



PLANNING COMMISSION STAFF REPORT

APPLICATION: CUP2019-0010

AGENDA ITEM: PH-1

PREPARED BY: Austin Arnold
Assistant Planner

MEETING DATE: August 14, 2019

SUBJECT: Conditional Use Permit CUP2019-0010
406 South Myrtle Avenue

REQUEST: Approve a Conditional Use Permit for the indoor and outdoor service and sale of beer and wine (Type 41 ABC License) at a new restaurant (BurgerIM). This property is located in the HCD (Historic Commercial Downtown) zone designation.

APPLICANT: Alba Lilliam Escobar
11828 Basye Street
El Monte, CA 91732

ENVIRONMENTAL DETERMINATION: Categorical Exemption (Class 1 – Existing Facilities)

BACKGROUND: The Applicant is requesting approval of a Conditional Use Permit (CUP) to serve beer and wine for indoor and outdoor dining at a new restaurant known as “BurgerIM.” The proposed restaurant will be located in the commercial tenant space at 406 South Myrtle Avenue (formerly occupied by Sprint) in Old Town Monrovia. Based on their request for a State Department of Alcohol Beverage Control (ABC) Type 41 license, this requires approval of both ABC and the Monrovia Planning Commission. ABC will not issue a license without the approval of a local jurisdiction.

Section 17.44.025 of the Zoning Ordinance (Title 17) was adopted to allow for review and mitigate potential adverse impacts associated with establishments which sell or serve alcoholic beverages. A CUP is required when alcoholic beverages are sold or served within 500 feet of residential zones, parks, schools, recreation centers, religious assembly or hospital uses. In Monrovia, the Planning Commission is granted the authority to approve, approve with conditions, or deny a CUP. The subject site is located within 100 feet of Library Park.

The Outdoor Dining Ordinance (MMC §17.44.115) contains additional regulations for restaurants that provide dining areas outside of their buildings, without or in conjunction with the service of alcoholic beverages. When alcoholic beverage service is requested in conjunction with an outdoor dining permit, the request is subject to approval by the Planning Commission through the CUP process. This application includes a request for both indoor and outdoor alcoholic beverage service.

SUBJECT PROPERTY: The subject site is located in Old Town Monrovia on the east side of South Myrtle Avenue, just south of East Lime Avenue. The proposed restaurant will occupy a 1,763 square foot tenant space within a multi-tenant building containing three spaces.

Coldstone Creamery currently occupies the tenant space to the south and Basin 141 occupies the tenant space to the north.

The property is in the HCD (Historic Commercial Downtown) zone and the General Plan Land Use designation is Historic Commercial Downtown. The subject site is surrounded by the following land use designations and commercial uses.

North:

General Plan: HCD (Historic Commercial Downtown)
Zoning: HCD (Historic Commercial Downtown)
Land Use: Commercial Use-Restaurant

South:

General Plan: HCD (Historic Commercial Downtown)
Zoning: HCD (Historic Commercial Downtown)
Land Use: Commercial Use-Restaurant

East:

General Plan: PD-5 (Planned Development –Area 5)
Zoning: PD-5 (Planned Development –Area 5)
Land Use: Commercial Use-Entertainment Facility (Movie Theater)

West:

General Plan: HCD (Historic Commercial Downtown)
Zoning: HCD (Historic Commercial Downtown)
Land Use: Commercial Use-Restaurant

DISCUSSION/ANALYSIS: BurgerIM offers customers a build-your-own burger experience in a quick casual dining setting. The restaurant will be open from 8:00 a.m. to 12:00 a.m.(midnight) daily. There will be approximately four employees onsite per shift and BurgerIM will also offer delivery through the Uber Eats service. The franchisee would like to make beer and wine available for purchase to patrons onsite. The service of beer and wine will be incidental to the overall operations of the restaurant. The establishment will remain a restaurant and may not become a bar. The City’s conditions of approval and ABC will require that the establishment be operated as a “Bona Fide Eating Place” with a full restaurant kitchen. The kitchen is required to be open and preparing food during all hours of operation as stated in Condition No. 1 on Data Sheet No. 1.

Based on the requirements of the Zoning Ordinance, the service of alcoholic beverages in outdoor dining areas is not permitted after 11:00 p.m., Sunday through Thursday or after midnight on Friday and Saturday. This restriction has been incorporated into Condition No. 21 on Data Sheet No. 1.

Floor Plan

The business’ primary entrance is located on Myrtle Avenue. Additionally, the subject tenant space has a rear exit that leads to restroom facilities and a common hallway with a secondary building exit/entrance shared by the three tenant spaces. The proposed floor plan for the restaurant includes a dining room with seating for 43 patrons, a kitchen, office, and storage areas.

