

Planning Commission

Regular Meeting Agenda Thursday, December 5, 2013 7:00 p.m., Council Chambers



City of South Haven

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Minutes – November 7, 2013
5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda
6. New Business – PUBLIC HEARINGS
 - A. Taste Restaurant – Special Use Permit, Outdoor Dining

Joel Gesiakowski, representing Taste Restaurant at 402 Phoenix Street, requests a special use permit to allow outdoor seating at the restaurant, per zoning ordinance section 601-3. The property number for the subject parcel is 80-53-001-008-00 and the owner of record is JWILCO Properties, LLC of South Haven.
 - B. Black River Tavern Restaurant – Special Use Permit, Outdoor Dining

Scott Maxwell, representing Black River Tavern at 401 Phoenix Street, requests a special use permit to allow outdoor seating at the restaurant, per zoning ordinance section 601-3. The property number for the subject parcel is 80-53-123-008-00 and the owner of record is BPO Elks #1509 of South Haven.
7. Old Business
 - A. None
8. Commissioner Comments

South Haven City Hall is Barrier-free and the City of South Haven will provide the necessary reasonable auxiliary aids and services for persons with disabilities, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting to individuals with disabilities at the meeting upon seven (7) days notice to the South Haven City Clerk. Individuals with disabilities requiring services should contact the City Clerk by writing or calling South Haven City Hall at (269) 637-0700.

9. Adjourn

RESPECTFULLY SUBMITTED,
Linda Anderson, Zoning Administrator

South Haven City Hall is barrier free and the City of South Haven will provide the necessary reasonable auxiliary aids and services for persons with disabilities, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting to individuals with disabilities at the meeting upon seven (7) days notice to the South Haven City Hall.

Planning Commission

Regular Meeting Minutes Thursday, November 7, 2013 7:00 p.m., Council Chambers



1. Call to Order by Paull at 7:00 p.m.

2. Roll Call

Present: Frost, Heinig, Miles, Peterson, Smith, Webb, Paull
Absent: Wall

Motion by Smith, second by Heinig to excuse Wall.

All in favor. Motion carried.

3. Approval of Agenda

Motion by Heinig, second by Smith to approve the agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – October 3, 2013

Motion by Smith, second by Peterson to approve the October 3, 2013 regular meeting minutes.

All in favor. Motion carried.

5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

None at this time.

6. New Business

A. PUBLIC HEARING – Special Use Permit, BMX Track

The City of South Haven requests approval to develop a BMX Pump Track at 1026 E. Wells Street. Public recreation facilities are permitted in this R-1B zone with a special use permit from the planning commission.

Anderson introduced the request for a public BMX pump track for non-motorized bikes, which is to be located near the Public Safety complex. Anderson noted she has some site plan related comments she will discuss later.

Motion by Heinig, second by Smith to open the public hearing.

All in favor. Motion carried.

Tony McGhee, Abonmarche. Noted the uses in the surrounding area; reviewed the site plan; additional parking is planned that can also be used to accommodate events being held at the public safety building.

McGhee displayed two (2) three-dimensional (3-D) concept drawings, explaining the track will be made out of clay and was designed with built-in drainage.

Paull called for questions.

Peterson asked if it is fully fenced in. McGhee indicated that there is fencing all the way around and identified the location on the site plan.

Smith had questions about maintenance. McGhee said pump tracks are relatively low maintenance. The Parks staff will need to go out there every month or so and do some raking. Frost asked about erosion; McGhee noted that that is not a typical problem with these tracks and indicated where drainage has been accommodated on the site.

Peterson asked if the property was originally earmarked for cemetery expansion. McGhee said to the best of his knowledge, this piece of land has always been part of the public safety complex.

By motion the public clearing was closed.

Paull called for discussion, comments and suggestions.

Anderson: Thinks it is a good project but would like a few minor changes made to the site plan. Would like to see setback distances shown on the final site plan. Noted that Ron Wise wants to keep one area clear for training (she identified the area on the site plan). There should be a trash container on site, which must be screened. Bike racks, not a lot of them, but some so bikes are not lying all over. Would like to see more screening between the residence that exists across the driveway. Suggested some seating for parents or observers. If there is going to be any exterior lighting, she would like to see a detail of that. Any signage will be done under our new institutional sign requirements and will require a zoning permit. The City Engineer would like to see storm sewer and drainage shown on the site plan.

McGhee: All of the suggestions are fine; there will not be lighting, but the rest will be easy to put together.

In response to a question by Smith about restroom facilities, Anderson noted they will be using the facilities at the Public Safety (SHAES) building. McGhee explained that the new building will have restrooms that are available without going into the restricted area.

Motion by Smith, second by Heinig to approve the proposal with the following additions:

- Indicate setback distances on the final site plan
- Keep the designated area clear for public safety training
- include a trash container on site, which must be screened
- Bike racks
- More screening between the residence that exists across the way
- Seating
- Signage with zoning approval and in compliance with the city's new institutional sign requirements
- Storm sewers and drainage shown on the site plan

All in favor. Motion carried.

B. Discussion of Draft Wind Turbine Generator Regulations (2010)

Paull reviewed the Planning Commission's previous discussions and the history of the ordinance. He stated that the ordinance had been forwarded to the city council in 2011. The city council and planning commission then held a joint worksession to discuss the areas of concern. The planning commission then sent the ordinance back to the city council in November of 2011 with only minor changes. The ordinance has remained in limbo since that time. The primary point of contention was a provision for 400' towers within the city limits. Even a 200' one would require an appropriate fall zone.

Paull noted that If the commission does not feel there are any additional changes or requirements the board can vote to move it again to City Council or if members feel it needs to be tweaked or fixed, we might form a sub-committee and discuss it or we could add comments tonight.

Miles stated he believes the ordinance is perfect the way it is.

Peterson asked about the City Council's issue with the draft. Paull said there was interest by a particular developer to put up a 400' windmill and that was a sticking point for the whole ordinance. That interest has since disappeared.

For the benefit of the three members who were not on the planning commission at the time the ordinance was previously discussed, Anderson reviewed the history. After several public hearings, the Planning Commission sent the ordinance to council. The City Council is required to present the draft ordinance twice; the first time they cannot act on the proposed amendment or make any changes. They do have the authority to send the ordinance back to the planning commission to require further study or consider changes to specific areas of the text. In this case, the City Council received the text and requested a work session with the Planning Commission to go over the ordinance in detail. After that meeting the Planning Commission took the comments back but decided they were not going to change it and sent it back to City Council but it never got put back on the agenda. Anderson stated that she does not think it was an oversight but perhaps it was not a good time to deal with it. This draft ordinance has been in limbo ever since that time. Anderson stated that she wondered about this unfinished project when she started working for the city. A few months ago the City Manager wanted to pick that issue up again and dispose of it one way or another. Anderson asked to bring it back to the

Planning Commission and see what their feelings are, whether they want to change anything, or whether they want to resend it on to City Council the way it currently reads. The City Council, since it is the second time for them, can make whatever changes or amendments they want to make. Anderson said she would like to have an ordinance in place because we do get calls now and then, but does not want to re-invent the wheel.

The following question was asked, "The area to the east side of the highway, the City Council wanted that area to allow 400 feet tall wind turbines and the Planning Commission kept 200 feet as the height limitation for such fans anywhere within the city limits.

Smith asked if locating the wind turbine out in the industrial park would prohibit building anything else, Paull said yes, and Miles explained it would eat up a lot of valuable property given the required fall zone. Smith said he has no problem with sending it back to City Council. Smith said 40' is the max allowed in most of the city, because we allow the peak of a house to be 40' – the two industrial areas south of the city could have wind turbines up to 200'.

When asked, Anderson restated that the November 11, 2010 version was the final version of the ordinance that was sent to City Council.

Motion by Miles to send the draft wind turbine ordinance on to City Council as written; second by Smith.

All in favor. Motion carried.

C. Discussion of B-3 Zoning District.

Anderson noted a sub-committee of Paull, Heinig, Webb and herself was formed which looked at the entire B-3 area and current regulations to identify any problem areas other than what had already been discussed. The subcommittee agreed that all amendments to the zone should be drafted at one time rather than piece-mealing it. The B-3 zone does not allow single family homes but we could not find any reason for that limitation. The committee suggests simply adding single family homes to permitted uses and changing the zoning from B-3 to Central Business District (CBD) for the Old Harbor Village/Inn retail area.

Anderson noted that the area along Williams Street that is zoned B-3 but actually is more consistent with the character of the Central Business District. The marinas should not be rezoned to CBD as they are more compliant with the B-3 zoning district regulations. This area which includes the Old Harbor is of similar character to the downtown and eliminates the need for off-street parking. The Old Harbor Village was able to develop without the off-street parking requirement because the city had a parking program at that time which allowed business owners to pay into a fund established to create new public parking lots in lieu of off-street parking. That program has since been abandoned.

Anderson noted that one issue with changing Old Harbor to CBD is that in the B-3 zone buildings may only be thirty-five feet (35') or two-and-a half (2.5) stories high but in the downtown buildings may be as high as forty-five feet (45') and 3.5 stories.. Buildings at that height would likely not be acceptable along the riverfront. If the planning commission

does decide to pursue changing the Old Harbor from B-3 to CBD we would have the option of placing an overlay on just that area, saying height could not exceed thirty-five feet (35') or specifically write that exemption into the ordinance. Anderson is currently favoring establishing this height restriction as an overlay zone to cover just the area that is being changed.

Paull commented that if these changes sound reasonable to the Planning Commission we could draft some text and arrange for a public hearing for these amendments.

Smith likes the solution to the height issue but wondered if, long-term, we would run into questions about doing the overlay: "Would some ask whether we would do that on the other side of the river?" Anderson reassured that that would not be an issue across the river as they are not in the Central Business District.

After a comment by Miles, Anderson noted that she has received calls regarding building a home on the old Three Pelicans site but presently that is not permitted. If single family residential becomes a permitted use in the B-3 zone, that lot would be a potential site for a house to be built. Heinig said adding the single-family residential to permitted uses in the B-3 zone could also solve the problem of there being so many non-conforming single family homes in the area. Paull agreed that was a good consideration.

Paull suggested that if the board is agreeable, Anderson could construct the language, draft the ordinance changes as described, and come before the Planning Commission in December for public hearing.

By consensus, the board agreed to Paull's suggestion.

7. Commissioner Comments

Anderson:

Planning Commission will have other requests in December, including outdoor dining requests from current business owners.

The corridor overlay zone was approved at City Council and will be enacted shortly.

There were no comments from the Commissioners.

8. Adjourn

Motion by Smith, second by Heinig to adjourn at 7:37 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary



City of South Haven

Agenda Item #6A Taste Restaurant Outdoor Dining Special Use Request

Background Information:

Background Information:

Joel Gesiakowski, representing Taste Restaurant at 402 Phoenix Street, requests a special use permit to allow outdoor seating at the restaurant, per zoning ordinance section 601-3. The property number for the subject parcel is 80-53-001-008-00 and the owner of record is JWILCO Properties, LLC of South Haven.

The city has designed the corner at Phoenix and Kalamazoo Streets to accommodate this outdoor seating. The city's schematic for the property is included in the attachments.

The Downtown Development Authority (DDA) will review the requested furniture at their meeting on Wednesday, December 4 and we should have their approval or rejection by the Planning Commission meeting. This special use request is authorized by the zoning ordinance section 1510.34.

Recommendation:

If the planning commission approves the special use permit, they should then make a recommendation to city council to approve the license agreement for seating on public property. Provided that the furniture chosen for the café is approved by the DDA, staff has no problem with recommending approval of this request.

Attachments:

Application
Taste perspective View
Outdoor dining site plans
Board rendering
Case summary
Draft license agreement

Respectfully submitted,
Linda Anderson
Zoning Administrator

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SPECIAL USE PERMIT APPLICATION
CITY OF SOUTH HAVEN
BUILDING SERVICES DEPARTMENT
539 PHOENIX STREET, SOUTH HAVEN, MICHIGAN 49090
FOR INFORMATION CALL 269-637-0760

Date: 11/7/13 Applicant: Taste - Joel Gesiakowski

Applicant Address: 402 Phoenix St. SH

Applicant Phone Numbers: 637-0010 or 773-914-5015

Applicant e-mail: taste.southhaven@gmail.com

Subject Property Address: 402 Phoenix St.
(A legal description and survey of the subject property is required to be submitted with this application.)

