

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 9/12/13

FROM: Ken Johnson, Senior Planner, via John Swiecki, Community Development Director

SUBJECT: 35 Visitacion Avenue; Conditional Use Permit UP-5-13; Conditional Use Permit for Night Operations to extend the hours of operation of the existing restaurant from 10 pm until 2 am, for indoor dining within the approximately 361 sq. ft. restaurant (60 sq. ft. +/- dining room), take-out and delivery. Outdoor dining is not included; Mama Mia Pizza, applicant; Richard Campos Tr., owner; Assessors Parcel Number 007-222-110.

Request: Mama Mia Pizza requests a conditional use permit to conduct night operations (after 10 pm) for food preparation, indoor dining, take-out and delivery. This would extend their closing time from 10 pm to 2 am. The applicant estimates that, based on current business levels, at a maximum there would be up to 10 orders during this 4 hour period from walk-in business (take-out or dining in) and up to 10 orders for deliveries. The restaurant is approximately 361 sq ft in total, with 60 sq ft devoted to dining, which accommodates up to 4 people.

The use permit would not include outdoor dining.

For further details please see the applicant's project description, attached.

Recommendation: Conditionally approve Conditional Use Permit UP-5-13 per the agenda report, via adoption of Resolution UP-5-13 with Exhibit A containing the findings and conditions of approval.

Environmental Determination: Operations within an existing structure are categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15301 of the State CEQA Guidelines.

Applicable Code Sections: Brisbane Municipal Code Section 17.14.080 requires a Use Permit for night operations regardless of the type of use, if the use is between the hours of 10 pm and 5 am. In addition to the standard findings for a use permit (BMC Section 17.40.060.E), two additional findings are required for night operations regarding noise, glare and other potential impacts on neighboring properties (BMC Section 17.19.060.E).

Analysis and Findings: The required findings under BMC Sections 17.41.060.A-F and project analysis are presented and discussed below.

BMC Section 17.40.060.E requires that findings A and B are to be met:

A. In considering an application, the planning commission shall consider and give due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question.

The application **complies** with this finding. The proposed use is consistent with adjacent uses or structures and should not have any significant impacts on any adjacent uses or structures. The adjacent uses/structures include Star Box restaurant, which is open weekdays from morning until mid-afternoon and residential uses are located immediately to the south and behind Mama Mia Pizza. The Brisbane Inn bar, an apartment building and an office building are located across the street. An aerial photo and site photos are provided which show the site and surroundings on both sides of the street.

The proposed use is consistent with the General Plan and there are no specific plans for the area. General Plan Policy 282 and Program 9c direct the City to encourage small and locally owned businesses and uses that benefit the community, providing jobs, revenues and services.

B. The planning commission shall determine whether or not the establishment, maintenance or operation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city.

The application **complies** with this finding. Given the surrounding adjacent and nearby uses and the low intensity of the use applied for, the proposed use will be consistent with and will not be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood nor will it be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city. See further discussion for finding C, below.

In addition, per BMC Section 17.19.060.E, for night operations, the following findings must also be met:

C. The night operations conducted by the applicant will not create noise, glare or other effects that are likely to create a sleep disturbance for the occupants of neighboring residential properties.

The application **complies** with this finding. As indicated in the applicant's description and based on the proposed low level of intensity, the use would not create noise, glare or other effects that are likely to create a sleep disturbance for the occupants of neighboring residential properties.

The proposed use will be conducted indoors, with the exception of some vehicle trips for either customer take-out/dine-in or for delivery. The applicant has indicated that the business currently has approximately 40 orders per day and based on this has estimated up to another 20 orders between 10 pm and 2 am. These orders would be split between deliveries and take-outs, with limited capacity for dining in the restaurant. The applicant indicated that this was his projected maximum, since the daytime hours were the peak hours for the restaurant. It's estimated that many of the walk-in orders will be from carryover business from the bars and since they are on the same block these patrons would not generate additional vehicle trips. Also, the dining room is only approximately 60 sq ft and currently accommodates a table and 4 chairs.

The applicant has not included outdoor dining on the patio in the application and a condition of approval has been included to prohibit outdoor dining. As requested by the Police Dept., a condition has also been included to prohibit gathering or loitering outside the restaurant. Other conditions have been recommended by the Planning Dept. to prohibit deliveries of supplies to the restaurant after 10 pm and the use of diesel vehicles for deliveries after 10 pm, due to potential noise generation from these types of vehicles.

