

CITY OF MADISON COMMON COUNCIL APPEAL OF PLAN COMMISSION DECISION

Pursuant to MGO Section 28.185(10)

Appellant: Kirk Bangstad, Minocqua Brewing Company Madison Tap Room

Property Address: 2927 E Washington Avenue, Madison, WI 53704

Legistar File ID: 91510 (LNDUSE-2026-00003)

Plan Commission Action Date: March 2, 2026

Appeal Filed: Within 10 days of Plan Commission action, per MGO §28.185(10)

Relief Requested: Reversal of Plan Commission denial; approval of conditional use for amplified sound in outdoor eating area subject to conditions.

I. INTRODUCTION

Appellant Kirk Bangstad, owner and operator of Minocqua Brewing Company Madison Tap Room at 2927 E Washington Avenue, respectfully appeals the March 2, 2026 decision of the Madison Plan Commission denying his application for a conditional use permit to allow amplified sound in an existing, approved outdoor eating area.

The denial was not supported by substantial evidence as required by Wisconsin law. The Plan Commission's stated reason — proximity to residential uses — is a site characteristic, not evidence of actual harm. Meanwhile, the Plan Commission permitted extensive public comment focused entirely on the personal character of the applicant, which is legally irrelevant to the conditional use standards under review. The result is a denial that cannot be sustained under Wisconsin Statute §62.23(7)(de) or the City's own conditional use standards.

II. FACTUAL BACKGROUND

The Minocqua Brewing Company Madison Tap Room has operated lawfully at 2927 E Washington Avenue since receiving Plan Commission approval in November 2023. In August 2024, the tap room received administrative approval for an outdoor eating area (beer garden), permitted as-of-right provided it closes by 9:00 p.m. and has no amplified sound.

This application seeks conditional use approval for a limited and specific expansion of that permitted use: amplified sound on Saturdays from 3:00–6:00 p.m. between May and October, plus amplified broadcasts of University of Wisconsin Badger football games. The beer garden would continue to close no later than 9:00 p.m.

In support of the application, the appellant proposed the following mitigation measures:

- Installation of sound-mitigating curtains (NRC rating of .70–.85) along the interior of the surrounding fence
- Use of decibel monitoring at property lines
- Hours limitation: Saturdays 3:00–6:00 p.m., May through October only
- Acceptance of a one-year approval period with renewal required thereafter

The Planning Division's own staff report acknowledged that if the Plan Commission found the standards met, it had prepared detailed conditions of approval that would govern the use. Staff also explicitly stated: "Staff are not aware of complaints filed with Zoning regarding activities occurring in the outdoor eating area" under current approvals.

On March 2, 2026, the Plan Commission denied the application, citing only that Conditional Use Approval Standard 3 was not met "due to the proximity of the outdoor eating area with proposed amplified sound to residential uses."

III. LEGAL STANDARDS GOVERNING THIS APPEAL

A. Wisconsin Statute §62.23(7)(de): The Substantial Evidence Requirement

In 2017, the Wisconsin Legislature enacted 2017 Wisconsin Act 67, codified at Wis. Stat. §62.23(7)(de), which fundamentally changed the standards for conditional use permit decisions. Under this law:

- **The city's decision to approve or deny must be supported by substantial evidence.** [Wis. Stat. §62.23\(7\)\(de\)\(2\)](#).
- **"Substantial evidence" is defined by statute** as "facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet." Wis. Stat. §62.23(7)(de)(1)(b).
- **If an applicant meets or agrees to meet all requirements and conditions**, "the city shall grant the conditional use permit." Wis. Stat. §62.23(7)(de)(2)(a). This is mandatory language.
- **Any conditions imposed must be** "related to the purpose of the ordinance and be based on substantial evidence." Wis. Stat. §62.23(7)(de)(2)(b).

The Madison Plan Commission's own staff report acknowledges this standard explicitly, noting that "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."

B. The Findings of Fact Requirement

Under Wisconsin case law, a decision-making body "may not simply grant or deny an application with conclusory statements" — it must "express, on the record, its reasoning why an application does or does not meet the statutory criteria." [59.694 Annotation, Wisconsin Statutes](#).

A written decision is adequate only if a board's reasoning is clear from the transcript of its proceedings.

