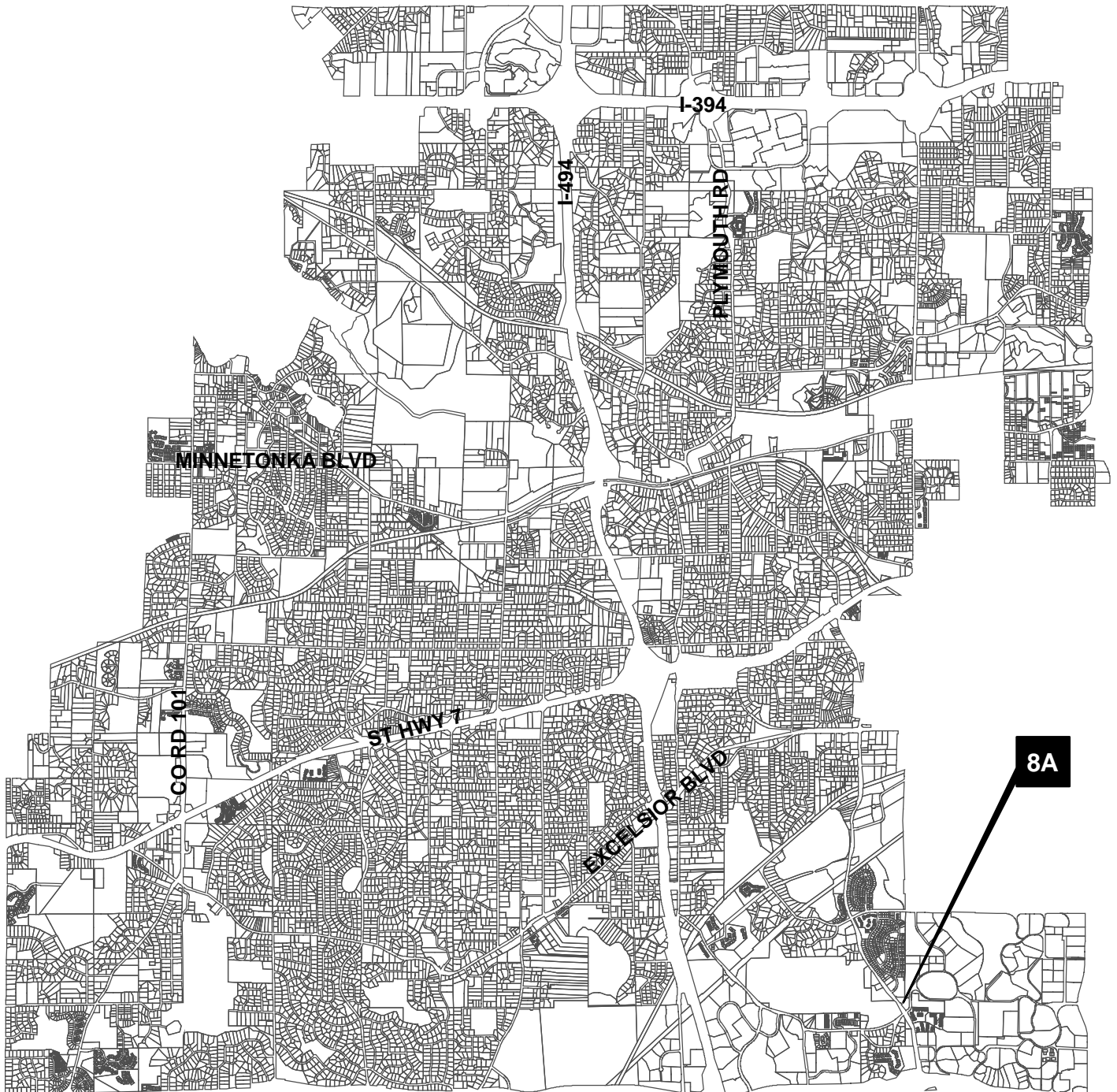


FEBRUARY 4, 2010
PLANNING COMMISSION MEETING
AGENDA





PLANNING COMMISSION AGENDA

FEBRUARY 4, 2010—6:30 P.M.

CITY COUNCIL CHAMBERS—MINNETONKA COMMUNITY CENTER

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Minutes: January 21, 2010
5. Report from Staff
6. Report from Planning Commission Members
7. Public Hearings: Consent Agenda
 - None
8. Public Hearings: Non-Consent Agenda Items
 - A. Items concerning an outdoor seating area at 5765 Sanibel Drive. (87039.09a)

RECOMMENDATION: Recommend the city council approve the request (4 votes)

 - Recommendation to City Council (Tentative Date: February 22, 2010)
 - Project Planner: Susan Thomas
9. Adjournment

PLANNING COMMISSION AGENDA

February 4, 2010

Page 2

Notices

1. Please call the planning division at (952) 939-8298 to confirm meeting dates as they are tentative and subject to change.
2. Applications scheduled for the February 18, 2010 Planning Commission meeting:

No items scheduled for February 18, 2010 at this time.

WELCOME TO THE MINNETONKA PLANNING COMMISSION MEETING

This outline has been prepared to help you understand the public meeting process. The review of an item usually takes the following form:

1. The chairperson of the meeting will announce the item to be reviewed and ask for the staff report on the subject.
2. Staff presents their report on the item.
3. The Commission will then ask City staff questions about the proposal.
4. The chairperson will then ask if the applicant wishes to comment.
5. The chairperson will open the public hearing to give an opportunity to anyone present to comment on the proposal.
6. This is the time for the public to make comments or ask questions about the proposal. Please step up to the podium, speak clearly, first giving your name (spelling your last name) and address and then your comments.
7. At larger public hearings, the chair will encourage speakers, including the applicant, to limit their time at the podium to about 8 minutes so everyone has time to speak at least once. Neighborhood representatives will be given more time. Once everyone has spoken, the chair may allow speakers to return for additional comments.
8. After everyone in the audience wishing to speak has given his or her comments, the chairperson will close the public hearing portion of the meeting.
9. The Commission will then discuss the proposal. No further public comments are allowed.
10. The Commission will then make its recommendation or decision.
11. Final decisions by the Planning Commission may be appealed to the City Council. Appeals must be written and filed with the Planning Department within 10 days of the Planning Commission meeting.

It is possible that a quorum of members of the City Council may be present. However, no meeting of the City Council will be convened and no action will be taken by the City Council.

**UNAPPROVED
MINNETONKA PLANNING COMMISSION
MINUTES**

JANUARY 21, 2010

1. CALL TO ORDER

Chair Cheleen called the meeting to order at 6:30 p.m.

2. ROLL CALL

Commissioners Blatz, Lehman, Sjeklocha, A. Thomas, Walker, Adams, and Cheleen were present.

Staff members present: City Planner Loren Gordon, Principal Planner Susan Thomas, and Planner Jeff Thomson.

3. APPROVAL OF AGENDA: The agenda was approved as submitted.

4. APPROVAL OF MINUTES: January 7, 2010

Blatz moved, second by A. Thomas, to approve the January 7, 2010 meeting minutes as submitted.

Blatz, Lehman, Sjeklocha, A. Thomas, Walker, Adams, and Cheleen voted yes. Motion carried.

5. REPORT FROM STAFF

Gordon announced that the next planning commission meeting will be February 4, 2010.

Gordon noted that the Minnetonka and Hopkins City Councils and advisory board members held a special session January 11, 2010 to discuss plans for the Shady Oak light rail station.

Gordon thanked Blatz for her service on the planning commission. This will be her last meeting.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA: None

8. PUBLIC HEARINGS

**A. Variance for a home addition at 13318 Lake Street Extension.
(10001.10a)**

Chair Cheleen introduced the proposal and called for the staff report.

Thomson reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Adams asked for a definition of a "PURD." Thomson explained that a "R2 PURD" is a zoning district that used to exist in the city. It stands for a R2 planned unit residential district. When the city adopted the PUD ordinance, PURDs were removed from the ordinance. The applicant's property is regulated as an R2 zoning district as well as by the adopted master development plan for the property and its applied standards.

Adams asked who owns the adjacent parcel. Thomson explained that the parcel is owned by the Pepperwood Association.

Dan Firehammer, 13318 Lake Street Extension, applicant, appreciated staff's report and the commission's time. The outlot is not part of his property. It is owned by the townhome association west of his property.

The public hearing was opened. No testimony was submitted and the hearing was closed.

A. Thomas supported the recommendation, but wanted to acknowledge that a nonconforming, existing condition is being made more nonconforming. At some time down the line, there could be further discussion regarding taking something that is nonconforming and making it more nonconforming. That is like taking something that is bad and making it worse. He has a problem with that, but supports the application.

Lehman asked if staff considered the proposal "more nonconforming." The property's nonconformance is that the back setback is not met. Thomson explained that the city's nonconforming use ordinance establishes essentially three different aspects of nonconforming development: replacement or reconstruction of what exists, improvement, or expansion. The proposal would expand the nonconforming use and require a variance. The existing building line would be maintained, but it would expand the nonconforming use.

Walker supported the recommendation. The building was built in the early 1900s. At that time, the residence was in conformance. It is in nonconformance now because of the codes that have been changed. Thomson added that in order to be entitled to the provisions provided for a nonconforming use, the structure had to exist prior to adoption of the ordinance that makes it nonconforming. If a structure was or is built without a permit or proper approval, then it would not be entitled to any of the provisions of the nonconforming use ordinance.

Blatz moved, second by Adams, to adopt the resolution on pages A8-A10 of the staff report, which approves a variance for expansion of a nonconforming structure, and a rear yard setback variance from 40 feet to 14 feet for an addition to the house at 13318 Lake Street Extension. Approval is based on the following findings:

- 1) The proposal is reasonable and would meet the required standards for a variance, because:
 - a. Practical difficulty: There is a practical difficulty due to the location of the house on the lot. Given the nonconforming rear yard setback, an addition could not be constructed to match the existing building line without the need for a variance.
 - b. Unique circumstance: The nonconforming rear yard setback is a circumstance that is not common to every single-family property.
 - c. Neighborhood character: The addition would not have any adverse visual impacts on surrounding properties. The addition would maintain the setback and building line of the existing house, and the exterior would consist of material similar to those of the house.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.

- 2) This variance will end on December 31, 2011, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Blatz, Lehman, Sjeklocha, A. Thomas, Walker, Adams, and Cheleen voted yes. Motion carried.

Chair Cheleen stated that an appeal of the planning commission's decision must be made in writing to the planning division within 10 days.

9. OTHER BUSINESS

A. 2010 Work Plan

Gordon informed commissioners of items staff will be working on including updating ordinances related to parking regulations, impervious surface practices, wetlands and floodplains, and signs. He reviewed a number of studies that will be happening.

Sjeklocha asked how planning staff will utilize a university class for the Opus sustainability study. Gordon explained that staff approached the Humphrey Institute because its staff was looking for projects. This is a way for city staff to gain information on new, cutting-edge techniques without making an investment of city dollars to hire a consultant to do the same type of process. This is a fresh perspective with a new set of eyes to provide another angle on redevelopment.

Sjeklocha asked if this is the first time the city has partnered with the University of Minnesota and/or the Humphrey Institute. S. Thomas responded that the city has not collaborated with students for at least the last eight years that she has been employed by the city. She graduated from the Humphrey Institute and knows that it is standard practice for the school to collaborate with cities on projects to provide an outside perspective.

Adams nominated A. Thomas to be on the committee to review sign regulations.

Adams asked what problems are trying to be fixed with the environmental ordinances. He asked if erosion control is an issue right now. Gordon stated that ordinance updates are sometimes prompted by state requirements where the city is required to implement the requirements. In this case, there is a mandate regarding storm water. The city must show that it is making strides to improve water quality. The mandate will include completing physical projects. The city will be outlaying dollars for capital improvements to storm water systems to improve

water quality. There are educational items that need to be done to show progress in meeting discharge goals for the next 20 years. Putting better management practices in place to provide better grading and erosion control during construction is a goal. Ordinance work regarding the floodplain consists of administrative clean-up items.

Chair Cheleen noted that most parking regulations relate to commercial sites instead of residential. He felt townhouse and planned unit developments have narrower roads, more density, and limited parking. He lives in one and sees spill over into other parking lots and public streets. He asked if it would be feasible to consider more residential parking regulations. Gordon answered affirmatively. The ordinance needs to be updated. It has not adapted to narrow streets with reduced setbacks and more density. Parking spaces are reviewed on a site plan, but there is not enough structure in the parking ordinance. That could be evaluated.

A. Thomas favored touring the city, identifying problem-parking areas, and looking at what can be done. He wanted to be flexible to promote environmentally-friendly parking lots with less bituminous and use the city hall's parking lot as an example of how a nice parking lot can look.

A. Thomas said that the environmental ordinances are a good thing. He has seen erosion control fences lying down. He supported more enforcement.

