

# MONTGOMERY COUNTY

DEPARTMENT OF PERMITTING SERVICES

## REQUIREMENTS FOR OUTDOOR CAFÉ SEATING



**DPS**

**Montgomery County  
Department of Permitting Services**

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# Montgomery County Requirements for Outdoor Café Seating Areas Within the Public Right-of-Way

## Introduction

Montgomery County is devoted to enhancing the atmosphere of its communities including improvements to promote getting out and enjoying our vibrant County. Having sidewalks that are more conducive to walking makes people more apt to socialize and patronize local businesses therefore enhancing the atmosphere in our communities. Outdoor cafés within the Public Right-of-Way (PROW) are a desirable feature of the streetscape and are beneficial as long as adequate pedestrian movement is retained. Outdoor cafés are becoming an essential part of restaurant businesses and can be a positive addition to local communities by contributing to a vibrant atmosphere.

In the past there has been inadequate clarification regarding the requirements for outdoor café seating areas within the PROW and therefore the requirements have been unclear to the business owners and citizens. Since outdoor cafés have recently become more popular, it is necessary to clarify and enforce these requirements. It is important to consistently apply these requirements to maintain adequate pedestrian movement and accessibility to those with physical disabilities, protect public property, protect adjacent properties, and facilitate outdoor cafés.

The Standards provided here are to assist business owners in acquiring the necessary Montgomery County Department of Permitting Services (DPS) permit for an outdoor café seating area within the PROW and to inform citizens of the requirements for obtaining a permit. These requirements do not pertain to outdoor cafés on private property unless a portion of the right-of-way is needed to support the outdoor café and/or accessibility. These requirements cannot cover every circumstance and each application will be thoroughly reviewed to ensure that any Outdoor Café Seating Permit within the PROW adheres to these requirements and benefits the community. This type of permit does not apply to the private use of the public right-of-way for the selling of goods or services, this is prohibited. Outdoor café areas within the PROW that have already obtained County approvals and do not meet these standards may continue to operate in accordance to their approved plan but must obtain an annual Outdoor Café Seating Permit.

## General Information

1. When an outdoor café seating area is proposed within any portion of the PROW, a **Work in Public Right-of-Way Permit is required**. The Permit for the outdoor café seating area issued by DPS is applicable only to County maintained rights-of-way and easements directly fronting and/or adjacent to the business applying for the Permit. This Permit

can be revoked should the permittee not adhere to these requirements and the conditions of the Permit and/or Certified Site Plan.

2. If the seating area encroaches within adjacent property frontage, written consent is required from neighboring property owner(s) to utilize any portion of the PROW directly in front of their property. Permission must be obtained from the property owner and not a lease holder.
3. The Permit for the outdoor café seating area within the PROW is valid from March 15 until December 15 in the calendar year in which it is issued. The right-of-way must be restored to its original condition during the times the Permit is not valid. It is the permit holder's responsibility to restore the public right-of-way to its original condition at no cost to the County. A temporary Outdoor Café Permit may be acquired for special events between December 15 and March 15. Businesses must have had a valid Outdoor Café Permit prior to December 15 to acquire a temporary permit unless a waiver is granted from DPS.
4. Outdoor café areas consist of tables and chairs for sit-down food and beverage service only, no stand up service is permitted. Service may be by wait staff or by serving oneself.
5. The hours of operation of an outdoor café area may not exceed the regular hours the business is open and operating.
6. The sale and consumption of alcohol to customers in an outdoor café requires a Liquor License from the Montgomery County Department of Liquor Control (DLC) and must comply with DLC's requirements. Obtain additional information on DLC's requirements at: <http://www.montgomerycountymd.gov/dlc/>
7. Outdoor café areas shall not have permanent fixtures, tables, seating, or barriers unless previously approved. These items must be easily removable (i.e., not attached to buildings or sidewalks) so that the public right-of-way can be easily restored back to its original condition. Removal of fixtures, tables, seating, and barriers is not required at the end of each business day unless otherwise required by the Permit.
8. Barriers shall be thirty-six inches (36") to thirty-eight inches (38") in height, free-standing, stable, removable, and the lowest point being a continuous rail two inches (2") to six inches (6") from the sidewalk surface. The barrier post base must not exceed one-half inch (½") in height. The barrier post base shall be flat and the edges shall be vertical up to one-quarter inch (¼") high, beveled at 45 degrees between one-quarter inch (¼") and one-half inch (½"), and extend no further than six inches (6") into the Clear Pedestrian Zone (See Fig. 1, "Barrier Post Detail"). The barriers may be made of metal or wood. Chain link fencing, rope rails, and chain rails are unacceptable barriers (See Fig. 2, Acceptable Barriers and Fig. 3, Unacceptable Barriers). Planters meeting these requirements may be used or incorporated as a barrier. Planters must be well-maintained, kept free of litter and debris.

