



REPORT TO CITY PLAN COMMISSION

Plan Commission Public Hearing Date: May 24, 2023

Common Council Meeting Date: June 7, 2023

Item: Special Use Permit #5-23 for a bar & grill with alcohol sales and consumption inside an existing building formerly used as an auto maintenance garage (approximately 1,550 sq. ft. floor area) at 2811 East Newberry Street

Case Manager: Don Harp, Principal Planner

GENERAL INFORMATION

Owner/Applicant: SPG Investments, LLC, Sudhansh and Suyash Goel

Address/Parcel #: 2811 East Newberry Street (Tax Id #31-4-5747-00)

Petitioner's Request: Establish a bar & grill with alcohol sales and consumption (serving liquor, wine, beer and food) inside an existing building formerly used as an auto maintenance garage (approximately 1,550 sq. ft. floor area).

BACKGROUND

The building was constructed in 1953, and the property contains Exxon Mobil Gas Station/Convenience Store with retail alcohol sales and an off-street parking lot. The rear portion of the building was formerly used as an automobile maintenance garage.

In 1994, the subject property was annexed from the Town of Buchanan to the City of Appleton.

STAFF ANALYSIS

Project Summary: The applicant proposes to establish a bar & grill with alcohol sales and consumption (serving liquor, wine, beer and food) inside an existing building formerly used as an automobile maintenance garage on the subject site, which would occupy approximately 1,550 square feet of the existing building.

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

Proposed Indoor Seating Capacity: 30 persons per plan of operation.

Outdoor Seating Area: No outdoor alcohol sales and consumption is requested with this application.

Existing Site Conditions: The existing gas station/convenience store with retail alcohol sales totals approximately 2,020 square feet (per City Assessor records), 2 gas pumps serving 4 vehicles, includes a 12-stall off-street parking lot. The rear of the property has been used for outdoor storage of vehicles, trailers, trucks and random items. Access is provided by curb cuts on East Newberry Street.

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Off-Street Parking Requirements: Section 23-172(m) of the Municipal Code requires a minimum number of off-street parking spaces based on the use of a property. Based on the existing convenience store and proposed bar & grill use, a total of 15 parking spaces would be required (1 space per 250 square feet of gross floor area) for multiple uses within a single building. There are 12 existing parking spaces identified on the development plan drawing.

The owner is proposing to construct 5 additional parking spaces to satisfy Section 23-172(m) of the Municipal Code. Site Plan Review and Approval, in accordance with Section 23-570 of the Municipal Code, is required prior to construction of the 5 proposed parking spaces prior to the issuance of a paving permit.

The subject property contains a historic lot line (annexed condition from the Town of Buchannan) and no formal platting documents have been recorded to officially combine the two parcels and eliminate the old parcel line. The existing paved parking lot and outdoor storage gravel parking area are bisected by this historic lot line. The proposed conversion of the outdoor storage gravel parking area to asphalt parking is not increasing the degree of the existing nonconformity regarding the minimum setback requirements from a lot line. Therefore, a Certified Survey Map to combine the historic lots into one lot is not needed as part of the Site Plan Review process.

The existing building and gas pump canopy are not bisected by this historic lot line. However, future building/gas pump canopy additions or above ground buildings/structures that cross the historic lot line and/or encroach into required setbacks will require the submittal of a one-lot CSM to combine the historic parcels and create one parcel.

Current Zoning and Procedural Findings: The subject property has a zoning designation of C-2 General Commercial District. Per Section 23-113(e) of the Municipal Code, a bar & grill use with alcohol sales and consumption requires a Special Use Permit in the C-2 District. The Plan Commission makes a recommendation to the Common Council who will make the final decision on the Special Use Permit. A two-thirds 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). The uses are generally industrial, commercial and residential in nature.

North: R-2 Two-family District. The adjacent land uses to the north are single and two family residential. (Future land use map recommends Single/Two family for adjacent properties)

South: M-2 General Industrial District and R-1A Single-family District. The adjacent land use to the south are Industrial warehouses and the Wisconsin Central Railroad. (Future land use map recommends Business/Industrial for this adjacent properties)

East: R-1A Single-family residential District. The adjacent land use to the east is single-family residential. (Future land use map recommends Commercial for this adjacent property)

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West: C-2 General Commercial District. The adjacent land use to the west is currently single-family residential and excavation business. (Future land use map recommends Commercial for this adjacent property)

Appleton Comprehensive Plan 2010-2030: Community and Economic Development staff has reviewed this proposal and determined it is compatible with the Commercial 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.

