

PREPARED FOR THE PLAN COMMISSION



Project Address: 453 W. Gilman Street (4th Aldermanic District, Ald. Verveer)
Application Type: Conditional Use
Legistar File ID # [49294](#)
Prepared By: Chris Wells, Planning Division
Report Includes Comments from other City Agencies, as noted
Reviewed By: Kevin Firchow, AICP, Principal Planner

Summary

Applicant/Contact: Marc Torres; Cheba Hut; 453 W. Gilman St., Madison, WI 53703
Property Owner: Lofgren Properties; P.O. Box 6473; Madison, WI 53716

Requested Action: The applicant requests approval of a conditional use to establish an outdoor eating area for a restaurant-tavern in the Urban Mixed Use (UMX) District at 453 W. Gilman Street.

Proposal Summary: The applicant proposes to construct a deck for an outdoor eating area behind an existing restaurant-tavern with a maximum capacity of 16 persons in the Urban Mixed Use (UMX) District. No structural or programmatic changes to the principal building are proposed.

Applicable Regulations & Standards: This proposal is subject to the standards for Conditional Uses [MGO §28.183], as §28.072(1) of the Zoning Code lists *Outdoor eating areas associated with food and beverage establishments* as a conditional use in the Urban Mixed Use (UMX) District. The Supplemental Regulations [MGO §28.151] contain further regulations for this type of use.

Review Required By: Plan Commission (PC)

Summary Recommendation: The Planning Division recommends that the Plan Commission find that the approval standards for Conditional Use can be found met and **approve** the request to establish an outdoor seating area on a property 453 W. Gilman Street. This request is subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

Background Information

Parcel Location: The property is located on the south side of W. Gilman Street, between University Avenue and N. Broom Street; Urban Mixed Use (UMX) District; Aldermanic District 4 (Verveer); TID 32; Madison Metropolitan School District.

Existing Conditions and Land Use: The 4,323-square-foot (0.1-acre) property has a two-story mixed-use building constructed in 1922. The 4,151-square-foot building has a ground floor restaurant space (The Cheba Hut) and a second floor four-bedroom apartment.

Surrounding Land Use and Zoning:

North: Across W. Gorham Street to the north, mixed-use buildings with restaurants, retail, and residential spaces in the Urban Mixed-Use (UMX) District, and the back of “The Hub”, a 12-story mixed-use building in the Downtown Core (DC) District;

East: 14-unit apartment building in the UMX District;

South: A mixed-use building (The James) containing approximately 12,000 square feet of commercial/flex space and 367 apartments in the UMX District; beyond which, across University Avenue to the south, are mixed-use buildings (La Ciel and The Embassy), both in the Planned Development (PD) District; and

West: Two-story office building in the UMX District.

Adopted Land Use Plan: The [Comprehensive Plan \(2006\)](#) recommends State Street District Mixed-Use for this area. The [Downtown Plan \(2012\)](#) recommends Downtown Mixed-Use, which includes a wide variety of uses, including restaurants with outdoor seating areas.

Zoning Summary: The project site is currently zoned Urban Mixed-Use (UMX) District.

Requirements	Required	Proposed
Lot Area (sq. ft.)	3,000 sq. ft.	4,323 sq. ft.
Lot Width	30'	33'
Front Yard Setback	Nonresidential or mixed-use building: 0	None
Max. Front Yard Setback	10'	None
Side Yard Setback	0	0 Northeast 9'-0" Southwest
Rear Yard Setback	10'	28'-9"
Maximum Lot Coverage	90%	Existing lot coverage
Minimum Building Height	2 stories	2 story existing building
Maximum Building Height: Downtown Height Map	12 stories	2 story existing building
Stepback: Downtown Stepback Map	30' stepback above 4 stories	2 story existing building

Site Design	Required	Proposed
Number Parking Stalls	No minimum required	None
Accessible Stalls	None	None
Loading	Not required	None
Number Bike Parking Stalls	Restaurant-tavern: 5% of capacity of persons (5)	None <i>(See Comment #5)</i>
Landscaping and Screening	Not required	Yes <i>(See Comments #6 & #7)</i>
Lighting	Not required	Existing lighting
Building Forms	Not required	Existing building

Other Critical Zoning Items	Urban Design (Urban Mixed-Use (UMX) District); Utility Easements; Barrier Free (ILHR 69)
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Tables Prepared by Jenny Kirchgatter, Assistant Zoning Administrator

Environmental Corridor Status: The subject site is not located in a mapped environmental corridor.

