



118 Central Avenue North, New Prague, MN 56071  
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## MEMORANDUM

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**TO:** PLANNING COMMISSION  
**FROM:** KYRA CHAPMAN - PLANNER  
**SUBJECT:** REQUEST FOR CONDITIONAL USE PERMIT #C2-2024 TO PROVIDE OUTDOOR SEATING AT THE OUTLAW SALOON LOCATED AT 103 MAIN ST W IN THE B1- CENTRAL BUSINESS DISTRICT, AS PROPOSED BY R&D MANAGEMENT LLC.  
**DATE:** 6/13/24

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### **Background / History**

In spring of 2023, R&D Management LLC purchased the Pioneer Saloon at 103 Main St W and renamed it as the Outlaw Saloon. The applicant, R&D Management LLC has applied for a conditional use permit to allow permanent outdoor seating at the Outlaw Saloon at 103 Main St W. R&D Management intends to construct a patio and install a 6' tall fence, which will enclose the patio area. The fence will enclose 756 sq ft (42' x 18') on the north side of their building. The existing building will have a new 3' wide backdoor installed to access the fenced patio. There will also be a new 3' wide emergency exit door installed on the northwest corner of the building (not attached to outdoor patio area) to a 6' wide outdoor walkway leading directly to the parking lot. The far northern section of the patio will have a smaller area that is fenced to store chairs.

### **Legal Description**

The West 1.10 feet of the South 56.00 feet of the following described parcel of record:

Commencing at a point Thirty Three (33) feet North of a point Sixteen Hundred and Forty-eight links West of the Southeast corner of the Southwest Quarter of Section Thirty-four (34), Township One Hundred Thirteen (113), Range Twenty-Three (23) West, said point being the intersecting corner of Main and Simmer Street, New Prague, Scott County, according to the plat thereof on file and of record in the Office of the Register of Deeds of said County and State; thence running North on the West line of Simmer Street One Hundred and Seventeen (117) feet; thence West Thirty (30) feet; thence South to the North line of Main Street One Hundred Seventeen (117) feet; thence East along the North line of Main Street Thirty (30) feet to the place of beginning.

AND

The West 25 Feet of the following described land: Commencing at a point 33 feet North of a point 1648 links West of the Southeast Corner of the Southwest Quarter of Section 34-113-23, thence North on the West Line of Simmer Street 117 feet; thence West 55 feet; thence South 117 feet to the North line of Main Street; thence east along the North line of Main Street 55 feet to the point of beginning. Also the right of egress & ingress over a strip of land 12 feet wide commencing at the Northwest Corner of said property and running East to Simmer Street.

### **Zoning**

The property is zoned B1 Central Business District. The proposed outdoor seating area for restaurants and drinking establishments is listed as a conditional use in the B-1 Central Business District which is why the Conditional Use Permit is required. The B-1 District also does not require off-street parking for any use, does not have minimum lot size requirements and also does not have minimum setbacks for buildings or other accessory uses other than to an alley and railroads.

### **Outdoor Patio Standards**

Zoning Ordinance Section 733 contains performance standards relating to outdoor seating for restaurants and drinking establishments in the City as follows:

#### **733 Outdoor Seating for Restaurants and Drinking Establishments**

1. *Restaurants, drinking establishments, and restaurants, may provide outdoor seating for their patrons with an approved Conditional Use Permit provided that the following requirements are met:*
2. *For all establishments:*
  - A. *The seating shall be located on private property and outside of any recorded easement areas and demonstrated on a site plan.*
  - B. *The seating shall consist of good quality patio or café type furniture that enhances the appearance of the business.*
  - C. *No beverages or food shall be served to persons outside of the designated outdoor seating area.*
  - D. *The seating area, if not slab on grade, shall be subject to applicable setback requirements.*
  - E. *The seating area shall have a permanent surface of concrete, asphalt, wood or other fabricated construction material.*
  - F. *The seating shall be located so as not to compromise safety. Seating shall not obstruct the entrance or any required exits or be located on landscaping or parking areas. If located on private sidewalks or walkways, it shall be located so as to leave a minimum of a four foot (4') wide passageway for pedestrians. Applicable building and fire codes for ingress and egress shall be met.*
  - G. *No additional parking is required for 30 outdoor seats or less. Any additional seating over 30 seats shall provide required parking based on one space per three seats.*
  - H. *The outdoor seating area shall be subordinate to the principal use and shall not exceed 40 percent of the square footage of the principal use building space.*
  - I. *Noises on the outdoor seating area shall be subject to City Code Section 92.18(S).*

