



## REPORT TO CITY PLAN COMMISSION

**Plan Commission Public Hearing Date:** March 23, 2022

**Common Council Meeting Date:** April 6, 2022

**Item:** Special Use Permit #4-22 for restaurant with alcohol sales and service

**Case Manager:** Jessica Titel, Principal Planner

### GENERAL INFORMATION

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**Owner/Applicant:** Desamour Properties, LLC / Area 509 – Reginald Desamour

**Address/Parcel #:** 1025 N. Badger Avenue (Tax Id #31-5-2090-00)

**Petitioner's Request:** The applicant is requesting a Special Use Permit for alcohol sales and service in conjunction with a restaurant and associated outdoor seating area.

### BACKGROUND

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The subject area is located at the southwest corner of North Badger Avenue/North Linwood Avenue and West Spring Street. The property currently consists of a single tenant commercial building and associated off-street parking lot. The existing building is approximately 1,452 square feet in size. Area 509 recently opened and is operating as a restaurant (without alcohol). The applicant recently applied for a Liquor License that includes Class B beer and Class C wine.

Special Use Permit #5-11 for Lolita's Restaurant was approved by the Common Council on May 18, 2011 for a restaurant with alcohol sales. Lolita's discontinued operation and subsequent businesses in this location did not include alcohol sales and service. A new Special Use Permit is needed due to the lapse in time since alcohol sales and service has occurred on this site and the expansion of alcohol sales and service for the proposed outdoor seating area.

### STAFF ANALYSIS

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**Project Summary:** The applicant proposes to establish a restaurant with alcohol sales and service on the subject site, which would occupy the existing building that is approximately 1,452 square feet in size. The applicant is also proposing an outdoor seating area and seasonal outdoor bar. The outdoor seating area is approximately 5,994 square feet. Alcohol consumption in the outdoor seating area will only occur when the outdoor bar is open and staffed. Customers are welcome to take their food to the outdoor seating area when the outdoor bar is not open or staffed, but no alcohol will be consumed during these times. The applicant is proposing a fence around the outdoor seating area.

**Operational Information:** A plan of operation is attached to the staff report.

**Outdoor Seating Area:** The outdoor seating area is approximately 5,994 square feet. Alcohol consumption in the outdoor seating area will only occur when the outdoor bar is open and staffed.

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Customers are welcome to take their food to the outdoor seating area when the outdoor bar is not open or staffed, but no alcohol will be consumed during these times.

**Existing Site Conditions:** The existing single-story building totals approximately 1,452 square feet in size. The 19,659 square foot site also includes an off-street parking lot, with access from West Spring Street and North Linwood Avenue.

There is a small portion of this lot that is currently zoned R-1B single family residential district. This has been the case for many years and this parcel has historically been used for commercial purposes. No commercial activities are permitted within the R-1B zoned portion of the property.

**Current Zoning and Procedural Findings:** The subject property has a zoning designation of C-2 General Commercial District. Per Section 23-113(e) of the Municipal Code, a restaurant with alcohol sales and service requires a Special Use Permit in the C-2 District. The Plan Commission makes a recommendation to the Common Council who will make the final decision on the Special Use Permit. A two-thirds vote of the Common Council is required for approval.

**Surrounding Zoning and Land Uses:** The surrounding area is under the jurisdiction of the City of Appleton (north, south, east, and west). The uses are generally commercial and residential in nature.

North: C-2 General Commercial District, R-2 Two-Family Residential and R-1B Single Family District. The adjacent land uses to the north are currently residential and a multi-tenant commercial building.

South: R-1B Single Family Residential. The adjacent land uses to the south are residential.

East: R-1B Single Family Residential. The adjacent land uses to the east are residential

West: R-1B Single Family Residential. The adjacent land uses to the west are residential.

**Appleton Comprehensive Plan 2010-2030:** Community and Economic Development staff has reviewed this proposal and determined it is compatible with goals and objectives found in the City's *Comprehensive Plan 2010-2030*. Listed below are related excerpts from the City's *Comprehensive Plan 2010-2030*.

