

PLANNING DIVISION STAFF REPORT

April 28, 2025



PREPARED FOR THE PLAN COMMISSION

Project Address: 2927 East Washington Avenue (District 15, Alder Martinez-Rutherford)

Legistar File ID #: [87634](#)

Prepared By: Chris Wells, Planning Division
Report Includes Comments from other City Agencies, as noted

Reviewed By: Kevin Firchow, AICP, Principal Planner
Meagan Tuttle, AICP, Planning Division Director

Summary

Applicant: Kirk Bangstad; Minocqua Brewing Company; 2927 E Washington Avenue; Madison, WI 53704

Contact: Amy Thomas; Minocqua Brewing Company; 320 W Ellsworth Lane, Bayside, WI 53217

Property Owner: Nancy Koberle; 2927 E Washington Avenue; Madison, WI 53704

Requested Action: Consideration of a conditional use in the Commercial Corridor-Transitional District (CC-T) District for amplified sound in an outdoor eating area for a tasting room at 2927 E Washington Avenue.

Proposal Summary: The applicant is requesting approval to have amplified sound (music) in the existing outdoor eating area associated with a tap room in a multi-tenant commercial building.

Applicable Regulations & Standards: Supplemental Regulations for *Outdoor eating area, temporary, associated with food and beverage establishment* are found in MGO Section 28.151, of which Regulation C states, "No amplified sound is permitted in all districts except MXC, CC and RMX, unless allowed as part of the conditional use approval." Standards for conditional uses are found in MGO Section 28.183(6). The subject site is located in Urban Design District 5. Per 33.24(4)(g), the Urban Design Secretary administratively approves certain proposed building additions, minor façade alterations, or minor construction within Urban Design Districts if found to be in compliance with the applicable criteria and requirements of the District in question.

Review Required By: Plan Commission

Summary Recommendation: The Planning Division recommends the following to the Plan Commission regarding 2927 E Washington Avenue:

- That the Plan Commission finds the conditional use standards are not met and **place the request on file without prejudice**. In placing the conditional use request on file without prejudice, the Plan Commission must provide findings of fact, listing the standards that have not been met and the reasons such standards were not met.

However, in the alternative, should the Plan Commission find that the standards and criteria for approval are met, staff recommend the approval is subject to input at the public hearing and the conditions recommended from reviewing agencies beginning on page 8 of this report.

Background Information

Parcel Location: The 25,203 square-foot (0.57-acre) parcel is located at the southwest corner of East Washington Avenue and Oak Street. It is located within District 15 (Alder Martinez-Rutherford) and the Madison Metropolitan School District.

Existing Conditions and Land Use: The subject parcel is occupied by an 11,838 square foot, one-story, multi-tenant commercial building built in 1964 with additions constructed in 1970, 1972, and 1977. The site is zoned Commercial Corridor-Transitional (CC-T) District.

Surrounding Land Use and Zoning:

North: Across East Washington Avenue, commercial and mixed-used buildings, zoned Commercial Corridor-Transitional (CC-T) District;

East: Across Oak Street, commercial buildings, zoned (CC-T) District; single family residential, zoned Traditional Residential-Consistent 4 (TR-C4) District;

South: Single family residential, zoned TR-C4 District; and

West: Madison East Shopping Center, zoned CC-T District.

Adopted Land Use Plan: The [Comprehensive Plan](#) (2023) recommends Community Mixed-Use (CMU) development for the subject property and adjacent properties along E Washington Avenue. Properties to the south are recommended for Low Residential (LR) development. The [Darbo Worthington Starkweather Neighborhood Plan](#) (2017) recommends Community Mixed-Use (CMU) development for the subject site. Properties to the south are recommended for Low Residential (LR) development.

Zoning Summary: The property is zoned Commercial Corridor-Transitional (CC-T) District.