- J. *Lighting shall be permitted to the extent that it only illuminates the designed area. Lighting must otherwise meet the standards listed in Section 704 of this Ordinance for Glare.*
  - K. *The business owner or designated person shall inspect the premises on a daily basis including all adjacent streets, sidewalks, alleys, parking areas and sidewalks within 100 feet and remove all litter. Appropriate receptacles for rubbish, garbage, cigarette paraphernalia, etc. must be provided in close proximity to the outdoor seating area.*
  - L. *Additional conditions may be imposed by the City and listed on the approved conditional use permit including but not limited to hours of outdoor seating area use and additional screening or buffering to residential zoned or used areas.*
  - M. *No external music, live or recorded, shall be allowed after 10:00PM. It also shall not be audible from a distance of more than 50' from the edge of the defined patio area at any time.*
3. *For establishments with liquor licenses the following regulations apply in addition to those listed above:*
- A. *The seating shall be located in a compact and contiguous location to the principal structure. No alcoholic beverages shall be served or consumed in an outdoor seating area unless the liquor license approved by the City specifies the compact and contiguous location.*
  - B. *The outdoor seating area shall be defined with the use of landscaping and permanent attractive fencing which is a minimum of four feet in height with at least 50 percent opacity that contains the tables and chairs for the use as demonstrated on a site plan. It shall also prohibit the free passage of any person or substance from the area.*
  - C. *No alcoholic beverages shall be served to persons outside of the designated outdoor seating area or those not seated at tables. Signage shall be posted that restricts consumption of alcohol outside of the designated outdoor seating area as approved by the Conditional Use Permit.*
  - D. *Bars are prohibited in outdoor seating areas (with the exception of a service bar for the exclusive use of the establishment's employees).*
  - E. *Patrons shall only access the outdoor seating area through the interior of the main building and seated by wait staff if at full service restaurants. No other ingress or egress shall be allowed other than required emergency exits.*

Although section 733 (3) (B) of the Zoning Ordinance requires outdoor seating areas to have a minimum fence height of 4' tall, staff recommends that the fence should be a minimum height of 6'. Staff are recommending a 6' tall fence to prevent individuals from easily passing alcohol over a 4' or 5' tall fence. Furthermore, the taller fence would better separate Central Plaza and the public parking lot.

In accordance with section 733 (2) (M), no external live or recorded music may continue after 10:00pm. After 10:00pm, music may only occur inside the building. Additionally, all noises occurring in the outdoor patio area shall be subject to City Code Section 92.18(S).

### **Neighborhood Conditions**

The subject property as well as all adjacent to the east and west are largely zoned B1-Central Business District.

North – B1-Central Business District, and RL84-Single Family Residential District.

South – B1-Central Business District, and RL70-Single Family Residential District.

West – B1-Central Business District, and RH – High Density Residential District

East – B1-Central Business District

Most of the buildings in the B1-Central Business District were constructed in the 1880s to the 1940s. The buildings within the district are currently used for commercial retail use or as drinking/dining establishments with some having rental dwelling units above. There are a few businesses in town that have outdoor patio areas approved via a conditional use permit. For instance, there is 1319 Woodfire Tavern at 125 E Main St, Local 105 at 105 Main St E, and Giesenbrau Bier Co. at 1306 1<sup>st</sup> St NE.

### **Parking**

Off-street parking is not required in the B-1 Central Business District. No additional parking is required if there are 30 outdoor seats or less. Any additional seating over 30 seats shall provide required parking based on one space per three seats. The applicant is proposing to have 20-25 outdoor seats, therefore, no off-street parking is required.

### **Lighting**

Lighting shall be permitted to the extent that it only illuminates the designed area. Lighting must meet 704 of the Zoning Ordinance:

In all districts, any lighting used to illuminate an off street parking area, sign, or other; structure, shall be arranged so as to deflect light away from any adjoining residential zone or from the public streets. Direct or sky reflected glare, whether from floodlights or from high temperature processes such as combustion or welding, shall be hooded or controlled in some manner so as not to light adjacent property. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right of way. Any light or combination of lights which cast light on a public street shall not exceed one (1) foot candle (meter reading) as measured from the centerline of said street. Any light or combination of lights which cast light on residential property shall not exceed 0.4 candles (meter reading) as measured from said property.