Technical Review Group (TRG) Report: This item appeared on the May 2, 2023 TRG agenda. Comments from participating departments are identified in the “substantial evidence conditions of approval” section (below).

Zoning Ordinance Requirements and Substantial Evidence: When reviewing an application for a Special Use Permit, the City must determine if the applicant's proposal satisfies Municipal Code requirements and conditions. Pursuant to Section 23-66(c)(5) of the Municipal Code, 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.” Any requirements and conditions listed for approval must be reasonable, and to the extent practicable, measurable.

Substantial Evidence Conditions of Approval:

- Section 23-40(a)(1) Application of district regulations, no structure or land shall hereafter be used or occupied, and no structure or part thereof shall hereafter be constructed, reconstructed or structurally altered except in conformity with all of the regulations specified for the C-2 District with respect to this proposed use. (Relates to change of use from auto maintenance garage to bar & grill with alcohol sales and consumption)

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- Section 23-172(m) a total of 15 parking spaces would be required (1 space per 250 square feet of gross floor area) for multiple uses occupying one building. (Relates to change of use from auto maintenance garage to bar & grill with alcohol sales and consumption)
- Section 23-570(c)(1)c. construction of less than 20 parking spaces requires minor site plan approval prior to the issuance of paving permit. Section 23-172(b)(2) parking lots and spaces shall be constructed and maintained in accordance with including but not limited to the applicable regulations of Article IX, Section 23-601, Landscaping and screening, on-site storm drainage (underground storm sewer connection to the lateral in Newberry Street) shall be provided in accordance with the State Plumbing Code, City Plumbing Code, and the City Stormwater Management Ordinance and Chapter 23 Zoning. (Relates to the construction of the 5 proposed parking spaces)
- Per 1028.5 of the IFC and IBC, a direct and unobstructed access to a public way shall be provided from every exit. The exit from the convenience store into the drive aisle poses an obstruction to the safe travel of people from the exit to the public way. To remedy this, shift the drive aisle to the west and install two bollards outside of the exit to ensure safe pedestrian passage. These bollards should be a minimum of 48” from the building to not create an impediment to egress. (See Exhibit A attached) (Relates to compliance with Fire Codes)
- The Wisconsin Food Code requires plans to be repaired showing the layout of this proposed use including equipment, sinks, and finishing details. (Relates to change of use from auto maintenance garage to bar & grill with alcohol sales and consumption)

Findings of Fact: This request was reviewed in accordance with the standards for granting a Special Use Permit under Section 23-66(e)(1-8) of the Municipal Code: *1. proper zoning district:* C-2 zoning allows a bar & grill with alcohol sales and consumption as a special use permit; *2. zoning district regulations:* the district regulations appear to be satisfied pursuant to the attached development plan, formal verification of regulations being satisfied will occur during the Site Plan Review process per stipulation 4 (below); *3. special regulations:* stipulations 1, 2, 3 and 4 (below) address the special regulations for alcohol sales and consumption; *4. consistent with comprehensive plan and other plans:* yes, see above analysis; *5. traffic:* the proposed use is not expected to create undue traffic congestion, it is anticipated customers will utilize existing and proposed on-site parking spaces to park their cars; *6. landscaping and screening:* this will be reviewed during the Site Plan Review process per stipulation 4 (below); *7. neighborhood compatibility with predominant land uses in this area:* the proposed use is located near other existing and future commercial/industrial uses in this area of City; *8. impact on services:* the City has existing utilities and services in place to serve this proposed use. These standards were found in the affirmative, as long as all stipulations are satisfied.

RECOMMENDATION

Staff recommends, based on the above analysis, that Special Use Permit #5-23 for a bar & grill with alcohol sales and consumption located at 2811 East Newberry Street (Tax Id #31-4-5747-00) 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:

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1. The applicant shall receive approval of a Liquor License from the City Clerk prior to serving alcohol on the premises.

Substantial Evidence: This condition provides notice to the applicant that a Liquor License is also needed prior to serving alcohol.