9. No fixtures, tables, seating, barriers, planters, sandwich boards or other signs shall be placed within the clear pedestrian zone as shown on the approved permit plan (See Figs. 4, 5, 6 and 7 Clear Pedestrian Zone Detail).
10. All food must be prepared inside the business, cooking and preparation of food within the outdoor café area is prohibited. Grills are not permitted in outdoor café areas.
11. All service shall take place within the boundaries of the outdoor café area. Wait staff or customers shall not block the clear pedestrian zone at any time.
12. The seating in an outdoor café area must be accessible to people with disabilities. Americans with Disabilities Act (ADA) accessibility requirements must be met within the outdoor café area. Five percent, or at least one, of the seating spaces in the outdoor café area must be accessible to people with disabilities. An accessible route connecting the outdoor café area, the business entrance, and the restrooms must be provided. Additional information on the ADA accessibility requirements can be found in the ADA Primer for Small Business at:  
[www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm#food](http://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm#food)
13. It is the responsibility of the permittee that the outdoor café area shall remain neat and clean at all times. If the outdoor café is by serving oneself, trash and recycling receptacles must be provided and placed within the boundaries of the outdoor café area. The outdoor café area shall be maintained and remain free of litter.
14. Outdoor café areas may not be enclosed by canopies or other methods than the approved barrier. Umbrellas are allowed and shall be properly maintained. Umbrellas shall have a stable base and be a minimum of seven feet (7') in height as measured from the top of sidewalk to the lowest point of the umbrella and shall not hang over the clear pedestrian zone (See Fig. 8, Umbrella Requirement Detail). Umbrellas shall be in the closed position during nonbusiness hours.
15. Heating is permitted within the designated outdoor café area. The heaters must be placed within the barriers of the outdoor café area, portable, and be easily removed.
16. Noise Ordinances are strictly enforced by the Department of Environmental Protection (DEP) and must be adhered to. Additional information on noise ordinance requirements can be found at:  
<http://www.montgomerycountymd.gov/dep/resources/files/downloads/compliance/noise-control-ordinance.pdf>
17. Smoking is prohibited in the outdoor café area.
18. Outdoor cafés must adhere to all rules and regulations from all Montgomery County Departments as applicable.

## Sidewalk Zones

For this purpose, a sidewalk is comprised of four zones; edge, furnishings, clear pedestrian, and frontage zones (See Fig. 9, Sidewalk Zones Detail). The edge zone is to be a minimum of eighteen inches (18") as measured from the face of the curb. The furnishings zone may be

utilized for outdoor cafés and is variable depending on overall sidewalk width. The clear pedestrian zone is a minimum six feet (6') wide area of unimpeded pedestrian mobility. If applicable, the clear pedestrian zone must be as wide or greater than the width of the shared use path as shown on the Certified Site Plan. The clear pedestrian zone cannot contain any obstructions, including but not limited to open doorways, signs, street lights, parking meters, street trees, tree pits, and/or tree grates. Any part of the proposed outdoor cafe must be out of the clear pedestrian zone including but not limited to signs, planters, barriers and/or overhead umbrellas. Private property with public easements may be utilized for some or all of the clear pedestrian zone. The frontage zone extends from the building to the property/public right-of-way line or the furthest protrusion from the building, such as an open door. The frontage zone may be utilized as an outdoor café on private property without requiring an Outdoor Café Seating Area Permit.

