

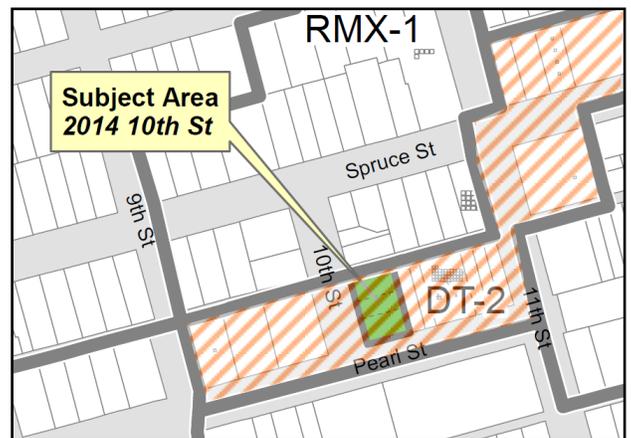
## MEMORANDUM

**TO:** Planning Board  
**FROM:** Elaine McLaughlin, Case Manager  
**DATE:** May 12, 2015  
**SUBJECT:** Call Up Item: USE REVIEW to establish the 82 indoor seat restaurant (previously not permitted – prior to Use Review requirement) and a 193 square foot outdoor patio in the front of the restaurant with 14 outdoor seats. Hours of operation from 10:00 a.m. to 10:00 p.m. seven days per week Reviewed under case no. LUR2015-00020.

### Background.

The property is located within the DT-2 zoning district within the area known as the West End of Pearl Street in Downtown Boulder. It is also located within the Downtown Historic District. The DT-2 zoning district is defined in section 9-5-2, B.R.C. 1981 as follows:

*“A transition area between the downtown and the surrounding residential areas where a wide range of retail, office, residential, and public uses are permitted. A balance of new development with the maintenance and renovation of existing buildings is anticipated, and where development and redevelopment consistent with the established historic and urban design character is encouraged.”*



The existing restaurant has operated on the site for several years and prior to the requirement for a Use Review in this DT-2 zoning district location for restaurants over 1,000 square feet. Because the restaurant wasn't previously permitted, as is required today, and because of the desire to add the patio the Use Review is required. In addition, the applicant is required to obtain a revocable permit for the patio because it extends into the public right of way along the 10<sup>th</sup> Street sidewalk. The applicant also applied for, and received on April 23, 2015, a Landmark Alteration Certificate (LAC) for the patio and ornamental wrought iron fencing enclosing the patio.

**Proposed Project.** The proposed 193 square foot outdoor patio with 14 seats is planned to be located between two existing restaurant patios adjacent on either side of the Sushi Tora restaurant. Refer to the photo to the right that illustrates the proposed fence location. The applicant provided several sketches of the patio and the proposed wrought iron fencing that was approved through the LAC. The applicant intends to operate both the restaurant and patio from 10:00 a.m. until 10:00 p.m., seven days per week. Refer to [Attachment C](#) for the Applicant's Proposed Plans and Management Plan.