Zoning District: CBD

Type of Special Use Requested: OUTDOOR DINING
(A scaled site plan for the subject property is required to be submitted with this application.)

Special Use Section Number: 601-3

Attach a list of the conditions for approval which apply to your request and comment on how your request will meet those standards:

Applicant shall respond to the general standards in Sec. 1502 below and comment on how the requested Special Use Permit will meet the standards:

General Standards - The Planning Commission shall review the particular circumstances of the special use permit application under consideration in terms of the following standards and shall approve a special use permit application only upon a finding of compliance with each of the following standards, as well as applicable standards established elsewhere in this Ordinance:

- a. The special land use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.
- b. The special land use shall not change the essential character of the surrounding area.
- c. The special land use shall not be hazardous to the adjacent property, property values, or involve uses, activities, processes, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, ground vibration, water runoff, odors, light, glare or other nuisance.
- d. The special land use shall not place demands on public services and facilities in excess of current capacity unless planned improvements have already been scheduled for completion.
- e. The special land use is consistent with the intent of the Comprehensive Plan.
- f. The special land use shall meet the site plan review requirements of Article IV.
- g. The special land use shall conform with all applicable state and federal requirements for that use.
- h. The special land use shall conform with all standards in this Ordinance and other applicable City Ordinances, including but not limited to parking (see Article XVIII), signs (see Article XX), and standards particular to the special land use found in the District provisions, Schedule of Regulations, or elsewhere.

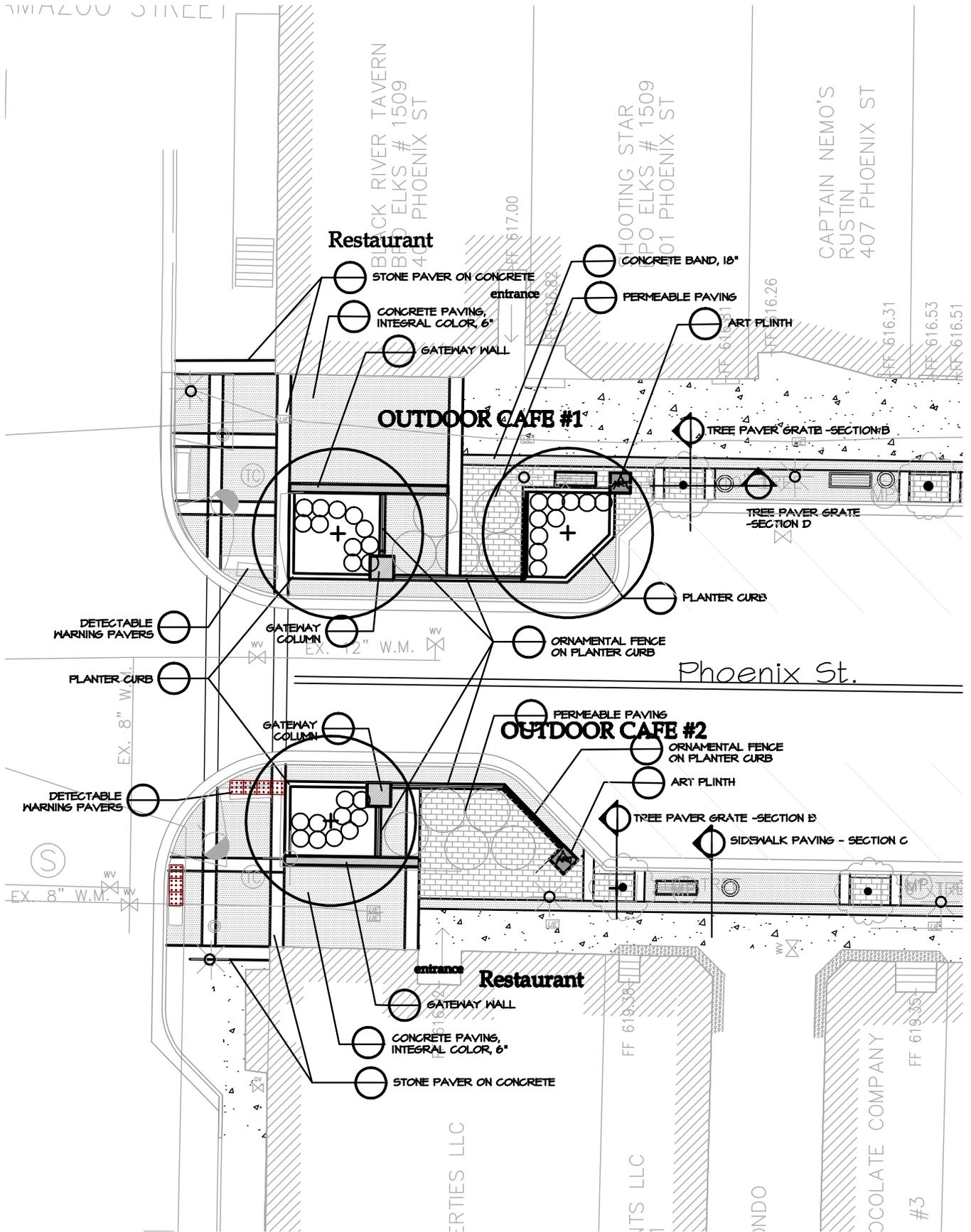
Applicant Signature Joel Gesiakowski Date: 11-12-13

A FEE OF \$400.00 MUST BE SUBMITTED WITH COMPLETED APPLICATION.



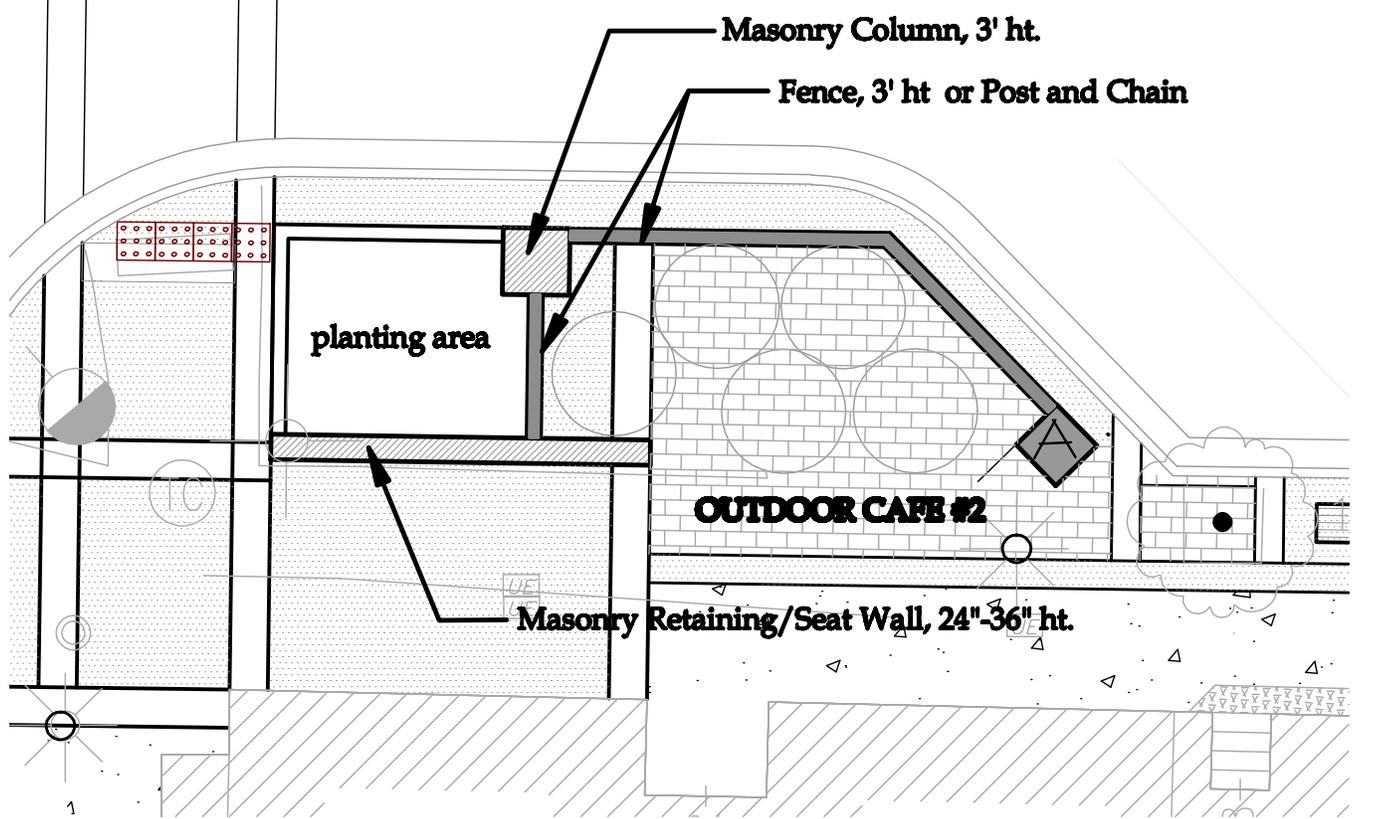
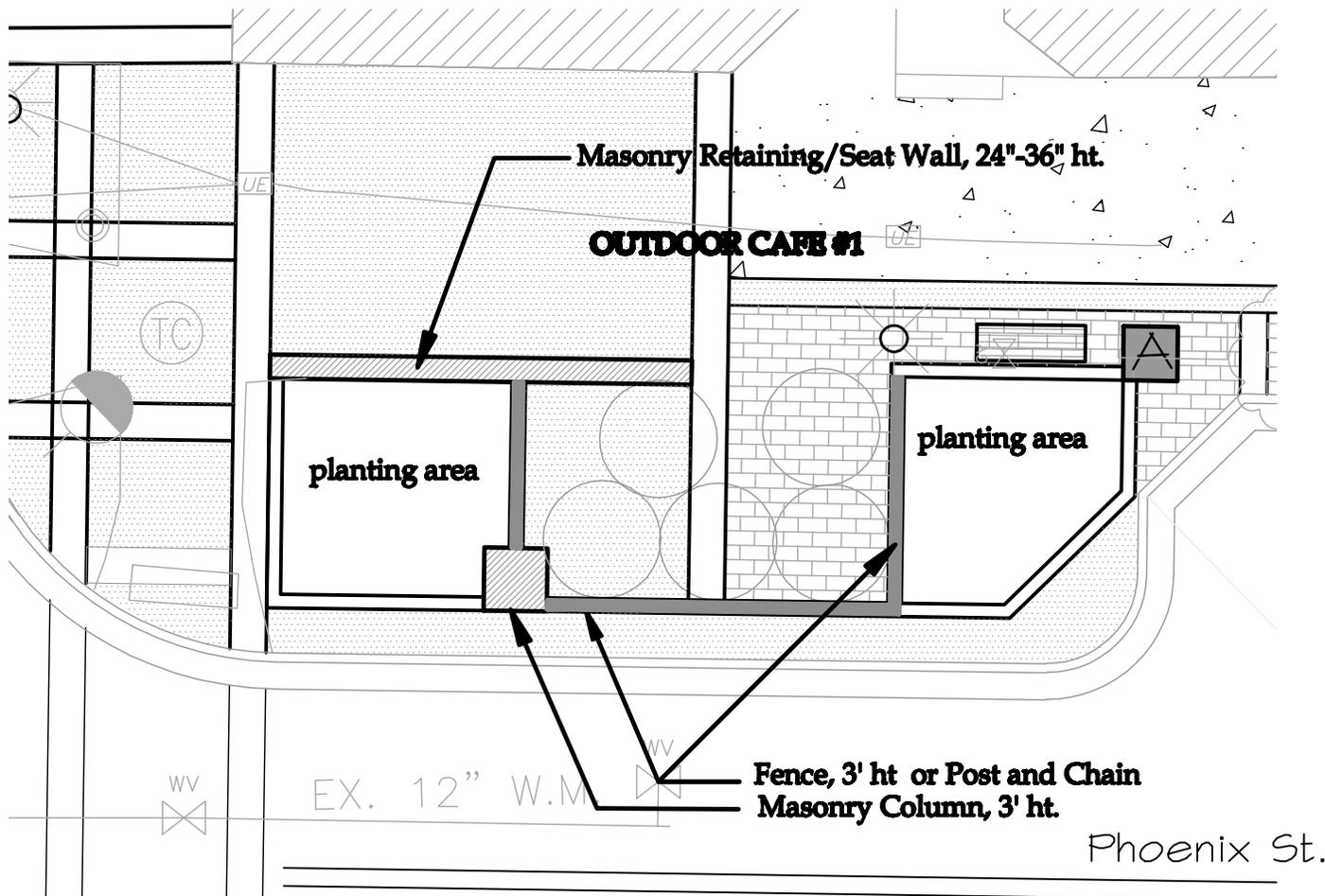
OUTDOOR CAFE #2: Fence/Wall Enclosure

KALAMAZOO STREET



Phoenix Street: City Hall to Kalamazoo St.
Streetscape Plan
 City of South Haven







GENERAL INFORMATION

Case Number.....2013-0022 SLU

Date of Plan Commission..... 11.05.2013

ApplicantJoel Gesiakowski (Taste Restaurant)

RequestA special use permit to operate an outdoor sidewalk café at the Taste Restaurant per zoning ordinance sections 601-3 and 1510.34.

