

**Office of Administrative Hearing (OAH) Record Index**  
**23-0320-MUN/Matter of CUP 23-04/23-01**


Notice of Amended Appeal	<b>Page 3-OAH</b>
Planning Commission Regular Meeting Agenda April 5, 2023	<b>Page 10-OAH</b>
Staff Report 23-023 dated April 5, 2023 re: Conditional Use Permit (CUP) 23-04	<b>Page 12-OAH</b>
Correspondence dated March 15, 2023 from Melody Livingston to the Planning Commission re: Resubmission for hearing on April 5, 2023 for Approval of Non-Conforming Setback for 106 W. Bunnell, Unit B	<b>Page 22-OAH</b>
Correspondence dated March 12, 2023 from Asia Freeman to the City of Homer re: CUP 23-01	<b>Page 24-OAH</b>
Email from Asia Freeman dated March 12, 2023 re: CUP 23-01 Wild Honey.pdf	<b>Page 25-OAH</b>
Correspondence dated February 8, 2023 from Melody Livingston to Planning Commission re: Cover Letter to CUP for 106 Bunnell, Unit B	<b>Page 26-OAH</b>
Correspondence from Asia Freeman dated February 7, 2023 to Melody Livingston re: Support for February 2023 CUP for 106 W Bunnell Ave, Unit 2	<b>Page 29-OAH</b>
Conditional Use Permit Application and Attachments	<b>Page 30-OAH</b>
Comprehensive Plan Review	<b>Page 44-OAH</b>
Community Design Manual Review	<b>Page 46-OAH</b>
Notice of Public Hearing for April 5, 2023 and Vicinity Map	<b>Page 52-OAH</b>
Asbuilt Survey Exhibit	<b>Page 54-OAH</b>
West Elevation Drawing	<b>Page 55-OAH</b>
Aerial Photograph	<b>Page 56-OAH</b>
Memorandum Agenda Changes/Supplemental Agenda for April 5, 2023	<b>Page 57-OAH</b>
Written Public Comments from Frank Griswold dated April 4, 2023	<b>Page 58-OAH</b>
Written Public Comments from Sherry Stead dated April 5, 2023	<b>Page 67-OAH</b>
April 5, 2023 Planning Commission Minutes	<b>Page 68-OAH</b>
Planning Commission Regular Meeting Agenda April 19, 2023	<b>Page 75-OAH</b>
Draft Decision and Findings Document re: Approved Conditional Use Permit (CUP) 23-04 amending CUP 23-01 106 West Bunnell Avenue	<b>Page 77-OAH</b>
April 19, 2023 Planning Commission Minutes	<b>Page 82-OAH</b>

Draft Decision and Findings Document re: Approved Conditional Use Permit (CUP) 23-04 amending  
CUP 23-01 106 West Bunnell Avenue **Page 80-OAH**

April 19, 2023 Planning Commission Minutes **Page 85-OAH**

Final Decision and Findings Document re: Approved Conditional Use Permit (CUP) 23-04 amending  
CUP 23-01 106 West Bunnell Avenue **Page 92-OAH**

Certificate of Service: I certify that on May 23, 2023, this document was sent to: Frank Griswold (by  
email); and Attorneys Michael Gatti & Max Holmquist (by email)

by:  \_\_\_\_\_  
Melissa Jacobson, MMC, City Clerk

**AMENDED NOTICE OF APPEAL TO HEARING OFFICER REGARDING HOMER  
PLANNING COMMISSION'S DECISION APPROVING CUP 23-04/23-01**

Pursuant to HCC 21.93.080, Frank Griswold hereby appeals the Homer Planning Commission's April 20, 2023 Decision, distributed on April 25, 2023, approving CUP 23-04 as an amendment to CUP 23-01. Frank Griswold's address is 519 Klondike Avenue, Homer, Alaska. The subject property is located at 106 West Bunnell Avenue, Homer, Alaska. Its legal description is Chamberlain & Watson No 4 Lot 1-A, and T 6S R 13W Sec 19 Seward Meridian HM 2011002. Parcel 17516052 is solely owned by Inlet Trading Post LLC which, in turn, is owned by Asia Freeman and Michael Walsh whose address is 106 West Bunnell #1, Homer, Alaska. The owners of Condominium Unit #2 are Melody and Scott Livingston, 106 West Bunnell #2, Homer, Alaska. Mr. Griswold actively and substantially participated in the April 5, 2023 Commission proceedings by submitting extensive written testimony. Mr. Griswold owns eight lots within the Central Business District including his residence at 519 Klondike Avenue. Not only do setback restrictions promote the community's health, safety, and welfare pursuant to the purposes listed under HCC 21.01.030, but they generate a "scarcity effect" as well. By increasing the scarcity of land available for particular uses in a particular location, the prices for those lands are bid up in the market. (See William Jaeger, The Effects of Land-use Regulations on Property Values, Environmental Law Vol. 36:105 at 106). A Milwaukee Wisconsin study found that requiring an additional 10-foot setback was associated with a price increase of 6.1% - 7.8%. Richard K. Green, Land Use Regulation and the Price of Housing in a Suburban Wisconsin County, 8 J. Housing Econ. 144. The proposed setback reduction could diminish both the value of Mr. Griswold's real property in the CBD and his enjoyment of that property. "Because reduced setbacks could potentially harm every property owner in the [Central Business] district, every property owner in that zoning district does have standing to challenge their legality. As we explained in Kanuk ex rel. Kanuk v. State, Department of Natural Resources, 'even federal law recognizes that denying injured persons standing on grounds that others are also injured - effectively preventing judicial redress for the most widespread injury solely because it is widespread - is perverse public policy.'" Griswold v. Board of Adjustment et al, 440 P.3d 248 (citations omitted).

## Allegations of Error

1. The Homer Planning Commission collectively did not have adequate training or expertise to fairly adjudicate the applications for CUP 23-01 and/or CUP 23-04 and the lay Commissioners were not provided legal counsel to compensate for their lack of training and expertise. The Fifth and Fourteenth Amendments to the US Constitution guarantee due process which requires that adjudicators must have the training, expertise, and competence to make findings and render a fair and just decision.

2. Pursuant to HCC 21.71.020(a), HCC 21.71.040(a), HCC 21.71.040(b), and HCC 21.71.050(d) the Commission does not have the authority to consider requests for multiple conditional uses under a single CUP application; findings and conditions pertaining to one conditional use may not apply to a different conditional use.

3. Pursuant to HCC 21.93.070, HCC 21.93.080 and the legal advice provided by the Homer City Attorney, the Commission did not have the authority to amend CUP 23-01 or consider CUP 23-04 as an amendment to CUP 23-01.

4. Conditions imposed by the Commission regarding CUP 23-01 do not apply to CUP 23-04 which requires distinct conditions under HCC 21.71.040(a) and HCC 21.71.040(b).

5. Pursuant to HCC 21.70.060, the application for CUP 23-04 should not have been processed because the Applicants did not pay the required CUP application fee and the Application was not determined to be complete as required under HCC 21.71.020(b).

6. Applicants failed to provide the Commission with sufficient evidence to enable meaningful review of their application as required under HCC 21.71.030; the Applicants failed to meet their burden of proof and the lack of countervailing evidence does not alone establish that this burden has been met. *Hazelton v. Zoning Board of Appeals*, 48 Ill. App.3d 348, 6 Ill. Dec. 515, 363 N.E.2d 44, 48 (1977)(cited in *Fields v. Kodiak City Council*, 628 P.2d 927 (1981)).

7. The Application for CUP 23-04 is incomplete, inaccurate, misleading, and otherwise fails to comply with HCC 21.71.020. Among myriad other deficiencies, no requisite clarification was provided regarding the seven special improvements Applicant

indicated she was willing to make by circling "yes" under item i at page 4.

8. The Commission erroneously ignored written evidence submitted by Frank Griswold. This constitutes a violation of due process guaranteed by the Fifth and fourteenth Amendments to the US Constitution.

9. The Commission violated HCC 21.71.030 by erroneously considered and made findings regarding the effects of unidentified "structures found within the 20ft setback" instead of considering the effects of the proposed setback reduction itself.

10. The Commission violated HCC 21.71.030 by failing to accurately determine the number of structures/buildings situated on the subject lot and sufficiently identify which one(s) were involved in the proposal.

11. The Commission facilitated the violation of HCC 21.71.020 (a)(1) and HCC 21.71.020(b) and outright violated HCC 21.55.010(a) and HCC 21.55.020(b) by failing to determine the individual ownership of the open spaces on the subject lot, including the front 20-foot setback and the rear parking lot.

12. The Applicant failed to identify Michael Walsh and (Ed) Scott Livingston as owners of the subject lot and the Application did not include their signatures as required under HCC 21.71.020(a)(9) (certifying that they grant the applicant the authority to apply for the CUP and are bound to the terms of the permit, if granted); the Commission erred in stating that Mr. Livingston applied for CUP 23-04.

13. The Commission erred in stating that the purpose of CUP 23-04 was to gain acceptance of structures found within the 20 foot setback. Formal acceptance of nonconforming structures is provided for under HCC 21.61.050(d) but acceptance of structures otherwise is not allowed under HCC 21.71.

14. The public notice, Application, and Decision fail to specifically identify the dimensions of the setback reduction sought as required under HCC 21.94.020(b)(1), HCC 21.71.020(a) (4), and HCC 21.71.020(a)(7).

15. The Applicants failed to submit a parking plan or disclose that the rear parking lot is dedicated for "parking by all business occupants/staff for Bunnell, The Fringe and Old Town B&B." (See Appeal of CUP 20-15 to Board of Adjustment @ R. 54). This constitutes a violation of HCC 21.71.030, HCC 21.71.020(a) (4), and HCC 21.71.020(a)(7).

16. The Commission failed to insure that adequate parking spaces were provided for the myriad uses proposed and failed to abate or deter illegal parking within the West Bunnell Avenue rights-of-way. HCC 21.90.090(a)(8) states that it is a violations of Title 21 to cause another to commit a violation of this title. The Commission's approval of CUP 23-04 makes the Commission complicit in causing the Applicants to violate Title 21.

17. The Commission misapplied the review criteria set forth in HCC 21.71.030 by focusing on the potential affects of a proposed permitted use instead of focusing on the potential affects of the proposed setback reduction. "The designation of a particular use of property as a permitted use establishes a conclusive presumption that such use does not adversely affect the district and precludes further inquiry into its effect on traffic, municipal services, property values, or the general harmony of the district." *TLC Development, Inc. v. Planning and Zoning Commission of Town of Branford* 215 Conn. 527, 577 A.2d 288 (Conn. 1990) (quoting *Beit Havurah v. Zoning Board of Appeals*, 177 Conn. 440, 443, 418 A.2d 82 (1979)).

18. The Commission violated procedural due process by merely rubber-stamping the biased findings of City Planner Rick Abboud instead of acting on its own independent consideration of the law and facts of the controversy. See *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (Philippines, 1940).

19. The Commission's Findings are inadequate, conclusionary, and not supported by substantial evidence thus constituting a violation of procedural due process. "Findings cannot be merely conclusionary, but must be based on evidence." *Day v. Williams*, 285 P.3d 256, 260 (Alaska 2012) quoting *Ethelbah v. Walker*, 225 P.3d 1082 at 1091 (Alaska 2009). There is no sufficient evidentiary basis to establish that the Commission's action was reached upon a consideration of the facts and was based upon reason rather than the whims of the individual Commissioners.

20. Mr. Abboud was neither impartial nor objective and he judged the matter and recommended approval of CUP 23-04 via Staff

Report 23-023 before considering the written evidence presented to the Commission at the April 5, 2023 public hearing. The Fifth and Fourteenth Amendments to the US Constitution guarantee due process which requires that adjudicators are fair and impartial. Mr. Abboud's partial recommendations to the Commission inappropriately influenced the Commission's Decision. See *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (Philippines, 1940).

21. The Commission erroneously adopted CUP review criteria standards under HCC 21.71.030 that were misapplied and/or inappropriately substituted by Mr. Abboud.

22. There is no evidence that locating structures closer to the rights-of-way "enhances a human scale and friendly pedestrian environment." The term "human scale" is undefined in HCC, is impermissibly ambiguous, and would apply to every structure in Homer designed for human occupancy.

23. It was inappropriate for City Planner Rick Abboud to sign the Commission's Decision and/or substitute it for the conditional use permit required under HCC 21.71.060.

24. Chair Smith's pre-hearing ex parte communication demonstrated bias. Pursuant to HCC 1.18.020 and HCC 1.18.048(a), Mr. Smith should have been disqualified from participation but he and the Commission erroneously failed to address this matter.

25. No evidence was provided by the Applicants to prove that the value of adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in the CBD. Auto repair is a permitted use in the CBD under HCC 21.18.020(dd) while setback reduction is a conditional use which therefore must be presumed to have a more negative affect on adjoining property values. Speculative conditional uses such as "homeless shelter" cannot constitute the minimal comparable standard under 21.71.030(c) because they could be heavily conditioned or denied altogether. HCC 21.71.010(c). Furthermore, HCC 21.71.030(c) is inconsistent with HCC 21.04.020(a)(4) which does not provide for comparisons with speculative conditional uses.

26. In consideration of HCC 21.71.030(c) and its ensuing issuance of Finding #3, the Commission erroneously considered the effect of unidentified structures found in the setbacks instead of the effect of the proposed setback itself on adjoining property values. Furthermore, the Commission failed to even mention the term "property value."

27. The Commission erred in finding under HCC 21.71.030(f) that when considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use and other relevant effects including those related to inadequate parking, it will not cause undue harmful effect upon desirable neighborhood character.

28. The Commission erred in finding under HCC 21.71.030(g) that the proposed setback reduction will not be unduly detrimental to the health, safety and welfare of the surrounding area and city as a whole.

29. The Commission erred in finding that with an approved CUP and issuance of a zoning permit, the proposal will comply with the applicable regulations of HCC Title 21 as required per HCC 21.71.030(h). The proposal would clearly continue to violate HCC 21.55 and myriad other applicable regulations of Title 21.

30. The Commission failed to require compliance with 13 AAC 02.340(a) which prohibits parking within 8 feet of the roadway.

31. The Commission violated HCC 21.70.030(c) by waiving, relaxing, or ignoring Fire Marshal Certification requirements, applicable CDM requirements, setback requirements prescribed under HCC 11.08.110 and HCC 11.08.050(a)(3), site plan and level two r-o-w access plan prescribed under HCC 21.18.050, retention of native vegetation **and buffers** prescribed under HCC 21.50.030(f)(1), parking space requirements prescribed under HCC 21.55, and restrictions on nonconforming structures and uses prescribed under HCC 21.61.030 and HCC 21.61.040.

32. Whether the proposed setback comports with some goals and objectives of the Homer Comprehensive Plan is irrelevant because that is not the applicable standard set forth under HCC 21.71.030(i); HCC 21.71.030(i) requires that the proposal must not be contrary to the applicable land use goals and objectives of the Comprehensive Plan.



33. The Homer Comprehensive Plan Goal of "infill" is unconstitutionally vague and infilling per se is not a valid zoning objective. See *Griswold v. City of Homer*, 925 P.2d 1015, 1023 n.9. Furthermore, the subject lot is already excessively infilled.

34. CUP 23-04 violates HCC 11.08.110 and HCC 11.08.050(a)(3).

35. The Commission failed to determine whether nonconforming uses and structures exist on the subject lot and whether the proposal violates HCC 21.61.030 and HCC 21.61.040.

36. The Commission erroneously determined that the existence of nonconforming (grandfathered) uses in a zoning district is a legal precedent for allowing other similar establishments when, in fact, the controlling legal precedent is the ordinance prohibiting such uses. "The continuation of nonconforming uses is designed to avoid the imposition of hardship on the owner of the property but eventually the nonconforming use is to be eliminated." *Cole-Collister Fire Protection Dist. v. City of Boise*, 93 Idaho 558, 561, 468 P.2d 290, 293 n.3 (1970) (citing 8A McQuillin, *Law of Municipal Corporations*, § 25.183, at 16-18 (1965)).

37. The Commission violated HCC 21.71.030(j) by failing to evaluate all of the applicable provisions of the Community Design Manual and requiring compliance thereto.

#### **Relief Sought**

The Commission's Decision should be reversed and CUP 23-01/23-04 should be denied with prejudice.

DATED: May 8, 2023

By: /Frank Griswold/  
Frank Griswold



# AGENDA

## Planning Commission - Regular Meeting

Wednesday, April 5, 2023 at 6:30 PM

City Hall Cowles Council Chambers In-Person & Via Zoom Webinar

---

### Homer City Hall

491 E. Pioneer Avenue  
Homer, Alaska 99603  
www.cityofhomer-ak.gov

### Zoom Webinar ID: 979 8816 0903 Password: 976062

<https://cityofhomer.zoom.us>  
Dial: 346-248-7799 or 669-900-6833;  
(Toll Free) 888-788-0099 or 877-853-5247

---

#### 1. CALL TO ORDER, 6:30 P.M.

#### 2. AGENDA APPROVAL

**3. PUBLIC COMMENTS** The public may speak to the Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

#### 4. RECONSIDERATION

**5. CONSENT AGENDA** All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda.

- 5. A. Unapproved Meeting Minutes  
Regular Meeting Minutes for March 15, 2023 **Pages 3-17**
- 5. B. Time Extension Request  
Right of Way Acquisition Sterling Highway Reconstruction Anchor Point to Baycrest Hill  
Preliminary Plat **Pages 18-28**
- 5. C. Decisions and Findings  
Conditional Use Permit (CUP) 23-02 at 3375 Sterling Hwy **Pages 29-33**  
Conditional Use Permit (CUP) 23-03 at 1368 Lakeshore Dr. **Pages 34-38**

#### 6. PRESENTATIONS / VISITORS

#### 7. REPORTS

- 7. A. City Planner's Report - Agenda Item Report PC 23-022 **Pages 39-43**

#### 8. PUBLIC HEARING(S)

- 8. A. Request for Conditional Use Permit (CUP) 23-04 at 106 W Bunnell Avenue for  
Approval of reduced setback from a dedicated right-of-way within the Central  
Business District.  
Agenda Item Report PC 23-023 **Pages 44-88**

## **9. PLAT CONSIDERATION(S)**

9. A. A.A. Mattox 2023 Replat Preliminary Plat  
Agenda Item Report PC 23-024 **Pages 89-101**

9. B. Bunnell's Subdivision 2023 Replat Preliminary Plat  
Agenda Item Report PC 23-025 **Pages 102-113**

## **10. PENDING BUSINESS**

## **11. NEW BUSINESS**

## **12. INFORMATIONAL MATERIALS**

12. A. City Manager's Report for March 28, 2023 **Pages 114-115**

**COMMENTS OF THE AUDIENCE** Members of the audience may address the Commission on any subject. (3 min limit)

### **COMMENTS OF THE STAFF**

### **COMMENTS OF THE COMMISSION**

### **ADJOURNMENT**

Next Regular Meeting is Wednesday, April 19th, 2023 at 6:30 p.m. A Worksession is scheduled for 5:30 p.m. All meetings are scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.



# City of Homer

www.cityofhomer-ak.gov

Planning  
491 East Pioneer Avenue  
Homer, Alaska 99603  
Planning@ci.homer.ak.us  
(p) 907-235-3106  
(f) 907-235-3118

## Staff Report 23-023

TO: Homer Planning Commission  
FROM: Rick Abboud, City Planner  
DATE: April 5, 2023  
SUBJECT: Conditional Use Permit (CUP) 23-04

**Synopsis** The applicant proposes to amend CUP 23-01 to gain acceptance of structures found within the 20ft. setback from rights-of-ways. A Conditional Use Permit (CUP) is required per HCC 21.18.040(b)(4). When approved by a conditional use permit, the setback from a dedicated right-of-way, except from the Sterling Highway or Lake Street, may be reduced in the Central Business District.

Applicant: Melody Livingston, Land/restaurant owner (Wild Honey Bistro)  
106 W Bunnell #2  
Homer, AK 99603

Location: 106 W Bunnell Ave. condo unit

Legal Description: Chamberlain & Watson No 4 Lot 1-A , and T 6S R 13W SEC 19 Seward Meridian  
HM 2011002 INLET TRADING POST CONDOMINIUMS UNIT 2

Parcel ID: 17516052 (parcel) 17516052C001 Unit 1, 17516052C002 Unit2

Size of Existing Lot: 11,441 square feet

Zoning Designation: Central Business District

Existing Land Use: Commercial mixed use

Surrounding Land Use: North: Residential condos and commercial  
South: RV Park, hotel  
East: Mixed use residential and commercial  
West: Restaurant, parking and residential condos

Comprehensive Plan: Chapter 4, Goal 4, Objective A, Implementation item 4-A-2: Create an overlay zone of the “Old Town” section of the CBD, establishing general standards for building design and construction. Aim for future buildings to continue in the style of the older buildings in the area as well as the several more recently constructed buildings that follow these traditions. Chapter 4, Goal 3: Encourage high quality buildings and site design that complements Homer’s beautiful natural setting, and Goal 1, Objective D, Implementation item 1-D-3: Support planning and zoning regulations that promote land use strategies that include compact, mixed-use development, high density development, and infill.

Wetland Status: Not within wetlands  
Flood Plain Status: Zone D, flood hazards not determined.  
BCWPD: Not within the Bridge Creek Watershed Protection District  
Utilities: Public utilities service the site.  
Public Notice: Notice was sent to 56 property owners of 40 parcels as shown on the KPB tax assessor rolls.

