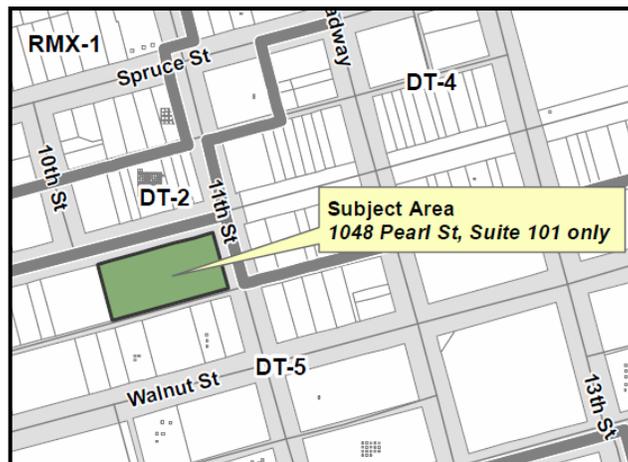


MEMORANDUM

TO: Planning Board
FROM: Elaine McLaughlin, Case Manager
DATE: Dec. 9, 2016
SUBJECT: **Call Up Item:** USE REVIEW (LUR2016-00069): Use Review proposal to allow a new restaurant patio located at the PearlWest building, 1048 Pearl Street, unit 101, in the DT-5 zoning district comprised of an approximately 840 square feet of outdoor dining space with 46 outdoor seats for the proposed 3,824 square foot restaurant with 138 interior seats.

The restaurant site is located within the PearlWest building. The applicant is requesting to operate the restaurant with an outdoor patio. The Land Use Code (section 9-6-1) requires any restaurant with an outdoor seating area of 300 square feet or more within 500 feet of a residential zoning district to apply for that use through a Use Review. The intent of this zoning district as stated in the Land Use Code, section 9-5-2, B.R.C. 1981 is:

“The business area within the downtown core that is in the process of changing to a higher intensity use where a wide range of office, retail, residential and public uses are permitted. This area has the greatest potential for new development and redevelopment within the downtown core.”



The DT-5 is based on the Boulder Valley Comprehensive Land Use Designation for the property of Regional Business. On page 63 of the BVCP it states,

“Within these areas are located the major shopping facilities, offices, financial institutions and government and cultural facilities serving the entire Boulder Valley and abutting communities. These areas will continue to be refurbished and upgraded and will remain the dominant focus for major business activities in the region.”

Proposed Project. The applicant is requesting approval of a Use Review that will permit an outdoor dining area (patio) of 840 square feet and 46 outdoor seats; the interior of the restaurant is planned to be 3,824 square feet with 138 dining seats. The proposed hours of operation in which the restaurant patio is open to the public are from 11:30 a.m. to 1:00 a.m. Sunday through Thursday and 11:30 a.m. until 2:00 a.m. Friday's and Saturday's. Refer to **Attachment C** for *Applicant's Project and Management Plans*.

Review Process. The proposed restaurant with outdoor seating was found to be in conformance with the Use Review criteria found in section 9-2-15, B.R.C. 1981. Per section 9-4-2, B.R.C. 1981, a notice of disposition must be sent to the Planning Board for consideration of call-up of the disposition within a 14-day call up period.

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. One comment was received by a nearby restaurant operator that questioned the number of employees cited on the application, for which the applicant clarified numbers of employees during specific hours of operations to be Monday– Thursday: 15-30 employees until 5:00 p.m. and 30-45 employees from 5:00 p.m. until 1:00 a.m.; and Friday to Sunday – 25-40 employees until 5:00 p.m. and 35 to 45 until 2:00 a.m.

Project Analysis and Conclusion. Staff finds that this application is consistent with the Use Review criteria found in subsection 9-2-15(e), “Criteria for Review,” B.R.C. 1981. Refer to **Attachment B** for the complete Use Review analysis. This proposal was approved by Planning and Development Services staff on Dec. 9, 2016 (see **Attachment A**) and the decision may be called up before Planning Board on or before **Dec. 23, 2016**. There is one Planning Board meeting within the 14-day call up period, on **Dec. 15, 2016**. Questions about the project or decision should be directed to Elaine McLaughlin at (303) 441-4130 or mclaughline@bouldercolorado.gov.