Other nearby businesses that operate later than 10 pm include the two bars (Brisbane Inn and the 23 Club) which are both located on this block of the neighborhood commercial district. Both of these uses have operated prior to the adoption of the night operations ordinance in 2002. It is not anticipated that the proposed use would add significantly to the current level of coming and going after 10 pm from that produced by the existing bars, nor would it be considered a significant level of traffic for this zoning district. Aside from these businesses the only nearby business that has applied for a night operations use permit was Pitney Bowes which currently operates their document production business around the clock next to the Post Office, at the corner of Park Lane and Old County Road. The proposed use at Mama Mia Pizza is one block away from that existing night operations use and the City has received no complaints regarding that use.

D. To the extent that any noise, glare or other impacts related to the night operations are caused by persons other than the applicant, the applicant has the ability to effectively control and mitigate such impacts.

The application **complies** with this finding. There are no anticipated impacts associated with this proposed use that would be caused by others.

Attachments: Draft Resolution UP-5-13 with Findings and Conditions of Approval
Vicinity Map
Applicant's Project Description and Plans/Photos

RESOLUTION UP-5-13

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
CONDITIONALLY APPROVING USE PERMIT UP-5-13
TO ESTABLISH NIGHT OPERATIONS
AT 35 VISITACION AVENUE

WHEREAS, Mama Mia Pizza, the applicant, applied to the City of Brisbane for Use Permit approval to establish night operations (between 10 pm and 2 am) at 35 Visitacion Ave., such application being identified as Use Permit UP-5-12; and

WHEREAS, on September 12, 2013, the Planning Commission conducted a hearing of the application, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the agenda report relating to said application, the plans and photographs, the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, the Planning Commission finds that the proposed project is consistent with the General Plan, specifically General Plan Policy 282 and Program 9c; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Use Permit.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of September 12, 2013, did resolve as follows:

Use Permit UP-5-13 is approved per the conditions of approval attached herein as Exhibit A.

ADOPTED this 12th day of September, 2013, by the following vote:

AYES:

NOES:

ABSENT:

Carolyn Parker
Chairperson

ATTEST:

JOHN A. SWIECKI, Community Development Director

EXHIBIT A

Action Taken: Conditionally approve Use Permit UP-5-13 per the staff memorandum with attachments, via adoption of Resolution UP-5-13.

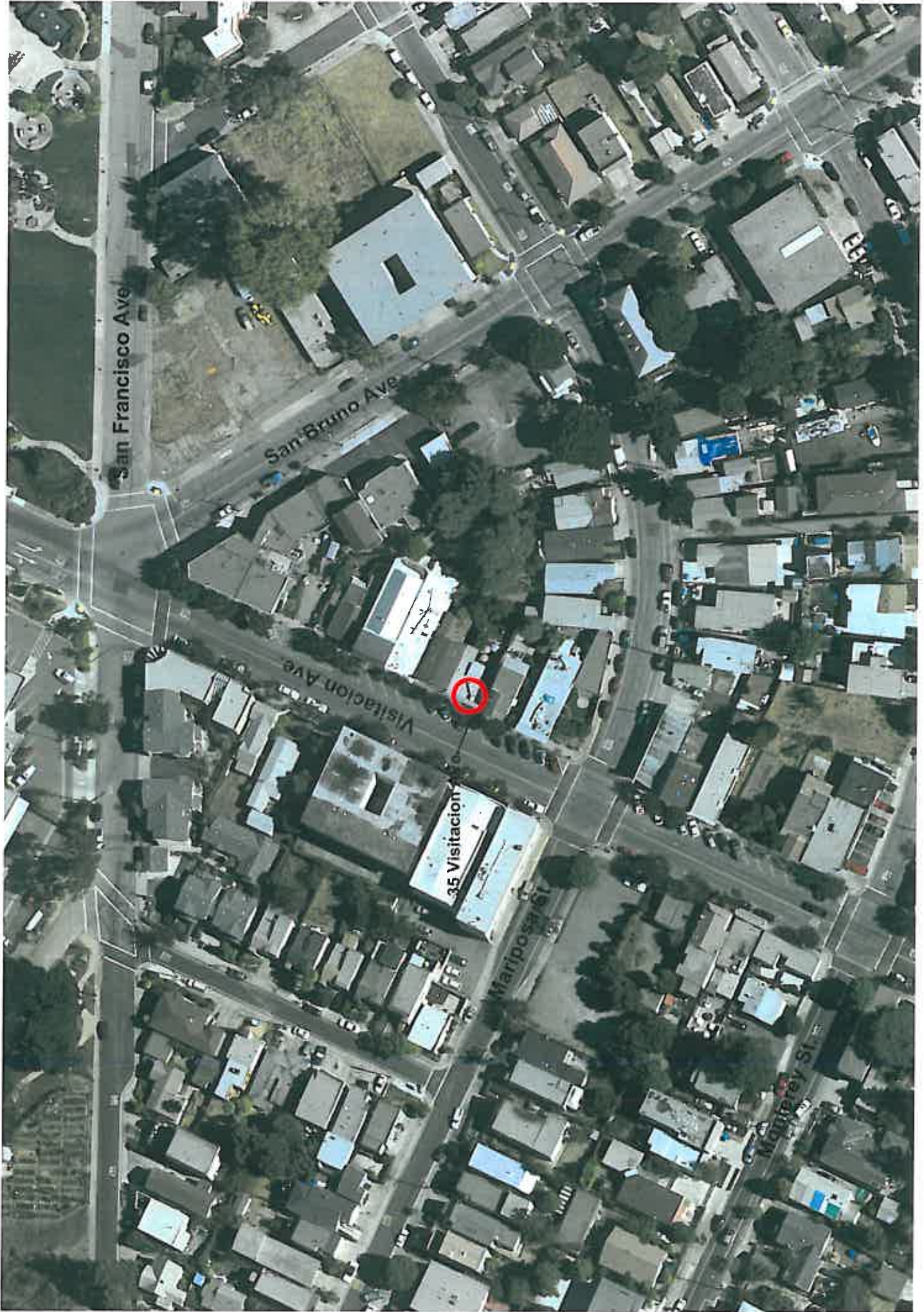
Findings:

- A. The planning commission has considered and given due regard to the nature and condition of all adjacent uses and structures, to General Plan consistency, and there no specific plans for the area in question.
- B. The planning commission has determined that the establishment, maintenance or operation of the use applied for, under the circumstances of the particular case, will not be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, nor will it be injurious or detrimental to property or improvements in the neighborhood or the general welfare of the city.
- C. The night operations conducted by the applicant will not create noise, glare or other effects that are likely to create a sleep disturbance for the occupants of neighboring residential properties.
- D. There are no noise, glare or other impacts related to the night operations that are anticipated to be caused by persons other than the applicant.

Conditions of Approval:

- 1. The night operations use is for indoor use of the restaurant for food preparation and dining, as well as take-out and delivery.
- 2. All work tasks during the approved hours of night operations (between the hours of 10 pm and 2 am) shall take place entirely within the building, with the exception of delivery to customers.
- 3. This night operations use permit shall not include any outdoor dining, neither on the rear patio nor on the front walkway.
- 4. Outdoor dining in front of the restaurant may only be provided during daytime hours (prior to 10 pm) following application and approval of an encroachment permit through the Public Works Dept.
- 5. Under no circumstances shall there be congregation, loitering, or other use that would block the sidewalk.

6. The indoor dining area shall not be altered from its current configuration, including approximately 60 sq ft of dining, except as may be allowed by determination of substantial conformance with this use permit by the Planning Director and via building permit if required by the Fire Dept. and/or the Building Dept..
7. The use shall not produce noise, glare or other impacts on neighboring properties.
8. No deliveries to the restaurant by outside suppliers shall be allowed after 10 pm and before 2 am.
9. Deliveries from the restaurant to patrons shall be done in a quiet manner. Due to noise from diesel vehicles, they shall be prohibited after 10 pm and before 2 am.
10. Minor modifications may be approved by the Planning Director in conformance with all requirements of the Municipal Code.
11. Advertising signs are not included with this use permit. Advertising signs are subject to separate application and City approval in accordance with BMC Chapter 17.36.
12. As detailed in BMC Section 17.41.100, this use permit may be revoked upon a determination by the planning commission that the holder of such permit has failed to comply with any of the conditions thereof or has violated any applicable provision of the BMC.



35 Visitacion Ave.
Brisbane, CA

F.1.7

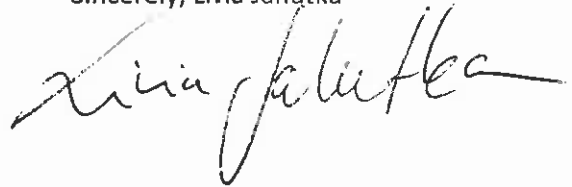
To whom it may concern,

The owner of Mama Mia Pizza (35 Visitacion Ave., Brisbane CA 94005) would like to request night operations for the business. The reason why I would like to apply for that to improve the profit of the business and also I would like to give opportunity to our community to enjoy our meal at night time because as known there are no (or very few) places open after 10 pm in Brisbane and around this area.