The disposition letter states only that Standard 3 was not met “due to the proximity” of the outdoor eating area to residential uses. This is a conclusory statement — it describes a site characteristic rather than providing findings of fact explaining how that characteristic, in this specific case with the specific mitigation proposed, would result in substantial impairment of neighboring properties.

C. MGO §28.183(6)(a)(3): The Applicable Conditional Use Standard

Standard 3 requires a finding that “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.”

The key word is *substantially*. The standard does not require that there be zero impact. It requires that the City produce evidence showing that the specific proposed use — with the specific conditions proposed — would substantially impair neighboring properties. Proximity alone does not satisfy this evidentiary burden.

IV. GROUNDS FOR APPEAL

Ground 1: The Denial Is Not Supported by Substantial Evidence

The Plan Commission's stated basis for denial is that the outdoor eating area is “approximately 40 feet” from the nearest dwelling unit. That is a description of site geometry. It is not evidence that amplified sound — limited to Saturday afternoons, with sound curtains, decibel monitoring, and a solid wooden fence already in place — would *substantially* impair neighboring properties.

The staff report itself provides the most damaging evidence against the denial's validity:

- Staff acknowledged no zoning complaints have been filed regarding the outdoor eating area under its current approvals.
- Staff identified specific conditions under which it would recommend approval — meaning staff did not conclude that approval was categorically impossible.
- The only documented prior violation involved unauthorized hours and amplified sound in 2024. That matter was resolved. The 2026 application is a lawful request to authorize the use that was previously prohibited. Continuing to cite a resolved enforcement matter as a basis for denial is not evidence of foreseeable future harm.

Distance is a characteristic of the site. It was a characteristic of the site when the outdoor eating area was approved. It was a characteristic of the site when the tap room was approved before that. Proximity to residential uses alone — without evidence of actual or foreseeable harm specific to this use and these conditions — does not constitute substantial evidence under [Wis. Stat. §62.23\(7\)\(de\)](#).

Ground 2: The Applicant Agreed to All Conditions, Triggering the Mandatory Approval Provision

Under [Wis. Stat. §62.23\(7\)\(de\)\(2\)\(a\)](#), when an applicant agrees to meet all conditions, the city *shall* grant the permit. The appellant agreed to:

- The one-year limited approval period recommended by staff
- The hours limitations recommended by staff (Saturdays 2:30–6:00 p.m.)
- Installation of sound-mitigating curtains as required
- Submission of a noise attenuation and management plan for City review
- Compliance with all supplemental regulations governing the outdoor eating area

Staff prepared detailed conditions of approval that would govern every aspect of the use. The appellant agreed to those conditions. Under the statute, the city must then explain, with substantial evidence, why those conditions are insufficient to address Standard 3 — or it must grant the permit. No such explanation appears in the record.

Ground 3: The Decision Is Based in Part on Legally Irrelevant Evidence

The public record for this application includes extensive comments about the applicant's personal character, social media conduct, financial litigation, business practices, and relationships with employees and customers. Examples from the submitted public comments include:

- Allegations about lawsuits involving the applicant's political action committee
- Claims about the applicant's social media behavior and response to negative reviews
- Personal characterizations of the applicant's fitness to hold "expanded operating privileges"
- A former employee's account of the applicant's personal conduct

None of this is relevant to Conditional Use Standard 3. The standard asks whether the *use* — amplified sound in an outdoor eating area, on limited Saturday afternoon hours, with mitigation measures — would substantially impair neighboring properties. The character of the applicant is not a conditional use standard under MGO §28.183(6).

Wisconsin statute defines substantial evidence explicitly as facts and information *other than merely personal preferences or speculation, directly pertaining to the requirements and conditions* an applicant must meet. [Wis. Stat. §62.23\(7\)\(de\)\(1\)\(b\)](#). Personal attacks on the applicant do not meet this definition.

When a decision-making body allows irrelevant and prejudicial evidence to dominate a public hearing record, and then issues a denial without affirmative findings of fact tied to the actual standards, the resulting decision lacks the legal foundation required by Wisconsin law.

Ground 4: The District Alder Pre-Committed to Denial Before the Hearing

Alder Martinez-Rutherford emailed the Plan Commission on February 27, 2026 — **prior** to the March 2 hearing — stating: “I think it is the right decision to deny this request.” This communication represents a pre-commitment to an outcome before the public hearing had concluded and before the evidentiary record was complete.

