



REPORT TO CITY PLAN COMMISSION

Plan Commission Meeting Date: July 7, 2020

Item: Minor Amendment to Special Use Permit #4-16 – Dairyland Brew Pub – 1216 East Wisconsin Avenue

Case Manager: Don Harp, Principal Planner

GENERAL INFORMATION

Owner/Applicant: Bernard and Dorri Schmidt (owners/applicants)

Address/Parcel #: 1216 East Wisconsin Avenue (Tax Id #31-1-2791-00)

Petitioner's Request: The applicant is requesting to amend Special Use #4-16 by relocating the 12 ft. x 20 ft. outdoor patio area from the northwest corner of the building to the southeast corner of the building and expand the outdoor alcohol sales and consumption area from 240 sq. ft. to approximately 516 sq. ft.

BACKGROUND

Special Use Permit #4-16 for a bar/restaurant and an outdoor patio area with alcohol sales (Dairyland Brew Pub) at 1216 East Wisconsin Avenue was conditionally approved by Common Council on September 7, 2016. There are no noncompliance orders pending with respect to the original conditions of approval per Inspections Division records.

STAFF ANALYSIS

Project Summary:

1. Relocate previously approved 12 ft. x 20 ft. outdoor patio area from the northwest corner of the building (See Attached Exhibit: A) to the southeast corner of the building.
2. Increase size of the outdoor alcohol sales and consumption area from 240 sq.ft. to 516 sq.ft., which includes the sidewalk area along the north side of the building and the sidewalk area and a portion of the parking lot along the east side of the building. (See attached development plan areas highlighted in yellow)
3. The outdoor seating area is enclosed with a 3.75 ft. to 4.125 ft. high fence.

Operational Information: See attached Plan of Operation and Locational Information. The outdoor patio area will assist the businesses owner with complying with social distancing guidelines as the local economy continues to safely re-open and successfully recover from the COVID-19 health emergency.

Ordinance Requirements: This item has been referred to the Plan Commission per Section 23-66(g) of the Municipal Code, which states:

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(1) **Minor change.** Minor changes shall be submitted to and reviewed by the Plan Commission. Minor changes include:

- a. Expansions of special uses of less than 10%.

Maximum expansion allowed: 1,123 square feet. Proposed expansion: 276 square feet. This request constitutes an expansion of less than 10%.

- b. Other changes which keep with the general intent and character of the Special Use Permit previously issued.

This minor amendment request is consistent with the general intent and character of Special Use Permit #4-16, as the subject area will continue to be used as a bar/restaurant with alcohol sales and consumption.

Note: Minor amendments to an existing Special Use Permit do not require Common Council action.

Surrounding Zoning and Land Uses:

North: R-1B Single-Family District – Residential uses

South: C-2 General Commercial District – Commercial uses

West: M-2 General Industrial District – Industrial use

East: C-2 General Commercial District – Commercial uses

2010-2030 Comprehensive Plan: The 2010-2030 Future Land Use Map currently represents the subject site as commercial. The use of the subject property is consistent with the Future Land Use Map.

Technical Review Group Report (TRG): This item was listed on the June 30, 2020 Technical Review Group meeting agenda. No negative comments were received from participating departments.

Ordinance Requirements and Substantial Evidence Regarding Conditions of Approval:

When reviewing an application for a Special Use Permit, the City must look at the requirements and conditions found in the zoning ordinance and determine if the applicant has demonstrated that their proposed application for Special Use Permit satisfies all those requirements and conditions pursuant to Section 23-66(c)5c. of the zoning ordinance. The Plan Commission must provide **substantial evidence** supporting their decision to approve, approve with conditions or deny the Special Use Permit. Substantial evidence means *“facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a special use permit and that reasonable persons would accept in support of a conclusion.”*

Public comment that is based on personal opinion or speculation are not sufficient forms of evidence. All requirements and conditions listed for approval must be reasonable, and to the extent practicable, measurable.

