



STAFF REPORT

MEETING DATE: April 24, 2023

AGENDA ITEM TITLE: The Sherman Market– Renewal of a Conditional Use Permit – 151 W. First Street

AGENDA SECTION: Public Hearing

REQUEST:

The request is to renew the Conditional Use Permit granted in 2022 for an Outdoor Market and Event Space located within the Central Business(C-2) zone district, Central Business Economic Overlay (CBEO) at 151 W. First Street.

The applicant was granted a Conditional Use Permit for 2022. This permit is being brought back to the Planning Commission for two reasons:

- 1) The previous permit conditions stated that if this use had not been addressed by the new land use code (which is not yet in effect), the applicant would be required to come back to Planning Commission to renew, and
- 2) The applicant was in violation of their Conditional Use Permit issued in 2022, necessitating additional review.



APPLICANT:

The applicant is Cate Kenny, 123 G Street, Salida, CO 80201.

LOCATION:

The subject property is described as Lots 11-13, Block 21, City of Salida, Chaffee County, Colorado. This property is also known as 151 W. First Street.

PROCESS:

The Salida Municipal Code, Chapter 16, specifies that Conditional Use applications be reviewed by the City of Salida Planning Commission at a public hearing after fifteen days public notice. The Planning Commission may make a decision to approve, approve with conditions, deny, or remand the application back to the applicant for modification.

The Planning Commission must find the use meets the review standards for a Conditional Use as stated in Section 16-4-110 of the Salida Municipal Code.

OBSERVATIONS:

1. The applicant is requesting to utilize their courtyard to host an outdoor market and other possible events. This property is located in the Central Business (C-2) zone district, Central Business Economic Overlay (CBEO). Table 16-D, Schedule of Uses, does not identify outdoor retail or outdoor event space as a use; however, per 16-4-140 the proposed use may be considered a conditional use if determined to be substantially similar to a use specifically described. In this case, the Administrator has determined the use is substantially similar to temporary commercial activities.
2. This will be the 6th year that the applicant has utilized their courtyard space. The use of the space has been primarily an outdoor market over those years, with additional events being added in 2021.

3. In previous years this request had been processed as a Limited Impact Review for a temporary commercial activity with more than 2 vendors and required additional permits and fees for a Multiple Vendor permit, as well as additional vendor fees on top of that permit. The Multiple Vendor Permit, established by Salida Municipal Code Chapter 6 and updated in 2019, is better designed for individual, short-term events such as a weekend festival. This is a private courtyard space that will be used for both recurring and one-time events, sometimes hosting multiple vendors and sometimes not. This permit allows us to consider all events under one Conditional Use Permit.
4. The surrounding land uses are commercial and multi-family residential.
5. A public comment letter was received and is included in this packet.

REVIEW STANDARDS (Section 16-4-110. Conditional Uses.)

- (a) General. Conditional uses are those land uses which are generally compatible with the permitted uses in a zone district, but which require site-specific review of their location, design, intensity, density, configuration and operating characteristics, and which may require the imposition of appropriate conditions, in order to ensure compatibility of the use at a particular location and mitigate its potentially adverse impacts. It is the intent of these regulations to provide a review of conditional uses so that the community is assured that any proposed conditional uses are suitable for the proposed location and are compatible with the surrounding land uses. Conditional uses are generally appurtenant to the property supporting the use; however, conditional use permits may also be made specific to the permit holder if appropriate under the circumstances.
- (b) Review Standards. An application for conditional use approval shall comply with the following standards. In addition, an application for a conditional use must demonstrate compliance with any review standards particular to that use specified in Table 16-D.

On May 31, 2022, the applicant was sent a written notification of being in violation of three conditions of their permit:

- * Racks of product were placed outside of the fenced area of the Sherman Market.
- * A vending truck was parked in the adjacent 1st Street right-of-way.
- * A generator was in use.

