

MEMORANDUM

To: Planning Board
FROM: Sloane Walbert, Case Manager
DATE: July 9, 2015
SUBJECT: **Call-Up Item:** USE REVIEW (LUR2015-00041): Request for a new restaurant (“Doug’s Day Diner”) to utilize an existing 815 square foot outdoor patio at 2400 Arapahoe Avenue within the Business - Regional 1 (BR-1) zone district. Hours of operation are 6:00 a.m. to 8:00 p.m., seven days a week. The call-up period expires on **July 22, 2015**.

Attached is the disposition of approval of a Use Review to allow a restaurant with an outdoor seating area of 815 square feet at the southeast corner of Arapahoe Avenue and Folsom Street in the Arapahoe Village Shopping Center (see [Attachment A](#)). Pursuant to [Table 6-1](#): “Use Table”, B.R.C. 1981, a Use Review is required for restaurants or taverns in the BR-1 zone district with an outdoor seating area of 300 square feet or more within 500 feet of a residential zone district. Refer to [Attachment B](#) for analysis of the Use Review Criteria.

Background. The subject tenant space is part of the 13.1 acre Arapahoe Village Shopping Center located in Central Boulder on the south side of Arapahoe Avenue, between Folsom Street and 28th Street. The area to the north and east comprises a regional business area (the Boulder Valley Regional Center). To the northwest, across Folsom Street, is the established Goss Grove residential neighborhood. Refer to **Figure 1** below for a Vicinity Map.



Figure 1: Vicinity Map

The proposed use would occupy a tenant space at the far northwest corner of the shopping center. The current configuration of Arapahoe Village was originally approved in 1979 as part of Planned Unit Development (PUD) (#P-79-33). Records indicate that commercial uses pre-date this approval. A PUD amendment was also approved in the following year (# P-80-5). The subject building currently contains a variety of service, retail and restaurant tenants.

The site is located in the Business - Regional 1 (BR-1) zoning district, which is defined under [section 9-5-2](#), B.R.C. 1981 as, “business centers of the Boulder Valley, containing a wide range of retail and commercial operations, including the largest regional-scale businesses, which serve outlying residential development; and where the goals of the Boulder Urban Renewal Plan are implemented.” Directly across Folsom Street is a restaurant and gas station, also within the BR-1 zone district. The Business - Transitional 1 (BT-1) zone district to the south contains the Millennium Harvest House hotel. Residential uses on the CU campus, which serves family and graduate students from the university, are located to the west in the Public (P) zone district. Refer to **Figure 2** below.