In order to provide proper patio area delineation and adequate accessible clearance along the sidewalk, the applicant proposes to provide temporary barrier posts with retractable belts. The

proposed outdoor patio area includes seating for 8 patrons and will utilize decorative furnishings. The applicant has indicated that they may be interested in replacing the existing awning fabric to refurbish the patio shade structure in the future. This will require staff review.

Development Review Committee Review

On July 17, 2019, the DRC reviewed the proposed application for BurgerIM, including the proposed operation and conditions and unanimously recommended approval of the request to the Planning Commission.

Parking

The restaurant is located in the Old Town parking district, which has a shared parking arrangement for all commercial uses in Old Town. Parking in the Old Town area can be found on the street and in the public parking lots. The closest public lot in relation to the proposed project is located on the northwest corner of Ivy Avenue and Lime Avenue.

Conclusion

Almost all of Monrovia's full service restaurants provide beer and wine or full alcohol service as part of their business operation. The majority of nearby restaurants in Old Town serve alcoholic beverages and are subject to similar conditions of approval proposed for BurgerIM. The proposed conditions of approval for the indoor and outdoor service of beer and wine for on-site consumption will ensure that the restaurant will be compatible with and not cause adverse impacts on the surrounding properties. Such conditions have been traditionally effective in reducing impacts related to the sale and consumption of alcohol. Additionally, the DRC conducts an annual review of all businesses serving alcohol to identify compliance issues with conditions of approval.

RECOMMENDATION: Staff and the Development Review Committee recommend approval of CUP2019-0010. If the Planning Commission concurs with this recommendation then, following the public hearing, the appropriate actions would be:

1. Pursuant to the California Environmental Quality Act ("CEQA") and the City's local CEQA Guidelines, the Planning Commission in the exercise of its independent judgment finds that CUP2019-0010 is categorically exempt from CEQA under Class 1.
2. The Planning Commission finds that the custodian of records for all other materials that constitute the record of proceeding upon which this decision is based is the Planning Division Manager. Those documents are available for public review in the Planning Division located at 415 South Ivy Avenue, Monrovia, California, 91016.
3. The Planning Commission in the exercise of its independent judgment hereby makes the findings listed on attached Data Sheet No. 3 for CUP2019-0010, which are incorporated herein by this reference.
4. The Planning Commission approves CUP2019-0010, subject to the attached Planning Conditions on Data Sheet No. 1 and recommendations in the Staff Report, all of which are incorporated herein by this reference.

MOTION:

Approve CUP2019-0010 pursuant to the recommendations in the Staff Report.



STANDARD CONDITIONS FOR SERVING ALCOHOLIC BEVERAGES

Development of the subject property and operations on the site must remain in substantial conformance at all times with the request and application forms and plans submitted by the applicant for CUP2019-0010, allowing outdoor dining and the indoor and outdoor service of beer and wine in a new restaurant, as approved by the Planning Commission and placed on file in the office of the Planning Division, except as modified by the conditions imposed by the Planning Commission and by subsequent modifications determined by the Planning Division Manager to be in substantial compliance with the conditions of approval. The term "Applicant" as used herein shall include the applicant, the property developer and all successors in interest to this conditional use permit.

REQUIREMENTS FOR RESTAURANTS WITH ALCOHOL SERVICE

1. The establishment shall be operated as a "Bona Fide Eating Place" as defined by ABC. The restaurant shall contain sufficient space and equipment to accommodate a full restaurant kitchen and the kitchen shall be open and preparing food during all hours the establishment is open. The establishment shall provide an assortment of foods and a full menu normally offered in restaurants. The service of sandwiches or salads shall not be deemed in compliance with this requirement.
2. The quarterly gross sales of alcohol beverages shall not exceed 33 percent of all gross sales of all products during the same period. The licensee shall maintain records which reflect separately the gross sales of alcoholic beverages. Records for the last quarter shall be made available to the City only if complaints have been received regarding the violation of conditions of the CUP.
3. The approved floor plan is an integral part of the decision approving this CUP. There shall be no change in the design of the floor plan without the approval of the Planning Division unless modification is required by the Building Official. Any change in the approved floor plan which has the effect of expanding or intensifying the present use shall require an amendment to the CUP.
4. All areas in the restaurant shall be available for inspection by the Police Department during all open business hours.
5. No sporting game or games of competition shall be permitted in conjunction with the business unless approved as part of the CUP application.
6. The display, posting or airing via closed circuit television of any gambling odds shall be prohibited unless pre-empted by the State.
7. No patrons shall be on the premises during closed hours.

