



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

Homer Planning Commission Meeting of October 7, 2020

Supplemental Packet (items not included in packet)

Consent Agenda

- C. Decision and Findings for Conditional Use Permit 20-15 to allow a second mobile home at 541 Bonanza Avenue

Revised Finding 2 for clarity

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Public Hearings

- A. Staff Report 20-63, Conditional Use Permit 20-15 for the reconstruction of a restaurant building at 106 W. Bunnell Avenue

Memorandum PL 20-11 from Planning Staff

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Page 4 of CUP application with property owner signature

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As-Built Exhibit (application item that was inadvertently left out of packet)

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Applicant site plan addressing roofed deck areas, dated 10.2.20

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Comments from Sherry Thompson, Susan & Gary Miller

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Comments from Frank Griswold

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HOMER ADVISORY PLANNING COMMISSION

September 2, 2020

RE: Conditional Use Permit (CUP) 20-14
Address: 541 Bonanza Ave
Legal: LEGAL T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0930033
GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

DECISION

Introduction: Scott and Stacy Lowry (the “Applicants”) applied to the Homer Advisory Planning Commission (the “Commission”) for a Conditional Use Permit (CUP) under Homer City Code HCC 21.18.030(c) for “mobile home parks” at 541 Bonanza Avenue.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on September 2, 2020. Notice of the public hearing was published in the local newspaper and sent to 40 property owners of 50 parcels.

The Commission hereby denies the request for Conditional Use Permit 20-14. Five Commissioners were present and voted unanimously to deny the proposal.

Background and Facts:

Evidence Presented: City Planner Abboud confirmed that the Commissioners had time to read the laydown presented by Frank Griswold in opposition to the proposal. The Applicants reviewed their plan to add an additional dwelling to the site to be used as a vacation home.

Public Testimony: Bob Shavelson, representing his sister with a nearby property interest, was concerned that the connex shipping container refurbished into a dwelling does not meet the definition of mobile home and that it conflicts with the goal of encouraging high quality buildings and site development found in the comprehensive plan.

Written Testimony: Frank Griswold provided a written comment in opposition that was provided to the Commission prior to the meeting.

Discussion: A discussion regarding the status of the use of a repurposed Connex container for a dwelling ensued. The Commissioners determined that the proposed second structure was not a mobile home. The Commission also noted that the structure was not used for the transportation of merchandise, so it did not constitute equipment used for the transporting of merchandise as described in HCC 21.18.080 (c).

Findings of Fact: After careful review of the record and consideration of the testimony presented at the hearing, the Commission determines that Conditional Use Permit 20-14 does not satisfy all the review criteria under HCC 21.71.030 and thus denies the conditional use.

Pursuant to HCC 21.71.030 and HCC 21.71.040, a conditional use must satisfy the following criteria:

- a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.
- b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.
- 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.
- d. The proposal is compatible with existing uses of surrounding land.
- e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.
- 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.
- g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.
- h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

- i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.
- j. The proposal will comply with all applicable provisions of the Community Design Manual.

Based on the finding(s) below the proposed conditional use fails to satisfy all the criteria identified in HCC 21.71.030. The Commission hereby denies Conditional Use Permit 20-14 the following finding(s).

Finding 1: The converted dwelling was not designed to meet the standards for a manufactured home (mobile home) determined by the U. S. Department of Housing and Urban Development and does not constitute a mobile home.

Finding 2: The proposal does not satisfy the criteria under HCC 21.71.030 (a) as “Mobile Home Park” is not applicable code in consideration of the proposed structure.

Conclusion

Based on the foregoing findings of fact and law, Conditional Use Permit 20-14 is hereby denied.

Date Chair, Scott Smith

Date City Planner, Rick Abboud, AICP

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) 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 _____, 2020. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date Travis Brown, Planning Technician

Scott & Stacy Lowry
907 Daly Road
Ojai, CA 9323

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

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



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Memorandum PL 20-11

TO: Homer Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: October 7, 2020
SUBJECT: CUP 2020-15, Wild Honey

Background

Staff received a public comment that raised several concerns with the CUP. Specific concerns about the rear parking lot included dust, noise and visual impacts. Staff contacted the applicant to explore the idea of paving the rear parking lot, and building a fence between the parking lot and the adjacent residential cottages.

The applicant responded that paving the parking lot in the long term was one of their considerations, but did not have the timeframe or budget at this time. The applicant did not want a paving requirement as part of the CUP. The fence was also not well received as noted in one public comment.

Screening Requirements

Staff notes there is a code requirement for screening commercial parking lots from adjoining residential uses. Although the condos were constructed well after this parking lot was created, this code requirement still applies. Staff recommends the applicant have the flexibility to choose how they will screen the parking area.