Because of the temporary nature of the market, the violation only lasted one day. Per Section 16-4-130 of the Salida Municipal Code, the permit holder was notified of this violation and given the required abatement period of thirty (30) days. As part of this renewal of the permit, staff recommends one of following two options should a future violation occur. In both options, the 30 day abatement period shall be considered used up from the 2022 violation:

- A violation of any condition of this permit will cause the Planning Commission to issue, at the following duly noticed hearing, a decision either revoking or sustaining the conditional use permit.

-OR-

- One violation may serve as a warning if corrective action is taken as soon as the applicant is notified. The next violation will cause the Planning Commission to issue, at the following duly noticed hearing, a decision either revoking or sustaining the conditional use permit.

(1) Consistency with Comprehensive Plan. The use shall be consistent with the City's Comprehensive Plan.

Applicant's Response: *The Sherman Market space is consistent with the City's Comprehensive Plan.*

The City's Comprehensive Plan identifies supporting local businesses, and to help retain and expand unique and independent local businesses, as a principle of the plan.

(2) Conformance to Code. The use shall conform to all other applicable provisions of this Chapter, including, but not limited to:

a. Zoning district standards. The purpose of the zone district in which it is located, the dimensional standards of that zone district and any standards applicable to the particular use, all as specified in Article V.

The purpose of the Central Business District (C-2) zone district is to provide for the business and civic functions that make up the City's core. The Central Business District (C-2) has a strong pedestrian character and provides for concentrated commercial activity.

The purpose of the Central Business Economic Overlay (CBEO) is to establish standards to preserve and protect the downtown area as a viable commercial district, and to ensure that future development be designed and planned in a manner compatible with those goals.

The activation of the courtyard at 151 West First Street with an outdoor market and events is compatible with the C-2 and CBEO districts. No structures are proposed.

Standards applicable to this conditional use are parking standards (addressed below in paragraph b.) and standards that apply to vendors on the property. The standards are identified as part of the outdoor vending permit and as a condition of approval, staff recommends that those standards shall apply here:

- The applicant shall be responsible for ensuring all vendors comply with the following:
 - a. All vendors shall remit appropriate sales tax to the State of Colorado and shall have their sales tax license visible at all times.
 - b. Food Vendors:
 - i. Food vendors shall obtain a 'License to Operate a Retail Food Establishment' from CDPHE prior to vending on this site.
 - ii. All food vendors shall receive a minimum of one fire inspection prior to or during operation. An operable, certified fire extinguisher is required.
 - iii. All waste from activity must be removed and properly disposed of daily. Any grease produced from food preparation must be disposed of in accordance with Chaffee County Health Department regulations.

b. Site development standards. The parking, landscaping, sign and improvements standards.

Applicant's Response: Hylton Lumber has agreed to allow the Sherman Market to access their parking lot.

The parking arrangement with Hylton Lumber is acceptable to staff for the terms of this conditional use. Table 16-J requires 1 parking space per 250 square feet of retail use. The Sherman Market courtyard is approximately 1,750 square feet, requiring 7 parking spaces. As a condition of approval:

- The parking agreement shall be re-visited by staff should the use or ownership of Hylton Lumber change in the future. If the required parking cannot be provided via a parking agreement, the applicant shall pay the Business Occupier Fee applicable at that time.

Any signage will meet the requirements of the Municipal Code.

(3) Use Appropriate and Compatible. The use shall be appropriate to its proposed location and be compatible with the character of neighboring uses, or enhance the mixture of complementary uses and activities in the immediate vicinity.

Applicant's Response: *The Sherman Market is compatible with neighboring uses.*

The proposed uses shall be contained within the fence of the courtyard. As a condition of approval:

- No activity shall encroach into the 1st Street right-of-way; activity shall be contained behind the current fence line.

(4) Traffic. The use shall not cause undue traffic congestion, dangerous traffic conditions or incompatible service delivery, parking or loading problems. Necessary mitigating measures shall be proposed by the applicant.

Applicant's Response: *The Sherman Market will not cause undue traffic congestion, dangerous traffic conditions or incompatible service delivery, parking, or loading problems. See attached information.*

As a condition of approval:

- Vendors shall not block parking along 1st Street, G Street, or impede traffic flow in the alley, other than to temporarily load and unload.