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RECOMMENDATION

Staff recommends, based on the above analysis, that Minor Amendment to Special Use Permit #4-16 to relocate the 12 ft. X 20 ft. outdoor patio area from the northwest corner of the building to southeast corner of the building and expand the outdoor alcohol sales and consumption area from 240 sq. ft. to approximately 516 sq. ft. located at 1216 East Wisconsin Avenue (Tax Id#31-1-2791-00), per attached resolution, **BE APPROVED**, to run with the land, subject to the following conditions:

1. The applicant shall receive approval of a Liquor License premises description amendment from the City Clerk prior to serving alcohol outdoors.
 - **Substantial Evidence:** This condition provides notice to the applicant that they are required to receive approval from the City Clerk's office prior to serving alcohol outdoors at 1216 East Wisconsin Avenue in order to comply with Municipal Code and General Policy Statement on Beer/Liquor Licensing.
2. The applicant shall comply with the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Municipal Code.
 - **Substantial Evidence:** This condition provides notice to the applicant that they are required to follow the standards for serving alcohol in the City of Appleton in order to promote the health, safety and general welfare of the City.
3. The premises shall be kept free of litter and debris.
 - **Substantial Evidence:** This requirement assures the applicant understands they must keep the premises free of litter and debris at all times in order to promote the health, safety, comfort and general welfare of the City.
4. All Zoning, Building, Fire, Engineering, Utility and other Municipal Codes, and all applicable State and Federal laws shall be complied with.
 - **Substantial Evidence:** This condition assures the applicant understands they must follow the City's Municipal Code and all applicable State and Federal laws which they are required to follow while conducting business in the City; failure to follow City, State and Federal regulations may result in revocation of their special use permit to serve alcohol.
5. Any expansions of the special use, changes to the development plan(s), plan of operation or any conditions of approval may require a major or minor amendment request to this Special Use Permit pursuant to Section 23-66(g) of the Zoning Ordinance. Contact the Community and Economic Development Department to discuss any proposed changes.
 - **Substantial Evidence:** Standardized condition that establishes a process for review and approval of future changes to the special use in order to promote the health, safety and welfare of the City.

CITY OF APPLETON
RESOLUTION FOR MINOR AMENDMENT TO SPECIAL USE PERMIT #4-16
BAR/RESTAURANT WITH OUTDOOR SEATING WITH ALCOHOL SALES AND CONSUMPTION
1216 EAST WISCONSIN AVENUE

WHEREAS, On September 7, 2016, the Common Council approved Special Use Permit #4-16 for bar/restaurant with outdoor seating with alcohol sales and service (Dairyland Brew Pub) located at 1216 East Wisconsin Avenue; also identified as Parcel Number 31-1-2791-00; and

WHEREAS, Dorri Schmidt, owner/applicant of Dairyland Brew Pub has applied for a Minor Amendment to Special Use Permit #4-16 to allow the owner to relocate the 12 ft. X 20 ft. outdoor patio area from the northwest corner of the building to the southeast corner of the building and expand the outdoor seating area with alcohol sales and consumption area from 240 sq. ft. to approximately 516 sq. ft. located at 1216 East Wisconsin Avenue, and also identified as Parcel Number 31-1-2791-00; and

WHEREAS, the City of Appleton Plan Commission held a public meeting on July 7, 2020 on the Minor Amendment to Special Use Permit #4-16 at which all those wishing to be heard were allowed to speak or present written comments and other materials presented at the public meeting; and

WHEREAS, the City of Appleton Plan Commission has reviewed and considered the Community and Economic Development Department's staff report and recommendation and other spoken and written evidence and testimony presented at the public meeting; and

WHEREAS, the City of Appleton Plan Commission reviewed the standards for granting a Minor Amendment to Special Use Permit #4-16 under Sections 23-66(e)(1-8) of the Municipal Code; and

WHEREAS, the City of Appleton Plan Commission reviewed the standards for imposing conditions on the Minor Amendment to Special Use Permit #4-16 under Section 23-66(c)(5)c. of the Municipal Code, and

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the City of Appleton Plan Commission, based on Community and Economic Development Department's staff report and recommendation and other spoken and written evidence and testimony presented at the public meeting with regard to the Minor Amendment to Special Use Permit #4-16, that the City Plan Commission:

1. Determines all standards listed in Sections 23-66(e)(1-8) are found in the affirmative YES or NO (CIRCLE ONE)
2. If NO, the City of Appleton Plan Commission hereby denies the Minor Amendment to Special Use Permit #4-16 for the relocation of the 12 ft. X 20 ft. outdoor patio area from the northwest corner of the building to the southeast corner of the building and the expansion of the outdoor seating area with alcohol sales and consumption area from 240 sq. ft. to approximately 516 sq. ft. located at 1216 East Wisconsin Avenue, and also identified as Parcel Number 31-1-2791-00 based upon the following standards and determinations: (List reason(s) why the Minor Amendment to Special Use Permit #4-16 was denied)

3. If YES, the City of Appleton Plan Commission hereby approves the Minor Amendment to Special Use Permit #4-16 to allow the owner to relocate the 12 ft. X 20 ft. outdoor patio area from the northwest corner of the building to the southeast corner of the building and expand the outdoor seating area with alcohol sales and consumption area from 240 sq. ft. to approximately 516 sq. ft. located at 1216 East Wisconsin Avenue, and also identified as Parcel Number 31-1-2791-00 subject to the following conditions as they are related to the purpose of the City of Appleton Municipal Code and are based on substantial evidence:

CONDITIONS OF APPROVAL: MINOR AMENDMENT TO SPECIAL USE PERMIT #4-16

- A. The applicant shall receive approval of a Liquor License premises description amendment from the City Clerk prior to serving alcohol outdoors.
- B. The applicant shall comply with the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Municipal Code.
- C. The premises shall be kept free of litter and debris.
- D. All Zoning, Building, Fire, Engineering, Utility and other Municipal Codes, and all applicable State and Federal laws shall be complied with.
- E. Any expansions of the special use, changes to the development plan(s), plan of operation or any conditions of approval may require a major or minor amendment request to this Special Use Permit pursuant to Section 23-66(g) of the Zoning Ordinance. Contact the Community and Economic Development Department to discuss any proposed changes.

*Note: The above referenced conditions replace the original conditions of Special Use Permit #4-16.

The City Clerk's Office is hereby directed to give a copy of this resolution to the owner/applicant, Community and Economic Development Department, Inspections Division and any other interested party.

Adopted this 7th day of July 2020.

Jacob A. Woodford, Mayor

ATTEST:

Kami Lynch, City Clerk

PLAN OF OPERATION AND LOCATIONAL INFORMATION

Business information:

Name of business: Dairyland Brew Pub

Years in operation: 3.5 yrs.

(Check applicable proposed business activity(s) proposed for the premises)

- Restaurant
- Tavern/Night Club/Wine Bar
- Painting/Craft Studio
- Microbrewery/Brewpub (manufacturing a total of not more than 310,000 U.S. gallons of fermented malt beverages per calendar year)
- Brewery (manufacturing a total of more than 310,000 U.S. gallons of fermented malt beverages per calendar year)
- Winery (manufacturing of wine)
- Craft-Distillery (manufacturing a total of not more than 100,000 proof gallons of intoxicating liquor per calendar year)
- Distillery (manufacturing a total of more than 100,000 proof gallons of intoxicating liquor per calendar year)
- Tasting room offering fermented malt beverages, wine or intoxicating liquor for consumption and/or retail sales on the premises where the fermented malt beverages, wine or intoxicating liquor is manufactured and/or at an off-premises location associated with premises. Tasting rooms may include food sales.
- Other _____

Explanation of existing business operations:

Restaurant / Bar selling food & alcohol

Explanation of proposed changes/amendments to previously approved Special Use Permit:

Changing west side approved 10x20 attached area to East side 12x23 patio AND include front sidewalk/Block under Building overhang

Existing gross floor area of building/tenant space, including outdoor spaces:

(square feet) 10,000 sq. ft. building

Proposed gross floor area of building/tenant space, including outdoor spaces:

(square feet) 10,000 sq. ft. building plus 516 sq.ft. outdoor area

Occupancy limits:

Maximum number of persons permitted to occupy the building or tenant space as determined by the International Building Code (IBC) or the International Fire Code (IFC), whichever is more restrictive: 180 persons.