*Goal 1 – Community Growth*

*Appleton will continue to provide opportunities for residential, commercial, and industrial growth, including appropriate redevelopment sites within the downtown and existing neighborhoods, and greenfield development sites at the City's edge.*

*Goal 8 – Economic Development*

*Appleton will pursue economic development that retains and attracts talented people, brings good jobs to the area, and supports the vitality of its industrial areas, downtown, and neighborhood business districts.*

**OBJECTIVE 9.5 Economic Development:**

*Encourage new development and redevelopment activities that create vital and attractive neighborhoods and business districts.*

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*OBJECTIVE 10.2 Land Use:*

*Encourage redevelopment to meet the demand for a significant share of future growth, and to enhance the quality of existing neighborhoods.*

*OBJECTIVE 10.5 Land Use:*

*Support the continued redevelopment and revitalization of land uses adjacent to Appleton's key transportation corridors and downtown.*

**Technical Review Group (TRG) Report:** This item appeared on the March 1, 2022 TRG agenda. No negative comments were received from participating departments.

**Zoning Ordinance Requirements and Substantial Evidence:** When reviewing an application for a Special Use Permit, the City must determine if the applicant's proposal satisfies Municipal Code requirements and conditions. Pursuant to Section 23-66(c)(5) of the Municipal Code, the Plan Commission and Common Council 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." Any requirements and conditions listed for approval must be reasonable, and to the extent practicable, measurable.

**Finding of Fact:** This request was reviewed in accordance with the standards (proper zoning district, district regulations, special regulations, comprehensive plan and other plans, traffic, landscaping and screening, neighborhood compatibility, and impact on services) for granting a Special Use Permit under Section 23-66(e)(1-8) of the Municipal Code, which were found in the affirmative, as long as all stipulations are satisfied.

**RECOMMENDATION**

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Staff recommends, based on the above analysis, that Special Use Permit #4-22 for a restaurant with alcohol sales and service and associated outdoor seating area located at 1025 N. Badger Avenue (Tax Id #31-5-2090-00), as shown on the attached maps and per attached plan of operation, along with the attached resolution, **BE APPROVED** to run with the land, subject to the following conditions:

1. The applicant shall receive approval of a Liquor License from the City Clerk prior to serving alcohol on the premises.

*Substantial Evidence: This condition provides notice to the applicant that a Liquor License is also needed prior to serving alcohol.*

2. The use shall conform to the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Appleton Municipal Code.

*Substantial Evidence: This condition is one of the special regulations included in Section 23-66(h)(6) of the Zoning Ordinance for this particular use.*

3. The site shall be kept free of litter and debris.

*Substantial Evidence: This condition is one of the special regulations included in Section 23-66(h)(6) of the Zoning Ordinance for this particular use.*

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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 is one of the special regulations included in Section 23-66(h)(6) of the Zoning Ordinance for this particular use.*

5. The serving and consumption of alcohol is limited to the interior ground floor of the building, outdoor bar and the outdoor seating area, as identified on the attached development plan drawings. Any future expansions for the serving and/or consumption of alcohol may require a major or minor amendment request to this Special Use Permit, pursuant to Section 23-66(g) of the Municipal Code.

*Substantial Evidence: Standardized condition that establishes parameters for the current application and identifies the process for review of any future changes to the special use.*

6. This Special Use Permit is needed for on-site alcohol sales and consumption. Compliance with the plan of operation is required at all times. Changes to the plan of operation, including any future changes to the agent/operator, shall be submitted to the Community and Economic Development Department for review and approval.

*Substantial Evidence: Standardized condition that establishes parameters for the current application and identifies the process for review of any future changes to the special use.*

**CITY OF APPLETON  
RESOLUTION FOR SPECIAL USE PERMIT #4-22  
RESTAURANT WITH ALCOHOL  
1025 NORTH BADGER AVENUE**

**WHEREAS**, Reginald Desamour, Area 509, has applied for a Special Use Permit for a restaurant with alcohol sales and service and associated outdoor seating area located at 1025 N. Badger Avenue, also identified as Parcel Number 31-5-2090-00; and

**WHEREAS**, the location for the proposed restaurant with alcohol sales and service is located in the C-2 General Commercial District, and the proposed use may be permitted by Special Use Permit within this zoning district pursuant to Chapter 23 of the Municipal Code; and

**WHEREAS**, the City of Appleton Plan Commission held a public hearing on March 23, 2022 on Special Use Permit #4-22, at which all those wishing to be heard were allowed to speak or present written comments and other materials at the public hearing; and

