

PLANNING DIVISION STAFF REPORT

August 26, 2019

PREPARED FOR THE PLAN COMMISSION



Project Address: 3116 Commercial Avenue (15th Aldermanic District, Alder Foster)
Application Type: Conditional Use
Legistar File ID #: [56800](#)
Prepared By: Chris Wells, Planning Division
Report Includes Comments from other City Agencies, as noted
Reviewed By: Kevin Firchow, AICP, Principal Planner

Summary

Applicant, Contact & Property Owner: Jason Socha; Alabaster Holdings, LLC.; 3116 Commercial Avenue; Madison, WI 53714

Requested Action: Approval of a conditional use to add an outdoor eating area for an existing nightclub in the Traditional Employment (TE) District.

Proposal Summary: The applicant proposes to add a roughly 615-square-foot outdoor eating area at the southeast corner of the existing nightclub, at the corner of the site. The applicant is requesting a capacity of 50 persons; the number which was recommended earlier this summer by the City's Alcohol License Review Committee and approved by the Council. Note: the total capacity of the venue remains at 325 but that number is now inclusive of the outdoor eating area. The seating area would consist of a fenced-in patio. No structural or programmatic changes to the existing building are proposed.

Applicable Regulations & Standards: This proposal is subject to the standards for Conditional Uses [MGO §28.183], as §28.061 of the Zoning Code lists an *Outdoor eating area associated with a food and beverage establishment* as a conditional use in the Traditional Employment (TE) District. The Supplemental Regulations [MGO §28.151] contain further regulations for this use.

Review Required By: Plan Commission (PC)

Summary Recommendation: The Planning Division recommends that the Plan Commission find that the conditional use standards are met and **approve** the request to add an outdoor eating area for an existing nightclub in the Traditional Employment (TE) District at 3116 Commercial Avenue. 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: The property is located on the northwest corner of the southern intersection of Commercial Avenue and Rethke Avenue, just north of Hwy 30. It is located within Aldermanic District 15 (Ald. Foster) and is within the limits of the Madison Metropolitan School District.

Existing Conditions and Land Use: The 60,100-square-foot (1.38-acre) site has a one-story, 19,260-square-foot warehouse building. The building is surrounded by asphalt which covers the rest of the site. The lot is zoned Traditional Employment (TE).

Surrounding Land Use and Zoning:

North: A massage parlor and a salon, both zoned TE (Traditional Employment District) as well as a hotel which is zoned CC-T (Commercial Corridor – Transitional District). To the northeast is a 60-unit permanent supportive housing complex, also zoned CC-T;

South: Across Commercial Avenue is Hwy 30, beyond which is the Wisconsin Department of Corrections building, zoned SE (Suburban Employment District);

East: Across Rethke Avenue is a one-story shop, a vacant lot, and a parking lot, all zoned TE, beyond which is single-family residential, zoned TR-V1 (Traditional Residential – Varied 1 District); and

West: A two-story, commercial warehouse, zoned TE.

Adopted Land Use Plan: The [Comprehensive Plan \(2006\)](#) recommends Employment Uses for the property. While the [Carpenter-Ridgeway-Hawthorne-Truax Neighborhood Plan \(2001\)](#) does not make a specific recommendation for the subject parcel, it does recommend that the neighboring parcels on the block which front onto E. Washington Avenue be assembled to facilitate a large redevelopment project of office uses.

Zoning Summary: This property is in the Traditional Employment (TE) District.

Requirements	Required	Proposed
Lot Area (sq. ft.)	6,000 sq. ft.	60,092 sq. ft.
Lot Width	50'	180'
Front Yard Setback	None	Existing front yard
Side Yard Setback	None unless needed for access	Existing side yards
Rear Yard Setback	Lesser of 20% lot depth or 20'	Existing rear yard
Maximum Lot Coverage	85%	82% existing lot coverage
Minimum Building Height	22' measured to building cornice	Existing 1 story building
Maximum Building Height	5 stories/ 68'	Existing 1 story building

