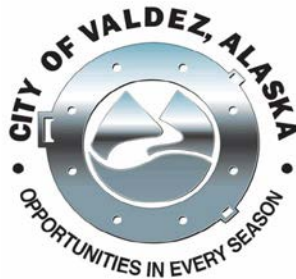


# City of Valdez

212 Chenega Ave.  
Valdez, AK 99686



## Meeting Minutes - Final

Wednesday, May 23, 2018

7:00 PM

Regular Meeting

Council Chambers

## Planning and Zoning Commission

**REGULAR AGENDA - 7:00 PM****I. CALL TO ORDER**

Chair Gondek called the meeting to order at 7:00 p.m. in Valdez City Council Chambers.

**II. ROLL CALL**

Present - 5 Chair Jess Gondek  
Commissioner Brandon Reese  
Commissioner Harold Blehm  
Commissioner Grant Uren  
Commissioner Don Haase

Absent -1 Commissioner Roger Kipar  
Vacancy 1

**III. APPROVAL OF MINUTES**

**1. Planning & Zoning Regular Meeting Minutes of April 11, 2018.**

**2. Planning & Zoning Regular Meeting Minutes of April 25, 2018.**

Both sets of meeting minutes were approved as presented.

**IV. PUBLIC BUSINESS FROM THE FLOOR**

There was no public business from the floor.

**V. NEW BUSINESS**

**1. Approval of Temporary Land Use Permit #18-01 for Karen Ables for Fat Mermaid Restaurant for Six Months on 600 Square Feet of Public Right of Way Immediately Adjacent to Lot 1A, Block 39A, Harbor Subdivision.**

MOTION: Commission Member Haase moved, seconded by Commission Member Reese, to approve temporary land use permit #18-01 for Fat Mermaid Restaurant and Karen Ables for six months, for the 600 square feet area of the sidewalk, within the public right of way, directly in front of her restaurant on Lot 1A, Block 39A, Harbor Subdivision. The motion carried by the following vote after the following discussion occurred.

Ms. Kate Huber, Community Development Senior Planner, noted there were some missing pages from the Temporary Land Use Permit (TLUP) application online agenda statement, but said she had printed a complete application for the Commissioners to view at the meeting. The complete application included past building permits and drawings of the structure in question.

Ms. Huber explained that while the seasonal covered outdoor seating structure at the Fat Mermaid had been issued a building permit in the past, this was the

first year a TLUP had been required for the structure. In previous years, no zoning review was completed. She added that because no current staff was involved in that permitting process, it was unclear why former staff did not complete zoning reviews. She said the 2018 zoning review had revealed a large portion of the proposed structure was located in the City right-of-way. She said the TLUP was the solution staff had found to allow the structure to persist. Ms. Huber said she did not have an opportunity to include the commentary from Public Works and Capital Facilities in the agenda statement, however, she read their comments aloud for the record. Ms. Huber said Capital Facilities Director, Mr. Nathan Duval, had expressed concern that the structure was projecting over the sidewalk in a way that would present a violation to the Americans with Disabilities Act (ADA.) Mr. Duval had sent an emailing stating that meeting requirements was non-negotiable and noted that City specifications called for a 4' or 5' minimum width for sidewalks. Mr. Duval stated in the remarks that he was most concerned over the sloped portion of the sidewalk, which represented a decorative grey accent strip meant to facilitate drainage. He said the slope of that portion might be too steep to meet the maximum slope for ADA accessibility.

Ms. Huber also read comments from Public Works department Foreman Mr. Ed Frank who stated the Public Works Department supported the TLUP approval as long as adequate space was given for wheelchair and pedestrian access. Mr. Frank said he would like to see a 4' minimum width for the accessible sidewalk, not including the sloped accent strip in order to accommodate this. Mr. Frank's comments also stated that he did not think the sloped area met the ADA maximum slope restriction of 2%. He added that there were some existing holes in the sidewalk from the installation of the structure over the past few years and said Public Works recommended that the applicant should be responsible for filling those holes.

Commissioner Haase stated he was in favor of approving the item, saying the structure had been there seasonally for two years without any public complaints and that he didn't think the Commission should stand in the way of business. He said he thought the outdoor seating added to the character of the downtown harbor area where it was located and presented an attraction for tourists. He said he thought placing parking blocks would be a good solution and said he thought the City or the applicant could cover costs to place them there.