A. Thomas looked forward to discussion regarding what the sign ordinance should provide. Fulfilling the needs of business owners while maintaining aesthetic quality of the city is a necessary discussion. The village study is relevant right now with the former K-Mart building remaining vacant. Revitalization of the southwest side and its parking issues provides a wide-scope of discussion. There should be a gateway to the city when entering from the west on State Highway 7. There really is not one right now. There is a dented sign there right now. It looks kind of shabby.

B. Recognition of Blatz' service

Chair Cheleen thanked Blatz for her two years of service on the planning commission. She has not missed more than a couple meetings during that time. Her legal background has been a nice resource. Chair Cheleen listed applications she reviewed and comprehensive guide plan amendments she participated with.

Adams appreciated Blatz's legal insight. He regretted losing a fellow environmentalist. He appreciated her service.

Sjeklocha appreciated Blatz's service and knowledge of past projects.

Chair Cheleen presented Blatz with a certificate of appreciation.

Blatz explained that she is leaving the commission due to the impending arrival of her second child. She thanked commissioners and staff. She has learned a lot by serving on the commission. Staff was always willing to answer her questions. She appreciated getting to know the neighborhoods, seeing the properties, and learning from the property owners. She encouraged other residents to serve on a commission.

10. ADJOURNMENT

***Blatz moved, second by Sjeklocha, to adjourn the meeting at 7:20 p.m.
Motion carried unanimously.***

By: _____
Lois T. Mason
Planning Secretary

Minnetonka Planning Commission Meeting

February 4, 2010

Agenda Item 7

Public Hearing: Consent Agenda

None

Minnetonka Planning Commission Meeting

February 4, 2010

Agenda Item 8

Public Hearing: Non-Consent Agenda

MINNETONKA PLANNING COMMISSION
February 4, 2010

Brief Description Items concerning an outdoor seating area at 5765 Sanibel Drive

Recommendation Recommend the city council approve the requests

Project No. 87039.09a

Property 5765 Sanibel Drive

Applicant Great Greens Family Partnership LP

Proposal The property owner is proposing to add an outdoor seating area to the west side of the existing Scoreboard Bar and Grill restaurant at 5765 Sanibel Drive. (See pages A1-A2 and A17–A19.)

The proposal requires:

- **Amendment to an Existing Conditional Use Permit.** There is an existing outdoor seating area on the south side of the Scoreboard. This seating was approved by conditional use permit in 1999. Construction of the proposed seating area on the west side of the structure, consequently increasing the site’s overall outdoor seating area, requires an amendment to the existing conditional use permit.
- **Setback Variance:** By city code, outdoor seating areas must maintain a 200-foot setback from all residential parcels. As proposed, the new seating area would be set back 124-feet from residential properties to the west.

Approving Body

The planning commission makes a recommendation to the city council, which has final authority to approve or deny the request. (City Code 300.06.4)

Site Features

The two-acre subject property is technically part of the Beachside Planned Unit Residential Development (PURD). The PURD’s approved master development plan includes a retail component – the Sundial Shopping Center – and a restaurant component – The Scoreboard Bar and Grill. The general history

of the shopping center and restaurant is outlined in the "Supporting Information" section of this report.

- **Stormwater**

Over one-half of the subject property is encumbered by 100-year stormwater area. Based on the historical information available, it appears this area was constructed in conjunction with the Sundial Center; it is not regulated as a wetland. (See page A2.)

- **Existing Building**

The existing 6,600 square foot restaurant building was constructed in 1987 and since has been occupied by various restaurants.

- **Existing Patio**

An existing outdoor seating area is located along the south side of the restaurant. This area was constructed as the first phase of a two-phase patio reviewed by city council in 1999. (See pages A4–A11.)

Proposed Patio

In December of 2009, the applicant submitted plans for expansion of the existing outdoor seating area. This expansion would have reflected the second phase of the two-phase patio reviewed ten years earlier. (See pages A12–A15.) Staff had two areas of concern based on this original plan:

- (1) 100-year stormwater regulations have changed significantly since the 1999 review. The proposal would not meet these current regulations; and
- (2) Residents south of the existing patio expressed unease at the expansion of what they perceive to be an already noisy/nuisance use.

Subsequent to staff and neighborhood review of the original plans, the applicant then submitted the current plans. Based on these revised plans, no change would occur on the south side of the restaurant. Rather, an approximately 1,086 square-foot outdoor seating area would be constructed on the west side of the building. (See pages A16–A19.)

Staff Analysis Staff finds that the applicant's proposal is reasonable.

- **Conditional Use Permit Standards.** With appropriate conditions of approval, the proposed outdoor seating area would meet all conditional use permit standards as outlined in city code. These standards are outlined in the "Supporting Information" section of this report.

- **Setback Variance.** By city code, outdoor seating areas must be set back at least 200 feet from residential properties. Further, such patios must be screened from the residential areas. The intent of these requirements is to minimize the impact outdoor seating may have on residential neighborhoods. The proposed seating area meets this intent.
 - (1) Shady Oak Road, a four-lane street, would separate the outdoor seating area from the residentially-zoned properties. (See page A20.)

 - (2) The two closest residentially-zoned properties are located directly west of the outdoor patio. One is parkland, Lone Lake Park, which is owned by the city. The second is privately owned undeveloped residential property. In addition, severe slopes and Woodland Preservation areas on the park property and the vacant property to the north, would significantly limit development potential. (See page A20.)

Staff Recommendation

Recommend that the city council adopt the resolution on pages A27–A31. This resolution amends and replaces an existing conditional use permit for outdoor seating areas at the Scoreboard restaurant at 5765 Sanibel Drive, with the following variance:

- Setback Variance from Residential from 200 feet to 124 feet.

Approval is based on the following findings:

- 1) Aside from the above described setback variance, the proposal meets the required conditional use permit standards.

- 2) The intent of the setback requirement as it relates to outdoor seating is to minimize the impact seating may have on residential neighborhoods. The proposed seating area meets this intent and is, therefore reasonable.
 - a. Shady Oak Road, a four-lane street, would separate the outdoor seating area from the residentially-zoned properties.
 - b. The two closest residentially-zoned properties are located directly west of the outdoor patio. One is parkland, Lone Lake Park, which is owned by the city. The second is privately owned undeveloped residential property. In addition, severe slopes and Woodland Preservation areas on the park property and the vacant property to the north, would significantly limit development potential.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, the following occur:
 - a. The existing cross-parking easement between the Sundial and Scoreboard properties must be submitted for review and approval of the city attorney. The city attorney may require an update to the existing cross-parking easement.
 - b. Submit a survey detailing the location of property lines, the 100-year storm elevation, the existing building and proposed outdoor seating area. The proposed seating area must meet all minimum setbacks from property lines and 100-year storm elevation.
 - c. Submit a letter of credit or cash escrow 150% of an estimated cost or 125% of a bid cost to complete landscaping as indicated on the Amendment to Conditional Use Permit plan date-stamped January 5, 2010.
 - d. This resolution must be recorded with the county and a copy of the resolution must be returned to the city.
- 2) Outdoor seating areas on the site must be maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Phase 1 site plan/floor plan, for the south side outdoor seating area, dated June 4, 1999. Attached to this resolution as Exhibit A.
 - Amendment to Conditional Use Permit plan and Elevations, including landscaping, for the west side outdoor seating area, date-stamped January 5, 2010. Attached to this resolution as Exhibit B.

- 3) The outdoor seating areas must be surrounded by an uninterrupted enclosure, unless as required by the fire marshal.
- 4) The outdoor seating areas must be equipped with refuse containers and patrolled hourly, during the restaurants hours of operation, for litter pick-up.
- 5) Speakers or audio equipment which is audible from adjacent parcels is not permitted.
- 6) Customers may not be formally seated by restaurant employees in the outdoor seating area after 10:00 p.m. Sunday through Thursday or after 11:00 p.m. Friday and Saturday.
- 7) Existing exterior trash and recycling storage areas must be enclosed with materials compatible with the principal structure.
- 8) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 9) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 10) The applicant must agree to these conditions in writing.
- 11) This resolution repeals and replaces Resolution 99-125, adopted by the Minnetonka City Council on July 12, 1999.

Originator: Susan Thomas, Principal Planner
Through: Loren Gordon, AICP, City Planner

Supporting Information

Surrounding Land Uses

Northerly: Sundial Shopping Center
Easterly: St. Margaret Cemetery and multi-family homes
Southerly: Multi-family homes
Westerly: undeveloped, residentially-zoned property

Planning

Guide Plan designation: Commercial
Zoning: R-3, PURD (Planned Unit Residential District)

History

1984. The city council granted site plan approval for the Sundial Shopping Center and conceptual approval of a freestanding restaurant. A commercial use of these properties had been conceptually approved by the city several years early during review and approval of the Beachside PURD.

1986. The city council approved a conditional use permit for construction and operation of a freestanding Bonanza Restaurant south of the Sundial Shopping Center.

1988. The city council approved a conditional use permit for conversion of the Bonanza Restaurant into Chappies Restaurant.

1986. The planning commission approved site and building plans for a Schlotzsky's restaurant at the Sundial Center. At that time, a conditional use permit was not necessary for a restaurant within a shopping center.

1987. The planning commission approved plans for a take-out pizza business in the Sundial Center. At that time, a conditional use permit was not necessary for a restaurant within the shopping center.

1996. Schlotzsky's proposed an expansion of their existing space. City code now required a conditional use permit for all fast food restaurant spaces. As such, expansion triggered a conditional use permit review. The city council ultimately approved a conditional use permit, with parking variance from 317 spaces to 231 spaces.

1999. The city council approved a conditional use permit for construction of an outdoor seating area. Under the approval, Phase 1 of the patio would be constructed. Phase 2 could be

constructed the following year if, the city determined noise or other problems had not been created. Staff finds no record of a public hearing occurring the following year; Phase 2 was never constructed.

City Code Parking

A cross parking easement exists between the Sundial Center and the Scoreboard property. Nevertheless, during each formal review outlined in the preceding, staff expressed concern about available parking. Two separate parking studies were done by hired consultants between 1984 and 1999 and various informal parking surveys were also conducted by staff. The parking variance approved in 1996 in conjunction with the Schlotzsky's expansion, from 317 spaces to 231 spaces, remains valid today.

	Required Spaces	Available Spaces
SUNDIAL CENTER		
Fast Food Restaurant	75	153
Retail	85	
Fitness	9	
SCOREBOARD		
Sit Down Restaurant	132	77
TOTAL	301	232

City code does not require, nor has it previously been the city's policy to require, parking for outdoor seating areas. Generally, it is assumed that outdoor seating does not increase the capacity of a restaurant; customers that would otherwise sit inside move to the outside space during the limited portion of the year outdoor seating areas are usable. Therefore, increasing the size of an outdoor seating area does not increase parking demand.

ITE Parking

The Institute of Traffic Engineers (ITE) has surveyed the hourly parking demand for various land uses. Based on these surveys, ITE has determined the hourly parking demand that occurs during each hour of the day for those various uses. The hourly parking numbers then establish the "daily peak" demand for the uses. The numbers established by ITE are considered the industry standard for estimating the amount of parking necessary within proposed developments. However, these ITE numbers are not always reflected in city code requirements.

Based on ITE numbers, the Sundial and Scoreboard sites provide enough parking to meet anticipated demand.

	Existing Sq.Ft.	ITE AVERAGE Required per 1000 sq.ft.	TOTAL	ITE 85th PERCENTILE Required per 1000 sq.ft.	TOTAL	CODE Required per 1000 sq.ft.	TOTAL
Fast Food Restaurant	4,500	8.02	36	12.33	55	16.7	75
High Turnover Restaurant	6,600	13.3	88	17.4	115	20	132
Health/Fitness	2,000	5.19	10	8.27	17	4.44	9
Shopping Center	18,800	3.02	57	4.36	82	4.5	85
TOTAL	31,900		191		269		301

Complaints

As is standard practice, the city notified surrounding property owners of the applicant's current request. Staff received several written comments and had several phone conversations with residents concerned about the level of noise generated by the existing outdoor patio. There have been no police calls to the site due to noise.

Staff acknowledges that a formal patio setting may encourage people to congregate outside, thereby adding to the noise generated by a restaurant. However, the absence of a patio does not necessarily ensure that restaurant patrons would not congregate outside; in particular given the State's Clean Air Act.

Residents are encouraged to report any perceived nuisance activity to the city.

CUP Standards

The proposal meets the general conditional use permit standards as outlined in city code:

- 1) The use is consistent with the intent of this ordinance;
- 2) The use is consistent with the goals, policies and objectives of the comprehensive plan;

- 3) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and
- 4) The use does not have an undue adverse impact on the public health, safety or welfare.

Aside from setback from a residentially-zoned property, the proposal would meet all specific conditional use permit standards as outlined in city code.