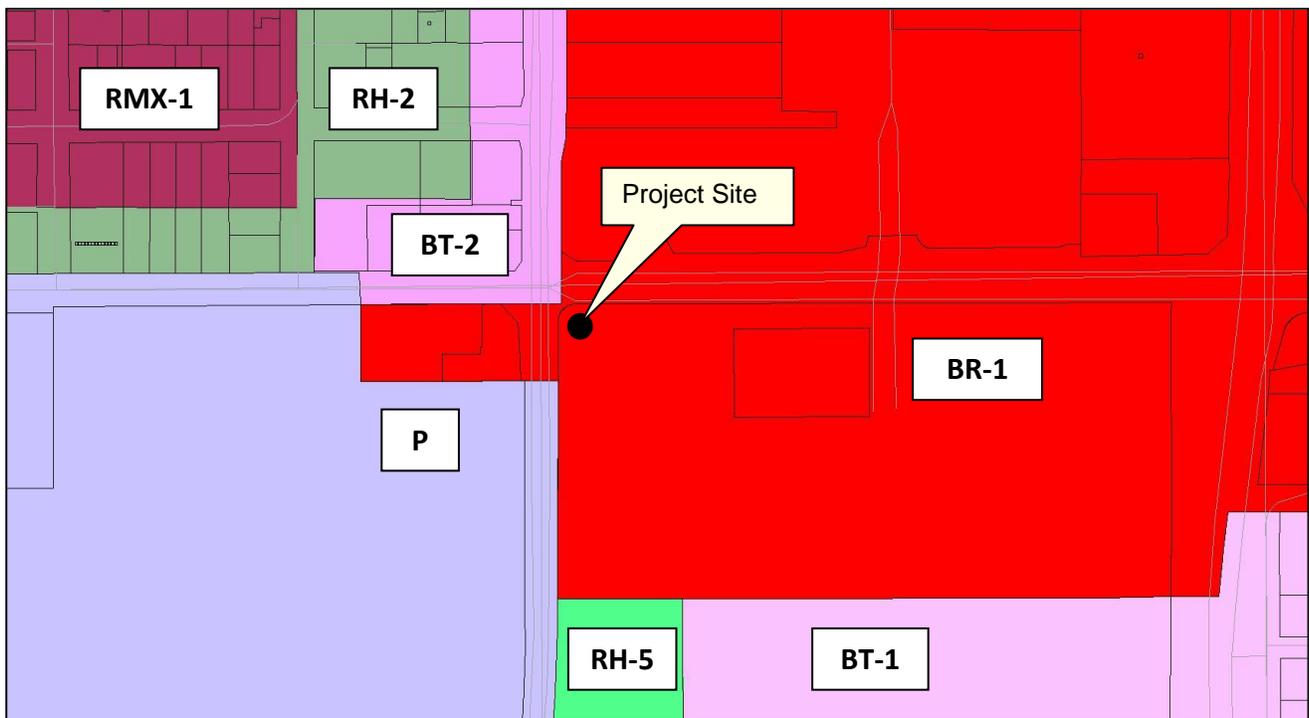


Figure 2: Zoning Map

The Arapahoe Village Shopping Center is over 50,000 square feet of floor area. Based on a parking analysis provided by the applicant, less than 30 percent of the floor area is occupied by restaurants, taverns or brewpubs. Per [Table 9-4](#) of the land use code, the total parking required is 636 parking spaces where 601 are provided. However, since this application will not adding floor area or increasing the parking demand, no parking reduction is necessary.



Figure 3: Existing Patio (Previous Tenant Shown)

Project Proposal. The applicant is requesting approval of a Use Review to allow a 2,746 square foot restaurant “Doug’s Day Diner” to utilize an existing 815 square foot outdoor patio at 2400 Arapahoe Ave. (refer to [Attachment C](#)). Proposed hours of operation are 6:00 a.m. to 8:00 p.m., seven days per week. The existing outdoor patio space and railing were installed in 2012 for a previous restaurant use, which has not operated for more than a year. Associated landscape improvements were also installed to screen the patio from the neighboring streets (see **Figure 3** above). The maximum seating capacity for the patio is 40 persons. No amplified music will be used on the patio.

Review Process. Pursuant to [section 9-6-1](#), B.R.C., restaurants with an outdoor seating area of 300 square feet or more within 500 feet of a residential zoning district are only permitted in the BR-1 zone district with a Use Review approval. Per [section 9-4-2](#), B.R.C. 1981, applications for Use Review are subject to call up by the Planning Board. No modifications from the development code have been requested. The proposal meets all of the development standards for the zoning district and does not trigger or require Site Review.

Public Comment. Required public notice was given in the form of written notification mailed to all property owners within 600 feet of the subject property and a sign posted on the property for at least 10 days. All notice requirements of [section 9-4-3](#), “Public Notice Requirements,” B.R.C. 1981 have been met. The applicant also held a neighborhood meeting in the tenant space on Thursday, June 25, 2015. Staff has not received any public comment and no neighbors attended the meeting.

Conclusion. Staff finds that the proposed project meets the relevant criteria of [section 9-2-15](#), “Use Review,” B.R.C. 1981 (refer to [Attachment B](#)).