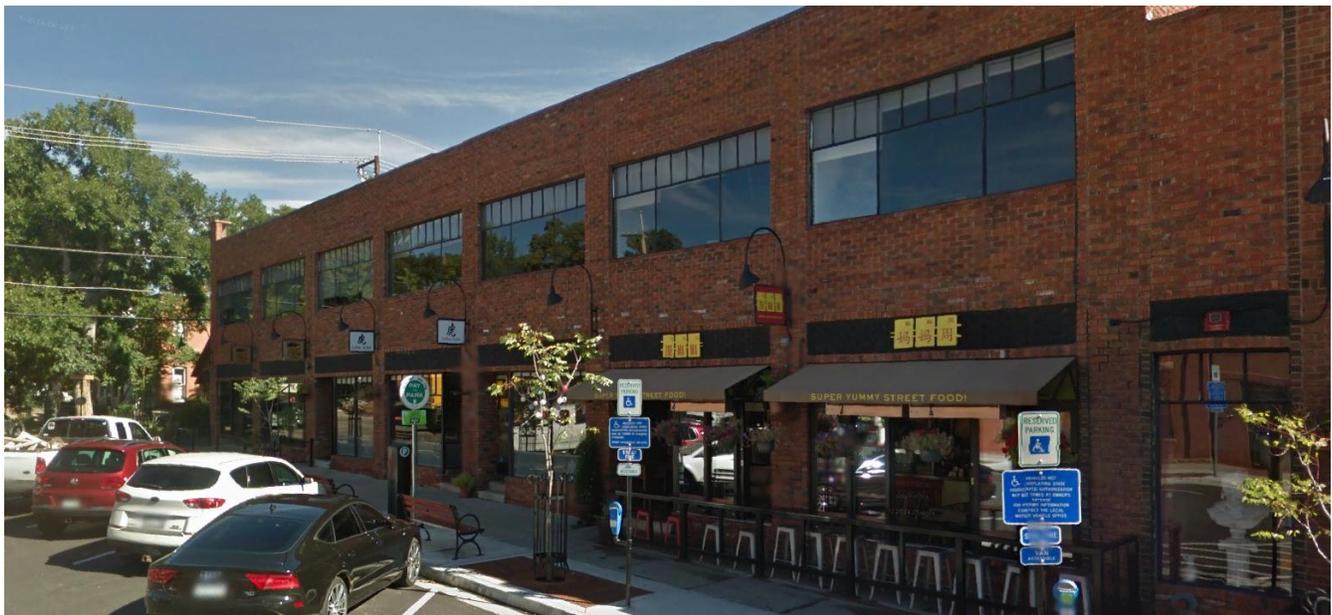
**Analysis.** The Use Standards of the Land Use Code section 9-6-1, B.R.C. 1981 require a Use Review for “restaurants, brewpubs and taverns that are over 1,000 square feet in floor area” to operate in the DT-2 zoning district. The application was found to be in conformance with the Use Review criteria of the Land Use Code section 9-2-15, B.R.C. 1981. **Attachment C** is provided of the Use Review Criteria checklist. As a result, a Notice of Disposition of Approval was issued by staff and provided in **Attachment A**.

**Public Comment.** Consistent with section 9-4-3, Public Notice Requirements, B.R.C. 1981, staff provided notification to all property owners within 600 feet of the subject location of the application, and a sign has been posted on the building by the applicant indicating the review requested. No comments were received regarding the application. Public notification was also sent to neighbors within 600 feet for a Good Neighbor Meeting which was held on May 4, 2015. There were no attendees from the public at the meeting.

**Conclusion.** Per section 9-4-2, B.R.C. 1981, applications for Use Review are subject to call up by the Planning Board. This proposal was approved by Planning and Development Services staff on **May 15, 2015** (see **Attachment A**) and the decision may be called up before Planning Board on or before **May 30, 2015**. There is one Planning Board meeting within the 14-day call up period, on **May 21, 2015**. Questions about the project or decision should be directed to Elaine McLaughlin at (303) 441-4130 or [mclaughline@boulder.colorado.gov](mailto:mclaughline@boulder.colorado.gov).

**Attachments:**

- A. Signed Disposition
- B. Analysis of Use Review Criteria
- C. Applicant’s Proposed Plan and Management Plan





**CITY OF BOULDER**  
**Community Planning & Sustainability**

1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791  
phone 303-441-1880 • fax 303-441-3241 • web www.bouldercolorado.gov

**CITY OF BOULDER PLANNING DEPARTMENT**  
**NOTICE OF DISPOSITION**

You are hereby advised that the following action was taken by the Planning Department based on the standards and criteria of the Land Use Regulations as set forth in Chapter 9-2, B.R.C. 1981, as applied to the proposed development.