- 1) The uses shall be located in a controlled or cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required and the enclosure shall not be interrupted; access shall be only through the principal building;

FINDING: As a condition of approval, the patio must be surrounded by an uninterrupted enclosure.

- 2) The use shall not be permitted within 200 feet of any residential parcel and shall be separated from residential parcels by the principal structure or other method of screening acceptable to the city;

FINDING: The outdoor seating area would be within 124 feet of a residentially zoned property to the west; a variance is required. (See page A20.) This variance is reasonable as:

- Shady Oak Road, a four-lane street, would separate the outdoor seating area from the residentially-zoned properties.
- The two closest residentially-zoned properties are located directly west of the outdoor patio. One is parkland, Lone Lake Park, which is owned by the city. The second is privately owned undeveloped residential property. In addition, severe slopes and Woodland Preservation areas on the park property and the vacant property to the north, would significantly limit development potential.

- 3) The use shall be located and designed so as not to interfere with pedestrian and vehicular circulation;

FINDING: The seating area would not impact pedestrian or vehicular circulation.

- 4) The use shall not be located to obstruct parking spaces. Parking spaces may be removed for the use only if parking requirements specified in section 300.28 are met;

FINDING: The seating area would not impact existing parking spaces.

- 5) The use shall be located adjacent to an entrance to the principal use;

FINDING: The seating area would be located in relative proximity to the entrance of the restaurant.

- 6) The use shall be equipped with refuse containers and periodically patrolled for litter pick-up;

FINDING: This has been added as a condition of approval.

- 7) The use shall not have speakers or audio equipment which is audible from adjacent parcels; and

FINDING: This has been added as a condition of approval.

- 8) The use shall be located in compliance with building setback requirements.

FINDING: Based on the information available, the outdoor seating area would meet all minimum setbacks from property lines and adjacent 100-year floodplain area. However, as a condition of approval, an updated survey must be submitted with the building permit for the area. The patio must be shown on the survey and constructed to meet all minimum setbacks.

Variance Standards A variance may be granted from the literal provisions of the ordinance when strict enforcement of the ordinance would cause undue hardship. By definition, undue hardship exists when a property cannot be put to reasonable use if used under the conditions allowed by city code. (City Code 300.07.1) *The*

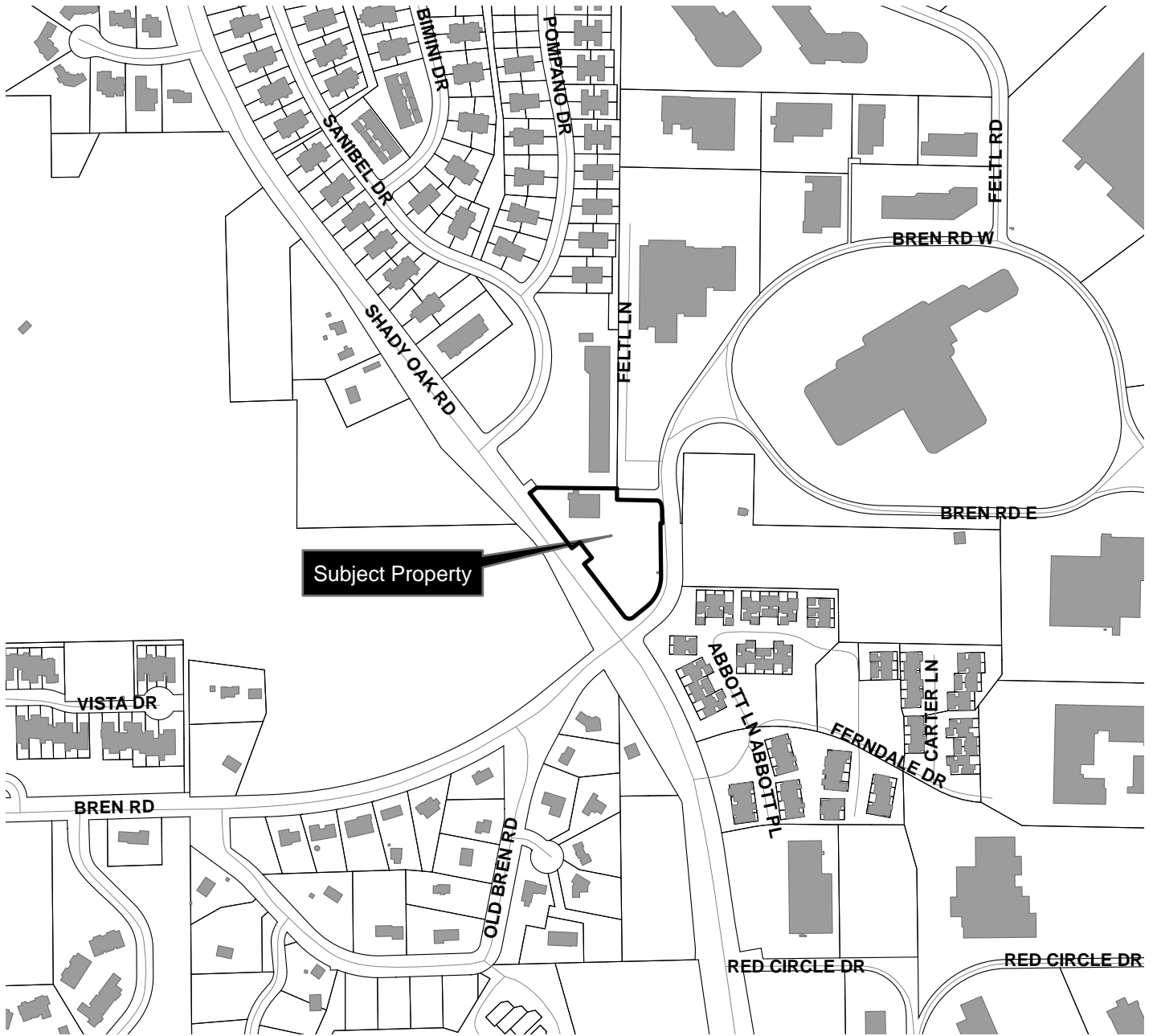
city attorney has advised that this definition does not mean that that applicant must show that land cannot be put to any reasonable use without a variance. Rather, the applicant must show that there are practical difficulties in complying with the code and that the proposed use is reasonable.

The requested variance is reasonable, as outlined in the “Staff Analysis” section of this report.

Natural Resources Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing. As a condition of approval the applicant must submit a construction management plan detailing these management practices.

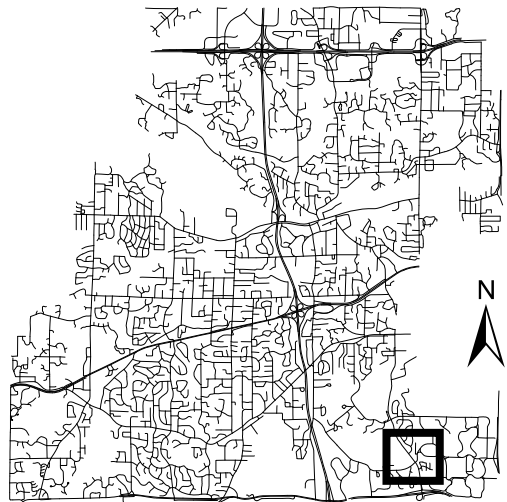
Neighborhood Comments The city sent notices to 41 area property owners and received 4 comments attached as pages A22–A25.

Deadline for Decision March 31, 2010



LOCATION MAP

Project: Scoreboard Bar & Grill
 Applicant: Michael J. Jennings Sr.
 Address: 5765 Sanibel Drive
 (87039.09a)



This map is for illustrative purposes only.

SCOREBOARD BAR & GRILL
 5765 SANIBEL DRIVE
 #87039.09a

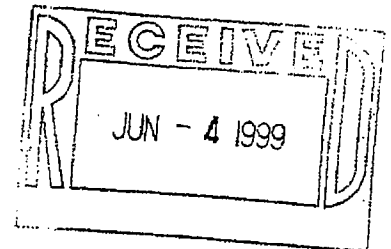
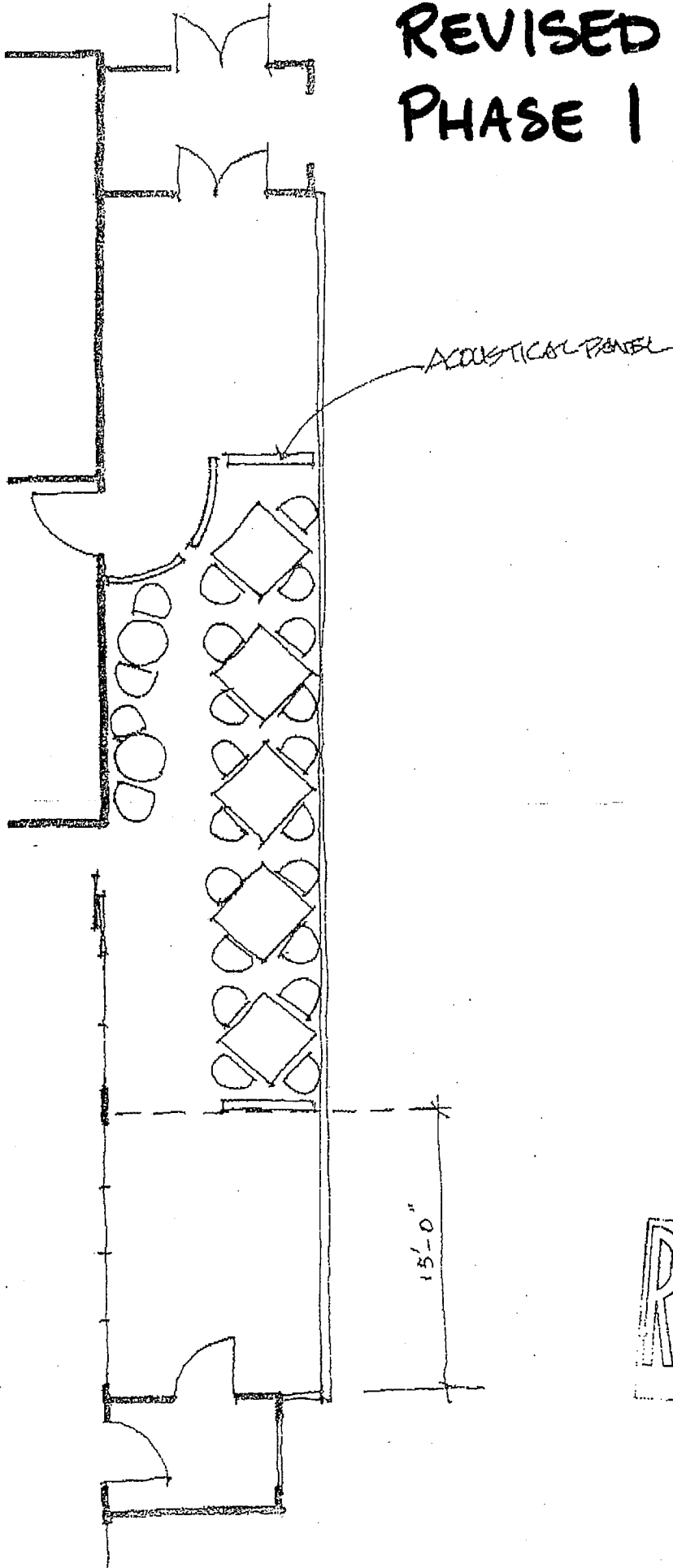


