



## REPORT TO PLAN COMMISSION

**Plan Commission Public Hearing Date:** June 23, 2020

**Common Council Meeting Date:** July 1, 2020

**Item:** Special Use Permit #4-20 for a sidewalk café and restaurant with alcohol sales and consumption located at 222 East College Avenue

**Case Manager:** Don Harp, Principal Planner

### GENERAL INFORMATION

**Owner/Applicant:** DDCC Holdings, LLC (owner) / Robert Wall, Green Gecko Enterprises, LLC (applicant)

**Address/Parcel #:** 222 East College Avenue – (Tax Id #31-2-0321-00)

**Petitioner's Request:** The applicant is requesting a Special Use Permit for a sidewalk café and restaurant with alcohol sales and consumption.

### BACKGROUND

This space was most recently occupied by Surfin Bird Skate Shop (retail use).

### STAFF ANALYSIS

**Project Summary:** The applicant proposes to establish a grocery store including a sidewalk café and restaurant (deli) with alcohol sales and service/consumption on the subject site. The proposed sidewalk café will be located within the amenity strip along College Avenue directly in front of the building. The proposed establishment will occupy the first floor of the building (2,700 square feet) and approximately 100 square feet of the amenity strip for the sidewalk cafe. The basement will be utilized for storage of business goods.

**Operational Information:** A plan of operation is attached to the staff report.

**Existing Site Conditions:** The existing two-story multi-tenant building totals approximately 5,400 square feet. The second floor consists of two office suites with the proposed Green Gecko, Grocer Deli occupying the first floor and utilizing the basement for storage. No off-street parking is provided on site, which is allowable in the CBD Central Business District.

**Outdoor Alcohol Consumption Area:** A sidewalk café with alcohol sales and consumption is proposed within the amenity strip along College Avenue directly in front of 222 East College Avenue. A Special Use Permit is required for this proposed use per Chapter 9 of the Municipal Code

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**Current Zoning:** The subject property has a zoning designation of CBD Central Business District. Per Section 23-114(e) of the Municipal Code, a restaurant (deli) with alcohol sales and service requires a Special Use Permit in the CBD District. A two-thirds (2/3) vote of the Common Council is required for approval.

**Surrounding Zoning and Land Uses:** The surrounding area is under the jurisdiction of the City of Appleton (north, south, east, and west).

North: CBD Central Business District. The adjacent land use to the north is currently a place of worship.

South: CBD Central Business District. The adjacent land uses to the south are currently a mix of commercial uses.

East: CBD Central Business District. The adjacent land uses to the east are currently a mix of commercial uses.

West: CBD Central Business District. The adjacent land uses to the west are currently a mix of commercial.

**Appleton Comprehensive Plan 2010-2030:** Community and Economic Development staff has reviewed this proposal and determined it is compatible with the Central Business District designation shown on the City's *Comprehensive Plan 2010-2030* Future Land Use Map. Listed below are related excerpts from the City's *Comprehensive Plan 2010-2030*.

*Goal 1 – Community Growth*

*Appleton will continue to provide opportunities for residential, commercial, and industrial growth, including appropriate redevelopment sites within the downtown and existing neighborhoods, and greenfield development sites at the City's edge.*

*Goal 8 – Economic Development*

*Appleton will pursue economic development that retains and attracts talented people, brings good jobs to the area, and supports the vitality of its industrial areas, downtown, and neighborhood business districts.*

*OBJECTIVE 9.4 Economic Development:*

*Ensure the continued vitality of downtown and the City's neighborhood commercial districts.*

*OBJECTIVE 10.5 Land Use:*

*Support the continued redevelopment and revitalization of land uses adjacent to Appleton's key transportation corridors and downtown.*

*Chapter 14 Downtown Plan, Initiative 4 Downtown Development and Business Retention:*

*Strategy 4.8 – Support private sector efforts to redevelop and invest in downtown.*

**Technical Review Group (TRG) Report:** This item appeared on the June 2, 2020 TRG Agenda. No negative comments were received from participating departments.

- The Department of Public Works recommended condition number three (3) be added to the staff report.

