



## REPORT TO CITY PLAN COMMISSION

**Plan Commission Public Hearing Date:** May 21, 2019

**Common Council Meeting Date:** June 5, 2019

**Item:** Special Use Permit #5-19 for an existing restaurant and sidewalk café with alcohol sales and consumption

**Case Manager:** Don Harp

### **GENERAL INFORMATION**

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**Owner/Applicant:** Jimmy Phimmasene (owner) / Natcha Jitmaiwong, Taste of Thai (applicant)

**Address/Parcel #:** 321 East College Avenue – (Tax Id #31-2-0007-00)

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

### **BACKGROUND**

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On April 3, 2019, the Common Council approved a street occupancy permit for the Taste of Thai restaurant to place tables and chairs in the College Avenue beautification strip.

Restaurants with alcohol sales and consumption required a Special Use Permit with the adoption of the 1994 Zoning Ordinance.

The Taste of Thai restaurant is an existing restaurant with alcohol sales and consumption. The current restaurant with alcohol sales and consumption has been operating as a historic allowed nonconforming use without a Special Use Permit.

### **STAFF ANALYSIS**

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**Project Summary:** The applicant is proposing to establish a sidewalk café (approximate area 293 square feet) with alcohol sales and consumption in the College Avenue beautification strip.

**Existing Site Conditions:** The Taste of Thai restaurant occupies the first floor of this building. The second floor is used primarily for storage.

**Outdoor Alcohol Consumption Area:** Sidewalk café in the College Avenue beautification strip.

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

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**Zoning Ordinance Requirements:** The subject property has a zoning designation of CBD Central Business District. Per Section 23-114(e) of the Municipal Code, a restaurant with alcohol sales and consumption requires a Special Use Permit in the CBD Central Business District. Per Section 9-262(b)(3) of the Municipal Code, a sidewalk café with alcohol sales and consumption requires a Special Use Permit.

The Plan Commission makes a recommendation to the Common Council who will make the final decision on the Special Use Permit. A two-thirds (2/3) vote of the Common Council is required for approval. The granting of the Special Use Permit will make the existing restaurant a conforming use per current Zoning Ordinance requirements.

**Surrounding Zoning and Land Uses:** The surrounding area is under the jurisdiction of the City of Appleton (north, south, east, and west). The uses are generally institutional, commercial and residential in nature.

North: CBD Central Business District. The adjacent land use to the north is currently the Outagamie County History Museum.

South: P-I Public Institutional District. The adjacent land uses to the south are currently Lawrence University Campus 1<sup>st</sup> floor offices and 2<sup>nd</sup> floor residential units.

East: P-I Public Institutional District. The adjacent land use to the east is currently Lawrence University campus green space.

West: P-I Public Institutional District. The adjacent land use to the west is currently Lawrence University Campus parking lot.

**Appleton Comprehensive Plan 2010-2030:** Community and Economic Development staff has reviewed this proposal and determined it is consistent with the following listed goals and objectives from the City's *Comprehensive Plan 2010-2030*.

*Chapter 14 Downtown Plan - Strategy 1.6: Add additional flexible outdoor space throughout the downtown area*

- A. *Identify specific locations and arrangements of outdoor seating and supportive outdoor furnishings which enhance the pedestrian experience.*
- B. *Review policies in place, identify barriers, and plan to adjust/remove barriers to encourage private businesses to add additional outdoor spaces including but not limited to outdoor seating, decks, patios, rooftop space, and sidewalk cafés.*

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*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 9.5 Economic Development:*

*Encourage new development and redevelopment activities that create vital and attractive neighborhoods and business districts.*

**Finding of Fact:** Prior to the granting of any Special Use Permit, the City Plan Commission may recommend and the Common Council may place such conditions and restrictions upon the establishment, location, construction, maintenance and method or hours of operation of the special use as is deemed necessary for the protection of the public interest and to secure compliance with the standards specified in 23-66 (e) (1-6). This request was reviewed in accordance with the standards for granting a Special Use Permit under 23-66 (e) (1-6), which were found in the affirmative.