Location402 Phoenix Street

Parcel Number 80-53-001-008-00

Size.....Downtown Property/0.1 acre

Street Frontage50 feet on Phoenix; 128 feet on Kalamazoo Street

Current ZoningCentral Business District (CBD)

Proposed Zoning.....No change

Contiguous Zoning.....North: CBD District
South: CBD District
East: CBD District
West: CBD District

Current Land Use.....Restaurant

Contiguous Land Uses.....North: Commercial
South: Commercial
East: Commercial
West: Commercial

Master Plan DesignationCommercial

CHARACTER OF THE AREA

The Subject Property is located in the east side of the downtown area. The character of the area is a mix of retail commercial with restaurants and condominiums. This character and use is consistent with the current zoning and future land use classification in its central business use.

DEVELOPMENT PROPOSAL

Taste Restaurant is asking for a special use permit to add outdoor sidewalk dining in the new (now under construction) public space on Phoenix Street in front of the restaurant. This public area was planned and developed to accommodate outdoor dining.

PUBLIC RESPONSE

N/A

EVALUATION

The following provisions of the Zoning Ordinance are followed by a statement representing the status of the subject property as it relates to that provision.

Section 1510.34. OUTDOOR SIDEWALK CAFÉ

1. **Locational requirements** – Outdoor Sidewalk Cafes on city public space are permitted by special use permit as an accessory use to food establishments and eating or drinking places which are located in a structure on private property, including restaurants, delicatessens, cafes, or similar establishments.
 - A. Outdoor Sidewalk Cafés are permitted by special use permit in the CBD district.

2. **Application, review and licensing requirements** – an outdoor sidewalk café is operated on property owned by the City Of South Haven. The South Haven City Council has the sole authority to enter into a license agreement to use city-owned property.
 - A. A special use permit application shall be submitted to the planning commission for review and approval. The planning commission shall use the standards, restrictions and conditions of the outdoor sidewalk café license agreement in the review of the special use permit.
 - B. The Downtown Development Authority (DDA) shall review photographs of all outdoor sidewalk café furniture and report its approval or rejection of the design to the planning commission prior to planning commission approval of the special use permit.
 - C. An outdoor sidewalk café shall not begin operation until the applicant has entered into an outdoor sidewalk café license agreement with the South Haven City Council.

3. **General restrictions, standards and conditions** – the outdoor sidewalk café shall meet the restrictions, standards and conditions of the license agreement as approved by city council. All furniture used in the outdoor sidewalk café shall have been approved by the Downtown Development Authority.
 - A. Operation of an outdoor sidewalk café without a license agreement or in a manner in violation of or inconsistent with an outdoor sidewalk café license agreement shall be considered a zoning violation and shall be subject to a civil infraction.
 - B. The use of furniture in an outdoor sidewalk café that has not been approved by the Downtown Development Authority shall be considered a zoning violation and shall be subject to a civil infraction.

The proposed site of the sidewalk café is in the CBD zoning district. Images of the proposed furniture have been submitted to the DDA. The draft license agreement is included in your agenda packet. That agreement will be forwarded to the city council with the planning commission recommendation for approval or denial.

Article XV (Section 1502, Basis of Determination):

1. **General standards** - the Planning Commission shall review the particular circumstances of the special use permit application under consideration in terms of the following standards and shall approve a special use permit application only upon a finding of

compliance with each of the following standards, as well as applicable standards established elsewhere in this ordinance:

- A. The special land use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.
- B. The special land use shall not change the essential character of the surrounding area.
- C. The special land use shall not be hazardous to the adjacent property, property values, or involve uses, activities, processes, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, ground vibration, water runoff, odors, light, glare or other nuisance.
- D. The special land use shall not place demands on public services and facilities in excess of current capacity unless planned improvements have already been scheduled for completion.
- E. The special land use is consistent with the intent of the comprehensive plan.
- F. The special land use shall meet the site plan review requirements of Article IV.
- G. The special land use shall conform to all applicable state and federal requirements for that use.
- H. The special land use shall conform with all standards in this ordinance and other applicable city ordinances, including but not limited to parking (see Article XVIII), signs (see Article XX), and standards particular to the special land use found in the district provisions, schedule of regulations, or elsewhere.

This special land use request will have minimal impact on the surrounding area. The outdoor seating area has been designed so as not to disrupt pedestrian traffic. The style of outdoor furniture has been submitted to the DDA thereby assuring harmony with the character of the surrounding area. We do not anticipate that the approval of this special use will create increased demand on city services or facilities.

The current adopted City Master Plan does not specifically address outdoor dining in the CBD but it does state that efforts should be made to entice residents and visitors into the downtown. The appeal of outdoor dining may encourage people visiting the downtown to stay and dine.

The special use application review, in conjunction with the licensing agreement, provides conformity assurance for local, state and federal laws.

RECOMMENDATION

The special use request is not uncommon in the CBD and is expected to become more common as new developments occur in the CBD. The Planning Commission needs to review the case summary and determine if this application for a special use permit meets the intent of the City. Staff recommends approval contingent on city council approval of the proposed license agreement

**OUTDOOR SIDEWALK CAFÉ LICENSE AGREEMENT
BETWEEN
THE CITY OF SOUTH HAVEN
AND
TASTE RESTAURANT
402 PHOENIX STREET**

This Outdoor Sidewalk Café License Agreement shall apply to food establishments and eating or drinking places including restaurants, delicatessen, café, bars, taverns or other similar establishments which serve food and/or beverages to the general public for personal consumption in or on outdoor facilities known as Outdoor Sidewalk Cafes.

This License Agreement shall be accompanied by Exhibit A, the Licensed Premises, which is a site plan drawing showing the location of the Owner's Parcel, the public right-of-way, the sidewalk, curb, landscaped areas, any structures or obstacles, the Designated Clear Path area and the Outdoor Sidewalk Café Licensed Premises area. The Licensed Premises shall be clearly designated by shading or cross-hatching and shall not include the Designated Clear Path.

This License Agreement shall be accompanied by certificates of insurance or other evidence reasonably acceptable to the City indicating that the Owner maintains a policy or policies of insurance as described in Section 11.

This License Agreement shall be accompanied by a copy of the Owner's Food Service License and a statement by the owner on the number of food service related seats within the owner's building, and the number of food-service related seats in the Outdoor Sidewalk Café.

This Outdoor Sidewalk Café License Agreement is made between the City of South Haven, a Michigan home rule city, of 523 Phoenix Street, South Haven, Michigan 49090-1499 (the "City"), and The Taste Restaurant, 402 Phoenix Street, South Haven, Michigan 49090 (the "Owner") with respect to the following facts and circumstances.

RECITALS

- A. Phoenix Street is a public right-of-way and/or public open-space within the corporate limits of the City.
- B. The Owner owns, or has a leasehold interest, in a building and land commonly known as 402 Phoenix Street, South Haven, Michigan ("Owner's Parcel"), and on that property operates a food establishment or eating or drinking place.
- C. The Owner desires to establish and operate an Outdoor Sidewalk Café on the public right-of-way and/or public spaces in front of or adjacent to the building or land described in Recital B, which would encroach upon the public right-of-way or City owned property at 402 Phoenix Street.
- D. The Owner has been granted a special use permit by the City Planning Commission on the --- day of ---, 2013, to establish and operate an Outdoor Sidewalk Café at the location described in Recital B.
- E. The City is willing to permit such Outdoor Sidewalk Café in strict accordance with the terms and conditions of this Agreement.

DEFINITIONS

"Outdoor Sidewalk Café" means any portion of a food establishment or eating or drinking place located on a public sidewalk or public open-space on a City right-of-way or City-owned property.

"*Excess Sidewalk or Excess Open-Space Area*" means the remaining area or sidewalk or open-space in front of or adjacent to the Owner's Parcel after five (5') feet of clear unobstructed sidewalk or open-space is made available to pedestrians for free passage.

"*Food Establishment or Eating or Drinking Place*" means a business which has been licensed by the Van Buren County Health Department or the Department of Agriculture to sell food and/or drinks for consumption on the premises, and which provides food service seating or restaurant seating inside a building on the Owner's Parcel.

"*Owner's Parcel*" means the private property under control of the Owner as described in Recital B.

"*Designated Clear Path*" means the area designated in Exhibit A as an unobstructed public walkway. A Designated Clear Path shall be maintained free from any obstruction, including those amenities associated with an Outdoor Sidewalk Café that impede or delay free pedestrian passage along a public sidewalk or public open-space and including but not limited to chairs, umbrellas, tables, trash containers, railings, planters and signage.

"*Licensed Premises*" means the area designated for use as an Outdoor Sidewalk Café in Exhibit A. The Licensed Premises shall not include any part of the Designated Clear Path or other area required to remain unobstructed.

"*Readily Removable*" means any such furniture that is **not** leaded, cemented, nailed, bolted, power riveted, screwed in or affixed even in a temporary manner to the public sidewalk or an public open-space area.

NOW, IN CONSIDERATION of the covenants contained in this Agreement, the City grants to Owner a License as provided below:

1. License. The City licenses to the Owner and the Owner accepts from the City the use of the premises located in the City described and depicted in the attached Exhibit A (the "Licensed Premises").

2. Term. The term of this License shall commence on the date of signature and will terminate at midnight on _____, 2033 unless earlier terminated or revoked as provided below.

3. Use. The Licensed Premises shall be used by the Owner to establish and operate an Outdoor Sidewalk Café in compliance with the standards and conditions of the special use permit granted by the City Planning Commission. The Owner will use the Licensed Premises in a clean, wholesome and lawful manner, in compliance with all applicable City ordinances, and permit requirements, and any applicable state laws, rules or regulations.

4. Fee. The Owner shall pay the City, its successors and assigns a License Fee of One and no/100 Dollars (\$1.00), together with an Application Fee of One Hundred and no/100's (\$100.00) Dollars to cover the costs and expenses incurred in the administration of this Agreement. The Owner shall pay the City an Amendment License Application Fee of One Hundred and no/100's (\$100.00) Dollars upon amendment of this Agreement. The Owner shall pay the City a Renewal License Application Fee of One and no/100's (\$1.00) Dollar upon renewal or extension of this Agreement.

5. No Assignment/Sublicensing. This License is personal with the Owner and does not run with the land. This License shall not be assigned or transferred in any manner by the Owner to any other person or business entity. The City, in its sole discretion, may authorize the assignment or transfer of this License to a third party by amendment to this Agreement or by a separate License Agreement.

6. Acceptance of the Premises. The Owner acknowledges and agrees that Owner has inspected the Licensed Premises and has determined such premises to be in a satisfactory condition and that the Owner's entry upon and use of the Licensed Premises constitutes acceptance of the Licensed Premises on an "as is" basis.

7. Compliance with Law. The Owner shall comply with and observe all applicable laws, ordinances, rules, regulations and orders of all public authorities including but not limited to health rules, laws and regulations.

8. General Restrictions, Standards and Conditions. In addition to any restrictions, standards, or conditions placed on the Owner by the Planning Commission in granting special use approval, and without limitation, the License is subject to the following general restrictions designed to control the design, materials, installation and maintenance of Outdoor Sidewalk Cafés:

A. The licensed Outdoor Sidewalk Café shall not be conducted in such a way as to become a public nuisance as proscribed by City ordinance. The licensed Outdoor Sidewalk Café shall not interfere with vehicular or pedestrian traffic or circulation on any adjoining streets, alleys, sidewalks or public open-space areas.

