

PLANNING DIVISION STAFF REPORT

August 12, 2019



PREPARED FOR THE PLAN COMMISSION

Project Address: 2262 Winnebago Street (District 6 - Ald. Rummel)
Application Type: Conditional Use
Legistar File ID #: [56127](#)
Prepared By: Sydney Prusak, Planning Division
Report Includes Comments from other City Agencies, as noted
Reviewed By: Kevin Firchow, AICP, Planning Division

Summary

Applicant & Property Owner: Frameshift Arts Café; The Winnebago Arts Café, 2262 Winnebago Street; Madison, WI 53704

Contact: Jacob Dehaven; Dehaven Properties; 2342 East Washington Avenue; Madison, WI 53704

Requested Action: The applicant requests conditional use approval to allow a theater, assembly hall, concert hall with a restaurant-nightclub (Incidental Use) and outdoor eating area in the Neighborhood Mixed-Use (NMX) Zoning District.

Proposal Summary: The applicant proposes to formally establish a theater, assembly hall, concert hall with a restaurant-nightclub and outdoor eating area, in the NMX Zoning District. As part of this development, the applicant proposes to increase the capacity of the space from 99 persons to 225 persons.

Applicable Regulations & Standards: This proposal is subject to the standards for Conditional Uses [MGO §28.183] as §28.082(1) of the Zoning Code lists *theaters, assembly halls, and concert halls, restaurant-nightclubs, and outdoor eating areas associated with food and beverage establishments* as conditional uses in the Neighborhood Mixed Use (NMX) Zoning District.

Review Required By: Plan Commission (PC)

Summary Recommendation: If the Plan Commission can find that the conditional use standards are met, then the Planning Division recommends that the Plan Commission **approve** the request to establish a theater, assembly hall, concert hall, restaurant-nightclub, and outdoor eating area, on a property zoned Neighborhood Mixed Use (NMX) District at 2262 Winnebago Street. 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 10,048-square-foot (0.23-acre) subject site is located on the west side of Winnebago Street near the intersection with Lafollette Avenue. It is within Aldermanic District 6 (Ald. Rummel) and the Madison Municipal School District.

Existing Conditions and Land Use: The subject parcel contains an existing 4,129 square-foot commercial building, which formerly housed the "Sons of Norway" Madison Chapter. According to Assessor's data, the

building was originally constructed in 1928 but went through intensive renovations in 2018 associated with the change of ownership to the Winnebago Arts Café (the current applicant). The property is currently a “legal non-conforming” restaurant-nightclub with a capacity of 99 persons.

Surrounding Land Use and Zoning:

- North:** Mix of single-family and two-family homes, zoned Traditional Residential – Varied 1 (TR-V1);
- East:** Mix of single-family, two-family, and multi-family homes, zoned TR-V1, with some commercial uses zoned Neighborhood Mixed Use (NMX);
- South:** Mix of single-family, two-family, and multi-family homes, and one commercial space zoned TR-V1; and
- West:** Mix of single-family, two-family, and multi-family homes, zoned TR-V1, with East High School, zoned Campus Institutional (CI) beyond;

Adopted Land Use Plan: The [Comprehensive Plan \(2018\)](#) recommends Low Medium Density Residential for the subject site. The [Marquette-Schenk-Atwood Neighborhood Plan](#) (1994) makes no specific recommendations for the subject site.

Zoning Summary: The property is zoned Neighborhood Mixed Use (NMX).

Requirements	Required	Proposed
Front Yard Setback	None	Existing front yard
Side Yard Setback: Where buildings abut residentially zoned lots at side lot line.	Minimum side yard required in the adjacent residential district.	Existing side yard
Rear Yard Setback	20'	Existing rear yard
Maximum Lot Coverage	75%	Existing lot coverage
Maximum Building Height	3 stories/ 40'	1 story existing building

Site Design	Required	Proposed
Number Parking Stalls	Restaurant-nightclub: 15% of capacity of persons (9)	8 (8)(9)
Accessible Stalls	Yes	1 (11)
Loading	Not required	None
Number Bike Parking Stalls	Theater, assembly hall, concert hall: 5% of capacity of persons (11)	18 (9)(10)
Landscaping and Screening	Not required	Existing landscaping (12)
Lighting	Not required	Existing lighting
Building Forms	Not required	Existing building

Other Critical Zoning Items	Barrier Free (ILHR 69), Utility Easements
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Tables Prepared by Jenny Kirchgatter, Assistant Zoning Administrator

Environmental Corridor Status: Portions of the parking lot are located in a mapped environmental corridor.