HCC 21.55.020 (a)(4)(f) states:

“f. An area used for commercial or industrial parking, loading or servicing shall be screened from view from any adjoining residential zoning district or lot used for residential purposes by a wall, fence or planting of adequate height to screen the parking, loading or servicing area.”

Staff Recommendation: To address the public comments concerning noise and visual impact, add a condition:

Condition 5: Screen the rear parking area along the north lot line per HCC 21.55.020 (a)(4)(f).

- 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

- 1. How many parking spaces are required for your development? _____
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? _____
- 3. Are you requesting any reductions? No _____

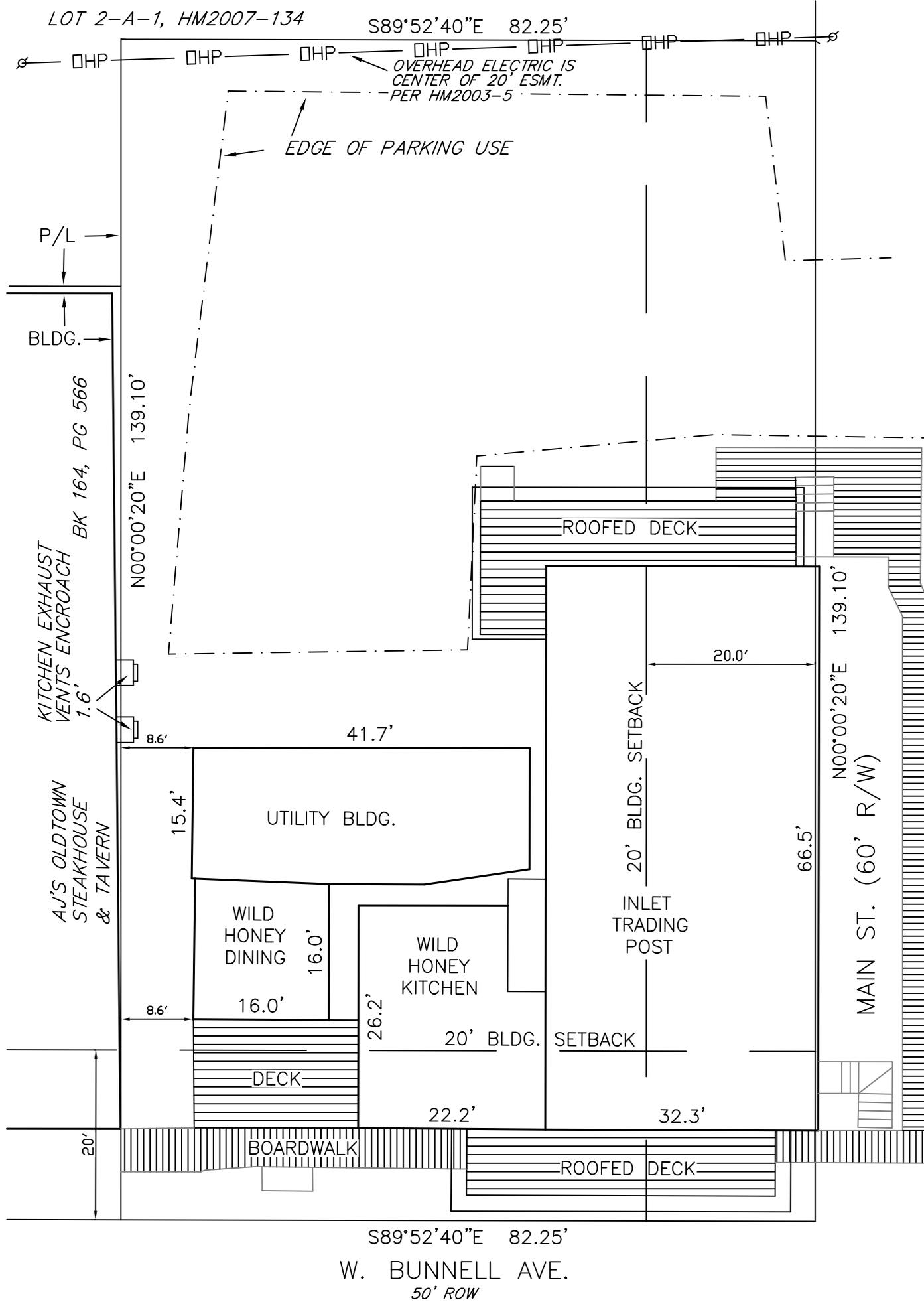
Include a site plan, drawn to a scale of not less than 1" = 20' which shows existing and proposed structures, clearing, fill, vegetation and drainage.

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:

CIRCLE ONE: Owner of record Lessee Contract purchaser

Applicant signature: [Signature] Date: 8/26/20

Property Owner's signature: [Signature] Date: 9/14/20



JOB No.	5225
DATE	08/26/2020
SCALE	1" = 15'
ADDRESS:	106 W. BUNNELL AVE
DRAWING	5225_5138_5169
TAX PARCEL	17516052
PLAT No.	2011-2
SECTION	SE-1/4, 19
TOWNSHIP	6S
RANGE	13 ^W (S.M.)