**Technical Review Group (TRG) Report:** This item was discussed at the April 30, 2019 Technical Review Group meeting. No negative comments were received from participating departments.

**RECOMMENDATION**

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Staff recommends, based on the above, that Special Use Permit #5-19 for an existing restaurant with alcohol sales and consumption and a sidewalk café with alcohol sales and consumption at 321 East College Avenue (Tax Id #31-2-0007-00), as shown on the attached maps and per attached plan of operation, along with the attached resolution, **BE APPROVED** to run with the land, subject to the following conditions:

1. The serving and consumption of alcohol is limited to the interior ground floor of the building and the sidewalk cafe, as identified on the attached development plan drawings. Any future expansions for the serving and/or consumption of alcohol may require a major or minor amendment request to this Special Use Permit, pursuant to Section 23-66(g) of the Municipal Code.
2. All applicable codes, ordinances, and regulations, including but not limited to Fire, Building, and Health Codes and the Noise Ordinance, shall be complied with.

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3. Compliance with the plan of operation is required at all times. Changes to the plan of operation shall be submitted to the Community and Economic Development Department for review and approval.
4. Any deviations from the approved Development Plan may require a major or minor amendment request to this Special Use Permit pursuant to Section 23-66(g) of the Zoning Ordinance.
5. The use shall conform to the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Municipal Code.

## RESOLUTION

### CITY OF APPLETON RESOLUTION APPROVING SPECIAL USE PERMIT #5-19

**WHEREAS**, Natcha Jitmaiwong, owner of Taste of Thai has applied for a Special Use Permit for a restaurant and sidewalk café with alcohol sales located at 321 East College Avenue, and also identified as Parcel Number 31-2-0007-00; and

**WHEREAS**, the location for the proposed restaurant and sidewalk café with alcohol sales and service is located in the CBD Central Business District and the uses are permitted by special use within this zoning district; and

**WHEREAS**, the City of Appleton Plan Commission held a public hearing on May 21, 2019, on Special Use Permit #5-19 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 considered the application, the staff reports, oral and written, the Comprehensive Plan and zoning on the subject property, the testimony, written comments, and other materials 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)(1-6) and 23-66(h)(6) of the Municipal Code, and forwarded Special Use Permit #5-19 to the City of Appleton Common Council with a \_\_\_\_\_ favorable \_\_\_\_\_ 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 \_\_\_\_\_, 2019 and found it to be acceptable.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Appleton Common Council approves Special Use Permit #5-19 for a restaurant and sidewalk café with alcohol sales and service located at 321 East College Avenue, also identified as Parcel Number 31-2-0007-00 and orders as follows:

#### CONDITIONS OF SPECIAL USE PERMIT #5-19

1. The serving and consumption of alcohol is limited to the interior ground floor of the building and the sidewalk cafe, as identified on the attached development plan drawings. Any future expansions for the serving and/or consumption of alcohol may require a major or minor amendment request to this Special Use Permit, pursuant to Section 23-66(g) of the Municipal Code.
2. All applicable codes, ordinances, and regulations, including but not limited to Fire, Building, and Health Codes and the Noise Ordinance, shall be complied with.

3. Compliance with the plan of operation is required at all times. Changes to the plan of operation shall be submitted to the Community and Economic Development Department for review and approval.
4. Any deviations from the approved Development Plan may require a major or minor amendment request to this Special Use Permit pursuant to Section 23-66(g) of the Zoning Ordinance.
5. The use shall conform to the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Municipal Code.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Timothy M. Hanna, Mayor

ATTEST:

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Kami Lynch, City Clerk

**TAVERN AND/OR RESTAURANT WITH ALCOHOL SALES  
PLAN OF OPERATION AND LOCATIONAL INFORMATION**

**Business Information:**

Name of business: Taste of Thai

Years in operation: 2 years

Percentage of business derived from restaurant service: 20 % 80% from sales of food  
from sales of alcoholic beverages

Type of proposed establishment (detailed explanation of business):

The proposed establishment, will be a family owned  
restaurant that serves Thai food. Alcoholic and non-  
alcoholic beverages will be brought to the tables  
by our servers.