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

**WHEREAS**, the City of Appleton Plan Commission reviewed the standards for granting a Special Use Permit 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 Special Use Permit under Section 23-66(c)(5) of the Municipal Code, and forwarded Special Use Permit #4-22 to the City of Appleton Common Council with a favorable conditional or not favorable (CIRCLE ONE) recommendation; and

**WHEREAS**, the City of Appleton Common Council has reviewed the report and recommendation of the City of Appleton Plan Commission at their meeting on April 6, 2022.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the Common Council, based on Community and Economic Development Department's staff report and recommendation, as well as other spoken and written evidence and testimony presented at the public hearing and Common Council meeting, and having considered the recommendation of the City Plan Commission, that the Common Council:

1. Determines all standards listed under Sections 23-66(e)(1-8) of the Municipal Code are found in the affirmative YES or NO (CIRCLE ONE)
2. If NO, the City of Appleton Common Council hereby denies Special Use Permit #4-22 for a restaurant with alcohol sales and service and associated outdoor seating area located at 1025 N. Badger Avenue, also identified as Parcel Number 31-5-2090-00, based upon the following standards and determinations: (List reason(s) why the Special Use Permit was denied)

3. If YES, the City of Appleton Common Council hereby approves Special Use Permit #4-22 for a restaurant with alcohol sales and service and associated outdoor seating area located at 1025 N. Badger Avenue, also identified as Parcel Number 31-5-2090-00, subject to the following conditions as they are related to the purpose of the City of Appleton Municipal Code and based on substantial evidence:

**CONDITIONS OF APPROVAL FOR SPECIAL USE PERMIT #4-22:**

- A. The applicant shall receive approval of a Liquor License from the City Clerk prior to serving alcohol on the premises.
  - B. The use shall conform to the standards established in Chapter 9, Article III, Alcoholic Beverages, of the Appleton Municipal Code.
  - C. The site 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. The serving and consumption of alcohol is limited to the interior ground floor of the building, outdoor bar and the outdoor seating area, as identified on the attached development plan drawings. Any future expansions for the serving and/or consumption of alcohol may require a major or minor amendment request to this Special Use Permit, pursuant to Section 23-66(g) of the Municipal Code.
  - F. This Special Use Permit is needed for on-site alcohol sales and consumption. Compliance with the plan of operation is required at all times. Changes to the plan of operation, including any future changes to the agent/operator, shall be submitted to the Community and Economic Development Department for review and approval.
4. 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.

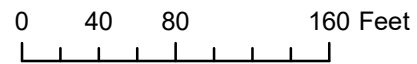
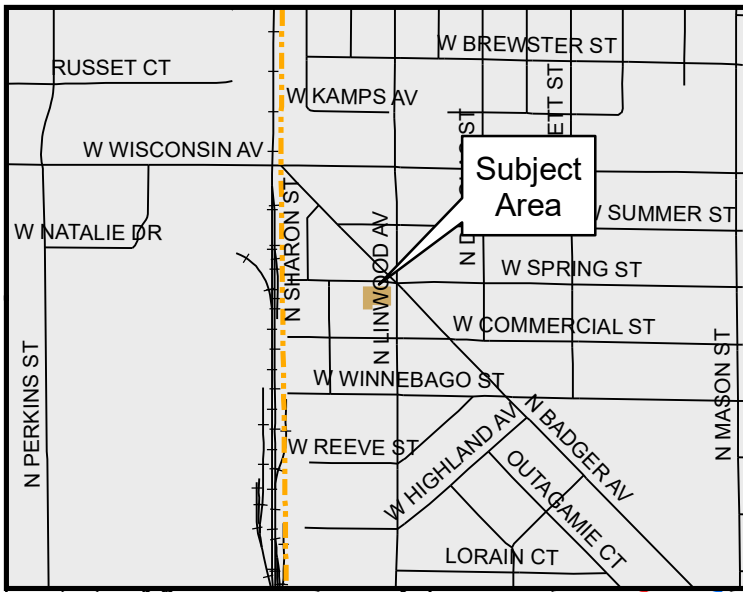
Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jacob A. Woodford, Mayor