B. Sale of Alcoholic Beverages. A Food Establishment or Eating or Drinking Place operating an Outdoor Sidewalk Café and possessing a valid liquor license issued by the Michigan Liquor Control Commission may serve alcoholic beverages subject to the following provisions:

1. The service of liquor on the Outdoor Sidewalk Café shall occur only in compliance with all rules and regulations promulgated by the Michigan Liquor Control Commission, including any prior Liquor Control Commission approval that may be required.
2. All alcoholic beverages to be served at Outdoor Sidewalk Cafés shall be prepared within the existing Food Establishment or Eating or Drinking Place, and alcoholic beverages shall only be served to patrons seated at tables.
3. The consumption of alcoholic beverages at an Outdoor Sidewalk Café shall be limited to the confines of the Licensed Premises. Any consumption of alcoholic beverages occurring within the confines of the Licensed Premises shall not be construed as a violation of any ordinance controlling open alcohol containers in a public area.
4. Employees of the Food Establishment or Eating or Drinking Place shall continuously supervise Outdoor Sidewalk Cafés serving alcoholic beverages.
5. Upon application for the License authorized under this Agreement, the Owner shall submit to the City all documentation submitted to the Michigan Liquor Control Commission in applying for the liquor license, and a full history of the liquor license holder including all complaints filed with the Michigan Liquor Control Commission.
6. A violation of any provision of this Agreement relating to the sale of alcoholic beverages is a material breach of this Agreement, and may result in immediate termination of the License as provided by this Agreement.

C. Outdoor Sidewalk Café Hours of Operation.

Except as otherwise provided in this Agreement, Outdoor Sidewalk Café Owners may conduct business in or on Outdoor Sidewalk Cafés upon City right-of-way or public space areas daily after 7:00 A.M. but not later than 11:00 P.M. If an approved festival event is permitted to operate later than 11:00 P.M., an Outdoor Sidewalk Café may also operate until the festival event concludes operation for the day.

D. Service Requirements.

1. The number of seats in an Outdoor Sidewalk Café shall not exceed the number of seats inside the building of the Food Establishment or Eating or Drinking Place.
2. The number of seats in an Outdoor Sidewalk Café shall be included in the Food Service License of the Food Establishment or Eating or Drinking Place.
3. Trash and/or refuse containers are required in an Outdoor Sidewalk Café and shall be located on the Licensed Premises.
4. Outdoor bussing or service stations are prohibited.
5. The presetting of tables with utensils, dinnerware, glasses, napkins, condiments and the like is prohibited.
6. The outdoor preparation of food is prohibited.

7. All exterior surfaces within the Outdoor Sidewalk Café shall be easily cleanable and shall be kept clean at all times by the Owner, Owner's agent, or the employees of the Owner.
8. The Owner shall be responsible for maintaining the Outdoor Sidewalk Café, including the sidewalk surface and furniture and adjacent areas in a clean, wholesome and safe condition.
9. Maintenance of the Outdoor Sidewalk Café shall include the immediate cleaning and sweeping/brooming of any trash, food, debris, liquid, broken glass or other trash to be placed in trash receptacles.

E. Outdoor Sidewalk Café Area Limitations

1. The area of an Outdoor Sidewalk Café shall be limited to the excess sidewalk and/or excess open-space area located directly in front of or adjacent to a food establishment or eating or drinking place.
2. No Outdoor Sidewalk Café shall encroach or extend beyond the property lines of the Owner's Parcel extended into the City right-of-way or City-owned property.
3. No Outdoor Sidewalk Café or associated furniture shall block or impede the passage and free movement of pedestrians entering the sidewalk from a legally parked vehicle.
4. No Outdoor Sidewalk Café shall encroach upon the Designated Clear Path. The Designated Clear Path shall be maintained free from any obstruction, including those amenities associated with an Outdoor Sidewalk Café that impede or delay free pedestrian passage along a public sidewalk or public open-space and including but not limited to chairs, umbrellas, tables, railings, trash containers, planters and signage.
5. No Outdoor Sidewalk Café shall interfere with any public service facility, such as a telephone, mailbox, or bench located on a right-of-way or other City-owned property.
6. An Outdoor Sidewalk Café shall leave sufficient space to allow access to the Food Establishment or Eating or Drinking Place in accordance with accessibility requirements under the Americans with Disabilities Act.

F. Outdoor Sidewalk Café Designated Clear Path

1. A Designated Clear Path shall be provided with a minimum width of five (5') feet, free of all obstructions in order to allow adequate pedestrian movement along sidewalks and public places as shown in Exhibit A.
2. The Designated Clear Path shall be marked upon the pavement where it is adjacent to any Licensed Premises.
3. The Designated Clear Path shall be located on the sidewalk between the Owner's building and a line drawn between the two nearest tree landscaping cut-outs in the sidewalk.
4. If an adjacent property owner has an established Outdoor Sidewalk Café, the Designated Clear Path must be aligned with the established Designated Clear Path.
5. The minimum height clearance for the Designated Clear Path shall be seven (7') feet measured vertically from the sidewalk to any Outdoor Sidewalk Café furniture in order to allow adequate pedestrian movement along sidewalks and public places.
6. The Owner shall be responsible for preserving the Designated Clear Path area at all times. The Designated Clear Path shall be maintained free from any obstruction, including those amenities associated with an Outdoor Sidewalk Café that impede or delay free pedestrian passage along a public sidewalk or public open-space and including but not limited to chairs, umbrellas, tables, trash containers, railings, planters and signage.
7. The Owner shall take such action as is necessary to prevent patrons and/or employees from encroaching beyond the Licensed Premises into the Designated Clear Path at all times.

G. Outdoor Sidewalk Café Furniture.

1. All Outdoor Sidewalk Café furniture, including tables, chairs, umbrellas, trash containers, railing and planters shall be approved by the Downtown Development Authority to insure the integrity and to preserve the character and compatibility of the local business district. Furniture which is identical in design, material and character to furniture previously approved by the Downtown Development Authority for an Outdoor Sidewalk Café shall be considered to have Downtown Development Authority Approval.

2. All outdoor dining furniture, including tables, chairs, umbrellas, trash containers, railing and planters shall be readily removable.
3. Outdoor heaters or fans are prohibited.
4. Outdoor Sidewalk Café furniture, including tables, chairs, umbrellas, trash containers, railing and planters, shall be removed from the Licensed Premises during those hours when the Outdoor Sidewalk Café is not open for business. Outdoor Sidewalk Café furniture shall not be stored in the public right-of-way at any time.
5. Outdoor Sidewalk Café furniture, including tables, chairs, umbrellas, trash containers, railing and planters, shall be removed from the Licensed Premises during periods of inclement weather which might cause injury or harm to staff, customers or passersby, including periods of high winds, tornadoes, lightning and thunder storms, hail or ice storms, or snowstorms.

H. Outdoor Sidewalk Café Table Umbrella Restrictions.

Table umbrellas shall be permitted as Outdoor Sidewalk Café furniture under the following conditions that:

1. All table umbrellas shall be properly supported, retractable, and made of a non-combustible frame, covered with flameproof canvas or cloth only.
2. No table umbrella shall exceed seven (7') feet in diameter.
3. No table umbrella shall obstruct the clear vision of any street sign or traffic regulatory sign.
4. No table umbrella shall contain or display any type sign or signage except on the fringe or valance
5. No table umbrella lower than seven (7') feet measured perpendicular from the sidewalk surface shall encroach into the designated clear path.
6. The valance or fringe of a table umbrella shall not exceed six (6") inches.
7. All table umbrellas must be properly secured with a base of not less than 60 pounds minimum.

I. Planters or Railings.

1. In order to maintain maximum visual access, the height of the planter or railing including vegetation therein, shall not be higher than thirty-six (36") inches.
2. All planters or railings utilized as part of the Outdoor Sidewalk Café for decoration or delineation of the Outdoor Sidewalk Café area shall be self-supporting.
3. All planters and railings shall be readily removable and shall be removed from the sidewalk right-of-way or open-space area during those hours when an Outdoor Sidewalk Café is prohibited.

J. Elevation and Surface Coverings Prohibited.

1. An Outdoor Sidewalk Café shall have the same surface elevation as the adjoining sidewalk.
2. Paint, artificial turf, carpets, platforms or any other surface cover or treatment of any kind are prohibited from being placed upon the area designated as an Outdoor Sidewalk Café at any time, except that the pavement may be marked to show the location of the Designated Clear Path.

K. The Outdoor Sidewalk Café shall be made available to patrons of the Owner only.

L. Noise Restrictions.

Stereo systems, stereo speakers or other audio devices for sound reproduction shall not be operated in or on Outdoor Sidewalk Cafes, and shall not be directed to an Outdoor Sidewalk Café from the Owner's Parcel.

M. Sign Restrictions.

Signs, signboards, or advertisements recognizing an Outdoor Sidewalk Café are prohibited in the Licensed Premises except for the name of the establishment on the fringe or valance of a table umbrella or on the valance of any awning.

N. Fire Code Compliance.

A permitted Outdoor Sidewalk Café is required to comply at all times with all requirements of the BOCA National Fire Prevention Code and other related fire ordinances to the satisfaction of the South Haven Emergency Services Fire Marshal or his designee.

O. Outdoor Sidewalk Café Limitation.

No more than one Outdoor Sidewalk Café license agreement shall be issued by the South Haven City Council for each parcel.

9. Maintenance. The Owner shall, during the term of this License, and at his sole expense, do and perform all maintenance necessary to keep the Licensed Premises in good repair and in a safe condition.

10. Improvements, Restoration, Construction Liens.

A. No improvements shall be made to the Licensed Premises without the prior written consent of the City.

B. The Owner shall not permit any construction lien to be filed against the fee of the Licensed Premises or against the Owner's interest in the Licensed Premises by reason of work, labor, services, or materials supplied, or claimed to have been supplied, whether prior or subsequent to the commencement of the term hereof, to the Owner. The Owner shall indemnify the City against such liens or other liens arising out of the making of any alteration, repair or additional improvement by the Owner. This paragraph is not construed as an admission by the City that a construction lien can properly be filed against the Licensed Premises. It is intended solely as additional protection to that afforded by law that no such lien will be enforced against the Licensed Premises. The City will have the right to post the Licensed Premises from any such liens.

11. Public Liability and Indemnity. The City shall not be responsible for any loss or damage from whatever cause to personal property located on the Licensed Premises. The Owner shall hold the City (defined for purposes of this paragraph to include the City's officers and employees) harmless from, indemnify it for, and defend it (with legal counsel reasonably acceptable to the City) against any demand, claim, judgment, award, legal proceeding or loss of any kind arising from the Owner's use, occupancy, maintenance (or failure to maintain), or repair (or failure to repair) the Licensed Premises. The Owner shall obtain and maintain a general liability insurance policy covering the Licensed Premises and the Owner's activities on the Licensed Premises in minimal coverage amounts of \$1,000,000 per occurrence and fire and casualty insurance with an extended coverage endorsement on any improvements placed or constructed by the Owner on the Licensed Premises equal to the amount to the full insurable value of such improvements. All policies shall name the City as an additional insured and certificate holder. Copies of certificates of insurance showing the coverage to be in place, that the premiums are fully paid, and that coverage cannot be terminated or modified except after 30 days prior written notice to the City, shall be provided to the City. Upon request, the City shall be provided copies of the policies of insurance and all endorsements.

12. Casualty. In the event of damage to or destruction of the Licensed Premises by fire, storm or any other casualty or accident, this License shall not terminate if the Owner gives written notice to the City that the Owner desires the License to continue, unless the Licensed Premises are so destroyed that it will require material reconstruction. The Owner shall have the right to repair any such damage to a condition prior to the damage; however such repair must be completed within sixty (60) days of the loss. If written notice is not given, or if repairs are not timely completed, the License shall terminate sixty (60) days after the loss. If the damages destroy the building on the Owner's Parcel in whole or in substantial part, then this License shall terminate immediately. In no event shall the City be responsible for loss or damage to improvements or personal property owned by the Owner or placed on the Licensed Premises by the Owner, which are caused by fire, theft, loss, vandalism or other casualty.

13. Breach. The Owner shall be in breach of this Agreement upon the occurrence of the following events: If at any time any fee, insurance premium or other charge or payment payable by the Owner

pursuant to the terms of this Agreement shall become in arrears and unpaid for a period of thirty (30) days after notice of default in performance; or if default in the Owner's requirements, obligations and duties hereunder is not cured within fourteen (14) days from written notice of such default, then at the option of the City it may terminate this Agreement and all rights of the Owner as to the Licensed Premises shall terminate. The City shall also have such other lawful remedies as are required to enforce the terms of this Agreement.