2. The use shall conform to the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Appleton Municipal Code.

- a. The owner/applicants shall continue working with the City of Appleton Police Department staff to address Crime Prevention Through Environmental Design (CPTED) recommendations for this proposed use to enhance and maintain a safe environment for customers and community members. The CPTED recommendations will be reviewed during the minor site plan approval process for the parking lot expansion. The City of Appleton Police Department staff will verify the CPTED recommendations are satisfied prior to the issuance of the liquor license.

Substantial Evidence: This condition is one of the special regulations included in Section 23-66(h)(6) of the Zoning Ordinance for this particular use.

3. The site shall be kept free of litter and debris.

Substantial Evidence: This condition is one of the special regulations included in Section 23-66(h)(6) of the Zoning Ordinance for this particular use.

4. All Zoning, Building, Fire, Engineering, Utility and other Municipal Codes (Article IV. Noise) and all applicable State and Federal laws shall be complied with, including but not limited to the following:

- a. Section 23-172(b)(2) parking lots and spaces shall be constructed and maintained in accordance with the applicable regulations of Article IX - Chapter 23 Zoning, including on-site storm drainage (underground storm sewer connection to the lateral in Newberry Street) shall be provided in accordance with the State Plumbing Code, City Plumbing Code, and the City Stormwater Management Ordinance.
- b. Section 23-172(m) a total of 15 parking spaces would be required (1 space per 250 square feet of gross floor area) for multiple uses occupying one building.
- c. Section 23-570(c)(1)c. construction of less than 20 parking spaces requires minor site plan approval prior to the issuance of paving permit per Chapter 23 Zoning.
- d. Section 1028.5 of the International Fire and Building Code shall be complied with, per Exhibit A attached.
- e. Section 23-601, Landscaping and screening shall be complied with.
- f. Wisconsin Food Code plans shall be repaired to show the layout of this proposed use including equipment, sinks, and interior finishing details.

Substantial Evidence: This condition is one of the special regulations included in Section 23-66(h)(6) of the Zoning Ordinance for this particular use.

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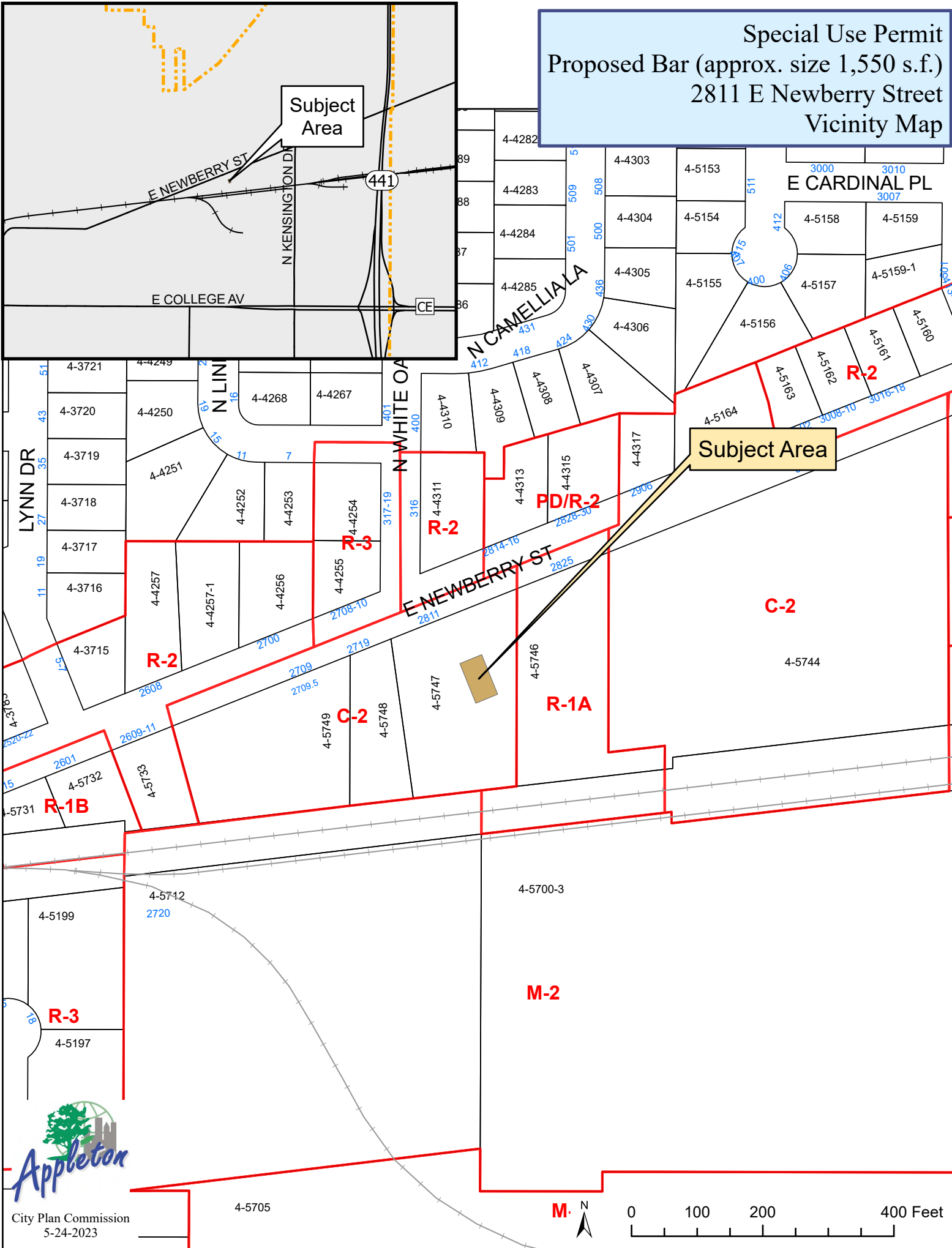
5. The serving and consumption of alcohol is limited to the interior tenant space, as identified on the attached development plan and floor plan drawings. Any future expansions for the serving and/or consumption of alcohol may require a major or minor amendment request to this Special Use Permit, pursuant to Section 23-66(g) of the Municipal Code.