(5) Nuisance. The operating characteristics of the use shall not create a nuisance, and the impacts of the use on surrounding properties shall be minimized with respect to noise, odors, vibrations, glare and similar conditions.

Applicant's response: *The Sherman Market will not create a nuisance for surrounding properties.*

As a condition of approval:

- Any use of amplified sound shall comply with the City of Salida noise regulations as provided in Chapter 10, Article IX, Noise Control of the Salida Municipal Code in effect at that time.

The applicant can provide electricity from the Sherman Hotel if needed by vendors. As a condition of approval:

- Generators shall not be allowed.

(6) Facilities. There shall be adequate public facilities in place to serve the proposed use, or the applicant shall propose necessary improvements to address service deficiencies which the use would cause.

Applicant's response: *The Sherman Market will provide public facilities.*

The applicant has restroom facilities within the Sherman Building available for the vendors and customers.

(7) Environment. The use shall not cause significant deterioration to water resources, wetlands, wildlife habitat, scenic characteristics or other natural features. As applicable, the proposed use shall mitigate its adverse impacts on the environment.

Applicant's response: *The Sherman Market will not impact the environment.*

The proposed use is located within the existing courtyard of the Sherman Hotel and will not adversely affect environmental resources.

REVIEW AGENCIES:

Fire, Assistant Chief Kathy Rohrich: "Fire has no concerns at this time."

Police, Chief Russ Johnson: "No issues at this time from PD."

Public Works, Director David Lady: "No concerns."

RECOMMENDED FINDINGS:

1. This application is consistent with the Land Use Code and the surrounding neighborhood uses and conditions.
2. The applicable review criteria for Conditional Use applications have been met.

STAFF RECOMMENDATION:

Based on the above findings, staff recommends **APPROVAL** of the renewal of the conditional use permit for the Sherman Market at 151 West First Street subject to the conditions listed below.

RECOMMENDED MOTION:

"I make a motion to approve the renewal of the conditional use permit for the Sherman Market at 151 West First Street subject to the following conditions:

1. A violation of any condition of this permit will cause the Planning Commission to issue, at the following duly noticed hearing, a decision either revoking or sustaining the conditional use permit.

-OR-

1. One violation may serve as a warning if corrective action is taken as soon as the applicant is notified. The next violation will cause the Planning Commission to issue, at the following duly noticed hearing, a decision either revoking or sustaining the conditional use permit.
2. The applicant shall be responsible for ensuring all vendors comply with the following:
 - a. All vendors shall remit appropriate sales tax to the State of Colorado and shall have their sales tax license visible at all times.
 - b. Food Vendors:
 - i. Food vendors shall obtain a 'License to Operate a Retail Food Establishment' from CDPHE prior to vending on this site.
 - ii. All food vendors shall receive a minimum of one fire inspection prior to or during operation. An operable, certified fire extinguisher is required.
 - iii. All waste from activity must be removed and properly disposed of daily. Any grease produced from food preparation must be disposed of in accordance with Chaffee County Health Department regulations.

3. The parking agreement shall be re-visited by staff should the use or ownership of Hylton Lumber change in the future. If the required parking cannot be provided via a parking agreement, the applicant shall pay the Business Occupier Fee applicable at that time.
4. No activity shall encroach on the 1st Street right-of- way; activity shall be contained behind the current fence line.
5. Vendors shall not block parking along 1st Street, G Street, or impede traffic flow in the alley, other than to temporarily load and unload.
6. Any use of amplified sound shall comply with the City of Salida noise regulations as provided in Chapter 10, Article IX, Noise Control of the Salida Municipal Code in effect at that time.
7. Generators shall not be allowed.

Attachments:

Application materials

Proof of Public Notice

Public Comment Letter

THE SHERMAN MARKET - 2023
151 West First Street
Salida, CO 81202

The Sherman Market space is an open-air courtyard located in the middle of Salida's historic downtown. Salida is the largest historical district in Colorado and is one of two certified Creative Arts Districts as well. The Sherman Market is a place to give the community a unique space to create on the west side of First Street.

