



PREPARED FOR THE PLAN COMMISSION

**Project Address:** 5502 University Avenue  
**Application Type:** Conditional Use  
**Legistar File ID #:** [33902](#)  
**Prepared By:** Heather Stouder, AICP, Planning Division  
Report Includes Comments from other City Agencies, as noted

## Summary

**Applicant/Contact:** Brian Ezman; Middleton BBQ Company; 4326 Rock Crest Rd., Middleton, WI 53562

**Property Owner:** Jed Sanborn; 5502 University Ave., Madison, WI 53705

**Requested Action:** Approval of a conditional use for a catering business and outdoor cooking operation in the NMX (Neighborhood Mixed Use) District.

**Proposal Summary:** The applicant proposes to utilize a portable meat smoker to the subject property on an occasional and seasonal basis for outdoor cooking associated with a catering business to be run from an on-site restaurant.

**Applicable Regulations & Standards:** This proposal is subject to the standards for conditional uses (MGO Section 28.183(6)).

**Review Required By:** Plan Commission (PC)

**Summary Recommendation:** The Planning Division recommends that if the Plan Commission can find that the conditional use standards are met, the Plan Commission should **approve** the request. This recommendation is subject to input at the public hearing and the conditions recommended by the Planning Division and other reviewing agencies.

## Background Information

**Parcel Location:** 5502 University Avenue is located on the northeast corner of University Avenue and Norman Way; Aldermanic District 19 (Clear); NMX (Neighborhood Mixed Use) district; Madison Metropolitan School District.

**Existing Conditions and Land Use:** The property is developed with a 2,880 square foot one-story commercial building in the back of the property, with an asphalt parking area in front of and beside the building.

### Surrounding Land Use and Zoning:

North: A 5,400 square foot one-story apartment building in the NMX (Neighborhood Mixed Use) District.

East: 40-unit apartment building in the NMX District.

South: Across Norman Way to the south, 34 apartment units in three buildings in the NMX District.

West: Across University Avenue to the west, a gas station with convenience store and Dale Heights Presbyterian Church in the NMX District.

**Adopted Land Use Plan:** The Comprehensive Plan (2006) recommends Neighborhood Mixed Use for this area, which would include restaurants and similar uses. The Spring Harbor Neighborhood Plan has no recommendations pertaining to this request.

**Zoning Summary:** This property is in the NMX (Neighborhood Mixed Use) District.

Dimensional Requirements	Required	Proposed
Lot width	50'	110.94' existing
Front Yard Setback	50'	48' existing
Side Yard Setback	0	30' RS, 1.8' LS existing
Rear Yard	One-story: 5' Two-story: 6'	5' existing
Maximum lot coverage	20'	Over 75% existing
Maximum Height	75%	1 story existing

Site Design	Required	Proposed
Number parking stalls	Catering: 1 per 2 employees: 1 Take-out restaurant 15% capacity: TBD	11, appears adequate
Accessible stalls	yes	1 van-accessible
Number bike parking stalls	2	0
Landscaping	Yes	existing
Lighting	No	existing
<b>Other critical zoning items:</b> UDD #6, Barrier free (ILHR 69)		

Table Prepared by Patrick Anderson, 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 Metro Transit routes running along University Avenue.

## Project Description, Analysis, and Conclusion

The applicant has proposed to utilize the property in front of an existing restaurant for occasional outdoor cooking, specifically the smoking of pork products for a catering business up to a maximum of twelve (12) days per calendar year. Both catering and outdoor cooking on a property within 200 feet of a lot with a residential use require conditional use approval in the NMX (Neighborhood Mixed-Use zoning district).

Staff understands from the applicant that this activity occurred in 2013, and that a portable smoker was placed on the south side of the building, within 75 feet of the 40-unit residential apartment building at 1706 Norman Way with no buffer between them. Apparently, the operation was shut down last year by staff from the Department of Public Health, who wanted to make sure that all approvals were in place prior to the activity occurring again. If placed as proposed, the smoker would be approximately 150 feet away from the apartment building, with the existing restaurant between them. The placement of the portable smoker in front of the building would likely help to reduce but not eliminate impacts on the adjacent residential property. Further, the applicant has indicated that if the wind is blowing to the north or northeast on a day where outdoor cooking is scheduled to take place, the outdoor cooking operation would be relocated outside of the City of Madison. Still, the approval for outdoor cooking at this location is needed in order for the applicant to have a catering operation at this site approved by the Department of Public Health.

Staff is aware of significant concerns about the proposal from residents in the apartment building who experience impacts from the smoke and smells of past outdoor cooking done on the property (see comments included in packet). Written comments provided by a nearby resident suggest that the site has been used for the smoking of meat for many hours per day on at least a few weekend days already this summer, although the applicant denies that this is the case. Neither the Zoning Administrator nor staff from Public Health have been

able to verify that outdoor cooking has taken place since June of 2013, when a complaint was submitted to Public Health and the operation was halted until proper zoning approvals could be sought and obtained.

**Conditional Use Standards** – The Planning Division staff evaluation of the proposed project’s ability to meet the standards for conditional use approval is summarized below.

1. *The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.*

Staff believes that this standard could be met, if all conditions of approval were adhered to.