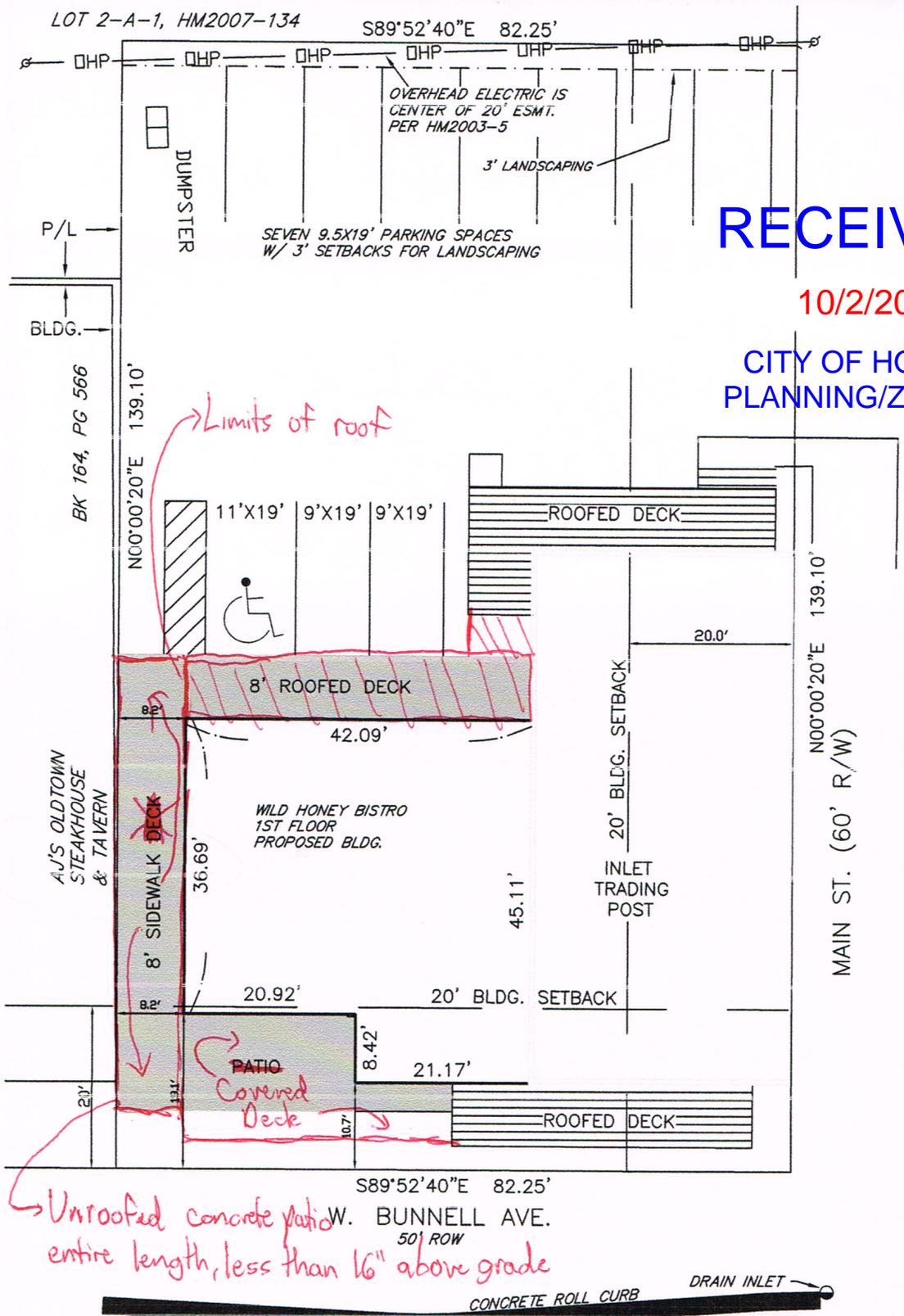
AS-BUILT EXHIBIT

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) 235-8440
152 DEHEL AVE., HOMER, ALASKA 99603



RECEIVED

10/2/2020

CITY OF HOMER
PLANNING/ZONING



JOB No.	5225
DATE	09/14/2020
SCALE	1" = 15'
ADDRESS:	106 W. BUNNELL AVE
DRAWING	5225_5138_5169
TAX PARCEL	17516052
PLAT No.	2011-2
SECTION	SE-1/4, 19
TOWNSHIP	6S
RANGE	13W (SM)

PLOT PLAN
WILD HONEY BISTRO
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) 235-8440
152 DEHEL AVE., HOMER, ALASKA 99603