DECISION:	<b>APPROVED</b>
PROJECT NAME:	<b>SUSHI TORA RESTAURANT WITH PATIO</b>
DESCRIPTION:	<b>USE REVIEW (STANDARD) to establish the 82 indoor seat restaurant (previously not permitted) and an outdoor patio in the front of the restaurant with 14 outdoor seats. Hours of operation seven days per week from 10:00 a.m. to 10:00 p.m.</b>
LOCATION:	<b>2014 10TH ST</b>
COOR:	<b>N03W07</b>
LEGAL DESCRIPTION:	<b>See Exhibit A</b>
APPLICANT:	<b>Joe Simonet</b>
OWNER:	<b>SAX FAMILY, LLC</b>
APPLICATION:	<b>Use Review, LUR2015-00020</b>
ZONING:	<b>DT-2</b>
CASE MANAGER:	<b>Elaine McLaughlin</b>
VESTED PROPERTY RIGHT:	<b>NO; the owner has waived the opportunity to create such right under Section 9-2-19, B.R.C. 1981.</b>

FOR CONDITIONS OF APPROVAL, SEE THE FOLLOWING PAGES OF THIS DISPOSITION.

Approved on: May 15, 2015  
Date

By:   
David Driskell, Executive Director of Community Planning and Sustainability

This decision may be appealed to the Planning Board by filing an appeal letter with the Planning Department within two weeks of the decision date. If no such appeal is filed, the decision shall be deemed final fourteen days after the date above mentioned.

**Appeal to Planning Board expires: May 30, 2015**

IN ORDER FOR A BUILDING PERMIT APPLICATION TO BE PROCESSED FOR THIS PROJECT, A SIGNED DEVELOPMENT AGREEMENT AND FINAL PLANS FOR CITY SIGNATURE MUST BE SUBMITTED TO THE PLANNING DEPARTMENT WITH DISPOSITION CONDITIONS AS APPROVED SHOWN ON THE FINAL PLANS, IF THE DEVELOPMENT AGREEMENT IS NOT SIGNED WITHIN NINETY (90) DAYS OF THE FINAL DECISION DATE, THE PLANNING DEPARTMENT APPROVAL AUTOMATICALLY EXPIRES.

Pursuant to Section 9-2-12 of the Land Use Regulations (Boulder Revised Code, 1981), the applicant must begin and substantially complete the approved development within three years from the date of final approval [or in compliance with the phasing plan]. Failure to "substantially complete" (as defined in Section 9-2-12) the development within three years [or in compliance with the phasing plan] shall cause this development approval to expire.

## CONDITIONS OF APPROVAL

1. The Applicant shall ensure that the **development shall be in compliance with all plans and the management plan** prepared by the Applicant on April 17, 2015 on file in the City of Boulder Planning Department, except to the extent that the development may be modified by the conditions of this approval. Further, the Applicant shall ensure that the approved use is operated in compliance with the following restrictions:
  - a. Size of the approved interior use shall be limited to 2,567 square feet on the interior with 82 interior seats; and 193 square feet on the patio with 14 exterior patio seats.
  - b. The approved interior and exterior use shall be closed from 10:00 p.m. until 10:00 a.m., seven days per week.
  - c. Trash and bottles shall not be removed to outside trash containers between the hours of 10:00 p.m. and 8:00 a.m
2. The Applicant **shall not expand or modify the approved use**, except pursuant to subsection 9-2-15(h), B.R.C. 1981.

## Exhibit A

### Attached Legal Description

#### PARCEL I:

That portion of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 25, Township 1 North, Range 71 West of the 6<sup>th</sup> P.M., in the County of Boulder, State of Colorado, described as follows:

Beginning at a point on the North line of Pearl Street in the City of Boulder, whence the Southeast corner of Block 97, Original Town of Boulder, bears North  $75^{\circ} 00'$  East, 300.00 feet, said point being the intersection of said North line of Pearl Street with the East line of Tenth Street; thence North  $15^{\circ} 00'$  West, along the Easterly line of said Tenth Street, 140.00 feet; thence North  $75^{\circ} 00'$  East, 50.00 feet; thence South  $15^{\circ} 00'$  East, 140.00 feet; thence South  $75^{\circ} 00'$  West, along the North line of Pearl Street, 50.00 feet to the place of beginning.