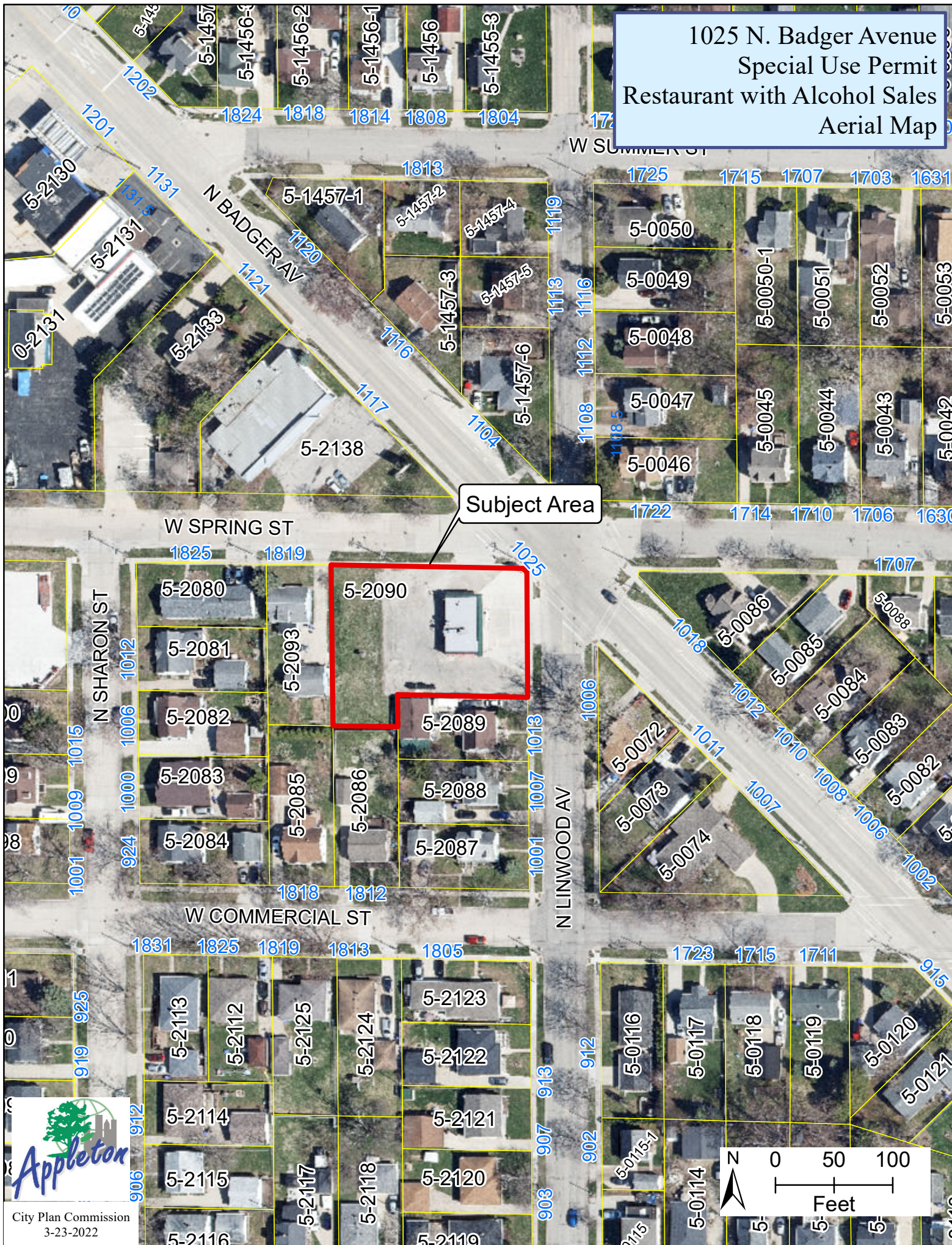
ATTEST:

\_\_\_\_\_  
Kami Lynch, City Clerk

1025 N. Badger Avenue  
 Special Use Permit  
 Restaurant with Alcohol Sales  
 Zoning Map



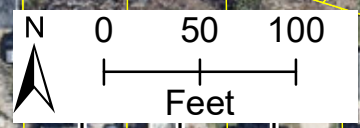
1025 N. Badger Avenue  
 Special Use Permit  
 Restaurant with Alcohol Sales  
 Aerial Map



Subject Area



City Plan Commission  
 3-23-2022





## PLAN OF OPERATION AND LOCATIONAL INFORMATION

### Business Information:

Name of business: Area 509

(Check applicable proposed business activity(s) proposed for the building or tenant space)

- Restaurant  
 Bar/Night Club  
 Wine Bar  
 Microbrewery  
 Other \_\_\_\_\_.