The proposal was **approved** by Planning and Development Services staff on **July 8, 2015** and the decision may be called up before Planning Board on or before **July 22, 2015**. There is one Planning Board hearing scheduled during the required 14-day call-up period on **July 16, 2015**. Questions about the project or decision should be directed to the Case Manager, Sloane Walbert at (303) 441-4231 or at walberts@bouldercolorado.gov.

Attachments:

- A. Disposition of Approval
- B. Analysis of Use Review Criteria
- C. Applicant's Proposed Plans



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: **Approved with conditions**
PROJECT NAME: **DOUG'S DAY DINER OUTDOOR PATIO**
DESCRIPTION: **USE REVIEW for a new restaurant (Doug's Day Diner) with an 815 square foot outdoor patio at the northwest corner of the Arapahoe Village shopping center. Hours of operation 6:00 a.m. to 8:00 p.m., seven days a week.**
LOCATION: **2400 ARAPAHOE AVE**
COOR: **N02W04**
LEGAL DESCRIPTION: **See Exhibit A**
APPLICANT: **ERIC CHEKAL, REGENCY CENTERS**
OWNER: **FW CO-ARAPAHOE VILLAGE, LLC**
APPLICATION: **Use Review, LUR2015-00041**
ZONING: **Business - Regional 1 (BR-1)**
CASE MANAGER: **Sloane Walbert**
VESTED PROPERTY RIGHT: **NO; the owner has waived the opportunity to create such right under Section 9-2-19, B.R.C. 1981.**

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

Approved On: 7/8/15
Date

By: [Signature]
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: 7/22/15

Final approval date: _____

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. Failure to "substantially complete" (as defined in Section 9-2-12) the development within three years 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 prepared by the Applicant on April 13, 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. The Applicant shall operate the business in accordance with the management plan dated May 26, 2015, which is attached to this Notice of Disposition.
 - b. The approved use shall be closed from 8 p.m. to 6 a.m. seven days per week.
 - c. Patio area will not exceed 815 square feet. All trash located within the outdoor dining area, on the restaurant property and adjacent streets, sidewalks and properties shall be picked up and properly disposed of immediately after closing.
2. The Applicant **shall not expand or modify the approved use**, except pursuant to Subsection 9-2-15(h), B.R.C. 1981.
3. This approval is limited to Rickey Bruening Inc. d/b/a Doug's Day Diner, the owner of the restaurant. Any changes in ownership shall be subject to the review and approval of the Planning Director. The purpose of such review shall be to inform such subsequent user of this space that it will be required to operate the restaurant in compliance with the terms of this approval.

Exhibit A

LEGAL DESCRIPTION

Parcel A:

A part of the Northwest 1/4 of the Northwest 1/4 of Section 32, Township 1 North, Range 70 West of the 6th Principal Meridian, County of Boulder, State of Colorado, being more particularly described as follows:

Commencing at the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of said Section 32;
Thence South 89°55'30" West along the North line of the Northwest 1/4 of the Northwest 1/4 of said Section 32 a distance of 170.00 feet;
Thence South 00°03'30" East and parallel with the East line of the Northwest 1/4 of the Northwest 1/4 of said Section 32, a distance of 30.00 feet to a point on the West line of a tract of land recorded in Book 895 at Page 399, said point being the Southwesterly corner of the intersection of Arapahoe Avenue and 28th Street and the True Point of Beginning;
Thence South 89°55'30" West along the Southerly right-of-way line of Arapahoe Avenue and parallel with the North line of the Northwest 1/4 of the Northwest 1/4 of said Section 32 a distance of 1121.10 feet to a point on the Easterly right-of-way line of 24th Street;
Thence South 00°07'00" East along the said Easterly right-of-way line and parallel with the West line of the Northwest 1/4 of the Northwest 1/4 of said Section 32, a distance of 550.00 feet;
Thence North 89°55'30" East and parallel with the North line of the Northwest 1/4 of the Northwest 1/4 of said Section 32, a distance of 1120.54 feet to a point on the Westerly right-of-way line of 28th Street;
Thence North 00°03'30" West along the said Westerly right-of-way line and parallel with the East line of the Northwest 1/4 of the Northwest 1/4 of said Section 32 a distance of 550.00 feet to the True Point of Beginning;
EXCEPT that parcel conveyed by University Village, Inc. to Aroe Building, Inc. in Deed recorded November 2, 1962 in Book 1255 at Page 193 and described as follows:

Commencing at the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of Section 32, Township 1 North, Range 70 West of the 6th P.M.;
Thence West along the North line of said Section 32, a distance of 716.89 feet;
Thence South at right angles to said North line, a distance of 80.00 feet to the True Point of Beginning;
Thence West parallel to the North line of Section 32, a distance of 28.00 feet;
Thence South at right angles to said North line, a distance of 161.29 feet;
Thence East parallel to the North line of said Section 32, a distance of 248.00 feet;
Thence North a distance of 161.29 feet to the True Point of Beginning.

Parcel B:

Perpetual and Non-Exclusive Easement for the movement of vehicular and pedestrian traffic over and across the Easterly 10 feet of the following described property granted to Arapahoe National Bank of Boulder by Chandelle Properties, in instrument recorded January 23, 1980 on Film 1101 at Reception No. 380252, to wit
Thence East parallel to the North line of said Section 32, a distance of 248.00 feet;
Thence North a distance of 161.29 feet to the True Point of Beginning.

Commencing at the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of Section 32, Township 1 North, Range 70 West of the 6th P.M.;
Thence West along the North line of said Section 32, a distance of 716.89 feet;
Thence South at right angles to said North line a distance of 80.00 feet to the True Point of Beginning;
Thence West parallel to the North line of Section 32, a distance of 248.00 feet;
Thence South at right angles to said North line, a distance of 161.29 feet;
Thence East parallel to the North line of said Section 32, a distance of 248.00 feet;

Thence North a distance of 161.29 feet to the True Point of Beginning;

County of Boulder,
State of Colorado.

Overall, the project was found to be consistent with the criteria for Use Review set forth in subsection 9-2-15(e), B.R.C. 1981.

(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 Non-Conformity**: The use is consistent with the purpose of the zoning district as set forth in [section 9-5-2\(c\)](#), "Zoning Districts Purposes," B.R.C. 1981, except in the case of a non-conforming use;

The proposed project is located in the BR-1 zoning district that is defined under section 9-5-2, B.R.C. 1981 as,

“Business centers of the Boulder Valley, containing a wide range of retail and commercial operations, including the larges regional-scale businesses, which serve outlying residential development and were the goals of the Boulder Urban Renewal Plan are implemented.”

The site is also located in the Boulder Valley Regional Center (BVRC). Per the use table (table 6-1), a restaurant with an outdoor seating area of 300 square feet or more within 500 feet of a residential zoning district is permitted in the BR-1 zone district with Use Review approval. The intent of the Use Review is to evaluate the impacts of an outdoor patio on adjacent residential uses, including noise, light pollution, traffic and parking. The proposed project is the use of an existing small, outdoor patio where the impacts to any surroundings are minimal. The operation of a restaurant with an outdoor patio is consistent with the intent of the zoning.

- ✓ (2) **Rationale**: The use either:

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

The proposed restaurant is located in proximity to residential uses on the CU campus and is directly across Folsom Street from the Newton Court Apartments, which serves family and graduate students from the university. The use is also proximate to the eastern edge of the Goss Grove neighborhood. The restaurant will provide dining opportunities for these residential uses. The patio function enhances that experience by providing an outdoor dining option and enhances the pedestrian experience on Folsom Street and Arapahoe Avenue.

- ✓ (B) Provides a compatible transition between higher intensity and lower intensity uses;

The proposed small patio is located near the intersection of Arapahoe and Folsom (an arterial and a collector). As such, any transition space between this outdoor space and the residential neighborhood to the north and west is interrupted by the two busy streets. Therefore, the patio could be considered as a transition from the high intensity traffic and the interior of the shopping center.