Rick Abboud

From: Travis Brown
Sent: Monday, October 5, 2020 2:15 PM
To: Rick Abboud
Subject: FW: CUP for Wild Honey Bistro

From: Sherry Thompson <sherrytesl@gmail.com>
Sent: Monday, October 5, 2020 12:23 PM
To: Department Planning <Planning@ci.homer.ak.us>
Cc: Gary & Susan Miller <ak.miller.susan@gmail.com>
Subject: CUP for Wild Honey Bistro

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

A letter of concern to be read into the record on October 7, 2020

Dear Planning Commission:

We are the homeowners of Cottages #7 and #8 in Old Town Cottages which directly abut and view the back of the Wild Honey Bistro. We are concerned with this CUP for the proposed remodel and new entry from the parking lot for the following reasons:

- **Dust pollution**-the new entry to the Wild Honey through the proposed 8 foot Sidewalk Deck streamlines the use of what will now become a very busy gravel parking lot behind the building. Unless there is owner intent to pave their proposed parking spaces, there will no doubt be greater dust/debris created by the development and use of 10 parking spaces. (currently there is only a hidden dirt path leading to the front entry). The increased use of this parking lot, facilitated by the new sidewalk deck access, will certainly encourage higher use of the lot and thus adversely affect our cottage properties.
- **Noise pollution**-the creation of a new 8 foot Sidewalk Deck and a new 8 foot Roofed Deck, on the side and back of the building, will create spaces for gathering of customers. Are these named spaces specifically meant as walkways or will they be crammed with bistro tables creating a noisy environment for us as two of their closest residential neighbors? As our front porches look directly at the parking lot we are unfortunately positioned to hear customer voices interrupting our privacy.
- **Visual distraction**- a proposed three foot landscape barrier may not be adequate to shield our cottages from the activity of the parking lot and back decks. It may be necessary to create a future barrier hedge/fence to replace the existing low lying rose bushes. Whose responsibility is this and who bears the cost?
- **Property value**- We are concerned that our property value may be affected by having a busy parking lot almost in our front yards. Specifically we are concerned that an unknown **Future Owner** may develop a business which far exceeds what Wild Honey currently has, a breakfast and lunch business. We respect the right of the owner of this property to develop what is already a successful and much appreciated addition to Old Town's charm, but we also want our property NOT to be devalued because of commercial gain by our adjoining neighbor.

We would like to hear the owner/applicant respond to our above concerns about the requested conditional use permit before it is granted. Thank you.

Sincerely,

Sherry Thompson
Homeowner Cottage #7
Old Town Cottages
3459 Main Street
Homer Ak 99603

Susan and Gary Miller
Homeowners Cottage #8
Old Town Cottages
3459 Main Street
Homer Ak 99603

Rick Abboud

From: Julie Engebretsen
Sent: Tuesday, October 6, 2020 11:13 AM
To: Rick Abboud
Subject: FW: Wild Honey CUP

See response below. Lets chat after lunch?

From: (null) (null) <melodyliving@yahoo.com>
Sent: Tuesday, October 6, 2020 10:53 AM
To: Julie Engebretsen <JEngebretsen@ci.homer.ak.us>
Subject: Wild Honey CUP

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Please see below for my response. Contact me if you have any questions.

Thanks,
Melody Livingston
Wild Honey Bistro

1) As discussed, I am not necessarily opposed to paving the parking lot at some point in the future, but do not understand why making the paving mandatory should be required or would be fair. I would question why such a condition and associated expense would be imposed on Wild Honey (and consequently the Bunnell Arts Center, and other tenants of 106 W Bunnell, and it's shared owner). The requirement seems arbitrary and not justified by the minimal additional traffic that may result. As noted in the plans, the rear-covered decking and side pathway were added mostly for aesthetics consistency with the Bunnell Arts Center. The rear exit/entry are there due to the city's fire code requirements and will not be used as a primary entry/exit. Also, while the new construction is designed to improve and enhance the visual and long-term viability of the Wild Honey Bistro building, it is not providing significant increases in capacity or being done in anticipation of increased vehicle traffic.

2) I agree that there will not be room for growth of a hedge that would be able to act as a true barrier. I do not believe that a fence should be required either as, in addition to the overlapping points made above, it is anticipated that foot and vehicle traffic will continue to be almost exclusively by and through the main front entrance. There will also be no seating on the rear deck as the decking was included simply to keep the rear of the new construction consistent with the look of the other half of the building. Given this, there should be no or only minimal increases in noise. Also, the visuals from the residences will be highly improved by the existing plans without the addition of a hedge or fence as they currently look onto the rear of a deteriorating quonset hut, which will be replaced by the new construction that will be aesthetically consistent with the rear of the existing Bunnell Arts Center. The addition of a fence would actually work against the

aesthetic improvements and not be consistent with other buildings in Old Town. A fence or hedge would also create security concerns during early mornings and winter months where light is low.