## **Permit**

### **Definition**

An Outdoor Café Seating Permit allows a food service establishment to set up tables, chairs, umbrellas, heaters, and other fixtures required for food service within the public right-of-way as described in General Information. The Permit is issued on an annual basis and is valid from March 15 until December 15 during the year issued unless revoked earlier. Any violation of the permit may result in fines to the permit holder and/or revocation of the Permit. The permit is issued to the individual business and cannot be transferred to others. If at any time ownership of the business has changed, the current permit becomes void and the new ownership must apply for a new Outdoor Café Seating Permit. The approved Outdoor Café Seating Permit and plan must be located at the address to which it has been issued and made available at the request of a County Official. Any modification to the current approved outdoor café plan must be approved by DPS. Minor modifications may be field approved at the inspector's discretion. Major modifications, such as altering the size or location of the outdoor café, requires the submittal of a revised plan with approval prior to implementing the modification. If the outdoor café was approved as part of a Certified Site Plan, approval of the revision by the Maryland-National Capital Park and Planning Commission (M-NCPPC) may also be required prior to implementing the modification. Outdoor cafés must be part of a lawful operating restaurant. Outdoor cafés must adhere to all rules and regulations from all Montgomery County Departments as applicable. The County retains all rights to revoke or alter any Outdoor Café Seating Permit at any time for public improvement or repairs in the Montgomery County right-of-way and in the interest of health, safety, or welfare concerns.

### **Application**

The business owner is required to submit a Work in Public Right-of-Way Permit Application with the following information:

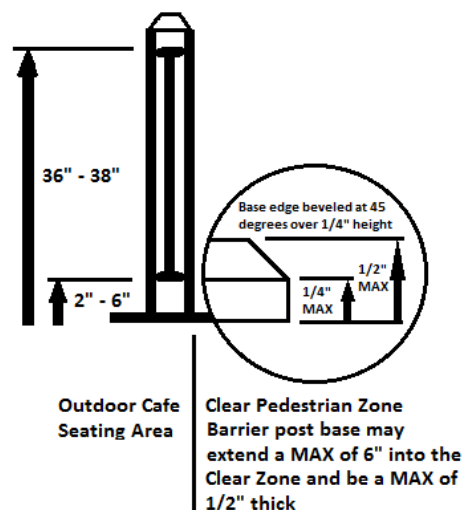
1. A plan dimensioned to appropriate scale showing the following:
  - a. The business name, address, and telephone number. Contact name and number of the responsible party. Contact name and number of property owner.
  - b. The existing building frontage including awnings, protrusions, and door swing directions with dimensions. Plans must establish that the means of egress from the existing building are not blocked, diminished, or in any way altered as a result of the new outdoor café.
  - c. A list of the name and type for all businesses at street level on the immediate left and right sides of the proposed outdoor café seating.
  - d. Streets shown and labeled in front and/or adjacent to the property.
  - e. All existing sidewalk dimensions from building face to face of curb.
  - f. The proposed dimensions and total area of the outdoor café area.
  - g. The proposed six feet (6') wide minimum clear pedestrian zone or width of shared use path as shown on the M-NCCPC approved Certified Site Plan, whichever is greater.
  - h. The proposed location and size of tables.
  - i. The proposed location and number of chairs.
  - j. The proposed handicapped accessible facilities and accessible travel route to these facilities from the sidewalk/clear zone and from these facilities to the business entrance.
  - k. The proposed locations and sizes of all other fixtures and amenities to be placed such as planters, lights, signs, umbrellas, heaters, etc. If gas heaters are to be utilized, a proposed maximum number of gas cylinders to be stored on-site, their size, and the proposed location of their storage. If proposed, clearance to combustibles from the heaters must be shown and be in accordance with National Fire Protection Association requirements ([www.nfpa.org](http://www.nfpa.org)).
  - l. The proposed location of barriers, size and location of opening for ingress/egress, and a detail of the barrier design.
  - m. Show all existing obstructions with dimensions including but not limited to:
    - Traffic/Pedestrian Signals and Associated Equipment
    - Street Lights
    - Utility Poles
    - Fire Hydrants
    - Parking Meters
    - Sign Posts
    - Tree Pits/Planters
    - Building Entrances/Door Swing
    - Emergency Exits
    - Roadway Curb and Gutter
    - Storm Drain Facilities