- 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

Not applicable.

N/A (D) Is an existing legal nonconforming use or a change thereto that is permitted under subsection (f) of this section;

Not applicable.

- ✓ (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 small size of the restaurant and patio will be reasonably compatible in the context given the intersection of two highly traveled roadways of Arapahoe and Folsom. Implementation of the management plan will mitigate the impacts of an outdoor patio. The small size of the restaurant and patio will be reasonably compatible in the context given the intersection of two highly traveled roadways of Arapahoe and Folsom.

- ✓ (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 existing building is already in place and has been for decades. The restaurant will not create an impact to infrastructure in area.

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

An active patio use would create an enhanced corner condition along the streetscape of Arapahoe and Folsom since it would create pedestrian interest and activate the street.

- N/A (6) Conversion of Dwelling Units to Non-Residential Uses: There shall be a presumption against approving the conversion of dwelling units in the residential zoning districts set forth in [subsection 9-5-2\(c\)\(1\)\(a\)](#), B.R.C. 1981, to non-residential uses that are allowed pursuant to a use review, or through the change of one non-conforming use to another non-conforming 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 day care center, park, religious assembly, social service use, benevolent organization use, art or craft studio space, museum, or an educational use.

Not applicable, as there are currently no residential units on the subject property.

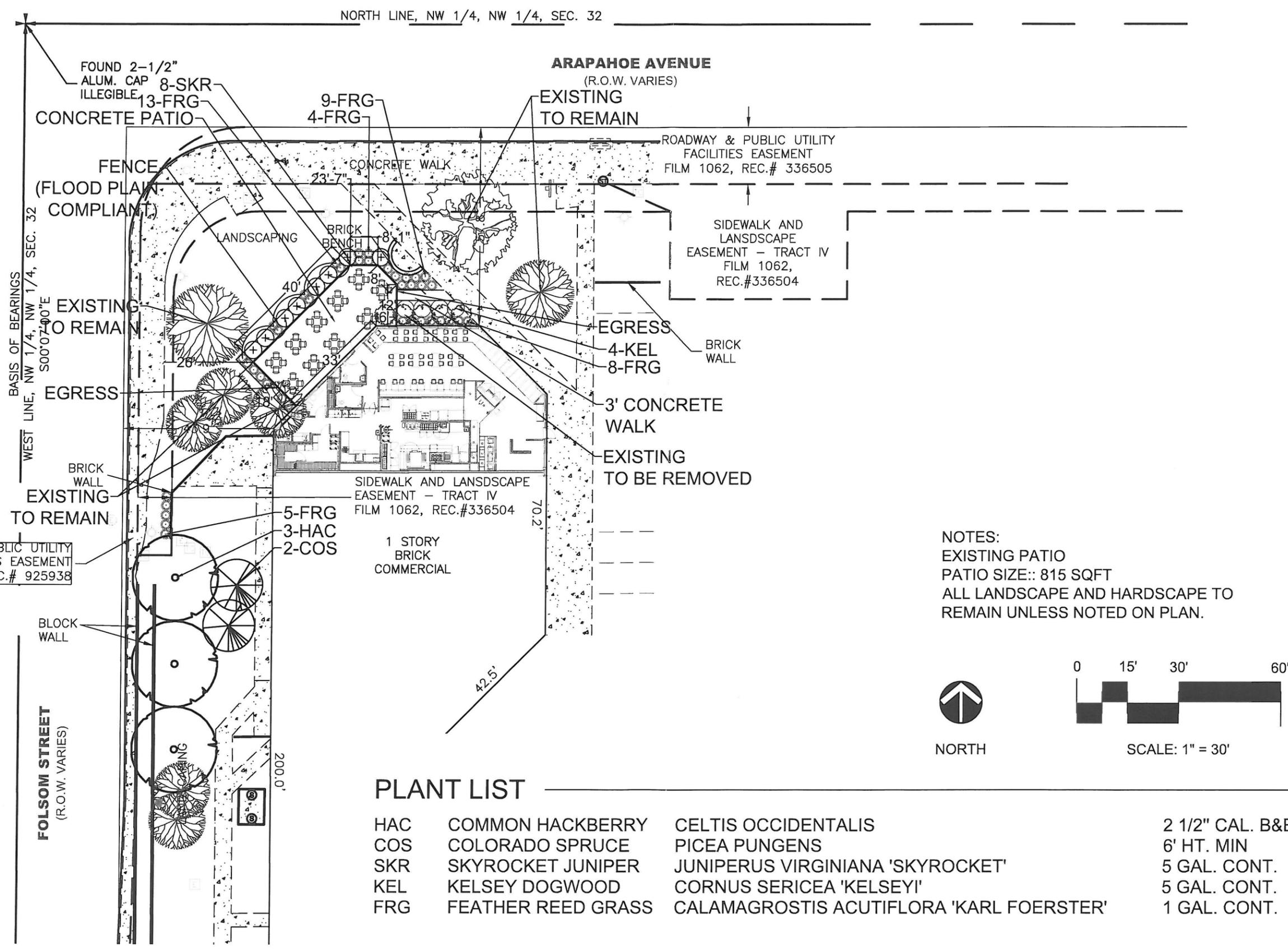
Section 9-6-5(b)(4) "Restaurants, Brewpubs, and Taverns with Outdoor Seating within 500 Feet of a Residential Use Module": The following criteria apply to any outdoor seating area that is within 500 feet (measured from the perimeter of the subject property) of a residential use module.