The Sherman Market began in 2017. This year we are excited to celebrate our 5th annual market. Our artisans & shoppers have grown by 50% year over year. The Sherman Market not only brings local & nationwide tourists to Salida, but also brings income to local businesses, hotels, restaurants, shops, etc. Not to mention the creative & cultural benefits art brings to any community.

The Sherman Market plans to operate:

Sat 5/27 & Sun 5/28
Sat 6/17 & Sun 6/18
Sat 6/24 & Sun 6/25
Sat 7/08 & Sun 7/09
Sat 7/15 & Sun 7/16

Last summer, The Sherman Market received a violation to the approved conditions. Our market manager explained to the offending vendor the city requirements (no generator, no product on sidewalk & no parking on First St) The owner of the business was aware of the violation & chose to park at their own risk. The Sherman Market will continue to only allow vendors participating in the market to sell within the gated courtyard.

The Sherman Market signage will meet the requirements stated in the City Code.

As per the City of Salida, it is required to have adequate parking. Hylton Lumber has agreed to allow the Sherman Market to access their parking lot.

Thank you for your time & consideration. Please contact us if you have any questions or concerns.

Best regards,

Greg & Cate Kenny



GENERAL DEVELOPMENT APPLICATION

448 East First Street, Suite 112

Salida, CO 81201

Phone: 719-530-2626 Fax: 719-539-5271

Email: planning@cityofsalida.com

1. TYPE OF APPLICATION (Check-off as appropriate)

- | | |
|--|--|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Administrative Review:
(Type) _____ |
| <input type="checkbox"/> Pre-Annexation Agreement | |
| <input type="checkbox"/> Variance | |
| <input type="checkbox"/> Appeal Application | <input checked="" type="checkbox"/> Limited Impact Review:
(Type) _____ |
| <input type="checkbox"/> Certificate of Approval | |
| <input type="checkbox"/> Creative Sign Permit | <input type="checkbox"/> Major Impact Review:
(Type) _____ |
| <input type="checkbox"/> Historic Landmark/District | |
| <input type="checkbox"/> License to Encroach | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Text Amendment to Land Use Code | |
| <input type="checkbox"/> Watershed Protection Permit | |
| <input checked="" type="checkbox"/> Conditional Use | |

2. GENERAL DATA (To be completed by the applicant)

A. Applicant Information

Name of Applicant: CATE KENNT

Mailing Address: 123 G. STREET - SALIDA, CO 81201

Telephone Number: 214.406.7201 FAX: _____

Email Address: thecatekennt@gmail.com

Power of Attorney/ Authorized Representative: _____
(Provide a letter authorizing agent to represent you, include representative's name, street and mailing address, telephone number, and FAX)

B. Site Data

Name of Development: THE SHERMAN MARKET

Street Address: 151 W. First St. - SALIDA, CO 81201

Legal Description: Lot _____ Block _____ Subdivision _____ (attach description)