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

Day	From	To
Week Day <u>Monday</u> <u>Wednesday - Thursday</u>	<u>4:00 PM</u> <u>11:00AM - 2:00 PM</u>	<u>9:00 PM</u> <u>4:00PM - 9:00 PM</u>
Friday	<u>11:00AM - 2:00PM</u>	<u>4:00PM - 9:00 PM</u>
Saturday	<u>12:00 PM - 3:00 PM</u>	<u>4:00PM - 9:00 PM</u>
Sunday	<u>12:00PM - 3:00 PM</u>	<u>4:00 PM - 9:00 PM</u>

**Building Capacity and Area:**

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: 170 persons

Gross floor area of the existing building(s): 4,800 S.F.

Gross floor area of the proposed building(s): \_\_\_\_\_

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

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

The HVAC units are located on top of the roof. The  
condensers for walk-in cooler / freezer are located outside the building.  
The kitchen exhaust hood that generates low level of noise is located in kitchen.  
There is no equipment or other mechanical sources that generate noise  
in dining area and bar area.

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

Since the proposed establishment is a sit-down restaurant, no loud crowd noise is anticipated inside. The other tenants in the same strip mall conduct professional service, personal service and retail type of activities; no crowd noise is coming from outside.

If off-street parking is available for the business, describe how noise from the parking lot will be controlled:

The proposed restaurant business is enclosed by storefront windows and concrete masonry walls. Noise from the parking lot is attenuated by those exterior building elements.

**Outdoor Uses:**

Location, type, size and design of outdoor facilities:

outdoor facility, sidewalk cafe within amenity strip.

Type and height of screening of plantings/fencing/gating:

None will be provided

Is there any alcohol service incorporated in this outdoor facility proposal? Yes  No

Are there plans for outdoor music/entertainment? Yes  No

If yes, describe how the noise will be controlled:

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

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

Day	From	To
Week Day	4:00 PM	9:30 PM
Friday	4:00 PM	9:30 PM
Saturday	11:00 AM	9:30 PM
Sunday	11:00 AM	9:30 PM



**Outdoor Lighting:**

Type: 1 lightpost 7 restaurant lights.

Location: 1 sidewalk lightpost, 7 in front of the restaurant building.

