

# PLANNING DIVISION STAFF REPORT

August 8, 2022



PREPARED FOR THE PLAN COMMISSION

**Project Address:** 25 South Livingston Street (6<sup>th</sup> Alder District, Ald. Benford)  
**Application Type:** Conditional Use  
**Legistar File ID #:** [72362](#)  
**Prepared By:** Colin Punt, Planning Division  
Report Includes Comments from other City Agencies, as noted  
**Reviewed By:** Heather Stouder, AICP, Planning Division Director

## Summary

**Applicant:** Lauren Toler; FPC Live, LLC; 29 S Livingston St; Madison, WI 53703

**Owner:** Gebhardt Frank Commercial Condominium; 222 North Street; Madison, WI 53703

**Requested Action:** Approval of a Conditional Use to establish an outdoor eating area in a Traditional Employment district at 25 South Livingston Street per MGO §28.082(1).

**Proposal Summary:** The applicant seeks approval an outdoor eating area at an existing building.

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

**Review Required By:** Plan Commission, Urban Design Commission (Secretary Review)

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find that the conditional use standards are met and **approve** the request to establish an outdoor eating and drinking area at 25 South Livingston Street. This recommendation is subject to input at the public hearing and the conditions recommended by the reviewing agencies listed in this report.

## Background Information

**Parcel Location:** The subject site is a 51,123 square-foot (1.17-acre) parcel located on the north side of South Livingston Street between East Washington Avenue and East Main Street. The plaza area in question is located at the corner of South Livingston Street and East Main Street. It is within Alder District 6 (Benford) and the Madison Metropolitan School District.

**Existing Conditions and Land Use:** The site, zoned TE (Traditional Employment District), is occupied by an eight-story mixed-use building with offices and a theater.

### Surrounding Land Uses and Zoning:

**Northwest:** Across East Washington Avenue, a fourteen-story mixed use building, zoned TE (Traditional Employment);

**Southwest:** Across South Livingston Street, a gas station and large utilities facility, both zoned TE;

**Southeast:** Across South Main Street, a two-story commercial building and parking lot, both zoned TE; and

**Northeast:** Eight-story office building zoned TE.

**Adopted Land Use Plan:** The [Comprehensive Plan](#) (2018) recommends Employment (E) for the site. The [East Washington Avenue Capitol Gateway Corridor Plan](#) (2008) proposes a mix of employment and residential uses, with commercial uses at the corner. The [East Rail Corridor Plan](#) (2004) recommended office, other employment uses, and mixed-use development in this area of East Washington Avenue and East Main Street. The [Marquette-Schenk-Atwood Neighborhood Plan](#) (1994) recommends additional employment within the East Rail Corridor.

**Zoning Summary:** The subject property is zoned TE (Traditional Employment District):

Requirements	Required	Proposed
Lot Area (sq. ft.)	6,000 sq. ft	51,123 sq. ft.
Lot Width	50'	154.74'
Front Yard Setback	0' or 5'	Adequate
Side Yard Setback: Street side yard	0' or 5'	Existing S. Livingston St side yard setback
Side Yard Setback: Other cases	None unless needed for access	Existing side yard setback
Rear Yard Setback: For corner lots, where all abutting property is in a nonresidential zoning district	The required rear yard setback shall be the same as the required side yard setback	Existing rear yard setback
Maximum Lot Coverage	85%	Existing lot coverage
Minimum Building Height	22' measured to building cornice	8 story existing building
Maximum Building Height	5 stories/ 68'	8 story existing building

Site Design	Required	Proposed
Number Parking Stalls	Not required: no change in occupancy or capacity	None (approved vehicle parking reduction)
Accessible Stalls	None	None (approved vehicle parking reduction)
Loading	Not required	None
Number Bike Parking Stalls	Not required: no change in occupancy or capacity	Existing bicycle stalls (see Zoning comment 4)
Landscaping and Screening	Not required	Existing landscaping
Lighting	Not required	Existing site lighting
Building Forms	Not required	Existing building

<b>Other Critical Zoning Items:</b>	Urban Design (UDD 8), Barrier Free (ILHR 69), Wellhead Protection (WP-24)
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*Table 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.