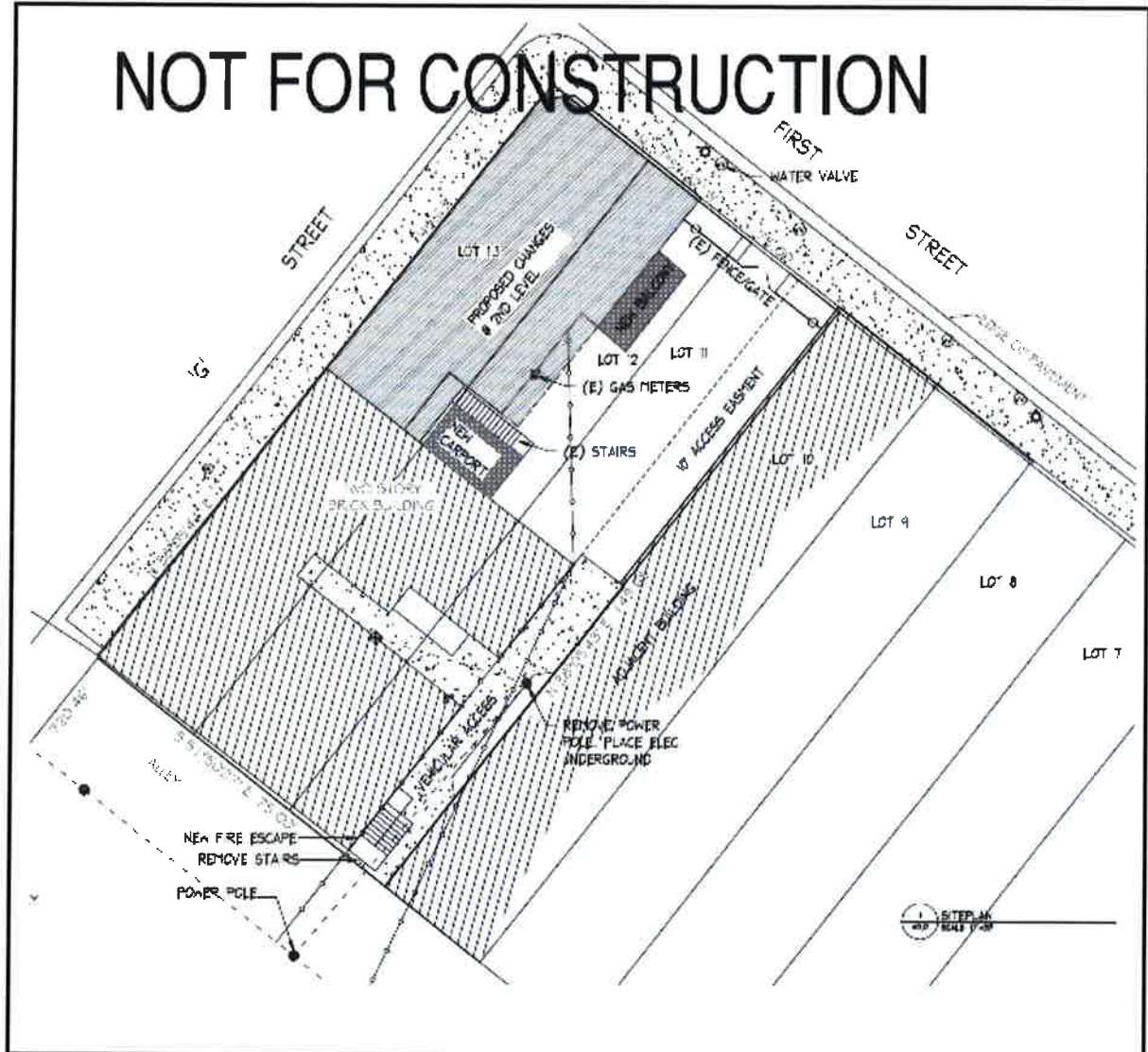
Disclosure of Ownership: List all owners' names, mortgages, liens, easements, judgments, contracts and agreements that run with the land. (May be in the form of a current certificate from a title insurance company, deed, ownership and encumbrance report, attorney's opinion, or other documentation acceptable to the City Attorney)

I certify that I have read the application form and that the information and exhibits herewith submitted are true and correct to the best of my knowledge.