- ✓ (A) Size Limitations: Outdoor seating areas shall not exceed the indoor seating area or seating capacity of the restaurant or tavern.

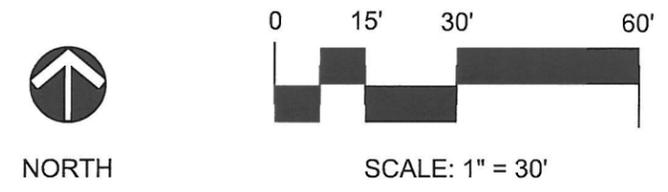
- (B) Parking Required: Parking in compliance with Section 9-9-6, "Parking Standards," B.R.C. 1981, shall be provided for all outdoor seating areas except those located in general improvement districts.
There will be no addition of floor area or increase in the parking demand and no parking reduction is necessary.
- (C) Music: No outdoor music or entertainment shall be provided after 11 p.m.
There will be no amplified music or entertainment on the patio.
- (D) Sound Levels: The outdoor seating area shall not generate noise exceeding the levels permitted in Chapter 5-9, "Noise," B.R.C. 1981.
- (E) Trash: All trash located within the outdoor dining area, on the restaurant or tavern property, and adjacent streets, sidewalks, and properties shall be picked up and properly disposed of immediately after closing.



Arapahoe Village Patio
Landscape Plan
Boulder, CO



NOTES:
EXISTING PATIO
PATIO SIZE:: 815 SQFT
ALL LANDSCAPE AND HARDSCAPE TO
REMAIN UNLESS NOTED ON PLAN.



PLANT LIST

HAC	COMMON HACKBERRY	CELTIS OCCIDENTALIS	2 1/2" CAL. B&B
COS	COLORADO SPRUCE	PICEA PUNGENS	6' HT. MIN
SKR	SKYROCKET JUNIPER	JUNIPERUS VIRGINIANA 'SKYROCKET'	5 GAL. CONT.
KEL	KELSEY DOGWOOD	CORNUS SERICEA 'KELSEYI'	5 GAL. CONT.
FRG	FEATHER REED GRASS	CALAMAGROSTIS ACUTIFLORA 'KARL FOERSTER'	1 GAL. CONT.