## **Project Description, Analysis, and Conclusion**

The applicant, representing the Sylvee music venue, is requesting conditional use approval for an outdoor eating and drinking area at the southern corner of the building site generally addressed as 803-811 East Washington Avenue. The specific site, at 25 South Livingston Street, includes the public plaza at the corner of East Main Street and South Livingston Street, of which the northwesterly two-thirds is proposed for the outdoor eating area.

The outdoor eating area was previously approved under the City's Streatery program in 2021, but the requested hours of operation for the patio require conditional use approval.

The entire plaza is approximately 90 feet long. The outdoor eating and drinking area is proposed for only the 62 feet nearest the Sylvee portion of the building. Seating is proposed for 42 people at seven tables, with total standing capacity of 240 persons. The patio area has been and is proposed to continue to be enclosed by movable metal barriers. Two doors into the building are located at the north corner of the patio. The 28-foot by 32-foot portion of the plaza adjacent to the street corner is not included in the conditional use request and will remain open to the public at all times.

The intended hours of operation of the outdoor eating and drinking area will coincide only with events at the Sylvee theater, enabling patrons to bring their drinks outside during the event. The applicant estimates the space will be utilized during approximately three events per week, with hours of operation during those events generally beginning at 6:00 p.m., and which may extend as late as 12 a.m. for some events. The applicant does not intend to have any operational hours outside of Sylvee events and no food will be served.

### **Adopted Plan Recommendations**

Four adopted plans include recommendations for this block. The [Comprehensive Plan](#) (2018) recommends Employment (E) for the site. Employment areas include predominantly corporate and business office, research facilities, laboratories, hospitals, medical clinics, and other similar uses. They may include retail and service establishments that primarily serve users of the area. The [East Washington Avenue Capitol Gateway Corridor Plan](#) (2008) proposes a mix of employment and residential uses on this block of East Washington Avenue, with commercial uses at the corner of East Washington Avenue and South Livingston Street. The plan recommends a maximum height of twelve stories on the East Washington Avenue half of the block and eight stories on the East Main Street side of the block. The [East Rail Corridor Plan](#) (2004) recommended office, other employment uses, and mixed-use development in this area of East Washington Avenue and East Main Street. The [Marquette-Schenk-Atwood Neighborhood Plan](#) (1994) recommends additional employment within the East Rail Corridor. Staff believes that, on the whole, the existing and proposed uses are consistent with the adopted plan recommendations.

### **Conditional Use Standards**

In regards to conditional use approval standards, 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 §28.183(6) MGO are met. Staff advises the Plan Commission that in evaluating the conditional use standards, 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. Outdoor eating areas are often accompanied by light and noise, which are sometimes called out in reference to conditional use approval standard 1, related to the detriment or endangerment of public health, safety, and welfare, and standard 3, regarding impairment or diminishment of uses, values, and enjoyment of other property in the neighborhood. In this case, because of the location of the outdoor eating area less than a block from East Washington Avenue, the intensity of surrounding development, and the urban characteristic of the surrounding environment, Staff believes that all applicable standards of approval can be found met.

Section 28.151 MGO includes supplemental regulations for outdoor eating and drinking areas. Staff believes this request is consistent with all applicable supplemental regulations.

## Urban Design District 8

This site is within Urban Design District 8. As there are no physical changes to the space, the proposal has been reviewed and approved by the Urban Design Commission Secretary.