Public Utilities and Services: This property is served by a full range of urban services, including several transit routes running along University Avenue and State Street.

Related Approvals

On August 20, 2014, the Alcohol License Review Committee (ALRC) granted a new license for this establishment with conditions that the capacity shall be limited to 75 persons indoors and 16 outdoors, that the establishment must meet the definition of a restaurant under MGO 38.02 at all times, and that alcohol service must cease at midnight (Legistar Item #[35023](#)).

On March 18, 2015, the ALRC granted a change of license for this establishment with the same conditions above save for the removal of the condition that alcohol service must cease at midnight (the restriction was previously added with the issuance of the new liquor license as a probationary restriction) (Legistar Item #[37199](#)).

On October 6, 2014, the Plan Commission approved a conditional use request to establish an outdoor seating area for this establishment. Construction of the associated deck occurred without the applicant completing the required sign-off process. As such, the conditional use approval is considered expired and cannot be legally operated as an outdoor seating area. In order to proceed, the applicant must have the Plan Commission re-approve this item prior to completing the required site plan review and permitting process.

Project Description, Analysis, and Conclusion

The applicant seeks approval to legally establish an outdoor eating area, which had previously been approved in 2014. As noted above, the associated deck has already been constructed, without completing the necessary sign-off process. Plans show the deck to be ADA accessible and include hand railings and an emergency exit for safety. Consistent with the August 20, 2014 ALRC approval, the outdoor seating area will accommodate a maximum of 16 people. Seasonal landscaping and a bamboo fence are proposed to surround the deck, screening it from adjacent properties and from University Avenue immediately to the south.

For the hours of operation of the outdoor eating area, the applicant requests to keep the deck open until 10:00 pm, Sunday – Wednesday and 12:00 am, Thursday – Saturday (the current hours of the Cheba Hut restaurant/tavern are 10:00 am – 12:00 am, Sunday – Wednesday and 10:00 am – 3:00 am, Thursday – Saturday).

In regards to the approval standards, the Plan Commission may not approve an application for a conditional use unless it can find that all of the standards found in Section 28.183(6)(a) are met. That section also states: “The City Plan Commission shall not approve a conditional use without due consideration of the recommendations in the City of Madison Comprehensive Plan and any applicable, neighborhood, neighborhood development, or special area plan, including design guidelines adopted as supplements to these plans.”

The Planning Division believes that the conditional use standards can be found met, given the conditions of approval included with this report, and provides additional discussion on Standard 3. This standard states “*The uses, values and enjoyment of other property in the neighborhood for purposes already established will not be substantially impaired or diminished in any foreseeable manner.*”

There are several residences in the area, including the on-site dwelling unit on the second floor. This unit is stepped back from the first floor by several feet in the back of the building. Staff believes this helps shield the unit from noise associated with outdoor dining. Similarly, the 14-unit apartment building next door will be shielded from the deck by the building itself.

Additionally, residential units have been recently added to the vicinity with the completion of “The James,” a 367-unit mixed-use building that did not exist at the time of the previous approval. That building has two floors of retail abutting the subject lot with the upper floors all containing residential units. The third-story residential unit at the western ‘prow’ (i.e. the portion of the building directly adjacent to the subject site) has a balcony, as does the unit above it. Additionally, five other third-floor units, located at least 75 feet to the east (and 20 feet up) from the subject site, also have balconies.