## **Introduction**

The applicant is proposing to tear down a portion of the existing Quonset hut like structure and extend the kitchen of the Wild Honey Bistro into its footprint. According to Kenai Peninsula Borough records, the structure to which the proposed addition is to be adjoined to was constructed in 1937. As the applicant is moving (removing) an existing structure (which affects lot coverage), a CUP has been approved per HCC 21.18.040(d) building area in excess of 30 percent of the lot area.

This amendment to the CUP is to address the portions of structures located in the 20ft. setback adjacent to rights-of-way. The previous CUP did not request approval of the reduced setback and the Commission was unable to grant the approval of the setback, as it had not been part of the application and had not been advertised to the public. The Commission made a condition of the CUP to gain approval for the structures located in the setback. As this application is an amendment to CUP 23-01, all the previous conditions apply and address the concerns of the proposed development.

## **Analysis**

### **Approval of structures within the 20' setback to West Bunnell Avenue and Main Street**

106 W Bunnell Ave is the site of four buildings and has adopted a condominium form of ownership for various elements found on the lot. Located at the northwest corner of Main Street and West Bunnell Ave, the three story Inlet Trading Post building currently houses the Bunnell Street Arts Center, Old Town Bed and Breakfast, the Fringe consignment store, and has other office space in the basement. This building will remain unchanged and is not part of the proposed new construction. The building to the west and adjacent to the three story building is the single story restaurant Wild Honey Bistro. Additionally, there two Quonset structures, one houses a dining area and the other is used for storage and is located behind the restaurant and dining area. The proposed new construction applies only to the building housing the restaurant and will not amount to any additional improvements within the 20' setback.

The requirement of the CUP allows for public review of the proposal and how it may be accommodated onsite. This particular site and some surrounding properties have created a "Homer" feel to the area for over eighty years and have inspired the recommendation found in the Comprehensive Plan to create an "Old Town" overlay zone which is intended to expand

upon the features of the older structures such as the ones found on this site. The site is already largely impervious and has maintained greenspace along lot lines. As the property was developed long before local development requirements were adopted, allowing the structures to remain within the 20' setback allows the lot to retain a relative high density and maintains a desirable pedestrian environment, as described in the Comprehensive Plan Appendix A under Central Business District and the future considerations for Downtown Mixed Use District. The existing site provides an example of most all of the design guidelines found in the Community Design Manual (CDM) that is reviewed in the attached document.



Exterior facing Bunnell Avenue 2.9.23

**Non-conforming status**

The principle structures housing the Bunnell Art Gallery and Wild Honey Bistro were built in 1937 according to Borough records, well before setback regulations applied. A review of historical photos make it unclear that the decks and porch were constructed prior to setback regulations, therefore the allowance for structures in the setback is best addressed with the code allowance for just such a condition found in code and approved with this CUP.

An amendment to the approved CUP for the structures in the setback will fulfill a requirement of CUP 23-01. As this is an amendment to CUP 23-01, the conditions of the permit remain. These conditions addressed: gaining owner signatures, offsite parking, screening requirements, use of down lit lighting fixtures, as well as gaining approval for structures within the setback.



Picture from 2018 Homer Comprehensive Plan – showing alignment of neighboring buildings

**The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030, Review criteria, and establishes the following conditions:**

a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district;

**Analysis:** HCC 21.18.040(b)(4) If approved by a conditional use permit, the setback from a dedicated right-of-way, except from the Sterling Highway or Lake Street, may be reduced.

HCC 21.18.020(a) authorizes retail business (Bunnell and the Fringe),

HCC 21.18.020(cc) authorizes a rooming house (Old Town Bed and Breakfast), and

HCC 21.18.020(d) authorizes restaurants.

CUP 23-01 authorizes more than 30% building area in the lot.

**Finding 1:** If approved by a Conditional Use Permit, the setback from a dedicated right-of-way may be reduced.

b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

**Applicant:** The purpose of the CBD zoning district is for a centrally-located shopping and restaurant, among others, and the proposed addition is compatible with the purpose of the district

**Purpose statement:** The purpose of the Central Business District is primarily to provide a centrally located area within the City for general retail shopping, personal and professional services, educational institutions, entertainment establishments, restaurants and other business uses listed in this chapter. The district is meant to accommodate a mixture of residential and nonresidential uses with conflicts being resolved in favor of nonresidential uses. Pedestrian-friendly designs and amenities are encouraged.

**Analysis:** The purposes of the structures are well within the stated purpose of the district. The structures provide elements recommended in the comprehensive plan regarding the development types. The site provides connections and accommodations for pedestrians and a host of other recommendations found in the Community Design Manual. These elements are supported with the structures and pedestrian amenities brought closer to the street creating a desirable dense, compact design in support of mixed-use as desired in this area as discussed in the 2018 Homer Comprehensive Plan. The result of the structures located closer to the rights-of-way enhances a human scale and friendly pedestrian environment.

**Finding 2:** The purpose of the Central Business District includes providing for general retail shopping, restaurants, and encourages pedestrian-friendly design and amenities. The proposed development is compatible with the purpose statement of the district.

c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

**Applicant:** Proposed project will increase adjoining property values. The project replaces an unsightly and deteriorating structure with a new useful structure that will match the aesthetics of the surrounding buildings.

**Analysis:** Many uses in the Central Business District have greater negative impacts than would be realized from location of principle uses and associated improvements in the setback. Mobile homes, auto repair, and shelters for the homeless may have a greater impact on nearby property values. Assisted living, group care, religious, cultural and fraternal assembly could generate a good deal of traffic. The architectural and pedestrian qualities of this project will help maintain neighborhood character and existing property values in support a commonly visited restaurant. The allowance for



the structures found in the setback will continue the established pattern of development to allow continued use of the well-established lots providing building to the lot line, pedestrian amenities, and parking to the rear as prescribed in the 2018 Comprehensive Plan and the Community Design Manual.

**Finding 3:** The structures found in the setbacks are not expected to negatively impact the adjoining properties greater than other permitted or conditional uses.

d. The proposal is compatible with existing uses of surrounding land.

**Applicant:** Proposed use is the same as the current use.

**Analysis:** Surrounding uses of land include AJ's restaurant and bar to the west, residential cottages of the north, mixed use commercial/residential to the east, and an RV park, private residence and hotel across the street. The structures distances into the setback is not exceptional to that of many of the neighbors. These developments may constitute nonconformities due setbacks, as they were developed prior to City regulations, but it has been recognizing through the citations of the comprehensive plan elements that these developments are a desirable for the area and not just something that should be eliminated. The site has included a restaurant for over twenty years, and the property has contained mixed uses at current density for decades. Allowing the continuance of the development within the existing setback is in-line with comprehensive plan goals for the area that encourages dense compact development.

**Finding 4:** Redevelopment of the existing restaurant with the proposed site plan and current setback distances are compatible with existing mixed uses of surrounding land.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

**Analysis:** The site is served by municipal water, sewer, police and fire services, and two city maintained paved roads.

**Finding 5:** Existing roads, public water, sewer, police and fire services are adequate to serve the site.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

**Applicant:** Use and traffic will remain consistent, but proposed building will better fit the design of adjoining buildings and be more attractive overall.

**Purpose statement:** The purpose of the Central Business District is primarily to provide a centrally located area within the City for general retail shopping, personal and professional services, educational institutions, entertainment establishments, restaurants and other business uses listed in this chapter. The district is meant to accommodate a mixture of residential and nonresidential uses with conflicts being resolved in favor of nonresidential uses. Pedestrian-friendly designs and amenities are encouraged.

**Analysis:** Desirable neighborhood character could be described by a portion of the purpose statement for the district. The proposed project is centrally located within the City of Homer and continues the general retail and restaurant uses of the property. The proposed design aligns well with existing buildings and sustains the character promoted in the Comprehensive Plan. The current setback distance promotes, mixed-use development, higher density development, and infill as supported in Chapter 4 Goal 1 Implementation item D-3 of the 2018 Homer Comprehensive Plan.

**Finding 6:** The Commission finds the proposal will not cause an undue harmful effect upon desirable neighborhood character as described in the purpose statement of the district.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

**Analysis:** Public services such as paved streets, water, sewer, and public safety are adequate to serve the proposed use. Fire Marshal review of the project is required to gain a zoning permit for construction supporting commercial occupancy.

**Finding 7:** The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area and the city as a whole when all applicable standards are met as required by city code.

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

**Analysis:** Gaining a CUP and subsequent zoning permit will require compliance with applicable regulations.

**Finding 8:** An approved CUP and zoning permit will ensure that the proposal will comply with applicable regulations and conditions specified in Title 21.

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

**Applicant:** Part of Goal One is to promote mix-use with moderate to high density, which the project accomplishes (as it better serves the current use). Goal Three encourages high quality structures and this project will increase the quality of the existing structures.

**Analysis:** Chapter 4 Goal 4 Implementation item A-2: Create an overlay zone of the “Old Town” section of the CBD, establishing general standards for building design and construction. Aim for future buildings to continue in the style of the older buildings in the area as well as the several more recently constructed buildings that follow these traditions. Goals of the Land Use Chapter of the Homer Comprehensive Plan include Chapter 4 Goal 3: Encourage high quality buildings and site design that complements Homer’s beautiful natural setting, and Goal 1 Implementation item D-3: Support planning and zoning regulations that promote land use strategies that include compact, mixed-use development, high density development, and infill.

The continued use of the buildings and structures found within the setback promote compact development and is in keeping with the applicable goals and objectives of the Comprehensive Plan. An analysis of the applicable goals and objectives of the Comprehensive Plan are attached.

**Finding 9:** The proposal is not contrary to the applicable land use goals and objects of the Comprehensive Plan. The proposal aligns Goal 1 Objective D-3, Goal 3 and Goal 4 Objective A-2 and no evidence has been found that it is contrary to the applicable land use goals and objects of the Comprehensive Plan.

j. The proposal will comply with the applicable provisions of the Community Design Manual (CDM).

**Analysis:** The three sections of the CDM apply: Site Plan Review, Architecture and Site Design. The proposed project does not significantly change the existing site plan, architecture, or site design. The CDM review will be commiserate with the scale of the proposed improvements. A review of the CDM is attached.

Staff finds the project complies with the applicable provisions of the CDM in many existing aspects and the project will provide increased compliance listed below as found in the conditions of cup 23-01:

1. The new construction will match the existing architectural style, siding material and color for the Inlet Trading Post building. Matching this style will maintain visual

compatibility between structures (see applicants supplemental response to question 2).

2. Conditions 3 and 4 to provide screening for the dumpster and parking lot.
3. Condition 6 for compliance with outdoor lighting requirements.

**Finding 11:** Conditions of CUP 23-01 provides for compliance with the applicable provisions of the CDM.

**HCC 21.71.040(b).** b. In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

- 1. Special yards and spaces:** No specific conditions deemed necessary
- 2. Fences and walls:** No specific conditions deemed necessary
- 3. Surfacing of parking areas:** No specific conditions deemed necessary.
- 4. Street and road dedications and improvements:** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress:** No specific conditions deemed necessary.
- 6. Special provisions on signs:** No specific conditions deemed necessary.
- 7. Landscaping:** No specific conditions deemed necessary.
- 8. Maintenance of the grounds, building, or structures:** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors or other similar nuisances:** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities:** No specific conditions deemed necessary.
- 11. A time period within which the proposed use shall be developed:** No specific conditions deemed necessary.
- 12. A limit on total duration of use:** No specific conditions deemed necessary.
- 13. More stringent dimensional requirements,** such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.
- 14. Other conditions necessary** to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.

**PUBLIC WORKS COMMENTS:** No comments received.

**FIRE DEPARTMENT COMMENTS:** No comments received.

**PUBLIC COMMENTS:** None at time of staff report.

**STAFF COMMENTS/RECOMMENDATIONS:**

Planning Commission approve CUP 23-01 with findings 1-10.

**Attachments**

Application

Comprehensive Plan review

CDM review

Public Notice

Aerial Photograph

**Melody Livingston**

**Scott Livingston**

Broad Point, LLC (d/b/a Wild Honey Bistro)

106 W Bunnell, Unit B

Homer, AK 99603

Ph: (907) 942-5205

Email: eat@wildhoneybistro.com

March 15, 2023

**ATTN: Planning Commission - City of Homer**

**RE:** Resubmission for hearing on April 5, 2023, of CUP 23-01 for approval of non-conforming setback for 106 W Bunnell, Unit B

Dear City Planning Commission,

This letter accompanies the resubmission of CUP 23-01 for further consideration as to the non-conforming setback. This CUP was first presented to the Commission at the March 1st hearing, earlier this year. The City Planner took the position that a separate CUP hearing was needed in order for the Commission to make a determination as to whether to accept the historically non-conforming setback for the property. We do not believe a separate hearing is necessary and have submitted a request to the Commission to clarify its decision at the presentation of Decisions and Findings at the hearing scheduled on March 15th.

However, pursuant to this letter and the accompanying attachments, we are also submitting the CUP for further consideration at the upcoming April 5th hearing in the event that the Commission determines that it is unable or unwilling to clarify its decision at the March 15th hearing.

For purposes of this resubmission, we have added a reference to the statute governing the setbacks in the Central Business District (see pg. 3, section (a); 28.18.040(b) - allowing reduction of setback on approval of CUP).

As a reminder of the discussion that occurred at the March 1st hearing:

- The Commission was made aware of the non-conformity to the setback and discussed the issue during the March 1<sup>st</sup> hearing.
- The Commission was informed about and agreed that the historically non-conforming setback for Wild Honey and the Bunnell was consistent with surrounding properties (AJ's Steakhouse, the Driftwood Inn, etc.).
- It was also noted at the hearing that there were plans in the works to modify the setback generally for Old Town. (Although these have not yet been adopted.)

As noted in the originally submitted CUP and at the March 1st hearing, the proposed project retains the existing footprint of the Wild Honey structures, does not expand the historical non-conforming setback, and all of the proposed construction is at the rear of the affected structures.

Finally, we would also remind the Commission that it has previously approved both the setback and lot coverage for the 106 W Bunnell property pursuant to a previously CUP that was submitted for this property in 2020. Under that CUP, the Commission approved a complete demolition and rebuild of the Unit B structures, allowing Wild Honey to maintain the existing footprint and thereby approving the historically non-conforming setback and lot coverage. (Wild Honey voluntarily withdrew the 2020 CUP after being unable to proceed with the project due to high building costs.) However, it seems clear that the Commission has in no instance seen the historically non-conforming lot coverage or setback as barring renovation of the Wild Honey space.

Considering the above, the materials already provided to the Commission by the applicant and the City Planner at the March 1st hearing, and the documentation attached hereto, we ask the Commission to additionally approve the non-conforming setback and direct the City Planner to move forward, with all due speed, with the administrative actions needed to allow the project to continue.

Sincerely,

A handwritten signature in black ink, appearing to read 'ML', with a long horizontal flourish extending to the right.

**Melody Livingston, Owner/Operator**  
Wild Honey Bistro (Homer, AK)

Asia Freeman  
Inlet Trading Post  
106 West Bunnell, Suite A  
Homer, AK 99603

To: City of Homer



Date: March 12, 2023

Re. CUP 23-01

I, Asia Freeman agree to be bound to any terms of CUP 23-01 that may be borne by reason of my interest of the property known as T 6S R 13W SEC 19 SEWARD MERIDIAN HM 2003005 CHAMBERLAIN & WATSON NO 4 LOT 1-A to which the CUP has been granted.

*Asia Freeman*



**From:** Asia Freeman [asia@bunnellarts.org](mailto:asia@bunnellarts.org)  

**Subject:** CUP 23-01 Wild Honey.pdf

**Date:** March 12, 2023 at 9:07 AM

**To:** Ed Livingston [livingston.edscott@gmail.com](mailto:livingston.edscott@gmail.com), (null) (null) [melodyliving@yahoo.com](mailto:melodyliving@yahoo.com), [Michael.slideruleblues@gmail.com](mailto:Michael.slideruleblues@gmail.com)

Hi Scott and Melody,

Michael and I have internet in Loreto this morning so I'm sending this along.  
We'll look out for subsequent directives.

Best,

Asia



CUP 23-01 Wild  
Honey.pdf

Asia Freeman  
Artistic Director  
[asia@bunnellarts.org](mailto:asia@bunnellarts.org)

**Melody Livingston**

Broad Point, LLC (d/b/a Wild Honey Bistro)  
106 W Bunnell, Unit 2  
Homer, AK 99603  
Ph: (907) 942-5205  
Email: eat@wildhoneybistro.com

February 8, 2023

ATTN: **Planning Commission - City of Homer**

RE: **Cover Letter to CUP for 106 W Bunnell, Unit B**

Dear City Planning Commission,

This letter accompanies and supplements the CUP submitted on February 8, 2023. The CUP was submitted for approval for the tear down of an existing, deteriorating structure and replacing with a new structure on the same footprint that will provide a dedicated food preparation space accessible from the currently-existing cafe.

Currently, the property is historically non-conforming in regard to lot coverage and the set back. The set back is not at issue under this CUP as no changes are proposed to the Bunnell side of the property and the setback will not be affected. Lot coverage also remains unchanged as the proposed demolition and construction simply replaces an existing building that is quickly deteriorating and will eventually become unusable in order to add kitchen prep space to the existing cafe. The lot coverage, and overall square footage for Wild Honey and the property overall, does not change under this proposal.

As noted, granting the CUP is justified as the non-conforming elements are either unaffected or remain unchanged by the proposed work and the work proposed constitutes a direct improvement to the property and will be positive for the neighborhood as it upgrades the long-term viability of the property and the aesthetics of the property for the surrounding neighbors. In short, the status quo is maintained as to the non-conforming elements and significant improvements will be made under the proposal.

- Question 1 - The property is currently a commercial condo with two units:
  - Unit 2 (16% ownership, by internal square footage) is owned by the CUP applicant, is used as a restaurant (Wild Honey Bistro), and consists of three structures - the cafe space, which is attached to but not accessible from the Bunnell building; a smaller quonset hut that sits to the West of the cafe and is used as a seating annex; and a larger quonset hut in the rear used for general storage.

- Unit 1 (84% ownership, by internal square footage) consists of a single structure housing the Bunnell Arts Center (art gallery), Old Town Bed & Breakfast (short-term rental space), and The Fringe (clothing retail).

The lot is 0.26 acres (11,441 sq. ft.). Lot coverage is estimated to be just under 36%. This estimate was calculated by taking the outside dimensions of the Bunnell Arts Center building (~67 ft. x 37 ft = 2442 sq. ft.) and outside dimensions of the space covered by the three structures constituting Unit 2 (~37 ft. x 44 ft = 1628 sq. ft.) and dividing the combined total square footage (2,442 sq. ft. + 1,628 sq. ft. = 4,070 sq. ft.) against the lot size (4,070 sq. ft. ÷ 11,441 sq. ft. = 35.58%).

- Question 2 - Use of the property will not change and Unit 2 will continue to be used as a dine-in/carry-out restaurant. The rear quonset hut will be partially demolished in order to allow for construction of a prep kitchen, which will be connected to the rear of the existing, original cafe structure. No other changes will be made to the other structures or to the front (Bunnell Avenue) side of the property.

The planned demo and new building will replace the old, deteriorating quonset hut structure with a useful space that will better allow Wild Honey to service its current customers. The new structure will also be sided and painted to match the main Bunnell building and the Bunnell Avenue side of the existing cafe. This will be much more visually pleasing than current.

- CUP Review Criteria (f) & Parking Questions - The CUP does not reduce the currently-available parking, nor does it seek or require an expansion of available parking.

Wild Honey Bistro has inside seating available for up to 24 customers (4 two-top tables in the main cafe, and 8 two-top tables in the small quonset annex) and overflow seating on the outside deck for 8 (two four-top tables) that is available in the summer, weather permitting. The proposed construction does not add or reduce total seating.

Current parking is available in the front (approximately 20 spaces, counting both side of Bunnell) and rear (10 spots) of the cafe, and Wild Honey has an agreement with the owner of AJ's Steakhouse for use of their parking lot in the mornings and afternoons, prior to AJ's opening at 5:00PM. None of this parking will be affected by the proposed changes.

The existing cafe has a very small kitchen space which limits how quickly customer orders can be fulfilled. During the summer season, wait times get excessively long due to the limited capacity of the current kitchen space (getting up to over an hour during the height of the season). Additionally, prep during the summer season has to happen outside of normal work hours as the kitchen is not able to

simultaneously handle prep work and servicing customer orders when the cafe is busy.

Converting a portion of the back quonset hut to kitchen prep space will help reduce wait times and allow prep work to be done at the same time that customer orders are being completed. The new prep space also will allow onsite preparation of all bakery products, the majority of which are currently being prepared in a cottage kitchen offsite.

Due to reduced wait times, approval of the CUP may actually result in lower parking competition as customers will be less likely to build up on the site while they wait to be served. This will be particularly impactful during summer months where parking competition is highest. As noted above and elsewhere in the application, the CUP simply seeks to add a prep space to the existing Wild Honey cafe structure. The renovation will not add any additional seating and overall square footage will stay the same.

The addition of a dedicated prep space will allow better service of the existing customer base as noted above, but will also provide a better working environment for Wild Honey's employees. Wild Honey employees will benefit as the new space will allow prep work to be done during regular business hours, rather than on days that the cafe would otherwise be closed or evening hours.

In addition to the responses above, please note that we will be working with the Fire Marshall and Alaska DEC to ensure that the kitchen expansion meets fire and food service requirements and that we are in compliance with all required permits and approvals.