Substantial Evidence: Standardized condition that establishes parameters for the current application and identifies the process for review of any future changes to the special use.

6. 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.

Substantial Evidence: Standardized condition that establishes parameters for the current application and identifies the process for review of any future changes to the special use.

Special Use Permit
Proposed Bar (approx. size 1,550 s.f.)
2811 E Newberry Street
Vicinity Map



Subject Area

Subject Area



E NEWBERRY ST

Special Use Permit
Proposed Bar (approx. size 1,550 s.f.)
2811 E Newberry Street
Aerial Map



Subject Area



City Plan Commission
5-24-2023



**CITY OF APPLETON
RESOLUTION FOR SPECIAL USE PERMIT #5-23
BAR & GRILL WITH ALCOHOL
2811 EAST NEWBERRY STREET**

WHEREAS, Sudhansh Goel, Newberry Bar & Grill has applied for a Special Use Permit to establish a bar & grill with alcohol sales and consumption located at 2811 East Newberry Street, also identified as Parcel Number 31-4-5747-00; and

WHEREAS, the proposed bar & grill with alcohol sales and consumption is located in the C-2 General Commercial 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 City of Appleton Plan Commission held a public hearing on May 24, 2023 on Special Use Permit #5-23, at which all those wishing to be heard were allowed to speak or present written comments and other materials 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, as well as 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) of the Municipal Code, and forwarded Special Use Permit #5-23 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 June 7, 2023.

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

1. Determines all standards listed under Sections 23-66(e)(1-8) of the Municipal Code are found in the affirmative YES or NO (CIRCLE ONE)
2. If NO, the City of Appleton Common Council hereby denies Special Use Permit #5-23 for a bar & grill with alcohol sales and consumption located at 2811 East Newberry Street, also identified as Parcel Number 31-4-5747-00, 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#5-23 for a bar & grill with alcohol sales and consumption located at 2811 East Newberry Street, also identified as Parcel Number

31-4-5747-00, subject to the following conditions as they are related to the purpose of the City of Appleton Municipal Code and based on substantial evidence:

CONDITIONS OF APPROVAL FOR SPECIAL USE PERMIT #5-23:

- A. The applicant shall receive approval of a Liquor License from the City Clerk prior to serving alcohol on the premises.
- B. The use shall conform to the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Appleton Municipal Code.
 - 1) The owner/applicants shall continue working with the City of Appleton Police Department staff to address Crime Prevention Through Environmental Design (CPTED) recommendations for this proposed use to enhance and maintain a safe environment for customers and community members. The CPTED recommendations will be reviewed during the minor site plan approval process for the parking lot expansion. The City of Appleton Police Department staff will verify the CPTED recommendations are satisfied prior to the issuance of the liquor license.
- C. The site shall be kept free of litter and debris.
- D. All Zoning, Building, Fire, Engineering, Utility and other Municipal Codes (Article IV. Noise) and all applicable State and Federal laws shall be complied with, including but not limited to the following:
 - 1) Section 23-172(b)(2) parking lots and spaces shall be constructed and maintained in accordance with the applicable regulations of Article IX - Chapter 23 Zoning, including on-site storm drainage (underground storm sewer connection to the lateral in Newberry Street) shall be provided in accordance with the State Plumbing Code, City Plumbing Code, and the City Stormwater Management Ordinance.
 - 2) Section 23-172(m) a total of 15 parking spaces would be required (1 space per 250 square feet of gross floor area) for multiple uses occupying one building.
 - 3) Section 23-570(c)(1)c. construction of less than 20 parking spaces requires minor site plan approval prior to the issuance of paving permit per Chapter 23 Zoning.
 - 4) Section 1028.5 of the International Fire Code and International Fire Code shall be complied with, per Exhibit A attached.
 - 5) Section 23-601, Landscaping and screening shall be complied with.
 - 6) Wisconsin Food Code plans shall be repaired to show the layout of this proposed use including equipment, sinks, and interior finishing details.

- E. The serving and consumption of alcohol is limited to the interior tenant space, as identified on the attached development plan and floor 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.
 - F. 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 _____ day of _____, 2023.

Jacob A. Woodford, Mayor

ATTEST:

Kami Lynch, City Clerk

Business Information:

Name of business: Newberry Bar & Grill

Years in operation: New

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

- 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.
- Other _____

Detailed explanation of proposed business activities:

Drinking Liquor/Wine/Beers & Eating food at Bars Location.

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

(square feet) ^{Convenience market = ± 2,020 sq. ft.} Bldg. 3300 Sq ft. + Outdoor 13020 Sq ft.

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

(square feet) ^{Bar/Grill = ± 1,550 sq. ft.} Bldg. 2170 Sq ft. + Outdoor 9180 Sq ft.

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: 30 persons.

Proposed Hours of Operation for Indoor Uses:

Day	From	To
Monday thru Thursday	8 AM	10 PM
Friday	8 AM	12 AM
Saturday	8 AM	1 AM
Sunday	8 AM	11 PM

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
- None. If none, leave the following two 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:

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

Outdoor Space Uses:

(Check applicable outdoor space uses)

- Patio
- Deck
- Sidewalk Café
- Other _____.

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

Size: _____ 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 ___ No

If yes, please describe:

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 Space:

Day	From	To
Monday thru Thursday		
Friday		
Saturday		
Sunday		

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:

stereo sound system

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

Staff

Off-Street Parking:

Number of spaces existing on-site: 12

Number of spaces proposed on-site: 17

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?

Adequate

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:

Wishing Well

MT Pockets

Number of Employees:

Number of existing employees: 0

Number of proposed employees: 6

Number of employees scheduled to work on the largest shift: 4-5

WHAT IS A SPECIAL USE PERMIT?

Special Uses are those uses having some uniqueness or unusual impact which require careful review of their location, design, and configuration to determine against fixed standards, the desirability of permitting their establishment at any given site. There are uses which may or may not be appropriate in a particular location depending on a weighing, in each case, of the public need and benefit against the community and neighborhood impact and effect as well as

NEWBERRY ST.