Staff believe much of the noise generated on the patio will be mitigated by the traffic along University Avenue, which runs no more than 12 feet from the proposed deck. Furthermore, with a maximum capacity of only 16 people, no outdoor amplified sound proposed, the fact that the outdoor seating area is and closing times of 10:00 pm, Sunday through Wednesday and 12:00 am, Thursday through Sunday, staff anticipates that if well-managed, there will be limited noise impacts to surrounding residential properties. Staff therefore believes that this standard can be found met.

If approved, the Plan Commission retains continuing jurisdiction over this conditional use, meaning that should complaints be filed, the Plan Commission could take further action on this conditional use as allowed in MGO Section 28.183(9)(d).

At the time of report writing, staff has not received any comments on the proposed request.

Recommendation

Planning Division Recommendation (Contact Chris Wells, (608) 261-9135)

The Planning Division recommends that the Plan Commission find that the approval standards for Conditional Use can be found met and **approve** the request to establish an outdoor seating area on a property 453 West Gilman Street. This request is subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

Recommended Conditions of Approval Major/Non-Standard Conditions are Shaded

Planning Division (Contact Chris Wells, (608) 261-9135)

1. The outdoor eating area shall be close at 10:00 pm, Sunday through Wednesday and 12:00 am, Thursday through Sunday.
2. There shall be no amplified sound, including, but not limited to television, ambient music or musical performances, in the outdoor eating area. Future modifications related to the permission to play ambient music in the outdoor eating area may be requested by the applicant in the future as a minor alteration of the conditional use following a recommendation by the district alder.
3. The final capacity for the outdoor seating area shall be approved by City Building Inspection.

City Engineering – Main Office (Contact Timothy Troester, (608) 267-1995)

The agency reviewed this request and has recommended no conditions or approval.

City Engineering Division - Mapping (Contact Jeffrey Quamme, (608) 266-4097)

The agency reviewed this request and has recommended no conditions or approval.

Traffic Engineering Division (Contact Sean Malloy, (608) 266-5987)

The agency reviewed this request and has recommended no conditions or approval.

Zoning Division (Contact Jenny Kirchgatter, (608) 266-4569)

4. The capacity for the restaurant-tavern and outdoor eating area has been established by the Building Inspection Unit at 99 persons. The capacity is subject to the issuance of the building permit for the proposed deck.
5. Bicycle parking shall comply with the requirements of Sections 28.141(4)(g) and 28.141(11). Provide five (5) short-term bicycle parking stalls (minimum of 5% of capacity of persons) located in a convenient and visible area on a paved or impervious surface. Bicycle parking shall be located within one hundred (100) feet of a principal entrance. Note: A bicycle stall is a minimum of two (2) feet by six (6) feet with a five (5) foot wide access area. Provide a detail of the proposed bike rack. If bicycle parking cannot be accommodated on the property, a bicycle parking adjustment will be required subject to MGO 28.141(5).
6. Show the trash enclosure area on the site plan. All developments, except single family and two family developments, shall provide a refuse disposal area. Such area shall be screened on four (4) sides (including a gate for access) by a solid, commercial-grade wood fence, wall, or equivalent material with a minimum height of six (6) feet and not greater than eight (8) feet. Submit a detail of the trash enclosure or screening.
7. Provide a detail of the proposed bamboo privacy screen.
8. Per Section 28.186(4)(b), the property owner or operator is required to bring the property into compliance with all elements of the approved site plans by the date established by the Zoning Administrator as part of the site and building plan approval. Work with Zoning staff to establish a final site compliance date.

Fire Department (Contact Bill Sullivan, (608) 261-9658)

9. Ensure that a clear exit path from the rear building exit and the proposed deck out to the public way is provided and maintained.

Parks Division (Contact Janet Schmidt, (608) 261-9688)

This agency reviewed this request and had no recommended conditions of approval.

Water Utility (Contact Adam Wiederhoeft, (608) 266-9121)

This agency reviewed this request and had no recommended conditions of approval.

Metro Transit (Contact Tim Sobota, (608) 261-4289)

The agency reviewed this request and has recommended no conditions or approval