### **Public Works Considerations**

Public Works Director Matt Rynda and Utilities General Manager Bruce Reimers did not have any comments on the subject.

### **FEMA Flood Plain**

N/A

### **Police Chief and Fire Chief Comments**

Police Chief Tim Applen stated the although the ordinance requires a minimum fence height of 4' tall, he recommends that fence should be a minimum of 6' tall to prevent alcohol from being easily passed over the fence.

### **Building Official Comments**

Building Official Scott Sasse stated that the out-swinging door to be installed in the Northwest corner of the existing building must meet all requirements from the 2020 MN Accessibility Code. The enclosed patio area is proposed at 756 square feet, this is without tables, chairs or decorations. The City will need a proposed seating design to keep on file with the intent of proposed tables, chairs, etc. showing how exiting paths will be maintained. Panic hardware (crash bar) will be required on the out-swinging emergency door/gate on the North side of the patio. The "Emergency Exit Only" sign at this exit shall be always illuminated internally or externally and not less than 90 minutes in the event of a primary power loss.

### **County Highway Department Comments**

N/A

### **Conditional Use Permit Findings**

Section 505 of the Zoning Ordinance states that when granting a conditional use permit the City Council shall make the following findings:

- A. The use will not create an excessive burden on existing parks, schools, streets and other public facilities which serve or are proposed to serve the area. (The proposed patio area will not create an excessive burden on existing parks, schools, streets and other public facilities which serve or are proposed to serve the area, as the additional area will only accommodate outdoor seating.)
- B. The use will be sufficiently compatible or separated by distance or screened from adjacent residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land. (The proposed patio will include a 6' tall fence, screening the outdoor seating area from the general public view, and which is compatible with adjacent residential apartments and will not cause a depreciation in their value.)
- C. The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties. (The proposed patio and site will improve the appearance of the existing concrete pad and will not adversely affect adjacent residential apartments.)
- D. The use, in the opinion of the City Council, is reasonably related to the overall needs of the City and to the existing land use. (The proposed patio is reasonably related to the overall needs of the City and existing land use as the proposed patio is specifically listed as a Conditional Use in the B-1 Central Business Zoning District and will be an expansion of an existing permitted business.)
- E. The use is consistent with the purposes of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use. (The proposed patio is specifically listed as a Conditional Use in the B-1 District and therefore is consistent with the purposes of the zoning ordinance.)

- F. The use is not in conflict with the Comprehensive Plan of the City. (The proposed patio is not in conflict with the Comprehensive Plan of the City because it is located in the B-1 District in which patios are listed as a Conditional Use.)
- G. The use will not cause traffic hazard or congestion. (The proposed outdoor patio will not cause traffic hazards or congestion as it provides only 20-25 seats and no off-street parking is required for any uses in the B-1 district.)
- H. Adequate utilities, access roads, drainage and necessary facilities have been or will be provided. (Adequate utilities, access roads, drainage and necessary facilities have been provided.)

Section 505 of the Zoning Ordinance also states that conditions may be placed upon the approval as are considered necessary to protect the public health, safety and welfare.

### **Staff Recommendation**

Staff recommends approval of Conditional Use Permit #C2-2024 to allow an outdoor patio for eating and drinking services, located at 103 Main St W in the B1-Central Business District, with the following conditions:

1. Approval is subject to the site plan dated 5/17/24 on file with the New Prague Planning Department which complies with the requirements of Section 733 of the Zoning Ordinance.
2. Before the Liquor License can be expanded to the proposed patio area, the following shall be completed:
  - a) All of the requirements and improvements associated with this Conditional Use Permit #C2-2024 must be completed and approved by City Staff.
  - b) The City Council must approve the expanded patio area as part of the applicant's liquor license.
3. The fencing around the outdoor patio area must be at least 6' tall due to the patio's proximity to a public parking lot and to Central Plaza.
4. Requirements of the Building/Code Enforcement Official must be met including:
  - a) Building Permits must be obtained as necessary.
  - b) The patio area must have an emergency exit door which must be clearly marked.
  - c) The "Emergency Exit Only" sign must be illuminated at all times of operation.
  - d) Panic hardware on the out-swinging emergency door/gate on the north side of the patio is required if it is to be locked (such hardware should be clearly marked).