If there is additional information that will assist with making a determination, please let us know and we will be happy to provide.

Sincerely,



**Melody Livingston, Owner/Operator**  
Wild Honey Bistro (Homer, AK)

**Asia Freeman**  
**Michael Walsh**  
106 W Bunnell Ave, Unit 1  
Homer, AK 99603  
asia@bunnellarts.org  
slideruleblues@gmail.com

February 7, 2023

**Melody Livingston**

Broad Point, LLC (d/b/a Wild Honey Bistro)  
106 W Bunnell Ave, Unit 2  
Homer, AK 99603  
Ph: (907) 942-5205  
Email: eat@wildhoneybistro.com

RE: Support for February 2023 CUP Application Submitted by  
Melody Livingston for 106 W Bunnell Ave, Unit 2

Dear Melody,

Michael and I are pleased to support your CUP application which works within the existing footprint and sightlines of the historic Inlet Trading Post.

We appreciate that your plan, including the drawing and description, shows that you will remove a dilapidated storage structure behind the existing cafe and replace it with an attractive and functional kitchen space that will be sided and painted to match the Trading Post. We like that your plan overall does not change the building's historic silhouette.

We appreciate your plan for structural and functional improvement of the building within Wild Honey Bistro's existing footprint as a cafe.

Thank you for your thoughtfulness in this design and your patience with this process of working towards both historic preservation of a Homer landmark, and improved functionality for your wonderful cafe.

Sincerely,

*Asia Freeman*

**Asia Freeman**  
Owner, 106 W Bunnell Ave, Unit 1



**Michael Walsh**  
Owner, 106 W Bunnell Ave, Unit 1



# City of Homer

www.cityofhomer-ak.gov

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

<b>Applicant</b>	
Name: <u>Melody Livingston</u>	Phone No.: <u>(907) 942-5205</u>
Address: <u>51789 East End RD</u>	Email: <u>melodyliving@yahoo.com</u>
<b>Property Owner (if different than the applicant):</b>	
Name: <u>(same as applicant)</u>	Phone No.: _____
Address: _____	Email: _____
<b>PROPERTY INFORMATION:</b>	
Address: <u>106 W Bunnell Ave, Unit B</u>	Lot Size: <u>0.26</u> acres KPB Tax ID # <u>17516052</u>
Legal Description of Property: <u>T65 R13W, Chamberline &amp; Watson N.4 Lot 1-A</u>	
<i>For staff use:</i>	
Date: _____	Fee submittal: Amount _____
Received by: _____	Date application accepted as complete _____
Planning Commission Public Hearing Date: _____	

### Conditional Use Permit Application Requirements:

1. Site Plan - drawn to a scale of not less than 1" = 20' which shows existing and proposed structures, clearing, fill, vegetation and drainage
2. Right of Way Access Plan
3. Parking Plan
4. A map showing neighboring lots and a narrative description of the existing uses of all neighboring lots. (Planning staff can provide a blank map.)
5. This completed application form
6. Payment of application fee (nonrefundable)
7. Any other information required by Code or staff to review your project

### Circle Your Zoning District

	RR	UR	RO	<u>CBD</u>	TCD	GBD	GC1	GC2	MC	MI	EEMU	BCWPD
Level 1 Site Plan	X	X	X			X			X			X
Level 1 ROW Access Plan	X	X							X			
Level 1 Site Development Standards	X	X										
Level 1 Lighting			X	X	X	X	X	X	X	X	X	
Level 2 Site Plan			X	X	X		X	X		X	X	
Level 2 ROW Access Plan			X	X	X		X	X		X	X	
Level 2 Site Development Standards			X	X	X	X	X	X			X	
Level 3 Site Development Standards									X	X		
Level 3 ROW Access Plan						X						
DAP/SWP questionnaire				X	X	X	X	X			X	

**Circle applicable additional permits. Planning staff can assist with these questions.**

- Y  N Are you building or remodeling a commercial structure, or multifamily building with more than three (3) apartments? If yes, Fire Marshal Certification is required.  
Status: \_\_\_\_\_
- Y  N Will development trigger a Development Activity Plan?  
Application Status: \_\_\_\_\_
- Y  N Will development trigger a Storm Water Plan?  
Application Status: \_\_\_\_\_
- Y  N Does the site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required. Application Status: \_\_\_\_\_
- Y  N Is development in a floodplain? If yes, a Flood Development Permit is required.
- Y  N Does the project trigger a Community Design Manual review?  
If yes, complete the design review application form. The Community Design Manual is online at: <https://www.cityofhomer-ak.gov/planning/community-design-manual>
- Y  N Do the project require a traffic impact analysis?
- Y  N Are there any nonconforming uses or structures on the property?
- Y  N Have nonconforming uses or structures on the property been formally accepted by the Homer Advisory Planning Commission?
- Y  N Does the site have a State or City driveway permit? Status: Active
- Y  N Does the site have active City water and sewer permits? Status: Active

**Conditional Use Permit Application Questions.** Use additional sheets if necessary.

1. Currently, how is the property used? Are there buildings on the property? How many square feet? Uses within the building(s)?

See cover letter for response.

---



---



---



---

2. What is the proposed use of the property? How do you intend to develop the property?

Attach additional sheet if needed. Provide as much information as possible.

See cover letter for response.

---



---



---



---

**Conditional Use Permit Review Criteria Information.** Use additional sheets if necessary. Per HCC 21.71.030 Review Criteria, the applicant must produce evidence sufficient to enable meaningful review of the application. Unless exceptions or other criteria are stated elsewhere in the Code, the application will be reviewed under these criteria:

- a. What code citation authorizes each proposed use and structure by conditional use permit?  
21.18.040(d) - greater than 30 percent lot coverage on approval of CUP; 21.18.040(b) - setback may be reduced on approval of CUP  
21.18.020(d) - permitted use of restaurant; 21.18.030(a) - conditional use for planned unit developments;  
21.18.030(h) - conditional use allowing more than one building containing a permitted principal use on lot
- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district.  
The purpose of the CBD zoning district is for a centrally-located shopping and restaurant, among others, and the proposed addition is compatible with the purpose of the zoning district and the current use of the property.
- c. How will your proposed project affect adjoining property values?  
Proposed project will increase adjoining property values. The project replaces an unsightly and deteriorating structure with a new, useful structure that will match the aesthetics of the surrounding buildings.
- d. How is your proposal compatible with existing uses of the surrounding land?  
Propose use is the same as the current use.
- e. Are/will public services adequate to serve the proposed uses and structures?  
Yes.
- f. How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected?  
Use an traffic will remain consistent with current use. The proposal is designed to allow better service relating to the current use and traffic levels. The project will enhance the current use, may help relieve congestion during peak periods of parking compellion (see cover letter for additional details on this point), will better fit the design of adjoining building, and be more attractive overall.



g. Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole?

No.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

h. How does your project relate to the goals of the Comprehensive Plan? Find the Comprehensive Plan on the City's website:

www.cityofhomer-ak.gov/planning/comprehensive-plan

Part of Goal One is to promote mix-use with moderate to high density, which the project accomplishes (as it better serves the current use).

Goal Three encourages high quality structures and this project will increase the quality of the existing structures.

\_\_\_\_\_  
\_\_\_\_\_

i. The Planning Commission may require special improvements. Are any of the following a component of the development plan, or are there suggestions on special improvements you would be willing to make? **Circle each answer and provide clarification on additional pages if Yes is selected.**

- 1. Y/N Special yards and spaces
- 2. Y/N Fences, walls and screening
- 3. Y/N Surfacing of parking areas
- 4. Y/N Street and road dedications and improvements (or bonds)
- 5. Y/N Control of points of vehicular ingress and egress
- 6. Y/N Special provisions on signs
- 7. Y/N Landscaping
- 8. Y/N Maintenance of the grounds, buildings, or structures
- 9. Y/N Control of noise, vibration, odors, lighting, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances
- 10. Y/N Time for certain activities
- 11. Y/N A time period within which the proposed use shall be developed
- 12. Y/N A limit on total duration of use
- 13. Y/N Special dimensional requirements such as lot area, setbacks, building height
- 14. Y/N Other conditions deemed necessary to protect the interest of the community

**Parking Questions.**

- 1. How many parking spaces are required for your development? No additional parking required  
If more than 24 spaces are required see HCC 21.50.030(f)(1)(b)
- 2. How many spaces are shown on your parking plan? see cover letter
- 3. Are you requesting any reductions? No

I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property: Page 21 of 44

**CIRCLE ONE:**

Owner of record

Lessee

Contract purchaser

Per HCC 21.71.020(a)(9), if the applicant is not the owner of the subject lot, the owner's signed authorization grants the applicant authority to:

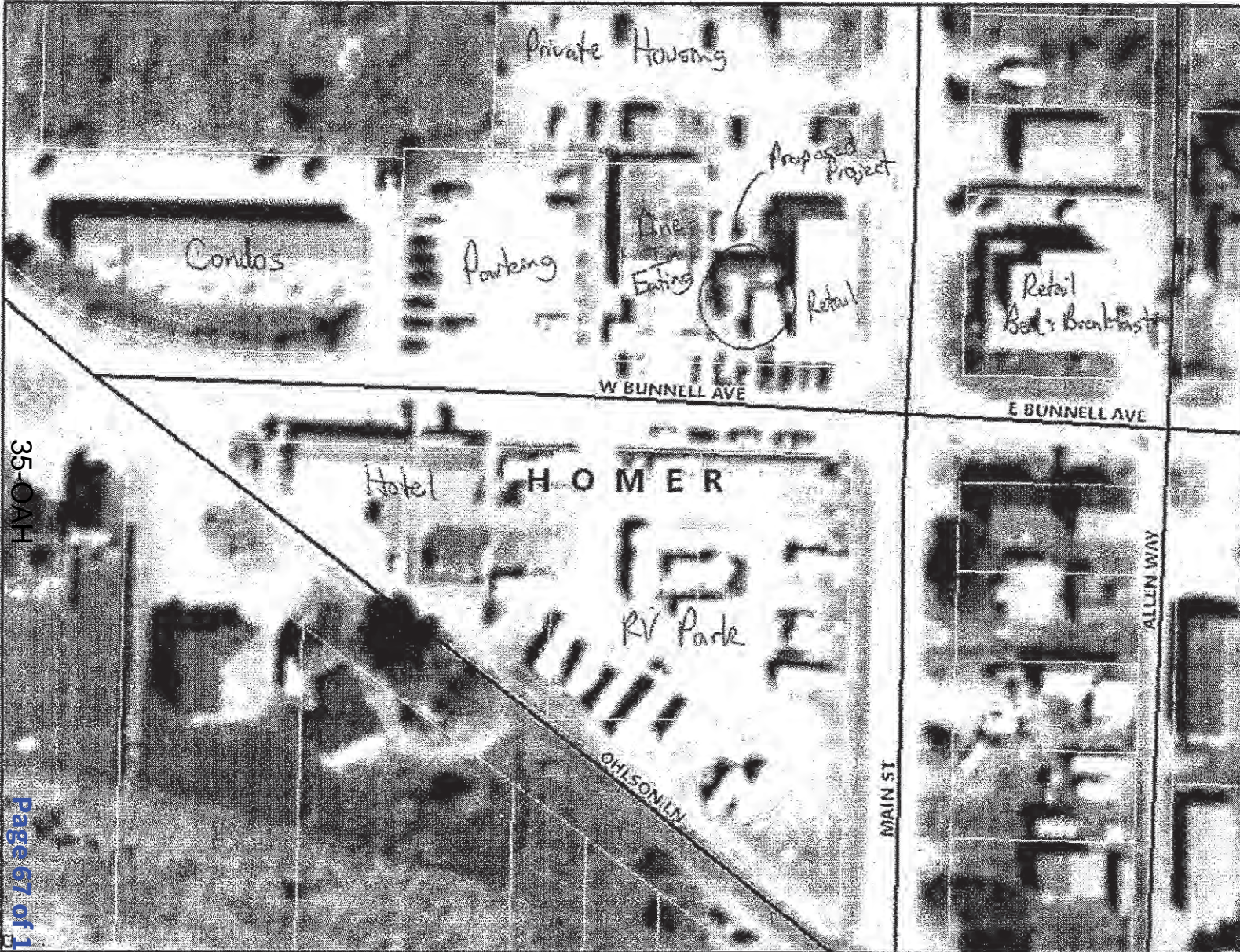
- (a) apply for the conditional use permit, and
- (b) bind the owner to the terms of the conditional use permit, if granted.

Applicant signature:  Date: 2/8/23

Property Owner signature:  Date: 2/8/23



Map title goes here.



Legend

- Mileposts
- City Limits
- Highways
- Major Roads
- Roads
  - Town Medium Volume
  - Town Low/Seasonal, Other
  - Proposed
- Parcels

35-OAH

Page 67 of 116

Page 29 of 64



Coordinate System: NAD\_1983\_StatePlane\_Alaska\_4\_FIPS\_5004\_Feet

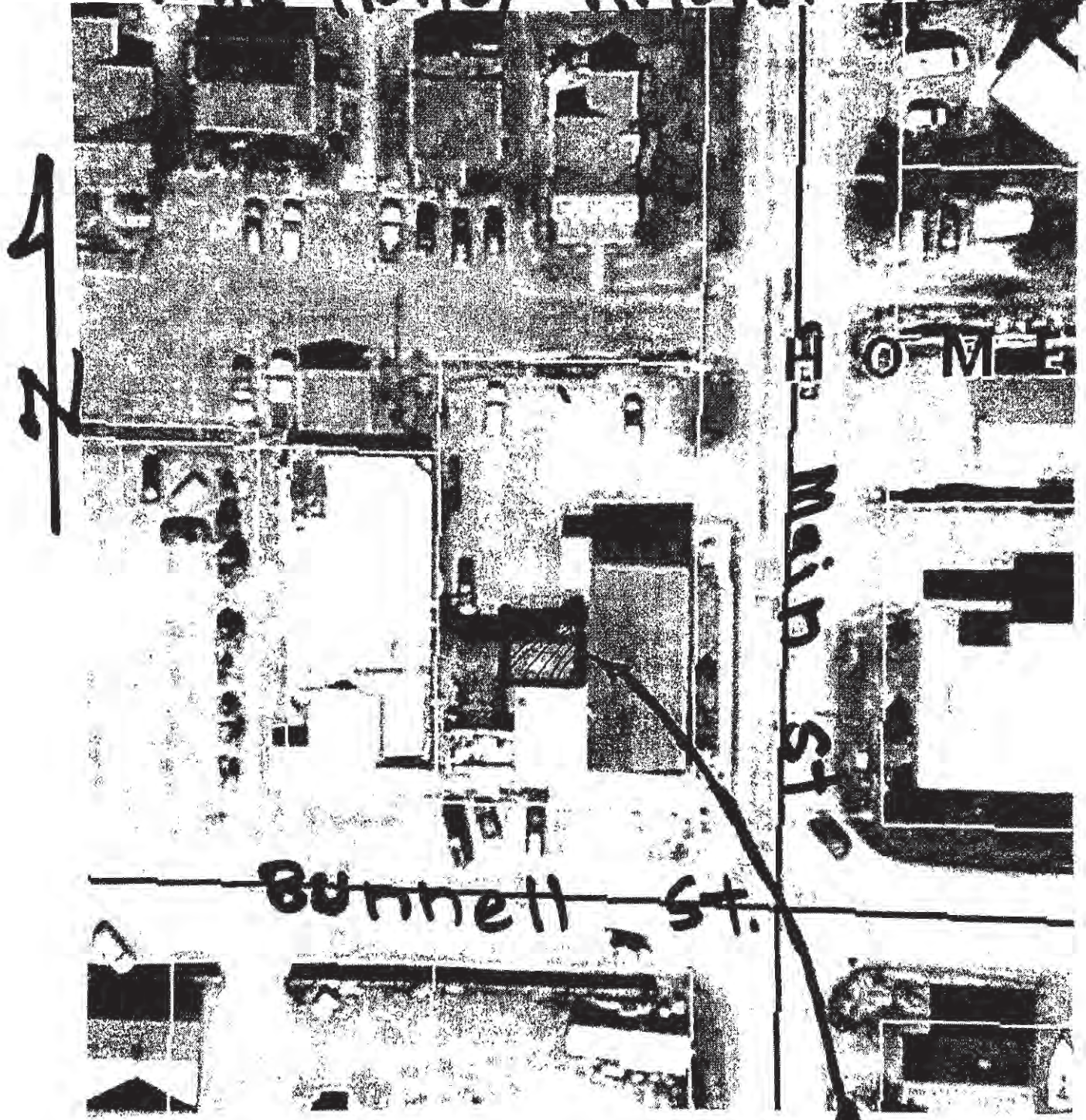
This map is a user generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. Do not use for navigation.

DATE PRINTED: 8/26/2020

Notes

Enter map notes here.

# Wild Honey Kitchen Remodel



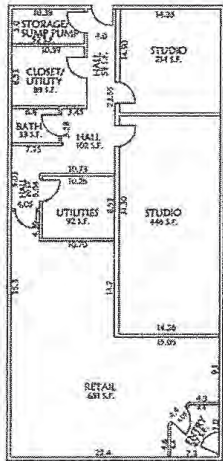
Scale (approximate)  
1" = 40'-0"

area for demo & replacement

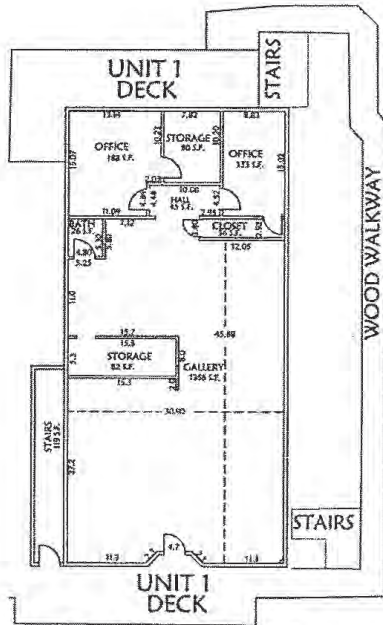
## site Plan

# INLET TRADING POST UNIT 1

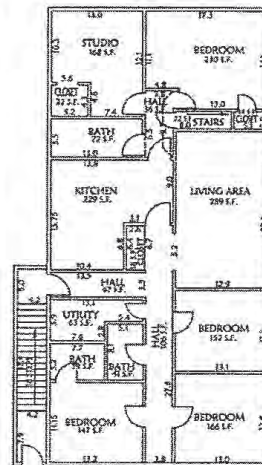
UNIT 1 INTERIOR  
 BASEMENT 1815 SQ. FT.  
 FIRST FLOOR 2065 SQ. FT.  
 SECOND FLOOR 1858 SQ. FT.  
 TOTAL 5738 SQ. FT.



**BASEMENT**  
 DECLARANT RESERVES RIGHT TO ESTABLISH AS A SEPARATE UNIT.



**GROUND FLOOR**  
 DECLARANT RESERVES RIGHT TO ESTABLISH AS A SEPARATE UNIT.



**SECOND FLOOR**  
 DECLARANT RESERVES RIGHT TO ESTABLISH AS A SEPARATE UNIT.



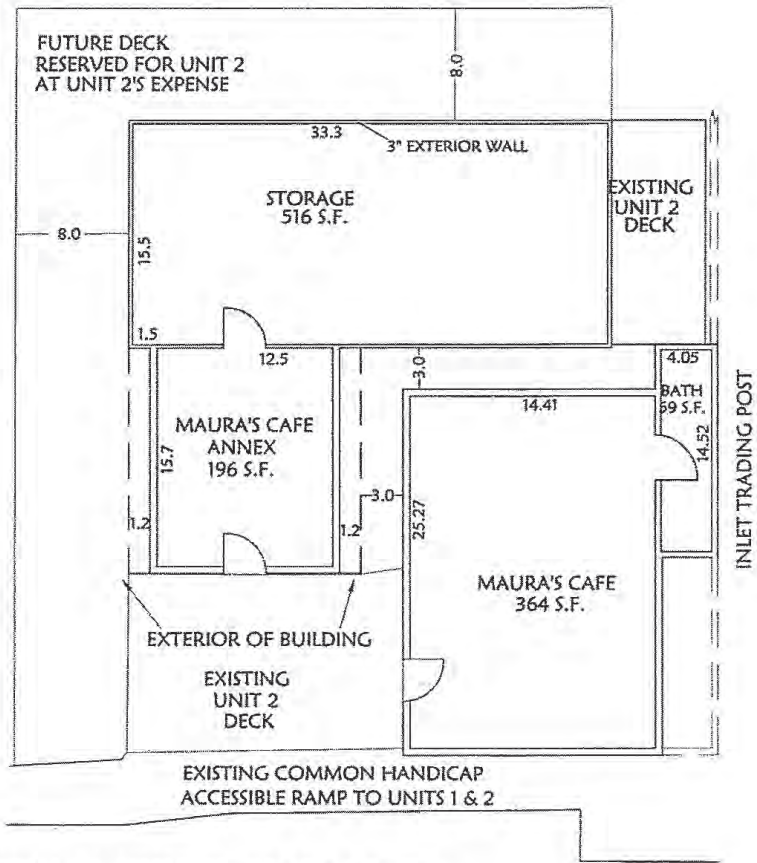
SCALE 1" = 10'

NOTE: 1. ALL AREAS SHOWN ARE NET INTERIOR.  
 AREAS DO NOT INCLUDE SPACE OCCUPIED BY INTERIOR WALLS

<b>INLET TRADING POST                  ASBUILT DRAWING</b>	
LOT 1-A CHAMBERLAIN AND WATSON NO. 4 RECORDED AS PLAT NO. 2003-005 H.R.D. LOCATED IN THE SW 1/4 SEC. 19., T. 65., R. 13W. S.M. WITHIN THE CITY OF HOMER KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (H.R.D.), CONTAINING 0.26 ACRES MORE OR LESS	
<b>SEABRIGHT SURVEY &amp; DESIGN</b> 1044 EAST ROAD, SUITE A HOMER, ALASKA 99603 (907) 235-4247 EMAIL: seabrightz@gmail.com	
DRAWN BY: KB	DATE: 1-2011
SCALE: 1" = 10'	SHEET 2 OF 4

MAURA'S CAFE  
UNIT 2

UNIT 2 INTERIOR  
TOTAL 1076 SQ. FT.