- Stormwater Management Facilities
  - Bus Stops
  - Taxi Stands
  - Crosswalks
  - Pedestrian Curb Ramps
  - Loading Zones
  - Shared Use Facilities
  - Bikeshare Stations
  - Bicycle Parking Facilities
  - Steps and/or Retaining Walls
  - Benches
  - Artwork or Similar Features
2. A copy of the Certified Site Plan (if applicable) approved by M-NCPPC.
  3. Proof of at least One Million Dollars (\$1 Million) in liability insurance while the Permit is in effect including potential claims for bodily injury, death, disability, and property damage which could occur at or be related to outdoor café purposes. The insurance must name Montgomery County as an additional insured.
  4. Written consent from the property owner.

## Permit Fees

The initial Outdoor Café Seating Permit fee is \$775.00. The annual renewal fee for the Outdoor Café Seating Permit is \$250.00. The permit must be renewed prior to March 15 of each calendar year to avoid resubmitting an application for an Outdoor Café Permit with proposed plan for review and paying the initial Outdoor Café Permit fee. The applicant must allow adequate time for review and approval when submitting to DPS.

**Fig. 1, Barrier Post Detail**





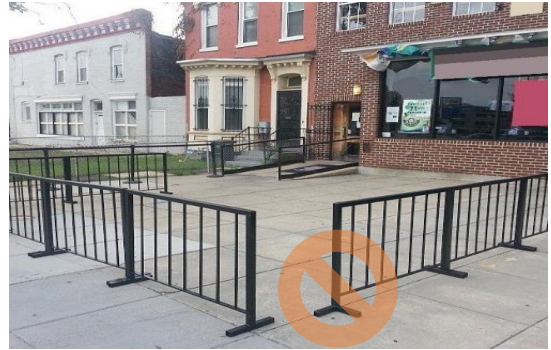
**Fig. 2, Acceptable Barriers**



These barrier designs are acceptable. They are 36" - 38" in height, free-standing, stable, easily removed, have a continuous rail 2" to 6" from the sidewalk surface, and have a flat post base less than 1/2' thick extending less than 6" into the Pedestrian Clear Zone.



## Fig. 3, Unacceptable Barriers



These two barrier designs are unacceptable, the post bases are greater than one-half inch (1/2") thick and introduce a tripping hazard into the Clear Pedestrian Zone.



This barrier design is unacceptable, heaters may not be used as a barrier and must be located within the confines of the outdoor café seating area.