Public Utilities and Services: This property is served by a full range of urban services, with multiple weekday and weekend Metro Transit routes near the site. More detail on the available transit service is provided in the analysis section of this report.

Project History

In 2018, the applicant submitted an application to the City requesting conditional use approval for a *restaurant-nightclub* on the subject property. After initial review of the proposal, Zoning staff determined that a restaurant-nightclub was a permitted use in the Neighborhood Mixed Use (NMX) Zoning District, so long as it was no open past 12:00 a.m. per MGO §28.151(a). Given that the proposed hours of operation were 7:00 a.m. to 12:00 a.m., the Plan Commission voted to place this item on file without prejudice, and the project continued to operate as a permitted use.

Since that time, the Zoning Code was amended to include all restaurant-nightclubs as conditional uses in the NMX district, regardless of the hours of operation. Therefore, the subject site became a “legal non-conforming use.” The property has been operating as a restaurant-nightclub since February, 2019 and due to the growth and popularity of the business, the applicant is looking to increase capacity without increasing the parking supply.

With the proposed capacity increase from 99 persons to 225 persons, the Zoning Administrator deemed that the primary use of the property is now considered a *theater, assembly hall, concert hall*, with an incidental restaurant-nightclub. According to the Supplemental Regulations for restaurant-nightclubs per MGO §28.151(a), the maximum capacity is established by the Director of the Building Inspection Division and shall not exceed the number of available seats, plus staff, plus a reasonable number of people waiting for seats. During City review of the project, staff determined that the primary use, as proposed, did not meet the definition of a restaurant-nightclub. Therefore, this project was reclassified as a theater, concert hall, assembly hall, which has no minimum seating requirement. Given the fact that the site has an existing restaurant/café and an entertainment license, the property technically still operates as a restaurant-nightclub in addition to the theater use. The Zoning Administrator classified the restaurant-nightclub aspect of the proposal as an “Incidental Use.” According to MGO §28.130, “Any lot containing a principal use may also contain incidental uses that are affiliated with but subordinate to the principal use.” The request before the Plan Commission is to formally approve both uses as well as an outdoor eating area.

Project Description

The applicant, Winnebago Arts Café, proposes to establish a theater, assembly hall, concert hall with a restaurant-nightclub (incidental use) and outdoor eating area at 2262 Winnebago Street. As part of this development, the applicant proposes to increase the capacity from 99 persons to 225 persons. According to the materials provided, the applicant foresees that most of the events will serve closer to 100 persons, but wants the ability to attract bigger artists and events. The site has eight vehicle parking stalls and 20 bicycle stalls. There is an additional vehicle parking stall located in the City’s Right-of-Way. While this stall is not officially counted by Zoning, the applicant has permission to use this spot until Traffic Engineering or City Engineering needs the space for future projects and/or improvements.

In conjunction with the capacity increase, the applicant proposes to establish an outdoor eating area off the southeast side of the building. In terms of service, the patio will be used for brunch during the day and as a

space for customers to smoke in a concentrated area during evening performances. The intent is keep smokers off the public sidewalk. As proposed, the outdoor eating area will close daily at 10:00 p.m.

The applicant is not requesting any changes in the hours of operation, which will remain as 7:00 a.m. to 12:00 a.m. daily, with live entertainment starting around 8:00 p.m. In addition to live music, theater, comedy, film, and civil dialog, the venue has a restaurant and café component with a limited bar.