While an alder’s input is part of the public process, a pre-hearing declaration of outcome raises due process concerns about whether the proceeding was a genuine fact-finding exercise or a predetermined result. The Common Council, as the appellate body, is well-positioned to conduct the de novo evidentiary review that the original proceeding did not provide.

Ground 5: The Denial Findings Are Conclusory and Do Not Meet the Articulation Standard

Under Wisconsin case law, a board “may not simply grant or deny an application with conclusory statements that the application does or does not satisfy the statutory criteria.” [59.694 Annotation](#). The board must articulate, on the record, why the applicant has not satisfied the applicable burden of proof.

The denial letter states only that Standard 3 was not met “due to the proximity” to residential uses. This is a one-factor conclusion with no analysis of:

- Why the proposed mitigation measures are insufficient to address the proximity concern
- What specific evidence supports a finding that *substantial* impairment would occur
- Why a one-year conditional approval with robust conditions could not adequately address the concern
- How this case is distinguishable from Mint Mark (1874 E Washington Ave, Legistar File ID 82730), the one similar case the Plan Commission approved with amplified sound

Without this articulation, the denial does not satisfy the evidentiary and procedural requirements of Wis. Stat. §62.23(7)(de) or Wisconsin case law.

Ground 6: Zoning Ordinances Must Be Construed in Favor of Free Use of Property

Wisconsin courts have consistently held that “zoning ordinances are in derogation of the common law and are to be construed in favor of the free use of private property,” and that restrictions on use must be “clear and unambiguous” to operate in derogation of common law rights. This principle is well-established in Wisconsin zoning law and appears as an annotation directly under Wis. Stat. §62.23 — the same statute governing this proceeding. [HEEF Realty & Investments, LLP v. City of Cedarburg Board of Appeals](#), 2015 WI App 23 (illustrating the principle in the context of a zoning board’s interpretation of a use restriction).

Amplified sound in an outdoor eating area is a conditionally permitted use — the City itself has determined this use is appropriate in the CC-T district with proper authorization. That policy judgment is not at issue here. The question before the Commission was not whether amplified sound near residential areas can ever be restricted, but whether this specific application, with these specific proposed conditions, met the substantial evidence standard for denial. The principle of construction in favor of free use of property reinforces that the burden to deny — supported by substantial evidence — is a high bar, and proximity alone does not clear it.

V. THE RECORD SUPPORTS APPROVAL WITH CONDITIONS

This is not a case where approval is categorically unsupported. The record shows:

- The outdoor eating area has been operating without incident since August 2024.
- There are no zoning complaints on file regarding the outdoor eating area. (Staff Report, p. 4)
- Staff acknowledged the possibility of approval and prepared detailed conditions to govern it.
- The appellant accepted all proposed conditions, including the most restrictive option: one Saturday per month during an initial one-year period.
- The Plan Commission retains continuing jurisdiction, meaning it can take further action if documented complaints arise. (MGO §28.183(9)(d))
- The proposed use is consistent with the City’s Comprehensive Plan recommendation of Community Mixed-Use (CMU) development for this corridor.

The Common Council has the authority and the complete record before it to find that Conditional Use Standard 3 is met and to approve the use subject to the conditions staff recommended. That is the relief the appellant requests.

VI. RELIEF REQUESTED

For the foregoing reasons, Appellant respectfully requests that the Common Council:

- **Reverse** the Plan Commission’s March 2, 2026 denial of Legistar File ID 91510;
- **Find** that Conditional Use Approval Standards 1–6 are met;
- **Approve** the conditional use for amplified sound in the outdoor eating area at 2927 E Washington Avenue, subject to the conditions of approval recommended by the Planning Division in the staff report dated March 2, 2026, including:
 - One-year approval period (May 1 – October 31, 2026), with renewal required
 - Amplified sound limited to one Saturday a month, 2:30–6:00 p.m.
 - Sound mitigation curtain installation with noise attenuation plan approved by Planning and Building Inspection
 - Beer garden hours end no later than 9:00 p.m.
 - Continuing Plan Commission jurisdiction per MGO §28.183(9)(d)

Respectfully submitted,

Amy Thomas

On behalf of: Kirk Bangstad, Owner

Minocqua Brewing Company Madison Tap Room

2927 E Washington Avenue, Madison, WI 53704

Date: 3/11/2026