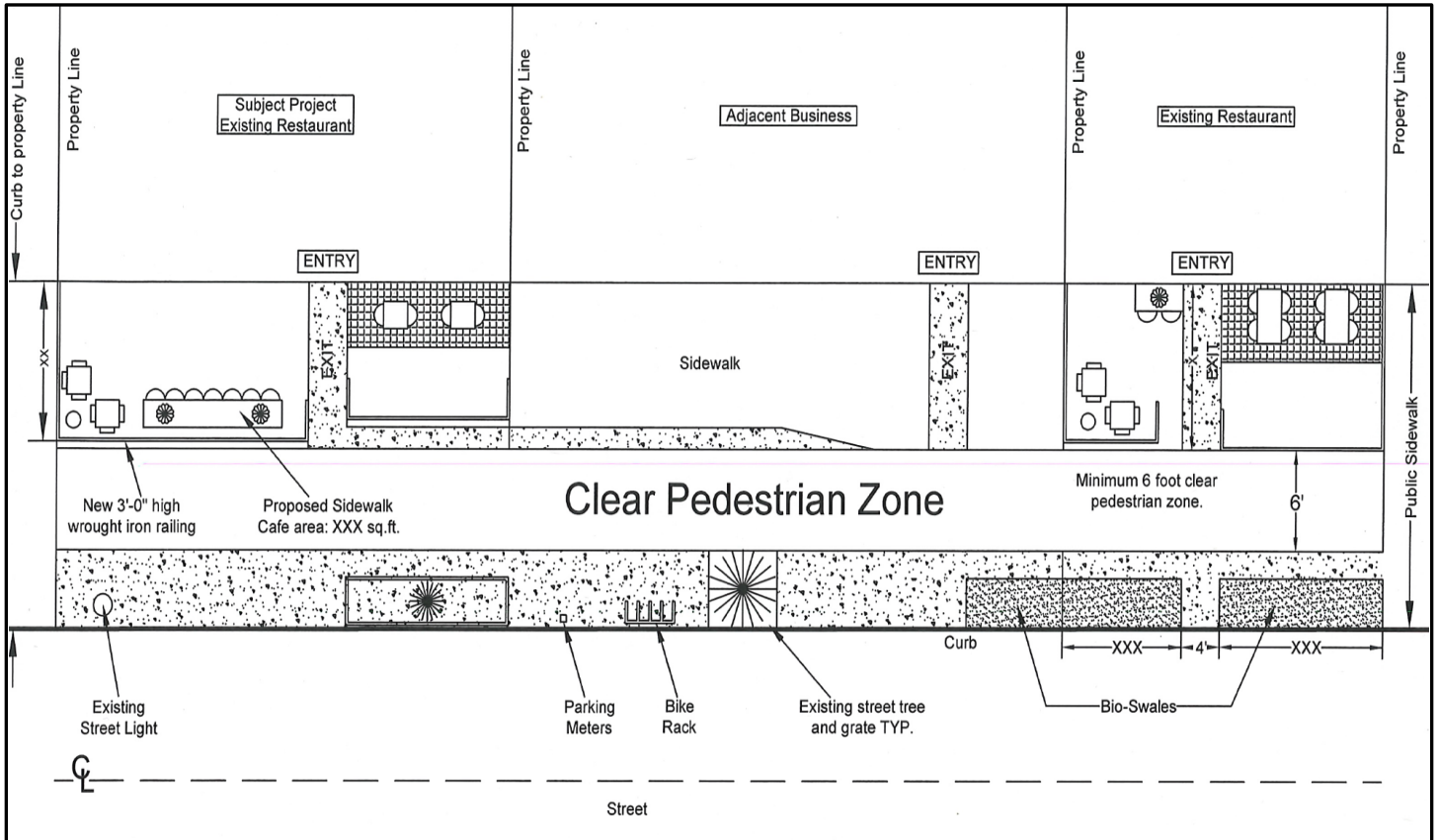


This barrier design is unacceptable; the pickets of the barrier protrude below the bottom rail. It is a requirement that the lowest point of the barrier be a continuous rail.