Analysis and Conclusion

The application is subject to the standards for Conditional Uses [MGO §28.183] as MGO §28.082(1) lists *theaters, assembly halls, concert halls, restaurant-nightclubs, outdoor eating areas associated with food and beverage establishments* as conditional uses in the Neighborhood Mixed Use (NMX) Zoning District.

Conformance with Adopted Plans

The [Comprehensive Plan \(2018\)](#) recommends Low Medium Density Residential for the subject site. However, the Plan allows for a limited amount of nonresidential uses within residential categories. Such uses often serve as focal points for neighborhood activity and are often relatively small, and therefore not always identified at the scale of the Generalized Future Land Use Map. The [Marquette-Schenk-Atwood Neighborhood Plan](#) (1994) makes no specific recommendations for the subject site. Staff notes that the site is zoned for mixed-use and commercial development.

Conditional Use Standards

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.

First, the Plan Commission must consider the requests to 1) establish a theater, assembly hall, concert hall with a capacity of 225 and 2) approve the existing legal non-conforming restaurant-nightclub, with a capacity of 60 persons, as a conditional use. While the restaurant-nightclub request is incidental to the theater use, it is still a conditional use in the NMX Zoning District. It is important to note that there is no minimum parking requirement for theaters, assembly halls, concert halls in the NMX Zoning District. As for the restaurant-nightclub, the parking minimum is 15% of capacity of persons. As proposed the capacity for the restaurant-nightclub (when no live music or shows are occurring on site) is 60 persons. While the nine existing and proposed parking stalls meet this requirement, the southern stall located in the Right-of-Way does not count towards this calculation. Therefore, as a Condition of Approval, the Applicant shall verify with Zoning staff the basis for the 60 person capacity for the restaurant-nightclub. An administrative level parking reduction may be required.

Conditional Use Standard #3 states that the Plan Commission must find 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." Given that this establishment is in operation, staff is generally supportive of its continuing use. The Planning Division acknowledges that the current capacity for the venue is 99 persons, and the applicant is requesting to increase it to 225 persons (125% increase). In order to approve this request, staff believes that proper management of the space is critical to minimize impacts. Given the limited hours of

operation, closing at 12:00 a.m. rather than bar time, and the fact that many of the events will be ticketed for crowd control, the Planning Division believes that it is possible for the Plan Commission to find that this Standard is met.

Staff's primary concern is with Conditional Use Standard #5, specifically with the adequacy of the parking supply. This condition states that the Plan Commission must find that, "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." The Planning Division recognizes both the neighborhood sensitivity to parking concerns and the options the applicant provided as part of this application, including the alternative forms of transit serving the site. The applicant is proposing a "Traffic Management Plan," which includes several initiatives to incentivize alternatives to driving to the site. The applicant also introduced the "Need No Space Initiative," to encourage alternative forms of transportation and ease the parking strain on the Atwood neighborhood. The applicant has provided a brief outline of the initiative as part of their land use application.

In terms of the availability and accessibility of alternative parking and impact on residential neighborhoods, staff acknowledges that the on-street parking options nearby are limited. A map of on-street parking availability is included in the Plan Commission materials. However, the site is located near many transit routes, which provide regular weekday and weekend service. There is a bus stop immediately adjacent to the site with service for Route #4 and #10. Moreover, in the submitted Traffic Management Plan, the applicant described their status as an official consignment retailer for Madison Metro bus passes. The restaurant-nightclub will have ability to sell bus passes on site as an addition to a customer's bill, further incentivizing customers to travel by bus. Staff notes that the last bus trips westbound (towards downtown and campus) depart as early as 11:05 p.m. on weeknights, and 10:10 p.m. on weekends. The final bus trips eastbound depart as early as 11:55 p.m. during the week, and 10:40 p.m. on Saturdays and Sundays. Therefore, while patrons can utilize the bus to access the venue, departures by bus are more limited.