A2

SCOREBOARD BAR & GRILL
5765 SANIBEL DRIVE
#87039.09a

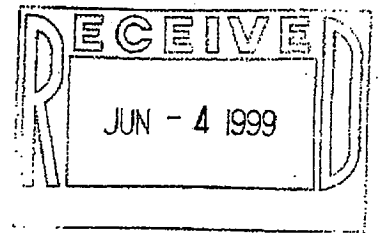
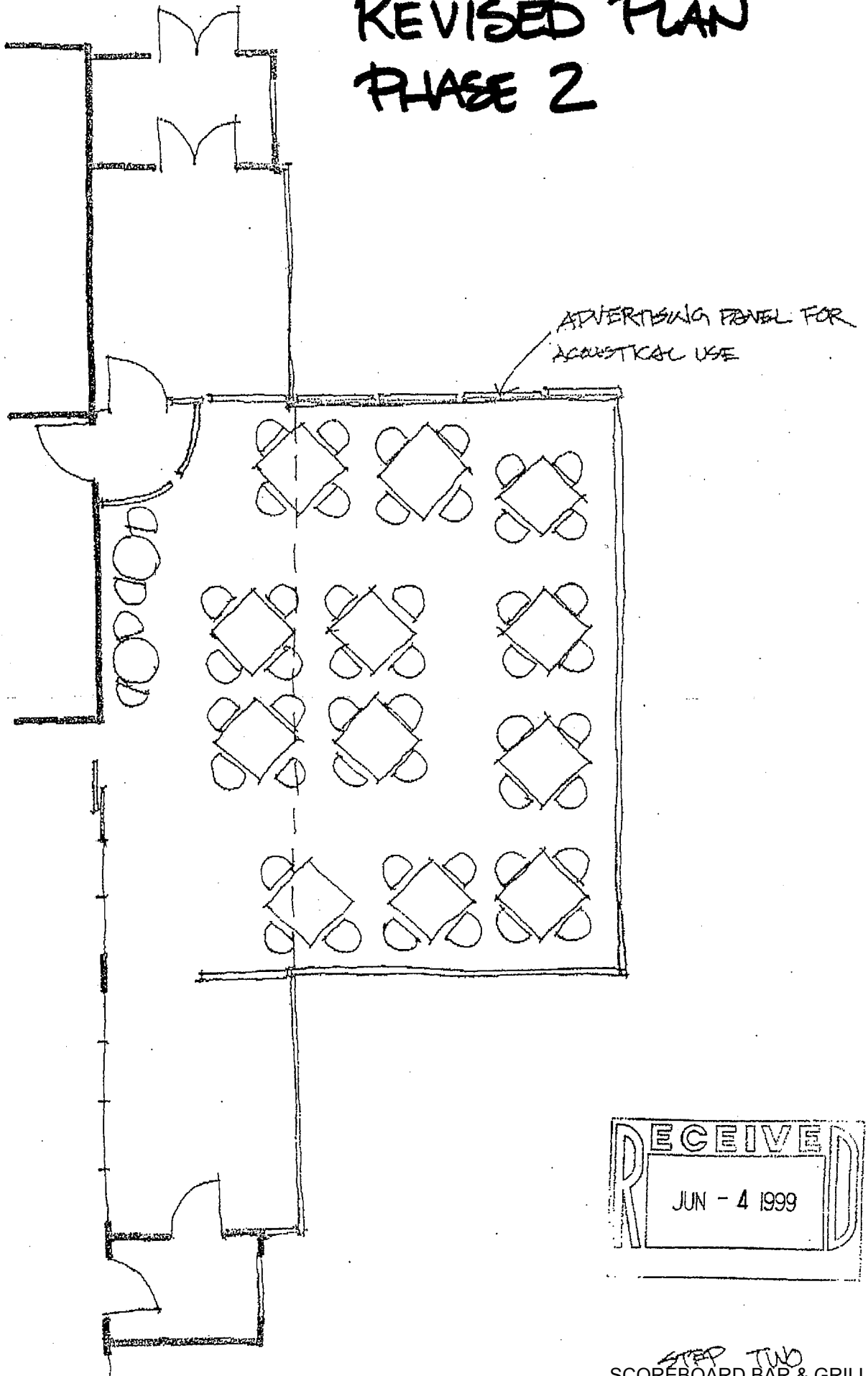
1999 PLANS

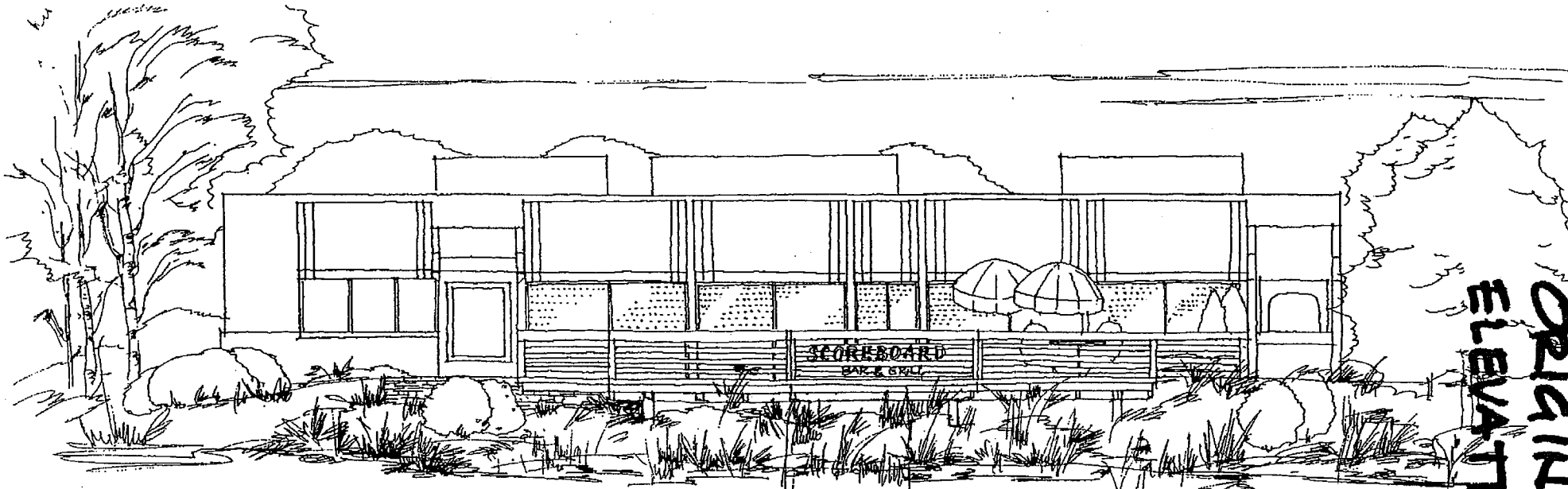
REVISED PLAN PHASE I



STEP ONE

REVISED PLAN PHASE 2

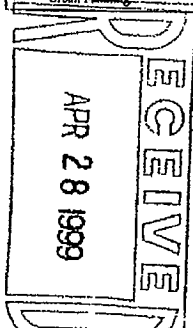
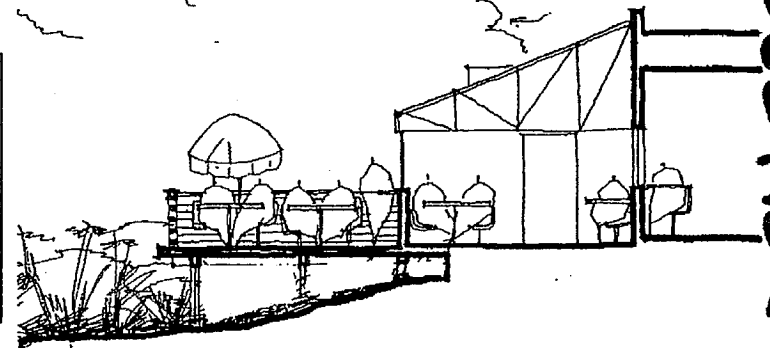




SOUTH ELEVATION - SHADY OAK ROAD

ORIGINAL PLAN ELEVATION & SECTION

Scoreboard Minnetonka, Minnesota		OUTDOOR EATING AREA		ELEVATION PLANS	
<p>MATERIALS: Wood, Canvas, Screen, Glass (sliding door), Steel (structural support and gate)</p> <p>CONSTRUCTION: Anticipated to be done in phases: outside dining without screened in area, deck, and screened in area.</p>		<p>DATE: April 27, 1999</p>		<p>SHEET 3 of 5</p>	
<p>Thibault ASSOCIATES Urban Planning Development Redevelopment Housing</p>					



RESOLUTION NO. 99-125

**RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR AN OUTDOOR
EATING AREA AT 5765 SANIBEL DRIVE**

BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota,
as follows:

Section 1. BACKGROUND.

1.01 Michael James Jennings is requesting a conditional use permit for a outdoor eating area at the Scoreboard Bar and Grill.

1.02 The property is located at 5765 Sanibel Drive. It is legally described as follows:

Lot 2, Block 1, Beachside Two 4th Addition

1.03 On June 17, 1999, the Planning Commission held a hearing on the application. The applicant was provided the opportunity to present information to the Planning Commission. The Planning Commission considered all of the comments and the staff report, which are incorporated by reference into this resolution. The Commission recommended that the City Council approve the permit.

Section 2. GENERAL STANDARDS.

2.01 City Code Section 300.21, Subdivision 2 lists the following general standards that must be met for granting of the permit:

1. The use is consistent with the intent of this ordinance;

2. The use is consistent with the goals, policies and objectives of the comprehensive plan;
3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;
4. The use is consistent with the city's storm water management plan;
5. The use is in compliance with the performance standards specified in Section 300.28 of this ordinance; and
6. The use does not have an undue adverse impact on the public health, safety or welfare.

Section 3. SPECIFIC STANDARDS.

3.01 City Code Section 300.21, Subdivision 4 lists the following specific standards that must be met for granting of the permit:

1. shall be located in a controlled or cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required and the enclosure shall not be interrupted; access shall be only through the principal building;
2. shall not be permitted within 200' of any residential parcel and shall be separated from residential parcels by the principal structure or other method of screening acceptable to the city;
3. shall be located and designed so as not to interfere with pedestrian and vehicular circulation;
4. shall not be located to obstruct parking spaces. Parking spaces may be removed for the use only if parking requirements specified in section 300.28 are met;
5. shall be located adjacent to an entrance to the principal use;
6. shall be equipped with refuse containers and periodically patrolled for litter pick-up;

Resolution No. 99-125

Page 3

7. shall not have speakers or audio equipment which is audible from adjacent parcels; and
8. shall be located in compliance with building setback requirements.

Section 4. FINDINGS.

4.01 The proposal meets the conditional use permit standards.

Section 5. CITY COUNCIL ACTION.

5.01 The above-described conditional use permit is approved, subject to the following conditions:


- a. The applicant may only build Phase 1 of the outdoor seating as shown in the approved site and building plans. One year after the outdoor seating has been in use, the Planning Commission shall hold a public hearing and the City Council shall review the use of the outdoor seating to determine one of the following:
 - (1) If the Council determines the use of the outdoor seating is not in compliance with this permit, or if the use of the outdoor seating has caused a significant noise impact on surrounding properties, the Council may deny the Phase 2 expansion, further restrict the hours of use of the outdoor seating, or revoke the permit; or
 - (2) If the Council determines the use of the outdoor seating is in compliance with this permit and has not caused a significant noise impact on surrounding properties, the applicant may build Phase 2 of the deck as shown in the approved site and building plans.
- b. The City Council may reasonably add or revise conditions to address any future unforeseen problems, including, but limited to, noise and hours of use.
- c. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.

Resolution No. 99-125

Page 4

- d. The outdoor seating shall be equipped with refuse containers and the applicant shall have the outdoor seating and surrounding area periodically patrolled for litter pick up.
- e. The outdoor seating shall not have any speakers or audio equipment.
- f. The use of the outdoor eating area shall cease by 10:00 p.m. daily.
- g. Phase 1 approval of the outdoor seating shall limit the total restaurant seating to 235 seats. The ratio of seating shall be 183 indoor table seats, 25 indoor bar seats, and 27 outdoor table seats. Phase 2 approval of the outdoor deck shall limit the total restaurant seating to 260 seats. The ratio of seating shall be 183 indoor table seats, 25 indoor bar seats, and 52 outdoor table seats.
- h. The south building entrance must be maintained as a public entrance to facilitate the use of the east parking lot.
- i. The applicant must agree to the above conditions in writing.
- j. Record this resolution with the county before the City issues a building permit.

Adopted by the Minnetonka City Council on July 12, 1999.



