedule for daily hours of operation.*
- 3. The bathroom facilities of the Texaco building shall be made available to food truck/trailer employees during all hours of operation. Alternatively, 3rd-party bathrooms and hand washing stations shall be supplied per the requirements of Garfield County Public Health and Human Services.*
- 4. Any auxiliary equipment, materials, or supplies necessary for the function of any food trucks/trailers shall be stored out of site or otherwise screened from public view by means of fencing, landscape ornamentation or other approved means of concealment.*
- 5. An adequate trash receptacle shall be provided and maintained on the southeast corner of the premises.*
- 6. Illustrate locations of on-site parking or designated loading areas as necessary. Two, 30-minute loading spaces (10' wide x 20' long) are permitted on the east side of Kamm Ave. south of the 30' vision triangle illustrated in Appendix B.*
- 7. The use approved in the application shall not be conducted until the Town Planner has issued a conditional use certificate. That certificate shall be issued only after the Applicant has entered into an agreement with the Town specifying that all conditions imposed by the Town Planning Commission will be completed and that the use and improvements will be in accordance with the approved application site plan and development schedule. The conditional use certificate must be issued within one year of the date of final approval by Town Council, or the application is deemed withdrawn by the Applicant and is of no further force and effect.*
- 8. No approved conditional use may be altered or expanded in ground area unless the site plan is amended and approved in accordance with the procedures applicable to approval of a conditional use as set out in § 17.84.070 of the Code.*
- 9. In the event the Town receives any complaints about the use of the site or observes or becomes aware of any violations of the conditional use approval, the Applicant and/or owner may be summoned before the Town Council in a public meeting to show cause why the permit should not be revoked, suspended, or additional conditions imposed. Such show-cause hearing shall be open to the public and the applicant or owner may present testimony or offer other evidence on its behalf.*
- 10. Applicant shall comply with all applicable building and municipal code requirements, including all signage permitting, and county licensing requirements.*
- 11. Any added exterior lighting will be dark sky compliant pursuant to the Comprehensive Plan Goal EN-4.*
- 12. All representations of the Applicant in written and verbal presentations submitted to the Town or made at public hearings before the planning commission or Town Council shall be considered part of the application and binding on the Applicant.*
- 13. The Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including without limitation all costs incurred by the Town's outside consultants such as legal and engineering costs.*
- 14. Development of the Property shall be consistent with the site plan shown on **Exhibit B** as approved by the Town Council.*

Planner Smith reviewed each staff recommendation. For item 5, Planner Smith noted that the commission requested the trash receptacles be enclosed. Mr. Hemelt said they may consider utilizing mobile trash cans as the business was not anticipated to produce much refuse. Mr. Hemelt added that their business would not be producing grease. He said the mobile food vendors were self-contained and responsible for their own waste. Commissioner Carey suggested the applicant consider the option of a metal dumpster with a lift bar, often easier to make bear proof. Planner Smith inquired if the commission was requesting to recommend to Council that the applicant be required to obtain an enclosed dumpster. Commissioner Carey said she did not want to

recommend additional requirements of one business that was not required for other businesses. The commission agreed.

Chair Apostolik closed the public hearing at 7:39 p.m. There were no public comments. Chair Apostolik returned the discussion to the commission.

For item 6, Commissioner Carey suggested extending the loading zone time from thirty minutes to an hour. Administrator Reynolds asked if the loading zone would be used for the mobile food vendors or for the microbrewery business. Mr. Hemelt clarified that they had planned to use it for both purposes. Kyla Hemelt confirmed she would appreciate an extended loading zone time with a parking sign. Chair Apostolik directed staff to adjust the time limit of the loading zone from 30 minutes to an hour, as a condition. Administrator Reynolds noted that the loading zone was a courtesy from the Public Works department since they were concerned of an established parking area along Kamm Avenue. He said parking signs may impede the delivery trucks and suggested seeing if there was a need for a sign, after a certain period of time had passed. He added that the cost of a parking sign would be provided by the town.

Assistant Attorney Haley asked if the commission wanted to add a condition regarding the height of the mobile food vendors. She said in the event there existed a two-story mobile food vendor that met the height limit of the building of eighteen feet, as Planner Smith outline in the application requirement, item C; she said the commission could limit that height as a condition. Chair Apostolik denied the need for that condition and pointed out that a vehicle that tall would not be able to pass under the freeway bridges.

MOTION: Chair Apostolik made a motion to approve Resolution PZ2024-2, A Resolution of the New Castle Planning and Zoning Commission Recommending Approval of a Conditional Use Permit for Mobile Vending Carts or Stands (I.E., Food Trucks) on Property Located in the C-1 Zone District with the condition of extending the loading zone time to an hour. Commissioner McDonald seconded the motion, and it passed on a roll call vote: Commissioner Westerlind: Yes; Commissioner McDonald: Yes; Commissioner Martinez: Yes; Commissioner Carey: Yes; Commissioner Sass: Yes; Chair Apostolik: Yes; Alternate Commissioner Rittner: Yes.

