



## Agenda Statement

**File #:** 21-0242 **Version:** 1  
**Type:** New Business **Status:** Passed  
**File created:** 4/21/2021 **In control:** Planning and Zoning Commission  
**On agenda:** 4/28/2021 **Final action:** 4/28/2021  
**Title:** Approval of Temporary Land Use Permit #21-07 for Fat Mermaid Restaurant for 600 Square Feet of Public Right-of-Way Immediately Adjacent to Lot 1A, Block 39A, Harbor Subdivision

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. TLUP 21-07 Fat Mermaid Application, 2. ADA Guide for Small Towns Accessible Route Excerpt

Date	Ver.	Action By	Action	Result
4/28/2021	1	Planning and Zoning Commission	approved	Pass

### **ITEM TITLE:**

Approval of Temporary Land Use Permit #21-07 for Fat Mermaid Restaurant for 600 Square Feet of Public Right-of-Way Immediately Adjacent to Lot 1A, Block 39A, Harbor Subdivision

**SUBMITTED BY:** Nicole LeRoy, Planning Technician

### **FISCAL NOTES:**

Expenditure Required: N/A

Unencumbered Balance: N/A

Funding Source: N/A

### **RECOMMENDATION:**

Approve temporary land use permit #21-07 for Fat Mermaid Restaurant for 600 square feet of public right-of-way immediately adjacent to Lot 1A, Block 39A, Harbor Subdivision with conditions.

### **SUMMARY STATEMENT:**

On April 16, 2021, Karen Ables, owner of the Fat Mermaid Restaurant, applied for a temporary land use permit for seasonal outdoor seating adjacent to her restaurant at 143 North Harbor Drive. This is the fourth year Ms. Ables has pursued a permit of this type. Per her attached application, Ms. Ables has requested use of a 600 square foot portion of public right-of-way for outdoor restaurant seating. Ms. Ables requested the permit for May 15th - October 1st of 2021.

When this type of temporary land use permit was first processed in 2018, staff recommended that compliance with the Americans with Disabilities Act (ADA) be a condition of the permit approval to allow all pedestrians an accessible route through the public right-of-way. There was debate at the

time as to the required slope of the sidewalk for qualification as an accessible route as defined by the ADA. Through inspection of the site, it was determined that the slope of the accent strip exceeded the 2% maximum slope mandated by the ADA, effectively disqualifying it as an approved accessible route. As such, it was determined by staff that 36" of flat, clear sidewalk would need to be maintained in order to meet the ADA minimum clearance for accessible routes (see attached guidelines.) Staff recommends that approval of this temporary land use permit also requires Ms. Ables to meet the ADA minimum as a condition of issuance this year.

In addition, per Valdez Municipal Code 17.48.140, the permanent alteration of City property is prohibited under a permit of this type. To satisfy this code requirement, staff recommends that the temporary land use permit approval condition that all barricades for the permitted area be temporary and moveable, and that no modification to the sidewalk occurs.

Per Valdez Municipal Code 17.48.140 B 2e, temporary land use permit requests not to exceed six months in duration may only be granted by the Planning and Zoning Commission if the desired use is in conformance with the existing zoning and/or comprehensive plan. The area of public right-of-way requested by Ms. Ables is adjacent to 143 North Harbor Drive, zoned general commercial. The general commercial district permits a wide variety of commercial activities including eating and drinking establishments. The temporary structure and use proposed by Ms. Ables is within the character of the district. As such, staff recommends approval of temporary land use permit 20-02 with the conditions listed above.

Fees temporary land use permits were established by City Council with Resolution #12-36. The resolution states that "for permits not exceeding two acres in size and for a period of six months or less, the fee shall be \$250 per month." For the six month period Ms. Ables has requested, a permit of this type will be \$1,500.00.

Staff submitted the temporary land use permit application to Capital Facilities, Public Works, and Ports and Harbor for their comments and received no objection to the permit.

Per VMC 17.48.140 B2k, if temporary land use permit 21-07 is approved by the Planning and Zoning Commission, the decision will be reported to City Council. Only upon no objection from City Council will the permit become effective after which, staff will prepare a temporary land use permit using standard language approved by City attorneys and include any conditions required by the Commission. If Ms. Ables is granted approval of temporary land use permit 21-07, she will need to apply for a building permit for construction of the awning structure and, once issued, schedule required inspections.

Staff recommends that the temporary land use permit request by Karen Ables and the Fat Mermaid Restaurant be approved only with the conditions that Ms. Ables be required to comply with all ADA guidelines, make no permanent alteration to the area, and obtain a building permit and required inspections for the proposed structure.