Karen J. Anderson, Mayor

ATTEST:



Kathleen A. Magrew, City Clerk

Resolution No. 99-125

Page 5

ACTION ON THIS RESOLUTION:

Motion for adoption: Tauer

Seconded by: Allendorf

Voted in favor of: Callison, Thomas, Allendorf, Schneider, Tauer, Anderson

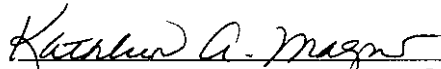
Voted against: Koblick

Abstained:-

Absent:-

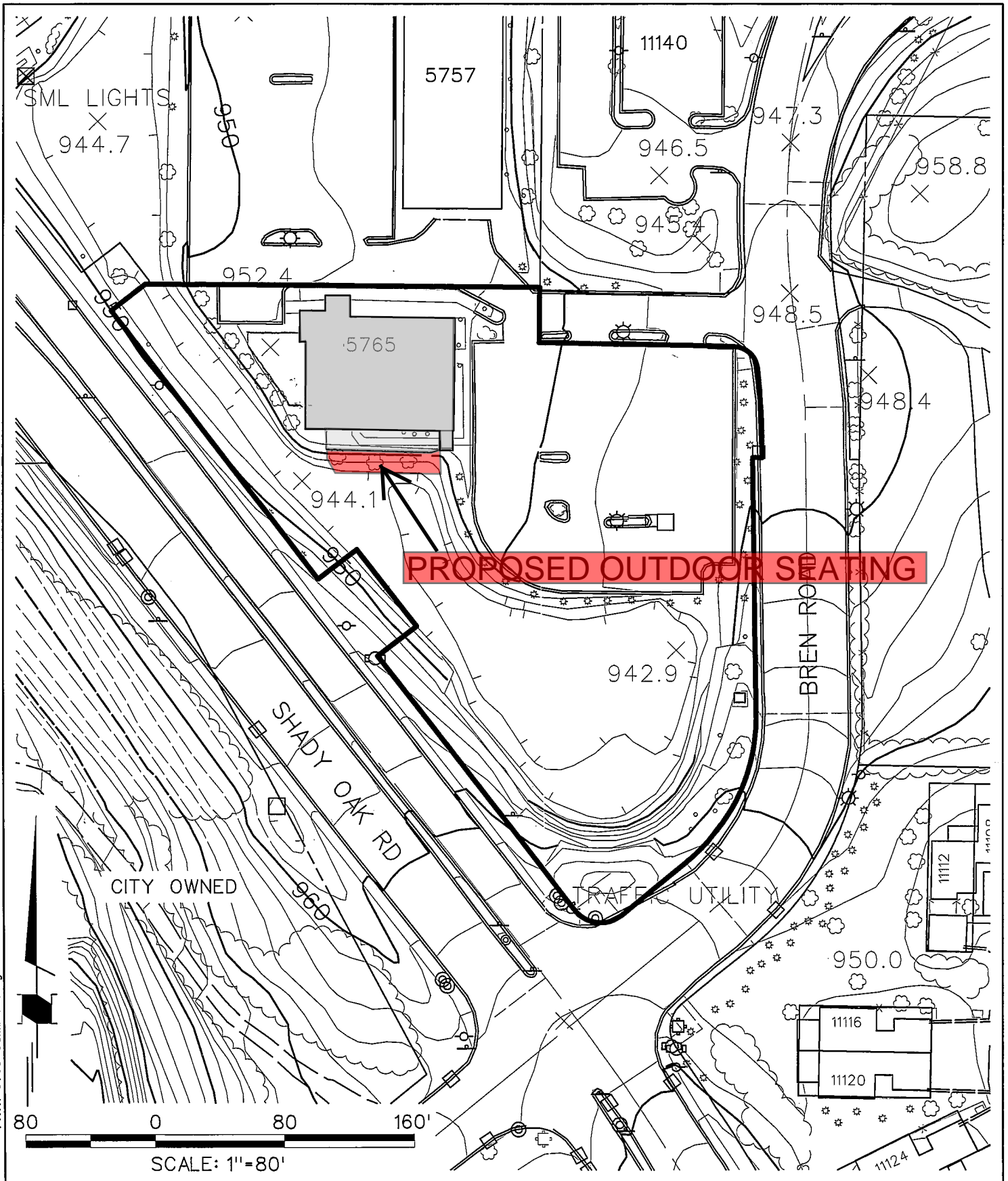
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on this 12th day of July , 1999.


Kathleen A. Magrew, City Clerk

G:\WP\Megan\Resolutions\1999\99-125.wpd
rev. 9/96

ORIGINALLY SUBMITTED PLANS



PATH: 5765 Sanibel Dr..dgn

PLOTTED BY: sornat

DISCLAIMER

This drawing is not a legally recorded plat or an accurate survey. It is intended to be only an approximate representation of information from various government offices and other sources. It should not be used for a purpose that requires exact measurement or precision. People who use this drawing do so at their own risk. The City of Minnetonka is not responsible for any inaccuracies contained in the drawing. The City of Minnetonka provides no warranty, express or implied, about the correctness of the information.

City of minnetonka
 14600 MTKA BLVD, MTKA, MN. 55345 PH: 952-939-8200

SCALE:
 1" = 80'
 DATE:
 12/17/2009

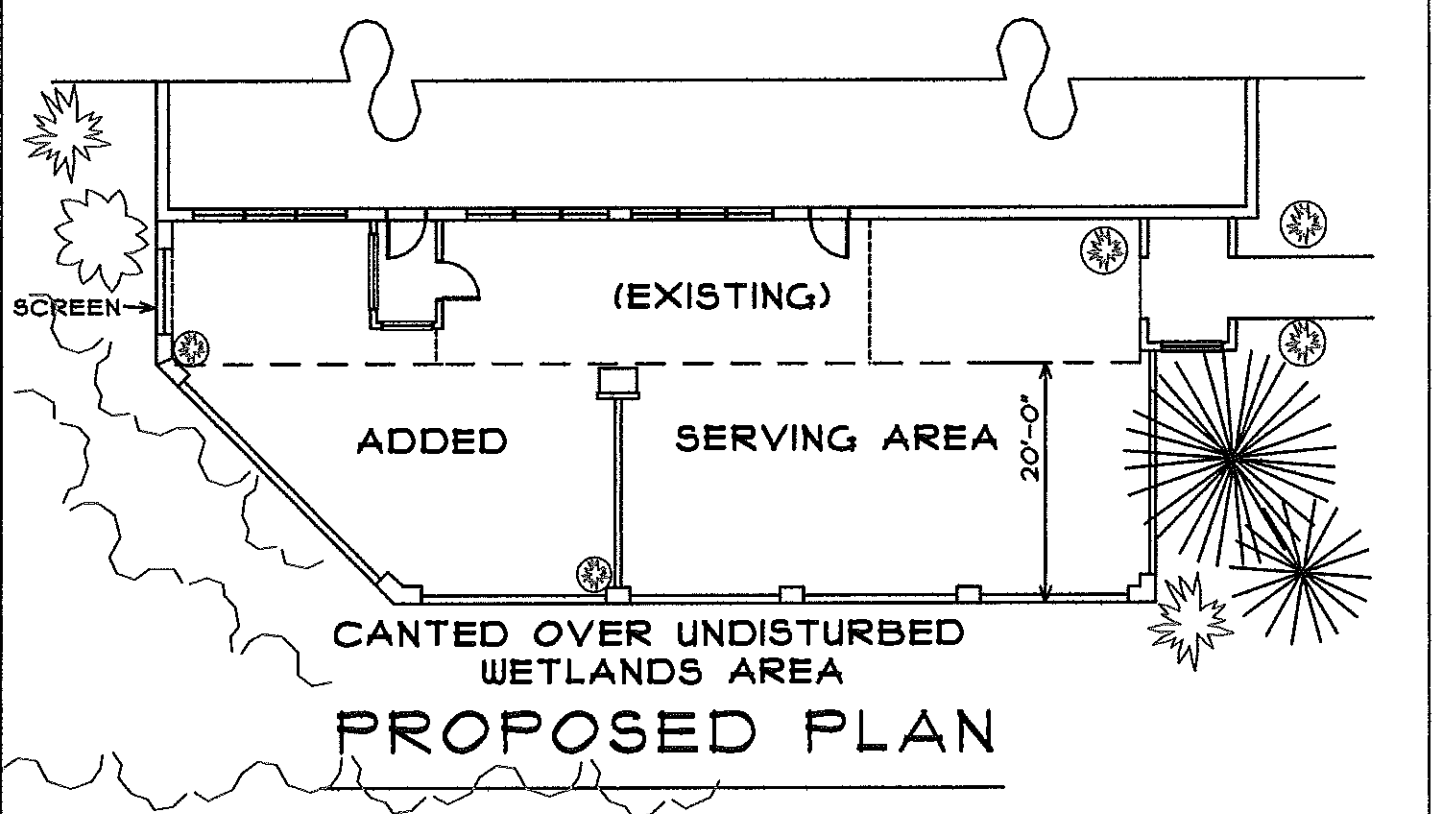
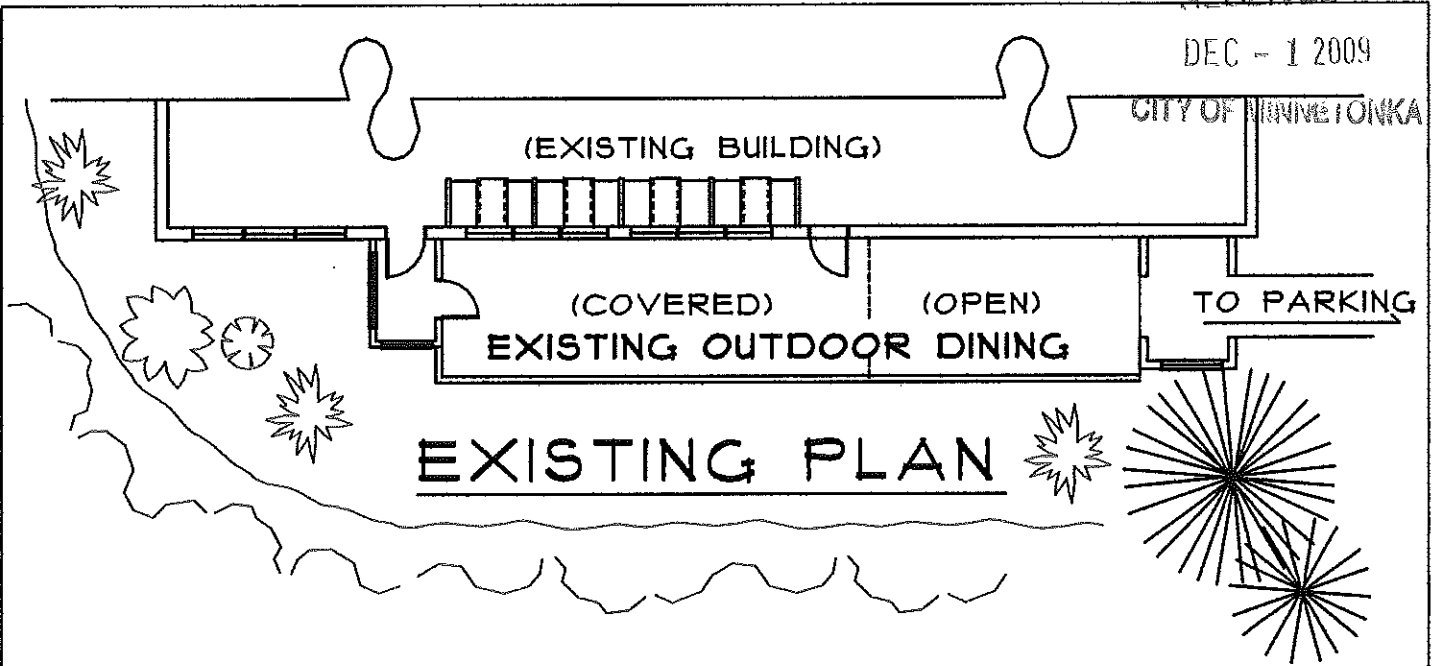
5765 SANIBEL DRIVE

SCOREBOARD BAR & GRILL
 5765 SANIBEL DRIVE
 #87039.09a

RECEIVED

DEC - 1 2009

CITY OF MINNETONKA



SCOREBOARD BAR & GRILL

5765 SANIBEL DRIVE
MINNETONKA, MN 55343

AMENDMENT TO CONDITIONAL USE PERMIT

PLAN VIEW SHEET
EXTENDED OUTDOOR DINING AREA
SCALE: 1/16" = 1'-0"

SHEET

A-1

SCOREBOARD BAR & GRILL
5765 SANIBEL DRIVE
#87039.09a

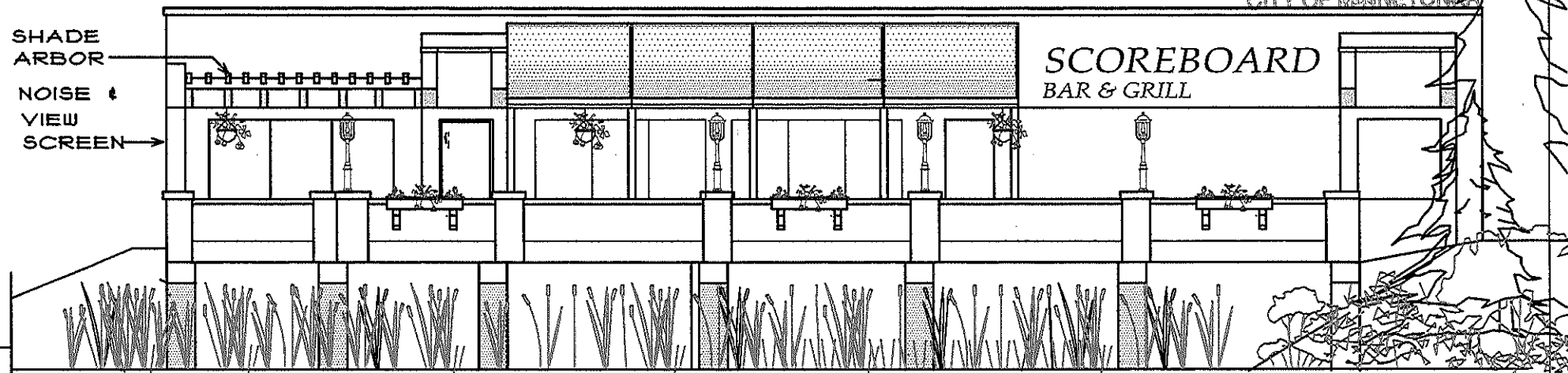
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DEC - 1 2009