And making the following findings to approve the conditional use permit:

- A. The proposed patio area will not create an excessive burden on existing parks, schools, streets and other public facilities which serve or are proposed to serve the area, as the additional area will only accommodate outdoor seating.
- B. The proposed patio will include a 6' tall fence, screening the outdoor seating area from the general public view, and which is compatible with adjacent residential apartments and will not cause a depreciation in their value.
- C. The proposed patio and site will improve the appearance of the existing concrete pad and will not adversely affect adjacent residential apartments.

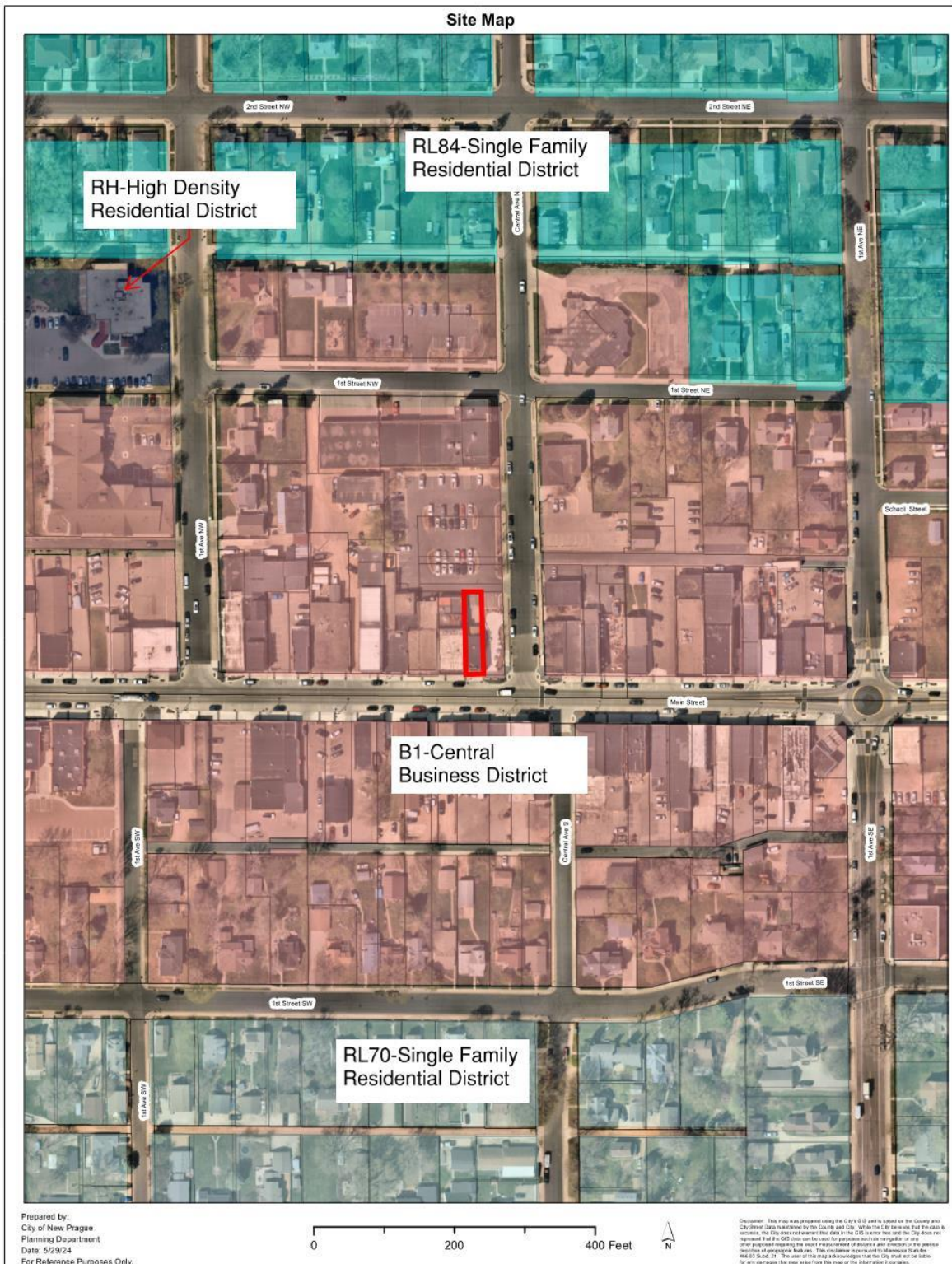
- D. The proposed patio is reasonably related to the overall needs of the City and existing land use as the proposed patio is specifically listed as a Conditional Use in the B-1 Central Business Zoning District and will be an expansion of an existing permitted business.
- E. The proposed patio is specifically listed as a Conditional Use in the B-1 District and therefore is consistent with the purposes of the zoning ordinance.
- F. The proposed patio is not in conflict with the Comprehensive Plan of the City because it is located in the B-1 District in which patios are listed as a Conditional Use.
- G. The proposed outdoor patio will not cause traffic hazards or congestion as it provides only 20-25 seats and no off-street parking is required for any uses in the B-1 district.
- H. Adequate utilities, access roads, drainage and necessary facilities have been provided.