#### PARCEL II:

That portion of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 25, Township 1 North, Range 71 West of the 6<sup>th</sup> P.M., in the County of Boulder, State of Colorado, described as follows:

Commencing at a point on the North line of Pearl Street in the City of Boulder, whence the Southeast corner of Block 97, Original Town of Boulder, bears North  $75^{\circ} 00'$  East, 180.00 feet; thence South  $75^{\circ} 00'$  West, along the North line of Pearl Street, 30.00 feet to the Southwest corner of that tract of land conveyed to Orvel L. Gathers to Alfred H. Allen in Deed recorded July 13, 1950, in Book 866 at Page 145, and the true point of beginning; thence South  $75^{\circ} 00'$  West along the North line of Pearl Street, 40.00 feet to the Southeast corner of that tract of land conveyed by Forrest C. Heath and Clara M. Heath to Orvel L. Gathers in Deed recorded March 5, 1948, in Book 775 at Page 304; thence North  $15^{\circ} 00'$  West, along the Easterly line of said tract described in Book 775 at Page 304, a distance of 140.00 feet to the Northeast corner thereof, and the South line of the alley in said Block 97 extended; thence North  $75^{\circ} 00'$  East, along the South line of said alley, 40.00 feet to the Northwest corner of said tract described in Book 866 at Page 145; thence South  $15^{\circ} 00'$  East along the Westerly line of said tract described in Book 866 at Page 145, a distance of 140.00 feet to the true point of beginning, County of Boulder, State of Colorado.

## USE REVIEW CRITERIA

**(e) Criteria for Review:** No use review application will be approved unless the approving agency finds all of the following:

√ **(1) Consistency With Zoning and Nonconformity:** The use is consistent with the purpose of the zoning district as set forth in [section 9-5-2](#), "Zoning Districts," B.R.C. 1981, except in the case of a nonconforming use;

The restaurant is located in the DT-2 zoning district and has operated in that location since prior to the requirement for a use review. The DT-2 zoning district is defined under section 9-5-2, B.R.C. 1981 as,

*"A transition area between the downtown and the surrounding residential areas where a wide range of retail, office, residential, and public uses are permitted. A balance of new development with the maintenance and renovation of existing buildings is anticipated, and where development and redevelopment consistent with the established historic and urban design character is encouraged."*

The existing restaurant has operated on the site for several years and prior to the requirement for a Use Review in this DT-2 zoning district location for restaurants over 1,000 square feet. Because the restaurant wasn't previously permitted, as is required today, and because of the desire to add the patio the Use Review is required. In addition, the applicant is required to obtain a revocable permit for the patio because it extends into the public right of way along the 10<sup>th</sup> Street sidewalk. The applicant also applied for, and received on April 23, 2015, a Landmark Alteration Certificate (LAC) for the patio and ornamental wrought iron fencing enclosing the patio.

√ **(2) Rationale:** The use either:

√ **(A) Provides direct service or convenience to or reduces adverse impacts to the surrounding uses or neighborhood;**

The restaurant is located within an existing retail building where other restaurants are also located, and within an area of the downtown that is highly walkable from surrounding neighborhoods. The ability walk, bike or bus to the restaurant is easily accomplished given the central location. The outdoor patio proposal will enhance the setting, providing an opportunity to dine outside during warmer days.

n/a **(B) Provides a compatible transition between higher intensity and lower intensity uses;**

n/a **(C) Is necessary to foster a specific city policy, as expressed in the Boulder Valley Comprehensive Plan, including, without limitation, historic preservation, moderate income housing, residential and non-residential mixed uses in appropriate locations, and group living arrangements for special populations; or**

n/a **(D) Is an existing legal non-conforming use or a change thereto that is permitted under subsection (f) of this section;**

