

# PLANNING DIVISION STAFF REPORT

May 11, 2026



PREPARED FOR THE PLAN COMMISSION

**Project Address:** 406 North Frances Street (District 2, Alder Ochowicz)  
**Application Type:** Conditional Use  
**Legistar File ID #:** [92588](#)  
**Prepared By:** Lisa Ernest, AICP, Planning Division  
Report Includes Comments from other City Agencies, as noted  
**Reviewed By:** Kevin Firchow, AICP, Principal Planner

## Summary

**Owner:** Jay Wanserski; 406 N Frances, LLC; 602 University Avenue, Madison, WI 53703

**Applicant & Contact:** Jeremy Cynkar; Destree Design Architects; 1050 West Washington Avenue, Madison, WI 53703

**Requested Action:** Consideration of a conditional use in the Urban Mixed-Use (UMX) District for an outdoor eating area open after 9:00 PM, and consideration of a conditional use in the UMX district for an outdoor eating area with amplified sound, all to allow an outdoor eating area for a restaurant to operate after 9:00 PM with amplified outdoor sound.

**Proposal Summary:** There is an existing outdoor eating area on the north side of the building. There are four televisions on the exterior wall. The applicant would like to add speakers to the televisions. They would also like to operate the outdoor eating area until 2:00 a.m.

**Applicable Regulations & Standards:** Approval standards for conditional uses are found in MGO Section 28.183(6). Minor exterior changes or additions in the UMX District may be approved by the Director of the Department of Planning, Community, and Economic Development and are subject to the [Downtown Urban Design Guidelines](#).

**Review Required By:** Plan Commission

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find the approval standards for conditional uses met and **approve** the request in the Urban Mixed-Use (UMX) District for an outdoor eating area open after 9:00 PM, and for an outdoor eating area with amplified sound, all to allow an outdoor eating area for a restaurant to operate after 9:00 PM with amplified outdoor sound at 406 North Frances Street.

## Background Information

**Parcel Location:** The site is .06-acres (2,752 square feet). It is located on the west side between University Avenue and State Street. The site is within Alder District 2 (Alder Ochowicz) and the Madison Metropolitan School District.

**Existing Conditions and Land Use:** The site is in the Urban Mixed-Use (UMX) District. There is a one-story commercial building on the site.

**Surrounding Land Use and Zoning:**

North: Two-story, three-unit residential building, zoned Planned Development (PD) District; and State Street Campus Parking Garage, zoned Urban Mixed-Use (UMX) District;

East: Across North Frances Street, three-story mixed-use building, zoned UMX District;

South: One-story, commercial buildings, and three-story, mixed-use buildings, zoned UMX District;

West: Three-story residential building, zoned UMX District; Hawthorne Court.

**Adopted Land Use Plan:** The [Comprehensive Plan](#) (2024) and the [Downtown Plan](#) (2012) recommend Downtown Mixed-Use (DMU) development for the property and adjacent properties.

**Zoning Summary:** The property is in the Urban Mixed-Use (UMX) District.

**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.

## Project Description, Analysis, and Conclusion

### Previous Approvals

#### *Conditional Use*

In March 2025 the Plan Commission approved a conditional use for a nightclub with the following conditions (Legistar ID [87143](#)):

1. Exterior doors shall remain closed and not be propped open during any live musical performances.
2. The garage door can be kept open during regular business hours, except after midnight, when there is live music. Changes to this condition can be handled through the minor alteration process.

In June 2025 the Common Council approved a Zoning Code amendment to modify restaurant and alcohol-related uses (Legistar ID [88319](#)). The amendment removed the “nightclub” use from the Zoning Code.

Under the current Zoning Code, the business is considered a tavern, which is a permitted use. A tavern is an establishment where the principal and primary use is serving fermented malt beverages or intoxicating liquors for consumption on the premises and where food or packaged alcoholic beverages may be served or sold only as accessory to the primary use, and which may serve meals and include kitchen facilities.

Due to the Zoning Code amendment and resulting change in use, the City no longer enforces the conditions of approval placed on the nightclub use.