CITY OF MINNETONKA

SHADE
ARBOR
NOISE &
VIEW
SCREEN

SCOREBOARD
BAR & GRILL



SOUTH ELEVATION

SCALE: 3/32"=1'-0"

EXISTING
BUILDING

← EXTENDED DECK

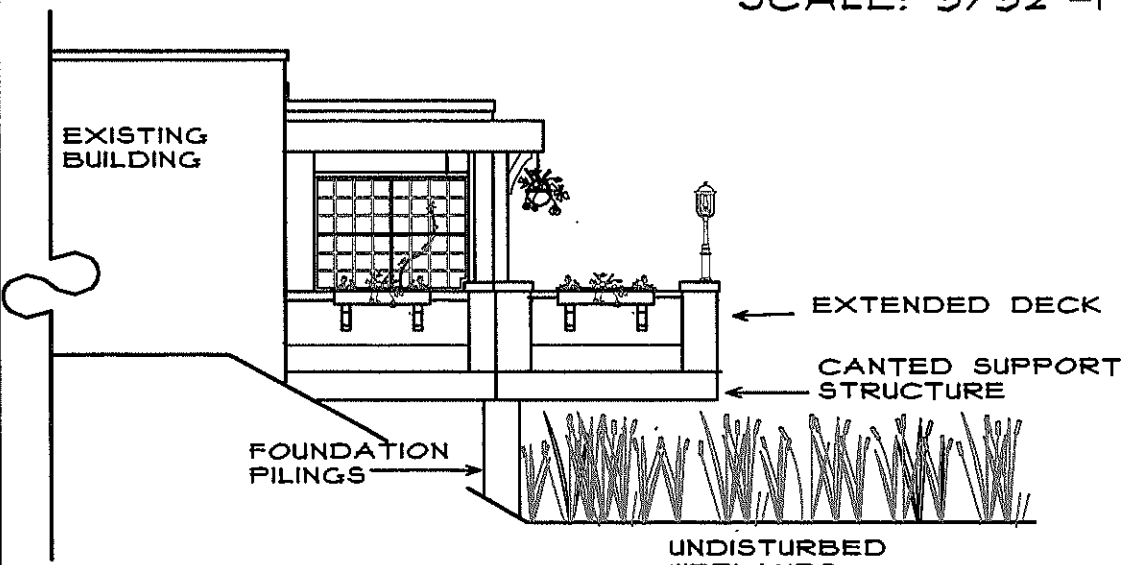
← CANTED SUPPORT
STRUCTURE

FOUNDATION
PILINGS

UNDISTURBED
WETLANDS

SHADY OAK ROAD
SIDE ELEVATION

SCALE: 3/32"=1'-0"



SCOREBOARD BAR & GRILL

5765 SANIBEL DRIVE
MINNETONKA, MN 55343

AMENDMENT TO CONDITIONAL USE PERMIT

ELEVATION SHEET
EXTENDED OUTDOOR DINING AREA

SHEET

SCOREBOARD BAR & GRILL

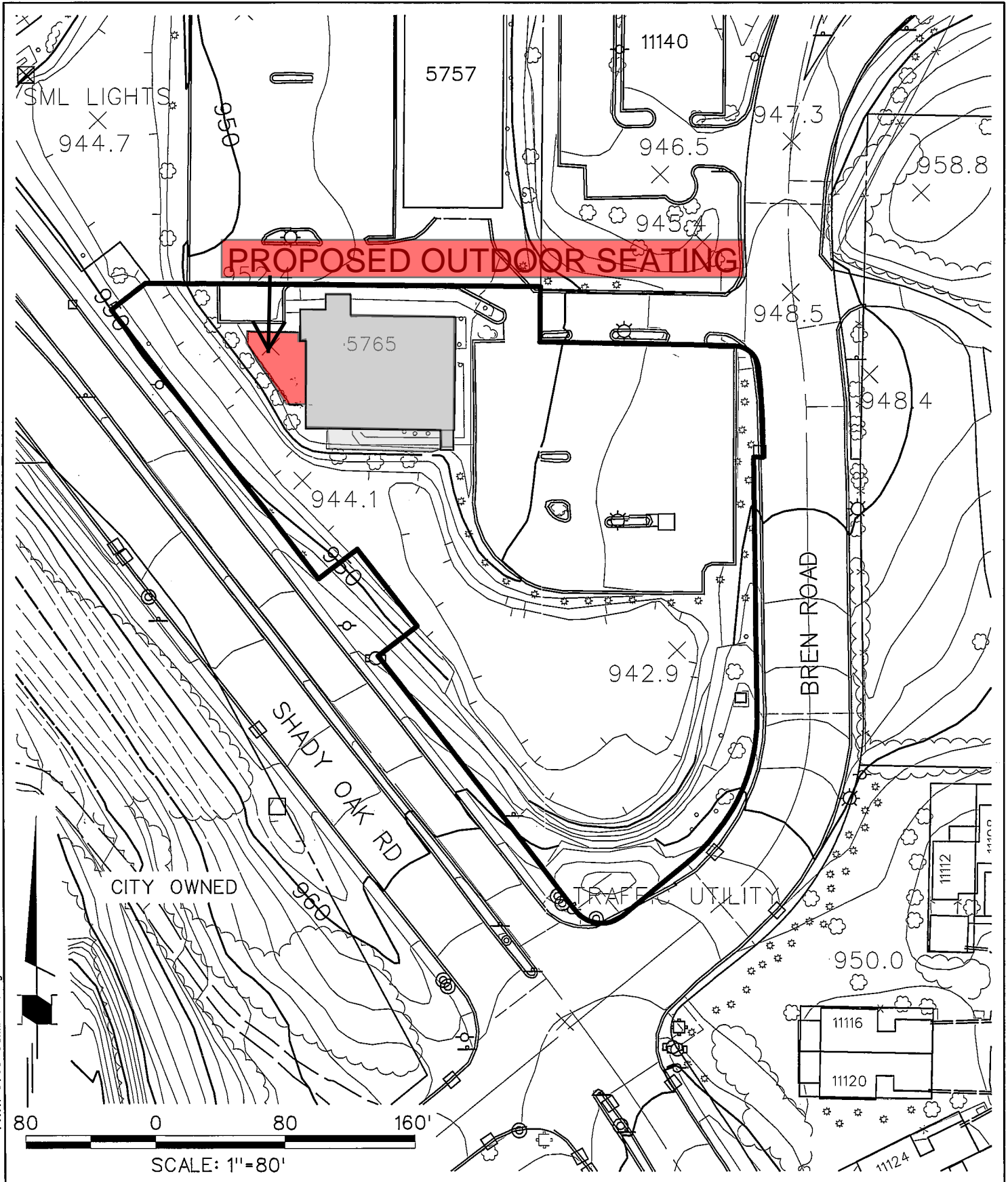
5765 SANIBEL DRIVE

#87039.09a

A-2

A15

CURRENT PLANS



PATH: 5765 Sanibel Dr.dgn

PLOTTED BY: sornat

DISCLAIMER

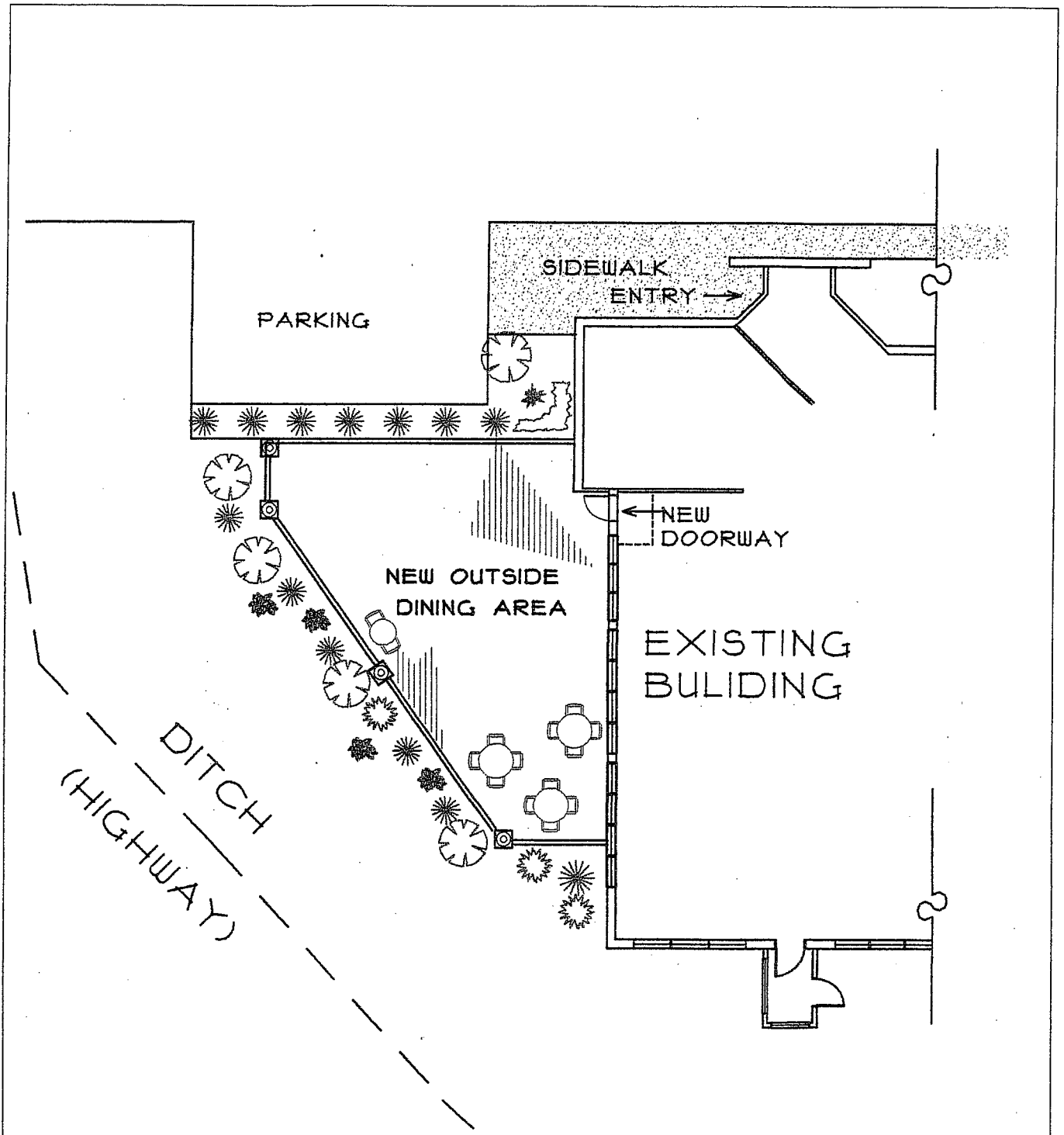
This drawing is not a legally recorded plat or an accurate survey. It is intended to be only an approximate representation of information from various government offices and other sources. It should not be used for a purpose that requires exact measurement or precision. People who use this drawing do so at their own risk. The City of Minnetonka is not responsible for any inaccuracies contained in the drawing. The City of Minnetonka provides no warranty, express or implied, about the correctness of the information.