#### **Attachments**

- 1. Aerial Site Map – Dated 5/29/24
- 2. Aerial Zoning Site Map – Dated 5/29/24
- 3. Aerial Site Map Detail – Dated 5/29/24
- 4. Outdoor Seating Site Plan – Dated 5/17/24
- 5. Proposed Fence – Undated
- 6. Aerial View of Outdoor Seating Site Plan – Dated 6/5/24
- 7. Oblique Air Photo – Dated 4/12/23
- 8. Pictures – 6/3/24

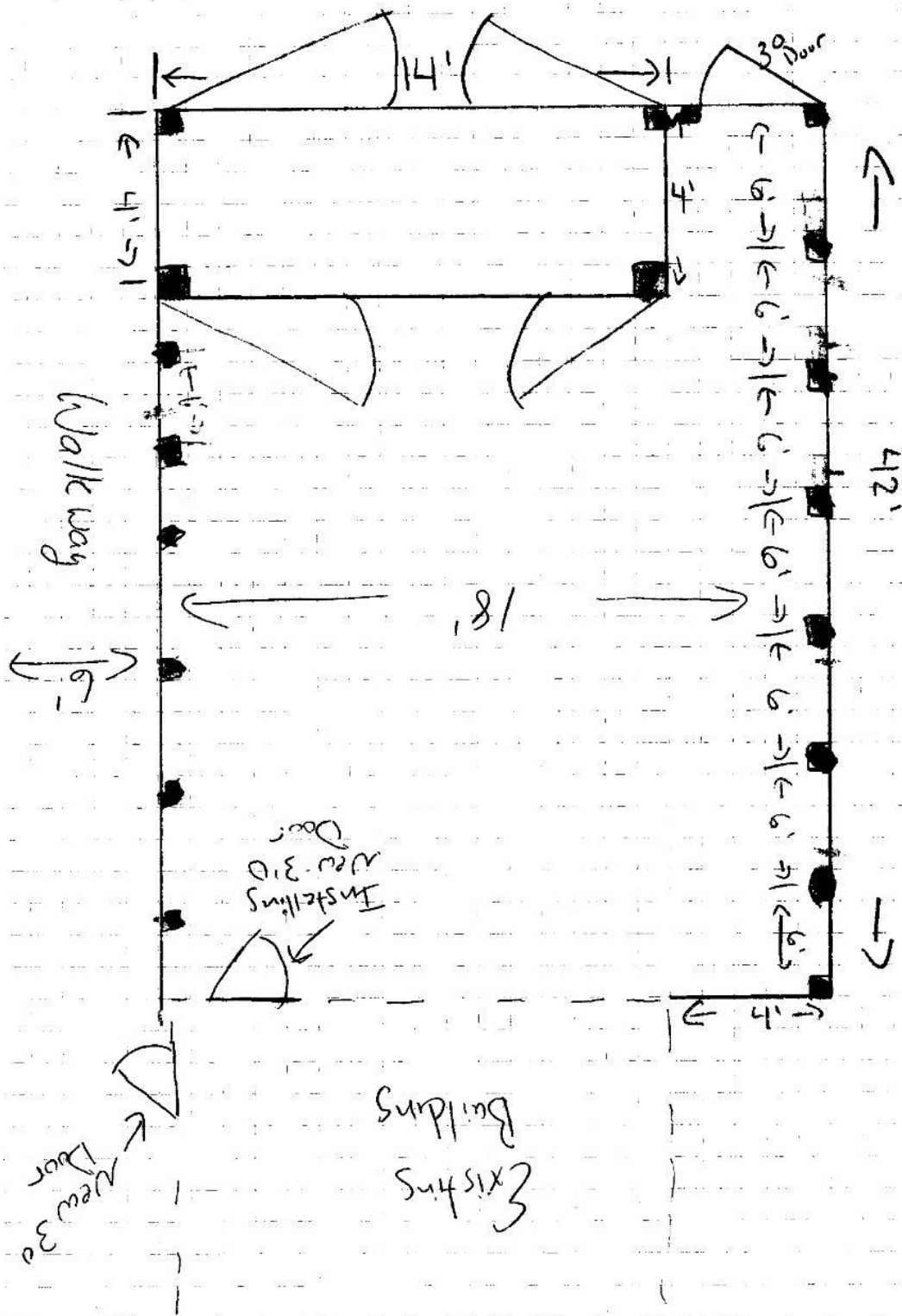


Aerial View of Subject Property



Aerial Zoning Site Map



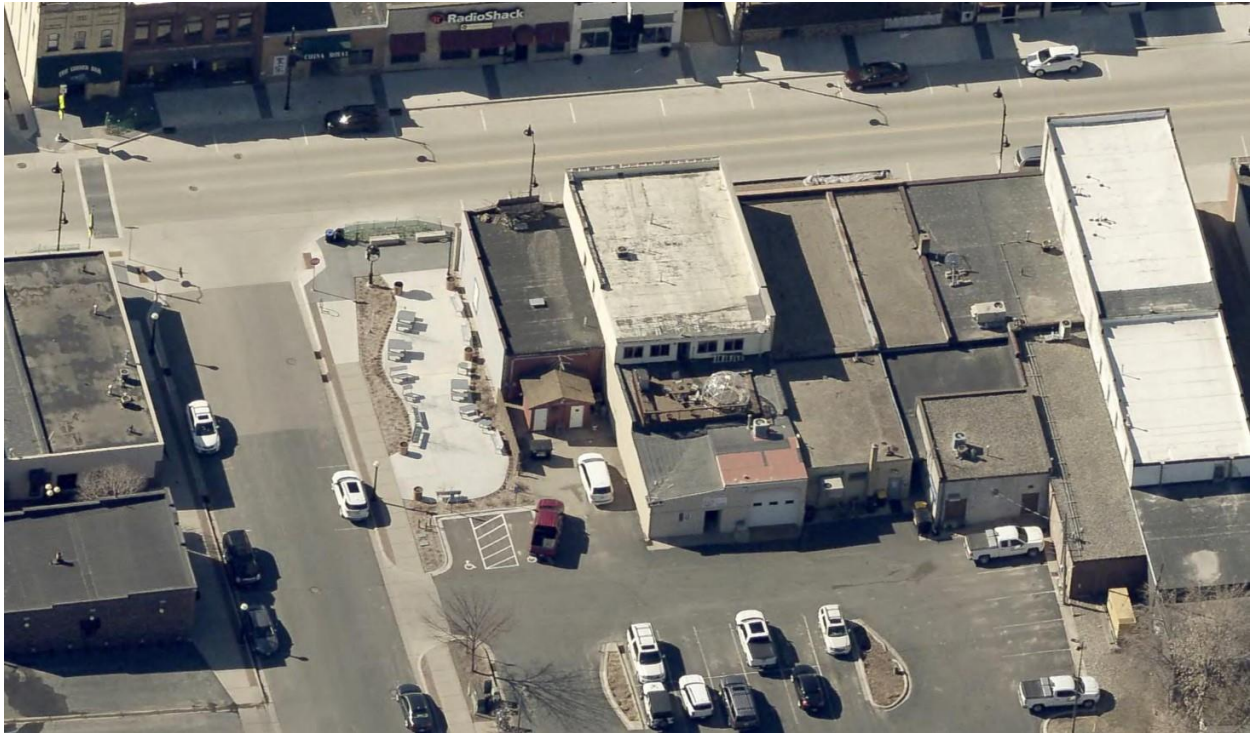


Outdoor Seating Site Plan



Proposed Fence





Oblique Aerial View