#### *Licenses*

The business has a 21+ Entertainment License, which was approved with no conditions (Legistar ID [85005](#)).

The business has a sidewalk café license that allows alcohol sales until 1 a.m. Sunday to Thursday and 1:30 a.m. Friday and Saturday. The area is 6 feet from the front of the business. It is 197 square feet and has three tables

## **Project Description**

There is an existing outdoor eating area on the north side of the building. It is approximately 6 feet 4 inches wide and 60 feet long, for a total of 384 square feet. The maximum occupancy is 49 people. There are nine tables with two chairs at each table. There are four televisions attached the exterior wall of the building. The area is accessed by an interior door. It is enclosed by a 4-foot tall wooden fence with two gates at either end. The outdoor eating area is setback approximately 7 inches from the side property line and 23 feet from the rear property line.

Per the letter of intent, there are two security staff members and a server that staff the patio. One security staff member is stationed at the exit gate along North Frances Street. There is 6-foot-high chain link fence along the back of the property.

The applicant is requesting to add speakers to the four televisions. The applicant is also requesting to operate the outdoor eating area until 2 a.m., seven days a week. String lights would be attached to the wooden poles on the fence.

The applicant states that they have received positive feedback from the property owners of 408 North Frances Street and 545 West Gilman Street.

## **Conformance with Adopted Plans**

The [Comprehensive Plan](#) (2024) and the [Downtown Plan](#) (2012) recommend Downtown Mixed-Use (DMU) development for the property and adjacent properties. DMU is used to delineate areas of the downtown that are outside the core of the downtown but are still appropriate for intensive mixed-use development. In the [Downtown Plan](#) the site is located in the State Street neighborhood.

## **Conditional Use Standards**

The applicant is requesting approval of two conditional uses: an outdoor eating area open after 9:00 PM, and an outdoor eating area with amplified sound.

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 Section 28.183(6) are met. Please note, 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. State law also states that if an applicant for a conditional use meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the Plan Commission, the city shall grant the conditional use permit.

MGO Section 28.183(6) lists sixteen approval standards, of which not all are applicable to every conditional use. For this request, standards 7 and 9-16 do not apply, while standards 1-6 and 8 are applicable. Staff believe that the Plan Commission can find standards 1-6 and 8 to be met. This report provides a discussion of Standard 3.

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."

Since 2015, there have been over 80 conditional use requests involving outdoor eating areas and/or outdoor amplified sound. There were approximately 14 applications in which outdoor sound was allowed, though a few properties were allowed to have outdoor sound only for a limited set of events. A majority of those applications

(approximately 69) did not request amplified sound, or the Plan Commission approved with conditions prohibiting amplified sound. That was a common condition prior to a 2022 code amendment. Before the amendment all outdoor eating areas were conditional uses, regardless of hours of operation or amplified sound.

Staff's primary concern is the proximity of the outdoor eating area to the nearby residential uses and whether allowing outdoor amplified sound, lighting, and extended hours can be found to meet the standard.

The property is surrounded by residential units to the north, south and west, with North Frances Street to the east. Of primary concern is the proximity to the residential units on the property to the north.

The following distances are based on the project plans and aerial imagery.

- 408 North Frances Street (north) – It is less than a foot from the property line and 2 feet 6 inches from the 3-unit residential building.
- 604 University Avenue (south) – It is approximately 25 feet from the 4-unit mixed-use building. The building at 406 N Frances Street is located between the outdoor eating area and this building.
- 411 Hawthorne Court (west) – It is approximately 23 feet from the property line and 60 feet from the 5-unit residential building.