Attachments:

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



CITY OF BOULDER
Planning and Development Services

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

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: **BARTACO RESTAURANT**
DESCRIPTION: **USE REVIEW for a restaurant with an outdoor seating area of 840 s.f. within the PearlWest development.**
LOCATION: **1048 PEARL ST**
COOR: **N03W06**
LEGAL DESCRIPTION: **Lot 1A and 2A Boulder and West Boulder Lot Line Elimination, City of Boulder, County of Boulder, State of Colorado**
APPLICANT: **BRAD HASWELL**
OWNER: **Ten Eleven Pearl, LLC**
APPLICATION: **Use Review, LUR2016-00069**
ZONING: **DT-5**
CASE MANAGER: **Elaine McLaughlin**

VESTED PROPERTY RIGHT: **NO; the owner has waived the opportunity to create such right under Section 9-2-20, B.R.C. 1981.**

APPROVED MODIFICATIONS FROM THE LAND USE REGULATIONS: None

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

Approved on: 12-9-16
Date

By: [Signature]
Charles Ferro, Development Review Manager for Land Use Planning, Housing + 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: 12-23-16

Final Approval Date: 12-26-16

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 if one was approved. Failure to "substantially complete" (as defined in Section 9-2-12) the development within three years or in compliance with the phasing plan, if one was approved, shall cause this development approval to expire.

CONDITIONS OF APPROVAL

1. The Applicant shall ensure that the **development shall be in compliance with the plan and management plan** prepared by the Applicant on October 31, 2016 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 which is attached to this Notice of Disposition.
 - b. The size of the approved interior use shall be limited to 3,824 square feet with 138 interior seats; and the size of the exterior patio shall be limited to 840 square feet with 46 exterior seats.
 - c. The approved use shall be closed from 1:00 a.m. until 11:30 a.m. Sunday through Thursday and 2:00 a.m. until 11:30 a.m. Friday and Saturday.
 - d. 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

LEGAL DESCRIPTION OF LAND

LOTS 1, 2, 3, 9 AND 10 AND THE EAST HALF OF LOT 8, BLOCK 65, BOULDER, NOW CITY OF BOULDER, AND LOTS 4 AND 5, BLOCK 65, PARTLY IN WEST BOULDER AND BOULDER, NOW CITY OF BOULDER, AND LOT 6, BLOCK 65, WEST BOULDER, COUNTY OF BOULDER, STATE OF COLORADO.

ATTACHMENT B: 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 intent of this zoning district as stated in the Land Use Code, section 9-5-2, B.R.C. 1981 is:

"The business area within the downtown core that is in the process of changing to a higher intensity use where a wide range of office, retail, residential and public uses are permitted. This area has the greatest potential for new development and redevelopment within the downtown core."

The DT-5 is based on the Boulder Valley Comprehensive Land Use Designation for the property of Regional Business. On page 63 of the BVCP it states,

"Within these areas are located the major shopping facilities, offices, financial institutions, and government and cultural facilities serving the entire Boulder Valley and abutting communities. These areas will continue to be refurbished and upgraded and will remain the dominant focus for major business activities in the region."

The location of the proposed restaurant was considered as a part of the Site Review approval for the PearlWest development approved in Sept. 2012 under the case no. LUR2012-00008. The intent of both the zoning and the Site Review approval is to permit active uses within the downtown core that will contribute to the economic viability and pedestrian orientation of this area of West Pearl. Further, the applicant also applied for, and received on Dec. 2, 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 West Pearl, in the nearly completed PearlWest development, where other restaurants and activities 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.

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

(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

(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 within the context of other restaurants with patios that integrate well into the existing urban context of West Pearl and 11th streets. The operating characteristics of the restaurant and patio are such that the hours of operation will have minimal impacts on the residential located to the north of the north side of Pearl Street.

√ (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;