Both 1 and 2 appear to be driven by a concern that the planned rear decking will attract car and/or vehicle traffic and/or that there will be a significant anticipated increase in business. I do not believe that this will be the case in any significant way, in order to address the concerns of the residential units, I would be willing to leave the rear decking out of the current building plans, if desired.

Sent from my iPhone

Travis Brown

From: Matt Early <matt@bcihomer.com>
Sent: Tuesday, October 6, 2020 2:18 PM
To: '(null) (null)'; Julie Engebretsen
Cc: Rick Abboud; Travis Brown
Subject: CUP for Wild Honey Bistro

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On Melody's comments below, I would just add that AJ's right next door currently has a gravel parking area adjacent to these cottages that has been in existence for some time, and no requirement has been made on them to either fence or pave that parking lot, which probably will see more vehicle traffic than the proposed parking area. It seems unfair to require additional work/costs from one property owner but not the other, particularly given that the Wild Honey project is already making a marked improvement to the area in terms of visual appearance with the new building, and thus property value improvements for the Old Town Cottages.

Let me know if this needs to be addressed in any greater detail prior to the meeting,

Matt Early
Project Manager
Phone: (907) 235-8876
Fax: (907) 235-5521
Mobile: (907) 299-9900
matt@bcihomer.com



BEACHY CONSTRUCTION, INC.

From: (null) (null) <melodyliving@yahoo.com>
Sent: Tuesday, October 06, 2020 10:45 AM
To: Matt <Matt@bcihomer.com>
Subject: Fwd: CUP for Wild Honey Bistro

Please see below for my response. Contact me if you have any questions.

1) As discussed, I am not necessarily opposed to paving the parking lot at some point in the future, but do not understand why making the paving mandatory should be required or would be fair. I would question why such a condition and associated expense would be imposed on Wild Honey (and consequently the Bunnell Arts Center, and other tenants of 106 W Bunnell, and its shared owner). The requirement seems arbitrary and not justified by the minimal additional traffic that may result. As noted in the plans, the rear-covered decking and side pathway were added mostly for aesthetics consistency with the Bunnell Arts Center. The rear exit/entry are there due to the city's fire code requirements and will not be used as a primary entry/exit. Also, while the new construction is designed to improve and enhance the visual and long-term viability of

Rick Abboud

From: Julie Engebretsen
Sent: Tuesday, October 6, 2020 10:30 AM
To: Rick Abboud
Subject: FW: Condition Use Permit 20-15, Wild Honey Restaurant

-----Original Message-----

From: Don Meares <dcmeares@me.com>
Sent: Monday, October 5, 2020 6:45 PM
To: Department Planning <Planning@ci.homer.ak.us>
Cc: Meares Carol <ccmeares@gmail.com>
Subject: Condition Use Permit 20-15, Wild Honey Restaurant

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

From Don and Carolyn Meares
3459 Main Street, Unit 2
Homer, AK. 99603
907-322-2301

We are emailing this comment in support of the Wild Honey Conditional User Permit request as we are not likely able to attend the meeting.

Carol and I have a residence in the Old Town Cottages near the Wild Honey restaurant and we also enjoy the Old town living experience.

We encourage approval of the conditional use permit. We believe that improving the safety and quality of Old Town's businesses while maintaining the Old Town character is positive for the City of Homer. We applaud Ms. Livingston's design maintaining the look and feel of Old Town, the beach town atmosphere, and the living history aspect of authentic Alaska.

We do believe that in the case of the Bunnell Street businesses, the required parking numbers may be inconsistent with the stated goal of ensuring the CBD remain a pedestrian friendly area. While the street does get very busy, many customers (far far more than the normal at anywhere else in town that I am aware of) walk to Wild Honey. Within walking distance are several bed and breakfast establishments, the RV park, a hotel, and residential housing. We support the staff suggestion of reduced parking requirements.

thank you
Don Meares
Carolyn Meares

Sent from my iPad

Rick Abboud

From: Julie Engebretsen
Sent: Tuesday, October 6, 2020 12:12 PM
To: Rick Abboud
Subject: Fwd: For Planning Commission tonite

Sent from my iPhone

Begin forwarded message:

From: Asia Freeman <asia@bunnellarts.org>
Date: October 6, 2020 at 1:07:34 PM PDT
To: Julie Engebretsen <JEngebretsen@ci.homer.ak.us>, Renee Krause <RKrause@ci.homer.ak.us>
Subject: For Planning Commission tonite

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

Dear City of Homer Planning Commission,

I am writing in regard to the permit for Wild Honey renovations. Wild Honey is physically attached to the Inlet Trading Post which houses Bunnell Street Arts Center on the main floor and Old Town Bed and Breakfast above.