Proposed Hours of Operation for Indoor Uses:

Day	From	To
Monday thru Thursday	11 am	2:00 am
Friday	11 am	2:30 am
Saturday	11 am	2:30 am
Sunday	11 am	2:00 am

Production/Storage information:

(Check applicable proposed business activity(s) proposed for the premises)

Current production of fermented malt beverages: _____ U.S. gallons per year

Proposed production of fermented malt beverages: _____ U.S. gallons per year

Current production of wine: _____ U.S. gallons per year

Proposed production of wine: _____ U.S. gallons per year

Current production of intoxicating liquor: _____ proof gallons per year

Proposed production of intoxicating liquor: _____ proof gallons per year

None. If none, leave the following 2 storage questions blank.

Identify location of grains and/or juice, grapes, other fruits or other agricultural product storage and type of storage container(s) used:

Identify the storage location of spent grains and/or grapes, other fruits or other agricultural products and type of storage container(s) used:

Outdoor Space Uses:

(Check applicable outdoor space uses)

Patio

Deck

Sidewalk Café

Other Sidewalk cement block under overhang

None. If none, leave the following questions in this section blank.

Size: 5 ft X 24 ft cement Block square feet and 23 X 12 (patio)
5 ft X 24 ft Total Outdoor Area = 516 sq.ft.

Type of materials used and height of material to enclose the perimeter of the outdoor space:

Fencing Landscaping Other _____ Height 3.75 - 4.125 feet

Is there any alcohol consumption incorporated within the outdoor facility? Yes No

If yes, please describe: usual consumption allowed.
outdoor seating will allow alcohol

Are there plans for outdoor music/entertainment? Yes No

If yes, describe how the noise will be controlled:

Is there any food service incorporated in this outdoor facility proposal? Yes No

outdoor seating will allow food.

Proposed Hours of Operation for Outdoor Space:

Day	From	To
Monday thru Thursday	11 am	
Friday	11 am	
Saturday	11 am	
Sunday	11 am	

?
?
?
?

NOTE: Hours of Operation for Outdoor Uses (Sidewalk Café with Alcohol):

****Municipal Code Section 9-262(b)(4): The permit holder can begin serving alcoholic beverages in the sidewalk café at 4:00 p.m. Monday through Friday and 11:00 a.m. on Saturday and Sunday. All alcoholic beverages must be removed from the sidewalk café by 9:30 p.m.

Describe Any Potential Noise Emanating From the Proposed Use:

Describe the noise levels ^{feet outdoor patio area} anticipated from all equipment or other mechanical sources:

Describe how the crowd noise will be controlled inside and outside the building:

Camera system installed - Staff controlled

Off-Street Parking:

Number of spaces existing on-site: 33

Number of spaces proposed on-site: _____

Street Access:

Is street access to the subject property adequate or are any street improvements, such as a new turning lane, necessary to minimize impacts on traffic flow?

no

Other Licensed Premises:

The number of licensed premises within the immediate geographic area of the proposed location will be considered in order to avoid an undue concentration that may have the potential of creating public safety problems or deterring neighborhood development.

List nearby licensed premises:

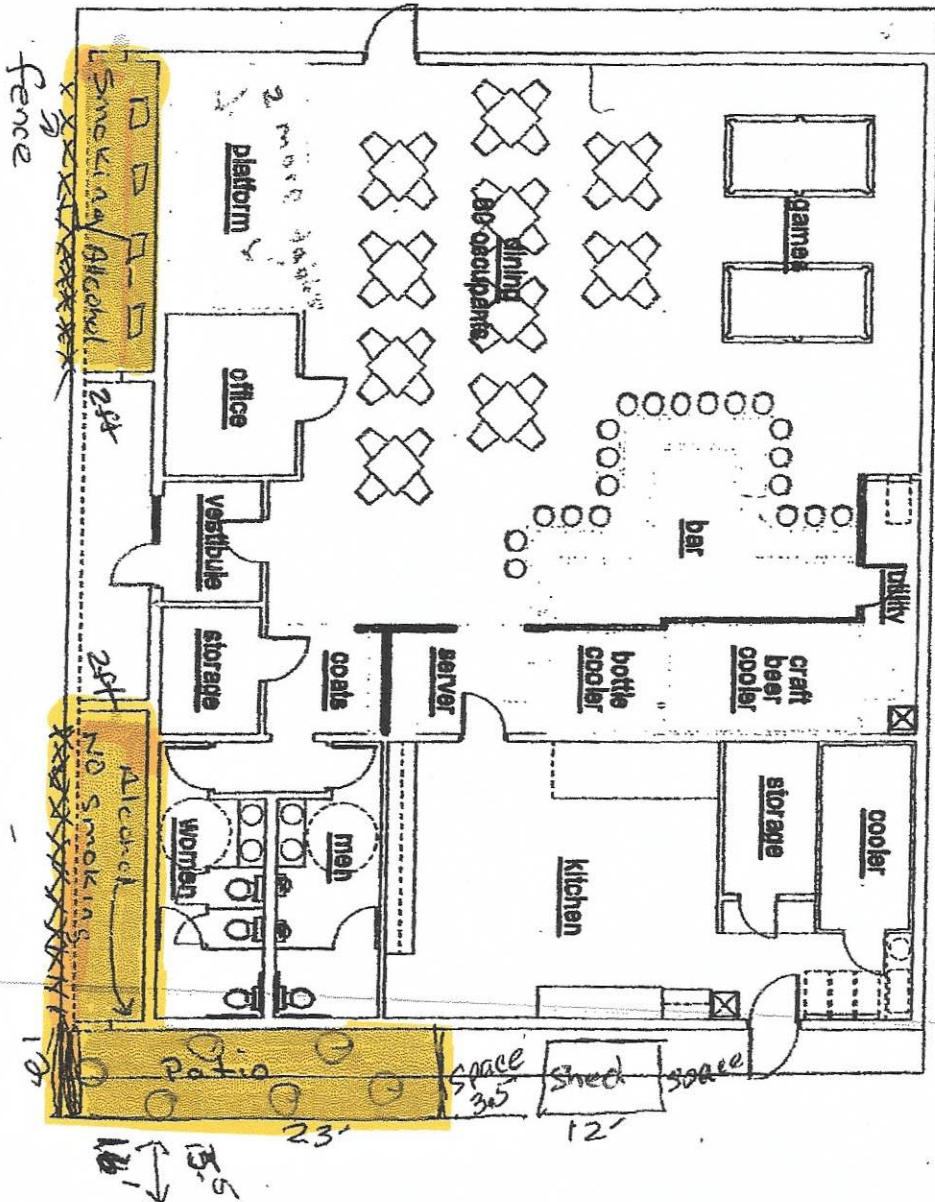
Number of Employees:

Number of existing employees: 2

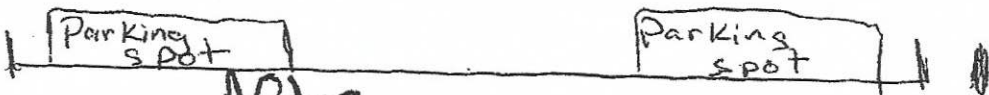
Number of proposed employees: 3

Number of employees scheduled to work on the largest shift: 10

There is 15.5' - 16 ft from 'patio side' to parking spot for vehicles.
 6 small tables + 12 chairs for patio
 4 chairs each side of vestibule entrance