**Ordinance Requirements and Substantial Evidence Regarding Conditions of Approval:**

When reviewing an application for a Special Use Permit, the City must look at the requirements and conditions found in the zoning ordinance and determine if the applicant has demonstrated that their proposed application for Special Use Permit satisfies all those requirements and conditions pursuant to Section 23-66(c)5c. of the zoning ordinance. The Plan Commission and Common Council must provide **substantial evidence** supporting their decision to approve, approve with conditions or deny the Special Use Permit. Substantial evidence means *“facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a special use permit and that reasonable persons would accept in support of a conclusion.”*

Public comment that is based on personal opinion or speculation are not sufficient forms of evidence. All requirements and conditions listed for approval must be reasonable, and to the extent practicable, measurable.

**Finding of Fact:** This request was reviewed in accordance with the standards (*proper zoning district, district regulations, special regulations, comprehensive plan and other plans, traffic, landscaping and screening, neighborhood compatibility, and impact on services*) for granting a Special Use Permit under Section 23-66 (e) (1-8), which were found in the affirmative.

**RECOMMENDATION**

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Staff recommends, based on the above analysis, that Special Use Permit #4-20 for a sidewalk café and restaurant with alcohol sales and consumption located at 222 East College Avenue, (Tax Id #31-2-0321-00), per attached resolution, **BE APPROVED** to run with the land, subject to the following conditions:

1. The applicant shall apply for and receive approval of a Liquor License from the City Clerk prior to serving alcohol on the premises and within the sidewalk café area.
  - **Substantial Evidence:** This condition provides notice to the applicant that they are required to apply for a liquor license from the City Clerk’s office prior to serving alcohol inside the building located at 222 East College Avenue in order to comply with Municipal Code and General Policy Statement on Beer/Liquor Licensing.

2. The applicant shall comply with the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Municipal Code.
  - **Substantial Evidence:** This condition provides notice to the applicant that they are required to follow the standards for serving alcohol in the City of Appleton in order to promote the health, safety and general welfare of the City.
3. The applicant shall apply for and receive approval of a Street Occupancy permit from the Common Council, prior to placing tables and chairs in the sidewalk café area.
  - **Substantial Evidence:** This condition provides notice to the applicant that they are required to apply for a street occupancy permit from the Department of Public Works office prior to placing tables and chairs in the sidewalk café area directly in front of 222 East College Avenue in order to comply with Municipal Code.
4. The premises and sidewalk café area shall be kept free of litter and debris.
  - **Substantial Evidence:** This requirement assures the applicant understands they must keep the premises free of litter and debris at all times in order to promote the health, safety, comfort and general welfare of the City.
5. All Zoning, Building, Fire, Engineering, Utility and other Municipal Codes, and all applicable State and Federal laws shall be complied with.
  - **Substantial Evidence:** This condition assures the applicant understands they must follow the City's Municipal Code and all applicable State and Federal laws which they are required to follow while conducting business in the City; failure to follow City, State and Federal regulations may result in revocation of their special use permit to serve alcohol.
6. The applicant shall have twelve (12) months from the issuance of the Special Use Permit (SUP) to obtain a liquor license and commence use of the tenant space located at 222 East College Avenue, or Special Use Permit #4-20 will expire.
  - **Substantial Evidence:** Standardized condition to encourage the applicant to proceed with applying for and obtaining the appropriate liquor license in a timely manner.
7. Any expansions of the special use, changes to the development plan(s), plan of operation or any conditions of approval may require a major or minor amendment request to this Special Use Permit pursuant to Section 23-66(g) of the Zoning Ordinance. Contact the Community and Economic Development Department to discuss any proposed changes.

**Special Use Permit #4-20**

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- **Substantial Evidence:** Standardized condition that establishes a process for review and approval of future changes to the special use in order to promote the health, safety and welfare of the City.