8. There shall be no uses or activities permitted of an adult-oriented nature as defined in Title 17 of the Monrovia Municipal Code.
9. The use of pornographic material in the form of videos, slides, magazines, or pictures shall be prohibited within the business establishment.
10. Only pre-recorded amplified music is permitted on the premises, and such music shall not be audible outside the boundaries of the establishment. No entertainment facilities as defined by the Monrovia Municipal Code (such as live entertainment or dancing) are permitted unless approved by the Planning Commission pursuant to the Monrovia Municipal Code.
11. No locking devices shall be allowed on interior doors that enclose rooms open to the public.
12. No warning devices and/or any action by employees that could serve to alert patrons and employees to the presence of law enforcement or other inspectors shall be permitted.
13. If it is determined by the Community Development Director or Public Works Director that patrons are littering the surrounding streets, sidewalks, parking lots, parks, or adjoining private properties as a result of their coming or leaving the establishment, the business will provide employees to pick-up and properly dispose of all litter.
14. In the event security/policing problems occur, this CUP shall be subject to review by the Development Review Committee (DRC) and may be modified to require uniformed security guards as determined necessary by the DRC.
15. The exterior of the premises, including adjacent public sidewalks shall be illuminated, during the hours of darkness with sufficient lighting to illuminate and make easily discernible the appearance and conduct of all persons on or about the establishment.
16. Window signs shall be placed and maintained in a manner so that there is a clear and unobstructed view of the interior of the premises from the public sidewalk or entrance to the premises.
17. Any graffiti painted or marked upon the premises or on an adjacent area under the control of the licensee shall be removed or painted over within forty-eight hours, unless any law in effect at that time imposes a shorter time period for eradication.
18. No happy hour, no drink specials or other bar promotions are permitted to be advertised outside or in the window/door area.
19. Hours of operation shall be limited to 8:00 AM to 12:00 AM daily. Before any change is made in these hours of operation, approval by the DRC must be obtained. Alternatively, the DRC may refer the matter to the Planning Commission for its review, in which case no change in the hours of operation shall be made without Planning Commission approval.

ADDITIONAL REQUIREMENTS FOR OUTDOOR DINING WITH ALCOHOL SERVICE

20. Outdoor dining with outdoor service of beer and wine is permitted in front (to the west) of the building as delineated on the site plan/floor plan.
21. Outdoor dining with the service of beer and wine is subject to the following additional conditions:
 - (a) Outdoor furniture shall be of sturdy construction. Applicant shall keep outdoor furniture clean, attractive, and serviceable.
 - (b) Decorative umbrellas and tablecloths are encouraged.
 - (c) The materials used and the design and style of (i) the barriers delineating the outdoor dining areas and (ii) the outdoor dining furniture, shall be in substantial conformance with the design, style and materials approved by the DRC.
 - (d) The service of beer and wine in the outdoor dining area shall be limited to 8:00 AM – 11:00PM Monday Through Thursday and Sundays, and from 8:00 Am - 12:00 AM midnight Friday and Saturday.
 - (e) The hours of operation for outdoor dining and alcohol service shall be reviewed by the Development Review Committee for modification if compatibility problems with adjacent uses develop or other nuisance problems develop, and based upon a finding that those problems exist, the DRC may modify the hours of operation. This authorization is in addition to any other authority the DRC has pursuant to the Monrovia Municipal Code, including without limitation, the authority to revoke an outdoor dining permit. Alternatively, the DRC may refer the matter to the Planning Commission for its review, in which case the Planning Commission may modify the hours of operation if incompatibility with adjacent uses or the existence of other nuisance problems justifies the change, or the Planning Commission may take any other action permitted pursuant to the Monrovia Municipal Code, including modification or revocation of the CUP.
 - (f) Serving of alcoholic beverages in the outdoor dining setting must be accompanied by the sale of food based on the everyday dining menu. Alcoholic beverages cannot be sold or consumed in the outdoor dining area to a patron who is not seated or to anyone when the restaurant kitchen is closed.

GENERAL REQUIREMENTS

22. Any violation of these conditions of approval or the Monrovia Municipal Code may be subject to the Administrative Fine Ordinance, other available remedies and/or revocation or modification of this permit at the discretion of the City Attorney and City Prosecutor.