SCALE 1" = 5'

NOTE: 1. ALL AREAS SHOWN ARE NET INTERIOR.  
AREAS DO NOT INCLUDE SPACE OCCUPIED BY INTERIOR WALLS

<p><b>INLET TRADING POST</b> ASBUILT DRAWING LOT 1-A CHAMBERLAIN AND WATSON NO. 4 RECORDED AS PLAT NO. 2003-005 H.R.D. LOCATED IN THE SW 1/4 SEC. 19., T. 65., R. 13W., S.M. WITHIN THE CITY OF HOMER KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (H.R.D.), CONTAINING 0.26 ACRES MORE OR LESS</p>		
<p><b>SEABRIGHT SURVEY &amp; DESIGN</b> 1044 EAST ROAD, SUITE A HOMER ALASKA 99603 (907) 235-4247 EMAIL: seabrightz@gmail.com</p>		
DRAWN BY: KB	DATE: 1-2011	SCALE: 1" = 5'
CHECKED BY: KB	JOB NO: 116	SHEET 3 OF 4

80

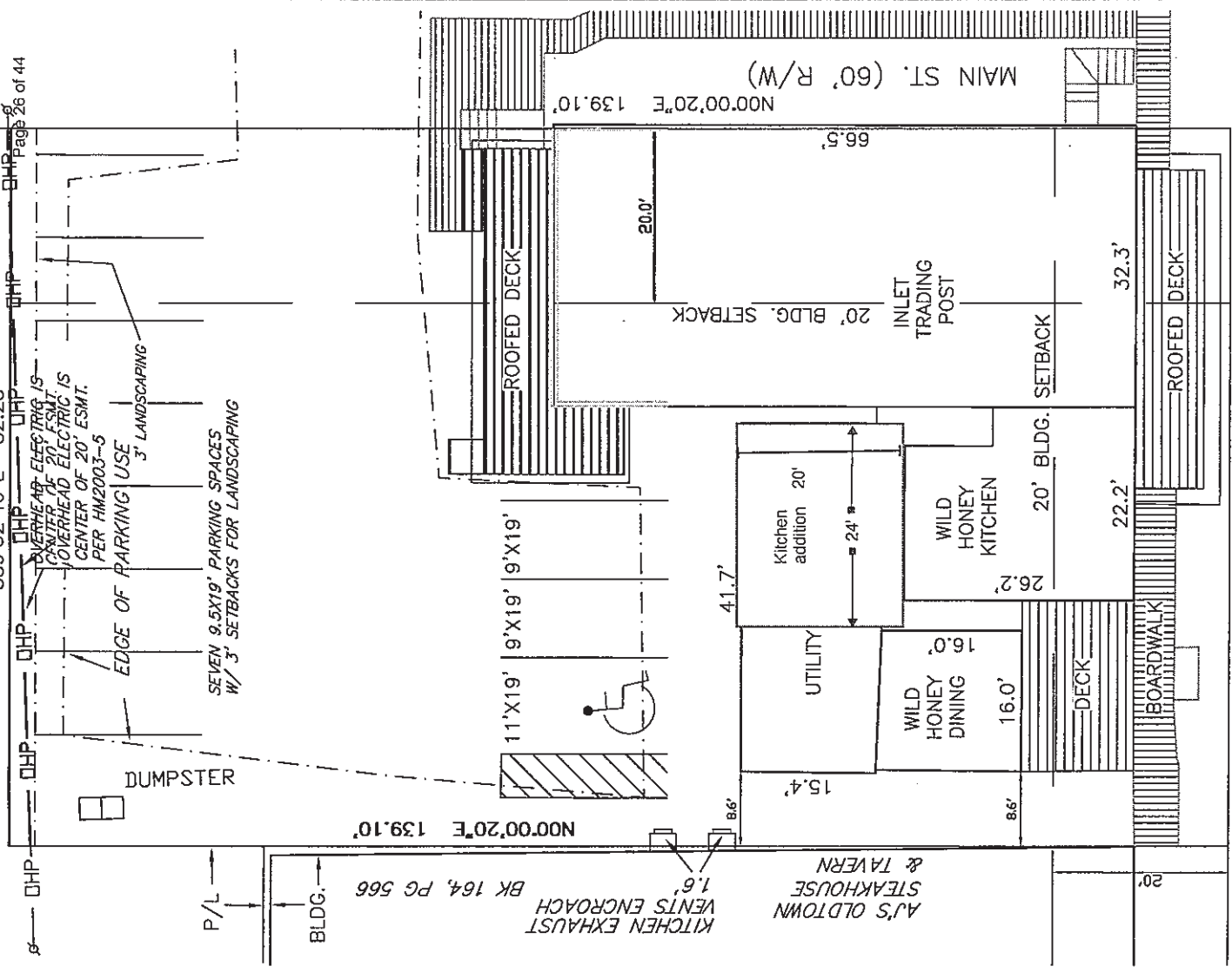
HOMER 2011-2

Page 70 of 116  
page 3 of 4

LOT 2-A-1, HM2007-134

S89°52'40"E 82.25'

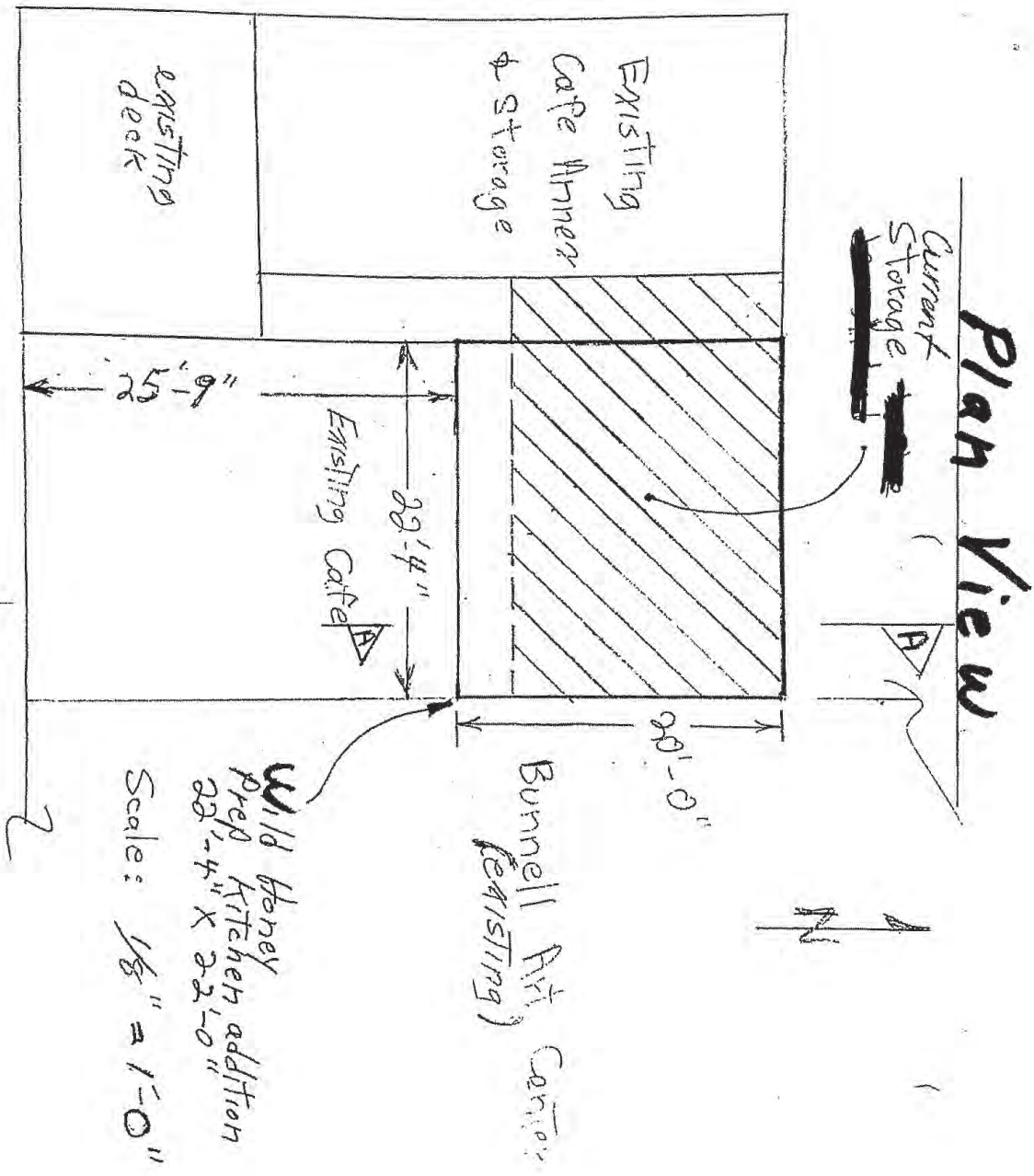
DHP Page 26 of 44



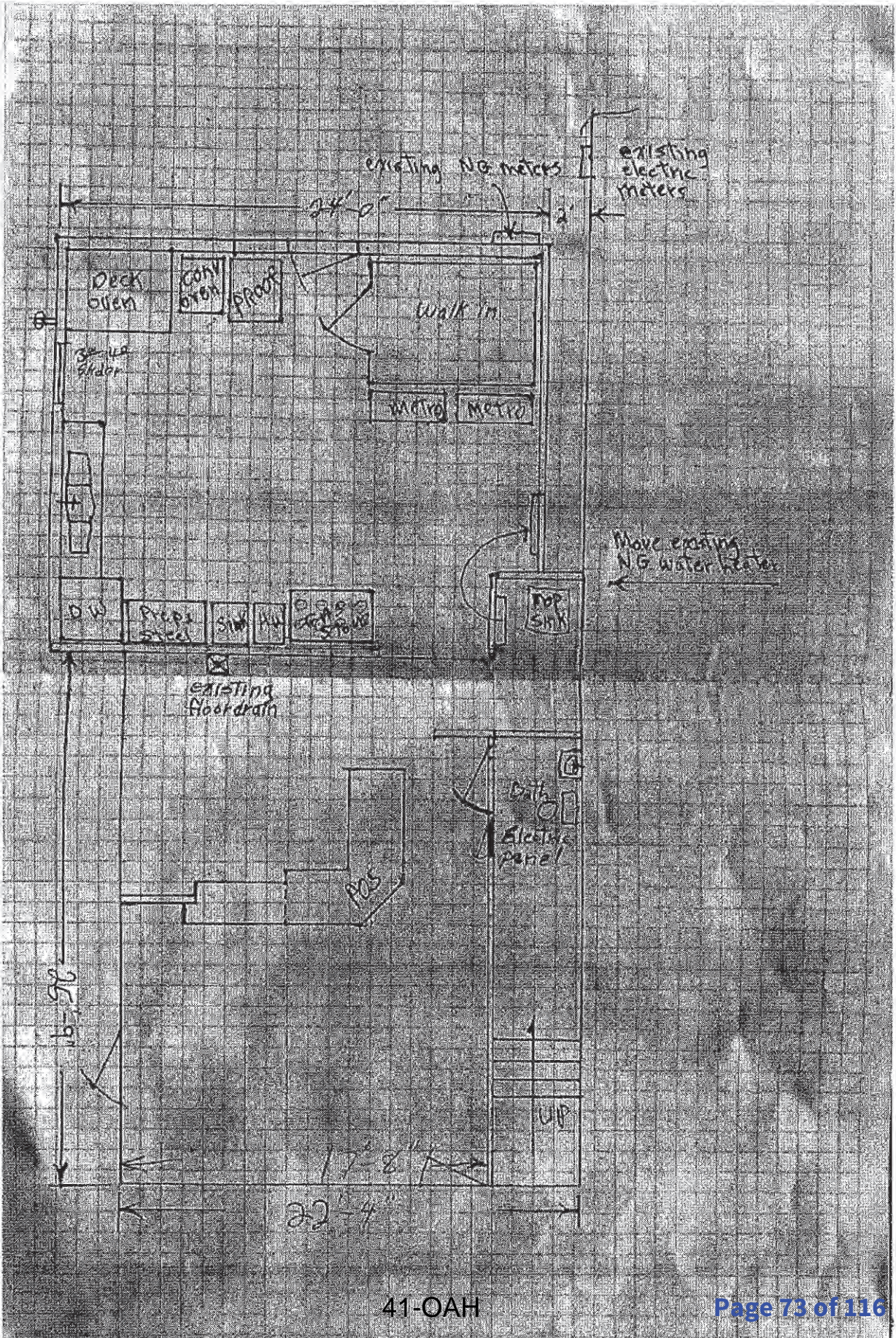
S89°52'40"E 82.25'  
W. BUNNELL AVE.  
50' ROW



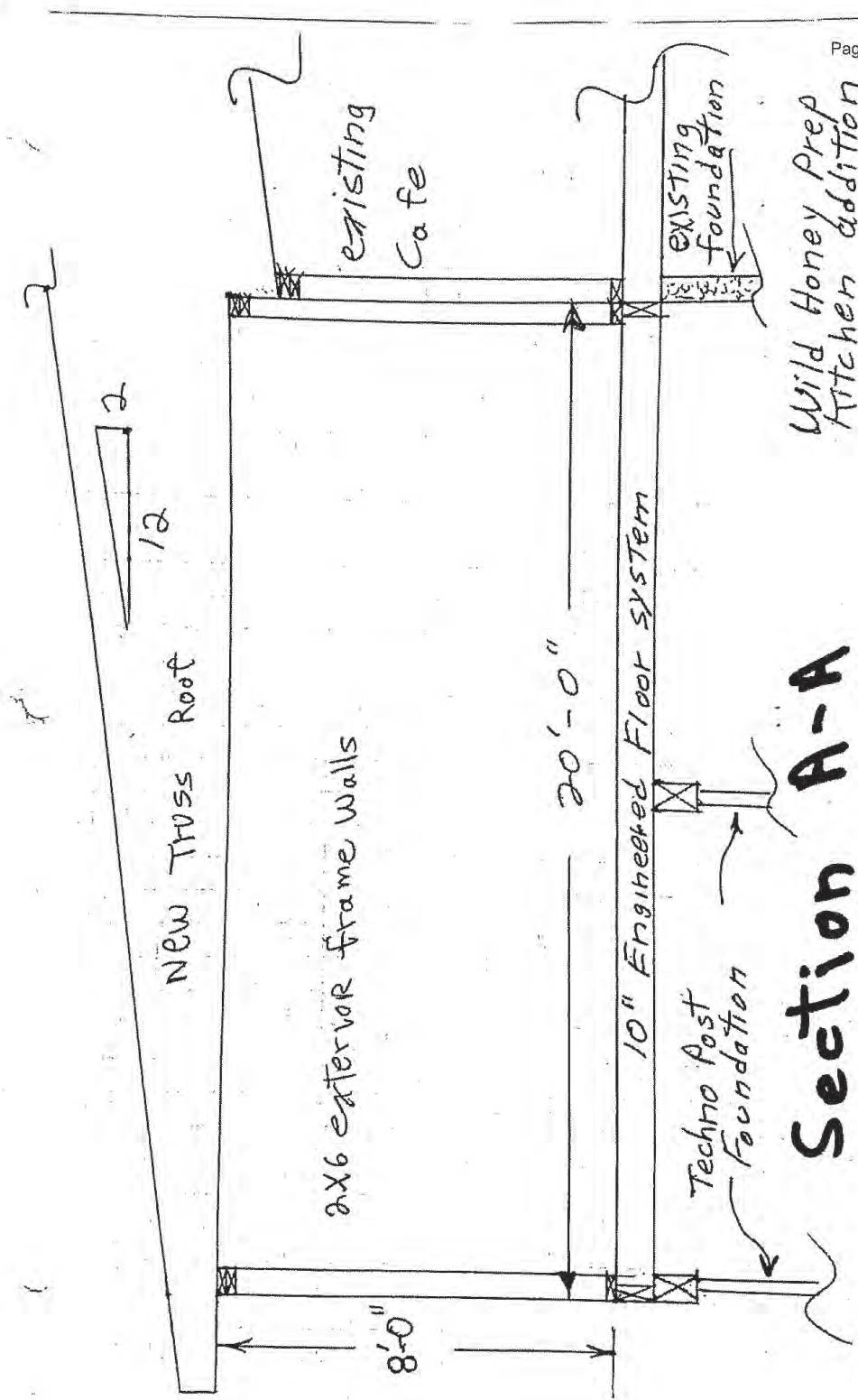
JOB No.	5225
DATE	08/26/2020
SCALE	1" = 15'
ADDRESS:	106 W. BUNNELL AVE
DRAWING	5225-513B-5169
TAX PARCEL	17516052
PLAT No.	2011-2
SECTION	SE-1/4, 19
TOWNSHIP	39 <sup>00</sup> OAH
RANGE	13W (5M)
<b>AS-BUILT EXHIBIT</b>	
LOT 1-A CHAMBERLAIN & WATSON NO.4	
WITHIN SET/4 SEC 19, T 6S, R 13W (S.M.) IN THE CITY OF HOMER HOMER RECORDING DISTRICT	
<b>ABILITY SURVEYS</b>	
REGISTERED LAND SURVEYORS (907) 235-8800 152 DEHEL AVE., HOMER, ALASKA 99603	











Drawn 1-16-23  
Page 75 of 116

**Section A-A**

Scale: 3/8" = 1'-0"

Wild Honey Prep  
Kitchen addition

**GOAL 1:** Guiding Homer’s growth with a focus on increasing the supply and diversity of housing, protect community character, encouraging infill, and helping minimize global impacts of public facilities including limiting greenhouse gas emissions.

**Objective A:** Promote a pattern of growth characterized by a concentrated mixed-use center, and a surrounding ring of moderate-to-high density residential and mixed-use areas with lower densities in outlying areas.

**Staff:** This project supports the concentrated mixed-use center (of town) and maintains established community character.

**Objective B:** Develop clear and well-defined land use regulations and update the zoning map in support of the desired pattern of growth.

N/A – not associated with update of zoning map.

**Objective C:** Maintain high quality residential neighborhoods; promote housing choice by supporting a variety of dwelling options.

N/A – not in a residential zone

**Objective D:** Consider the regional and global impacts of development in Homer.

**Staff:** This projects supports implementation items D-2 and D-3, promoting concentrated, mixed use, and higher density development.

**GOAL 2:** Maintain the quality of Homer’s natural environment and scenic beauty.

**Objective A:** Complete and maintain a detailed “green infrastructure” map for the City of Homer and environs that presents an integrated functional system of environmental features on lands in both public and private ownership and use green infrastructure concepts in the review and approval of development projects.

N/A – not associated with mapping

**Objective B:** Continue to review and refine development standards and require development practices that protect environmental functions.

N/A – not associated with creation of development standards

**Objective C:** Provide extra protection for areas with highest environmental value or development constraints.

N/A – Already developed area, no change in impact is proposed.

**Objective D:** Collaborate with jurisdictions outside the City of Homer, as well as state and federal agencies, to ensure that environmental quality is maintained.

N/A – not associated with other jurisdictions

**GOAL 3:** Encourage high-quality buildings and site development that complement Homer’s beautiful natural setting.

**Objective A:** Create a clear, coordinated regulatory framework that guides development.

**Staff:** Goal 3, objective A implementation items are all directives to review and consider new policies and are not directly applicable to CUP’s.

**Objective B:** Encourage high quality site design and buildings.

**Staff:** The proposal increases the quality of building by replacement of poor quality structure with a new addition that is required to gain approval of the State Fire Marshall.

**GOAL 4:** Support the development of a variety of well-defined commercial/business districts for a range of commercial purposes.

**Objective A:** Encourage a concentrated, pedestrian oriented, attractive business/commerce district in the Central Business District (CBD) following the guidelines found in the Town Center Development Plan.

**Staff:** The proposal provides updates of a lot that provide an example of the objectives listed in objective A and the Community Design Manual. The site design provides a template that is recommended to be forwarded in consideration of future regulations.

**Objective B:** Discourage strip development along the Sterling Highway and major collectors/thoroughfares.

**Staff:** This proposal supports for maintaining a concentrated development existing in the CBD and that is not located on a major collector.

**Finding:**

The proposal is not contrary to the applicable land use goals and objects of the Comprehensive Plan.

## Staff CDM Review CUP 23-01/04

The Community Design Manual (CDM) was adopted by resolution in April 2004, amended in January 2009 and 2021. The CDM is divided into sections: architecture, site design, and outdoor lighting. The architecture, site design, and outdoor lighting sections are applicable to conditional uses within the central business district.

This Design Review Manual represents a statement of policies which shall be observed for building and site design in the City of Homer. The Commission is authorized to waive specific Design Manual requirements if it finds that (a) an alternative design represents an equivalent or superior design solution to what would otherwise be achieved by rigidly applying specific requirements, or (b) the alternative design meets the intent of the general requirement, or (c) reasonably meets the intent of the CMD when considering the constraints of the building site, building use, or excessive material costs.