Requirements	Required	Proposed
Front Yard Setback	0' or 5'	Existing front setback
Max. Front Yard Setback: TOD	20'	Existing front setback
Side Yard Setback: Street side yard	0' or 5'	Existing east side yard setback
Side Yard Setback: Other cases	None unless needed for access	Existing west side yard setback
Rear Yard Setback	The lesser of 20% of lot depth or 20'	12' existing rear yard setback
Maximum Lot Coverage	85%	Existing lot coverage
Minimum Building Height: TOD	2 stories	1 story existing building
Maximum Building Height	5 stories/78'	1 story existing building

Site Design	Required	Proposed
Number Parking Stalls	No minimum required: TOD	24 existing parking stalls 2 garage stalls
Electric Vehicle Stalls	Not required	None
Accessible Stalls	Yes	1
Loading	Not required	None
Number Bike Parking Stalls	Tasting room: 5% of capacity of persons (2)	2
Landscaping and Screening	Not required	Existing landscaping
Lighting	Not required	Existing lighting
Building Form and Design	Not required	Existing building

Other Critical Zoning Items	Urban Design (UDD #5); Barrier Free (ILHR 69); Utility Easements; TOD Overlay District
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Tables Prepared by Jenny Kirchgatter, Assistant Zoning Administrator

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

Public Utilities and Services: This property is served by a full range of urban services.

Related Approvals

At its November 13, 2023 meeting, the Plan Commission found the standards met and approved a conditional use in the Commercial Corridor-Transitional (CC-T) District for a tasting room at 2927 E Washington Avenue. (ID [80221](#))

On May 20, 2024, the Plan Commission found the standards met and approved a conditional use in the Commercial Corridor-Transitional (CC-T) District to allow free-standing vending (food carts) at 2927 East Washington Avenue within 200 feet or less from a property line of a lot with a residential use. (ID [82947](#)).

In August of 2024, a conditional use minor alteration was approved to allow an outdoor eating area behind the building. While tap rooms and free-standing vending required conditional use approval, outdoor eating areas that close by 9:00 pm and do not have outdoor amplified sound are permitted uses.

Project Description, Analysis, and Conclusion

The applicant, Minocqua Brewing Company, currently operates a tap room in a multi-tenant commercial building at 2927 E Washington Avenue. The tap room occupies the middle unit with the other spaces occupied by a liquor store and pay day loan business. The tap room has an existing outdoor eating area, roughly 1,100-square-foot outdoor eating area, and located just to the southwest of the building. It was approved administratively in August of 2024 (per the supplemental regulations for the use – *Outdoor eating areas, temporary, associated with food and beverage establishments* are permitted uses – if their hours of operation end at 9:00 pm and they have no amplified sound). With this application, the applicant is requesting approval to have amplified sound out in the outdoor eating area but is not proposing to increase the hours of operation past 9:00 pm.

The applicant has stated in communications with Staff that the reason for the amplified outdoor sound is to be able to hold small concerts/performances in the space. It is anticipated that the performances will take place in the southwest corner of the space, just north of the garage. The applicant has communicated to staff that it will typically be choral, classical, Celtic, and bluegrass. As for the size of musical groups/ensembles/bands, the applicant anticipates *“likely no more than 5-6 people per group (like brass quintets maybe or bluegrass bands).”* As for the need for amplification, the applicant states, *“guitars need to be amplified, voices that aren’t classically trained need to be amplified, speeches need to be amplified, badger game broadcasting needs to be amplified. The arts, by definition, don’t fit neatly in a box. One never knows when one needs to amplify an instrument or voice in an outdoor space to create a beautiful blend of voices. We want to have these options.”*

As for the hours of operation, the applicant is requesting to be able to have amplified music during the following times: Thursdays from 6:00 pm to 8:45 pm, Saturdays from 12:00 pm to 8:45 pm and Sundays from 12:00 pm to 6:00 pm. The applicant does emphasize that, for Saturdays and Sundays, the amplification would be used

during only a portion of those windows stated above and never during the entire window (i.e. all eight hours and 45 minutes on Saturday or all six hours on Sunday).

Supplemental Regulations

Per MGO Section 28.151, *Outdoor Eating Areas Associated with Food and Beverage Establishments* are subject to the following Supplemental Regulations:

- a) Primary access to the area shall be from within the establishment.
- b) Hours of operation shall end at 9:00 p.m. in all districts except for MXC, CC and RMX, unless extended as part of the conditional use approval.
- c) No amplified sound is permitted in all districts except MXC, CC and RMX, unless allowed as part of the conditional use approval.
- d) Where the use is conditional, an appropriate transition area between the use and adjacent property may be required, using landscaping, screening, and other site improvements consistent with the character of the neighborhood.