**Off-Street Parking:**

Number of spaces existing: \_\_\_\_\_

Number of spaces proposed: 0

**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:

None  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

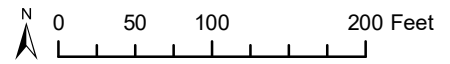
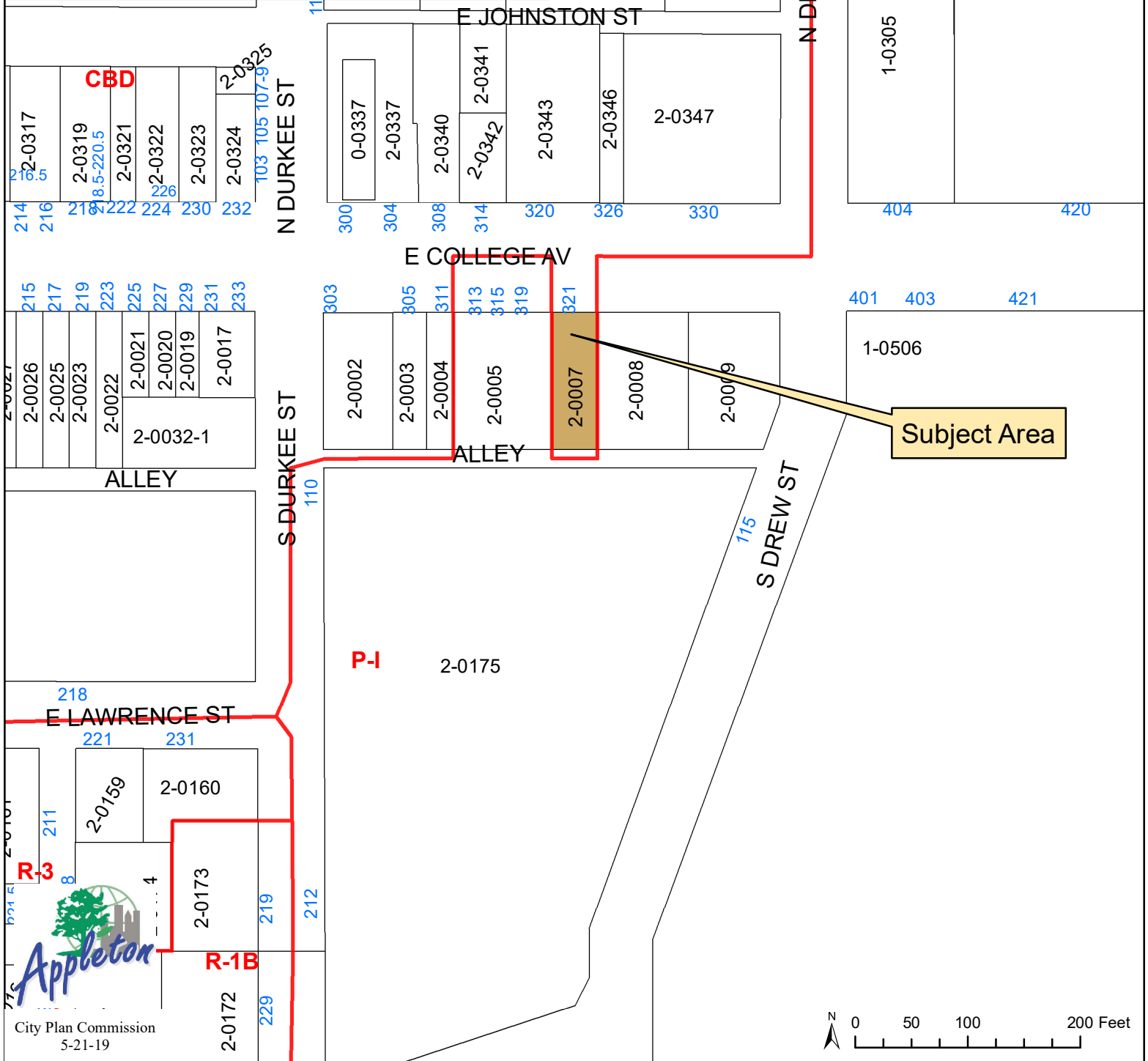
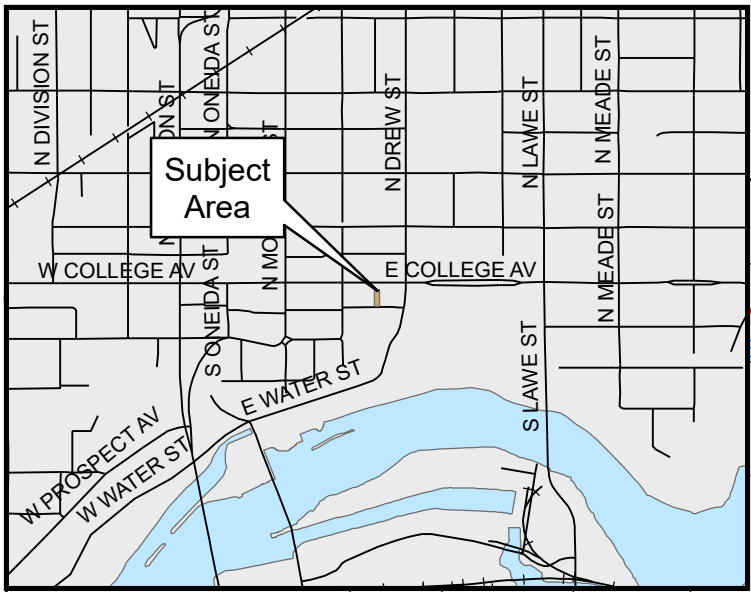
**Number of Employees:**