USE REVIEW
DATE:
USE REVIEW - 4/04/12
USE REVIEW - 5/09/12
USE REVIEW - 5/18/12
resubmittal - 04/13/15
SHEET TITLE:
USE REVIEW
SHEET NUMBER:
UR-01

DOUG'S DINER OUTDOOR PATIO

LUR2015-00041

2400 Arapahoe Avenue

Boulder, CO 80302

22 bike parking spaces

14 bike parking spaces

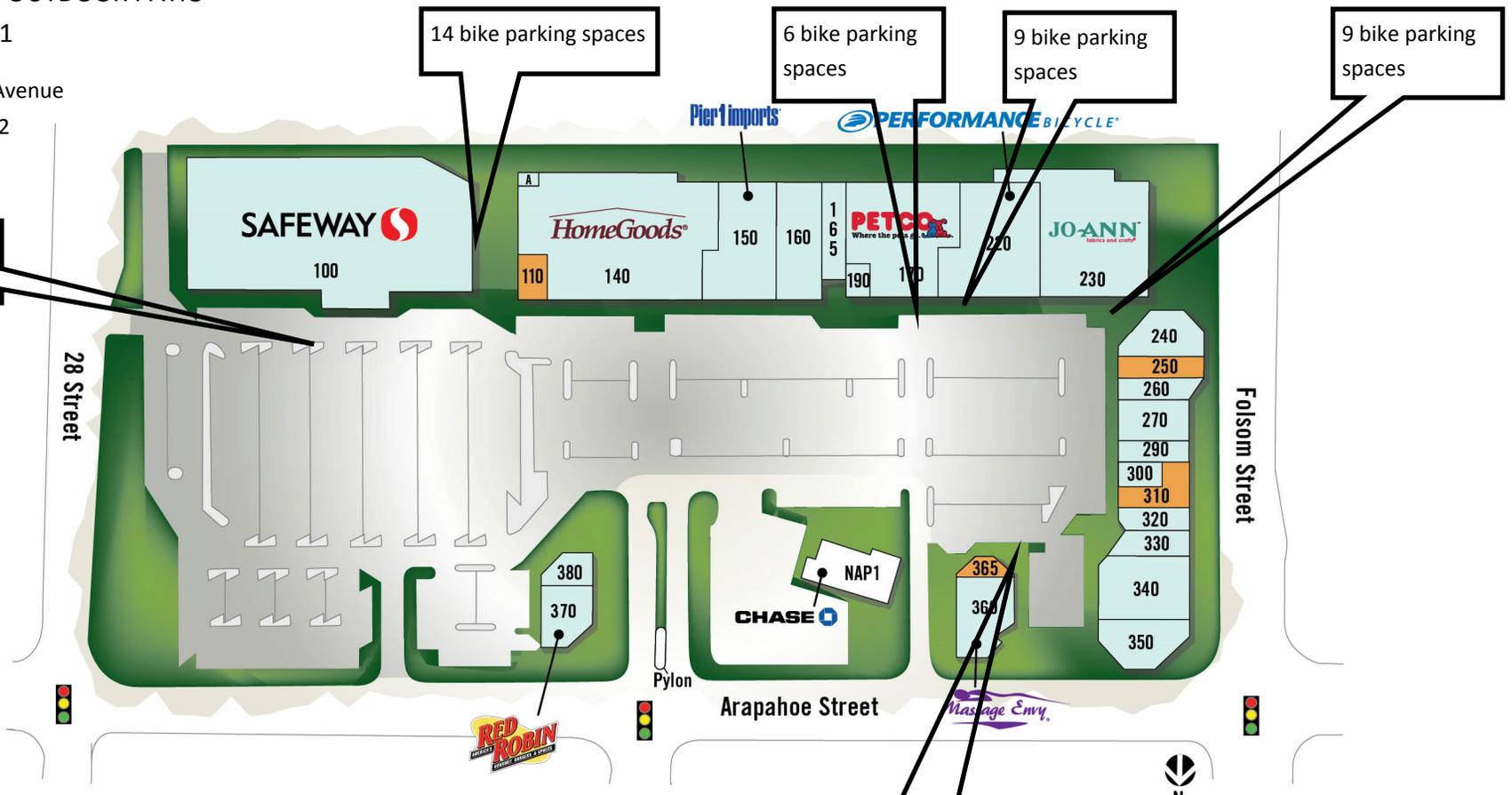
6 bike parking spaces

9 bike parking spaces

9 bike parking spaces

11 bike parking spaces

AVAILABLE
 LEASED
 NAP (NOT A PART)



5-26-2015

Management Plan-Doug's Day Diner, Boulder

Rickey Bruening Inc dba Doug's Day Diner will be a full service diner specializing in local, fresh and homemade food. We will be located at 2400 Arapahoe Ave Boulder, Colorado. We are not a part of a franchise and we are locally owned and operated. We currently own two additional Doug's Day Diners in different locations in Colorado. The menu we crafted includes homemade and scratch-made food, from the sauces, soups, browns, fries, chips, syrup, jams, pickles and dressings. We provide the customer with the freshest and best tasting food we can possibly create. A copy of our menu is attached below. Our breakfast sales are 80% of are total sales, making it our busiest part of the day.

This establishment will not serve any alcohol and will therefore not require a liquor license. Due to the family atmosphere our restaurant attracts within the community, we are proud to be alcohol-free. Our hours of operation will be from 6 a.m. to 8 p.m. Monday through Friday and 7 a.m.-8 p.m. Saturday and Sunday. We will be closed Thanksgiving and Christmas day, and will close early on Christmas Eve.

Doug's Day Diner is actively involved in the community. We sponsor local high school teams and the local Boy and Girl Scouts troops. Being engaged with the greater community of Boulder County is important to us.

Doug's Day Diner will provide the neighborhood with a social place to gather and visit with family and friends. We have a consistent business during our breakfast hours and have a tendency to slow down after.