Commissioner Reese agreed with Commissioner Haase and noted that he did see some car bumpers extend onto the sidewalk when parked in that area. He agreed it was fair to require the applicant to fill in the holes, and to require the applicant to use pier blocks to install the structure in the future. Commissioner Reese said he didn't think the slope was considerable enough to effect someone in a wheelchair negatively. He also said he thought parking blocks would help and that City place them at the site.

Ms. Rochelle Rollenhagen, Community Development Director, said she did not think the Planning and Zoning Commission had the authority to waive ADA requirements to allow the sloped accent strip to qualify as accessible sidewalk. She explained that the accent strip did not count as useable sidewalk to meet ADA accessibility requirements.

Ms. Huber agreed that the main concern was related to meeting ADA requirements. She said that the applicant, Ms. Karen Ables, was already pursuing the parking blocks since she had the materials to do so. Ms. Huber noted that parking blocks would address the overhang, but would not address ADA compliance concerns. She said that while the Community Development Department did not enforce ADA compliance as a building department for businesses during their plan review, the City would still have to enforce ADA compliance on City property.

Ms. Rollenhagen asked if the sloped area began at the accent strip. Ms. Ables replied it did but said the slope was so insignificant that people would not notice it. She said that if she was required to move her structure back further, she would lose a row of seating, which would cost her a significant portion of revenue.

Commissioner Reese asked if the ADA maximum slope was binding to the Commission. Ms. Huber said her understanding was that it was, and noted that Mr. Frank had said the grey area did not meet ADA requirements. Commissioner Reese said he thought meeting ADA requirements would be difficult because it would cut off a great portion of the covered space to move the structure back.

Ms. Huber said that the Commission could make ADA compliance a requirement of the TLUP as a condition of approval, and then the Community Development Department could work with Public Works to determine how to best achieve ADA compliance after measuring the slope of the accent strip.

Commissioner Reese said that without knowing exactly what grade was acceptable, he found it difficult to make a decision. Ms. Huber referenced an attachment in the agenda statement stating the ADA guidelines addressing slope of walking surfaces stating that 2% was the maximum slope allowed. Commissioner Uren asked what the purpose of having the awning over area was, noting that Ms. Ables could accomplish the same square footage of space by extending outdoor seating to the right of her building. Ms. Ables replied the awning was there to provide shelter from summer rain and that she already utilized the space to the right of her building. Ms. Huber clarified that there portion covered under the TLUP use permit application which was uncovered. Ms. Ables said she had used the 600 square foot space for outdoor seating the past, and wanted to continue to use it.

Commissioner Haase asked if the City was required to have a sidewalk on that side of the street. Ms. Huber said she would have to do more research to answer with certainty but thought a sidewalk was a requirement of that area.

Commissioner Blehm said the general standard for a sidewalk was for two people to walk next to one another without colliding. He noted that the Fat Mermaid building was already projecting into setbacks, and cutting off visibility at the corner intersection based on the aerial map provided in the agenda statement. He said he felt it was critical to find a way to protect pedestrians. Ms. Huber explained that the center line on a GIS aerial map could be skewed due to the angle at which the photos were taken. She said there was no as-built for the parcel on file, and that the GIS was the best visual they had to include in the agenda packet but did not necessarily reflect accurate lot lines.

Chair Gondek asked if Ms. Ables wanted to speak to the item. Ms. Ables thanked the Commissioners for their consideration and said she wanted to do everything she could to get her structure permitted properly. She said she would gladly have the holes in the sidewalk filled. She also said she thought the slope of the accent strip was minimal and said she would lose a significant amount of income if she was required to move her structure back. Ms. Ables asked that she be allowed to keep the site as is.

Chair Gondek thanked staff for working on the item and said the Commission needed to decide how they would proceed. He asked if any Commissioners wanted to require changes or conditions on the permit approval. Commissioner Uren asked if any other harbor businesses would be going through a similar permitting process. Ms. Huber said the City intended to look into other businesses that had outdoor seating that might extend into the public right-of-way. Commissioner Reese said he would prefer to waive the ADA requirements and pass the item with no conditions. He asked if the Commission was allowed to do this. Ms. Huber said her understanding was that the Commission did not have the right to waive Federal ADA requirements. However, she said that she was not completely sure the structure was out of compliance by projecting into the accessible walkway.