**Staff:** In this instance, we find a ‘model’ existing development that espouses most of the elements of the Community Design Manual and forms the basis for reproduction of its elements, as explained in the CUP staff report regarding the concept of an “Old Town Overlay” District referenced in the 2018 Homer Comprehensive Plan.

The Applicant is making a change to a small percentage of the site that, in itself, constitutes a greater compliance with the CDM. The proposal is minimal and introduces an improvement to the rear of the property. The measures applied to the site should be in consideration of the constraints of the site and in relation to the extent of the proposed improvements. In this case, a few minor changes will provide a benefit within reason of the scale of the proposal, while a great deal of compliance with the manual is existing. The addition does not add any new requirements for parking or introduce addition to the footprint.

### ***Architecture Review (Begins on page 1-1)***

*The building and its setting:* Buildings shall be designed to reflect the natural conditions of the site and shall include design elements, which visually anchor the building to the site.

1. Incorporate building design elements into landscaped areas.
2. Respect natural topography.

**Staff:** No change to the existing natural conditions are proposed. The site began development in 1937.

*Hierarchy in building design:* Visual interest in the urban-scape can be achieved through a hierarchal approach to design. For example, strategically located structures, architectural elements or site amenities designed as focal points create a visual “draw” and suggest a point of activity. These also serve as a reference point for all subordinate structures. This concept is particularly applicable to large parcels with multiple structures. Multiple carbon copy buildings provide no visual hub and shall be avoided.

1. Design primary structure as a focal point.
2. Include area for outdoor leisure for Primary Structure.
3. Incorporate multiple tenant spaces into hierarchy of building design.

4. *Provide common architectural treatment.*
5. *Integrate secondary structures as support buildings.*

**Staff:** The applicant is proposing additional compliance with building design, as the expansion is to be treated with a uniform architectural treatment that exists on the main structures. The existing structures form adequate hierarchy, including outdoor areas.

*Prominent Facades:* Prominent Facades: Prominent facades include all building facades visible from waterways, arterials, and activity centers, and also facades, which face the road(s) providing primary access to the building site. Prominent facades may not be sterile wall planes void of architectural interest. They shall be detailed with added relief, shadow lines, and visual depth unless screened with landscaping.

Provide consistent architectural interest to all prominent facades.

- a. Prominent facades shall not be blank walls.
- b. Prominent facades shall reflect the same design and detailing which typify the building's front including roof design, window proportion, facade variation, and building materials.
- c. Prominent facades may not be concealed behind high walls or privacy fences.  
Lower fences and walls not exceeding 3 feet in height are acceptable.

**Staff:** Prominent facades are not part of the proposal and existing facades fit well into requirements.

#### *Building Scale and Mass*

Avoid long, low wall planes. Prominent facades shall have no wall plane wider than 2.5 times the height of the wall plane.

**Staff:** Existing facades meets requirements.

Provide substantial shifts in walls and roof surfaces. Wall and roof surfaces shall be broken down into smaller planes using substantial shifts in building footprints that result in substantial shift by limiting roof areas in the same plane and provide horizontal and vertical shifts.

**Staff:** Significant shifts in wall and roof surfaces exist.

Provide visual terminus to tops of buildings. In order to avoid a truncated look at the top of the building, all structures shall have a visual "cap". This may include either a pitched roof or a flat roof. Pitched roofs shall have the appearance of true hips and gables with a defined ridge where opposing roof planes meet. Avoid unusual or atypical roof forms on all structures.

**Staff:** Visual terminus is provided.

#### *Window and Door Fenestration:*

1. Maintain balance in the placement of windows.
2. Conform to solid/void ratio requirements on prominent façade wall planes.
3. Reflective glass is discouraged.

**Staff:** Existing windows and doors provide a good balance and interest.

Siding and Trim: Traditional building materials such as brick, stone or wood reflect human handicraft and provide texture to building exteriors. Materials for new construction and remodeling should convey similar visual qualities. Use materials which simulate quality traditional building materials

**Staff:** Siding and trim presented to street fronts are appropriate features. The addition is to continue in the style and color of the existing structures.

*Color:*

1. Keep field colors subdued.
2. Limit bold or bright trim colors.
3. Finer details may be accented with brighter colors.

**Staff:** Existing color is appropriate and shall be continued on the expansion.

Roofing materials: Views of roofs from the ground and from higher elevations play an important role in the architecture of the city. Roofing materials shall be selected according to following criteria.

1. Use roof materials which provide texture and shadow lines.
2. Avoid bright-colored, reflective, or unsightly roofing materials.

**Staff:** Roofing material are not apparent from the street fronts.

*Building Lighting:* Building Lighting: Lighting may be used to accent a building but shall not be used to denote a corporate or commercial image except on allowed signage. Lighting may be directed to a building but should generally not emanate from a building.

1. Avoid back lit panels and awnings.
2. Keep light sources hidden from public view.
3. Avoid bright lighting on outdoor surfaces of buildings.
4. Avoid colored lighting on buildings.
5. Apply utility lighting sparingly.
6. Lighted accents, canopies, color bars, stripes, or areas. (used sparingly)

**Staff:** Lighting is appropriate and any new lighting shall conform to code and the CDM per condition of CUP.

Miscellaneous Architectural Devices: Building design should be executed in a straightforward manner. Tack-on devices may not be used to mitigate poor design or to promote a particular theme. If a particular style or theme is desired, it should be reflected in the building's form and general detailing.

1. Architecturally integrated artwork is encouraged.
2. Avoid architectural gimmicks and fads.
3. Maintain consistency in awning design.
4. Avoid awnings which obscure or dominate the building design.

**Staff:** Architectural is integrated and the rest of the buildings in the area are encouraged to emulate the style.



*Parking Garages:*

1. Recess vehicle entrances in the main façade.
2. Screen parking garage facade

**Staff:** N/A

**Site Design Review (begins page 2-1):**

*On-Site Walkways:*

1. Link commercial buildings and the public right-of-ways with primary walkways.
2. Assure that primary walkway width is proportionate to scale of project.
3. Differentiate walkway surface.
4. Accent walkways with significant landscaping.
5. Accent walkways with lighting and seating areas.

**Staff:** The current walkway provides elements listed above.

Outdoor Common Areas: A common area is a designed outdoor space which encourages outdoor activities and leisure in outdoor spaces associated with commercial development. Required common spaces must be provided on-site, but may be enlarged and extended into city rights-of-way to connect with the sidewalk, subject to City of Homer approval.

1. Provide common area of a size proportionate to development
2. Choose type of common area best suited to development
3. Locate common areas in view corridors.
4. Provide direct access to common areas with pedestrian walkways

**Staff:** Existing outdoor common areas provide a good example of the qualities desired by the CDM.

*Commercial Streetscape*

1. Locate structure near front setback line
2. Orient service and delivery areas away from street
3. Use landscaping to screen parking lots and service areas
4. Link dissimilar building with common site amenities.
5. Provide covering over walkways where appropriate.
6. Place no more than 50% of required parking in front of buildings
7. Avoid parking in front of building entrance

**Staff:** The existing site design reasonably provides elements supported above. The parking lot does offer some screening from the street and the Condition in the CUP addresses screening design left to the applicant to meet the intent of the code. Site constraints exist, as the area needed to support a buffer is part of utility line easement and landscaping needs to be tempered to not interfere with power lines or access to them.



Old picture approx. 10-12yrs old(?) – for representative purposes – private drive in foreground

### *Landscaping and screening*

1. Utilize non-invasive attractive plants to achieve landscaping and screening, preserve or create tree canopy, and provide ecosystem services such as water retention and filtration. Concepts such as rain gardens and other Low Impact Development concepts are encouraged.
2. Choose plantings which are compatible with existing vegetation.
3. Locate vegetation to preserve significant views
4. Provide adequate room for retained vegetation.
5. Replace lost trees which were intended to be retained.
6. Retain the natural symmetry of trees.
7. Use shrubs or vines on blank walls.
8. Outside storage of materials and equipment and trash, if otherwise allowed, should be screened from view from adjacent streets and residential areas.
9. Enclosed storage of materials, equipment and trash is encouraged.
10. Elements such as, but not limited to; HVAC units, telephone boxes, fuel tanks and electrical transformers, shall be integrated into the site design through the use of landscaping, berms or fences and should be as unobtrusive as possible.

**Staff:** The site does retain areas of vegetation and those are not proposed to change. The CUP supports conditions to screen parking area and dumpster from view. This provides reasonable compliance with landscaping and screening in relation to site constraints and existing compliance that includes plantings and flower boxes in front of the structures as well as green areas along lot lines.

### *Fences*

1. Choose fence materials carefully.
2. Limit chain link to non-visible areas.
3. Limit height of fences

**Staff:** If the applicant chooses to employ a fence, it is to meet the intent of the design manual.

### ***Outdoor Lighting (begins page 3-1):***

#### *Outdoor Lighting*

1. Avoid lighting large area with a single source.
2. Avoid excessive light throw.
3. Keep light source hidden from public view
4. Use downward directional lighting
5. Choose approved outdoor light designs
6. Avoid light fixture designs which have an industrial appearance.

**Staff:** CUP recommends a condition that any lighting comply with code and the CDM.

**Finding:** The proposal will provide additional compliance with the CDM in appropriate relationship to the improvement proposed and site constraints.

A public hearing on the matter below is scheduled for Wednesday, April 5, 2023 during the Regular Planning Commission Meeting. The meeting begins at 6:30 p.m. and will be conducted via Zoom webinar. Participation is available virtually or in-person at City Hall, more information below.

**A request for Conditional Use Permit (CUP) 22-04 to amend CUP 22-01 for building renovation and kitchen expansion of the Wild Honey Bistro at 106 W. Bunnell Avenue. A Conditional Use Permit (CUP) is required per HCC 21.18.040(b)(4). When approved by a conditional use permit, the setback from a dedicated right-of-way, except from the Sterling Highway or Lake Street, may be reduced in the Central Business District.**

In-person meeting participation is available in Cowles Council Chambers located downstairs at Homer City Hall, 491 E. Pioneer Ave., Homer, AK 99603.

To attend the meeting virtually, visit [zoom.us](https://zoom.us) and enter the Meeting ID & Passcode listed below. To attend the meeting by phone, dial any one of the following phone numbers and enter the Webinar ID & Passcode below, when prompted: 1-253-215-8782, 1-669-900-6833, (toll free) 888-788-0099 or 877-853-5247.

Meeting ID: 979 8816 0903  
Passcode: 976062

Additional information regarding this matter will be available by 5pm on the Friday before the meeting. This information will be posted to the City of Homer online calendar page for April 5, 2023 at <https://www.cityofhomer-ak.gov/calendar>. It will also be available at the Planning and Zoning Office at Homer City Hall and at the Homer Public Library.

Written comments can be emailed to the Planning and Zoning Office at the address below, mailed to Homer City Hall at the address above, or placed in the Homer City Hall drop box at any time. Written comments must be received by 4pm on the day of the meeting.

If you have questions or would like additional information, contact Rick Abboud at the Planning and Zoning Office. Phone: (907) 235-3106, email: [clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov), or in-person at Homer City Hall.

**NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY**



**VICINITY MAP ON REVERSE**

STERLING HWY

# Vicinity Map

HANSEN AVE.

MAIN ST.



Subject Location

W. BUNNELL AVE.

E. BUNNELL AVE.

CHARLES WAY

## Legend

-  Lots within 300 feet
-  Subject Property

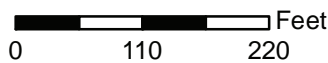


City of Homer  
Planning and Zoning Department

January 25, 2023

## Request for Conditional Use Permit 23-01 106 W. Bunnell

Marked lots are within 300 feet and  
property owners notified.

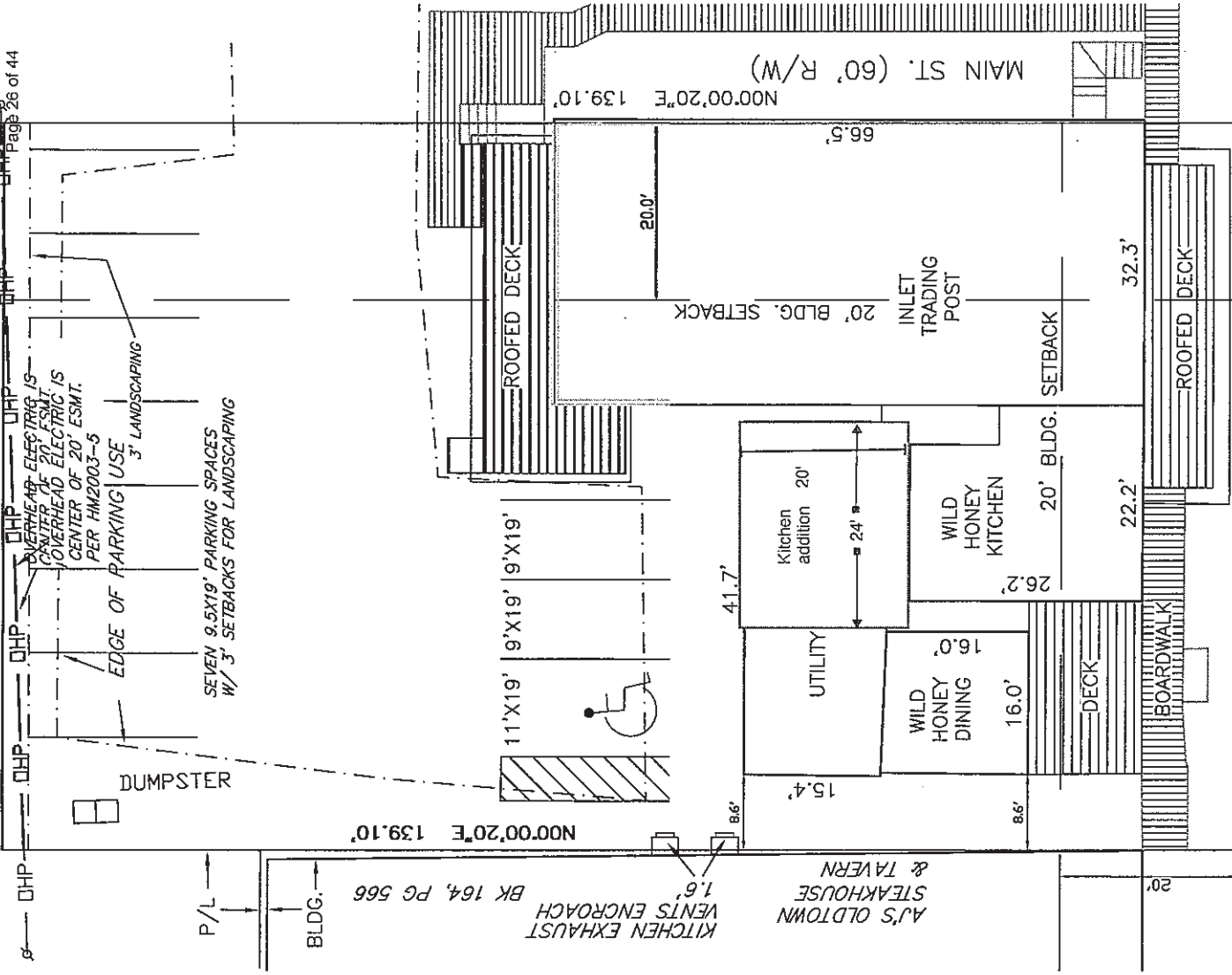


*Disclaimer:  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.*

LOT 2-A-1, HM2007-134

S89°52'40"E 82.25'

DHP Page 26 of 44

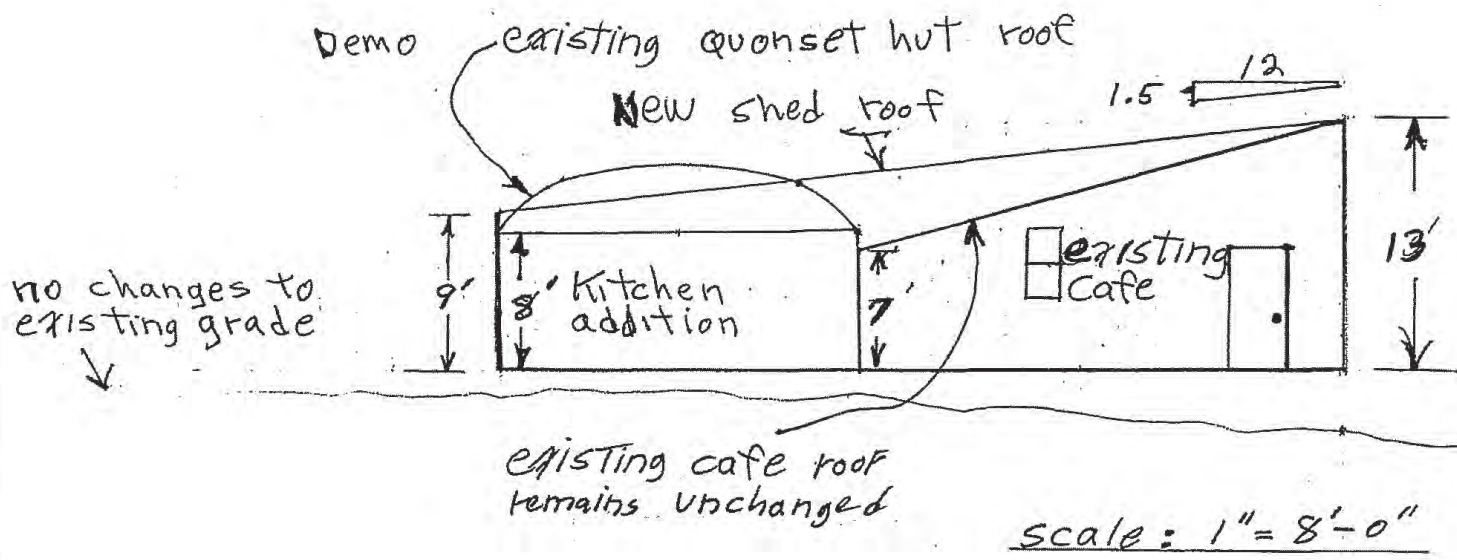


JOB No.	5225
DATE	08/26/2020
SCALE	1" = 15'
ADDRESS:	106 W. BUNNELL AVE
DRAWING	5225-513B-5169
TAX PARCEL	17516052
PLAT No.	2011-2
SECTION	SE-1/4, 19
TOWNSHIP	54 <sup>00</sup> OAH
RANGE	13W (5M)

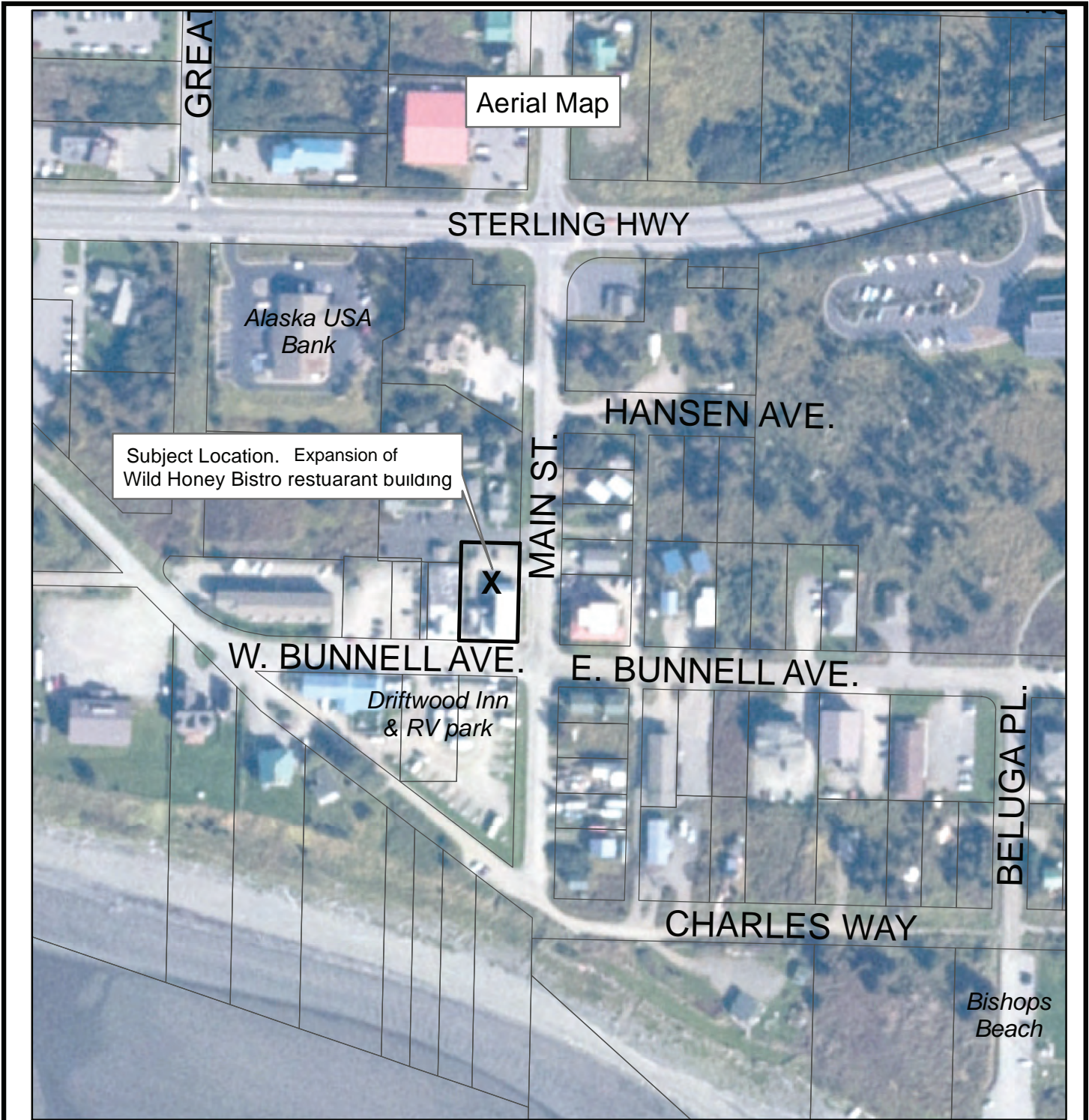
**AS-BUILT EXHIBIT**  
 LOT 1-A CHAMBERLAIN & WATSON NO.4

WITHIN SE1/4 SEC 19, T 6S, R 13W (S.M.)  
 IN THE CITY OF HOMER  
 HOMER RECORDING DISTRICT

**ABILITY SURVEYS**  
 REGISTERED LAND SURVEYORS  
 (907) 235-1500  
 152 DEHEL AVE., HOMER, ALASKA 99603



# West Elevation



Subject Location. Expansion of Wild Honey Bistro restuarant building

Aerial Map

STERLING HWY

Alaska USA Bank

HANSEN AVE.