√ **(3) Compatibility:** The location, size, design, and operating characteristics of the proposed development or change to an existing development are such that the use will be reasonably compatible with and have minimal negative impact on the use of nearby properties or for

**residential uses in industrial zoning districts, the proposed development reasonably mitigates the potential negative impacts from nearby properties;**

The restaurant and patio are relatively small and are in the context of other restaurants with patios that integrate well into the existing urban context of West Pearl and 10<sup>th</sup> streets. The operating characteristics of the restaurant and patio are such that the hours of operations will have minimal impacts on the nearby residential.

- √ (4) **Infrastructure: As compared to development permitted under [section 9-6-1](#), "Schedule of Permitted Land Uses," B.R.C. 1981, in the zone, or as compared to the existing level of impact of a nonconforming use, the proposed development will not significantly adversely affect the infrastructure of the surrounding area, including, without limitation, water, wastewater, and storm drainage utilities and streets;**

The infrastructure for the site is already integrated into the urban context of the site.

- √ (5) **Character of Area: The use will not change the predominant character of the surrounding area;**

The restaurant is existing and the addition of the patio area for the restaurant will enhance the character of the surroundings by providing outdoor seating adjacent to other restaurants on the same block.

- n/a (6) **Conversion of Dwelling Units to Nonresidential Uses: There shall be a presumption against approving the conversion of dwelling units in the residential zoning districts to nonresidential uses that are allowed pursuant to a use review, or through the change of one nonconforming use to another nonconforming use. The presumption against such a conversion may be overcome by a finding that the use to be approved serves another compelling social, human services, governmental, or recreational need in the community including, without limitation, a use for a daycare center, park, religious assembly, social service use, benevolent organization use, art or craft studio space, museum, or an educational use.**

Not applicable to this case, this is not a proposed conversion of residential to non-residential use.

## Attachment C: Applicant's Management Plan and Project Plans

### Written Statement:

This Land Use Review application is in reference to the addition of an outdoor patio in front of Sushi Tora at 2014 10<sup>th</sup> Street Boulder, CO 80302.

#### Existing Use of property:

Restaurant. DBA: Sushi Tora

#### Existing Floor Area of the Restaurant:

2,566.59 sq/ft RSF

2,190.11 sq/ft USF

#### Number of Indoor Seats:

BFD Seating Capacity: 49 North half (Sushi Bar Side)	Actual Seats: 42
BFD Seating Capacity: 57 South half (Café Side)	Actual Seats: 40
Total BFD Seating Capacity: 106	Total Actual Seats: 82

#### Hours of Operation: (Existing Restaurant)

Daily (Sunday–Saturday) 10:00am-10:00pm

#### Proposal:

Addition of 192.65 sq/ft outdoor patio in front of Sushi Tora Restaurant (2014 10<sup>th</sup> Street Boulder, CO 80302), in between the two existing outdoor patios in front of Zoe Mama (2010 10<sup>th</sup> Street Boulder, CO 80302) and PMG (2018 10<sup>th</sup> Street Boulder, CO 80302).

#### Number of additionally proposed outdoor seats:

8 North half (Sushi bar side)

6 South half (Café Side)

Total Additionally proposed seats: 14

#### Intended Use:

Outdoor seating for dine in guests of Sushi Tora restaurant during business hours.