23. In addition to Planning (Data Sheet No. 1) conditions of approval, the Applicant shall also comply with all requirements of the Building Division and Fire Department that are directly applicable to the project.
24. This CUP may be called for review, including modification or revocation, at any time by City Staff, the City Council, or Planning Commission if a violation of the approved conditions or the Monrovia Municipal Code (MMC) is alleged, or if it is alleged that the establishment, or its patrons, are creating a public nuisance, and such violation or public nuisance is verified as valid by the Police Department, Code Enforcement, or other City department. In addition to any other remedy available to the City, security measures may be required such as adding an additional employee to monitor the area where problems are occurring.
25. Indemnification. As a condition of approval, Applicant agrees to defend, indemnify, protect and hold harmless City, its officers, officials, employees, agents and volunteers from and against any and all claims, actions, or proceeding against the City, its officers, officials, employees, agents and/or volunteers to attack, set aside, void or annul, an approval of the City, Planning Commission or City Council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The City shall promptly notify the Applicant of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at Applicant's expense.
26. Indemnification. As a condition of approval, Applicant agrees to defend, indemnify, protect and hold harmless City, its officers, officials, employees, agents and volunteers from and against any and all claims, suits, demands, actions, losses, damages, judgments, settlements, penalties, fines, defensive costs or expenses (including without limitation, interest, attorneys' fees and expert witness fees), or liability of any kind or nature arising out of or attributable to the acts or omissions of Applicant, or Applicant's officers, officials, employees, or agents which in any way arise out of, result from, or are in any way related to sale and service of alcoholic beverages at the property, excepting only liability arising out of the sole negligence or willful misconduct of City, its officers, officials, employees, agents, or volunteers. The City shall promptly notify the Applicant of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at the Applicant's expense.
27. The Applicant shall, within 30 days after approval by the Planning Commission, submit to the Community Development Department his/her written acknowledgment of receipt of the decision approving the Conditional Use Permit and his/her written consent to all of the conditions of approval contained in Data Sheet Number 1. This CUP shall be void and of no force or effect unless such

written acknowledgment and consent is submitted to the City within the 30 day period.

28. The Development Review Committee shall review the use permitted by this CUP one year from the date the use commences.
29. The use or development associated with this CUP shall begin within one (1) year after its approval or it will expire without further action by the City.
30. All of the above conditions shall be complied with prior to commencement of the operation, unless an earlier compliance period is specified as part of a condition.



CONDITIONAL USE PERMIT 2019-0010 (Service of beer and wine)

As required by Section 17.52.290 of the Monrovia Municipal Code (MMC), the decision for granting CUP2019-0010 to allow the indoor and outdoor service of beer and wine for on-site consumption at a new restaurant located at 406 South Myrtle Avenue is based on the following findings:

- A. The project site is adequate in size, shape and topography for the proposed sale of beer and wine for on-site consumption in a new restaurant that will have indoor and outdoor dining. *The topography of this commercial property is relatively flat and is improved with the one multi-tenant commercial building. The interior and exterior building areas are adequate in size to accommodate the service of beer and wine in conjunction with restaurant operations.*
- B. The project site has sufficient access to streets and highways, adequate in width and pavement type to carry the quantity and quality of traffic generated by the restaurant. *The proposed use is located in the central business district, which is suited to support these types of uses and traffic loads. The introduction of service of alcoholic beverages is not expected to significantly increase traffic as the main operation is a restaurant use and not a bar. The floor area and number of customer seats (both indoors and outdoors) proposed are similar to previous restaurants within Historic Old Town. Accordingly, no additional parking is required.*
- C. The proposed sale of beer and wine for on-site consumption in a new restaurant is compatible with the General Plan and will not adversely impact the objectives of the General Plan. *The proposed service of beer and wine in a bona fide eating place is consistent with the General Plan, including those General Plan requirements specific to the HCD (Historic Commercial Downtown) designation that is intended for pedestrian-oriented uses such as small shops, banks and restaurants. The service of beer and wine is an ancillary use to the full service dine-in restaurant.*
- D. The proposed sale of beer and wine for on-site consumption in a new restaurant will comply with the applicable provisions of the zoning ordinance. *There are no variances requested for this CUP. A restaurant is a permitted in the HCD zone. The use will continue to operate as a restaurant with the service of beer and wine and will not operate as a bar.*
- E. The location of the new restaurant with indoor and outdoor service of beer and wine and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety or welfare, nor will it be materially injurious to properties or improvements in the vicinity. *The Applicant will comply with the conditions of approval for the indoor and outdoor service of beer and wine as part of the restaurant operation to ensure the service of beer and wine is not detrimental or injurious to the public and surrounding uses. The service of beer and wine is an*