MAIN ST.

X

W. BUNNELL AVE.

E. BUNNELL AVE.

Driftwood Inn & RV park

BELUGA PL.

CHARLES WAY

Bishops Beach

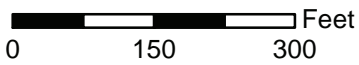


City of Homer  
Planning and Zoning Department

9/30/20

**Request for  
Conditional Use Permit 20-15  
106 W. Bunnell Ave.**

Marked lots are within 300 feet and property owners notified.



*Disclaimer:  
It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.*





# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

## Memorandum

### Agenda Changes/Supplemental Packet

TO: PLANNING COMMISSION  
FROM: RENEE KRAUSE, DEPUTY CITY CLERK II  
DATE: APRIL 5, 2023  
SUBJECT: SUPPLEMENTAL

---

#### 3. PUBLIC COMMENT ON ITEMS ALREADY ON THE AGENDA

- 3.A. Unapproved Meeting Minutes  
Regular Meeting Minutes for March 15, 2023

Public Comment Received

**pages 3-5**

#### 8. PUBLIC HEARING(S)

- 8.A. Request for Conditional Use Permit (CUP) 23-04 at 106 W Bunnell Avenue for Approval of Reduced Setback from a dedicated right-of-way within the Central Business District.

Agenda Item Report PC 23-023

Public Testimony Received.

**pages 6-18**

April 4, 2023

Dear Commissioners,

The Application for CUP 23-04 is glaringly incomplete and, for the most part, inapplicable to the setback reduction sought. The Application does not identify "setback reduction" as the proposed use or specifically state how many feet of setback reduction is being sought. Instead, it primarily refers to the proposed addition previously approved via CUP 23-01. Applicant(s) have clearly not produced sufficient evidence to enable meaningful review of the application as required under HCC 21.71.030. The Application for CUP 23-04 that was published online does not indicate on its face whether it was accepted by planning staff as complete or whether the appropriate application fee was paid. CUP 23-04 pertains to a stand-alone permit application and is not merely an amendment to CUP 23-01.

Staff Report 23-023 states as follows: "106 W Bunnell Ave is the site of four buildings and has adopted a condominium form of ownership for various elements found on the lot." This conflicts with Staff Report 20-63 dated October 7, 2020 regarding CUP 2020-15 which stated: "106 W Bunnell Ave is the site of two buildings, and the property has been turned into a condominium form of ownership." At that time, it was suggested by the city attorney that Wild Honey Bistro shares a common wall with the Inlet Trading Post structure such that all of the buildings on the lot collectively constitute a single structure. On appeal, the Homer Board of Adjustment remanded CUP 2020-15 to the Commission to determine whether the subject property contains a single building or whether the proposed project involves two buildings, but CUP

2020-15 was withdrawn before any relevant new evidence was presented. On February 8, 2023, Ms. Livingston stated that she owns 16% of Unit 2, by internal square footage, and that Unit 1 is a single structure housing the Bunnell Arts Center, Old Town Bed and Breakfast, and The Fringe which comprise 84% of ownership by internal square footage. However, 64% of the subject property involves external square footage such as parking lot(s), setbacks, and other open space. It has not been established who owns that external square footage and it is not readily apparent how many feet of setback reduction are being requested for Unit 1 and/or for Unit 2.

HCC 21.61.040(b) states: "No nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied as of the date it became nonconforming." Therefore, if any of the myriad uses of the subject lot constitute nonconforming uses, they cannot individually or collectively be extended into the setback. HCC 21.61.030(a) states: " A nonconforming structure may be enlarged or altered, but only if it does not increase its nonconformity." Extending nonconforming structures into the 20-foot setback could arguably increase their nonconformity, especially since HCC 1.08.010 mandates that "there shall be a minimum 20-foot building setback required which shall apply to any property line abutting any dedicated road or street right-of-way" and HCC 11.08.050(a)(3) requires that "all stands, buildings, gasoline pumps, and structures of any kind be placed at least 12 feet back on the property line." No evidence has been presented establishing when the existing decks and porches on the subject lot were constructed. Neither Planning Staff nor the Commission has the right to speculate as to the nonconforming status of a use or structure; the burden to establish nonconforming status of a structure or use

lies with the Applicant(s) in accordance with HCC 21.71.030 and HCC 21.61.050(a).

Nonconforming uses do not set a legal precedent for similar uses on adjacent properties; nonconforming uses are intended to be discontinued and replaced by conforming uses. In a memorandum to Council member Alan Parks dated April 3, 1998, Homer City Attorney Gordon Tans stated: "Generally, the existence of a non-conforming "grandfathered" use in a zoning district is not a legal precedent that would allow other similar establishments to open in the zone. To the contrary, the ordinance serves as the legal precedent saying that such establishments are not to be allowed in the zoning district. Therefore, the controlling legal precedent is the ordinance that prohibits the use." Likewise, illegally constructed structures or uses do not set a legal precedent for similar structures or uses.

The fact that there may be plans to modify setbacks for "Old Town" is irrelevant since no such plans have been implemented via ordinance. Furthermore, "Old Town" is not a zoning district. The subject lot lies within the CBD. Standard zoning enabling acts require that zoning ordinances apply uniformly to all properties within a zoning district.

Staff Report 23-023 was written by City Planner Rick Abboud who deemed himself a party to the appeal of CUP 2020-15 when he acted in all respects on behalf of Ms. Livingston. It seems likely that he gave assurances to Ms. Livingston in exchange for her tactical withdrawal of her Application for CUP 2020-15. Staff Report 23-023 does not constitute an objective analysis of the requisite CUP review criteria and it was inappropriate for Mr. Abboud to have played any role in preparing it.

Mr. Abboud's proposed Findings are conclusionary and not supported by substantial evidence; this constitutes a flagrant violation of procedural due process. "Findings cannot be merely conclusionary, but must be based on evidence." *Day v. Williams*, 285 P.3d 256, 260 (Alaska 2012) quoting *Ethelbah v. Walker*, 225 P.3d 1082 at 1091 (Alaska 2009). The Commission is required under HCC 1.18.020 to be impartial in all quasi-judicial proceedings. Accordingly, it should act on its own independent consideration of the law and facts instead of rubber-stamping the biased, unsubstantiated findings of a subordinate.

Under review criteria (b), Staff Report 23-023 states "the purposes of the structures are well within the stated purpose of the district." However, the proposed purpose of the application for CUP 23-04 is to obtain a setback reduction and setback reduction is not a stated purpose of the CBD. Staff Report 23-023 further states: "The result of the structures located closer to the rights-of-way enhances a human scale and friendly pedestrian environment." Enhancing a human scale, whatever that means, is not a stated purpose of the CBD and reducing building setbacks along congested West Bunnell Avenue creates an unfriendly environment for pedestrians by exacerbating that traffic congestion. On the other hand, constructing sidewalks along Bunnell Avenue would create a friendly environment for pedestrians. Contrary to Staff Report 23-023, proposed CUP 23-04 offers no pedestrian amenities.

Under review criteria (f), Staff Report 23-023 states: "Desirable neighborhood character could be described by a portion of the purpose statement for the district. The proposed project is centrally located within the City of Homer and continues the general retail and restaurant uses of the property. The proposed design

aligns well with the existing buildings and sustains the character promoted in the Comprehensive Plan. The current setback distance promotes, [sic] mixed-use development, higher density development, and infill as supported in Chapter 4 Goal 1 Implementation item D-3 of the Homer Comprehensive Plan." Determining the effects of a proposal on desirable neighborhood character under review criteria (f) is a totally different standard from determining whether a proposal comports with the purposes of the zoning district and/or the comprehensive plan. Under review criteria (f), it irrelevant whether the proposed project is centrally located within the City of Homer, aligns with the existing buildings, or is supported by item D-3 of the Homer Comprehensive Plan. Under HCC 21.71.030(f), the Commission must consider harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, including parking issues, when determining whether the proposed setback reduction will not cause undue harmful effect upon desirable neighborhood character. Businesses that do not have adequate on-site parking will clearly have an undue harmful effect to any neighborhood. In his staff report, Mr. Abboud did not consider any of the factors prescribed under HCC 21.71.030(f) and deliberately chose to substitute factors prescribed in other review criteria in order to secure the Commission's approval of CUP 23-04.

Mr. Abboud claims that CUP 23-04 is contrary to the following goals and objectives of the Homer Comprehensive Plan: Goal 2: Maintain the quality of Homer's natural environment and scenic beauty. Objective A: Complete and maintain a detailed "green infrastructure" map for the City of Homer and environs that present an integrated functional system of environmental features on lands in both public and

private ownership and use green infrastructure concepts in the review and approval of development projects. Objective C: Provide extra protection for areas with highest environmental value or development constraints. Goal 3: Encourage high quality buildings **and sight design** that complements Homer's beautiful natural setting. The Comprehensive Plan Goal of "infill" is unconstitutionally vague; infilling per se is not a valid zoning objective. See *Griswold v. City of Homer*, 925 P.2d 1015, 1023 n.9. In any event, the subject lot is already densely infilled.

Building setbacks were enacted to promote health, safety and general welfare in accordance with HCC 21.01.030 which includes 21.01.030(f): "Provide adequate open spaces for light and air; and to prevent and fight fires." No evidence has been presented to establish that existing fire services are adequate to serve this site where a restaurant kitchen fire could easily wipe out four business now located in the adjoining tinder-box structure that was formerly the Inlet Trading Post. With structure(s) built into the 20-foot setback forcing on-street parking, it could prove difficult to get a fire truck or ambulance anywhere close to such a fire.

Instead of focusing on the potential affects of the restaurant addition, the Commission should focus primarily on the affects of the proposed setback reduction, including the existing inadequate parking and resulting traffic congestion. If any amount of setback reduction is approved, there will be even less room for on-site parking. With vehicles protruding into the roadway from both sides, Bunnell Street is already an extremely dangerous place for motorists, bicyclists, and pedestrians.

With regard to CUP 2020-15, Planning Staff determined that 16 parking spaces were required for Wild Honey Bistro and that only 10 on-site parking spaces were provided. The current Application asks: "How many spaces are shown on your parking plan? But no requisite parking plan was submitted. In her cover letter, Ms. Livingston alleges that there are currently 20 parking spaces in the front, counting both sides of Bunnell Street, plus 10 parking spots in the rear. The angled parking spaces in front already encroach into the West Bunnell Street right-of-way and therefore constitute on-street parking which is generally disapproved of within the CBD. Ms. Livingston stated that the majority of bakery products are currently being prepared offsite and that prep work during the summer has to happen outside of normal work hours but after the new construction is completed, bakery products will be prepared onsite and prep work will happen during normal work hours. This means that even more parking spaces will be required for those additional onsite employees.

The parking spaces across the street from 106 West Bunnell serve other businesses and do not qualify as designated parking spaces for the myriad businesses operating on the subject lot. HCC 21.55.020(b) states: "Except as this chapter permits otherwise, the entire parking lot, including parking stalls and aisles, shall be located on private property and not in any public right-of-way." The 10 parking spaces in the rear are already insufficient to accommodate the customers, staff, employees, and delivery trucks serving the four businesses operating within the Inlet Trading Post structure, much less Wild Honey Bistro. The parking spaces owned by AJ's Steakhouse do not currently qualify as parking spaces for Wild Honey Bistro. HCC 21.55.050(b) states: "Off-street parking



that is not located on the same lot as the use for which it is required shall meet the standards for off-site parking in HCC 21.55.060. Among myriad other requirements, HCC 21.55.060 requires a recorded parking agreement between the parties involved and signs advising customers of the location of the off-site parking. HCC 21.55.120(a) states: "Each lot containing a building or use that receives or makes deliveries shall contain off-street facilities for the loading and unloading of delivery vehicles that meet the requirements of this section. HCC 21.55.120(b) states: "Each loading area shall be situated and of sufficient size to permit loading and unloading without interference with or projection into any public right-of-way or parking area, except as provided in subsection (c) of this section. Each loading area shall be provided with convenient access to a public right-of-way. The access may be located in a required yard or setback, but this does not permit the location of a structure in a required setback." HCC 21.55.120(c) states: "No loading or unloading may be conducted in a required off-street parking area for more than four hours in any period of 24 hours." The Commission does not have the authority to waive any parking space requirements. HCC 21.70.030(c).

HCC 21.18.050 states: "A zoning permit for any building or structure within the Central Business District shall not be issued by the City without a site plan and a level two right-of-way access plan approved by the City under Chapter 21.73 HCC." HCC 21.50.030(f)(1)(a)(i) mandates that landscaping shall include the retention of native vegetation to the maximum extent possible and shall include, but is not limited to, a buffer of three feet minimum width along all lot lines where setbacks permit; except where a single use is contiguous across common lot lines, such as, but not limited to, shared

driveways and parking areas. Whenever such contiguous uses cease the required buffers shall be installed. The 20-foot setback along West Bunnell Avenue would be an appropriate space for providing the landscaping required under HCC 21.50,030 and the CDM.

CUP 23-04 should be denied outright but when it is inevitably approved, significant conditions should be imposed. Down-lighting is not an actual condition because it is already required under HCC 21.59.030. Partially screening a dumpster does nothing to alleviate parking issues and traffic congestion. On September 21, 2022, Mayor Castner stated to this Commission that after reducing the number of conditional use permits [via Ordinance 22-68(A)], "A person can still go for a conditional use permit, but with the expectation that there is going to be conditions." No final action regarding this Application should be taken until all nonconforming status issues are investigated and resolved. Thereafter and absent outright denial, providing adequate on-site parking, providing pedestrian amenities, meeting all landscaping requirements, and obtaining Fire Marshal approval should be among the conditions imposed for CUP 23-04.

*Frank Griswold*



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

## Memorandum PL 22-05

TO: HOMER PLANNING COMMISSION  
FROM: RICK ABOUD, AICP, CITY PLANNER  
DATE: MARCH 15, 2023  
SUBJECT: CONDITIONAL USE PERMIT (CUP) PROCEDURES

---

After receiving correspondence on the Decisions and Findings and other issues related to CUP 23-01, in addition to reported attempted or actual communications with Commissioners involved in the quasi-judicial item, I asked for clarification regarding procedures and options available to Commissioner's and the applicant from the City Attorney.

He provided me a communication that outlines provisions in code for CUP's and consideration for Commissioners once a motion has been made and approved after time for reconsideration has passed.

Basically, the Commission's decision is now final, the record is closed, and no substantive changes may be made to the Decisions and Findings document that would alter the motion passed at the last meeting. The applicant does have the right to appeal or take other actions to fulfil the conditions of the CUP. The Commissioners are asked to disclose their communications with the applicant.

I would like to correct the Attorney's correspondence that there are in fact 6 conditions that were approve with CUP 23-01 and not 5.

### Attachments

City Attorney Email

**From:** [Michael Gatti](#)  
**To:** [Rick Abboud](#)  
**Subject:** Wild Honey Bistro CUP  
**Date:** Wednesday, March 15, 2023 11:43:14 AM  
**Attachments:** [image.png](#)  
[image.png](#)

---

**CAUTION:** This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Rick,

Further to our recent discussions regarding CUP 23-01 and your recent communications with the applicant, we advise Homer City Planning as follows:

Following a public hearing conducted on March 1, 2023, the Homer Planning Commission approved CUP 23-01 in a subsequent written decision setting forth findings and conditions with regard to the application. That CUP permits the applicants to build over an area in excess of 30% of the lot, pursuant to HCC 21.18.040(d). CUP 23-01 contains five conditions, one of which requires the applicants to “Obtain approval of structures in the setback prior to commencement of any building activities.” You have correctly advised the applicants that approval of structures in the property’s setback requires an additional CUP for a reduction of the 20-foot setback requirement pursuant to HCC 21.18.040(b)(4). You also correctly advised the applicants that under Condition 1 of CUP 23-01 and HCC 21.71.020(a)(9), they must obtain a signed authorization from the property’s other owner, Asia Freeman, consenting to the application for CUP 23-01 and consenting to be bound by the permit’s terms.

The Commission’s written decision with regard to CUP 23-01 is final. There is no procedure in the Homer City Code to re-open the application for CUP 23-01 to address any additional issues, supplement the record, or reconsider or clarify the decision. The applicants may appeal the Commission decision to a hearing officer pursuant to HCC 21.93.020(b)(1) if they disagree with some aspect of the decision. However, the Commission does not have the authority to revisit CUP 23-01.

You have informed us that the applicants may have communicated with individual commissioners following the March 1, 2023 hearing. Such communications would constitute a prohibited ex-parte contact. Commissioners must refrain from communicating with applicants about matters which have come before the Commission, even if the Commission has already decided them, due to the possibility of an appeal and subsequent remand of the matter to the Commission. Commissioners should disclose any ex-parte contacts with the applicants.

Please let us know if you have any questions regarding these issues.



**Max D. Holmquist**

Attorney

Jermain, Dunnagan & Owens, PC

3000 A Street, Suite 300

Anchorage, AK 99503

Tel: 907.563.8844

Direct: 907.261.6648

Fax: 907.563.7322



**Michael Gatti**

Of Counsel

Jermain, Dunnagan & Owens, PC

3000 A Street, Suite 300

Anchorage, AK 99503

Tel: 907.563.8844

Fax: 907.563.7322

*The information contained in this transmittal is confidential, may be subject to attorney-client privilege, protected health information that is subject to HIPAA privacy and security guidelines, or otherwise legally exempt from disclosure and is intended only for the use of the recipient named above. If the reader of this information is not the intended recipient, or the employee or agent responsible for delivery of this information to the intended recipient, you are hereby notified that this is not a waiver of privilege and any dissemination, distribution, or copying of this information is strictly prohibited. The firm does not provide tax advice and nothing herein should be relied upon for tax advice by the taxpayer. If you have received this information in error, please notify the sender immediately by telephone at (907) 563-8844 and delete this message from your system.*

City Planning Department of Homer,

April 5, 2023

I am writing this letter of support for Wild Honey Bistro to be able to expand for capacity of City Bear Breads. The Old Town District is a growing area for our community. There are new residences being built as well as a few new businesses setting up shop in that area. The addition of a bakery will benefit the locals as well as tourists. Tourists like to support local businesses. Local restaurants like to purchase local ingredients and products for their menus. Locals like to purchase fresh products. For example, today I stopped in and purchased a fresh French Chai Croissant on my way to recycling. It enhanced my trip deliciously. I am hoping in the future to be able to stop in and get a fresh loaf of bread. For this to happen, there needs to be an expansion of the baking area.

Homer needs to be supporting new business growth in the down town area. The walk-ability of Wild Honey and City Bear Breads only enhances what Homer has to offer.

It is not easy in today's market to be a small business owner and operator. For Homer to be a vibrant and growing city, it needs to be investing in small businesses. These year round businesses shop locally, hire locally and pay taxes locally. I have heard it said money spent locally changes hands in that community 7 times. Promoting and allowing new businesses provides jobs, taxes and supports the other small businesses in the community.

Please approve the permitting required for a new bakery to add to our city of Homer.

Sherry Stead

Small Business Owner

## 1. CALL TO ORDER

Session 23-07, a Regular Meeting of the Planning Commission was called to order by Chair Scott Smith at 6:30 p.m. on April 5, 2023 at the Cowles Council Chambers in City Hall, located at 491 E. Pioneer Avenue, Homer, Alaska, and via Zoom Webinar. The worksession was canceled by the City Planner.

**PRESENT:** COMMISSIONERS VENUTI, SMITH, HIGHLAND, STARK, CHIAPPONE

**ABSENT:** COMMISSIONER BARNWELL, CONLEY (EXCUSED)

**STAFF:** ACTING CITY PLANNER/ECONOMIC DEVELOPMENT MANAGER ENGBRETSSEN  
DEPUTY CITY CLERK KRAUSE

## 2. AGENDA APPROVAL

Chair Smith read the items from the supplemental packet and requested a motion and second to adopt the agenda as amended.