Regarding Supplemental Regulation d, staff note that a solid wooden fence currently surrounds the outdoor eating area. Later in this report is a discussion of the mitigation measures the applicant is proposing to reduce noise impacts via sound blankets and the use of a decibel (sound) meter. The applicant is not currently proposing any other landscaping or site improvements with respect to the transition to the residential neighborhood to the south.

Conformance with Adopted Plans

The [Comprehensive Plan](#) (2023) recommends Community Mixed-Use (CMU) development for the subject property and adjacent properties along E Washington Avenue. Properties to the south are recommended for Low Residential (LR) development. The [Darbo Worthington Starkweather Neighborhood Plan](#) (2017) recommends Community Mixed-Use (CMU) development for the subject site. Properties to the south are recommended for Low Residential (LR) development.

Conditional Use Standards

The conditional use approval standards state that the Plan Commission shall not approve a conditional use without due consideration of the City's adopted plan recommendations, design guidelines, supplemental regulations, and finding that all of the conditional use standards of MGO §28.183(6) are met. Please note, recent changes to state law requires that conditional use findings must be based on "substantial evidence" that directly pertains to each standard and not based on personal preference or speculation.

The [Comprehensive Plan](#) (2023) and [Darbo Worthington Starkweather Neighborhood Plan](#) (2017) recommend Community Mixed-Use (CMU) development. CMU areas include existing and planned areas supporting an intensive mix of residential, commercial, and civic uses serving residents and visitors from the surrounding area and the community as a whole. Employment, retail, civic, institutional, and service uses serving both adjacent neighborhoods and wider community markets are recommended for CMU areas.

The proposed outdoor eating area directly abuts a residential property and is roughly 40 feet from the nearest dwelling unit (the single-family residence located to the south at 242 Oak Street). Other residences in the neighborhood that are zoned and planned for residential development are also nearby.

Conditional Use Approval Standard 3 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.”* This standard is of particular concern to Staff given the close proximity of the outdoor eating area to residential uses.

To better understand the relationship of approved outdoor eating areas, Staff reviewed conditional use approvals for outdoor eating areas dating back to mid-2015. There have been 78 such requests during that timeframe. Of this number, the Plan Commission approved amplified sound for just eight of these (roughly 10%) and prohibited it 55 times (roughly 71 %). (See Table 1, below)

Table 1: Requests for Outdoor Eating Area which Came Before the Plan Commission Since mid-2015

Amplified Sound Approved by the Plan Commission in the Outdoor Eating Area?	#	%	Approximate Distance to Nearest Residential Unit		
			Median	Average	Range
Yes	8	10%	143 ft	281 ft	0** - 820 ft
No	55	71%	45 ft	64 ft	0** - 310 ft
None Proposed	15	19%	330 ft	410ft	0** - 820 ft
TOTAL			78		

Looking specifically at applications that included outdoor eating areas similarly close to residential development, staff did not find comparable examples where outdoor amplified sound was allowed. The median distance to residential units where amplified sound was allowed was approximately 143 feet. Staff’s review found that 25 (86%) were approved with amplified sound prohibited. Three (10%) did not propose amplified sound at all. For sites located 40 feet or less from residential units, 26 were proposed with only one being approved amplified sound. That application included differences from the current application as it was a newly constructed mixed-use building where the outdoor eating area fronted onto East Washington Avenue. The impacted units were on-site. (See Table 2, below)

Table 2: Plan Commission Reviewed Outdoor Eating Areas Within 40 Feet of a Residential Dwelling Unit

Amplified Sound Approved by the Plan Commission in the Outdoor Eating Area?	#	%
Yes	1 **	3%
No	25	86%
None proposed	3	10%
TOTAL		29

**** Note on Tables 1 & 2:** There is only one example where the Plan Commission approved amplified sound for an outdoor eating area within 40 feet of a building with residential units-- the Mint Mark restaurant’s outdoor eating area (located at 1874 E Washington Avenue, Legistar File ID [82730](#)). It is located on the ground floor of a mixed-use building with 290 residential units. The outdoor eating area has seating for 40-60 patrons and is located at the south corner of the building, adjacent to the E Washington Avenue sidewalk. No off-site dwelling units were within 40 feet of that outdoor eating area.