Site Design	Required	Proposed
Number Parking Stalls	No minimum required	56 existing stalls
Accessible Stalls	Yes	3
Loading	None	None
Number Bike Parking Stalls	Nightclub: 5% of capacity of persons (16)	16 existing stalls
Landscaping	Not required	Existing landscaping
Lighting	Not required	Existing site lighting
Building Forms	Not required	Existing building

Other Critical Zoning Items:	Barrier Free (ILHR 69)
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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. Metro Transit provides daily bus service along East Washington Avenue, with stops at the Rethke Avenue intersection. Trips operate at least once every 30 minutes on weekdays, but only pass once an hour each direction on weekends. The last trips westbound - towards the downtown and campus - depart at approximately 11:05 pm on weeknights, and 10:10 pm on weekend evenings. The final departures heading the opposite direction, towards East Towne Mall, depart around midnight during the week, and 11:15 pm on Saturdays and Sundays.

Project History

On July 16, 2019, the Common Council, with a recommendation from the Alcohol License Review Committee, approved the request to change the previously approved premises and conditions to allow an outdoor capacity of 50 occupants and a total capacity (indoor and outdoor) of 325 occupants. (Legistar ID: [56363](#))

On September 18, 2017, the Plan Commission approved a Conditional Use to establish a nightclub in an existing building at 3116 Commercial Avenue. (Legistar ID: [48337](#))

On June 2, 2017, the Common Council, with a recommendation from the Alcohol License Review Committee, approved the request for an alcohol license for a nightclub 5,800 square feet in size, without any outdoor seating areas, and with a capacity to 325 occupants. (Legistar ID: [46894](#))

Project Description, Analysis, and Conclusion

The applicant requests approval to add an outdoor eating area for an existing nightclub in the Traditional Employment (TE) District with the intent to allow beverages (including alcoholic beverages) in this area. It is therefore subject to the standards for Conditional Uses [MGO §28.183], as §28.061 of the Zoning Code lists an *Outdoor eating area associated with a food and beverage establishment* as a conditional use in the TE District. The Supplemental Regulations [MGO §28.151] contain further regulations for these uses. In regards to the approval standards, the Plan Commission shall not approve a conditional use without due consideration of the City's adopted plan recommendations, design guidelines, 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 proposed outdoor eating area (patio) will be roughly 615 square-feet in size and located at the southeast corner of the existing building, at the corner of the site. The applicant is requesting a capacity of 50 persons, a number that was recommended earlier this summer by the City's Alcohol License Review Committee and approved by the Council. Note: the total capacity of the venue remains at 325 but that number is now inclusive of the outdoor eating area. That said, the final details of the seating plan and capacity will still need to be approved by Building Inspection.

The patio would be accessed from within the facility, via the existing door at the southeastern corner of the building. The submitted materials show seating provided on the eastern (paved) side of the patio in the form of four tables, though the applicant notes *"exact tables subject to change; no formal/permanent seating arrangement is planned."* The patio will be enclosed to the north and west by the building walls, and by a fence along the south and east. The fence will be chain link but will be covered by a nylon fabric. The southern portion of the fence will have an egress gate, with panic hardware, which will open out towards Commercial Avenue.

Regarding the hours of operation, the applicant is requesting 4:00 pm-2:00 am, Wednesdays through Saturdays, and 1:00 pm-10:00 pm on Sundays. They have also stated that there will not be any amplified sound on the exterior of the building. One condition of approval which was added in 2017 when the nightclub was approved but still remains and applies to this proposal, is the requirement that the door accessing the patio will not be allowed to remain open.

No structural or programmatic changes to the existing building are proposed.

Regarding the adopted plans, the [Comprehensive Plan \(2006\)](#) recommends Employment Uses for the property, while the [Carpenter-Ridgeway-Hawthorne-Truax Neighborhood Plan \(2001\)](#) has redevelopment plans showing large office buildings on this block – primarily for the portion of the block fronting onto E. Washington Avenue. Similar to the previous request for the nightclub, while not an employment use, the Planning Division believes the proposal could be found compatible with these recommendations. This is due in part to the fact that again, despite the investment embodied in the proposed addition of the patio and fencing, it is an interim use of the site and one that – given the TE zoning of the site as well as the surrounding properties – will not prevent it or the rest of the block from eventually being redeveloped for employment uses envisioned by the plans.