**CITY OF APPLETON  
RESOLUTION FOR SPECIAL USE PERMIT #4-20  
RESTAURANT AND SIDEWALK CAFÉ WITH ALCOHOL SALES AND CONSUMPTION  
222 EAST COLLEGE AVENUE**

**WHEREAS**, Robert Wall, owner/applicant of the Green Gecko Grocer & Deli has applied for a Special Use Permit for a restaurant and sidewalk café with alcohol sales and consumption located at 222 East College Avenue, and also identified as Parcel Number 31-2-0321-00; and

**WHEREAS**, the location for the proposed restaurant with alcohol sales and consumption is located in the CBD Central Business District, and the proposed use may be permitted by special use permit within this zoning district pursuant to Chapter 23 of the Municipal Code; and

**WHEREAS**, the location for the proposed sidewalk café with alcohol sales and consumption is located in the amenity strip along College Avenue directly in front of 222 East College Avenue, and the proposed use may be permitted by special use permit pursuant to Chapter 9 of the Municipal Code; and

**WHEREAS**, the City of Appleton Plan Commission held a public hearing on June 23, 2020 on Special Use Permit #4-20 at which all those wishing to be heard were allowed to speak or present written comments and other materials presented at the public hearing; and

**WHEREAS**, the City of Appleton Plan Commission has reviewed and considered the Community and Economic Development Department’s staff report and recommendation and other spoken and written evidence and testimony presented at the public hearing; and

**WHEREAS**, the City of Appleton Plan Commission reviewed the standards for granting a Special Use Permit under Sections 23-66(e)(1-8) of the Municipal Code; and

**WHEREAS**, the City of Appleton Plan Commission reviewed the standards for imposing conditions on the Special Use Permit under Section 23-66(c)(5)c. of the Municipal Code, and forwarded Special Use Permit #4-20 to the City of Appleton Common Council with a favorable conditional or not favorable (CIRCLE ONE) recommendation; and

**WHEREAS**, the City of Appleton Common Council has reviewed the report and recommendation of the City of Appleton Plan Commission at their meeting on July 1, 2020; and

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the Common Council, based on Community and Economic Development Department’s staff report and recommendation and other spoken and written evidence and testimony presented at the public hearing, the Common Council meeting, and having considered the recommendation of the City of Appleton Plan Commission, that the Common Council:

1. Determines all standards listed in Sections 23-66(e)(1-8) are found in the affirmative YES or NO (CIRCLE ONE)
2. If NO, the City of Appleton Common Council hereby denies Special Use Permit #4-20 for a sidewalk café and restaurant with alcohol sales and consumption located at 222 East College Avenue, also identified as

Parcel Number #31-2-0321-00 based upon the following standards and determinations: (List reason(s) why the Special Use Permit was denied)

3. If YES, the City of Appleton Common Council hereby approves Special Use Permit #4-20 for a sidewalk café and restaurant with alcohol sales and consumption located at 222 East College Avenue, also identified as Parcel Number #31-2-0321-00 subject to the following conditions as they are related to the purpose of the City of Appleton Municipal Code and are based on substantial evidence:

**CONDITIONS OF APPROVAL: SPECIAL USE PERMIT #4-20**

- A. The applicant shall apply for and receive approval of a Liquor License from the City Clerk prior to serving alcohol on the premises and within the sidewalk café area.
  - B. The applicant shall comply with the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Municipal Code.
  - C. The applicant shall apply for and receive approval of a Street Occupancy permit from the Common Council, prior to placing tables and chairs in the sidewalk café area.
  - D. The premises and sidewalk café area shall be kept free of litter and debris.
  - E. All Zoning, Building, Fire, Engineering, Utility and other Municipal Codes, and all applicable State and Federal laws shall be complied with.
  - F. The applicant shall have twelve (12) months from the issuance of the Special Use Permit (SUP) to obtain a liquor license and commence use of the tenant space located at 222 East College Avenue, or Special Use Permit #4-20 will expire.
  - G. Any expansions of the special use, changes to the development plan(s), plan of operation or any conditions of approval may require a major or minor amendment request to this Special Use Permit pursuant to Section 23-66(g) of the Zoning Ordinance. Contact the Community and Economic Development Department to discuss any proposed changes.
4. The City Clerk’s Office is hereby directed to give a copy of this resolution to the owner/applicant, Community and Economic Development Department, Inspections Division and any other interested party.

Adopted this 1<sup>st</sup> day of July 2020.