14. Temporary Suspension of License. The City Manager shall have the right and power, acting through the City Police Department, to suspend this license for an Outdoor Sidewalk Café and cause removal of the Owner's furniture and other personal property from the licensed premises at any time because of anticipated or actual problems or conflicts in the use of the public right-of-way, sidewalk or a public open-space area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades or marches, repairs to the street or sidewalk, or from demonstrations or emergencies occurring on, in, adjacent to, or near the Licensed Premises. To the extent possible, the City shall give the Owner prior written notice of any time period during which the operation of the Outdoor Sidewalk Café will be suspended by the City due to a specific problem or conflict; however, any failure to give prior written notice shall not affect the right and power of the City to suspend the license for operation of any Outdoor Sidewalk Café at any particular time.

15. Exceptions. Exceptions to the conditions of this agreement may be granted by the South Haven City Council during planned and organized festival events and sidewalk sales.

16. Termination. This Agreement and the License granted under it shall terminate upon any of the following events:

- A. The expiration of the term of this Agreement without a written amendment or extension by the parties.
- B. At any time by the Owner, upon giving the City fourteen (14) days prior written notice.
- C. Immediately upon any default of the Owner without timely cure as provided in Section 13.
- D. At the option of the City upon fourteen (14) days prior written notice given by the City to the Owner. Further, the City Manager may terminate this License immediately upon verbal or written notice to Owner, where the City Manager determines that the use of the Licensed Premises has become a hazard or presents an imminent risk or danger to the public health, safety and welfare. Unless the City Manager subsequently rescinds such suspension, the City Council, at its next regular meeting shall consider whether to reinstate the License, continue the suspension, or terminate this license agreement, in its sole discretion. The Owner shall be afforded an opportunity to be heard before the City Council regarding the suspension of the License under this Agreement.
- E. In accordance with Section 12, upon the destruction in whole or substantial part of the building on Owner's Parcel or upon the damage to or destruction of the Licensed Premises if the Owner does not make timely repairs.
- F. Immediately upon the issuance of a judgment, order, rule or regulation of a governmental unit or agency having jurisdiction, other than the City, requiring that the improvements and encroachments be removed from the Licensed Premises.
- G. Immediately, at the option of the City Manager, upon the Owner's failure to meet, observe or fulfill any obligation, general restrictions, standards, condition, or requirement of this Agreement.

17. Effect of Termination. Upon termination of this Agreement, the Owner, and at the Owner's sole expense, shall promptly remove all furniture and materials from the Licensed Premises and restore the Licensed Premises to the condition as existed prior to making use of the Licensed Premises. If the Owner fails to take such action promptly, the City shall be entitled, after giving the Owner seven (7) days

prior written notice, to remove all such furniture and materials from the Licensed Premises. Provided that, the City shall not be required to give such notice in the event of an emergency or imminent risk or danger to the health, safety and welfare of the public. Any costs and expenses, including without limitation legal expenses and attorney's fees, incurred by the City in enforcing this Section shall be the responsibility of and paid by the Owner.

18. Owner's Acknowledgements. The Owner acknowledges and agrees that the City owns the Licensed Premises, that the License granted under this Agreement involves the permission to enter and use property which is a public right of way and/or City owned property, that the public's rights are paramount, and that the Owner's use under this License may not interfere with the public's rights to the reasonable use of the Licensed Premises. The Owner further acknowledges that its use of the Licensed Premises does not constitute any title, claim of right, or other property interest in the Licensed Premises. The Owner further acknowledges that it has no claim to any amount of lost revenues due to suspension, termination or any other interruption in the use of the Licensed Premises.

19. Notices. Any notices, reports or statements required to be served hereunder shall be sufficiently given if mailed by first class mail addressed to the City and the Owner at their respective addresses stated above. Notice shall be deemed to have been given upon the date of mailing.

20. No Waiver. The failure of either party to enforce any covenant or condition of this License shall not be deemed a waiver thereof or of the right of either party to enforce each and every covenant and condition of this License. No provision of this License shall be deemed to have been waived unless such waiver shall be in writing.

21. Payment. In the event that the Owner shall default in his obligations hereunder or become delinquent in the payment of any taxes, insurance or other charges to be paid by the Owner under the terms of this Agreement, then the City shall have the right, at its option, to perform such obligation or pay any such item. Upon such payment or performance by the City, said item shall be deemed an additional License Fee due hereunder and shall be immediately due and payable to the City. This provision shall not relieve Owner of any default.

22. Miscellaneous.

A. This Agreement is written pursuant to the laws of the State of Michigan and was made in Van Buren County, Michigan. This is the entire agreement between the parties regarding its subject matter. There are no prior or contemporaneous agreements. This Agreement may not be modified or amended except in writing, signed by the parties. It shall not be affected by any course of dealing.

B. The captions of this Agreement are for convenience only and shall not be considered as part of this License or in any way limiting or amplifying its terms and provisions. The recitals, however, are an integral part of this Agreement. More than one copy of this Agreement may be signed, but all constitute one agreement.

[signatures on next page]

The parties have caused this Agreement to be executed as of the date first written above.

CITY OF SOUTH HAVEN

APPLICANT

By: _____
Robert Burr, Mayor

By: _____

By: _____
Amanda Morgan, Clerk

Its: _____

Date signed: _____, 2012

By: _____

Its: _____

Date signed: _____, 2012



**Agenda Item #6B
Black River Tavern (BRT) Restaurant
Outdoor Dining
Special Use Request**

Background Information:

Scott Maxwell, representing Black River Tavern at 401 Phoenix Street, requests a special use permit to allow outdoor seating at the restaurant, per zoning ordinance section 601-3. The property number for the subject parcel is 80-53-123-008-00 and the owner of record is BPO Elks #1509 of South Haven.

The city has designed the corner at Phoenix and Kalamazoo Streets to accommodate this outdoor seating. The city's schematic for the property is included in the attachments.

The Downtown Development Authority (DDA) will review the proposed furniture at their meeting on Wednesday, December 4 and we should have their approval or rejection by the Planning Commission meeting. This special use request is authorized by the zoning ordinance section 1510.34.

Recommendation:

If the planning commission approves the special use permit, they should then make a recommendation to city council to approve the license agreement for seating on public property. Provided that the furniture chosen for the café is approved by the DDA, staff has no problem with recommending approval of this request.

Attachments:

Application
BRT perspective view
Outdoor dining site plans
Case summary
Draft license agreement

Respectfully submitted,
Linda Anderson
Zoning Administrator

SPECIAL USE PERMIT APPLICATION
CITY OF SOUTH HAVEN
BUILDING SERVICES DEPARTMENT
539 PHOENIX STREET, SOUTH HAVEN, MICHIGAN 49090
FOR INFORMATION CALL 269-637-0760

Date: 11-13-13 Applicant: BLACK RIVER TAVERN

Applicant Address: 403 PHOENIX ST.

Applicant Phone Numbers: 269-637-4837 630-854-0877 (CELL)

Applicant e-mail: MAXXSCOTT@GMAIL.COM

Subject Property Address: N/A
(A legal description and survey of the subject property is required to be submitted with this application.)

Zoning District: CBP

Type of Special Use Requested: OUTDOOR DINING
(A scaled site plan for the subject property is required to be submitted with this application.)

Special Use Section Number: 601-3

Attach a list of the conditions for approval which apply to your request and comment on how your request will meet those standards:

Applicant shall respond to the general standards in Sec. 1502 below and comment on how the requested Special Use Permit will meet the standards:

General Standards - The Planning Commission shall review the particular circumstances of the special use permit application under consideration in terms of the following standards and shall approve a special use permit application only upon a finding of compliance with each of the following standards, as well as applicable standards established elsewhere in this Ordinance:

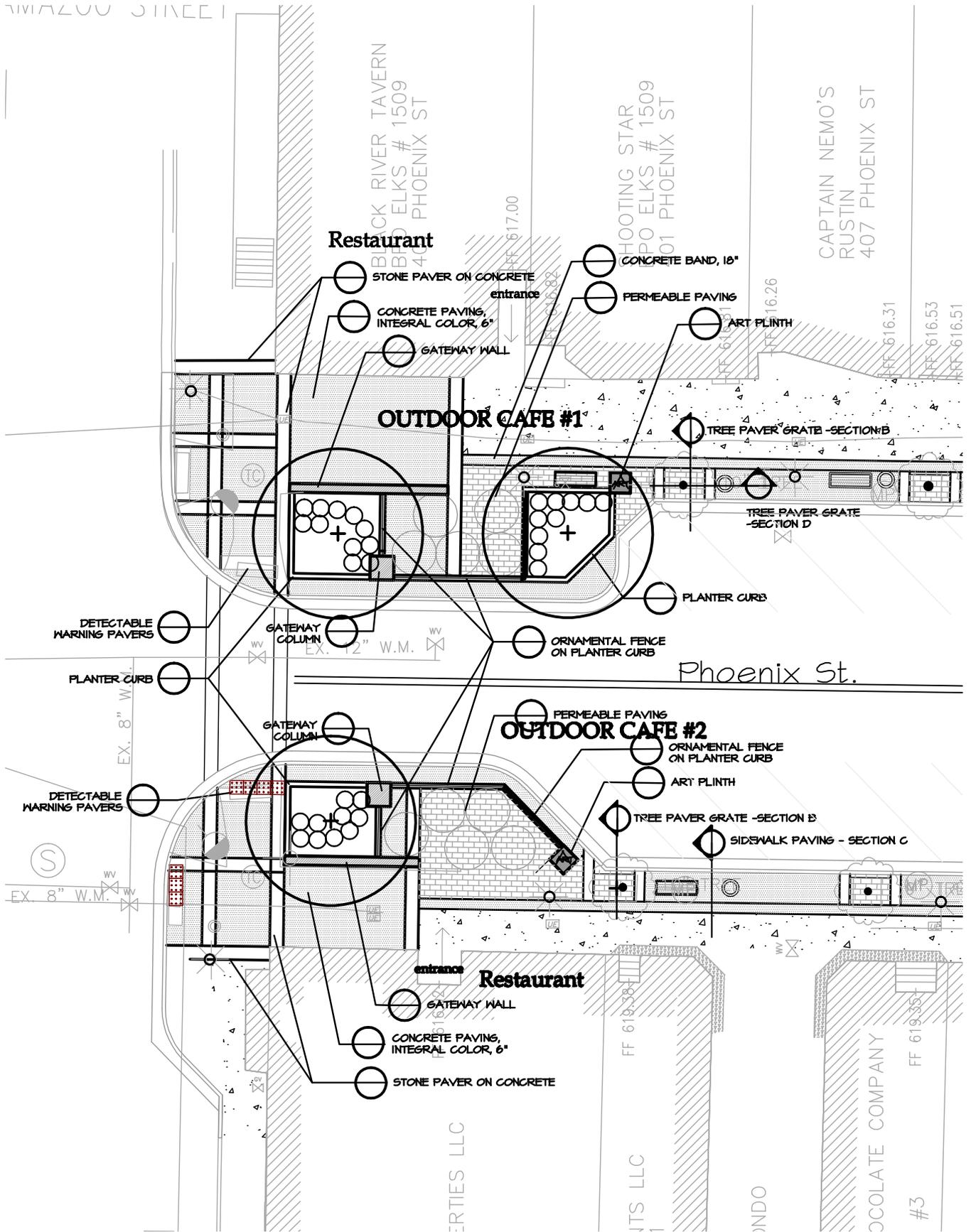
- a. The special land use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.
- b. The special land use shall not change the essential character of the surrounding area.
- c. The special land use shall not be hazardous to the adjacent property, property values, or involve uses, activities, processes, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, ground vibration, water runoff, odors, light, glare or other nuisance.
- d. The special land use shall not place demands on public services and facilities in excess of current capacity unless planned improvements have already been scheduled for completion.
- e. The special land use is consistent with the intent of the Comprehensive Plan.
- f. The special land use shall meet the site plan review requirements of Article IV.
- g. The special land use shall conform with all applicable state and federal requirements for that use.
- h. The special land use shall conform with all standards in this Ordinance and other applicable City Ordinances, including but not limited to parking (see Article XVIII), signs (see Article XX), and standards particular to the special land use found in the District provisions, Schedule of Regulations, or elsewhere.

Applicant Signature  Date: 11-13-13

A FEE OF \$400.00 MUST BE SUBMITTED WITH COMPLETED APPLICATION.