Number of existing employees: N/A

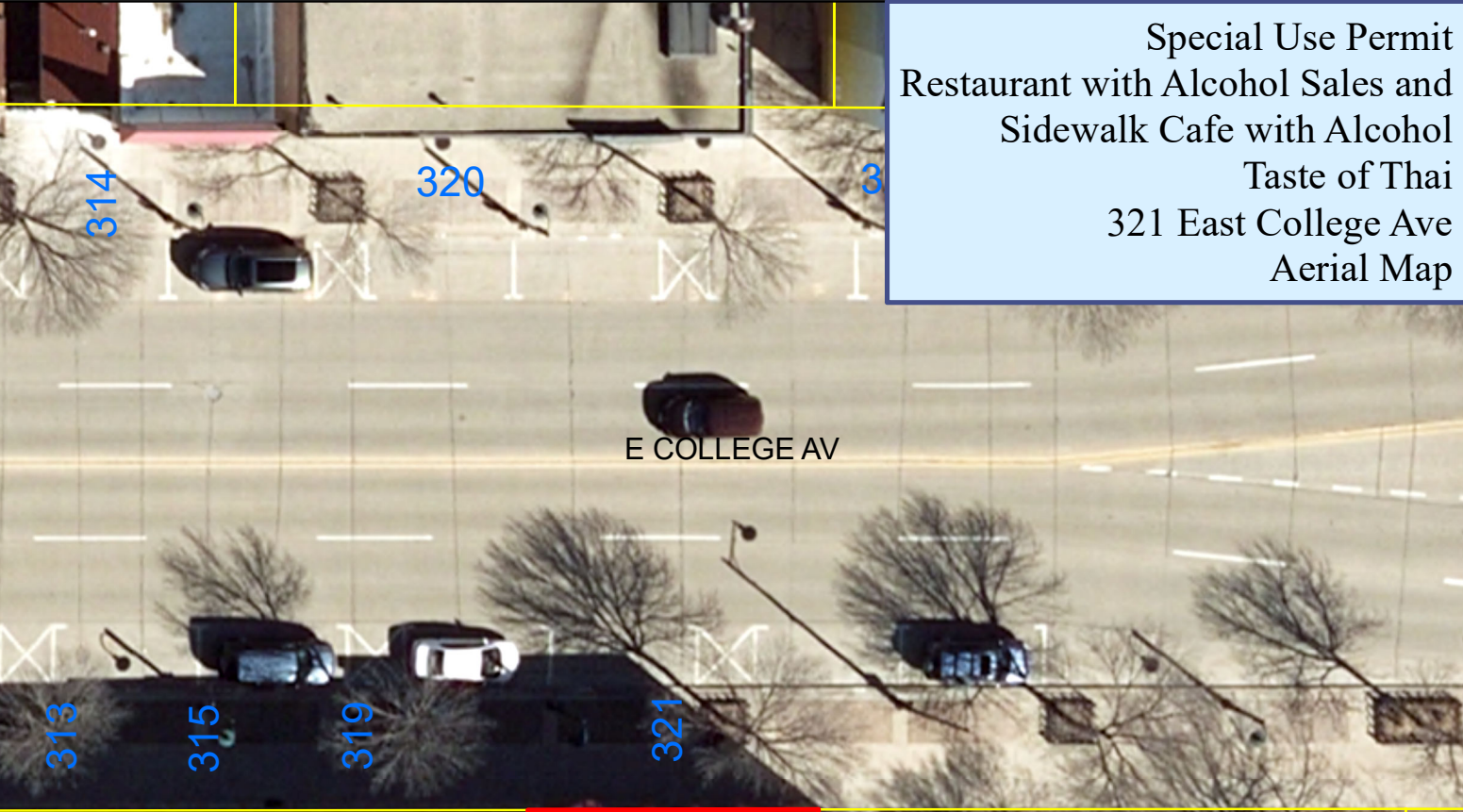
Number of proposed employees: 12

Number of employees scheduled to work on the largest shift: 10

Special Use Permit  
 Restaurant with Alcohol Sales and  
 Sidewalk Cafe with Alcohol  
 Taste of Thai  
 321 East College Ave  
 Zoning Map



Special Use Permit  
Restaurant with Alcohol Sales and  
Sidewalk Cafe with Alcohol  
Taste of Thai  
321 East College Ave  
Aerial Map



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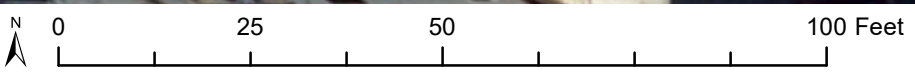
Subject Area