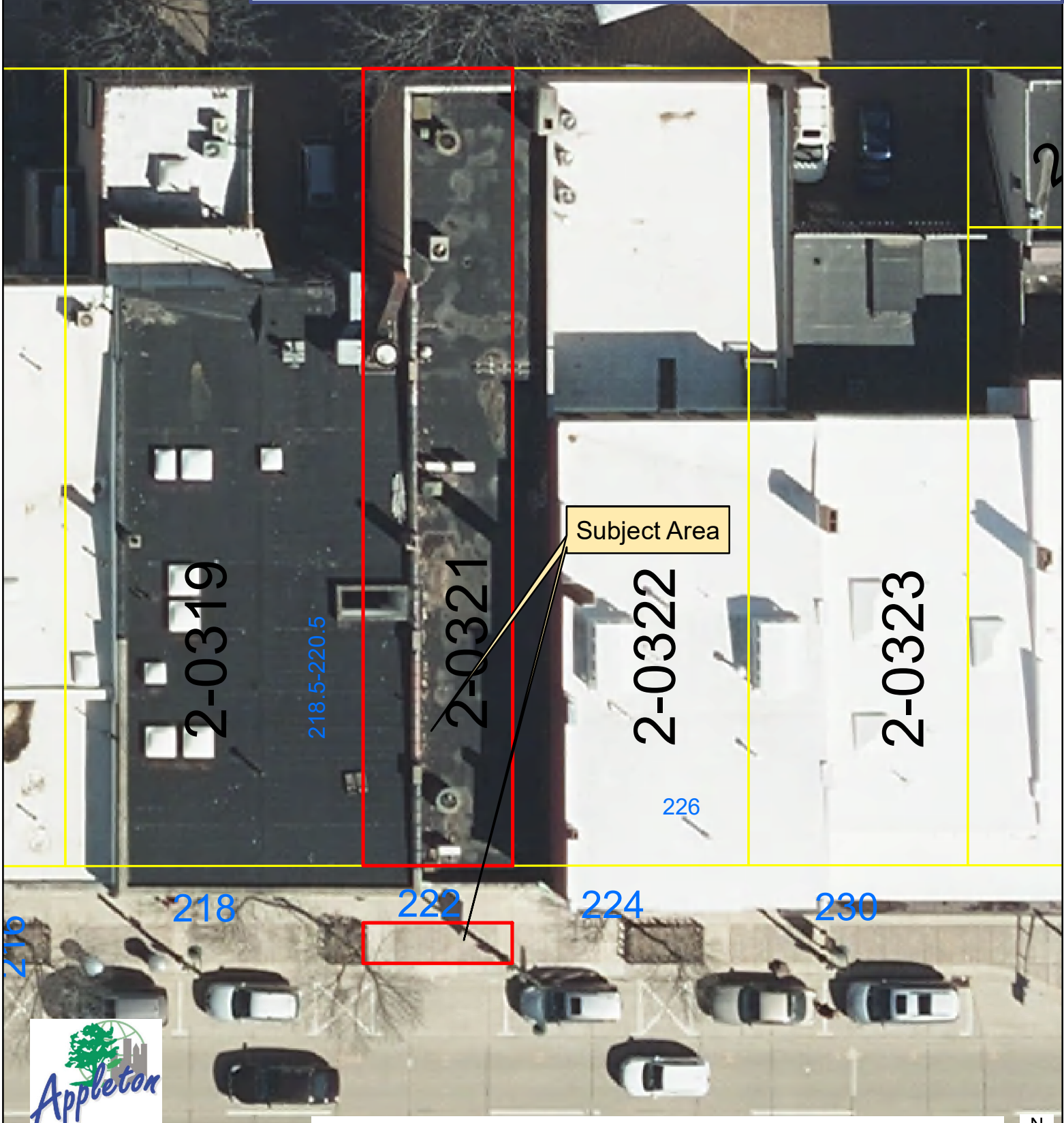
\_\_\_\_\_  
Jacob A. Woodford, Mayor

ATTEST:

\_\_\_\_\_  
Kami Lynch, City Clerk

Special Use Permit  
On-Site Alcohol Sales and Consumption, include the Sidewalk Cafe  
Green Gecko Grocer  
222 E College Avenue  
Aerial Map