Years in operation: new business

Percentage of business derived from food service: 60 %

Type of proposed establishment (detailed explanation of business operations):

Limited service Caribbean restaurant with indoor seating for 22 and outdoor grassy area with seating. Outdoor bar in shipping container in future plans.

### Proposed Hours of Operation for Indoor Uses:

Day	From	To
Week Days Monday thru Thursday	11 am	8 pm
Friday	11 am	10 pm
Saturday	11 am	10 pm
Sunday	11 am	8 pm

### Building Capacity and Area:

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: 49 persons

Gross floor area of the existing building(s): 1452 square feet

Gross floor area of the proposed building(s): 1452 square feet

**Describe Any Potential Noise Emanating From the Proposed Use:**

Describe the noise levels anticipated from all equipment or other mechanical sources:

minimal noise from equipment  
inside - kitchen equipment (oven and two fryers)  
outside - generator is hosting a food truck

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

inside - barrier between seating and kitchen, area rugs, machinery  
out of dining area  
outside - fencing around grass area

If off-street parking is available for the business, describe how noise from the parking lot will be controlled:

fence between parking and surrounding houses  
\_\_\_\_\_  
\_\_\_\_\_

**Outdoor Space Uses:**

(Check applicable proposed area)

- Patio
- Deck
- Sidewalk Café
- Other grass
- None

Size: 5,994 square feet.

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

Fencing  Landscaping  Other \_\_\_\_\_ Height 6 feet.

Is there any alcohol service incorporated within the outdoor space? Yes  No

Are there plans for outdoor music/entertainment? Yes  No

If yes, describe how the noise will be controlled:

fencing and controlled hours (music will not go past 10pm)

Is there any food service incorporated within the outdoor space? Yes  No

**Proposed Hours of Operation for Outdoor Space:**

*in season only*

Day	From	To
Week Days: Monday thru Thursday	4 pm	8 pm
Friday	4 pm	10 pm
Saturday	4 pm	10 pm
Sunday	4 pm	8 pm

**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.**

**Off-Street Parking:**

Number of spaces existing: 12

Number of spaces proposed: 12

**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:

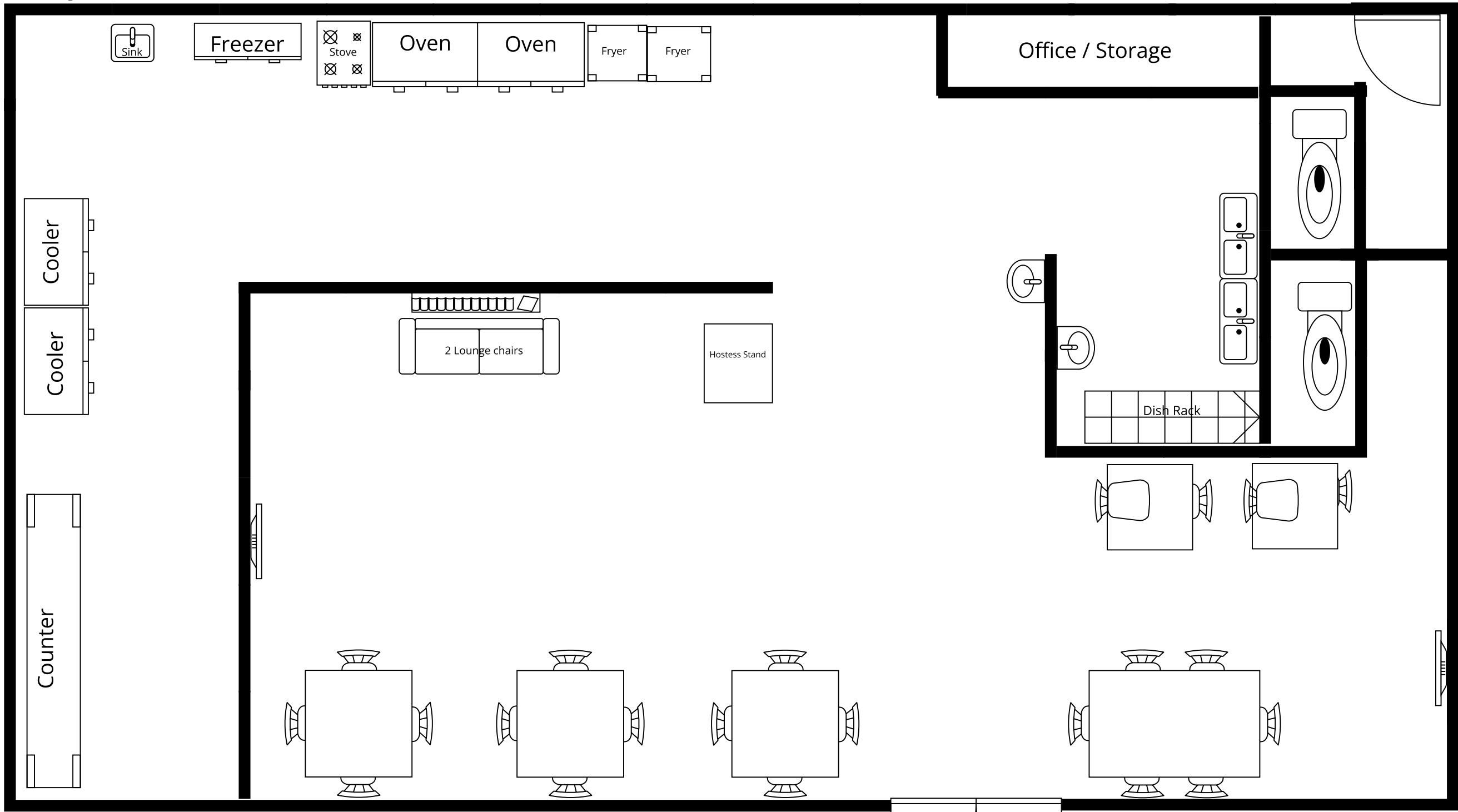
unaware of this information  
\_\_\_\_\_  
\_\_\_\_\_