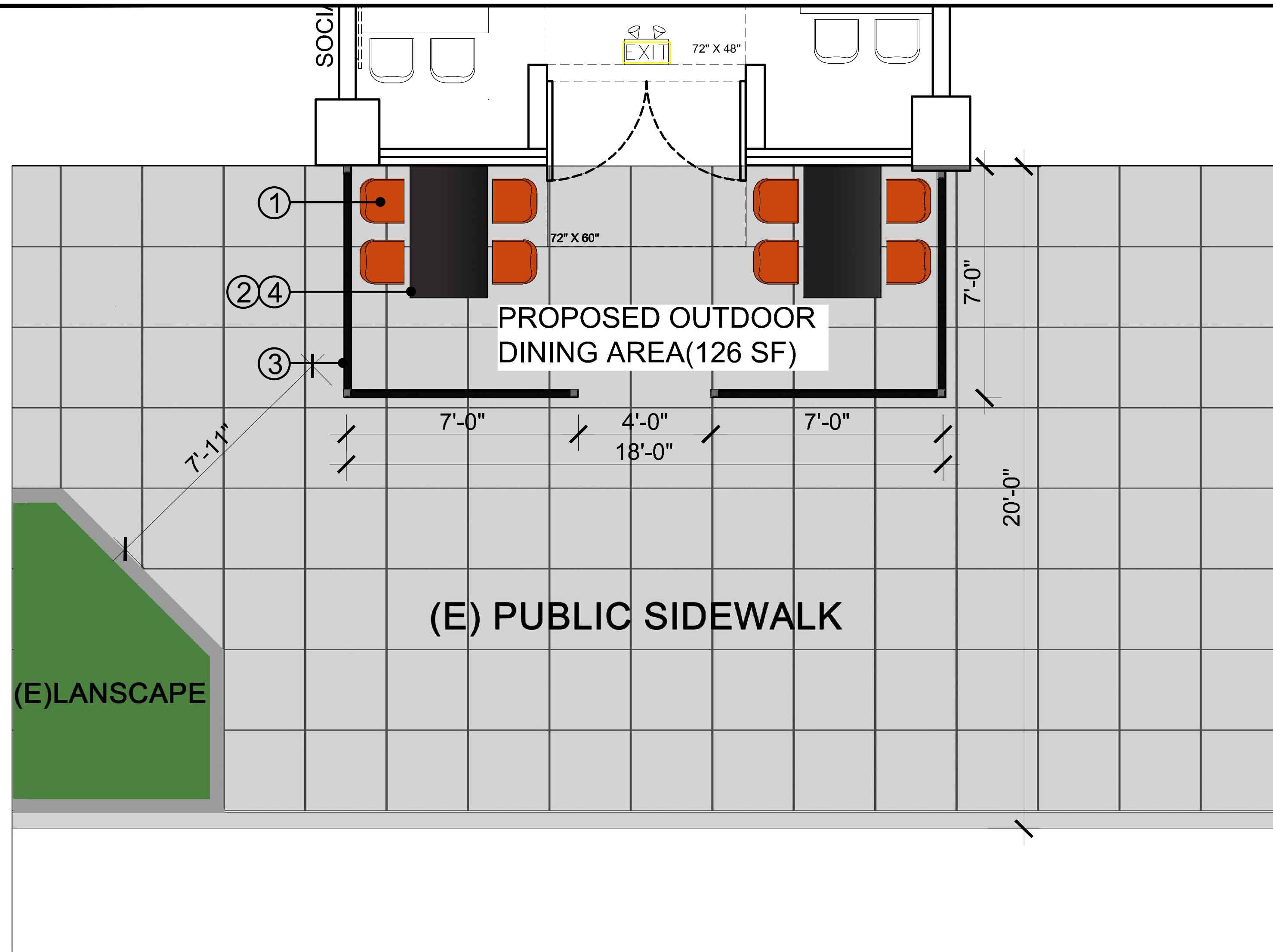
ancillary use to the full service dine-in restaurant. Condition of Approval No. 14 states that if any security/policing problems occur, the CUP may be subject to review by the Development Review Committee, and the Committee may require additional mitigation measures.

Further, as required by Section 17.44.025 of the Monrovia Municipal Code (MMC), the decision for granting CUP2019-0010 to allow the indoor and outdoor service of beer and wine for on-site consumption at a new restaurant located at 406 South Myrtle Avenue is also based on the following findings:

- A. *The proposed sale of beer and wine for on-site consumption at a new restaurant will not adversely and seriously affect the peace, health, safety and welfare of residents of the community. Condition of Approval No. 1 requires the establishment to operate as a “bona fide eating place.” The service of beer and wine is an ancillary use to the full service dine-in restaurant. Additional conditions of approval require that all areas of the restaurant shall be available for inspection by the Police Department during all open business hours. Furthermore, the CUP may be called for review at any time if a violation of the approved conditions or the MMC is alleged or if the service of beer and wine is creating a public nuisance.*
- B. *The proposed use will not directly contribute to peace, health, safety and general welfare problems including but not limited to loitering, littering, public drunkenness, defacement and damaging of structures, pedestrian obstructions as well as traffic circulation, parking, and noise problems on public streets and adjacent parking lots. The restaurant will be required to adhere to the conditions of approval that set forth regulations that are specific to the sale of beer and wine and the overall business operation. Condition of Approval No. 13 states that if the Community Development or Public Works Director determine that patrons are littering as a result of coming to or leaving from the establishment, the business will be responsible for the pick-up and proper disposal of all liter.*
- C. *The proposed use will not create serious adverse impacts to the commercial district. The restaurant will operate as a “bona fide eating place” and will provide a service that has been planned for in this location. The business will not become a bar and conditions of approval have been included prohibiting such type of operation.*
- D. *The proposed use is adequately served by sufficient parking to serve the quantity of traffic such use generates. The restaurant is located within the Historic Commercial Downtown zone that is served by public parking lots. The service of beer and wine is not expected to significantly increase the parking demand as the use will remain primarily a restaurant and not a bar. The floor area and number of customer seats (both indoors and outdoors) proposed are similar to previous restaurants within Historic Old Town. Accordingly, no additional parking is required.*
- E. *The proposed use will not be incompatible with the adjoining uses as it relates to noise, traffic, and hours of operation. The restaurant is part of the downtown commercial corridor and with the conditions of approval it will be a restaurant use that will operate as a “bona fide eating place.” Beer and wine will only be served in the approved areas that include the inside dining area and delineated outdoor patio.*