I understand that the Planning Commission has made requests to the project permitting which include paving the parking lot and installing a fence along the north edge of the parking lot between Old Town Cottages and the Inlet Trading Post.

I am not opposed to paving the parking lot at some point in the future, but I do not understand why making the paving mandatory should be required. It is a very big expense (at least \$20,000, last I checked) for Wild Honey (and consequently the Bunnell Art Center, and other tenants of 106 W Bunnell, and it's shared owner), but not other business owners in Old Town. Paving the parking lot seems to be an unfair request. Will AJ's Steakhouse also be required to pave its lot within the two-year period? Will the same requirement be imposed on the RV park across from Wild Honey. The requirement seems arbitrary and not justified by the minimal additional traffic that may result. As noted in the plans, the rear-covered decking and side pathway were added mostly for aesthetics consistency with the Bunnell Street Art Center. The rear exit/entry are there due to the city's fire code requirements and will not be used as a primary entry/exit. Also, while the new construction is designed to improve and enhance the visual and long-term viability of the Wild Honey Bistro building, it is not providing significant increases in capacity or being done in anticipation of increased vehicle traffic.

I agree that there will not be room for growth of a hedge that would be able to act as a true barrier. I do not believe that a fence should be required either as, in addition to the overlapping points made above, it is anticipated that foot and vehicle traffic will continue to be almost exclusively by and through the main front entrance. There will also be no seating on the rear deck as the decking was included simply to keep the rear of the new construction consistent with the look of the other half of the building. Given this, there should be no or only minimal increases in noise. Also, the view from the residences will be significantly improved by the renovation, without the addition of a hedge or fence. Old Town Cottages currently looks onto the rear of a deteriorating quonset hut, which will be replaced by the new construction that will be aesthetically consistent with the rear of the existing Bunnell Art Center and really very neat and attractive, and historic in appearance. The addition of a fence would actually work against the aesthetic improvements and not be consistent with other buildings in Old Town. A fence or hedge would also create security concerns during early mornings and winter months where light is low.

The request for paving and fencing appear to be driven by a concern that the planned rear decking will attract car and/or vehicle traffic and/or that there will be a significant anticipated increase in business. Wild Honey clientele parks in front of the building, which is most convenient, while the rear parking lot will continue to be used as it has since long before Old Town Cottages, for parking by all business occupants/staff for Bunnell, The Fringe and Old Town B&B.

Sincerely,

Asia

Asia Freeman
Artistic Director
Bunnell Street Arts Center
106 West Bunnell, Suite A
Homer, AK 99603
907.235.2662
asia@bunnellarts.org

Bunnell Street Arts Center is situated within the sovereign tribal boundaries of [Ninilchik Village Tribe](#), lands that have been cared for for thousands of years, since time immemorial, by the Indigenous people of this region-- Dena'ina, Sugpiaq, Yup'ik and Kachemak Peoples before them. Chin'an, Chiqinik, Quyana, Thank you! We are committed to resisting colonialism by partnering with Indigenous artists and supporting Indigenous-led practices

[[[sEP:sEP]]] Bunnell's land acknowledgement is a living document. We offer this statement with good intentions. It is not our intent to offend and we welcome feedback on how we can to continue to improve our efforts on this journey.

Travis Brown

From: Gary Miller <garymillerak@gmail.com>
Sent: Wednesday, October 7, 2020 3:37 PM
To: Department Planning
Cc: Sherry Thompson; Susan Miller
Subject: Wild Honey CUP hearing 10/7/2020

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Planning Commission

Re; Wild Honey Restaurant, Old Town, Homer

We live @ 3459 Main St, behind Wild Honey Restaurant and Bunnell Art Center, red cottage, #8. so we look directly into Wild Honey and AJ's Steakhouse, have lived there part time for 9 years, built the cottage.

We like what the Planning Committee has come up with in their report.

Only issue we would like to see would be possible restaurant venting go upward into the sky versus out back, so we wouldn't have to listen to sound of fans/or smell the cooking.

We have that now with AJ's Steakhouse, it's not good. sometimes wind drives it right into our front door or sound is loud.

Landscaping: so to conceal the rear of the building if possible with shrubs. and to seal the parking lot so dust doesn't come into our cottage with traffic. Since the rear parking area is for Bunnell Arts, the B&B, Vintage clothing store in building and Wild Honey, we'd appreciate limiting further parking back there.