186'4"

5 BAYS EXISTING

7 BAYS EXISTING

HOUSE

245'9"

12' MULCH & GRASS

5 BAYS
9'x18'

ASPHALT

C. STORE

PROPOSED
REMODEL
BAR

PRIVATE PROPERTY

NEWBERRY BAR & GRILL
2811 E NEWBERRY ST. APPLETON

NOT TO SCALE

157'
RAILWAY LINE

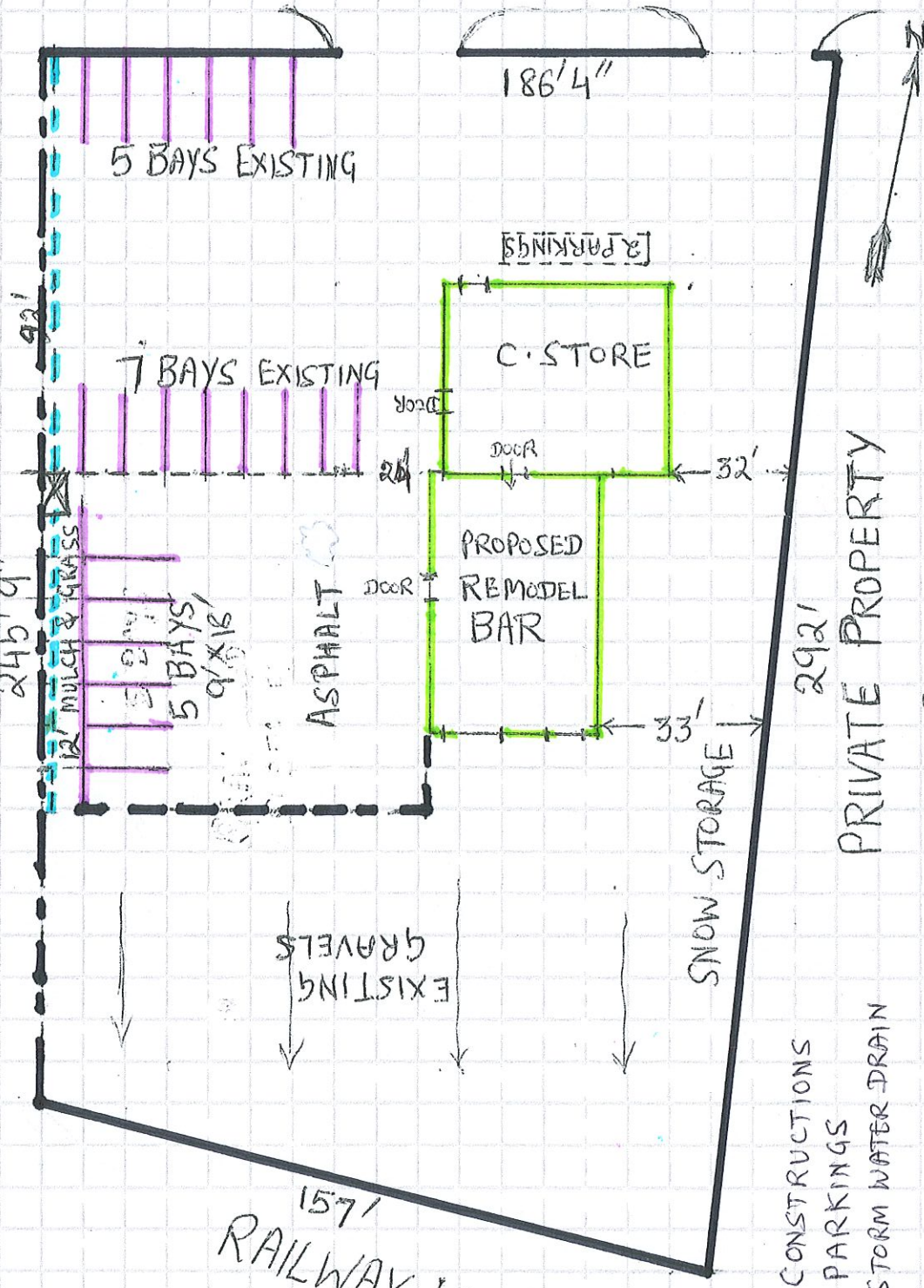
- CONSTRUCTIONS
- PARKINGS
- STORM WATER DRAIN

SNOW STORAGE

292'