Staff believes that the site is well served by bicycle infrastructure. This includes on-street facilities on Winnebago Street and East Washington Avenue, and the Union Corners Bike Path that connects Division Street to Milwaukee Street. The applicant is proposing to install 20 bike parking stalls on the property, which is roughly eight more than the required amount. In terms of shared parking arrangements, the applicant stated that they have contacted UW Health Urgent Care located at Union Corners about the potential to lease some of their parking during their off hours (8:00 p.m. to 8:00 a.m.), though nothing was formalized at the time of report writing.

The applicant is also requesting the ability to use the patio as an outdoor eating area. As proposed the patio will be used for diners during brunch hours, and as a smoking area during evening shows. As a Condition of Approval, the Planning Division recommends that all food and beverage outside service end at 10:00 p.m. Additionally, staff recommends that there be no outdoor amplified sound. The Planning Division believes that this component of the proposal can meet the Conditional Use Approval Standards.

Supplemental Regulations

MGO §28.151(a) contains further regulations for restaurant-nightclubs and outdoor eating areas associated with food and beverage establishments. There are no supplemental regulations for theaters, assembly halls, concert halls. Staff believes that all the supplemental regulations for the requested uses are met. As mentioned in the Project History section of this report, one of the supplemental regulations for restaurant-nightclubs is that the "Maximum capacity to be established by the Director of the Building Inspection Division, not to exceed

the number of available seats, plus staff, plus a reasonable number of people waiting for seats.” When no live shows or entertainment are occurring on site, the restaurant-nightclub will have a set capacity of 60 persons. The Director of the Building Inspection Division will be required to sign-off on this requirement.

Public Input

At the time of report writing, the Planning Division received many comments, both in support and opposition, regarding this request. The majority of the comments were from nearby neighbors, citing concerns over parking on residential streets, noise, and the overall increase in evening activity that comes with an entertainment venue. The comments in support addressed the need for this sized venue to support Madison’s growing art scene. Staff also received a letter of support from the Schenk-Atwood-Starkweather-Yahara Neighborhood Association (SASY). The comments are attached for reference.

Conclusion

Staff believes that it may be possible for the Plan Commission to find that the Conditional Use Standards are met. Careful consideration must be given to these Standards, including Standard #5 related to the adequacy of parking. Staff acknowledges that this is a big request for a fairly new venue located in a residential neighborhood and that not all the parking impacts can be predicted, especially as the number of full-capacity shows is not known. If approved, staff encourage s the applicant to continue to work with nearby property owners to figure out a shared parking arrangement.

If approved, the Plan Commission retains continuing jurisdiction, meaning that should complaints arise the Commission could take further action, requiring additional conditions or possible revocation of the conditional use should it find the approval standards cannot be met. If the Plan Commission cannot find the approval standards to be found met, the Plan Commission shall specify its findings of fact and list the standard(s) that have not been met and the reasons such standard(s) was not met.

Recommendation

Planning Division Recommendation (Contact Sydney Prusak, (608) 243-0554)

If the Plan Commission can find that the conditional use standards are met, then the Planning Division recommends that the Plan Commission **approve** the request to establish a theater, assembly hall, concert hall with restaurant-nightclub (Incidental Use), and an outdoor eating area at a property zoned the Neighborhood Mixed Use (NMX) Zoning District at 2262 Winnebago Street. 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 Sydney Prusak, (608) 243-0554)

1. The door to the outdoor eating area on the southwest side of the building shall remain closed at all times.
2. No outdoor amplified sound (from music, televisions, etc.) or live musical performance shall be allowed in the outdoor seating area.

3. The outdoor eating area shall close at 10:00 p.m., seven days a week. The Director of the Planning Division may consider a minor alteration to the conditional use in the future to further modify the hours of operation for the outdoor areas following a recommendation by the District Alder.
4. The theater, assembly hall, concert hall and restaurant-nightclub shall close at 12:00 a.m. seven days a week.

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

5. The site plan shall include all lot/ownership lines and all pavement including the access pavements to Winnebago Street. Also refer to Birrenkott Survey of August 7, 2018.
6. Label and denote fully on the site plan the lease area for Parking Lot Improvements per Document No 5461180.
7. Label and dimension the 15' wide City of Madison Transportation Parcel adjacent to this site.