Commissioner Haase said he would like staff to find out if a sidewalk on both sides of the street was required. Commissioner Reese asked if it was an option to pave over the sloped portion of the sidewalk to flatten it. Ms. Huber said staff could work with Capital Facilities and Public Works to determine feasibility of that suggestion if the accent strip was found to not meet ADA requirements.

Ms. Ables asked if she would be allowed to use the structure for outdoor seating if the Commission approved the item. Ms. Rollenhagen said staff would work to resolve the issue quickly if it was approved with the condition of ADA compliance. Ms. Ables asked if she was allowed to operate using the awning if the Commission approved her application that night. Ms. Huber said she would work through the administrative process of executing the TLUP relatively quickly

if the Commission approved the item. Ms. Ables asked what would happen if Capital Facilities found it was out of compliance, and the structure was required to be moved. Ms. Huber replied she did not know what that timeline would be but would work with Ms. Ables to bring the structure into compliance.

Commissioner Reese pointed out that if Public Works found the slope of the accent strip to be greater than the ADA maximum, it might be better for Ms. Ables wait to construct, rather than have to alter the design. Ms. Ables clarified that the structure was already standing.

Commissioner Blehm said he would still like to see the structure moved back to facilitate visibility at the intersection, and to allow for 4' minimum width of the sidewalk. Ms. Ables said she would have to lose a whole row of dining tables if she was required to move her structure back.

Chair Gondek said he felt the item was a simple housekeeping issue, as the structure had been there for two seasons. He said he personally did not think the structure should be moved back and noted that Commissioner Blehm might be a lone voice in wanting the structure altered. Commissioner Blehm asked if there could be a sign placed on the adjacent corner directing pedestrian traffic across the street to the adjacent sidewalk. Ms. Huber pointed out that while it was not the City's responsibility to enforce access to the restaurant, the Fat Mermaid should also be accessible to workers and patrons with disabilities.

Commissioner Reese reiterated that once they knew what the slope of the accent strip was, the City could simply fill the accent strip to bring it up to grade. Chair Gondek said that while all the concerns brought up had been valid, he was ready to vote to approve the item with no conditions. He said the City could reconsider if Legal came back with a different determination regarding ADA compliance. Ms. Huber clarified that even though the Commission intended to approve the item without conditions, they were still directing staff to research City Code and determine the slope of the accent strip. Commissioner Reese said yes, he intended to approve the TLUP permit application without any conditions but that he would like staff to find out what the slope of the accent strip was. Chair Gondek agreed and said that until the Commission knew the slope of the accent strip with certainty, he did not think it was important to enforce at that time. Ms. Huber said she would work with Public Works to determine the slope and address the concerns for the next year.

#### VOTE ON THE MOTION:

Yays: 4 - Commissioner Haase, Chair Gondek, Commissioner Reese, Commissioner Uren

Nays: 1 - Commissioner Blehm

Absent: 1 - Commissioner Kipar

## VI. REPORTS

There were no reports presented.

**VII. COMMISSION BUSINESS FROM THE FLOOR**

Commissioner Blehm said he had recently traveled to the communities of Dutch Harbor and Kodiak and found them both to be vibrant in comparison to Valdez. He said he thought Valdez needed to foster a better atmosphere. He noted that the City Hall building exterior was becoming discolored and mossy and requested it be acid washed. Commissioner Blehm also wanted to alert staff of a possible violation of inappropriate storage being built near Robe River Subdivision.

Commissioner Uren had no comments.

Commissioner Reese said he thought Valdez was slowly improving and noted he had seen many positive changes in the past few years due to the community wide improvement effort. However, one thing that continued to bother him was the amount of trash strewn about town. He asked when the 2018 Community Cleanup Day was scheduled for. Ms. Rochelle Rollenhagen replied that it had been the prior weekend. Commissioner Reese said he did not think Cleanup Day had been wholly effective and thought something else should be done. Commissioner Haase had nothing to comment. Chair Gondek also had nothing to add and adjourned the meeting.

**VIII. ADJOURNMENT**

There being no further business, Chair Gondek adjourned the meeting at 7:52 p.m.

---

Jess Gondek, Chairman

---

Sheri Pierce, MMC, City Clerk