2-00005

2-00007

2-00008

ALLEY

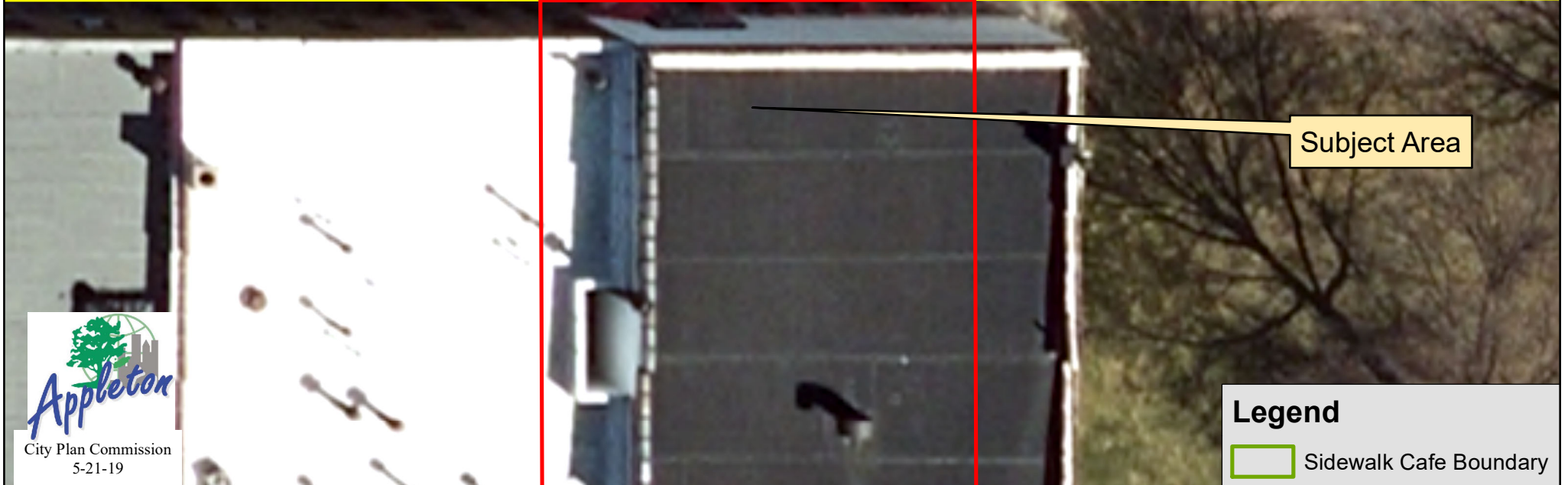
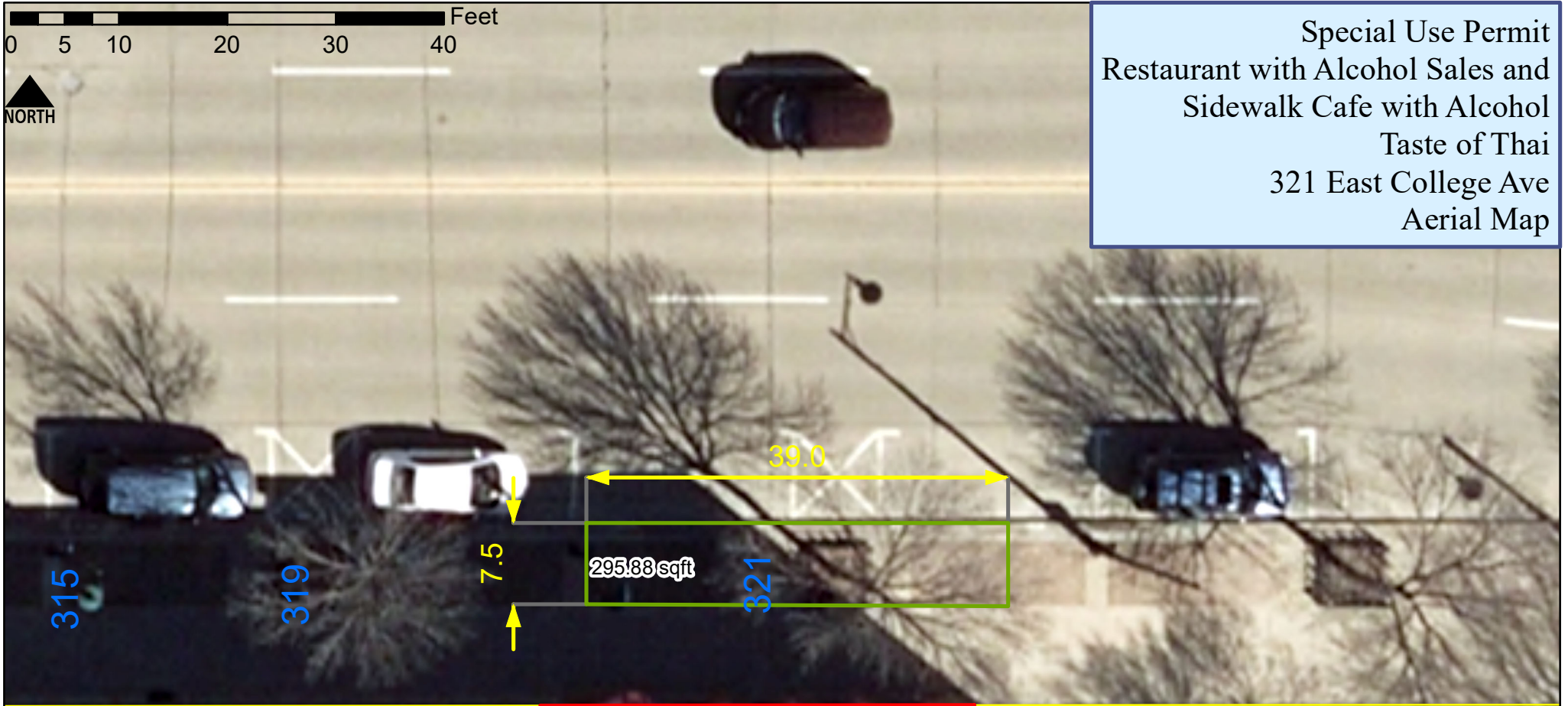




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Special Use Permit  
Restaurant with Alcohol Sales and  
Sidewalk Cafe with Alcohol  
Taste of Thai  
321 East College Ave  
Aerial Map



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**Legend**

 Sidewalk Cafe Boundary