The Planning Division anticipates that if well-managed, the proposed outdoor eating area should not result in significant negative impacts to the surrounding properties. Factors such as the limited size and capacity of the proposed patio; the prohibition of amplified or live music on or near the patio; the placement along the southern boundary of the site, roughly 340 feet from the nearest residential unit; the fact that the noise from the traffic along the adjacent WI-30 will likely mask much of the noise generated by the patio users; the fact that the door accessing the patio will not be allowed to remain open; and the proposed conditions of approval will help mitigate possible negative impacts. 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 Section 28.183(9)(d).

Staff believe the proposed outdoor eating area can be found to meet the conditional use approval standards and recommends that it be approved by the Plan Commission.

Staff also believe that proposal satisfies the Supplemental Regulations for the use. These are: (a) Primary access to the area shall be from within the establishment; (b) Hours of operation may be restricted and noise and lighting limits imposed as part of the conditional use approval; and (c) 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.

At the time of report writing, staff was not aware of any concerns regarding this request.

Recommendation

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

The Planning Division recommends that the Plan Commission find that the conditional use standards are met and **approve** the request to add an outdoor eating area for an existing nightclub in the Traditional Employment (TE) District at 3116 Commercial Avenue. This recommendation is subject to input at the public hearing and the following conditions:

Recommended Conditions of Approval

Major/Non-Standard Conditions are Shaded

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

1. The applicant shall submit more details and high-resolution colored renderings of the design and materials of the outdoor eating area fence for review by Zoning and Planning Staff before final sign off.
2. There shall be no amplified sound, including, but not limited to television, ambient music or musical performances, in the outdoor eating area.
3. The hours of operation for the outdoor eating area shall be 4:00 pm-2:00 am, Wednesdays through Saturdays, and 1:00 pm-10:00 pm on Sundays.
4. Pending review by the Building Inspection Division, the capacity of the outdoor eating area shall not exceed 50 persons (as approved by the Alcohol License Review Committee).

City Engineering Division (Contact Brenda Stanley, (608) 261-9127)

5. Based on WDNR records (BRRS #03-13-000304, 03-13-002516), the property may contain residual contaminated soil. If contaminated soil is encountered as part of this redevelopment, all WDNR and DSPS regulations shall be followed for proper handling and disposal.

City Engineering Division - Mapping (Contact Jeffrey Quamme, (608) 266-4097)

6. The proposed improvements are within a public Sloping and Grading Easement. Any improvements are subject to the rights of the City of Madison when Commercial Avenue is reconstructed. The enclosure and any other improvements will be required to be removed by the owner when necessary when the street is reconstructed in the future.

Traffic Engineering (Contact Sean Malloy, (608) 266-5987)

7. The applicant shall secure their patio from the Commercial Avenue Right of Way with a fence or a substantial barrier.

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

8. The applicant is not seeking to increase the overall capacity of the nightclub establishment. Meet applicable building/fire codes. The capacity shall be established for the outdoor eating area. Occupancy is established by the Building Inspection Unit. Contact Building Inspection staff at (608) 266-4559 to help facilitate this process.

9. Per Section 28.186(4)(b), the property owner or operator is required to bring the property into compliance with all elements of the approved site plans by the date established by the Zoning Administrator as part of the site and building plan approval. Work with Zoning staff to establish a final site compliance date.

Fire Department (Contact Bill Sullivan, (608) 261-9658)

10. The patio gates shall incorporate panic hardware for exiting the building & patio area.

Water Utility (Contact Adam Wiederhoeft, (608) 266-9121)

The agency reviewed this request and has recommended no conditions of approval.

Parks Division (Contact Kathleen Kane, (608) 261-9671)

The agency reviewed this request and has recommended no conditions of approval.

Forestry Division (Contact Brad Hofmann, (608) 267-4908)

The agency reviewed this request and has recommended no conditions of approval.

Metro Transit (Contact Tim Sobota, (608) 261-4289)

The agency reviewed this request and has recommended no conditions of approval.