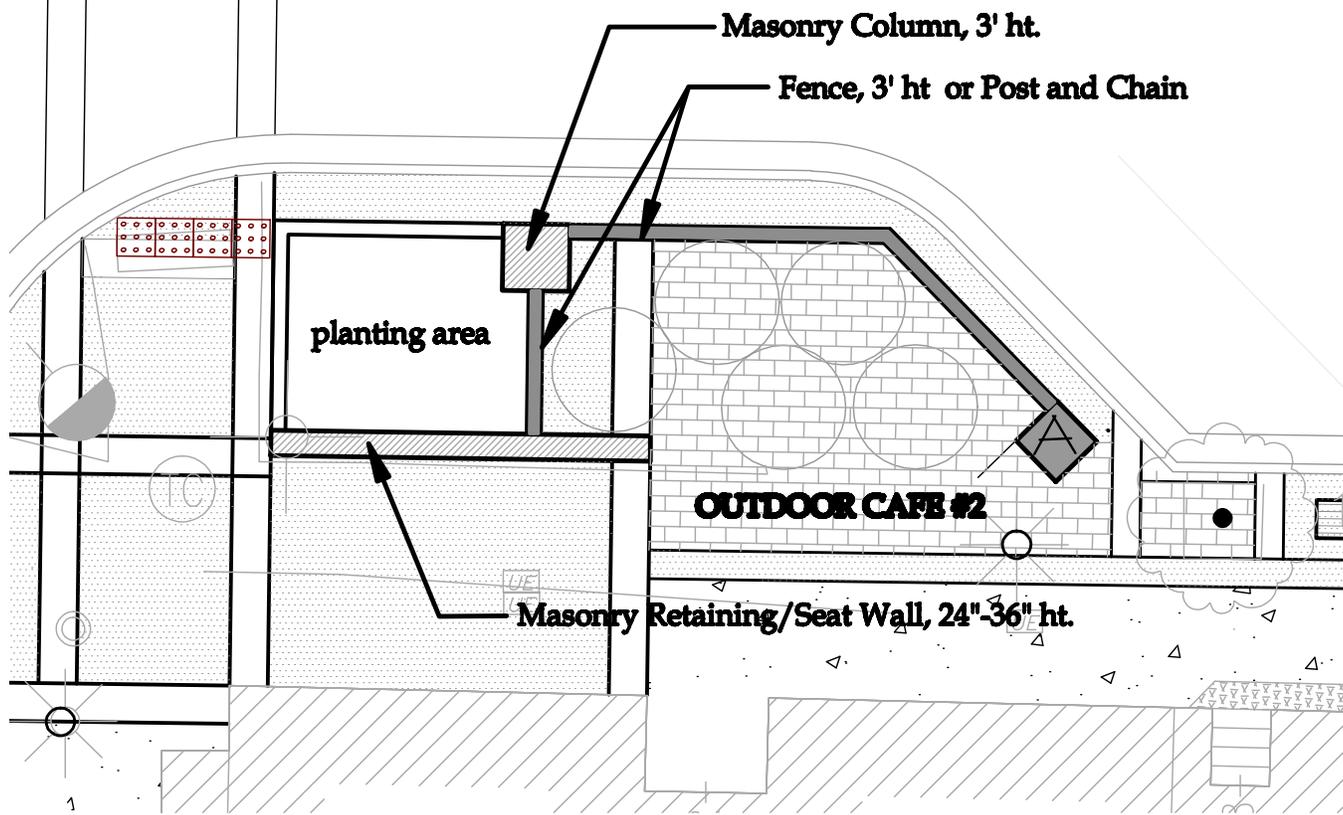
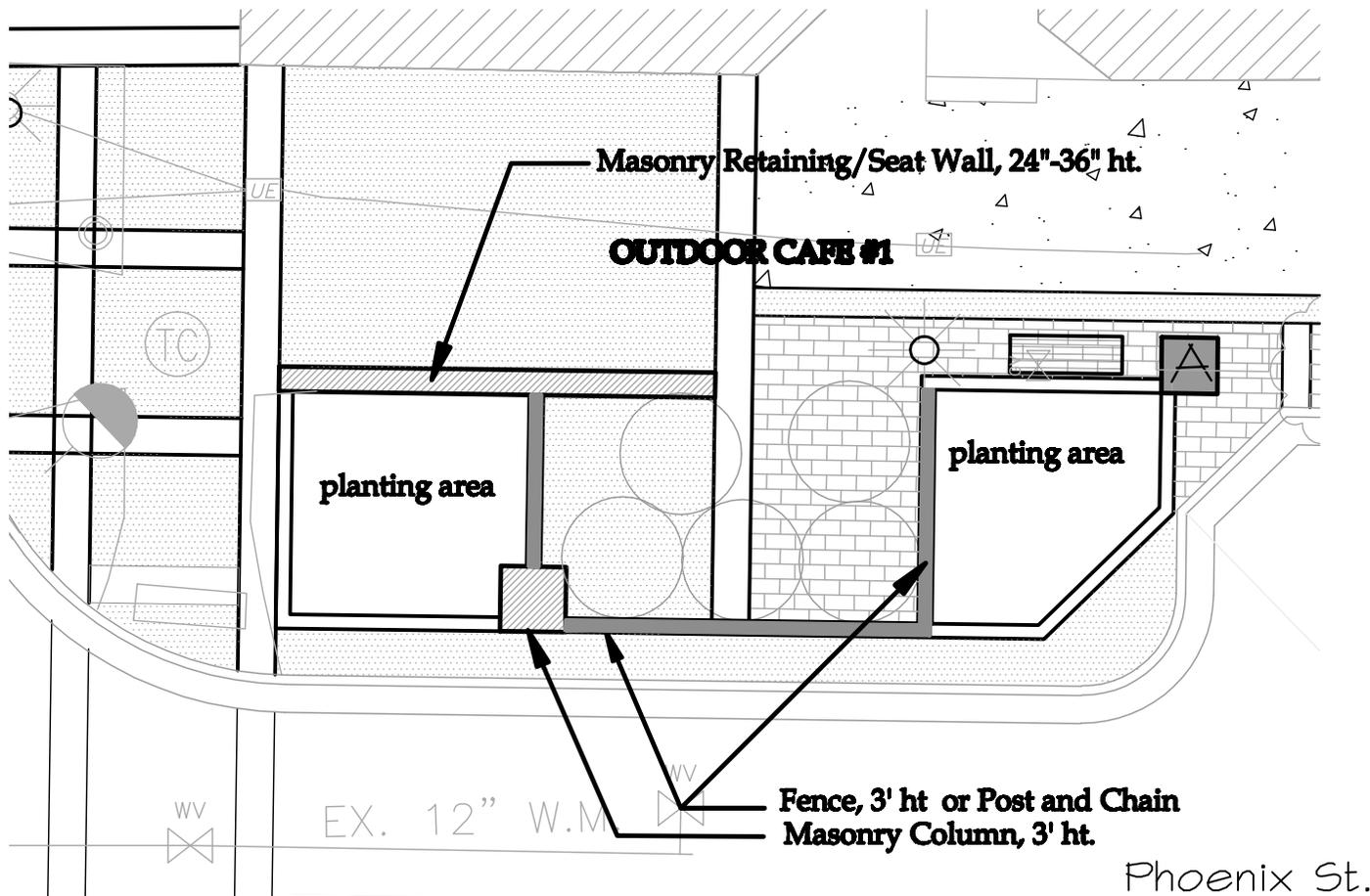


KALAMAZOO STREET



Phoenix Street: City Hall to Kalamazoo St.
Streetscape Plan
 City of South Haven





GENERAL INFORMATION

Case Number.....2013-0023 SLU

Date of Plan Commission..... 11.05.2013

Applicant Scott Maxwell (Black River Tavern Restaurant)

Request A special use permit to operate an outdoor sidewalk café at the Black River Tavern Restaurant per zoning ordinance sections 601-3 and 1510.34.

Location 401 Phoenix Street

Parcel Number 80-53-123-008-00

Size..... Downtown Property/0.1 acre

Street Frontage 75 feet on Phoenix; 100 feet on Kalamazoo Street

Current Zoning Central Business District (CBD)

Proposed Zoning..... No change

Contiguous Zoning..... North: CBD District
South: CBD District
East: CBD District
West: B-4 District (across Williams St.)

Current Land Use..... Restaurant

Contiguous Land Uses..... North: Commercial
South: Commercial
East: Commercial
West: Commercial

Master Plan Designation Commercial

CHARACTER OF THE AREA

The Subject Property is located in the east side of the downtown area. The character of the area is a mix of retail commercial with restaurants and condominiums. This character and use is consistent with the current zoning and future land use classification in its central business use.

DEVELOPMENT PROPOSAL

Taste Restaurant is asking for a special use permit to add outdoor sidewalk dining in the new (now under construction) public space on Phoenix Street in front of the restaurant. This public area was planned and developed to accommodate outdoor dining.

PUBLIC RESPONSE

N/A

EVALUATION

The following provisions of the Zoning Ordinance are followed by a statement representing the status of the subject property as it relates to that provision.

Section 1510.34. OUTDOOR SIDEWALK CAFÉ

1. **Locational requirements** – Outdoor Sidewalk Cafes on city public space are permitted by special use permit as an accessory use to food establishments and eating or drinking places which are located in a structure on private property, including restaurants, delicatessens, cafes, or similar establishments.
 - A. Outdoor Sidewalk Cafés are permitted by special use permit in the CBD district.

2. **Application, review and licensing requirements** – an outdoor sidewalk café is operated on property owned by the City Of South Haven. The South Haven City Council has the sole authority to enter into a license agreement to use city-owned property.
 - A. A special use permit application shall be submitted to the planning commission for review and approval. The planning commission shall use the standards, restrictions and conditions of the outdoor sidewalk café license agreement in the review of the special use permit.
 - B. The Downtown Development Authority (DDA) shall review photographs of all outdoor sidewalk café furniture and report its approval or rejection of the design to the planning commission prior to planning commission approval of the special use permit.
 - C. An outdoor sidewalk café shall not begin operation until the applicant has entered into an outdoor sidewalk café license agreement with the South Haven City Council.

3. **General restrictions, standards and conditions** – the outdoor sidewalk café shall meet the restrictions, standards and conditions of the license agreement as approved by city council. All furniture used in the outdoor sidewalk café shall have been approved by the Downtown Development Authority.
 - A. Operation of an outdoor sidewalk café without a license agreement or in a manner in violation of or inconsistent with an outdoor sidewalk café license agreement shall be considered a zoning violation and shall be subject to a civil infraction.
 - B. The use of furniture in an outdoor sidewalk café that has not been approved by the Downtown Development Authority shall be considered a zoning violation and shall be subject to a civil infraction.

The proposed site of the sidewalk café is in the CBD zoning district. Images of the proposed furniture have been submitted to the DDA. The draft license agreement is included in your agenda packet. That agreement will be forwarded to the city council with the planning commission recommendation for approval or denial.

Article XV (Section 1502, Basis of Determination):

1. **General standards** - the Planning Commission shall review the particular circumstances of the special use permit application under consideration in terms of the following standards and shall approve a special use permit application only upon a finding of

compliance with each of the following standards, as well as applicable standards established elsewhere in this ordinance:

- A. The special land use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.
- B. The special land use shall not change the essential character of the surrounding area.
- C. The special land use shall not be hazardous to the adjacent property, property values, or involve uses, activities, processes, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, ground vibration, water runoff, odors, light, glare or other nuisance.
- D. The special land use shall not place demands on public services and facilities in excess of current capacity unless planned improvements have already been scheduled for completion.
- E. The special land use is consistent with the intent of the comprehensive plan.
- F. The special land use shall meet the site plan review requirements of Article IV.
- G. The special land use shall conform to all applicable state and federal requirements for that use.
- H. The special land use shall conform with all standards in this ordinance and other applicable city ordinances, including but not limited to parking (see Article XVIII), signs (see Article XX), and standards particular to the special land use found in the district provisions, schedule of regulations, or elsewhere.

This special land use request will have minimal impact on the surrounding area. The outdoor seating area has been designed so as not to disrupt pedestrian traffic. The style of outdoor furniture has been submitted to the DDA thereby assuring harmony with the character of the surrounding area. We do not anticipate that the approval of this special use will create increased demand on city services or facilities.