Within the downtown commercial corridor, there are a number of existing restaurants uses that also provide incidental alcoholic beverages as part of their operation.

- F. The proposed use will not negatively impact nearby parks, schools, recreation centers, religious assembly facilities, and hospitals. *The nearby park and recreation center properties will not be negatively impacted because beer and wine will only be served to restaurant patrons with the purchase of food items. Furthermore, sufficient safeguards exist that will allow the City to exercise control measures that will protect the peace, health, and safety of surrounding properties. The CUP may be called for review at any time by City Staff, the City Council, or Planning Commission if complaints are filed and verified as valid by the Police Department, Code Enforcement Division or other City departments concerning a violation of the approved conditions, or if the establishment or its customers are creating a public nuisance.*



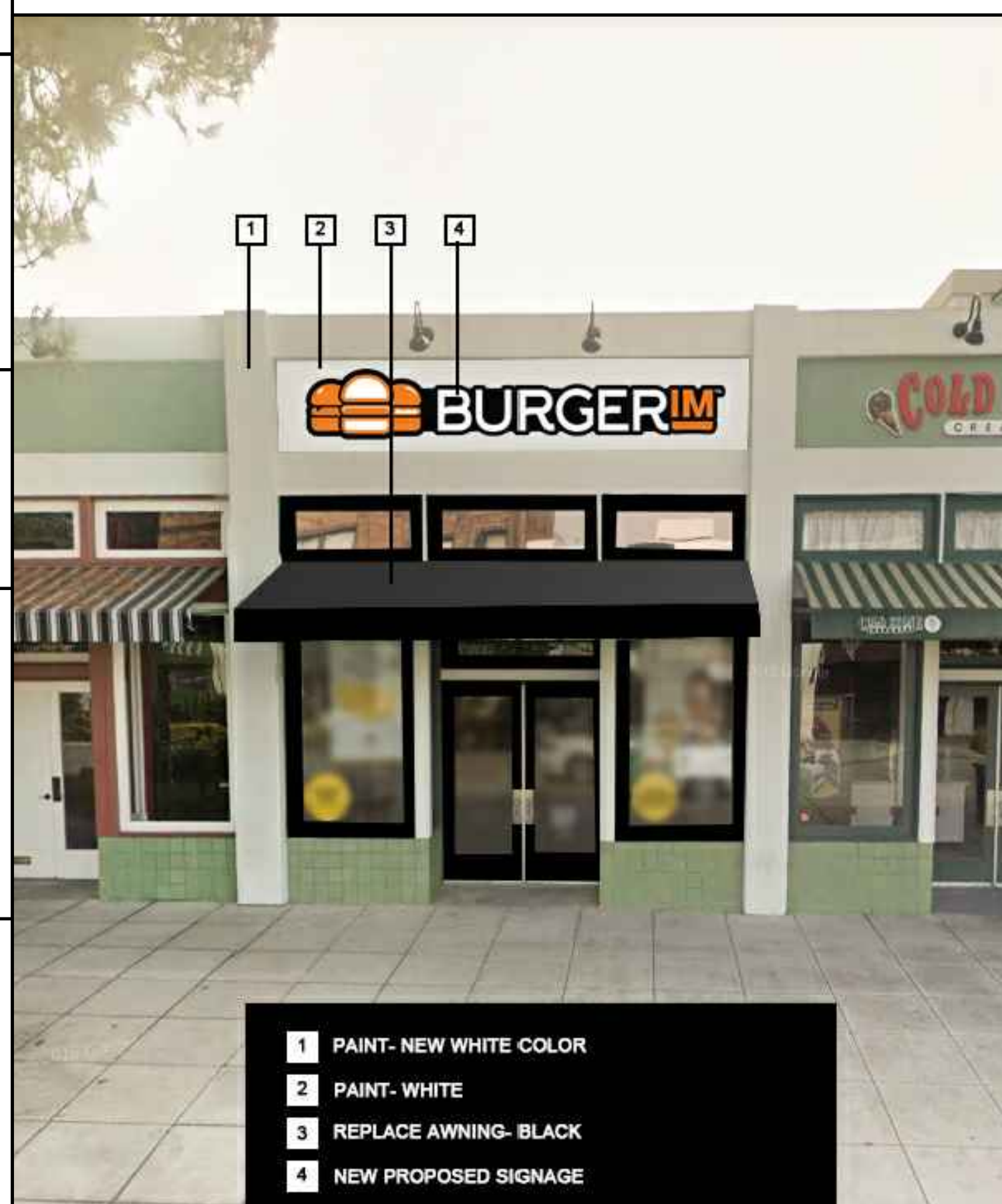
ENLARGED SITE PLAN

SCALE 4

	(N) PROPOSED CHAIR	①
	(N) PROPOSED TABLETOP	②
	(N) CROWD CONTROL BARRIER POSTS WITH RETRACTABLE BELT	③
	(N) PROPOSED TABLE BASE	④