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SCALE:
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 12/17/2009

5765 SANIBEL DRIVE

SCOREBOARD BAR & GRILL
 5765 SANIBEL DRIVE
 #87039.09a



SCOREBOARD BAR & GRILL

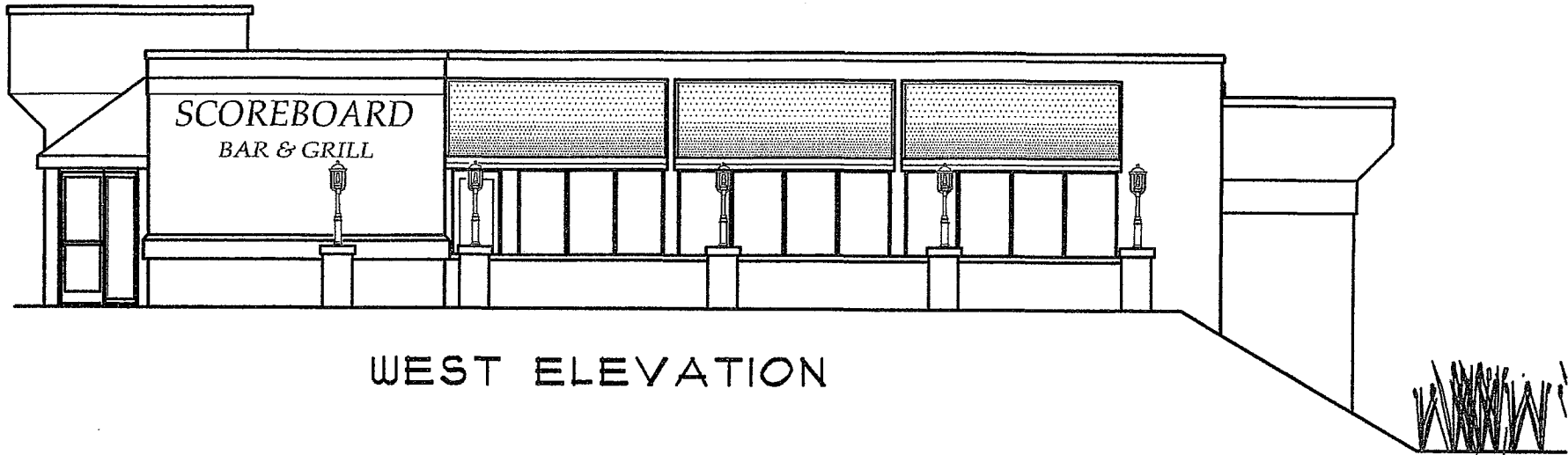
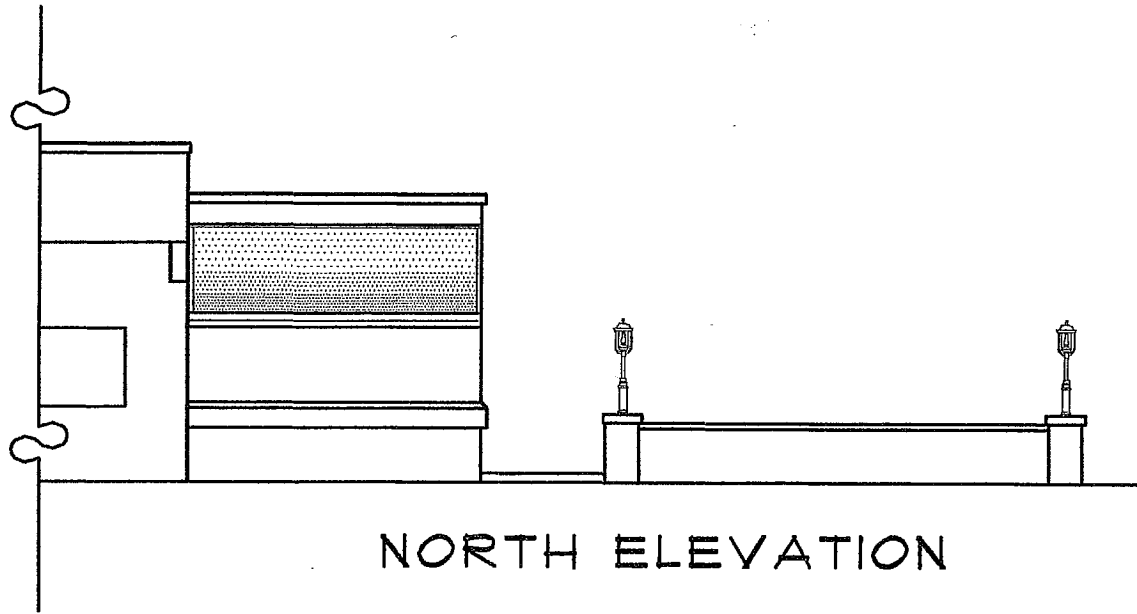
5765 SANIBEL DRIVE
MINNETONKA, MN 55343

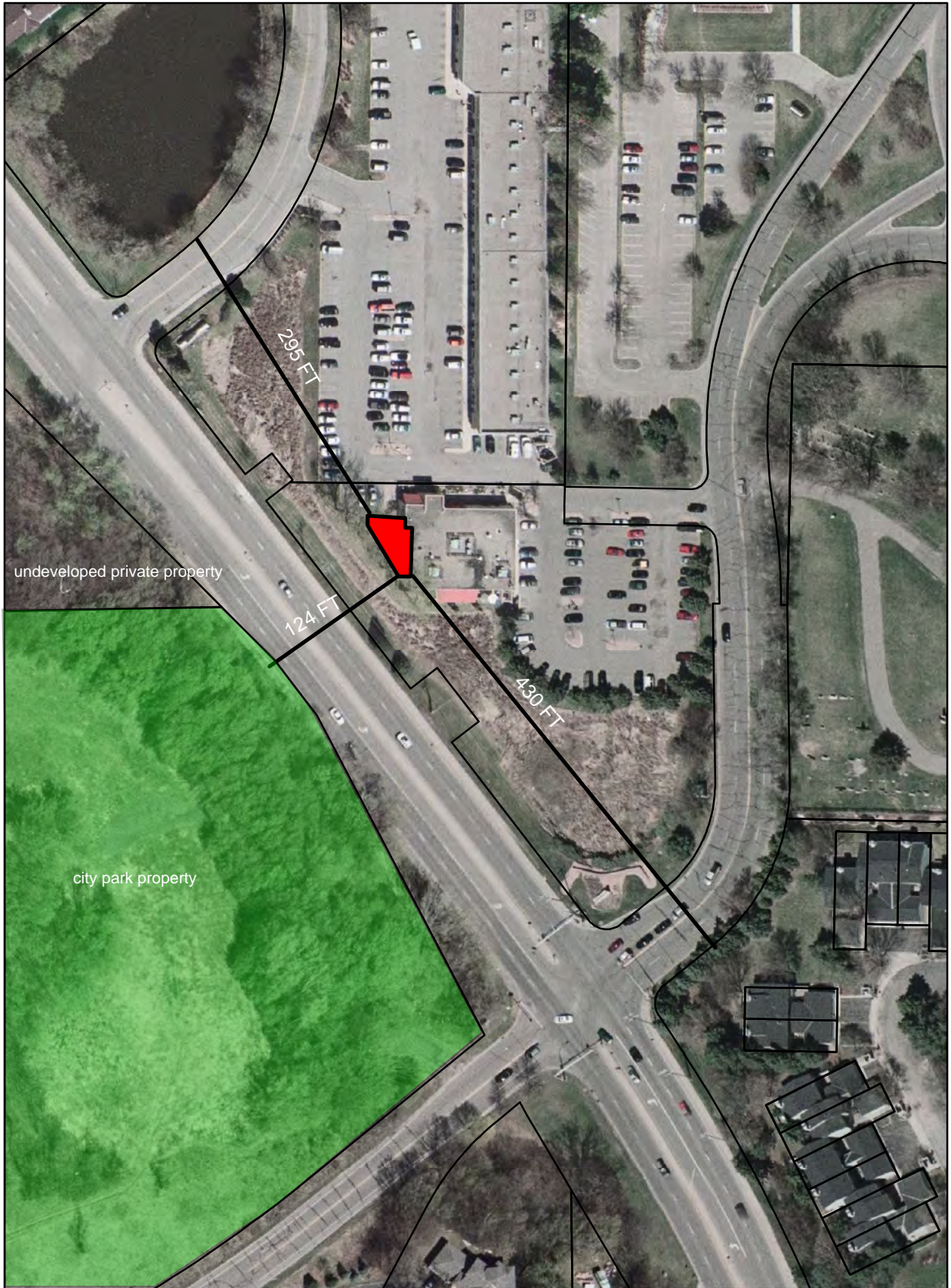
AMENDMENT TO CONDITIONAL USE PERMIT

PLAN VIEW SHEET
EXTENDED OUTDOOR DINING AREA
SCALE: 1/16" = 1'-0"

SHEET

A-1





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From: [Anne Van Abel](#)
To: [Susan Thomas](#)
Subject: Planning Expansion Project: Scoreboard Bar & Grill
Date: Wednesday, December 30, 2009 10:16:57 AM
Importance: High

Susan,

I also left you a voice message.

I tried to go on the eminnetonka web site to place a comment, however was unable to do so, even though I registered.

So as a result, would like to know how else I can submit my comment regarding the above project prior to December 31.

I am a neighbor directly adjacent to this property and am strongly opposed to this expansion. The expansion would not only increase noise to our townhomes and surrounding townhomes but would also draw additional inappropriate bar behaviors and individuals. This has been a reasonable neighborhood eating establishment that is now becoming a brawling bar establishment particularly on weekends late into the early mornings. This behavior will sometimes also cross over into the Cemetery which is also across from this bar. Police officers are regularly having to monitor this area including speeding or drunk driving. My neighbors and I strongly oppose this expansion and will be attending the Planning Commission public hearing.

Anne and John Van Abel
11108 Abbott Lane

Anne Julian (Van Abel)

Phone: 612-382-4821

e-mail: ajvanabel@comcast.net

Project Management, Staffing, Human Resources

"building relationships, tearing down walls, and opening windows of opportunity"

Linkedin Profile: <http://www.linkedin.com/in/annevanabel>

From: [Lindberg](#)
To: [Susan Thomas](#)
Subject: Fwd: Scoreboard Bar & Grill Expansion
Date: Thursday, December 31, 2009 4:51:14 PM

Susan Thomas,

We concur with Paul Hines analysis and concerns. We live in the same four unit building as Paul, and can hear the patio noise in the summer with the windows open (and sometimes even with them closed). Additional space could only mean a higher likelihood of noise, and I'm sure you have noticed, whenever a group gathers, the more that are present, the louder people talk to be heard over the others.

Tom and Karen Lindberg
11100 Abbott Lane
952-933-7227

From: Paul Hines [mailto:plhines@comcast.net]
Sent: Thursday, December 31, 2009 3:34 PM
To: Susan Thomas (sthomas@eminnetonka.com)
Cc: 'bellingson@eminnetonka.com'
Subject: Scoreboard Bar & Grill Expansion

This communication is intended to identify my concerns regarding the issue presented to the City of Minnetonka Planning Commission by the subject establishment. They do not represent opinions of the entire 74 households in the Shady Oaks Townhome Association or the Association Board of Directors. They are however in concert with most of the Association households impacted by this issue—some of whom I believe have communicated with you. My primary issue is:

- A) The continuation of an unacceptable noise level late at nite resulting from customers being served within the current outdoor serving area.**
- B) The anticipated increase in this level with an expanded outdoor serving area.**

Obviously this occurs/would occur during periods of the year when our home's windows/doors are open—approximately 6-8 months a year.

This is the same issue-late nite noise-that was raised back in 1999 when the original outdoor area was approved. Although it was initially addressed by the Scoreboard, I believe a major change has evolved approximately 4 years ago with the implementation of the Hennepin County smoking ban in Restaurants. Beginning with that ban, the Scoreboard designated the current outdoor area as their designated "customer smoking" area. Although food & beverage service **via servers** is discontinued near designated times, customers are allowed to bring beverages/food outside until closing while smoking. I believe non smokers tend to join smokers outdoors; hence the resulting unacceptable noise level often exists until closing time even though the outdoor area is technically closed at 10:00 PM.

My personal feeling is that as a homeowner my concerns stated above are not unreasonable. Generally we homeowners deal with other noise issues resulting from this establishment. If the Scoreboard is truly concerned about neighborhood values, they will take the appropriate action to be a sensitive and kind neighbor to their "next door" neighbors. That would include elimination of unacceptable levels of noise in their outdoor area after 10:00 PM regardless of size. This would not appear to be at odds with their stated business model of "serving lunch, dinner & Sunday brunch."

From: [Paul Hines](#)
To: [Susan Thomas](#)
Cc: [Bob Ellingson](#)
Subject: Scoreboard Bar & Grill Expansion
Date: Thursday, December 31, 2009 3:36:36 PM

This communication is intended to identify my concerns regarding the issue presented to the City of Minnetonka Planning Commission by the subject establishment. They do not represent opinions of the entire 74 households in the Shady Oaks Townhome Association or the Association Board of Directors. They are however in concert with most of the Association households impacted by this issue—some of whom I believe have communicated with you. My primary issue is:

- A) The continuation of an unacceptable noise level late at nite resulting from customers being served within the current outdoor serving area.**
- B) The anticipated increase in this level with an expanded outdoor serving area.**

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Other related questions regarding this issue:

The actual size of the proposed expansion?

Action proposed in construction to address the noise issue?

The proposed timing of expansion?

What impact would this have on the existing conditional use permit # 99-125 ?

Also, could you please advise me as to where I might find the implementation of Hennepin County Smoke Free Ordinance # 24 within Minnetonka ordinances? I have been unsuccessful in a search of the archives & the legal link.

Thankyou
Paul L Hines
11112 Abbott Lane
952-931-9130

Project feedback: Scoreboard Bar and Grill

Response sent Tuesday, December 29, 2009

11207 Old Bren Rd

Minnetonka, MN 55343

General comments

this center has had inadequate parking for many years, mostly due to Scoreboard traffic. Any expansion of seating would only exacerbate the problem.

Specific issues or concerns

this business should not expand without corresponding expansion of parking.

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RESOLUTION NO. 2010

RESOLUTION AMENDING AND REPLACING AN EXISTING CONDITIONAL USE PERMIT FOR OUTDOOR SEATING AREAS AT THE SCOREBOARD RESTAURANT AT 5765 SANIBEL DRIVE

BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. BACKGROUND.