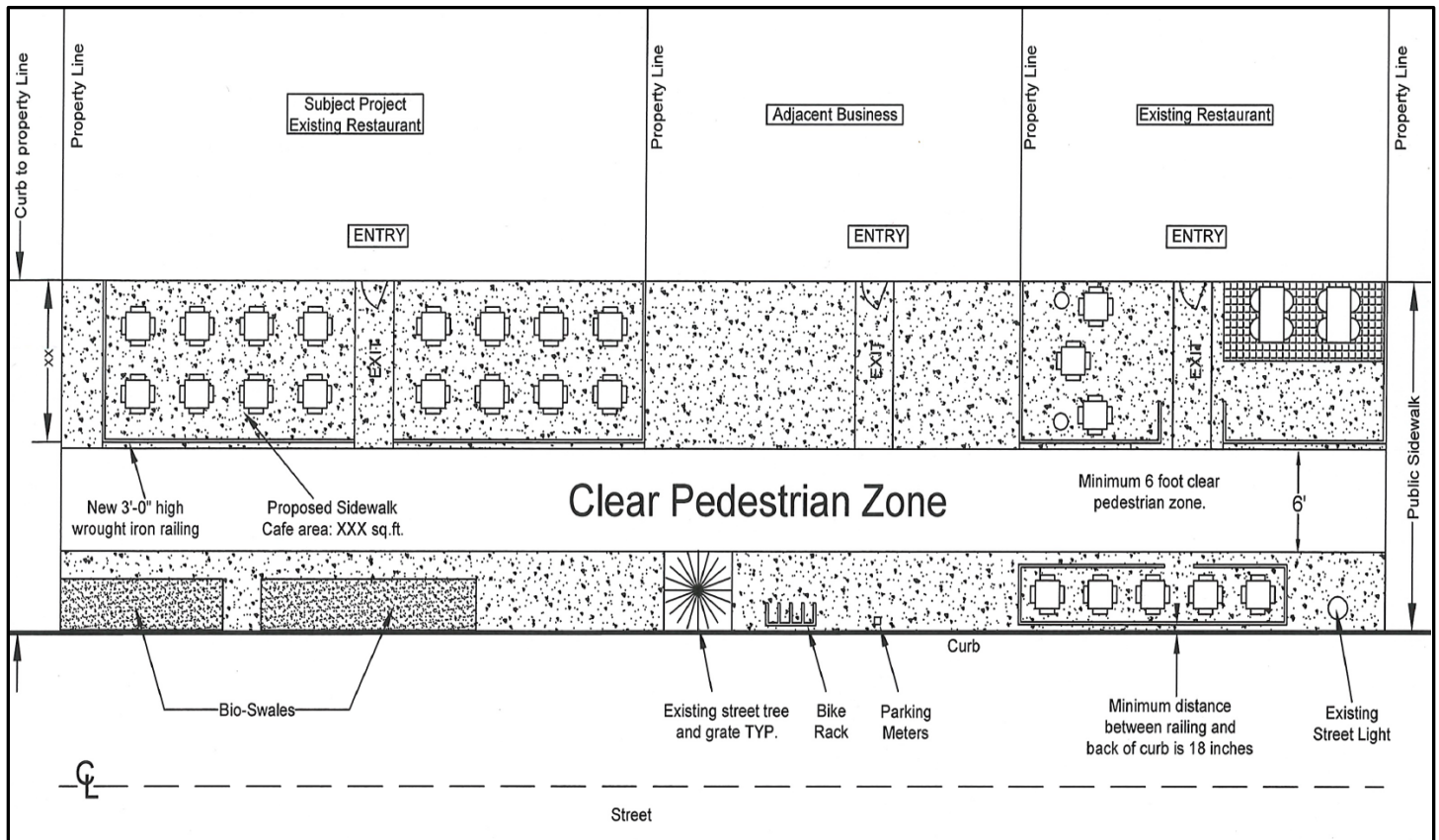


These barrier designs are unacceptable, neither rope rails nor chain rails are acceptable barriers. They are not substantial enough to define the outdoor café seating area and introduce a hazard to the visually impaired within the public right-of-way.