The original application for the building's eight-story portion adjacent to East Main Street necessitated the UDC's application of the bonus stories criteria ([§33.24\(15\)\(e\)\(12\)\(c\) MGO](#)) for the proposed additional feet above grade. Of those criteria, the project was determined to be eligible for bonus stories under some combination in subsection ii. sufficient to warrant additional height of: LEED Silver certification or equivalent; on-site publicly accessible plaza/ pocket park (1 to 10 ratio); a minimum of 50 percent vegetative roof cover; through-block multi-modal connection; and adequately sized, publicly available community meeting room. The applicant originally had unsuccessfully pursued identifying the shared plaza between the Cosmos and adjacent Spark buildings for public accessibility as required by the bonus stories criteria and pursuing LEED certification at one of the levels identified in the ordinance. In a second review, the applicant then proposed to make the 3,300 square-foot plaza at the southwesterly corner of the building a publicly accessible pocket park and to provide a community room on the fourth floor. The UDC determined the plaza satisfied the requirement for bonus story/height subject to the applicant and City entering into a Public Access Management Agreement to ensure public accessibility to the pocket park for the life of the building. The required agreement does allow for closures of the plaza during special events, though it does not address the situation of this request in detail. The building's fourth floor community room was also found to adequately address the criteria for bonus stories/height in UDD 8. See Legislative Files [44223](#), [44825](#), and [45531](#) for more information.

It is clear that the bonus stories as approved by UDC were well justified due to the inclusion of several of the listed criteria. That said, pertinent to this request, staff has given careful consideration to whether the private use of the plaza by the Sylvee would impact the inclusion of the publicly accessible plaza as part of the justification for bonus stories. Staff believe that certain characteristics of the request and potential conditions for the limited use of the plaza space for event-related use will not create inconsistencies with the previous approvals. Specifically, an estimated maximum of three six-hour events per week and use of the two-thirds of the plaza closest to the building are mitigating details. Further, staff recommend conditions of approval limiting the total hours per week for private use and requiring that the portable metal fencing enclosing the outdoor eating and drinking area be removed and stored during all times the space is not being used for related Sylvee events, thereby maintaining public access to the whole plaza during all other times.

## Conclusion

Staff believes that given the surrounding uses, the location of the outdoor eating area away from any residential uses, the plan recommendations, and the recommended conditions of approval, the Plan Commission can find the applicable conditional use standards of approval to be met and approve the conditional use request. Staff notes that as a conditional use, the Plan Commission retains "continuing jurisdiction" to review and resolve complaints that may arise on the operation of the conditional use.

At time of report writing, staff has received one public comment, which has been attached to the legislative file.

## Recommendation

### Planning Division Recommendation (Contact Colin Punt, (608) 243-0455)

The Planning Division recommends that the Plan Commission find that the conditional use standards are met and **approve** the request to establish an outdoor eating and drinking area at 25 South Livingston Street. This recommendation is subject to input at the public hearing and the following conditions recommended by the reviewing agencies:

### Recommended Conditions of Approval

Major/Non-Standard Conditions are Shaded

### Planning Division (Contact Colin Punt, 243-0455)

1. That the portable metal fencing enclosing the outdoor eating and drinking area be removed and stored during all times the space is not being used for related Sylvee events.
2. That use of the plaza space for private functions related to Sylvee events end by 12 a.m. The portable metal fencing referenced in condition 1 shall be removed and stored at that time.
3. That use of the plaza space for private functions related to Sylvee events not exceed 20 hours per week. The portable metal fencing referenced in condition 1 shall be removed and stored at all other times.

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

4. Maintain a five (5) distance between the patio seating and bicycle stalls. A bicycle stall is a minimum of two (2) feet by six (6) feet with a five (5) foot wide access area.
5. 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 District ordinances. Signage permits are issued by the Zoning Section of the Department of Planning and Community and Economic Development.

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

6. The applicant shall secure their private patio area from the public Right of Way with a barrier/fence and note the barrier/fence on their plan

### Fire Department (Contact Bill Sullivan, (608) 886-4691)

7. Provide documentation/details on whether the doors from the building are part of the building egress system. If so, maintain a clear unobstructed egress path out to the public way

*The Engineering Division – Main Office, Engineering Division –Mapping Section, Parks Division, Forestry Section, Water Utility, and Metro Transit have reviewed this request and have recommended no conditions of approval*