The current adopted City Master Plan does not specifically address outdoor dining in the CBD but it does state that efforts should be made to entice residents and visitors into the downtown. The appeal of outdoor dining may encourage people visiting the downtown to stay and dine.

The special use application review, in conjunction with the licensing agreement, provides conformity assurance for local, state and federal laws.

RECOMMENDATION

The special use request is not uncommon in the CBD and is expected to become more common as new developments occur in the CBD. The Planning Commission needs to review the case summary and determine if this application for a special use permit meets the intent of the City. Staff recommends approval contingent on city council approval of the proposed license agreement

**OUTDOOR SIDEWALK CAFÉ LICENSE AGREEMENT
BETWEEN
THE CITY OF SOUTH HAVEN
AND
BLACK RIVER TAVERN RESTAURANT
403 PHOENIX STREET**

This Outdoor Sidewalk Café License Agreement shall apply to food establishments and eating or drinking places including restaurants, delicatessen, café, bars, taverns or other similar establishments which serve food and/or beverages to the general public for personal consumption in or on outdoor facilities known as Outdoor Sidewalk Cafes.

This License Agreement shall be accompanied by Exhibit A, the Licensed Premises, which is a site plan drawing showing the location of the Owner's Parcel, the public right-of-way, the sidewalk, curb, landscaped areas, any structures or obstacles, the Designated Clear Path area and the Outdoor Sidewalk Café Licensed Premises area. The Licensed Premises shall be clearly designated by shading or cross-hatching and shall not include the Designated Clear Path.

This License Agreement shall be accompanied by certificates of insurance or other evidence reasonably acceptable to the City indicating that the Owner maintains a policy or policies of insurance as described in Section 11.

This License Agreement shall be accompanied by a copy of the Owner's Food Service License and a statement by the owner on the number of food service related seats within the owner's building, and the number of food-service related seats in the Outdoor Sidewalk Café.

This Outdoor Sidewalk Café License Agreement is made between the City of South Haven, a Michigan home rule city, of 523 Phoenix Street, South Haven, Michigan 49090-1499 (the "City"), and The Black River Tavern, 523 Phoenix Street, South Haven, Michigan 49090 (the "Owner") with respect to the following facts and circumstances.

RECITALS

- A. Phoenix Street is a public right-of-way and/or public open-space within the corporate limits of the City.
- B. The Owner owns, or has a leasehold interest, in a building and land commonly known as 403 Phoenix Street, South Haven, Michigan ("Owner's Parcel"), and on that property operates a food establishment or eating or drinking place.
- C. The Owner desires to establish and operate an Outdoor Sidewalk Café on the public right-of-way and/or public spaces in front of or adjacent to the building or land described in Recital B, which would encroach upon the public right-of-way or City owned property at 403 Phoenix Street.
- D. The Owner has been granted a special use permit by the City Planning Commission on the --- day of ---, 2013, to establish and operate an Outdoor Sidewalk Café at the location described in Recital B.
- E. The City is willing to permit such Outdoor Sidewalk Café in strict accordance with the terms and conditions of this Agreement.

DEFINITIONS

"Outdoor Sidewalk Café" means any portion of a food establishment or eating or drinking place located on a public sidewalk or public open-space on a City right-of-way or City-owned property.

"*Excess Sidewalk or Excess Open-Space Area*" means the remaining area or sidewalk or open-space in front of or adjacent to the Owner's Parcel after five (5') feet of clear unobstructed sidewalk or open-space is made available to pedestrians for free passage.

"*Food Establishment or Eating or Drinking Place*" means a business which has been licensed by the Van Buren County Health Department or the Department of Agriculture to sell food and/or drinks for consumption on the premises, and which provides food service seating or restaurant seating inside a building on the Owner's Parcel.

"*Owner's Parcel*" means the private property under control of the Owner as described in Recital B.

"*Designated Clear Path*" means the area designated in Exhibit A as an unobstructed public walkway. A Designated Clear Path shall be maintained free from any obstruction, including those amenities associated with an Outdoor Sidewalk Café that impede or delay free pedestrian passage along a public sidewalk or public open-space and including but not limited to chairs, umbrellas, tables, trash containers, railings, planters and signage.

"*Licensed Premises*" means the area designated for use as an Outdoor Sidewalk Café in Exhibit A. The Licensed Premises shall not include any part of the Designated Clear Path or other area required to remain unobstructed.

"*Readily Removable*" means any such furniture that is **not** leaded, cemented, nailed, bolted, power riveted, screwed in or affixed even in a temporary manner to the public sidewalk or an public open-space area.

NOW, IN CONSIDERATION of the covenants contained in this Agreement, the City grants to Owner a License as provided below:

1. License. The City licenses to the Owner and the Owner accepts from the City the use of the premises located in the City described and depicted in the attached Exhibit A (the "Licensed Premises").

2. Term. The term of this License shall commence on the date of signature and will terminate at midnight on _____, 2033 unless earlier terminated or revoked as provided below.

3. Use. The Licensed Premises shall be used by the Owner to establish and operate an Outdoor Sidewalk Café in compliance with the standards and conditions of the special use permit granted by the City Planning Commission. The Owner will use the Licensed Premises in a clean, wholesome and lawful manner, in compliance with all applicable City ordinances, and permit requirements, and any applicable state laws, rules or regulations.

4. Fee. The Owner shall pay the City, its successors and assigns a License Fee of One and no/100 Dollars (\$1.00), together with an Application Fee of One Hundred and no/100's (\$100.00) Dollars to cover the costs and expenses incurred in the administration of this Agreement. The Owner shall pay the City an Amendment License Application Fee of One Hundred and no/100's (\$100.00) Dollars upon amendment of this Agreement. The Owner shall pay the City a Renewal License Application Fee of One and no/100's (\$1.00) Dollar upon renewal or extension of this Agreement.

5. No Assignment/Sublicensing. This License is personal with the Owner and does not run with the land. This License shall not be assigned or transferred in any manner by the Owner to any other person or business entity. The City, in its sole discretion, may authorize the assignment or transfer of this License to a third party by amendment to this Agreement or by a separate License Agreement.

6. Acceptance of the Premises. The Owner acknowledges and agrees that Owner has inspected the Licensed Premises and has determined such premises to be in a satisfactory condition and that the Owner's entry upon and use of the Licensed Premises constitutes acceptance of the Licensed Premises on an "as is" basis.

7. Compliance with Law. The Owner shall comply with and observe all applicable laws, ordinances, rules, regulations and orders of all public authorities including but not limited to health rules, laws and regulations.

8. General Restrictions, Standards and Conditions. In addition to any restrictions, standards, or conditions placed on the Owner by the Planning Commission in granting special use approval, and without limitation, the License is subject to the following general restrictions designed to control the design, materials, installation and maintenance of Outdoor Sidewalk Cafés:

A. The licensed Outdoor Sidewalk Café shall not be conducted in such a way as to become a public nuisance as proscribed by City ordinance. The licensed Outdoor Sidewalk Café shall not interfere with vehicular or pedestrian traffic or circulation on any adjoining streets, alleys, sidewalks or public open-space areas.

B. Sale of Alcoholic Beverages. A Food Establishment or Eating or Drinking Place operating an Outdoor Sidewalk Café and possessing a valid liquor license issued by the Michigan Liquor Control Commission may serve alcoholic beverages subject to the following provisions:

1. The service of liquor on the Outdoor Sidewalk Café shall occur only in compliance with all rules and regulations promulgated by the Michigan Liquor Control Commission, including any prior Liquor Control Commission approval that may be required.
2. All alcoholic beverages to be served at Outdoor Sidewalk Cafés shall be prepared within the existing Food Establishment or Eating or Drinking Place, and alcoholic beverages shall only be served to patrons seated at tables.
3. The consumption of alcoholic beverages at an Outdoor Sidewalk Café shall be limited to the confines of the Licensed Premises. Any consumption of alcoholic beverages occurring within the confines of the Licensed Premises shall not be construed as a violation of any ordinance controlling open alcohol containers in a public area.
4. Employees of the Food Establishment or Eating or Drinking Place shall continuously supervise Outdoor Sidewalk Cafés serving alcoholic beverages.
5. Upon application for the License authorized under this Agreement, the Owner shall submit to the City all documentation submitted to the Michigan Liquor Control Commission in applying for the liquor license, and a full history of the liquor license holder including all complaints filed with the Michigan Liquor Control Commission.
6. A violation of any provision of this Agreement relating to the sale of alcoholic beverages is a material breach of this Agreement, and may result in immediate termination of the License as provided by this Agreement.

C. Outdoor Sidewalk Café Hours of Operation.

Except as otherwise provided in this Agreement, Outdoor Sidewalk Café Owners may conduct business in or on Outdoor Sidewalk Cafés upon City right-of-way or public space areas daily after 7:00 A.M. but not later than 11:00 P.M. If an approved festival event is permitted to operate later than 11:00 P.M., an Outdoor Sidewalk Café may also operate until the festival event concludes operation for the day.

D. Service Requirements.

1. The number of seats in an Outdoor Sidewalk Café shall not exceed the number of seats inside the building of the Food Establishment or Eating or Drinking Place.
2. The number of seats in an Outdoor Sidewalk Café shall be included in the Food Service License of the Food Establishment or Eating or Drinking Place.
3. Trash and/or refuse containers are required in an Outdoor Sidewalk Café and shall be located on the Licensed Premises.
4. Outdoor bussing or service stations are prohibited.
5. The presetting of tables with utensils, dinnerware, glasses, napkins, condiments and the like is prohibited.
6. The outdoor preparation of food is prohibited.

7. All exterior surfaces within the Outdoor Sidewalk Café shall be easily cleanable and shall be kept clean at all times by the Owner, Owner's agent, or the employees of the Owner.
8. The Owner shall be responsible for maintaining the Outdoor Sidewalk Café, including the sidewalk surface and furniture and adjacent areas in a clean, wholesome and safe condition.
9. Maintenance of the Outdoor Sidewalk Café shall include the immediate cleaning and sweeping/brooming of any trash, food, debris, liquid, broken glass or other trash to be placed in trash receptacles.

E. Outdoor Sidewalk Café Area Limitations

1. The area of an Outdoor Sidewalk Café shall be limited to the excess sidewalk and/or excess open-space area located directly in front of or adjacent to a food establishment or eating or drinking place.
2. No Outdoor Sidewalk Café shall encroach or extend beyond the property lines of the Owner's Parcel extended into the City right-of-way or City-owned property.
3. No Outdoor Sidewalk Café or associated furniture shall block or impede the passage and free movement of pedestrians entering the sidewalk from a legally parked vehicle.
4. No Outdoor Sidewalk Café shall encroach upon the Designated Clear Path. The Designated Clear Path shall be maintained free from any obstruction, including those amenities associated with an Outdoor Sidewalk Café that impede or delay free pedestrian passage along a public sidewalk or public open-space and including but not limited to chairs, umbrellas, tables, railings, trash containers, planters and signage.
5. No Outdoor Sidewalk Café shall interfere with any public service facility, such as a telephone, mailbox, or bench located on a right-of-way or other City-owned property.
6. An Outdoor Sidewalk Café shall leave sufficient space to allow access to the Food Establishment or Eating or Drinking Place in accordance with accessibility requirements under the Americans with Disabilities Act.

F. Outdoor Sidewalk Café Designated Clear Path

1. A Designated Clear Path shall be provided with a minimum width of five (5') feet, free of all obstructions in order to allow adequate pedestrian movement along sidewalks and public places as shown in Exhibit A.
2. The Designated Clear Path shall be marked upon the pavement where it is adjacent to any Licensed Premises.
3. The Designated Clear Path shall be located on the sidewalk between the Owner's building and a line drawn between the two nearest tree landscaping cut-outs in the sidewalk.
4. If an adjacent property owner has an established Outdoor Sidewalk Café, the Designated Clear Path must be aligned with the established Designated Clear Path.
5. The minimum height clearance for the Designated Clear Path shall be seven (7') feet measured vertically from the sidewalk to any Outdoor Sidewalk Café furniture in order to allow adequate pedestrian movement along sidewalks and public places.
6. The Owner shall be responsible for preserving the Designated Clear Path area at all times. The Designated Clear Path shall be maintained free from any obstruction, including those amenities associated with an Outdoor Sidewalk Café that impede or delay free pedestrian passage along a public sidewalk or public open-space and including but not limited to chairs, umbrellas, tables, trash containers, railings, planters and signage.
7. The Owner shall take such action as is necessary to prevent patrons and/or employees from encroaching beyond the Licensed Premises into the Designated Clear Path at all times.