**Number of Employees:**

Number of existing employees: 1

Number of proposed employees: 10

Number of employees scheduled to work on the largest shift: 4



Sink

Freezer

Stove

Oven

Oven

Fryer

Fryer

Office / Storage

Cooler

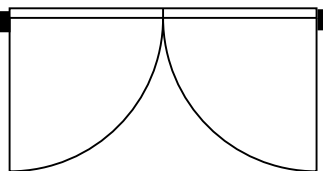
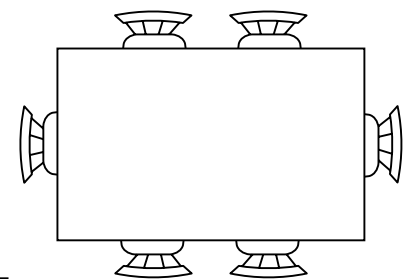
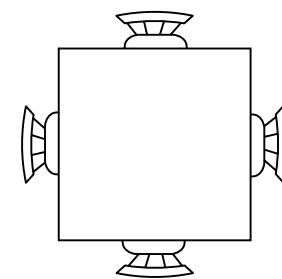
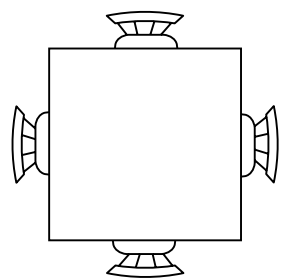
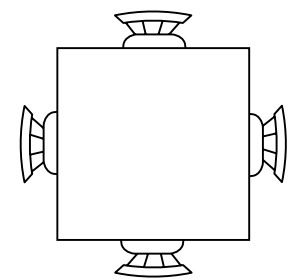
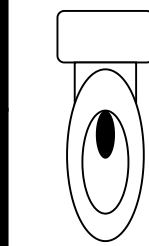
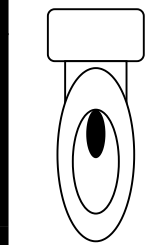
Cooler

Counter

2 Lounge chairs

Hostess Stand

Dish Rack





54 feet

Fence

Seating Area

111 feet

Fence

Outdoor Bar  
(20' x 8')

Food Truck

New Parking Spaces

1 2 3 4 5 6 7 8

9

10

11

12

Walk-In Cooler

Dumpsters

1025

1025 N Badger Ave,  
Appleton, WI 54914

1

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