HIGHLAND/VENUTI MOVED TO APPROVE THE AGENDA AS AMENDED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

## 3. PUBLIC COMMENTS ON ITEMS ALREADY ON THE AGENDA

## 4. RECONSIDERATION

## 5. CONSENT AGENDA

### 5. A. Unapproved Meeting Minutes

Regular Meeting Minutes for March 15, 2023

### 5. B. Time Extension Request

Right of Way Acquisition Sterling Highway Reconstruction Anchor Point to Baycrest Hill  
Preliminary Plat

### 5. C. Decisions and Findings

Conditional Use Permit (CUP) 23-02 at 3375 Sterling Hwy  
Conditional Use Permit (CUP) 23-03 at 1368 Lakeshore Dr.

Chair Smith read the consent agenda into the record and requested a motion and second.

HIGHLAND/VENUTI MOVED TO ADOPT THE CONSENT AGENDA AS PRESENTED.

There was no discussion.

VOTE: NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

## **6. PRESENTATIONS/VISITORS**

## **7. STAFF & COUNCIL REPORTS/COMMITTEE REPORTS**

### **7A. City Planner's Report - Agenda Item Report PC 23-022**

Chair Smith introduced the topic and deferred to Acting City Planner Engebretsen.

Acting City Planner Engebretsen provided a summary review of Staff Report PC 23-022. She facilitated a brief discussion on future staffing of the Planning Department.

Chair Smith noted that they needed a Commissioner to volunteer to provide the report at the next Council meeting which is April 10 or the 24<sup>th</sup>. He stated that he can submit a written report for the packet after getting no volunteers. Chair Smith commented that Commissioners can attend the Council meeting via Zoom and report to Council also, noting that he did that for the last Council meeting.

## **8. PUBLIC HEARING(S)**

8. A. Request for Conditional Use Permit (CUP) 23-04 at 106 W Bunnell Avenue for Approval of reduced setback from a dedicated right-of-way within the Central Business District.  
Agenda Item Report PC 23-023

Chair Smith introduced the item by reading of the title and deferred to Acting City Planner Engebretsen.

Acting City Planner Engebretsen provided a summary review of the report presented in the packet. She noted that this CUP was a condition listed in CUP23-01 and that all other conditions of that CUP are still in place.

Chair Smith invited the Applicant to speak to the Application.

Melody Livingston, applicant, reiterated that they were not intending to touch or alter the front of the building, all construction would be done on the back of the building.

Chair Smith opened the public hearing, seeing no members of the public wishing to provide testimony on Zoom or coming forward from the audience in Council Chambers, he closed the public hearing and opened the floor to questions from the Commission.

Commissioner Venuti brought his concerns on the Commission having ample time to fully digest materials submitted in the Supplemental Packet. He reiterated his request from the previous meeting for the deadline to be amended. Mr. Venuti indicated that an hour and half prior to the regular meeting even when they have no worksession is not enough time to effectively assimilate the information that is provided to the Commission. He would like to see the deadline pushed back a day.

Acting City Planner Engebretsen explained the established deadlines and further noted that does not stop the public from submitting their comments from the 4:00 p.m. deadline to providing it within the meeting.



The deadline was established so that there was time for staff to get the materials distributed to the website and the Commission and anything submitted after the deadline there was no guarantee that the Commission would receive the information or the public to have access as well to that material.

Deputy City Clerk Krause responded stating that policy follows generally what is established by Council and that she will consult with the City Clerk to see if that can be amended.

Chair Smith called for a point of order and requested any additional questions from the Commission hearing none, he requested a motion.

HIGHLAND/VENUTI MOVED TO ADOPT STAFF REPORT 23-023 AND RECOMMEND APPROVAL OF CONDITIONAL USE PERMIT 23-04 WITH FINDINGS ONE THROUGH ELEVEN.

There was a brief comment on the conditional use permit being very straight forward.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

## **9. PLAT CONSIDERATION(S)**

### **9. A. A.A. Mattox 2023 Replat Preliminary Plat - Staff Report PC 23-024**

Chair Smith introduced the item by reading of the title and deferred to Acting City Planner Engebretsen.

Acting City Planner Engebretsen provided a summary review of Staff Report 23-024 commenting on the very small creek and drainage with historical overflows and the process conducted by the City over time in this area regarding right of way dedication.

There was no applicant present.

Chair Smith opened the Public Comment Period seeing no one that was attending the meeting in person or via Zoom coming forward to provide comment, he closed the Public Comment Period and opened the floor to questions from the Commission.

There were no questions from the Commission.

HIGHLAND/VENUTI MOVED TO ADOPT STAFF REPORT 23-024 AND RECOMMEND APPROVAL OF THE PRELIMINARY PLAT TO VACATE LOT LINES TO CREATE A LARGER LOT FROM THREE SMALLER LOTS WITH THE FOLLOWING COMMENTS:

1. CREATE A PLAT NOTE STATING "PROPERTY OWNER SHOULD CONTACT ARMY CORPS OF ENGINEERS PRIOR TO ANY ON-SITE DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT WETLAND DESIGNATION IF ANY. PROPERTY OWNERS ARE RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE AND FEDERAL PERMITS IF ANY."
2. THERE WILL NEED TO BE RIGHT OF WAY DEDICATION ON THE EAST SIDE OF PENNOCK STREET. EXACT DEDICATION REQUIREMENT IS UNKNOWN AS THE RIGHT OF WAY VARIES ADJACENT TO THE LOT. PAST CITY REQUIREMENTS REQUESTED 9.85 FEET. DIMENSIONS SHALL BE VERIFIED.

3. DEDICATE A 15 FOOT UTILITY EASEMENT FRONTING THE UNDETERMINED DEDICATION ON EAST SIDE OF PENNOCK STREET.
4. THE PROPERTY OWNER WILL NOT BE REQUIRED TO ENTER INTO AN INSTALLATION AGREEMENT WITH THE CITY.
5. DEDICATE A 20 FOOT DRAINAGE EASEMENT CENTERED ON THE DRAINAGE ON THE NORTHEASTERN PROPERTY CORNER.

There was a brief comment on the known drainage issues being addressed with the easement.

VOTE: NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

9. B. Bunnell's Subdivision 2023 Replat Preliminary Plat - Staff Report PC 23-025

Chair Smith introduced the item by reading of the title and deferred to Acting City Planner Engebretsen.

Acting City Planner Engebretsen provided a summary review of Staff Report PC 23-025. She noted that there was a previous action that dedicated a 15 drainage easement centered on the creek and the City would like to continue that easement. Ms. Engebretsen continued by providing a brief description of the creek path and this dedication will assist in prevention of future flooding. She then noted an oversight in not carrying over the recommendation regarding dedication of a 15 foot utility easement and the Commission will need to address that issue. Ms. Engebretsen stated that she can provide additional clarification if needed when appropriate.

Gary Nelson, Ability Surveys, applicant, provided a brief history of the project and noted that they would like to offer a counter recommendation to staff recommendation number four, noting that this has taken the owner by surprise and will add an additional cost of \$10,000 or more to the project. He stated that the property owner is trying to rectify a bad situation and suggested that instead of bonding and requiring installation if it could be changed to say no building permit would be offered or approved for Lot 51 A until services are installed. Mr. Nelson acknowledged that services must be installed but the cheapest way to take care of the situation is to abandon in place the stub services and install new ones 50 feet north of the existing location. Further adding that to hire a contractor to do this work before it's needed is really adding expense and the services will not be needed until someone wants to build on that lot. He continued explaining how the process would work, tying up capital and advocating for the requirement to be delayed until needed.

John Hendrix, property owner and applicant, provided historical ownership and use of the land, issues and legal options available. He noted that they are giving up 15 feet on the Swatzell side and now the City is asking to give an additional 15 feet for the creek and pay additional for the removal of the existing services which is unreal to him. He questioned how much a person has to give to do it right.

Chair Smith opened the public comment period and confirmed with the Clerk that there was no one on Zoom that wanted to comment and noted that there was no one present in chambers who wanted to comment he closed the public comment period. He then opened the floor to questions from the Commission and noted that Ms. Engebretsen can provide guidance on the amendment as well at this time.

Ms. Engebretsen stated that amending may not be under the purview of the Commission and requested a moment to review code as she believed that lay in Title 11.

Commissioner Highland commented that she did not recollect ever amending recommendations and felt that Public Works would be involved. She further noted that she did not believe they needed a decision tonight.

Chair Smith requested a motion and second before continuing discussion.

VENUTI/CHIAPPONE MOVED TO POSTPONE THIS ITEM TO THE NEXT MEETING TO ALLOW A RESPONSE FROM PUBLIC WORKS ON THIS ISSUE.

Ms. Engebretsen cited for the record the following: Homer City Code 22.10.050 Improvement requirements – General. (a)(2) All other utilities and public improvements to be constructed in the rights-of-way and easements dedicated by the plat, including water, sewer, electric, communications, and gas lines, and applicable means for non-motorized transportation; adding that the Commission cannot exempt the requirement under Homer City Code 22.10.050 (b) *The Commission may exempt a plat from the provisions of subsection (a) of this section as provided in Homer City Code 22.10.040*, since this plat does involve the dedication of a right of way. She acknowledged the expense and frustration but noted that this action was a standard in city code, and frequently when you see a lot line vacation a service has to be abandoned, dug up and in this case relocated with installation of a new service for the northern lot.

Chair Smith requested Mr. Nelson to come forward to speak on the record.

Mr. Nelson stated that Ms. Engebretsen left out the language, “or an installation agreement being in place.”

Ms. Engebretsen responded that Mr. Nelson was correct, and further commenting that typically people perform all the relocations before they record because it is easier, since they do not want it to be left hanging out there that long, other options are through the bonding process and Public Works usually handles all those details.

Mr. Nelson opined that installation agreements are commonly used and Ms. Engebretsen agreed but added that there is always an installation agreement but whether you install all those improvements before recording the plat, and typically on a bigger plat it is, you can choose either way to record this particular plat, if you have the installation agreement in place.

Mr. Nelson restated that was his desire to have the conditions in the subdivision development agreement that whatever is figured out, and a building permit could not be issued until such time as those improvements are installed but they can talk about it more with this postponement.

Chair Smith called for a point of order noting the motion on the floor for postponement. He requested discussion on the motion.

Ms. Engebretsen stated that she did not believe the Commission has purview on this, but if the Commission would like to postpone and since the applicant is requesting this for a more thorough review, staff can do that however this does not preclude the Commission from approving this plat tonight but if the Commission would prefer to consider it in the future with more information staff can facilitate that.

Chair Smith inquired about the details of the additional recommendation that Ms. Engebretsen stated was omitted when she was providing her report.

Ms. Engebretsen noted that the recommendation to dedicate a 15 foot utility easement was in the report under Public Works comments but was not carried forward under Staff recommendations.

Ms. Engebretsen fielded questions regarding the following:

- There is nothing that the applicant can do if this action is postponed tonight to change the outcome
- the Commission can recommend approval to the Borough, the installation issue is a discussion for Public Works as it is addressed by Title 11 in Homer City Code
- Under Title 22 the Commission cannot waive this exemption
- this action will come back at the next meeting with a little more information in the staff report but nothing else will have changed
- the requirement of the new stub is because they are dealing with two lots
- If the applicant purchased the lot they could then vacate the lot line and still would be required to abandon and excavate the old service.

Commissioner Stark commented that approving the motion to postpone provides the applicant additional time to speak with staff regarding the application and referenced the advice of the Mayor to have most if not everything resolved and identified prior to approving the plat even though it is preliminary.

Chair Smith stated that the applicant was wishing to speak to the Commission and requested a motion to suspend the rules to allow them to speak. He then acknowledged his error previously allowing Mr. Nelson to speak earlier in the meeting.

HIGHLAND/CHAIPPONE MOVED THAT THE COMMISSION SUSPEND THE RULES TO ALLOW THE APPLICANT TO ADDRESS THE COMMISSION.

There was no discussion.

VOTE: NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Mr. Hendrix jokingly offered to pay the city to install the new service stub in order to move this process along. He reiterated that he is trying to cure an old problem but can just as well use the parking lot as is and start litigation.

Chair Smith countered that he understands that a postponement delays the applicant's grief but assured the applicant that they are trying to reach a successful outcome and this postponement will allow Mr. Nelson to speak with Public Works. He noted that this item will be on the agenda under pending business.

## 10. PENDING BUSINESS

## 11. NEW BUSINESS

## 12. INFORMATIONAL MATERIALS

- 12.A. City Manager's Report  
CM Report for March 28, 2023

## 13. COMMENTS OF THE AUDIENCE

## 14. COMMENTS OF THE STAFF

Acting City Planner Engebretsen commented her appreciation for a very efficient meeting.

Deputy City Clerk Krause echoed Ms. Engebretsen's comments regarding the short meeting.

## 15. COMMENTS OF THE COMMISSION

Commissioner Highland commented that they had a short meeting, a little complication but she suspected that it will get taken care of, and thanked everyone.

Commissioner Stark expressed his appreciation for the Commissioners attending in person and on Zoom and the Acting City planner for a very succinct Planner's Report. He advised that he will require one additional eye surgery but will gladly provide the report via Zoom and in person after he gets back as always. He then requested Julie to contact him regarding information for the CDL feedback on the Transportation survey.

Commissioner Venuti commented that it was an interesting and short meeting.

Commissioner Chiappone stated that he will not be at the next two meetings as he will be traveling out of the country, and thanked Julie for filling in.

Chair Smith expressed his appreciation for the efficient meeting and the efforts of the staff. He thanked Julie for filling in noting that it was always a pleasure working with her.

## 16. ADJOURNMENT

There being no further business before the Commission, the meeting was adjourned at 7:30 p.m. The next Regular Meeting is Wednesday, April 19, 2023 at 6:30 p.m. A worksession is scheduled for 5:30 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom webinar.



\_\_\_\_\_  
Renee Krause, MMC, Deputy City Clerk II

Approved: \_\_\_\_\_ April 19, 2023



# AGENDA

## Planning Commission Regular Meeting

Wednesday, April 19, 2023 at 6:30 PM

City Hall Cowles Council Chambers In-Person & Via Zoom Webinar

---

### Homer City Hall

491 E. Pioneer Avenue  
Homer, Alaska 99603  
www.cityofhomer-ak.gov

### Zoom Webinar ID: 979 8816 0903 Password: 976062

<https://cityofhomer.zoom.us>  
Dial: 346-248-7799 or 669-900-6833;  
(Toll Free) 888-788-0099 or 877-853-5247

---

1. **CALL TO ORDER, 6:30 P.M.**
2. **AGENDA APPROVAL**
3. **PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA** The public may speak to the Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit)
4. **RECONSIDERATION**
5. **CONSENT AGENDA** Items listed below are considered routine and non-controversial by the Commission and are approved in one motion. If a separate discussion is desired on an item, a Commissioner may request that item be removed from the Consent Agenda and placed on the Regular Agenda under New Business. No Motion is necessary.
  5. A. PC Meeting Minute Approval **Page 3**  
Unapproved April 5, 2023 Regular Meeting Minutes
  5. B. Decisions and Findings for CUP 23-04 request for Conditional Use Permit (CUP) 23-04 at 106 W Bunnell Avenue for Approval of Reduced Setback from a Dedicated Right of Way within the Central Business District **Page 10**
6. **VISITORS/PRESENTATIONS**
7. **STAFF & COUNCIL REPORT/COMMITTEE REPORTS**
  7. A. PC Staff Report for March – PC Staff Report 23-026 **Page 15**
8. **PUBLIC HEARING(S)**
9. **PLAT CONSIDERATION(S)**

**10. PENDING BUSINESS**

9. A. Bunnell’s Subdivision 2023 Replat Preliminary Plat Memorandum 23-027 **Page 20**

**11. NEW BUSINESS**

11. A. Public Comment Submittal Process and Timing Memorandum 23-028 **Page 25**

11. B. Planning Commission Meeting Schedule Memorandum 23-029 **Page 27**

**12. INFORMATIONAL MATERIALS**

12. A. City of Homer Newsletter April 2023 Issue **Page 29**

12. B. City Manager's Reports CM April 10, 2023 Report **Page 41**

**13. COMMENTS OF THE AUDIENCE** (3 minute time limit)

**14. COMMENTS OF THE CITY STAFF**

**15. COMMENTS OF THE COMMISSION**

**16. ADJOURNMENT** The next Regular Meeting is Wednesday, May 3, 2023 at 6:30 p.m. A Worksession is scheduled for 5:30 p.m. All meetings are scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar.



**City of Homer**

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

**Planning**

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

## **HOMER PLANNING COMMISSION**

### **Approved CUP 2023-04 at the Meeting of April 5, 2023**

**RE:** Conditional Use Permit (CUP) 2023-04, amending CUP-23-01

**Address:** 106 West Bunnell Ave.

**Legal Description:** Chamberlain & Watson No 4 Lot 1-A, and T 6S R 13W SEC 19 Seward Meridian HM 2011002 INLET TRADING POST CONDOMINIUMS UNIT 2

## **DECISION**

### **Introduction**

Melody Livingston, representing Wild Honey Bistro (the “Applicant”), owner of Inlet Condominiums Unit 2 and her husband Ed (Scott) Livingston, applied to the Homer Planning Commission (the “Commission”) for a Conditional Use Permit (CUP) under Homer City Code (HCC) 21.18.040(b) (4), to gain acceptance of structures found within the 20ft. setback from rights-of-ways.

The applicant previously applied for CUP 23-01 under Homer City Code (HCC) 21.18.040(d), for building area in excess of 30% of the lot in the Central Business District. This CUP was approved with several conditions. Condition 5 required the applicant to: “Obtain approval of structures in the setback prior to commencement of any building activities.” The applicant then applied for an amendment to CUP23-01, presented here as CUP 23-04, to comply with Condition 5. With approval of CUP 23-04, a reduced setback was approved for the portions of the existing structures in the 20’ setback from the rights-of-way (ROW) of West Bunnell Ave and Main Street.

A public hearing was held for the application before the Commission on April 5, 2023, as required by Homer City Code 21.94. Notice of the public hearing was published in the local newspaper and sent to 56 property owners of 40 parcels within 300 feet of the proposal, as shown on the Kenai Peninsula Borough tax assessor rolls. Public notices contained information on how to submit written testimony, participate telephonically, or participate on the Zoom meeting platform.

At the April 5, 2023 meeting of the Commission, five members were present. Commissioners Connelly and Barnwell were absent. The Commission approved CUP 2023-04 unanimously with ten findings.



## **Evidence Presented**

Acting City Planner Julie Engebretsen reviewed the staff report. The Applicant was available to answer questions. Written comments in support of the project were submitted by Sherry Stead, and written comments opposed to the project were submitted by Mr. Griswold. After discussion, the Commission moved and approved CUP 23-04 with Findings 1 through 10 by unanimous consent.

## **Findings of Fact**

After careful review of the record and consideration of testimony presented at the hearing, the Commission determined that CUP 2023-04, to gain acceptance of structures found within the 20ft. setback from rights-of-ways per HCC 12.18.040 (b) (4), satisfies the review criteria set out in HCC 21.71.030 and is hereby approved.

**The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030 and 21.71.040.**

**a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.**

**Finding 1:** If approved by a Conditional Use Permit, the setback from a dedicated right-of-way may be reduced.

**b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.**

**Finding 2:** The purpose of the Central Business District includes providing for general retail shopping, restaurants, and encourages pedestrian-friendly design and amenities. The proposed development is compatible with the purpose statement of the district.

**c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.**

**Finding 3:** The structures found in the setbacks are not expected to negatively impact the adjoining properties greater than other permitted or conditional uses.

**d. The proposal is compatible with existing uses of surrounding land.**

**Finding 4:** Redevelopment of the existing restaurant with the proposed site plan and current setback distances are compatible with existing mixed uses of surrounding land.

**e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.**

**Finding 5:** Existing roads, public water, sewer, police and fire services are adequate to serve the site.

**f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.**

**Finding 6:** The Commission finds the proposal will not cause an undue harmful effect upon desirable neighborhood character as described in the purpose statement of the district.

**g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.**

**Finding 7:** The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area and the city as a whole when all applicable standards are met as required by city code.

**h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.**

**Finding 8:** An approved CUP and zoning permit will ensure that the proposal will comply with applicable regulations and conditions specified in Title 21.

**i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.**

**Finding 9:** The proposal is not contrary to the applicable land use goals and objects of the Comprehensive Plan. The proposal aligns Goal 1 Objective D-3, Goal 3 and Goal 4 Objective A-2 and no evidence has been found that it is contrary to the applicable land use goals and objects of the Comprehensive Plan.

**j. The proposal will comply with all applicable provisions of the Community Design Manual.**

**Finding 10:** Conditions of CUP 23-01 provides for compliance with the applicable provisions of the CDM.

**HCC 21.71.040(b).** b. In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

- 1. Special yards and spaces:** No specific conditions deemed necessary.
- 2. Fences and walls: Condition 2:** Any dumpster shall be screened on three sides.
- 3. Surfacing of parking areas:** No specific conditions deemed necessary.
- 4. Street and road dedications and improvements:** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress:** No specific conditions deemed necessary.
- 6. Special provisions on signs:** No specific conditions deemed necessary.
- 7. Landscaping:** No specific conditions deemed necessary.
- 8. Maintenance of the grounds, building, or structures:** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors or other similar nuisances:** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities:** No specific conditions deemed necessary.
- 11. A time period within which the proposed use shall be developed:** No specific conditions deemed necessary.
- 12. A limit on total duration of use:** No specific conditions deemed necessary.
- 13. More stringent dimensional requirements,** such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.
- 14. Other conditions necessary** to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.