While there are residential units close to the outdoor eating area staff note that outdoor eating areas and outdoor sound are more common in this part of the City, with many nearby properties zoned with intensive downtown mixed-use districts. The property is located in the Downtown's State Street neighborhood which has a high number of bars and restaurants that are open until 2:00 to 2:30 a.m. There are several bars and restaurants with either a sidewalk café license or outdoor eating area within a block of this property:

- 602 University Avenue (Wando's) – Sidewalk café license allows alcohol sales until 1 a.m. Sunday to Thursday and 1:30 a.m. Friday and Saturday.
- 620 University Avenue (The Double U) – Outdoor eating area with amplified sound. Amplified sound is permitted until 10:00 p.m. (Legistar ID [05922](#)).
- 529 University Avenue (Vintage Spirits and Grill) - Outdoor eating area open until 1 a.m. The conditional use was approved in 1996.
- 453 West Gilman Street (Cheba Hut) – Outdoor eating area open until 10:00 p.m. Sunday to Wednesday and 12:00 a.m. Thursday to Saturday (Legistar ID [49294](#)).
- 603 State Street (State Street Brats) – Sidewalk café license allows alcohol sales until 1 a.m. Sunday to Thursday and 1:30 a.m. Friday and Saturday.

As noted previously, the business has a sidewalk café license that allows alcohol sales until 1 a.m. Sunday to Thursday and 1:30 a.m. Friday and Saturday. The area is 6 feet from the front of the business. It is 197 square feet and has three tables.

### ***Supplemental Regulations***

Outdoor eating areas associated with food and beverage establishments are subject to Supplemental Regulations found in §28.151 MGO. The supplemental regulations for this conditional use include the following:

- (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 have recommended measures that may be considered by the Plan Commission to address and mitigate sound and lighting impacts. If the Plan Commission can find the standards met, then staff recommends the following:

- **Limited Operations.** Staff recommend limiting occupancy of the outdoor eating area to 12 a.m. Amplified sound should be limited to 10 p.m. The exterior door should remain closed and not be propped open during any live musical performances. No live performances should be allowed in the outdoor eating area.
- **Lighting Mitigation Measures.** Minor exterior changes or additions in the UMX District may be approved by the Director of the Department of Planning, Community, and Economic Development and are subject to the [Downtown Urban Design Guidelines](#). Consistent with the Guidelines, staff recommend that all string lights shall have frosted bulbs and that the lighting meet the City's cut-off requirements. Prior to issuance of permits the Urban Design Commission Secretary will review the plans for compliance with the Downtown Urban Design Guidelines.

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).

## Conclusion

The applicant is requesting to extend the hours of operation and have amplified sound in an existing outdoor eating area. The request is subject to the standards for conditional uses and supplemental regulations for outdoor eating areas.

While there are relatively few recent requests for amplified outdoor sound in proximity to residential uses, each conditional use request must be reviewed on its own merits. In this case the property is located in the Downtown's State Street neighborhood, which has a high number of bars and restaurants that are open until 2:00 to 2:30 a.m. These properties are currently in the Urban Mixed-Use District, which is among the more intensive mixed-use districts in the Downtown. There are also several bars and restaurants with either a sidewalk café license or outdoor eating area within a block of this property. Additionally, the recommended conditions of approval include limitations that staff believe may help the Plan Commission find Standard 3 and any other applicable standards to be met. On balance, staff believes it could be possible to find the standards met considering this site's Downtown context and other approvals for outdoor uses already within this surrounding area.

Staff again 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).

## Recommendation

### **Planning Division Recommendation** (Contact Lisa Ernest, 243-0554)

The Planning Division recommends that the Plan Commission find the approval standards for conditional uses met and **approve** the request in the Urban Mixed-Use (UMX) District for an outdoor eating area open after 9:00 PM, and for an outdoor eating area with amplified sound, all to allow an outdoor eating area for a restaurant to operate after 9:00 PM with amplified outdoor sound at 406 North Frances Street.

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

#### **Planning Division**

1. The outdoor eating area shall close at 12 a.m.
2. Outdoor amplified sound is prohibited after 10 p.m.
3. The exterior door shall remain closed and not be propped open during any live musical performances.
4. No live performances shall be allowed in the outdoor eating area.
5. Due to the limited scope of design changes, this application has been reviewed administratively by the Urban Design Commission Secretary who has recommended that all string lights shall have frosted bulbs and that the lighting meeting the City's cut-off requirements.

### **City Engineering Division – Mapping Section** (Contact Jeffrey Quamme, 266-4097)

6. Plans shall show the full street name of N Frances Street.

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