G. Outdoor Sidewalk Café Furniture.

1. All Outdoor Sidewalk Café furniture, including tables, chairs, umbrellas, trash containers, railing and planters shall be approved by the Downtown Development Authority to insure the integrity and to preserve the character and compatibility of the local business district. Furniture which is identical in design, material and character to furniture previously approved by the Downtown Development Authority for an Outdoor Sidewalk Café shall be considered to have Downtown Development Authority Approval.

2. All outdoor dining furniture, including tables, chairs, umbrellas, trash containers, railing and planters shall be readily removable.
3. Outdoor heaters or fans are prohibited.
4. Outdoor Sidewalk Café furniture, including tables, chairs, umbrellas, trash containers, railing and planters, shall be removed from the Licensed Premises during those hours when the Outdoor Sidewalk Café is not open for business. Outdoor Sidewalk Café furniture shall not be stored in the public right-of-way at any time.
5. Outdoor Sidewalk Café furniture, including tables, chairs, umbrellas, trash containers, railing and planters, shall be removed from the Licensed Premises during periods of inclement weather which might cause injury or harm to staff, customers or passersby, including periods of high winds, tornadoes, lightning and thunder storms, hail or ice storms, or snowstorms.

H. Outdoor Sidewalk Café Table Umbrella Restrictions.

Table umbrellas shall be permitted as Outdoor Sidewalk Café furniture under the following conditions that:

1. All table umbrellas shall be properly supported, retractable, and made of a non-combustible frame, covered with flameproof canvas or cloth only.
2. No table umbrella shall exceed seven (7') feet in diameter.
3. No table umbrella shall obstruct the clear vision of any street sign or traffic regulatory sign.
4. No table umbrella shall contain or display any type sign or signage except on the fringe or valance
5. No table umbrella lower than seven (7') feet measured perpendicular from the sidewalk surface shall encroach into the designated clear path.
6. The valance or fringe of a table umbrella shall not exceed six (6") inches.
7. All table umbrellas must be properly secured with a base of not less than 60 pounds minimum.

I. Planters or Railings.

1. In order to maintain maximum visual access, the height of the planter or railing including vegetation therein, shall not be higher than thirty-six (36") inches.
2. All planters or railings utilized as part of the Outdoor Sidewalk Café for decoration or delineation of the Outdoor Sidewalk Café area shall be self-supporting.
3. All planters and railings shall be readily removable and shall be removed from the sidewalk right-of-way or open-space area during those hours when an Outdoor Sidewalk Café is prohibited.

J. Elevation and Surface Coverings Prohibited.

1. An Outdoor Sidewalk Café shall have the same surface elevation as the adjoining sidewalk.
2. Paint, artificial turf, carpets, platforms or any other surface cover or treatment of any kind are prohibited from being placed upon the area designated as an Outdoor Sidewalk Café at any time, except that the pavement may be marked to show the location of the Designated Clear Path.

K. The Outdoor Sidewalk Café shall be made available to patrons of the Owner only.

L. Noise Restrictions.

Stereo systems, stereo speakers or other audio devices for sound reproduction shall not be operated in or on Outdoor Sidewalk Cafes, and shall not be directed to an Outdoor Sidewalk Café from the Owner's Parcel.

M. Sign Restrictions.

Signs, signboards, or advertisements recognizing an Outdoor Sidewalk Café are prohibited in the Licensed Premises except for the name of the establishment on the fringe or valance of a table umbrella or on the valance of any awning.

N. Fire Code Compliance.

A permitted Outdoor Sidewalk Café is required to comply at all times with all requirements of the BOCA National Fire Prevention Code and other related fire ordinances to the satisfaction of the South Haven Emergency Services Fire Marshal or his designee.

O. Outdoor Sidewalk Café Limitation.

No more than one Outdoor Sidewalk Café license agreement shall be issued by the South Haven City Council for each parcel.

9. Maintenance. The Owner shall, during the term of this License, and at his sole expense, do and perform all maintenance necessary to keep the Licensed Premises in good repair and in a safe condition.

10. Improvements, Restoration, Construction Liens.

A. No improvements shall be made to the Licensed Premises without the prior written consent of the City.

B. The Owner shall not permit any construction lien to be filed against the fee of the Licensed Premises or against the Owner's interest in the Licensed Premises by reason of work, labor, services, or materials supplied, or claimed to have been supplied, whether prior or subsequent to the commencement of the term hereof, to the Owner. The Owner shall indemnify the City against such liens or other liens arising out of the making of any alteration, repair or additional improvement by the Owner. This paragraph is not construed as an admission by the City that a construction lien can properly be filed against the Licensed Premises. It is intended solely as additional protection to that afforded by law that no such lien will be enforced against the Licensed Premises. The City will have the right to post the Licensed Premises from any such liens.

11. Public Liability and Indemnity. The City shall not be responsible for any loss or damage from whatever cause to personal property located on the Licensed Premises. The Owner shall hold the City (defined for purposes of this paragraph to include the City's officers and employees) harmless from, indemnify it for, and defend it (with legal counsel reasonably acceptable to the City) against any demand, claim, judgment, award, legal proceeding or loss of any kind arising from the Owner's use, occupancy, maintenance (or failure to maintain), or repair (or failure to repair) the Licensed Premises. The Owner shall obtain and maintain a general liability insurance policy covering the Licensed Premises and the Owner's activities on the Licensed Premises in minimal coverage amounts of \$1,000,000 per occurrence and fire and casualty insurance with an extended coverage endorsement on any improvements placed or constructed by the Owner on the Licensed Premises equal to the amount to the full insurable value of such improvements. All policies shall name the City as an additional insured and certificate holder. Copies of certificates of insurance showing the coverage to be in place, that the premiums are fully paid, and that coverage cannot be terminated or modified except after 30 days prior written notice to the City, shall be provided to the City. Upon request, the City shall be provided copies of the policies of insurance and all endorsements.

12. Casualty. In the event of damage to or destruction of the Licensed Premises by fire, storm or any other casualty or accident, this License shall not terminate if the Owner gives written notice to the City that the Owner desires the License to continue, unless the Licensed Premises are so destroyed that it will require material reconstruction. The Owner shall have the right to repair any such damage to a condition prior to the damage; however such repair must be completed within sixty (60) days of the loss. If written notice is not given, or if repairs are not timely completed, the License shall terminate sixty (60) days after the loss. If the damages destroy the building on the Owner's Parcel in whole or in substantial part, then this License shall terminate immediately. In no event shall the City be responsible for loss or damage to improvements or personal property owned by the Owner or placed on the Licensed Premises by the Owner, which are caused by fire, theft, loss, vandalism or other casualty.

13. Breach. The Owner shall be in breach of this Agreement upon the occurrence of the following events: If at any time any fee, insurance premium or other charge or payment payable by the Owner

pursuant to the terms of this Agreement shall become in arrears and unpaid for a period of thirty (30) days after notice of default in performance; or if default in the Owner's requirements, obligations and duties hereunder is not cured within fourteen (14) days from written notice of such default, then at the option of the City it may terminate this Agreement and all rights of the Owner as to the Licensed Premises shall terminate. The City shall also have such other lawful remedies as are required to enforce the terms of this Agreement.

14. Temporary Suspension of License. The City Manager shall have the right and power, acting through the City Police Department, to suspend this license for an Outdoor Sidewalk Café and cause removal of the Owner's furniture and other personal property from the licensed premises at any time because of anticipated or actual problems or conflicts in the use of the public right-of-way, sidewalk or a public open-space area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades or marches, repairs to the street or sidewalk, or from demonstrations or emergencies occurring on, in, adjacent to, or near the Licensed Premises. To the extent possible, the City shall give the Owner prior written notice of any time period during which the operation of the Outdoor Sidewalk Café will be suspended by the City due to a specific problem or conflict; however, any failure to give prior written notice shall not affect the right and power of the City to suspend the license for operation of any Outdoor Sidewalk Café at any particular time.

15. Exceptions. Exceptions to the conditions of this agreement may be granted by the South Haven City Council during planned and organized festival events and sidewalk sales.

16. Termination. This Agreement and the License granted under it shall terminate upon any of the following events:

- A. The expiration of the term of this Agreement without a written amendment or extension by the parties.
- B. At any time by the Owner, upon giving the City fourteen (14) days prior written notice.
- C. Immediately upon any default of the Owner without timely cure as provided in Section 13.
- D. At the option of the City upon fourteen (14) days prior written notice given by the City to the Owner. Further, the City Manager may terminate this License immediately upon verbal or written notice to Owner, where the City Manager determines that the use of the Licensed Premises has become a hazard or presents an imminent risk or danger to the public health, safety and welfare. Unless the City Manager subsequently rescinds such suspension, the City Council, at its next regular meeting shall consider whether to reinstate the License, continue the suspension, or terminate this license agreement, in its sole discretion. The Owner shall be afforded an opportunity to be heard before the City Council regarding the suspension of the License under this Agreement.
- E. In accordance with Section 12, upon the destruction in whole or substantial part of the building on Owner's Parcel or upon the damage to or destruction of the Licensed Premises if the Owner does not make timely repairs.
- F. Immediately upon the issuance of a judgment, order, rule or regulation of a governmental unit or agency having jurisdiction, other than the City, requiring that the improvements and encroachments be removed from the Licensed Premises.
- G. Immediately, at the option of the City Manager, upon the Owner's failure to meet, observe or fulfill any obligation, general restrictions, standards, condition, or requirement of this Agreement.

17. Effect of Termination. Upon termination of this Agreement, the Owner, and at the Owner's sole expense, shall promptly remove all furniture and materials from the Licensed Premises and restore the Licensed Premises to the condition as existed prior to making use of the Licensed Premises. If the Owner fails to take such action promptly, the City shall be entitled, after giving the Owner seven (7) days

prior written notice, to remove all such furniture and materials from the Licensed Premises. Provided that, the City shall not be required to give such notice in the event of an emergency or imminent risk or danger to the health, safety and welfare of the public. Any costs and expenses, including without limitation legal expenses and attorney's fees, incurred by the City in enforcing this Section shall be the responsibility of and paid by the Owner.

18. Owner's Acknowledgements. The Owner acknowledges and agrees that the City owns the Licensed Premises, that the License granted under this Agreement involves the permission to enter and use property which is a public right of way and/or City owned property, that the public's rights are paramount, and that the Owner's use under this License may not interfere with the public's rights to the reasonable use of the Licensed Premises. The Owner further acknowledges that its use of the Licensed Premises does not constitute any title, claim of right, or other property interest in the Licensed Premises. The Owner further acknowledges that it has no claim to any amount of lost revenues due to suspension, termination or any other interruption in the use of the Licensed Premises.

19. Notices. Any notices, reports or statements required to be served hereunder shall be sufficiently given if mailed by first class mail addressed to the City and the Owner at their respective addresses stated above. Notice shall be deemed to have been given upon the date of mailing.

20. No Waiver. The failure of either party to enforce any covenant or condition of this License shall not be deemed a waiver thereof or of the right of either party to enforce each and every covenant and condition of this License. No provision of this License shall be deemed to have been waived unless such waiver shall be in writing.

21. Payment. In the event that the Owner shall default in his obligations hereunder or become delinquent in the payment of any taxes, insurance or other charges to be paid by the Owner under the terms of this Agreement, then the City shall have the right, at its option, to perform such obligation or pay any such item. Upon such payment or performance by the City, said item shall be deemed an additional License Fee due hereunder and shall be immediately due and payable to the City. This provision shall not relieve Owner of any default.

22. Miscellaneous.

A. This Agreement is written pursuant to the laws of the State of Michigan and was made in Van Buren County, Michigan. This is the entire agreement between the parties regarding its subject matter. There are no prior or contemporaneous agreements. This Agreement may not be modified or amended except in writing, signed by the parties. It shall not be affected by any course of dealing.

B. The captions of this Agreement are for convenience only and shall not be considered as part of this License or in any way limiting or amplifying its terms and provisions. The recitals, however, are an integral part of this Agreement. More than one copy of this Agreement may be signed, but all constitute one agreement.

[signatures on next page]

The parties have caused this Agreement to be executed as of the date first written above.

CITY OF SOUTH HAVEN

APPLICANT

By: _____
Robert Burr, Mayor

By: _____

By: _____
Amanda Morgan, Clerk

Its: _____

By: _____

Date signed: _____, 2012

Its: _____

Date signed: _____, 2012