With concerns noted about sound conflicts, the following possible mitigation measures have been suggested:

Applicant Suggested Mitigation Measures:

- **Hours Limitations.** The applicant is requesting outdoor amplified sound during the following times: Thursdays from 6:00 pm to 8:45 pm, Saturdays from 12:00 pm to 8:45 pm and Sundays from 12:00 pm to 6:00 pm. The applicant further notes that for Saturdays and Sundays, the amplification would be used during only a portion of those windows stated above and never during the entire window (i.e. all eight hours and 45 minutes on Saturday or all six hours on Sunday).
- **Installation of Sound Mitigating Curtains.** In follow-up correspondence with staff, the applicant indicated he planned to install an outdoor sound mitigating curtain (exterior sound reducing panels) on the inside face of the fences around the area. According to the manufacturer's website, such blankets have a noise reduction coefficient (NRC) of .70 to .85 (meaning that 75- to 80-percent of the sound striking the sound curtains will be absorbed.) Staff believe the effectiveness would depend on various factors, including how and where they are installed and their relationship to sound sources. At the time this report was finalized, the applicant had not provided detailed indicating exactly where they will be installed, how closely together, etc.
- **Decibel Monitoring.** In follow-up correspondence with staff, it was indicated that decibel (sound) meters will be used to make sure they do not exceed the established property line maximums, and if they do, they would take action and turn down the volume. While staff appreciate the intent and do not object to the applicant performing decibel monitoring, based on discussions with City Building Inspection, their experience is that there are practical challenges in relying on this enforce sound levels for this type of sound. As such, staff would not require this as a condition of approval.

In discussion with Building Inspection staff, the 65 dBA limit established in MGO Section 24.08(6)(a) pertains to the noise from mechanical equipment, not music. Staff also note that dBA limits have not been found to be an effective or practically enforceable way to measure noise levels associated with live musical sounds. This is due to factors that include varying intonations of different types of music and environmental conditions which affect sound measurement, including but not limited to weather conditions, ambient conditions such as loud vehicle traffic, and proximity to surrounding buildings and structures which bounce sound.

Additional Staff Recommended Mitigation Measures:

- **Establish One-Year "Trial" Approval.** As a recommended condition, this initial Conditional Use approval would be valid only for one year. After that year, the applicant may reapply to extend the conditional use. The intent would be to determine that use, after a season of operation, could be found to meet the standards.

There is precedent for this type of condition. For example, in July 2015, the Tip Top restaurant's outdoor eating area, located just 45 feet from a single-family residence, came back before the Plan Commission under its continuing jurisdiction due to noise complaints (Legistar File ID [39084](#)). The Plan Commission approved the use of the outdoor eating area (which did not include amplified sound) with a condition specifying that the approval was good only for a year and that a new application would be required. More recently, a one year Conditional Use was approved for the Essen House Site (506-518 E Wilson Street and 134-148 S Blair Street) January 22, 2024 approvals (Legistar ID [81267](#))

- **Noise Mitigation Plan.** In order to establish a more detailed and clear understanding of operational details, the applicants proposed mitigation efforts is recommended to be specifically noted in a plan to be reviewed and approved by City Building Inspection and the Planning Division. This should include more details on stage/speaker set up, curtain installation

Despite these suggested mitigation efforts, site-specific factors would suggest that outdoor amplified sound intended for outdoor patio guests would result in sound impacts to abutting and nearby residential properties where located on this property. The resulting sound levels and impacts to surrounding properties will vary based on several factors, including the actual level of amplified sound, location/setup of stage and speakers, size and equipment of performing ensembles, on-site mitigation efforts, and the frequency and timing of events. However, while the applicant and staff have suggested a variety of measures that could potentially reduce sound impacts, staff do not believe all impacts from outdoor amplified sound can be resolved considering the location and proximity to residential uses.