Thank you,

Gary and Susan Miller
907.440/7167

winter address: 9578 E Ventaso Cir
Tucson AZ. 85715

Travis Brown

From: Frank Griswold <fsgriz@alaska.net>
Sent: Wednesday, October 7, 2020 3:59 PM
To: Department Planning
Subject: CUP 20-15

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

Dear Commissioners,

The application for CUP 20-15 lists Beachy Construction, Inc. as the Applicant and is signed by contractor Matt Early who indicated on page 5 that he is the Owner of Record. The actual owner of record appears to be Melody Livingston who did not sign the Application and, contrary to Staff Report 20-63, is not listed as an applicant on the application form. HCC 21.71.020(a)(9) states: "If the applicant is not the owner of the subject lot, the owner's signed authorization granting the applicant the authority to (a) apply for the conditional use permit and (b) bind the owner to the terms of the conditional use permit, if granted." Because HCC 21.71.020(a)(9) has not been complied with, the application for CUP 20-15 should not even be considered by the Commission. The application form suggests that Level 1 lighting, Level 2 ROW Access Plan, and level 2 Site Development Standards apply; it is not clear that these have been adequately addressed. Applicant indicates that he is building or remodeling a commercial structure, or multifamily building with more than 3 apartments so Fire Marshal Certification is required. Where asked to state the status of Fire Marshal Certification, Applicant left it blank. If CUP 20-15 is approved, Fire Marshal Certification should be one of the conditions. HCC 21.71.030(j) requires that the proposal will comply with all applicable provisions of the Community Design Manual. Nonetheless, Applicant indicated on the Application that his project does not trigger a Community Design Manual review. Without a CDM review it cannot be determined which provisions are applicable or met. Applicant indicates that there are nonconforming uses or structures on the property and further indicates that they have been formally accepted by the Homer Advisory Planning Commission. There is no evidence in the record that any nonconforming uses or structures on the subject property have been formally accepted by the Homer Advisory Planning Commission. Applicant states that adjoining property values will "increase due to improved quality of adjacent buildings" but fails to acknowledge that decreasing setbacks and lot density requirements will likely have a deleterious effect on the values of adjoining properties. Applicant states that his proposal will not be detrimental to the health, safety or welfare of the surrounding area or the city as a whole but there is no evidence to support such a claim. The purpose of the Homer Zoning Code is listed under HCC 21.01.030:

The Homer Zoning Code is adopted as one means of implementing the general goals and policies of the Homer Comprehensive Plan. Its purpose is to enhance the public health, safety and welfare through land use regulations to:

- a. Designate, regulate and restrict the location and use of buildings, structures and land;
- b. Regulate the height, number of stories, and size of buildings and other characteristics of structures;
- c. Regulate and determine the size of yards and other open spaces;
- d. Regulate and limit the density of population;

- e. Conserve and stabilize the value of property;
- f. Provide adequate open spaces for light and air; and to prevent and fight fires;
- g. Prevent undue concentration of population;
- h. Lessen congestion on streets and highways;
- i. Preserve and enhance the aesthetic environment of the community;
- j. Promote health, safety and general welfare. [Ord. 08-29, 2008].

Building setbacks and lot density restrictions were enacted to promote health, safety and general welfare. Arbitrarily reducing setback requirements and lot density requirements is clearly detrimental to the health, safety and welfare of the surrounding area and city as a whole.

On page 4 of the application, Applicant failed to state how many parking spaces are required for his development or how many spaces are shown on his parking plan. He did state that he is not requesting any (parking space) reductions. However, Planning Staff calculated that 16 parking spaces are required and that only 10 on-site parking spaces are provided. Despite Applicant's certification that the above statements and other information submitted are true and accurate to the best of his knowledge and that he is the owner of record, on many accounts this does not appear to be the case.

HCC 21.71.010(b) states in relevant part as follows: "A conditional use permit may be granted to approve *land uses and structures* with special design or site requirements, operating characteristics, or potential adverse effects on surroundings." HCC 21.18.020(a), HCC 21.18.020(cc), and HCC 21.18.020(d) are all irrelevant to this application because all pertain to permitted uses for which no CUP is needed. The Commission should focus on the effects of the proposed setback reduction and lot density increase instead of the effects of permitted uses.

HCC 21.18.040(b)(4) and HCC 21.18.040(d) violate the equal protection clause of the US Constitution because they arbitrarily apply to some properties within the CBD but not to others. They also circumvent the variance procedures prescribed under AS 29.40 and HCC 21.72. Therefore, the Commission does not have the authority to approve CUP 20-15 as applied. This proposal should be considered under HCC 21.72 as a request for area variances where the review criteria apply to dimensional requirements, not under HCC 21.71 as a request for a conditional use permit where the review criteria apply to uses and structures. These issues are pending before the Alaska Supreme Court. It would be prudent for the Commission to seek independent, impartial legal counsel before deciding this matter.