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

8. There is no minimum vehicle parking requirement for a *theater, assembly hall, or concert hall* use nor for a building under 10,000 sq. ft. in floor area within the NMX zoning district. There will be a minimum vehicle parking requirement for the incidental *restaurant-nightclub* use operating while there are no performances. The vehicle parking requirement for the restaurant-nightclub is equal to 15% of capacity of persons. The maximum capacity of the restaurant-nightclub shall be established by the Director of the Building Inspection Division based on the number of available seats, plus staff, plus a reasonable number of people waiting for seats. Verify with Zoning staff the basis for the 60 person capacity for the restaurant-nightclub. An administratively approved parking reduction may be required.
9. Four (4) bicycle parking spaces above the minimum number required may be substituted for one (1) required automobile parking space. Seven (7) bicycle stalls are proposed above the minimum of eleven (11) stalls for a substitution of one (1) vehicle stall.
10. Show the dimensions of the proposed bicycle stalls that abut the deck and accessible stall. A bicycle stall is a minimum of two (2) feet by six (6) feet with a five (5) foot wide access area.
11. Show the required signage at the head of the accessible stall. Accessible signs shall be a minimum of 48" between the bottom of the sign and the ground.
12. Screening is required adjacent the Zoning district boundary along the north and west property lines. Screening shall be provided along side and rear property boundaries between commercial/ mixed-use districts and residential districts. Screening shall consist of a solid wall, solid fence, or hedge with year-round foliage, between six (6) and eight (8) feet in height. Submit a detail of the screening fence or hedge with the final plans.
13. 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.
14. 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.

Traffic Engineering Division (Contact Sean Molloy, (608) 266-5987)

8. 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.
9. All parking facility design shall conform to MGO standards, as set in section 10.08(6).
10. All bicycle parking adjacent pedestrian walkways shall have a 2 foot buffer zone to accommodate irregularly parked bicycles and/or bicycle trailers.

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

11. MFD supports the phased plan with fire sprinkler protection being installed in the summer of 2019.

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

12. Metro Transit staff, as well as our passengers and other stakeholders in the Capitol East District, have identified that the existing hourly bus service frequency that operates on Route 6 along East Washington Avenue on weekends and holidays is inadequate for the densities and uses that are being proposed, and have been previously approved.
13. As part of the 2019 budget process, Metro Transit again submitted an operating budget request that includes an investment proposal that would afford an increase to the bus service frequency in the East Washington Avenue corridor on weekends and holidays, to more frequent trips running every 30 minutes. The supplemental budget request for an approximate annual operating cost of \$450,000 - that would be necessary to implement this service frequency increase, by using four additional buses on weekends and holidays - was not adopted in either the 2018 or 2019 operating budgets.
14. Metro Transit provides daily bus service along East Washington Avenue and Winnebago Street, including stops near the Sixth Street intersection. Trips on East Washington operate at least once every 30 minutes on weekdays, but only pass once an hour each direction all day on weekends. Trips along Winnebago only operate once an hour, both weeknight evenings and all day on weekends.
15. The proposed operating hours, at night, extend beyond the final bus trips currently funded by the City of Madison. The last trips westbound - towards the downtown and campus - depart as early as 1105pm on weeknights, and 1010pm on weekend evenings. The final departures heading the opposite direction, towards the North Transfer Point or East Towne Mall, depart as early as 1155pm during the week, and 1040pm on Saturdays and Sundays.

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

16. The proposed development appears to include the installation of a fire protection/automatic sprinkler system; subsequently, a higher capacity water service lateral may be required to meet required flow rates. The site is currently served by a 3/4-IN diameter copper water lateral. If a new water service will be required, contact Madison Water Utility Engineering Section to evaluate service connection options, confirmation of water meter size, or any applicable customer account revisions.
17. Madison Water Utility will be required to sign off as part of the approval review associated with this Land Use Application/Site Plan Review prior to the issuance of building permits for the proposed development.