Signature of applicant/agent [Signature] Date 3.17.23

Signature of property owner [Signature] Date 3.17.23

PLAT MAP

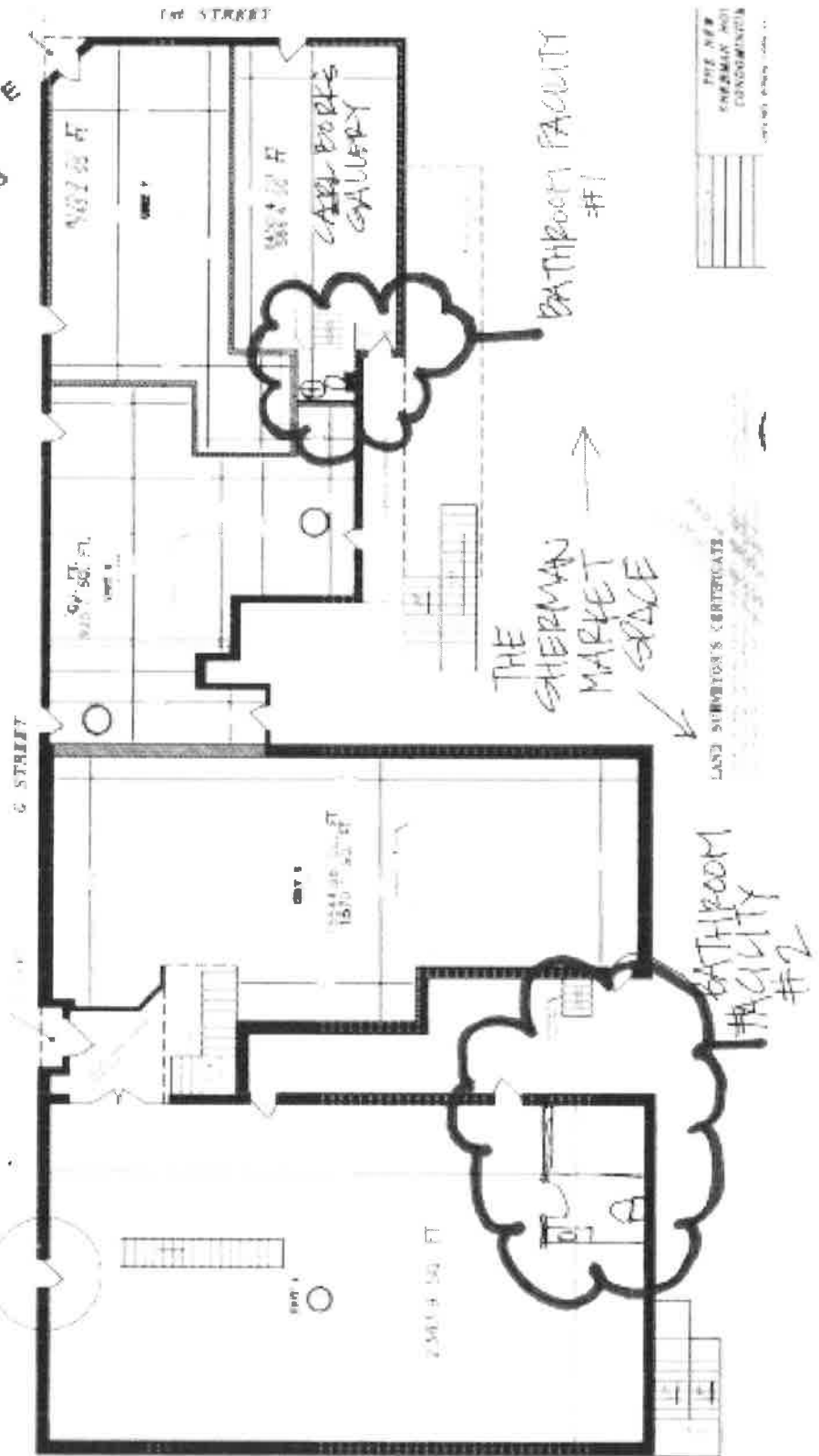


THE NEW SHERMAN HOTEL
CONDOMINIUMS

LOCATED WITHIN LOTS 11, 12 AND 13 BLOCK 27
OF THE CITY OF SALT LAKE
CHRYSLER COUNTY, COLORADO



GROUND LEVEL





**CONDITIONAL USE APPLICATION &
ADMINISTRATIVE CONDITIONAL USE**

448 East First Street, Suite 112

Salida, CO 81201

Phone: 719-530-2626 Fax: 719-539-5271

Email: planning@cityofsalida.com

A. TYPE OF CONDITIONAL USE REQUESTED (Refer to Schedule of Uses in Article IV of the Land Use Code)

Residential Zone Districts (Table 16-D): _____

Or

Commercial/Industrial Zone Districts (Table 16-D): THE SHERMAN MARKET.