E JOHNSTON



Subject Area

2-0319

218.5-220.5

2-0321

2-0322

2-0323

226

218

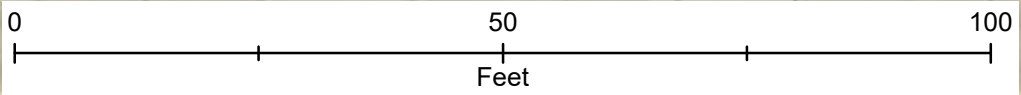
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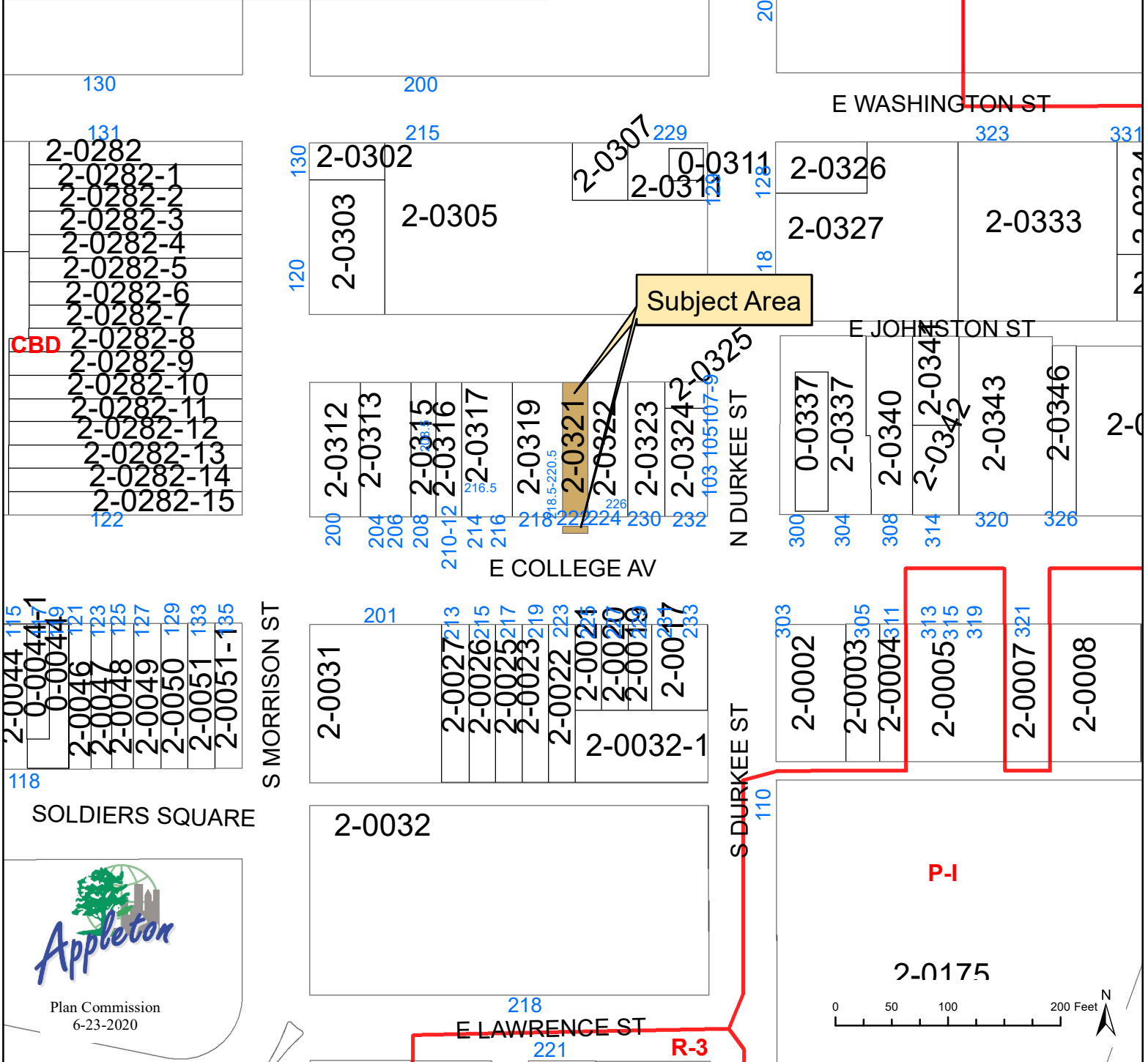