Pipelines and railroads could admittedly have a greater negative impact on the value of adjoining property than the proposed setback reduction and increase in lot coverage but Planning Staff has deliberately misinterpreted the applicable standard. HCC 21.71.030(c) states: "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." Neither pipelines nor railroads are listed as permitted uses within the CBD; both are listed as conditional uses. However, neither have been *conditionally permitted* via CUP and if they ever were, severe conditions would likely be imposed. Planning Staff has substituted "conditionally permissible" for "conditionally permitted" in order to lower the bar for approval so low as to render review criteria HCC 21.71.030(c) meaningless.

Planning Staff states that three sections of the CDM apply but fails to state why myriad other applicable sections do not. The CDM includes extensive landscaping requirements but Planning Staff states as follows: "Due to the existing site design and small lot, there is not a lot of room for landscaping. ... Staff recommends leaving any decisions about landscaping and drainage to the affected property owners." In granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein. HCC 21.70.030(c). If the subject lot is too small to support the proposed structure then the structure should be reduced so that it fits the lot. What is the point in having a zoning code if it is not adhered to?

Planning Staff states: "Allowing the continuation and expansion of floor area over 30% meets the Comprehensive Plan goal of infill." It is not a stated goal of the Comprehensive Plan to infill every square inch of every lot in the CBD. The subject lot is already infilled. In *Griswold v. City of Homer*, 925 P.2d 1015, 1023 n.9 (Alaska 1996) the court said: "Not all of the goals articulated by the City can be considered legitimate per se. For example, any zoning change which eases restrictions on property use could be said to further the goal of "filling in vacant places."

Planning Staff found that "no evidence has been found that [the proposal] is not contrary to the applicable land use goals and objects [sic] of the Comprehensive Plan." Planning Staff did not look for any such evidence. Furthermore, the lack of evidence does not constitute evidence. The proposal is contrary to the following goals and objectives of the 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 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.

Implementation Strategies

- • Review how developments effect on- and off-site environmental functions
 - • Support the preservation of green infrastructure.
1. **Objective B:** Continue to review and refine development standards and require development practices that protect environmental functions.

Once a project has been identified for development, green infrastructure concepts can be used to consider what special conditions, if any, need to be incorporated into the project's layout and development. Guidelines for development such as setbacks from waterbodies or limits on development of steep slopes are covered through the City's zoning code. Homer's existing codes include many good environmental standards. Periodic review of the successes and failures of the existing standards will help identify opportunity for revisions.

Appendix C-7 includes examples of how decisions about site clearing, grading, and impervious surfaces can create very different types of development. Homer is encouraged to continue practices that bring about Objective B.

Implementation Strategies

- • Review the lessons learned from the implementation of site development standards
- • Consider revision of development standards in light of new information in relation to

environmental functions and best practices

Green Infrastructure Defined

Green infrastructure is defined as an interconnected network of natural areas and other open spaces that conserves natural ecosystem values and functions, sustains clean air and water, and provides a wide array of benefits to people and wildlife. In contrast to traditional approaches to open space conservation, green infrastructure is integrated with and linked to development. Green infrastructure is a way of conserving natural areas that function as city infrastructure. Definition and other information based on Green Infrastructure: Linking Landscapes & Communities.

Mark A. Benedict, Ph.D., Edward T. McMahon, J.D. Island Press, 2006

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

Ideally, adopting more effective development standards will result in the preservation and protection of lands with high environmental value. However, there may be some areas identified that cannot easily be protected through standard means and are so important they should be preserved forever. References such as wetland, steep slope, and green infrastructure maps can help identify and prioritize these lands. Organizations, such as the Homer Soil and Water Conservation District and the Natural Resources Conservation Service of Alaska may be consulted in identifying specific local strategies. Examples of environmentally important areas might include a particular beach access corridor or a particular section of a lake or stream.

Implementation Strategies

- Support acquisition of environmentally sensitive land for preservation

GOAL 3: Encourage high quality buildings *and site design* that complements Homer’s beautiful natural setting.

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Planning Staff states: “If the new construction met the twenty foot building setback, it would be much further [sic] from the street and not align with the older buildings on either side: the AJ’s restaurant to the west, and the Inlet Trading Post to the east. Allowing new construction within the twenty foot setback area would keep the character of the period architecture of this portion of Old Town, as recommended by the Comprehensive Plan.” Many of the older buildings in Old Town are (grandfathered) nonconforming uses. Nonconforming uses do not set a legal precedent for the proliferation of similar uses; at some point they are supposed to be discontinued and be replaced by new uses/structures that conform to the city’s comprehensive zoning scheme. In a memorandum to Councilmember Alan Parks dated April 3, 1998, Homer City Attorney Gordon Tans stated as follows: "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.”

The applicant must produce evidence sufficient to enable meaningful review of the application. HCC 21.71.030. He did not. The application shall not be approved unless it is established that the proposal, with

conditions if necessary, satisfies the applicable criteria. (Which it does not). HCC 21.71.040(a). Nothing in the zoning code shall be construed to require the granting of a conditional use permit.

Frank Griswold