2. *The City is able to provide municipal services to the property where the conditional use is proposed, given due consideration of the cost of providing these services.*

Staff believes that this standard can be met.

3. *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.*

Staff is uncertain whether this standard can be met, but suggests a condition of approval that the use of the property for outdoor cooking be allowable a maximum of 12 days per year. Further, the smoker may only be placed on the western portion of the property as shown on submitted plans, so that the distance and the existing building on the site will help to reduce impacts on residential properties to the east.

4. *The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.*

Staff believes that this standard can be met.

5. *Adequate utilities, access roads, drainage, parking supply, internal circulation improvements, including but not limited to vehicular, pedestrian, bicycle, public transit, and other necessary site improvements have been or are being provided.*

Staff believes that this standard can be met.

6. *Measures, which may include transportation demand management (TDM) and participation in a transportation management association have been or will be taken to provide adequate ingress and egress, including all off-site improvements, so designed as to minimize traffic congestion and to ensure public safety and adequate traffic flow, both on-site and on the public streets.*

Staff believes that this standard can be met.

7. *The conditional use conforms to all applicable regulations of the district in which it is located.*

Staff believes that this standard can be met.

[Standards 8-15 do not apply to this request]

While outdoor cooking within 200 feet of residential properties is supportable on an infrequent basis, it should not result in the inability for nearby residents to open their windows on several summer weekends. In this case, staff believes that the placement of the smoker on the west side of the lot as proposed, and the limitation on the activity to a maximum of 12 days per year will help to address conditional use standards, particularly Standard No. 3. Based on input provided at the public hearing by the applicant and nearby residents, the Plan Commission should carefully consider whether the proposed conditions of approval are sufficient, and whether they can be adhered to.

## Recommendation

### **Planning Division Recommendation** (Contact Heather Stouder, 266-5974)

The Planning Division recommends that if the Plan Commission can find that the conditional use standards are met, the Plan Commission should **approve** the request. This recommendation is subject to input at the public hearing and the conditions recommended by the Planning Division and other reviewing agencies.

### **Recommended Conditions of Approval**

Major/Non-Standard Conditions are Shaded

### **Planning Division** (Contact Heather Stouder, 266-5974)

1. The use of the smoker shall be limited to a maximum of twelve (12) days per year, and occur between the hours of 5:00 AM and 7:00 PM. If these limitations are not adhered to, the Plan Commission may revoke the approval as part of their continuing jurisdiction over the conditional use.
2. The conditional use approval is only relevant to this applicant. Any future business seeking to do outdoor cooking or catering at this site will require subsequent conditional use approval.

### **Zoning Administrator** (Contact Pat Anderson, 266-5978)

3. The submitted site plan is not drawn to scale and does not accurately reflect the condition of the property relative to the reconstruction of University Avenue. Submit a final site plan, drawn to scale, showing the parking, buildings lot lines, etc. showing all dimensions of building, parking and setbacks. Include location for placement of smoker during outdoor cooking events.
4. Signage approvals are not granted by the Plan Commission. Signage must be reviewed for compliance with Chapter 31 Sign Codes of the Madison General Ordinances and Chapter 33 Urban Design prior to sign installations. Banners, pennants, temporary signs, portable signs etc. are not approved as a part of this project.
5. Per the conditions identified in the letter of intent, the smoker and any associated equipment shall not be stored on-site but for when in use or when being set up or taken down in association with an approved outdoor cooking operation event.
6. Submitted plans do not show any new/additional rooftop or ground level equipment proposed for the building. Per Sec. 28.142(9)(d), any new rooftop or ground level mechanical equipment must be screened.
7. Provide required accessible parking stall if none is provided on site currently.
8. Bike parking shall comply with City of Madison General Ordinances Table 28I-3 (General Regulations). Provide the minimum of two bike parking stalls in a safe and convenient location on an impervious surface to be shown on the final plan. NOTE: A bike-parking stall is two feet by six feet with a five-foot access area. Provide details of bike rack on final plan sets.

### **Traffic Engineering** (Contact Eric Halvorson, 266-6527)

9. The applicant shall submit one contiguous plan showing proposed conditions and one contiguous plan showing existing conditions for approval. The plan drawings shall be scaled to 1" = 20' and include the following, when applicable: existing and proposed property lines; parcel addresses; all easements; pavement markings; signing; building placement; items in the terrace such as signs, street light poles, hydrants; surface types such as

asphalt, concrete, grass, sidewalk; driveway approaches, including those adjacent to and across street from the project lot location; parking stall dimensions, including two (2) feet of vehicle overhang; drive aisle dimensions; semitrailer movement and vehicle routes; dimensions of radii; and percent of slope.

10. The Developer shall post a security deposit prior to the start of development. In the event that modifications need to be made to any City owned and/or maintained traffic signals, street lighting, signing, pavement marking and conduit/handholes, the Developer shall reimburse the City for all associated costs including engineering, labor and materials for both temporary and permanent installations.
11. The City Traffic Engineer may require public signing and marking related to the development; the Developer shall be financially responsible for such signing and marking.
12. All parking facility design shall conform to MGO standards, as set in section 10.08(6).

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

13. A means to extinguish uncontrolled fire shall be readily available such as 2A fire extinguisher or garden hose.
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**No other agencies submitted conditions of approval for this request.**