A-1 PROPOSED FLOOR PLAN
 SCALE: 1/8" = 1'-0"
 NORTH



A-2

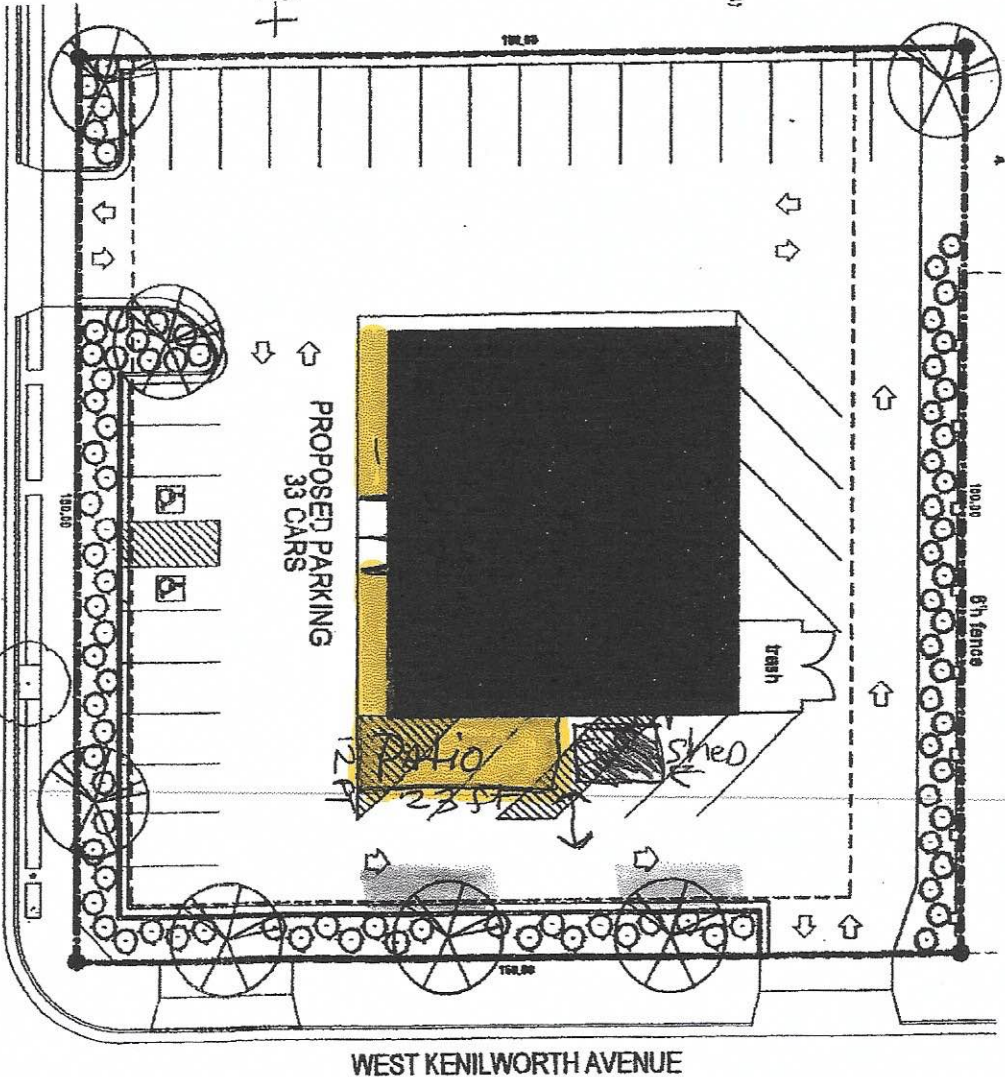
DATE: 11/12/14
 SHEET NO.

Alter
 INTERIOR ALTERATION
**DAIRYLAND BREWPUB
 & PIZZERIA**

MILLENNIUM
 CONSTRUCTION & ALTERATION
 414 W. WISCONSIN AVE
 APPLETON, WISCONSIN
 TEL: 920.821.8700
 FAX: 920.821.8700
 www.millenniumconstruction.com

ZONING CODE SUMMARY	
ZONING DISTRICT:	O-2 (GENERAL COMMERCIAL)
PV SETBACK:	10 FEET
RY SETBACK:	0 FEET
ZONING USE:	RESTAURANT / TAVERN
REQUIRED PARKING:	1 STALL PER 7 OCCUPANTS
MAXIMUM OCCUPANTS:	90 (1-100 SQ. FT. SEATING AREAS OR FIRE BARREN)
REQUIRED PARKING:	33 STALLS 8'x18'
PROPOSED PARKING:	33 STALLS
LANDSCAPING BUFFERS	
RESIDUAL:	10 FEET W/OPAOUE EVERGREEN
STREET:	8 FEET W/1 SHADE PER 40 FEET
BIWAY:	6 FEET W/1 SHADE PER 80 FEET
INTERIOR:	8% OF PAVED SURFACE
DUMP PATERS:	ENCLOSED W/FENCE

Request to have alcohol permit for areas in ~~pink~~ YELLOW



PROPOSED SITE PLAN
SCALE: 1/8" = 1'-0"