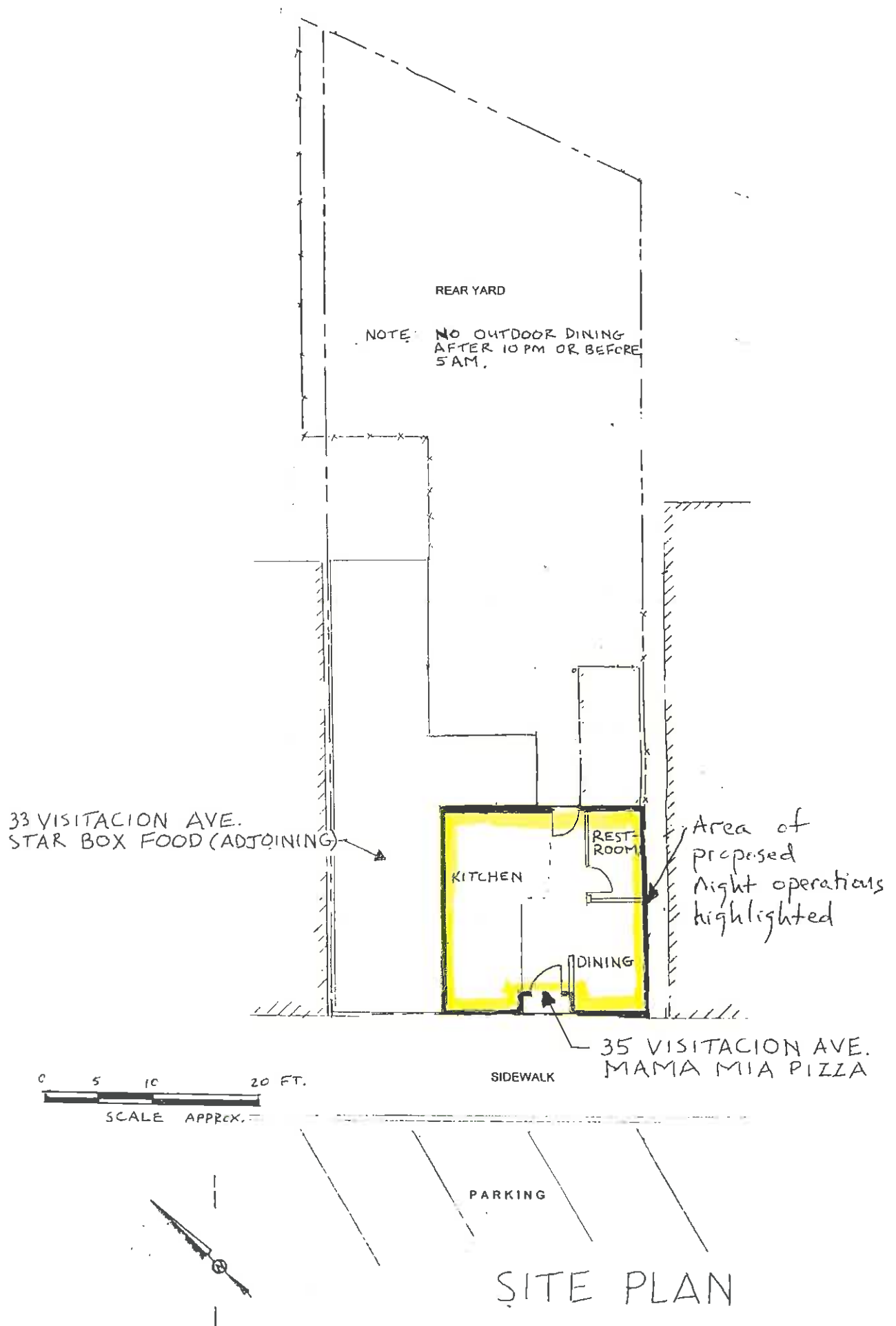
I have only one small table with four chairs in the front which will be enough for people who want to dine in at night time. I will not use, open the back patio area of the place during night time operation because I do not want to bother the neighbors with noise, glare or other effects that are likely to create a sleep disturbance. I also offer pick- up and delivery options for the food availability.

I like to be in here in Brisbane because the people are very nice, help each other. Great community! That is why I decided to stay open late for them, for Brisbane.

Sincerely, Livia Jahutka

A handwritten signature in black ink, appearing to read 'Livia Jahutka', with a long, sweeping horizontal stroke at the end.

08/22/2013







F.1.11