B. DEVELOPMENT PROCESS (City Code Section 16-4-110)

1. Pre-Application Conference. Optional.
2. Submit Application.
3. Staff Review. Schedule Hearing, if required. Forward Report to Applicant and Planning Commission, if required.
4. Public Notice Provided For Hearing.
5. Public Hearing Conducted by Planning Commission and Action Taken.

C. APPLICATION CONTENTS (City Code Section 16-3-60 for Admin. Conditional Use or 16-3-80 for Conditional Uses)

1. **General Development Application**
2. **Conditional Use Application**
3. **Site Plan.** A site plan of the subject property, showing existing and proposed features, buildings, roads, alleys, utilities, etc. which are relevant to the review of the application. The application will also indicate conformance with any applicable development standards for the proposed conditional use. **The copies shall be accepted on 8½" x 11", 11" x 17", 24"x 36" paper or electronically.**
4. **Surrounding Land Use.** Current land use of properties on all sides of the property and across the street(s) and alley.
5. **Public Notice- Conditional Use Applications requiring public noticing.**
 - ☐ a. **List.** A list shall be submitted by the applicant to the city of adjoining property owner's names and addresses. A property owner is considered adjoining if it is within 175 feet of the subject property regardless of public ways. The list shall be created using the current Chaffee County tax records.
 - ☐ b. **Postage Paid Envelopes.** Each name on the list shall be written on a postage-paid envelope. Postage is required for up to one ounce. Return address shall be City of Salida, 448 E First Street, Suite 112, Salida, CO 81201
6. **Other Information.** Staff may request additional information as deemed necessary to evaluate the impacts of the conditional use application. Mobile Home Parks and Recreational Vehicle Parks shall contain the additional information required in Section 16-4-190 of the Land Use Code.
7. **Vicinity Map.** 8 ½" x 11" map showing parcel's location in the City.
8. **Application Fee** \$500, cash or check made out to City of Salida, or \$250.00 for **Administrative Conditional Use application.**

D. REVIEW STANDARDS (If necessary, attach additional sheets)

An application for conditional use approval shall comply with the following standards.

1. **Consistency with Comprehensive Plan.** The use shall be consistent with the City's Comprehensive Plan.

THE SHERMAN MARKET IS CONSISTENT WITH
THE CITY'S COMPREHENSIVE PLAN. SEE ATTACHED

2. **Conformance to Code.** The use shall conform to all other applicable provisions of this Land Use Code, including, but not limited to:

A. **Zoning District Standards.** The purpose of the zone district in which it is located, the dimensional standards of that zone district, and any standards applicable to the particular use, all as specified in Article 5, Use and Dimensional Standards.

- b. **Site Development Standards.** The parking, landscaping, sign and improvements standards.

SEE ATTACHED

3. **Use Appropriate and Compatible.** The use shall be appropriate to its proposed location and be compatible with the character of neighboring uses, or enhance the mixture of complementary uses and activities in the immediate vicinity.

THE SHERMAN MARKET IS COMPATIBLE WITH
NEIGHBORING USES.

4. **Traffic.** The use shall not cause undue traffic congestion, dangerous traffic conditions or incompatible service delivery, parking or loading problems. Necessary mitigating measures shall be proposed by the applicant.

THE SHERMAN MARKET WILL NOT CAUSE UNLUE
TRAFFIC CONGESTION, INCOMPATIBLE SERVICE DELIVERY,
PARKING, OR LOADING PROBLEMS.

5. **Nuisance.** The operating characteristics of the use shall not create a nuisance and the impacts of the use on surrounding properties shall be minimized with respect to noise, odors, vibrations, glare, and similar conditions.

THE SHERMAN MARKET WILL NOT CREATE A
NUISANCE FOR SURROUNDING PROPERTIES.

6. **Facilities.** There shall be adequate public facilities in place to serve the proposed use, or the applicant shall propose necessary improvements to address service deficiencies which the use would cause.

THE SHERMAN MARKET WILL PROVIDE PUBLIC FACILITIES. SEE ATTACHED.