Plan Commission  
6-23-2020





Special Use Permit  
 On-Site Alcohol Sales and Consumption, include the Sidewalk Cafe  
 Green Gecko Grocer  
 222 E College Avenue  
 Zoning Map



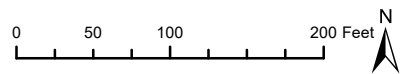
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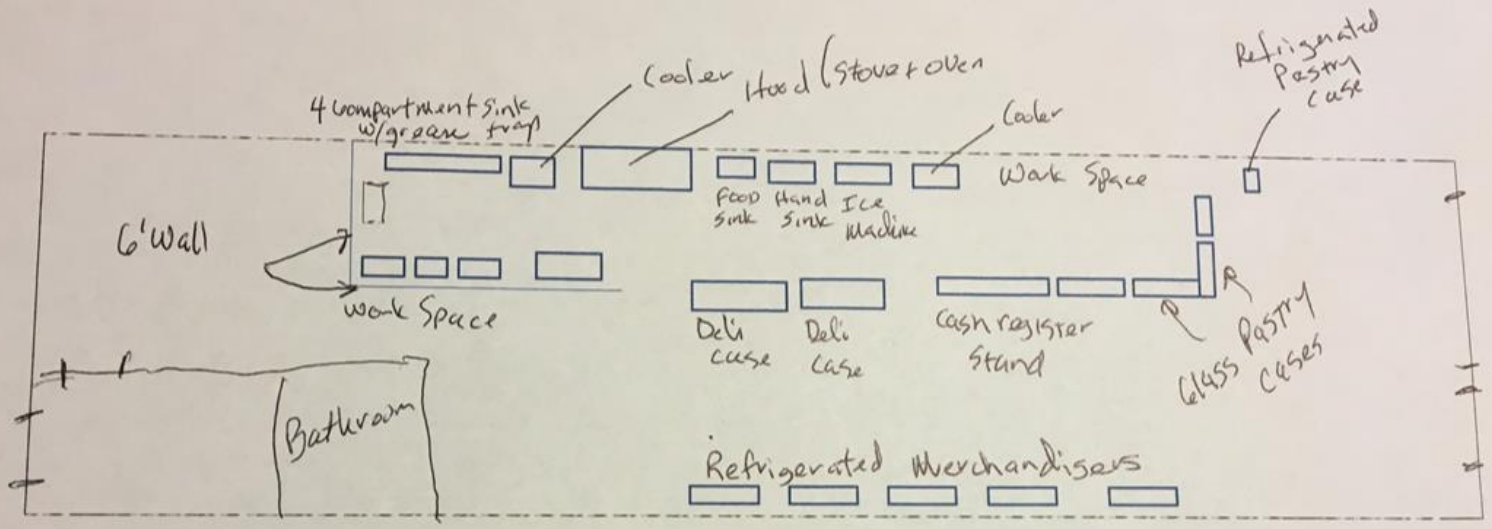
Subject Area

Subject Area



Plan Commission  
 6-23-2020





Green Grocer & Deli  
 222 E. College Avenue

## PLAN OF OPERATION AND LOCATIONAL INFORMATION

### Business information:

Name of business: Green Gecko, Enterprises, LLC

Years in operation: New establishment at this location

(Check applicable proposed business activity(s) proposed for the premises)

X Restaurant

- Tavern/Night Club/Wine Bar
- Painting/Craft Studio
- Microbrewery/Brewpub (manufacturing a total of not more than 310,000 U.S. gallons of fermented malt beverages per calendar year)
- Brewery (manufacturing a total of more than 310,000 U.S. gallons of fermented malt beverages per calendar year)
- Winery (manufacturing of wine)
- Craft-Distillery (manufacturing a total of not more than 100,000 proof gallons of intoxicating liquor per calendar year)
- Distillery (manufacturing a total of more than 100,000 proof gallons of intoxicating liquor per calendar year)
- Tasting room offering fermented malt beverages, wine or intoxicating liquor for consumption and/or retail sales on the premises where the fermented malt beverages, wine or intoxicating liquor is manufactured and/or at an off-premises location associated with premises. Tasting rooms may include food sales.