- 1.01 Great Green Family Partnership LP is requesting an amendment to an existing conditional use permit for an outdoor seating areas. The amendment would allow for construction of additional outdoor seating space on the west side of the existing structure. (Project 87039.09a).
- 1.02 The property is located at 5765 Sanibel Drive. It is legally described as follows:
- Lot 2, Block 1, Beachside Two 4th Addition
- 1.03 On January 7, 2010, the Planning Commission held a hearing on the application. The applicant was provided the opportunity to present information to the Planning Commission. The Planning Commission considered all of the comments and the staff report, which are incorporated by reference into this resolution. The Commission recommended that the City Council approve the permit.

Section 2. GENERAL STANDARDS.

- 2.01 City Code Section 300.21, Subdivision 2, lists the following general standards that must be met for granting of the permit:
1. The use is consistent with the intent of this ordinance;
 2. The use is consistent with the goals, policies and objectives of the comprehensive plan;

3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;
4. The use is consistent with the city's storm water management plan;
5. The use is in compliance with the performance standards specified in Section 300.28 of this ordinance; and
6. The use does not have an undue adverse impact on the public health, safety or welfare.

Section 3. SPECIFIC STANDARDS.

3.01 City Code Section 300.21, Subdivision 4(r) lists the following specific standards that must be met for granting of the permit:

1. The uses shall be located in a controlled or cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required and the enclosure shall not be interrupted; access shall be only through the principal building;
2. The use shall not be permitted within 200 feet of any residential parcel and shall be separated from residential parcels by the principal structure or other method of screening acceptable to the city;
3. The use shall be located and designed so as not to interfere with pedestrian and vehicular circulation;
4. The use shall not be located to obstruct parking spaces. Parking spaces may be removed for the use only if parking requirements specified in section 300.28 are met;
5. The use shall be located adjacent to an entrance to the principal use;
6. The use shall be equipped with refuse containers and periodically patrolled for litter pick-up;
7. The use shall not have speakers or audio equipment which is audible from adjacent parcels; and
8. The use shall be located in compliance with building setback requirements.

Section 4. FINDINGS.

- 4.01 Aside from the above described setback variance, the proposal meets the required conditional use permit standards.
- 4.02 The intent of the setback requirement as it relates to outdoor seating is to minimize the impact seating may have on residential neighborhoods. The proposed seating area meets this intent and is, therefore reasonable.
1. Shady Oak Road, a four-lane street, would separate the outdoor seating area from the residentially-zoned properties.
 2. The two closest residentially-zoned properties are located directly west of the outdoor patio. One is parkland, Lone Lake Park, which is owned by the city. The second is privately owned undeveloped residential property. In addition, severe slopes and Woodland Preservation areas on the park property and the vacant property to the north, would significantly limit development potential.

Section 5. CITY COUNCIL ACTION.

- 5.01 The above-described amendment to an conditional use permit is approved, subject to the following conditions:
1. Prior to issuance of a building permit, the following occur:
 - a. The existing cross-parking easement between the Sundial and Scoreboard properties must be submitted for review and approval of the city attorney. The city attorney may require an update to the existing cross-parking easement.
 - b. Submit a survey detailing the location of property lines, the 100-year storm elevation, the existing building and proposed outdoor seating area. The proposed seating area must meet all minimum setbacks from property lines and 100-year storm elevation.
 - c. Submit a letter of credit or cash escrow 150% of an estimated cost or 125% of a bid cost to complete landscaping as indicated on the Amendment to Conditional Use Permit plan date-stamped January 5, 2010.

- d. This resolution must be recorded with the county and a copy of the resolution must be returned to the city.
2. Outdoor seating areas on the site must be maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Phase 1 site plan/floor plan, for the south side outdoor seating area, dated June 4, 1999. Attached to this resolution as EXHIBIT A.
 - Amendment to Conditional Use Permit plan and Elevations, for the west side outdoor seating area, date-stamped January 5, 2010. Attached to this resolution as EXHIBIT B.
3. The outdoor seating areas must be surrounded by an uninterrupted enclosure, unless as required by the fire marshal.
4. The outdoor seating areas must be equipped with refuse containers and patrolled hourly, during the restaurants hours of operation, for litter pick-up.
5. Speakers or audio equipment which is audible from adjacent parcels is not permitted.
6. Customers may not formally seated by restaurant employees in the outdoor seating area after 10:00 p.m. Sunday through Thursday or after 11:00 p.m. Friday and Saturday.
7. Existing exterior trash and recycling storage areas must be enclosed with materials compatible with the principal structure.
8. The city council may reasonably add or revise conditions to address any future unforeseen problems.
9. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
10. The applicant must agree to these conditions in writing.
11. This resolution repeals and replaces Resolution 99-125, adopted by the Minnetonka City Council on July 12, 1999.

Adopted by the City Council of the City of Minnetonka, Minnesota, on _____, 2010.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

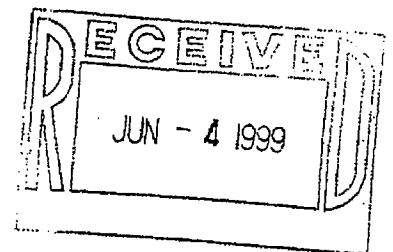
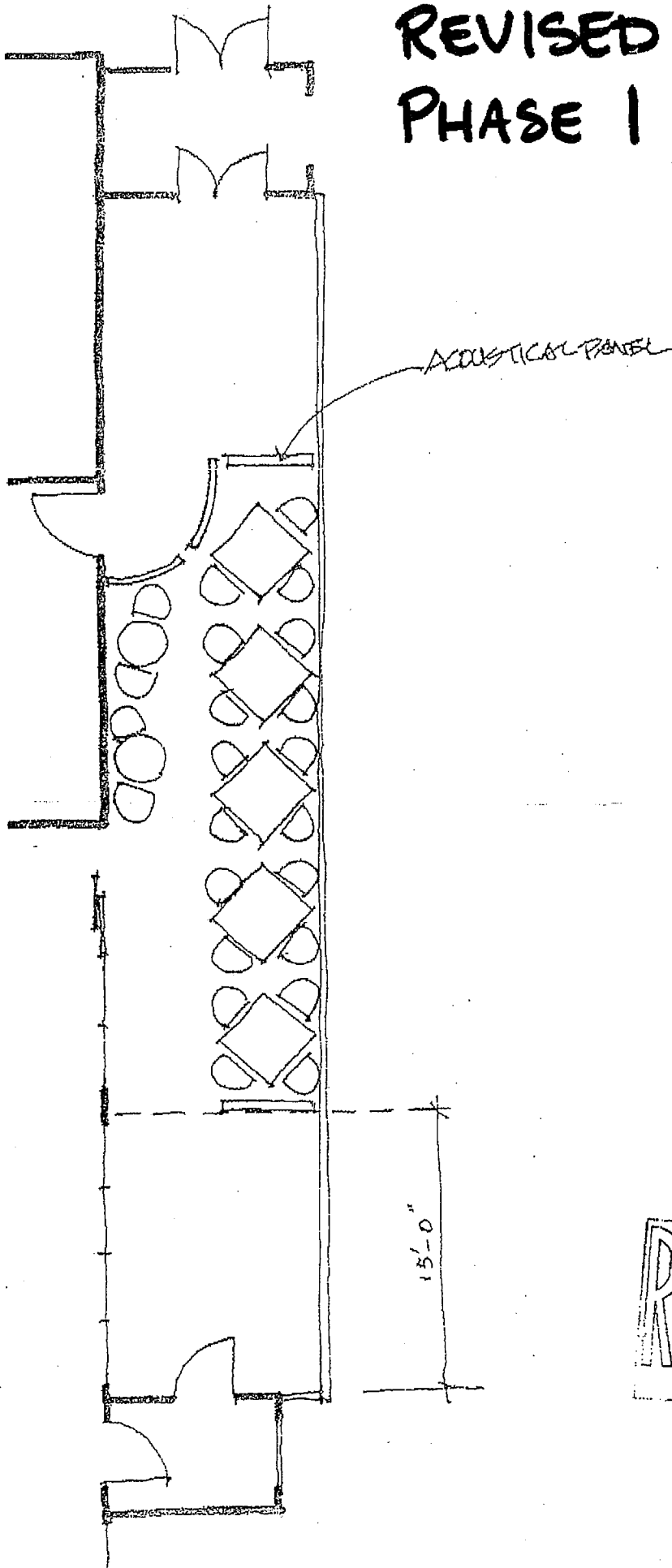
Motion for adoption:
Seconded by:
Voted in favor of
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on _____, 2010.

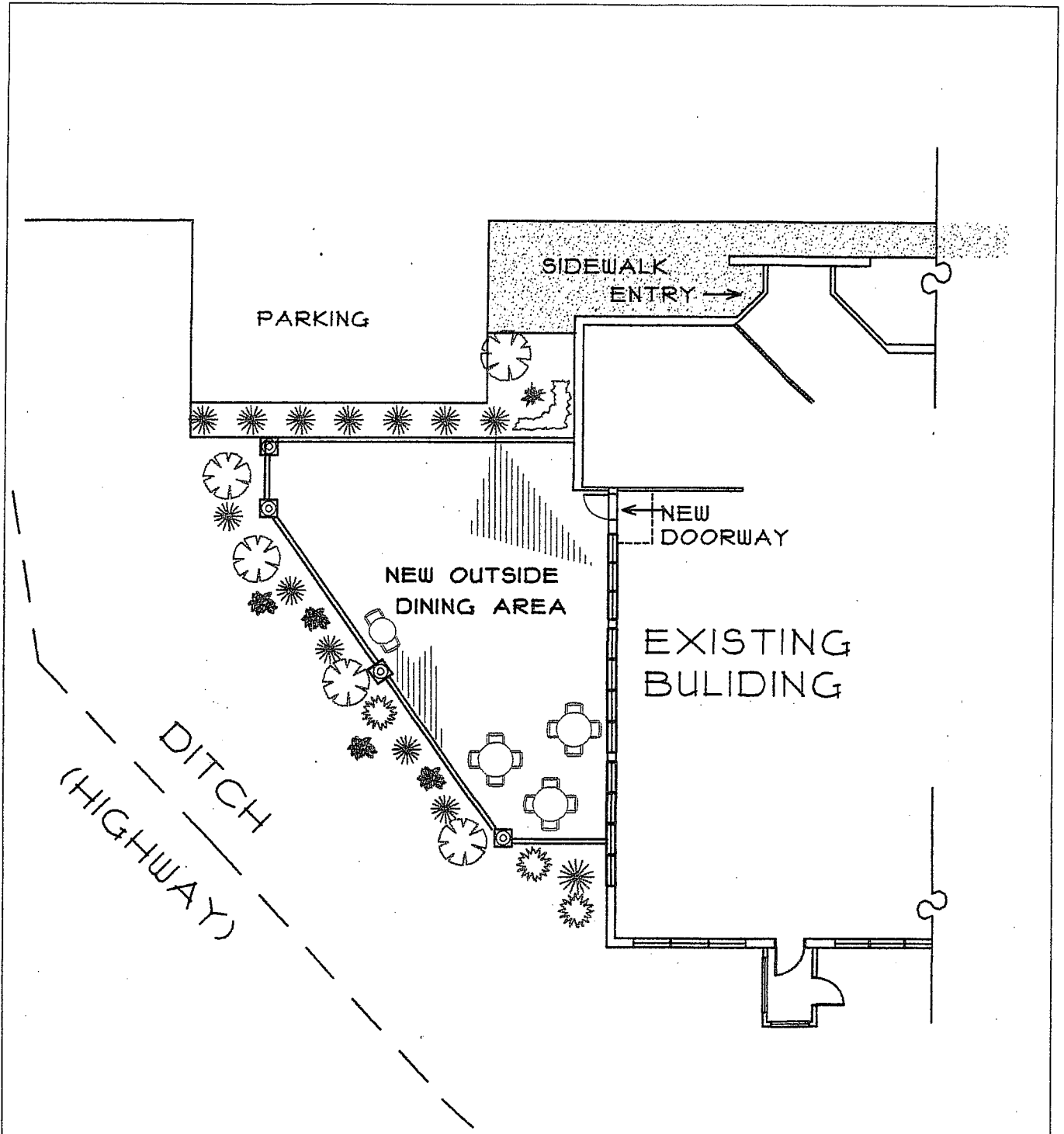
David E. Maeda, City Clerk

SEAL

REVISED PLAN PHASE I



STEP ONE



NORTH

SCOREBOARD BAR & GRILL

5765 SANIBEL DRIVE
MINNETONKA, MN 55343

AMENDMENT TO CONDITIONAL USE PERMIT

PLAN VIEW SHEET
EXTENDED OUTDOOR DINING AREA
SCALE: 1/16" = 1'-0"

SHEET

A-1