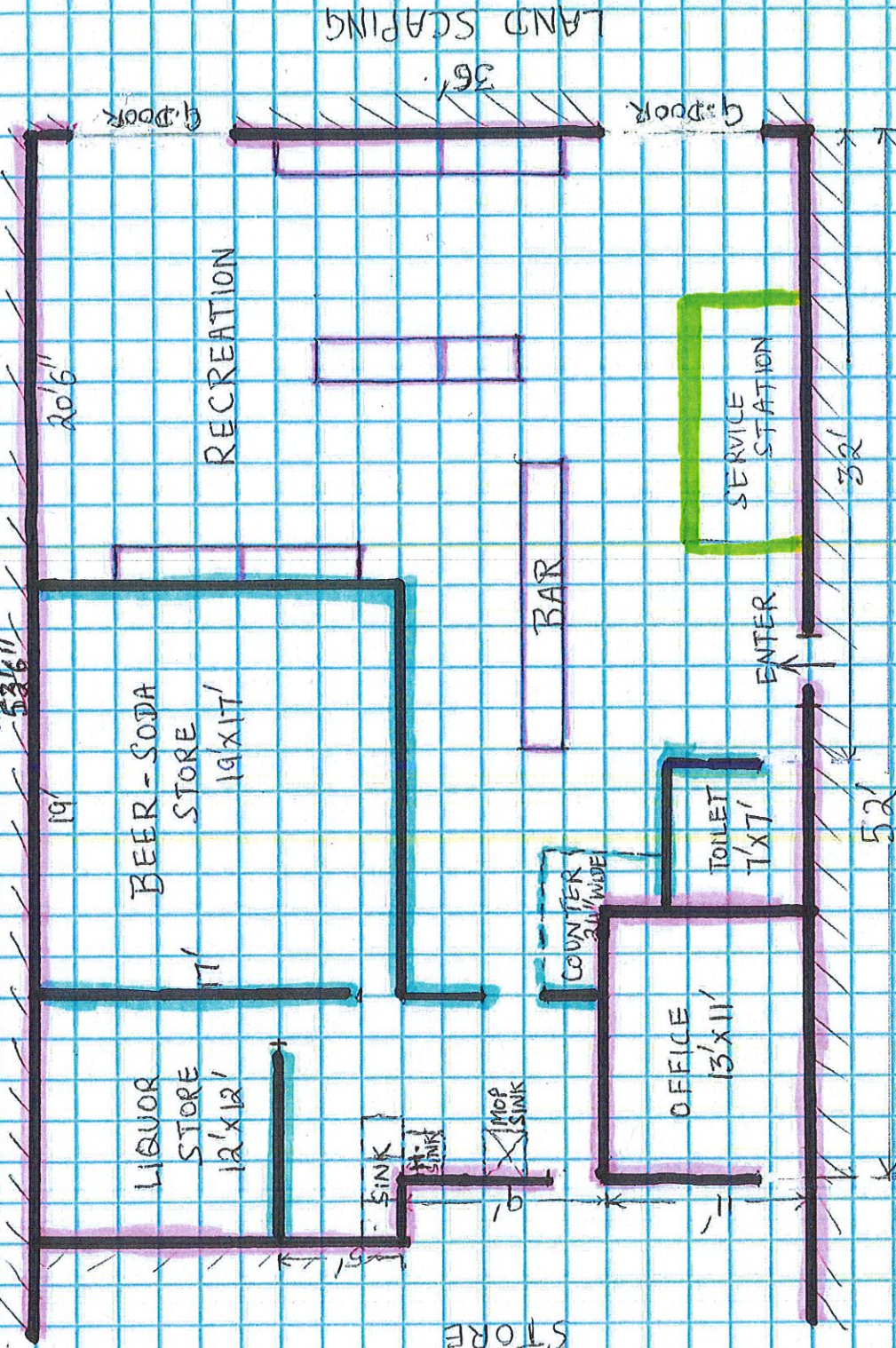
33'

32'



NEWBERRY BAR & GRILL

2811E STE B NEWBERRY ST APPLETON WI 54915



LAND SCAPING

NOT TO SCALE

SPG GROUPS LLC
Roll

SITTINGS

NOTE: NEW FURNACE & AC UNIT

EXISTING

NEW CONSTRUCTION

SERVICE STATION

PARKING

ENTER

SERVICE STATION

BAR

TOILET 7'x7'

COUNTER 30\"/>

OFFICE 13'x11'

LIQUOR STORE 12'x12'

BEER-SODA STORE 19'x17'