PROPOSED OUTDOOR FURNITURE

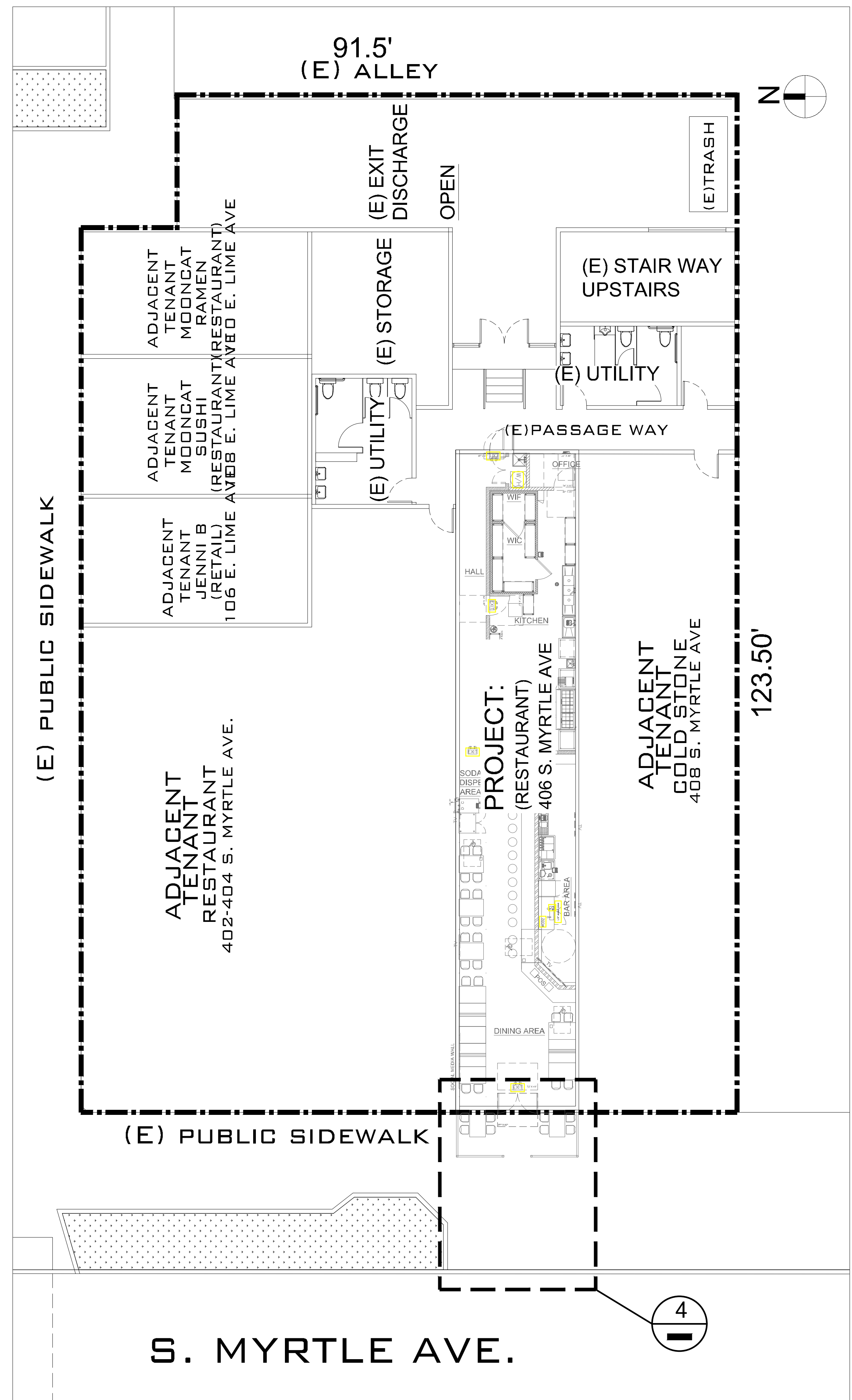
SCALE 3



PROPOSED FACADE

SCALE 2

SITE PLAN

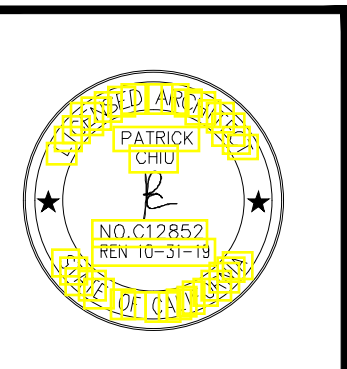


SCALE 1
1/8" = 1'-0"

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No.	Date	Revision
△	06/12/2019	ABC
△		
△		
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△		
△		

Job Name & Address:
BURGERIM MONROVIA
(PROPOSED OUTDOOR DINING AREA)
406 S MYRTLE AVE., MONROVIA, CA 91016



Date:	07/03/2018
Dwg. No.:	.
Drawn By:	.
Checked By:	MJ
Scale:	AS SHOWN

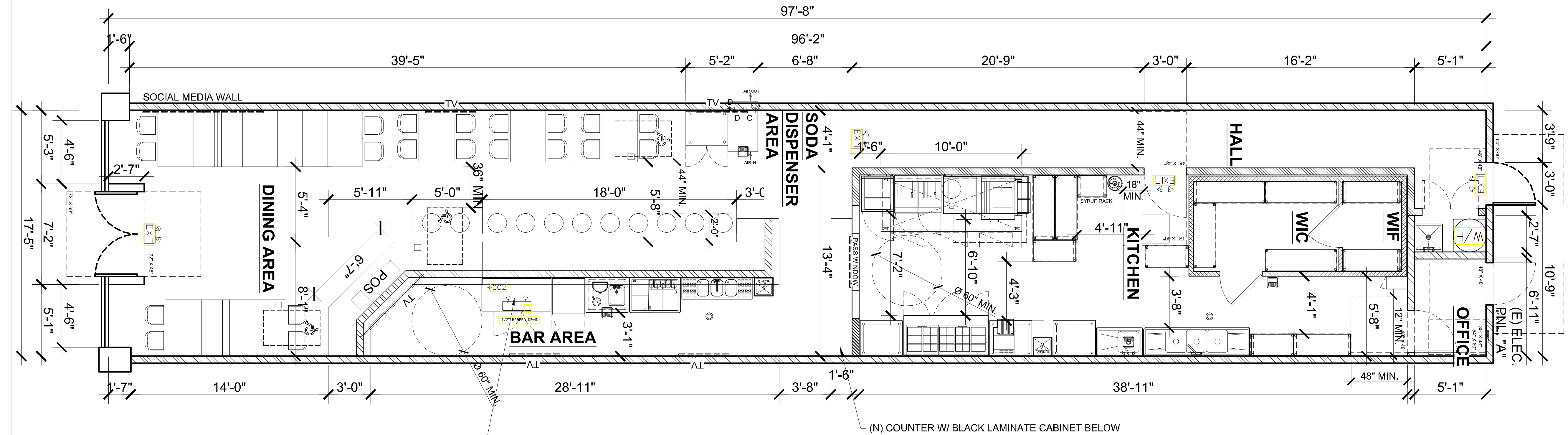