Doug's Day Diner plans to use the patio as weather permits. We will not have any music amplified on the patio. All trash will be cleaned off the tables as our customers leave. There will be no outside trash receptacles placed on the patio. There will not be new dumpsters for the restaurant. Doug's Day Diner will share the existing dumpsters and removal service. The patio will seat approximately 30-40 customers.

Doug's Day Diner will use its best efforts to manage and control unruly behavior of its customers entering and leaving the restaurant patio. All of the Doug's Day Diner kitchen staff is SerSafe certified. The rest of our employees (including waiters and hosts) are trained to handle customer complaints and are experienced with proper customer service.

Doug's Day Diner plans to hire close to 15-20 employees for this location. The first shift will start at 5 a.m. The first shift starting Monday through Friday will have 4-6 employees working. On Saturdays and Sundays the first shift will have 8 to 12 employees working. On weekdays we will have 4 to 6 employees working dispersed

shifts throughout the day. All deliveries of food will happen before the restaurant opens for the day (1 a.m. to 5 a.m.) on Tuesday and Thursday.

Doug's Day Diner will maintain the exterior of this premises in a neat and clean manner at all times, including sweeping up cigarette butts and other garbage and removing graffiti. All employees are instructed to pick up any trash and litter within our patio and the adjacent sidewalk as it is discovered throughout the day. All trash will be properly disposed of after closing in the shared dumpsters in the front of the building.

Neighborhood residents are encouraged to contact the Doug's Day Diner Store manager or myself to work to resolve any complaints or issues that may arise. The cell phone number of the store manager and myself will be available to all neighbors. In the event of a complaint about the noise or anything else from the neighborhood residents we want to reassure neighbors to contact the people mentioned above. Doug's Day Diner will work with the neighborhood in good faith, if necessary the use of mediation services recommended by the City of Boulder.