X Other: Grocer & Deli

Detailed explanation of proposed business activities:

### Retail sales of Food & Beverages for on & off site consumption

Existing gross floor area of building/tenant space, including outdoor spaces:

(square feet) 5,400 sq.ft.

Proposed gross floor area of building/tenant space, including outdoor spaces:

(square feet): 1<sup>st</sup> floor occupancy = 2,700 sq.ft. including ±100 sq.ft. outdoor sidewalk cafe

**Occupancy limits:**

Maximum number of persons permitted to occupy the building or tenant space as determined by the International Building Code (IBC) or the International Fire Code (IFC), whichever is more restrictive: TBD persons.

**Proposed Hours of Operation for Indoor Uses:**

Day	From	To
Monday thru Thursday	7 a.m.	7 p.m.
Friday	7 a.m.	7 p.m.
Saturday	7 a.m.	7 p.m.
Sunday	7 a.m.	7 p.m.

**Production/Storage information:**

(Check applicable proposed business activity(s) proposed for the premises)

- Current production of fermented malt beverages: \_\_\_\_\_ U.S. gallons per year
- Proposed production of fermented malt beverages: \_\_\_\_\_ U.S. gallons per year
- Current production of wine: \_\_\_\_\_ U.S. gallons per year
- Proposed production of wine: \_\_\_\_\_ U.S. gallons per year
- Current production of intoxicating liquor: \_\_\_\_\_ proof gallons per year
- Proposed production of intoxicating liquor: \_\_\_\_\_ proof gallons per year

X None. If none, leave the following 2 storage questions blank.

Identify location of grains and/or juice, grapes, other fruits or other agricultural product storage and type of storage container(s) used:

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Identify the storage location of spent grains and/or grapes, other fruits or other agricultural products and type of storage container(s) used:

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**Outdoor Space Uses:**

(Check applicable outdoor space uses)

Patio

Deck

X Sidewalk Café

Other \_\_\_\_\_.

None. If none, leave the following questions in this section blank.

Size: ±100 square feet

Type of materials used and height of material to enclose the perimeter of the outdoor space:

Fencing  Landscaping  Other \_\_\_\_\_ Height \_\_\_\_\_ feet

Is there any alcohol consumption incorporated within the outdoor facility? Yes X No \_\_\_

If yes, please describe: We would like to allow alcohol consumption

Are there plans for outdoor music/entertainment? Yes \_\_\_ No X

If yes, describe how the noise will be controlled:

\_\_\_\_\_

Is there any food service incorporated in this outdoor facility proposal? Yes X No \_\_\_

**Proposed Hours of Operation for Outdoor Space:**

Day	From	To
Monday thru Thursday	4 p.m.	7 p.m.
Friday	4 p.m.	7 p.m.
Saturday	4 p.m.	7 p.m.
Sunday	4 p.m.	7 p.m.

**NOTE: Hours of Operation for Outdoor Uses (Sidewalk Café with Alcohol):**

**\*\*\*\*Municipal Code Section 9-262(b)(4): The permit holder can begin serving alcoholic beverages in the sidewalk café at 4:00 p.m. Monday through Friday and 11:00 a.m. on Saturday and Sunday. All alcoholic beverages must be removed from the sidewalk café by 9:30 p.m.**

**Describe Any Potential Noise Emanating From the Proposed Use:**

Describe the noise levels anticipated from all equipment or other mechanical sources:

Negligible

Describe how the crowd noise will be controlled inside and outside the building:

Negligible

**Off-Street Parking:**

Number of spaces existing on-site: 0

Number of spaces proposed on-site: 0

**Street Access:**

Is street access to the subject property adequate or are any street improvements, such as a new turning lane, necessary to minimize impacts on traffic flow?

NO

**Other Licensed Premises:**

The number of licensed premises within the immediate geographic area of the proposed location will be considered in order to avoid an undue concentration that may have the potential of creating public safety problems or deterring neighborhood development.

List nearby licensed premises:

Wooden Nickel, Antojitos, Jeckyl's

**Number of Employees:**

Number of existing employees: 0

Number of proposed employees: 4

Number of employees scheduled to work on the largest shift: 4