Title:
PROPOSED OUTDOOR DINING AREA

Sheet No.

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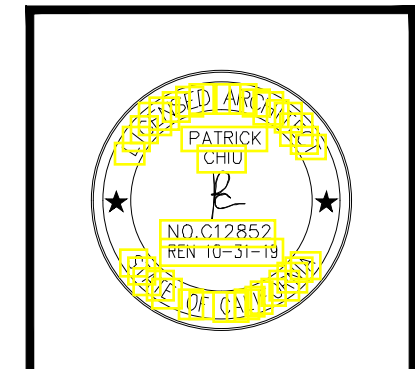
No.	Date	Revision
1	06/12/2019	ABC
2		
3		
4		
5		



ALCOHOL STORAGE
 BEER DISPENSER 2-DR REFRIGERATOR

BURGERIM MONROVIA
 (T.I. - RESTAURANT)
 406 S MYRTLE AVE., MONROVIA, CA 91016

Job Name & Address:
BURGERIM MONROVIA
 (T.I. - RESTAURANT)
 406 S MYRTLE AVE., MONROVIA, CA 91016



Date:	3/10/2019
Dwg. No.:	.
Drawn By:	.
Checked By:	MJ
Scale:	AS SHOWN

Title:
FLOOR PLAN
 Sheet No.
A'-2.0