7. **Environment.** The use shall not cause significant deterioration to water resources, wetlands, wildlife habitat, scenic characteristics, or other natural features. As applicable, the proposed use shall mitigate its adverse impacts on the environment.

THE SHERMAN MARKET WILL ^{NOT} ~~PROVIDE~~
~~PUBLIC FACILITIES~~. IMPACT THE ENVIRONMENT.

PUBLIC NOTICE
NOTICE OF PUBLIC HEARING BEFORE
THE PLANNING COMMISSION FOR
THE CITY OF SALIDA CONCERNING A
CONDITIONAL USE APPLICATION
TO ALL MEMBERS OF THE PUBLIC
AND INTERESTED PERSONS: PLEASE
TAKE NOTICE: that on April 24, 2023 at
or about the hour of 6:00 p.m., a public
hearing will be conducted by the City of
Salida Planning Commission at City Council
Chambers, 448 East First Street, Suite 190,
Salida, Colorado and online at the following
link: <https://attendee.gotowebinar.com/rt/1909092342220683277>

The applicant, Cate Kenny of The Sherman Hotel LLC, is requesting renewal of a Conditional Use Permit for Outdoor Market and Events on a piece of property known as Lots 11-13, Block 21, City of Salida, Chaffee County, Colorado. This property is also known as 151 West First Street.

The general purpose of the application is to renew that Conditional Use Permit granted in 2022 for an outdoor market and event space within a Central Business (C-2) zone district. Interested persons are encouraged to attend the public hearing. Further information on the application may be obtained from the Community Development Department, (719) 530-2631.

*Please note that it is inappropriate to personally contact individual City Councilors or Planning Commissioners, outside of the public hearing, while an application is pending. Such contact is considered ex parte communication and will have to be disclosed as part of the public hearings on the matter. If you have any questions/ comments, you should email or write a letter to staff, or present your concerns at the public meeting via the above GoToWebinar link so your comments can be made part of the record.

Published in The Mountain Mail April 7, 2023

Merrell Bergin
PO Box 868
Salida, CO 81201-0868
mberginco@gmail.com

April 21, 2023

Kathryn Dunleavy
Planner
City of Salida
448 East 1st Street
Salida, CO 81201

Via Email: kathryn.dunleavy@cityofsalida.com
Re: Conditional Use Permit: The Sherman Hotel, LLC
Support for Planning and Zoning Hearing April 24, 2023

Kathryn,

Thank you for sending the 2023 Conditional Use Permit renewal application for The Sherman Hotel, LLC. The incident that the applicant Cate Kenny refers to was on Sept. 16, 2022. Email text below:

I tried to reach Cate Kenny today at 3:42 to talk about the large truck and food cart that was setting up to operate in the alley between 1st and 2nd, F and G behind our building. They were planning to serve the New Sherman courtyard.

There was no fire access in the alley and only small cars could pass. I was unable to reach Cate and told her by text that I was calling Code Enforcement.

I then reached sheriff dispatch and they may have sent someone because now the truck has moved around to 1st and G and is taking up two parking places there. The service window is open to the street.

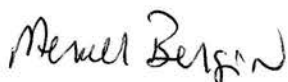
They appear to be servicing what was described to me as a private party in the Sherman Courtyard but people are coming up to them from First Street and asking for water and food from the streetside.

Code Enforcement and Community Development were made aware of this, and they were contacted by Police that day.

Subsequently, I had a very positive face to face meeting with Greg and Cate Kenny. We shared our mutual concerns as neighbors, as well as cell phone information and all was resolved. I appreciate their candor in bringing this to the renewal application.

I feel confident heading into the new season that the applicants will consistently ensure that the alley behind the Sherman is clear of vehicles, except for active loading/unloading with the driver nearby. I also believe they will make their vendors aware of the prohibition of not using First Street/Hwy 291 as a pop-up vendor location,

Given the above, I support the renewal application and look forward to working with the applicants if any new issues arise.



Merrell Bergin

Tel.303-601-1785