**Conclusion:** Based on the foregoing findings of fact and law, Conditional Use Permit 2023-04 is hereby approved, with Findings 1 through 10.

---

Date

---

Chair, Scott Smith

---

Date

---

City Planner, Rick Abboud

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.070, any person who has standing to appeal per HCC 21.93.050 and is aggrieved by this determination may appeal this decision to a Hearing Officer within fifteen (15) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on \_\_\_\_\_, 2023. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

---

Date

---

Courtney Dodge, Assistant Planner

Melody Livingston  
106 W Bunnell #2  
Homer, AK 99603

City of Homer  
491 E Pioneer Avenue  
Homer, AK 99603

Michael Gatti, JDO Law  
3000 A Street, Suite 300  
Anchorage, AK 99503

Rob Dumouchel, City Manager

## **1. CALL TO ORDER**

Session 23-08, a Regular Meeting of the Planning Commission was called to order by Vice Chair Roberta Highland at 6:55 p.m. on April 19, 2023 at the Cowles Council Chambers in City Hall, located at 491 E. Pioneer Avenue, Homer, Alaska, and via Zoom Webinar. The worksession was canceled by the City Planner. Technical difficulties with reception delayed the meeting start time.

**PRESENT:** COMMISSIONERS VENUTI, SMITH, HIGHLAND, STARK

**ABSENT:** COMMISSIONER BARNWELL, CONLEY, CHIAPPONE (EXCUSED)

**STAFF:** CITY PLANNER ABOUD, DEPUTY CITY CLERK KRAUSE

## **2. AGENDA APPROVAL**

Vice Chair Highland read the items from the supplemental packet and requested a motion and second to adopt the agenda as amended.

VENUTI/STARK MOVED TO APPROVE THE AGENDA AS AMENDED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

## **3. PUBLIC COMMENTS ON ITEMS ALREADY ON THE AGENDA**

Gary Nelson, city resident, spoke to the preliminary plat under Pending Business, stated he was briefly confused on the process, and this was clarified by the City Planner that the Commission did not approve it. Mr. Nelson continued by reading an email response he received from Public Works Director Keiser as follows, "Hello Gary, Thanks for stopping by. You may represent to the Planning Commission that you met with me and we agreed that the City would accept a Subdivision Agreement specifying the service connections needed to be relocated when Lot 51-A is developed or undergoes further lot line adjustments. You may remind them the City now requires a bond to secure the performance of Subdivision Agreements. (See Ordinance 23-15 Amending HCC11.20.070) Regards, Jan"

Mr. Nelson reiterated that they have come to an agreement with the City and the Planning Commission can approve the subdivision as recommended by Staff as he understood it.

## **4. RECONSIDERATION**

## **5. CONSENT AGENDA**

- 5. A. Unapproved Meeting Minutes  
Regular Meeting Minutes for March 15, 2023

5. B. Time Extension Request

Right of Way Acquisition Sterling Highway Reconstruction Anchor Point to Baycrest Hill  
Preliminary Plat

5. C. Decisions and Findings

Conditional Use Permit (CUP) 23-02 at 3375 Sterling Hwy  
Conditional Use Permit (CUP) 23-03 at 1368 Lakeshore Dr.

Vice Chair Highland read the consent agenda into the record.

VENUTI/STARK MOVED TO ADOPT THE CONSENT AGENDA AS PRESENTED.

There was no discussion.

VOTE: NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

**6. PRESENTATIONS/VISITORS**

**7. STAFF & COUNCIL REPORTS/COMMITTEE REPORTS**

7A. City Planner's Report - Agenda Item Report PC 23-026

Vice Chair Highland introduced the topic and deferred to City Planner Abboud

City Planner Abboud provided a review of Staff Report PC 23-026. He provided additional details on the following:

- APA Conference in Philadelphia;
- Comprehensive Plan process and updates
- performance guarantees through bonding requirements
- Ordinance 23-21 was referred to the Planning Commission and will be on the next agenda. There is conflicting language regarding process and the public hearing date

City Planner Abboud responded to Commissioner Venuti regarding the language being written by a lay person and it needs the review of a professional to make sure the code that is adopted conforms to what is allowable and does not conflict with the Borough. The current language states that if the applicant does not do something the city is not forwarding the plat to the borough, which is not an option. He then stated that he has contacted Max Best for his input, but he will be out of town for a month.

City Planner Abboud explained that the preliminary plat is not the proper place for requiring an asbuilt for the engineering for infrastructure that has not been completed. There are processes to guarantee that the required infrastructure is completed. City Planner Abboud explained that is where the Public Works Director made the amendments to code to obtain those guarantees. It is the Public Works Director's responsibility to ensure that the requirements are included in the agreements for the development. He opined that the biggest phobia is that the ball is going to be dropped, but plans from thirty years ago did not have these requirements, such as sidewalks. A plat is not used to make sure that the infrastructure is in place. Planning assures that the required dedications are shown on the plat to accommodate those items. The performance is in the development agreement.

Commissioner Venuti questioned if the city will enforce this requirement.

City Planner Abboud reiterated that there will be guaranteed bond, and it's written into the agreement exactly what will be done. City Code states what the requirements are such as sidewalks, there are some items that could be a blanket requirement such as requiring paved roads and sidewalks in the CBD or urban residential, and this requirement could certainly be everywhere in the city but there is going to be some tradeoffs and everyone must understand the implications to do that.

Commissioner Venuti requested clarification that Public Works will be responsible for ensuring that the individual or developer has met the requirements of the bond.

City Planner Abboud responded that Public Works, as heard tonight, will include in the agreements the requirements outlined and the developer will provide the City a bond which gives assurance that the work will be done as prescribed in the agreement or the city will take over cash in the bond and make the improvements.

Commissioner Stark provided an outline on the typical process having plans reviewed, project inspections, etc., and acknowledged that the City was working towards having a building department, but that it is currently in the hands of Public Works.

Commissioner Smith expressed his apologies for the issues that were raised regarding the amendments proposed by Councilmembers Davis and Erickson. He referenced the issues that were brought about with the Forest Trails Subdivision preliminary plat with regards to allowing development in drainage way areas that in his opinion were unbuildable and questioned why they would even divide them in the manner that was shown on that preliminary plat.

City Planner Abboud responded that the surveyor explained there are some items that are unknown until you start getting into the project and clearing away but then it is determined that they will need to change the lot lines by reducing some lot sizes and enlarging others. He further commented on the desire to make amendments during proceedings and that applicants have a right to certain expectations and not have to worry about changes mid-process.

## **8. PUBLIC HEARING(S)**

## **9. PLAT CONSIDERATION(S)**

## **10. PENDING BUSINESS**

10. A. Bunnell's Subdivision 2023 Replat Preliminary Plat  
Memorandum 23-027 and Memorandum 23-025

Vice Chair Highland introduced the item by reading of the title and deferred to City Planner Abboud.

City Planner Abboud stated that he was not going to review Staff report 23-025 again as he believed everyone was familiar with the contents. There was some questions on making certain improvements required by Public Works and Mr. Nelson read into the record earlier the response from Public Works Director which he believed provided a solution. He did not believe there were any additional points of contention on this action. Staff recommends that the Planning Commission approve the Preliminary Plat with comments one through five.

Hearing no further questions from the Commission, Vice Chair Highland requested a motion and second.

VENUTI/STARK MOVED TO ADOPT STAFF REPORTS PL 23-027 AND 23-025 AND RECOMMEND APPROVAL OF THE BUNNEL SUBDIVISION 2023 REPLAT PRELIMINARY PLAT WITH THE FOLLOWING COMMENTS:

1. INCLUDE A PLAT NOTE STATING PROPERTY OWNER SHOULD CONTACT THE ARMY CORPS OF ENGINEERS PRIOR TO ANY ONSITE DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT WETLAND DESIGNATION (IF ANY). PROPERTY OWNERS ARE RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE AND FEDERAL PERMITS.
2. DEDICATE A 15 FOOT DRAINAGE EASEMENT CENTERED ON THE CREEK IN LOT 51-A AND POSSIBLY THROUGH THE NORTHWEST CORNER OF LOT 54-A.
3. DEDICATE A 15 FOOT UTILITY EASEMENT FRONTING THE NEWLY DEDICATED SWATZELL STREET.
4. THERE CURRENTLY EXISTS A WATER & SEWER STUB OUT FOR LOT 51-A ON THE SOUTHEAST PROPERTY BOUNDARY, THESE SERVICES WILL NEED TO BE RELOCATED NORTH TO SERVE THE LOT DIRECTLY AND NOT VIA AN EASEMENT.
5. THE PROPERTY OWNER WILL NEED TO RELOCATE THE SERVICES PRIOR TO RECORDING THE PLAT OR ENTER INTO AN INSTALLATION AGREEMENT WITH THE CITY IN WHICH THEY WILL BOND THE COST OF RELOCATING THE SERVICES IN AN AGREED UPON TIME FRAME. THIS WILL ALLOW THE PLAT TO BE RECORDED PRIOR TO THE WORK BEING COMPLETED.

There was a brief discussion on the applicant speaking with Public Works and that resulted in the statement that was read into the record by Mr. Nelson. It was noted that this was a reasonable solution to the issue.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

## **11. NEW BUSINESS**

### 11. A. Public Comment Submittal Process and Timing - Memorandum 23-028

Vice Chair Highland introduced the item and opened the floor to discussion by the Commission.

Commissioners expressed frustration over the limited time frame that they have to review materials provided in a supplemental packet distributed after 4:00 p.m. Some commissioners expressed that it was difficult to review all materials provided especially if it is extensive such as a recent packet containing over 55 pages of materials.

Staff provided feedback on being limited in the manner that items are submitted to the Commissioners. It is possible that Staff can submit individual documents or emails as they are received and then can submit those same documents in the supplemental packet. Staff explained that this did not stop the receipt or submittal of laydown materials up until and during meeting time.

After much discussion the Commission and staff agreed that items for the supplemental packet will be distributed as they are received, noting that this provides redundancy, but the Planning Department will forward to the Clerk for distribution, then will put them into a supplemental packet which will be distributed and posted. The Clerk reiterated that any items that were submitted at or during the meeting would be uploaded to meeting webpage after the fact as laydowns



#### 11. B. Planning Commission Meeting Schedule - Memorandum 23-029

Vice Chair Highland introduced the item by reading of the title and invited City Planner Abboud to speak to the topic.

City Planner Abboud stated that he has broached this topic before and the Commission was not willing to support it at that time, but he was advocating the once a month meetings as it would allow staff the time to work on the details of items that interest the Commission or require more research to present to the Commission. Mr. Abboud addressed concerns regarding timely action from the Commission on plats or conditional use permits stating that additional meetings can be schedule if required and as the memorandum showed most of the Communities held planning commission meetings on a monthly schedule. He further noted that meeting twice a month puts a burden on the planning staff and even the Clerk to prepare for the meeting from getting information, research, draft documents, memorandums and the minutes all completed and then produce a packet, adding that it comprises a majority of his workload. If the meetings were reduced he would be able to expend time on items such as code amendments, enforcement, updates to various plans, etc. He further noted that reduction of meetings will require the Commission being efficient conducting meetings by limiting discussion and comments on agenda items. There are times that the Commission entertains discussion not germane to the agenda item and that would not be allowed.

Vice Chair Highland requested a motion and second before opening the floor to discussion by the Commission.

VENUTI/STARK MOVED TO AMEND THE PLANNING COMMISSION REGULAR MEETING SCHEDULE TO ONCE PER MONTH ON THE (DAY TO BE DETERMINED) WEDNESDAY WITH A WORKSESSION PRIOR TO THE REGULAR MEETING AND SCHEDULE SPECIAL MEETINGS AS NEEDED.

Discussion ensued on the following points:

- Planning Department needs additional staff
- Amending the meeting time to 5:30 p.m. to allow for more agenda items
- Still having worksessions which would be more valuable since there would be fewer meetings
- preference to continue discussion when all commissioners are present
- Homer is in crisis with public opinion that the city is growing too fast for the Planning Department or Commission to adequately guide the growth and maybe this is not the best time to reduce meetings

VENUTI/STARK MOVED TO POSTPONE DISCUSSION TO THE MAY 3, 2023 MEETING TO HAVE A FULL COMMISSION PRESENT.

There was no further discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

#### **12. INFORMATIONAL MATERIALS**

12.A. City Manager's Report  
CM Report for March 28, 2023

Vice Chair Highland commented that the newsletter was very well done and appreciated it being included in the packet. She then encouraged the Commissioners to attend the planned Guiding Growth Community meeting on Saturday, April 29, 2023. This will be from 4:00 pm to 5:30 pm and should be interesting. Ms. Highland commented on the Harbor Expansion project and there was to be planned scoping meetings for the public and that it was to come to the Planning Commission also for input so there will be some new homework for the Commission to look at.

**13. COMMENTS OF THE AUDIENCE**

**14. COMMENTS OF THE STAFF**

Deputy City Clerk Krause stated he was glad that it worked out to have Commissioner Smith attend via conference call and he was able to be heard and participate in the discussion.

City Planner Abboud announced he would be leaving the City of Homer and moving to the east coast. His last meeting will be on May 3<sup>rd</sup> and his last day with the City is May 12, 2023. Ryan Foster will be the interim City Planner. He was the City Planner for Kenai and has been one of the Special Projects Coordinators for the City, and he likes it here.

**15. COMMENTS OF THE COMMISSION**

Commissioner Smith expressed his apologies for the technological issues connecting, but he found out that you cannot have two things going at the same time, so he kept getting booted off. He expressed his appreciation to the Clerk for her ability in getting him connected. He then commented in response to the City Planner's announcement that he understands how difficult it is to make decisions to leave a place but when you are caring for loved ones it is a no-brainer, but he actually knows the area where the City Planner is relocating and agreed that it is a very convenient place and believed that Mr. Abboud will enjoy living there. Commissioner Smith then expressed his apologies for the issues regarding preliminary plat and that proposed ordinance as he was approached by Councilmembers Davis and Erickson. It was intended to be a memo but then submitted and ordinance. He noted that it was shut down pretty quick. He apologized again for stepping outside the proper channels but knows better now. Mr. Smith expressed his appreciation for City Planner Abboud assistance and direction and professionalism over the last five years he has been on the Commission and hoped recent events have not caused him duress.

Commissioner Stark commented that in spite of the technical difficulties they pulled off a great meeting and was glad that Commissioner Smith was able to connect and attend the meeting. He congratulated the City Planner and acknowledged that life changes and glad things came together for him, wished him all the best.

Commissioner Venuti voiced that the announcement was an interesting development, noting he has worked with the City Planner for 13 years, who has taught him a tremendous amount on how the City is operated and ran. He expressed his thanks for that and wished him the best of luck, however noted that where the City Planner was relocating to there was no red salmon. In fact that reminded him of a book title

that is fitting, So long and thanks for all the fish. Commissioner Venuti wished City Planner Abboud good luck.

Commissioner Highland expressed her shock and surprise at hearing the City Planner's news and wished him and his family the best. She noted that he has been the City Planner for most of her service on the Commission, over 13 years, and he has taught her just about everything she knows about planning. Interesting, just interesting times. She expressed her appreciation for Commissioner Smith and the Clerk on getting connected so they could meet tonight as there were a few important things to get done, thank you again for your persistence.

**16. ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 8:36 p.m. The next Regular Meeting is Wednesday, May 3, 2023 at 6:30 p.m. A worksession is scheduled for 5:30 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom webinar.

---

Renee Krause, MMC, Deputy City Clerk II

Approved: \_\_\_\_\_



**City of Homer**

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

**Planning**

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

## **HOMER PLANNING COMMISSION**

### **Approved CUP 2023-04 at the Meeting of April 5, 2023**

**RE:** Conditional Use Permit (CUP) 2023-04, amending CUP-23-01  
**Address:** 106 West Bunnell Ave.

**Legal Description:** Chamberlain & Watson No 4 Lot 1-A, and T 6S R 13W SEC 19 Seward Meridian HM 2011002 INLET TRADING POST CONDOMINIUMS UNIT 2

## **DECISION**

### **Introduction**

Melody Livingston, representing Wild Honey Bistro (the “Applicant”), owner of Inlet Condominiums Unit 2 and her husband Ed (Scott) Livingston, applied to the Homer Planning Commission (the “Commission”) for a Conditional Use Permit (CUP) under Homer City Code (HCC) 21.18.040(b) (4), to gain acceptance of structures found within the 20ft. setback from rights-of-ways.

The applicant previously applied for CUP 23-01 under Homer City Code (HCC) 21.18.040(d), for building area in excess of 30% of the lot in the Central Business District. This CUP was approved with several conditions. Condition 5 required the applicant to: “Obtain approval of structures in the setback prior to commencement of any building activities.” The applicant then applied for an amendment to CUP23-01, presented here as CUP 23-04, to comply with Condition 5. With approval of CUP 23-04, a reduced setback was approved for the portions of the existing structures in the 20’ setback from the rights-of-way (ROW) of West Bunnell Ave and Main Street.

A public hearing was held for the application before the Commission on April 5, 2023, as required by Homer City Code 21.94. Notice of the public hearing was published in the local newspaper and sent to 56 property owners of 40 parcels within 300 feet of the proposal, as shown on the Kenai Peninsula Borough tax assessor rolls. Public notices contained information on how to submit written testimony, participate telephonically, or participate on the Zoom meeting platform.

At the April 5, 2023 meeting of the Commission, five members were present. Commissioners Connelly and Barnwell were absent. The Commission approved CUP 2023-04 unanimously with ten findings.

### **Evidence Presented**

Acting City Planner Julie Engebretsen reviewed the staff report. The Applicant was available to answer questions. Written comments in support of the project were submitted by Sherry Stead, and written comments opposed to the project were submitted by Mr. Griswold. After discussion, the Commission moved and approved CUP 23-04 with Findings 1 through 10 by unanimous consent.

### **Findings of Fact**

After careful review of the record and consideration of testimony presented at the hearing, the Commission determined that CUP 2023-04, to gain acceptance of structures found within the 20ft. setback from rights-of-ways per HCC 12.18.040 (b) (4), satisfies the review criteria set out in HCC 21.71.030 and is hereby approved.

**The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030 and 21.71.040.**

**a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.**

**Finding 1:** If approved by a Conditional Use Permit, the setback from a dedicated right-of-way may be reduced.

**b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.**

**Finding 2:** The purpose of the Central Business District includes providing for general retail shopping, restaurants, and encourages pedestrian-friendly design and amenities. The proposed development is compatible with the purpose statement of the district.

**c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.**

**Finding 3:** The structures found in the setbacks are not expected to negatively impact the adjoining properties greater than other permitted or conditional uses.

**d. The proposal is compatible with existing uses of surrounding land.**

**Finding 4:** Redevelopment of the existing restaurant with the proposed site plan and current setback distances are compatible with existing mixed uses of surrounding land.

**e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.**

**Finding 5:** Existing roads, public water, sewer, police and fire services are adequate to serve the site.

**f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.**

**Finding 6:** The Commission finds the proposal will not cause an undue harmful effect upon desirable neighborhood character as described in the purpose statement of the district.

**g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.**

**Finding 7:** The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area and the city as a whole when all applicable standards are met as required by city code.

**h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.**

**Finding 8:** An approved CUP and zoning permit will ensure that the proposal will comply with applicable regulations and conditions specified in Title 21.

**i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.**

**Finding 9:** The proposal is not contrary to the applicable land use goals and objects of the Comprehensive Plan. The proposal aligns Goal 1 Objective D-3, Goal 3 and Goal 4 Objective A-2 and no evidence has been found that it is contrary to the applicable land use goals and objects of the Comprehensive Plan.

**j. The proposal will comply with all applicable provisions of the Community Design Manual.**

**Finding 10:** Conditions of CUP 23-01 provides for compliance with the applicable provisions of the CDM.

**HCC 21.71.040(b).** b. In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

- 1. Special yards and spaces:** No specific conditions deemed necessary.
- 2. Fences and walls: Condition 2:** Any dumpster shall be screened on three sides.
- 3. Surfacing of parking areas:** No specific conditions deemed necessary.
- 4. Street and road dedications and improvements:** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress:** No specific conditions deemed necessary.
- 6. Special provisions on signs:** No specific conditions deemed necessary.
- 7. Landscaping:** No specific conditions deemed necessary.
- 8. Maintenance of the grounds, building, or structures:** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors or other similar nuisances:** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities:** No specific conditions deemed necessary.
- 11. A time period within which the proposed use shall be developed:** No specific conditions deemed necessary.
- 12. A limit on total duration of use:** No specific conditions deemed necessary.
- 13. More stringent dimensional requirements,** such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.
- 14. Other conditions necessary** to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.

**Conclusion:** Based on the foregoing findings of fact and law, Conditional Use Permit 2023-04 is hereby approved, with Findings 1 through 10.

4-20-23  
Date

Roberta Highland  
Vice Chair, Roberta Highland

4/20/23  
Date

Rick Abboud  
City Planner, Rick Abboud

#### NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.070, any person who has standing to appeal per HCC 21.93.050 and is aggrieved by this determination may appeal this decision to a Hearing Officer within fifteen (15) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

#### CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on April 25, 2023. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

4/25/23  
Date

Renee Krause  
Renee Krause, Deputy City Clerk II

Melody Livingston  
106 W Bunnell #2  
Homer, AK 99603

Michael Gatti, JDO Law  
3000 A Street, Suite 300  
Anchorage, AK 99503

Rob Dumouchel, City Manager  
City of Homer  
491 E Pioneer Avenue  
Homer, AK 99603