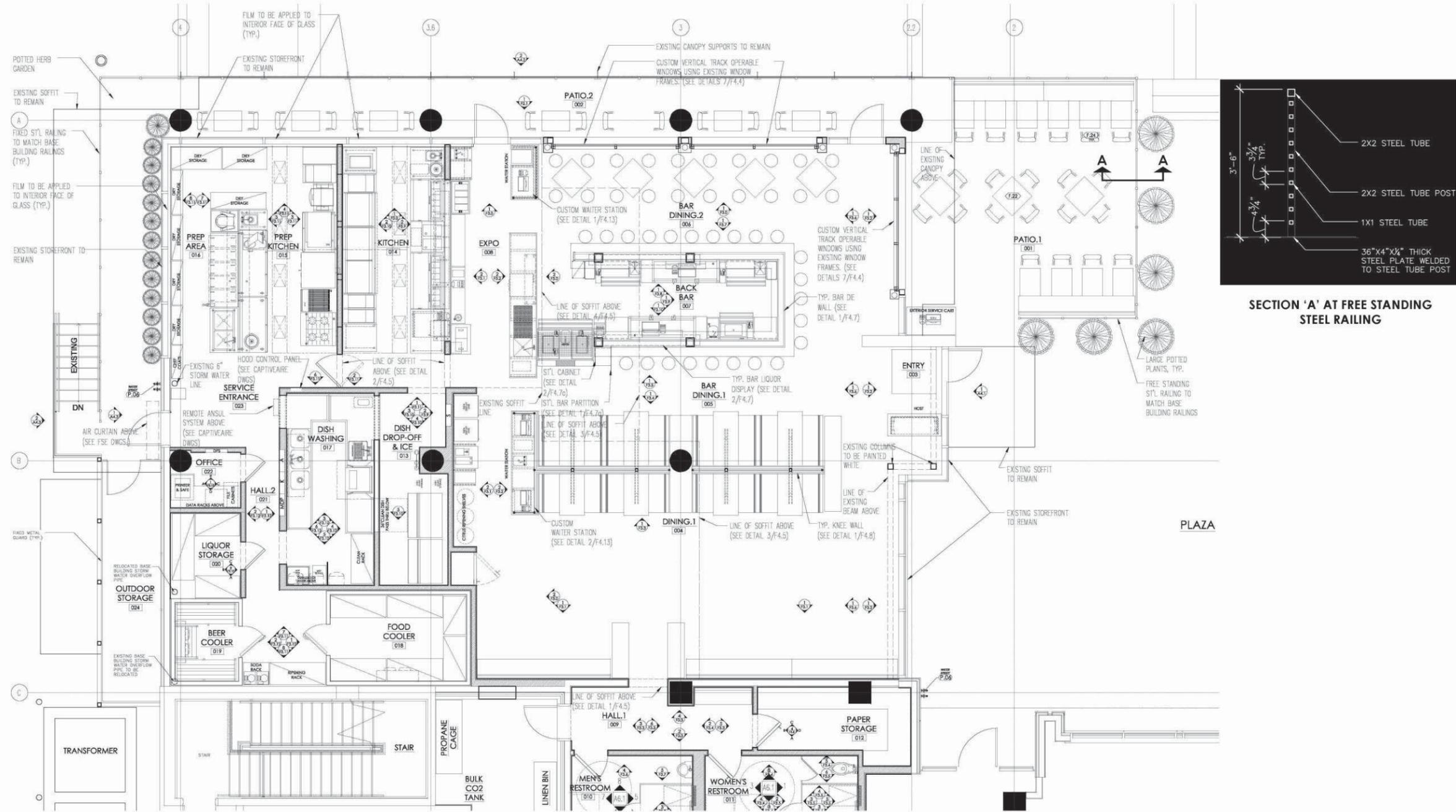
The infrastructure for the site is already integrated into the urban context of the site.

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

The restaurant will enhance the character of the surroundings by providing outdoor seating in an open plaza space anticipated for activity and gathering space within the new PearlWest building.

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.



BARTACO PROPOSED EXTERIOR IMPROVEMENTS
GROUND FLOOR PLAN
 OCTOBER 31, 2016


BARTACO PEARL WEST, LLC
 1048 PEARL STREET, SUITE 101, BOULDER, CO

STUDIO DH
 architecture
 1300 JACKSON STREET, #200 GOLDEN, COLORADO
 303-458-9600 www.studio-dh.us

COPYRIGHT: Studio DH Architecture, P.C. Drawings and Specifications are Instruments of Service and as such shall remain the property of the Architect. Any use without written permission of the Architect is unlawful.

ATTACHMENT C: APPLICANT'S MANAGEMENT PLAN AND PROJECT PLAN



Operational Plan

1048 Pearl Street, Suite 101,
Boulder, CO 80302

Operating Hours

Sunday to Thursday: 11:30am- 1am
Friday and Saturday: 11:30am- 2am

Employees enter building as early as 9am
(Excluding cleaning crew)- 3a-7a, 2 people

Trash Pick ups

Monday to Saturday daily
Sunday: none

Trash Containers = 4
Recycling Containers = 2

Recycling pick up: 4 times/week

Deliveries

Monday - Saturday 9a-1130a

Protocol for ALL deliveries is to park in our loading dock and
deliver directly into the building.

Staff/Employee Impact

Monday - Thursday - 15-30 employees until 5pm and 30-45 from 5pm till 11pm

Friday to Sunday - 25-40 employees until 5pm and 35 to 45 till 11pm

Entertainment

Music is fed into a system playing a variety of beach themed music from opening to closing time.

We add a DJ on Friday & Saturday nights at 930p until closing.

To address impact on our abutters, we turn off the outdoor speakers & close our garage doors to the deck nightly at 11p.

On occasion, a DJ or other entertainment is hired when hosting special or private events (Cinco de Mayo/ bar or bat mitzvahs)

Capacity

Indoors- 138, outdoors- 46

Outdoor closes nightly no later than 2am

Bar Operations

Indoors- until closing