Staff Reports

Planner Smith reported a couple tentative agenda items to expect in future meetings: Xcel Line Replacement CUP, and the return of R2 Partners as a Preliminary meeting. Deputy Clerk Bordelon reported two upcoming work sessions that Council had organized and requested the attendance of New Castle commissioners: Attorney Review and Water Rights Discussion.

Commission Comments and Reports

Commissioner Parks reported progress made by the Historic Preservation Commission (HPC). He said members of HPC conducted their first videography interview of the McNeal Family. He added that HPC had planned to host an Open House in May to discuss the benefits of historic designations with the community.

Review Minutes from Previous Meeting

MOTION: Commissioner Westerlind made a motion to approve the February 14, 2024 meeting minutes. Commissioner Sass seconded the motion and it passed unanimously.

MOTION: Chair Apostolik made a motion to adjourn the meeting. Commissioner Sass seconded the motion and it passed unanimously.

The meeting adjourned at 7:54 p.m.

Respectfully Submitted,

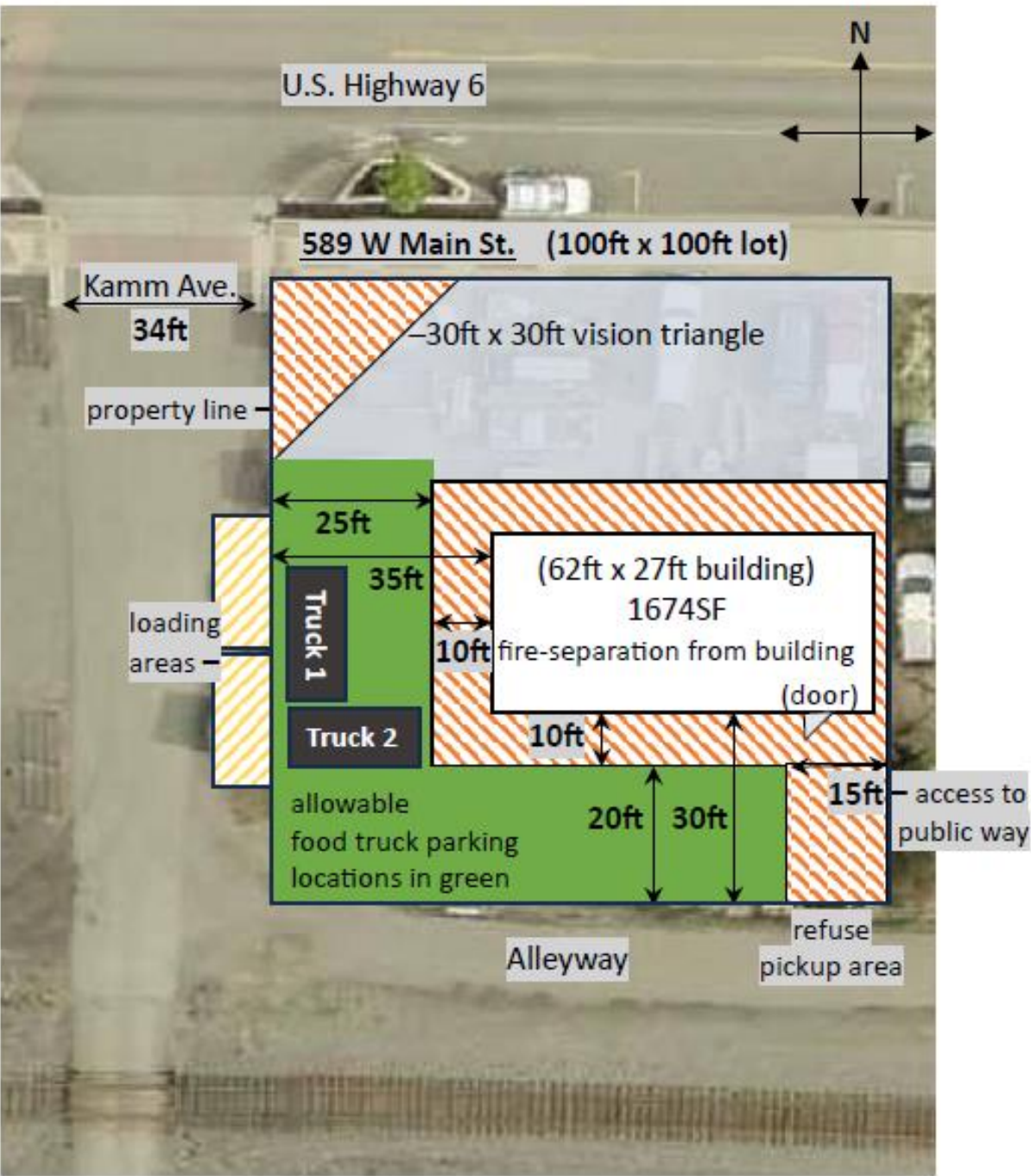
Chuck Apostolik, Chair

Remi Bordelon, Deputy Town Clerk

465
466

Exhibit A

Staff Recommended Site Plan:



467