Finally, Staff want to address MGO Section 28.186(6)(b)(1) which states, *"Before granting a conditional use, the Plan Commission may stipulate conditions and restrictions on the establishment, location, construction, maintenance and operation of the conditional use. In doing so, the Plan Commission may consider overdue taxes and/or fees and the applicant's history of compliance with relevant ordinances and approvals, including but not limited to, building and minimum housing code, zoning code and zoning approvals, and alcohol license provisions and approvals."*

On October 11, 2024, a City of Madison Building Inspection Enforcement Notice was sent to the applicant notifying them that they were violating the supplemental regulations of the administratively approved outdoor eating area, namely the requirement to close by 9:00 pm and not have amplified music. The applicant's materials for the original outdoor eating area approval noted *"The beer garden will not be open after 9:00 pm. There will be no amplified music or audio in the beer garden,"* which conveyed that they understood the supplemental regulations for the use. While in and of itself it is not grounds for a denial, Staff believe that Plan Commission might find this to be relevant to the current proposal.

Finally, staff note that 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 §28.183(9)(d).

Public Comment

At the time this staff report was finalized a number of public comments had been received and are posted to the Legislative file (ID [87634](#)).

Conclusion

The applicant currently has an approved outdoor seating area behind the subject building. This area is within 40 feet of a property zoned and planned for residential development. Outdoor eating areas are permitted uses in the Zoning Code provided they close at 9pm and have no outdoor amplified sound. The inclusion of outdoor amplified sound can only be allowed if Conditional Use approval is granted by the Plan Commission after finding all of the Conditional Use Standards are met. Staff's concerns relate to meeting Conditional Use Standard 3, which staff does not conclude is met at this time.

As proposed, the request would allow outdoor amplified sound for up to three days a week, anticipated for at least six months a year. While the letter of intent states the applicant does not anticipate that all outdoor sound will not very likely occur every week or between May and November, it would be allowed with this request. Despite the suggested mitigation efforts, site-specific factors would suggest that outdoor amplified sound intended for outdoor patio guests would result in sound impacts to abutting and nearby residential properties if amplified sound is allowed. Careful information should be given to all of the submitted materials and input at the public hearing. While staff do not conclude Standard 3 is met, should the Plan Commission find that the standards can be met, staff have recommended several approval conditions intended to reduce the possible sound impacts.

Recommendation

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

The Planning Division recommends the following to the Plan Commission regarding 2927 E Washington Avenue:

- That the Plan Commission finds the conditional use standards are not met and **place the request on file without prejudice**. In placing the conditional use request on file without prejudice, the Plan Commission must provide findings of fact, listing the standards that have not been met and the reasons such standards were not met.

However, in the alternative, should the Plan Commission find that the standards and criteria for approval are met, staff recommend the approval is subject to input at the public hearing and the conditions recommended from reviewing agencies.

Recommended Conditions of Approval

Major/Non-Standard Conditions are Shaded

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

1. That the conditional use for amplified sound in the outdoor eating area at 2927 E Washington Avenue is approved for calendar year 2025 only. Any future amplified sound in the outdoor eating area after December 31, 2025 shall require approval by the Plan Commission following submittal of a new application request and public hearing.
2. That a noise attenuation plan prepared by the applicant be submitted to the Building Inspection and Planning Divisions for approval prior to final sign off, which includes an implementation plan. Such a plan should include further information related to considerations such as stage setup(s), speaker placement, location and type sound mitigation features, and other similar details.
3. The applicant shall install a sound mitigation curtain or other similar sound dampening mechanism.
4. The Outdoor Amplified Sound shall only be allowed on Thursdays between 6:00 pm to 8:45 pm, Saturdays between 12:00 pm to 8:45 pm and Sundays between 12:00 pm to 6:00 pm.

Zoning (Contact Jenny Kirchgatter, (608) 266-4429)

5. The beer garden shall comply with Zoning Code Supplemental Regulations Section 28.151 for Outdoor Eating Areas Associated With Food and Beverage Establishments. The hours of operation for the beer garden shall end at 9:00 p.m. unless extended through a Conditional Use approval.

The following agencies reviewed the request and recommended no conditions of approval: Engineering Mapping, Traffic Engineering, Fire Department, Parks Division, Assessor's Office, Forestry, Water Utility, Engineering Division, Parking Utility, and Metro Transit.