EAST WISCONSIN AVENUE

WEST KENILWORTH AVENUE

request to move patio to other side - is safer

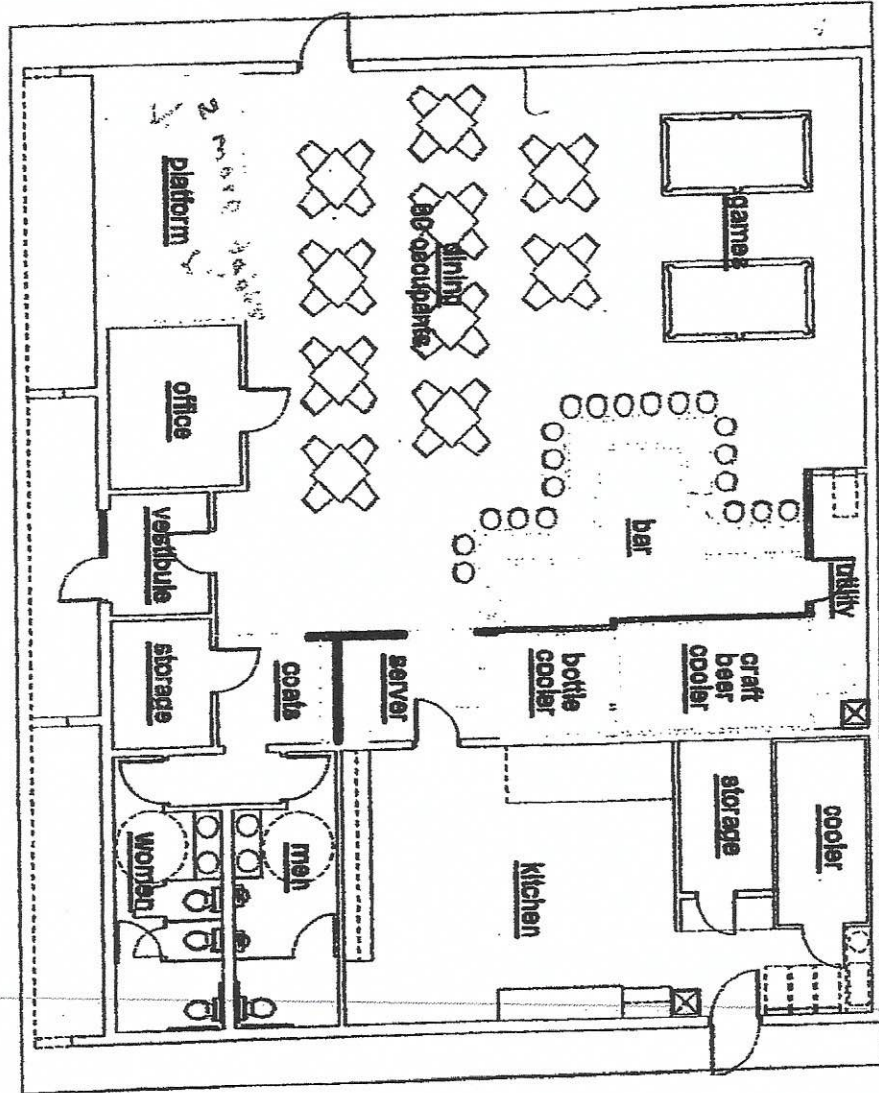
Patio to Parrell parking spot is 15.5 foot

INTERIOR ALTERATION
DAIRYLAND BREWPUB & PIZZERIA

MILLENNIUM
CONSTRUCTION & TRADING
"THE WAY OF THE FUTURE"
423 W. WISCONSIN AVE
APPLETON, WISCONSIN
PH: 920.892.1100
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DATE: 11/12/14
SHEET NO.: C-1



PROPOSED FLOOR PLAN

SCALE 1/8" = 1'-0"

After
**INTERIOR ALTERATION
 DAIRYLAND BREWPUB
 & PIZZERIA**

A-2

SHEET NO. 11/12/14

DATE

MILLENNIUM
 OF ARCHITECTURE & INTERIOR DESIGN
 481 W. WISCONSIN AVE
 APPLETON, WISCONSIN
 54912-1808
 THE ARCHITECTS OF RECORD