## Fig. 4, Clear Pedestrian Zone Detail

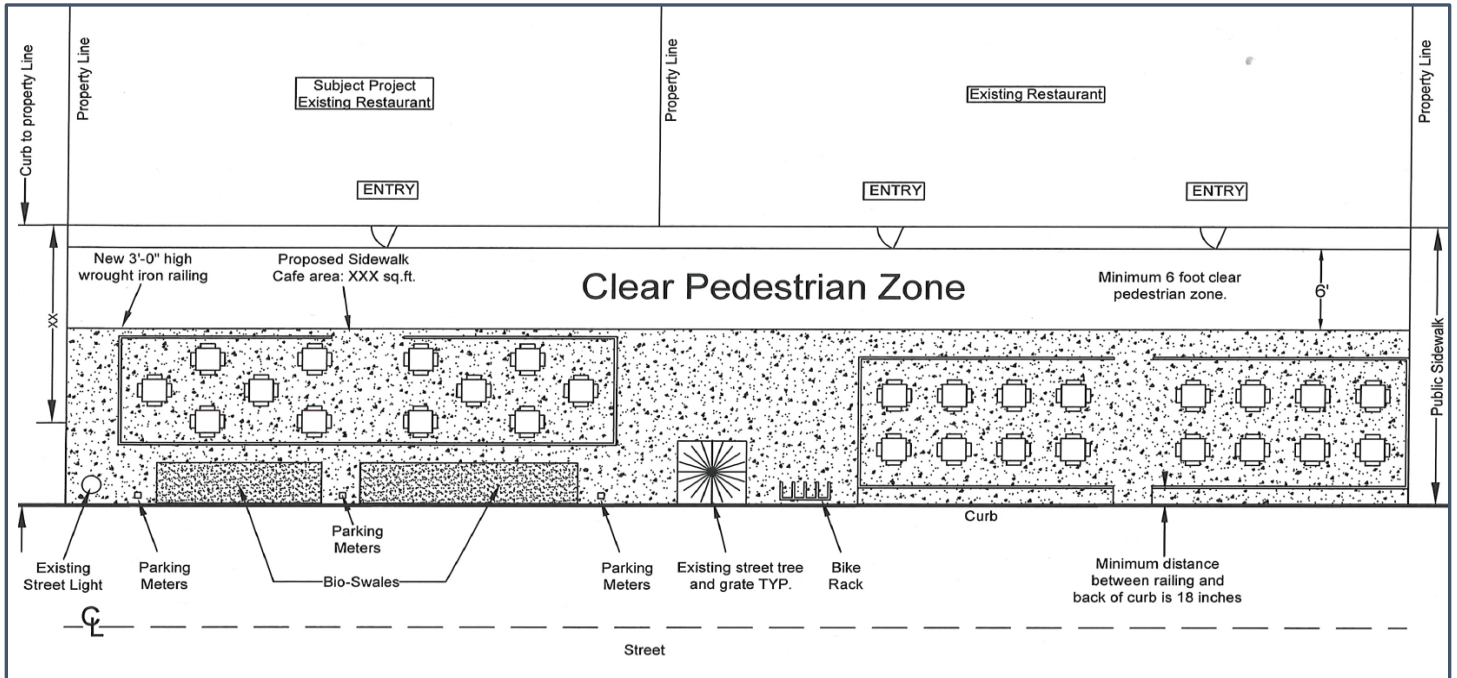


## Fig. 5, Clear Pedestrian Zone Detail

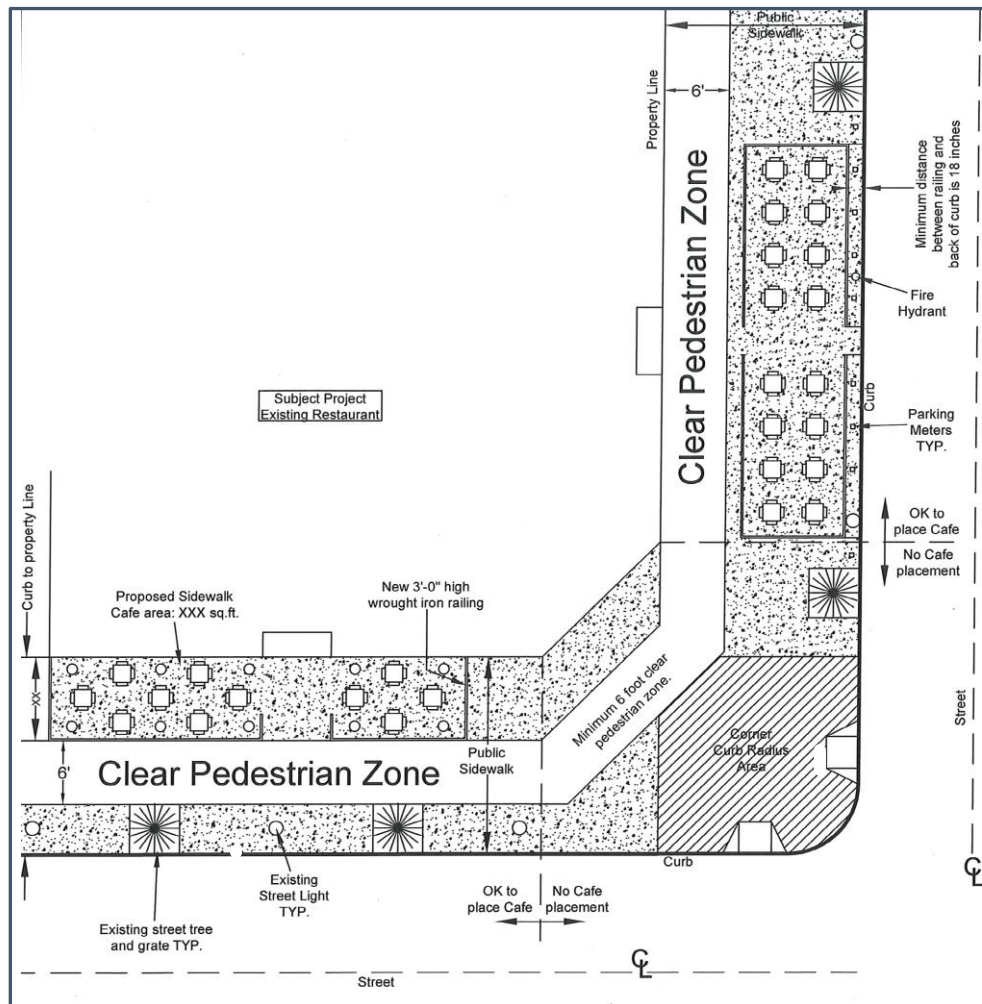




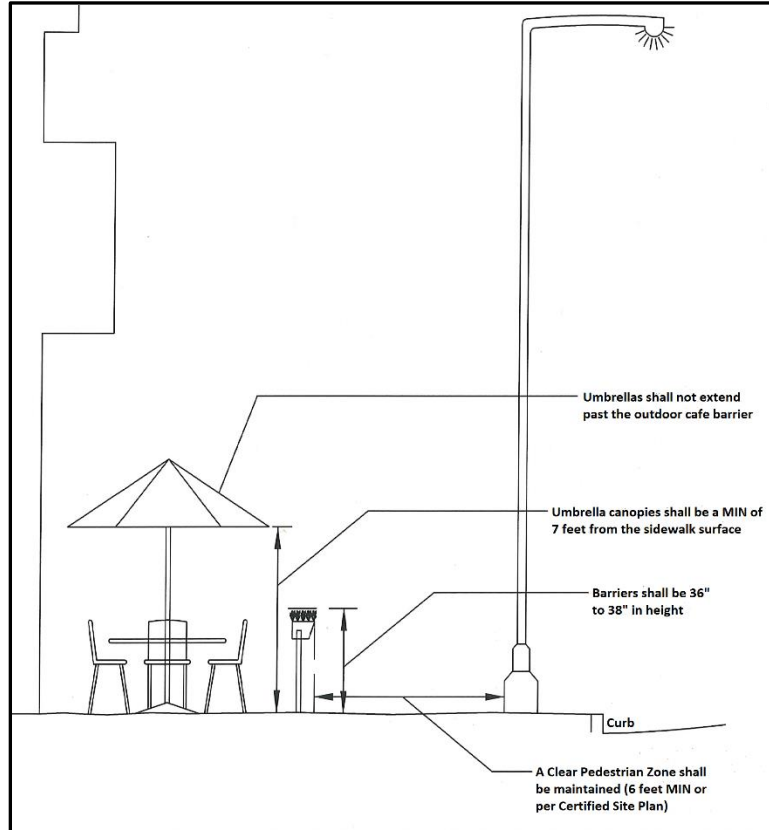
# Fig. 6, Clear Pedestrian Zone Detail



# Fig. 7, Clear Pedestrian Zone Detail



**Fig. 8, Umbrella Requirement Detail**



**Fig. 9, Sidewalk Zones Detail**



These requirements were prepared as a collaborative effort of a group of individuals seeking to make the Outdoor Café Seating experience one that can be achieved by county businesses and welcomed by the communities.

We would like to acknowledge those that helped participate as part of a workgroup in the preparation of the guidelines.

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