RECREATION

STORE

20'6"

19'

17'

12'x12'

5'

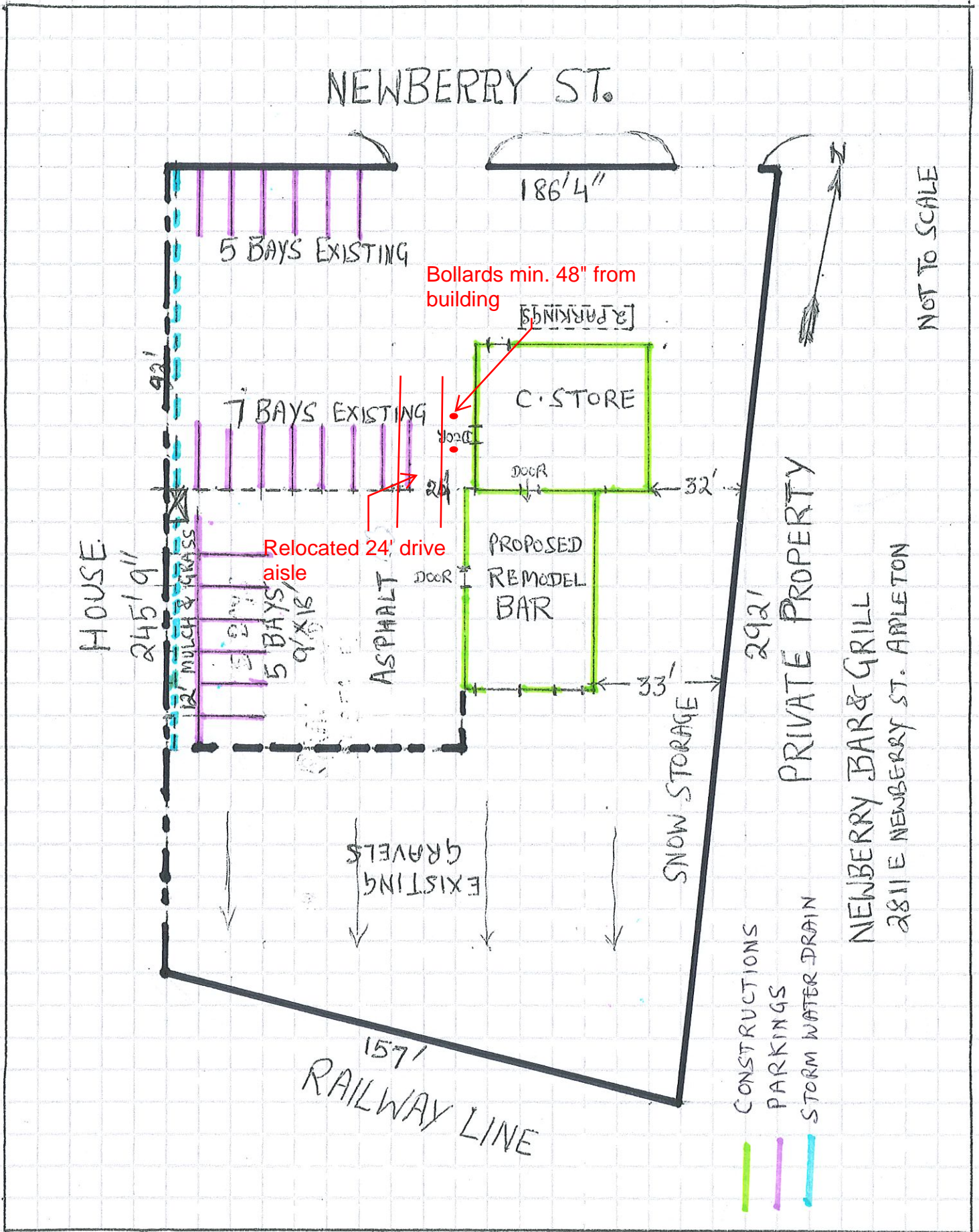
GLASS DOOR

36"

32'

52'

EXHIBIT A



NOT TO SCALE

- CONSTRUCTIONS
- PARKINGS
- STORM WATER DRAIN

NEWBERRY BAR & GRILL
2811 E NEWBERRY ST. APPLETON