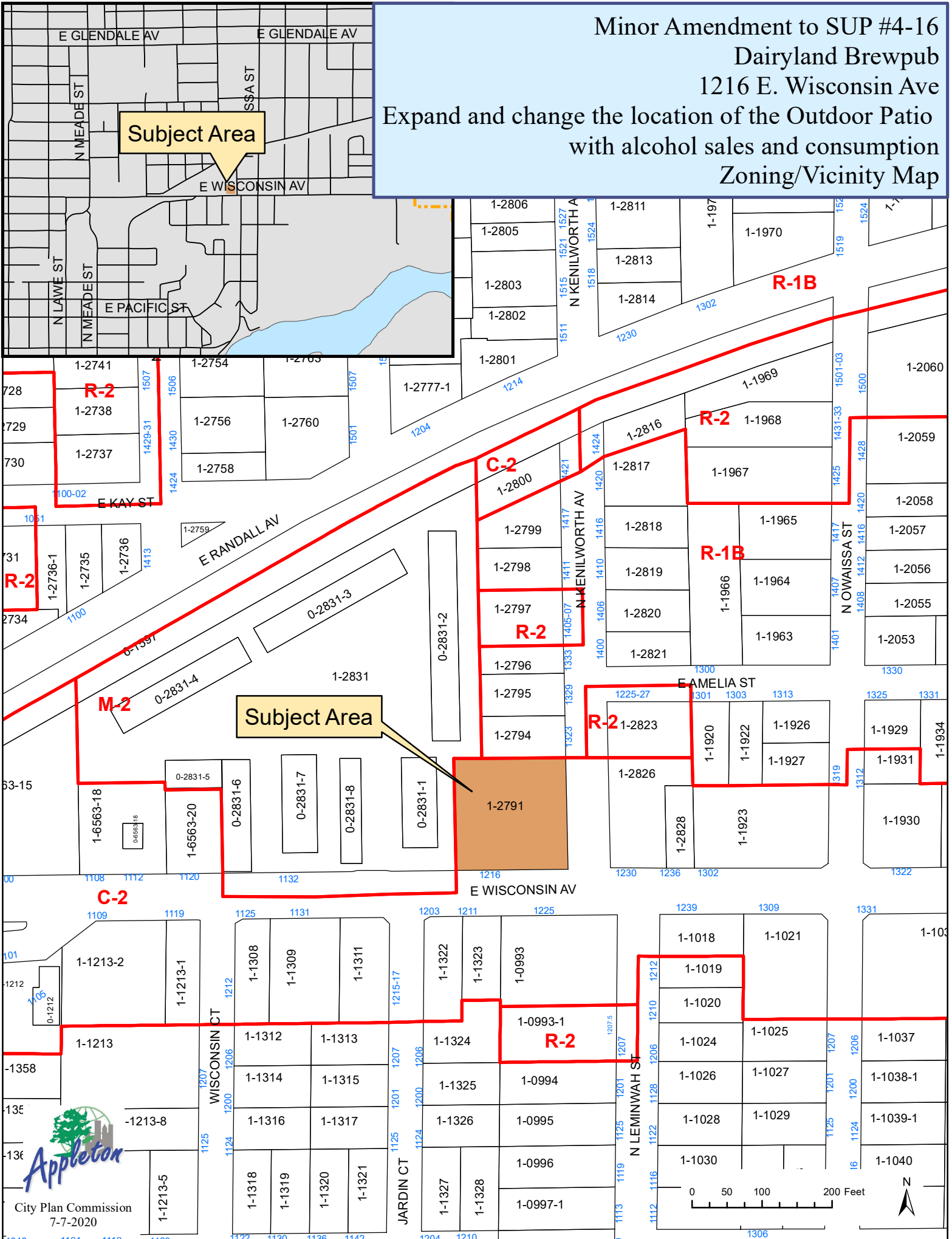


Minor Amendment to SUP #4-16

Dairyland Brewpub

1216 E. Wisconsin Ave

Expand and change the location of the Outdoor Patio
with alcohol sales and consumption
Zoning/Vicinity Map



ArcGIS Web Map



6/16/2020 1:06:04 PM

- | | | | |
|--------------|------------------|-----------------|-----------------------|
| City Parcels | Floodway | Highway | WetlandProtectiveArea |
| Setbacks | FloodplainFridge | ShorelandZoning | Small Street Names |
| Building | | | |