#### Hours of Operation: (Proposed Outdoor Patio)

Daily (Sunday–Saturday) 10:00am-10:00pm

#### Revocable Lease:

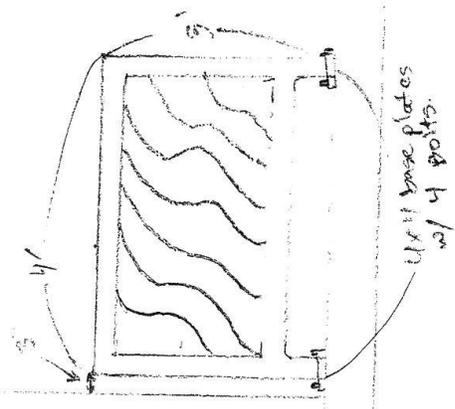
Property in question will require a revocable lease from the City of Boulder. Applicant acknowledges and accepts the terms and conditions subject to its use.



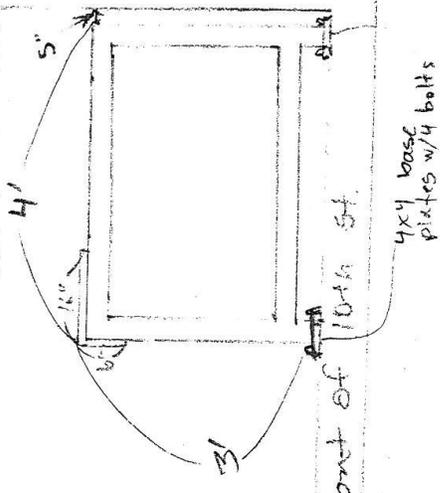


Side View  
from North  
2014 10th St.

\* This portion of the patio currently exists. It is the Beehive patio next to Suskitorra.



This is the portion of the patio that we are constructing - generally constructed to match w/ Zoo existing next to Suskitorra.

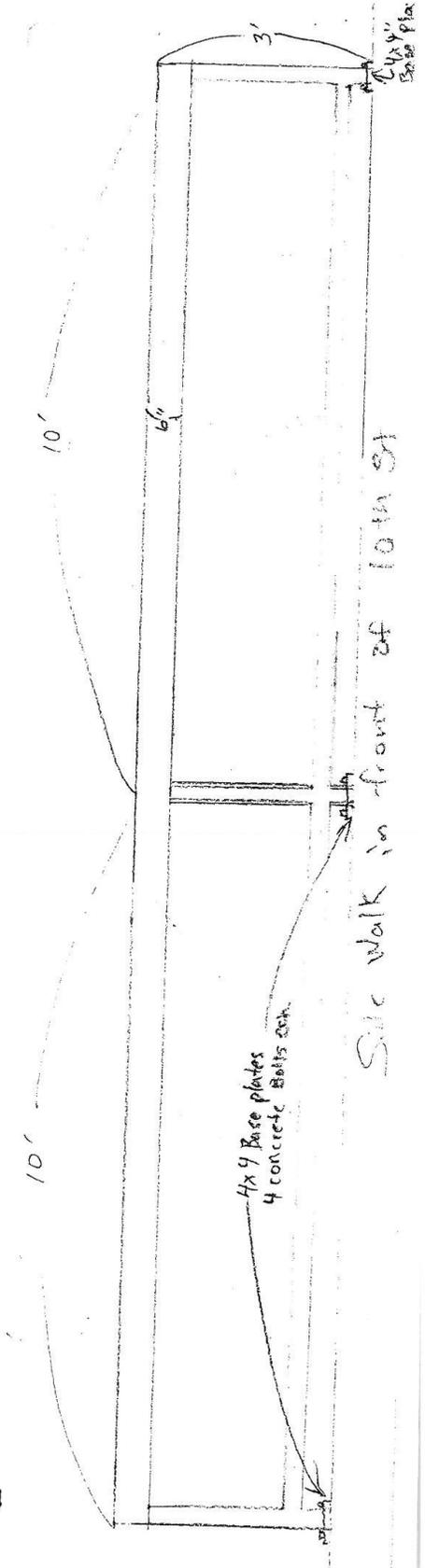


Side View  
from South  
2014 10th St.

### EXHIBIT B Patio Rail Design

Side walk in front of 10th St.

Front View  
from West



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PDS