



REPORT TO CITY PLAN COMMISSION

Plan Commission Public Hearing Date: April 12, 2023

Common Council Meeting Date: April 19, 2023

Item: Special Use Permit #2-23 to expand an existing outdoor patio with alcohol sales and service associated with a tavern (Mr. Frogs) located at 409 West College Avenue

Case Manager: Don Harp, Principal Planner

GENERAL INFORMATION

Owner/Applicant: Julia Morales c/o James Jackson, Mr. Frogs

Address/Parcel #: 409 West College Avenue (Tax Id # 31-3-1032-00)

Petitioner's Request: The applicant is requesting a new Special Use Permit to expand an existing outdoor patio (southside of the existing tavern building) with alcohol sales and service.

BACKGROUND

The subject site is currently occupied by Mr. Frogs Tavern.

On January 24, 2022, Special Use Permits #17-02 and #15-05 were transferred to the applicant to allow a tavern to resume operations on the 1st floor of the building and the 24' x 32' (768 square foot) outdoor patio area on the south side of the building. In addition, Special Use Permits #17-02 and #15-05 allowed the tavern to expand operations on the 2nd floor of the building.

- Section 23-66(f)(4) of the Zoning Ordinance states, "Continuation of a special use permit. Once approved, a special use permit shall be allowed to continue and may be transferred to any entity, unless specified otherwise as a condition of approval, as long as all conditions placed on the special use are followed."

STAFF ANALYSIS

Project Summary: As shown on the attached development plan, the applicant proposes to expand the existing outdoor patio area by 456 square feet for a total area of 1,224 square feet. The applicant proposes to continue with alcohol sales and service within the expanded outdoor patio area.

Existing Site Conditions: The existing tavern building (1st and 2nd floor) on the subject parcel totals approximately 3,120 square feet, including a 768 square foot outdoor patio.

Zoning Ordinance Requirements: The subject property has a zoning designation of CBD Central Business District. The proposed outdoor patio expansion is defined as a major change to Special Use Permits #17-02 and #15-05; therefore, a new Special Use Permit is required.

Special Use Permit #2-23

April 12, 2023

Page 2

The Plan Commission makes a recommendation to the Common Council who will make the final decision on the Special Use Permit. A two-thirds (2/3) vote of the Common Council is required for approval.

Special Use Permit Consolidation: If approved, Special Use Permit #2-23 will replace Special Use Permits #17-02 and #15-05. The following on-going conditions will continue to be in effect and will be included in the staff recommendation.

1. The serving and consumption of alcohol is limited to the interior ground floor, second story and the enclosed outdoor seating area (south side of building) as identified by the submitted floor plan/development plan pursuant to Special Use Permit #15-05 on file in the Community and Economic Development Department. Any future expansions into additional building space not identified by the submitted development plan, for the serving and/or consumption of alcohol, will require a new Special Use Permit application to be applied for and approved.
2. Any expansion of a tavern with alcohol sales use requires approval of a premise description amendment of the existing liquor license from the Safety and Licensing Committee and Common Council.
3. Deliveries must continue to use the rear entrance so College Avenue traffic flow is not interrupted.
4. All dumpsters and/or waste containers shall be kept out of the alley way (public right-of-way).
5. All Noise Ordinances shall be adhered to at all times.
6. All City of Appleton and State of Wisconsin Building Codes must be met.
7. The use shall conform to the standards established on Chapter 9, Article III, Alcoholic beverages, of the Appleton Municipal Code.

Operational Information: The plan of operation is attached to the Staff Report.

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 public institutional in nature.

North: CBD Central Business District. The adjacent land uses to the north are currently a mix of commercial uses, including the Performing Arts Center.

South: CBD Central Business District. The adjacent land use to the south is currently St. Joseph's Church.

East: CBD Central Business District. The adjacent land uses to the east are currently a mix of commercial uses, including D2 Sports Pub.

West: CBD Central Business District. The adjacent land uses to the west are currently a mix of commercial uses, including Sal's Pizza.

Appleton Comprehensive Plan 2010-2030: Community and Economic Development staff has reviewed this proposal and determined it is compatible with the Central Business District designation shown on the City's *Comprehensive Plan 2010-2030* Future Land Use Map. 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 9.4 Economic Development:

Ensure the continued vitality of downtown and the City's neighborhood commercial districts.

Chapter 14 Downtown Plan, Initiative 4 Downtown Development and Business Retention:

Strategy 4.8 – Support private sector efforts to redevelop and invest in downtown.

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 for granting a Special Use Permit under Section 23-66(e)(1-8) of the Municipal Code: *1. proper zoning district:* CBD zoning allows taverns as a special use permit; *2. zoning district regulations:* the district regulations were reviewed pursuant to the attached development; *3. special regulations:* stipulations 2, 3 and 4 (below) address the special regulations for taverns; *4. consistent with comprehensive plan and other plans:* yes, see above analysis; *5. traffic:* the proposed use is not expected to create undue traffic congestion, it is anticipated customers will utilize on-street and ramp parking spaces to park their cars and other multi-modal transportation options are available too; *6. landscaping and screening:* not applicable to this use, the CBD District allows 100% lot coverage; *7. neighborhood compatibility:* the proposed use is located near similar commercial uses in this area of the City; *8. impact on services:* the City has existing utilities, services and equipment in place to serve this proposed use. These standards were found in the affirmative, as long as all stipulations are satisfied.

Technical Review Group (TRG) Report: This item was discussed at the March 21, 2023 Technical Review Group meeting. No negative comments were received from participating departments.

RECOMMENDATION

Staff recommends, based on the above, that Special Use Permit #2-23 to expand an existing outdoor patio with alcohol sales and service associated with a tavern (Mr. Frogs) located at 409 West College Avenue (Tax Id #31-3-1032-00), as shown on the attached maps, development plans 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 and/or an Alcohol License Premise Amendment from the City Clerk prior to serving alcohol on the premise.

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 and current Special Use Permits #17-02 and #15-05.

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.

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 and current Special Use Permits #17-02 and #15-05.

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 parameters for the current application and identifies the process for review of any future changes to the special use.

Special Use Permit #2-23

April 12, 2023

Page 5

6. Deliveries must continue to use the rear entrance so College Avenue traffic flow is not interrupted.

Substantial Evidence: This condition applied pursuant to Special Use Permits #17-02 and #15-05.

7. All dumpsters and/or waste containers shall be kept out of the alley (public right-of-way).

Substantial Evidence: This condition applied pursuant to Special Use Permits #17-02 and #15-05.

**CITY OF APPLETON
RESOLUTION FOR SPECIAL USE PERMIT #2-23
TAVERN WITH OUTDOOR PATIO WITH ALCOHOL
409 WEST COLLEGE AVENUE**

WHEREAS, James Jackson, of Mr. Frogs, has applied for a Special Use Permit to expand an existing outdoor patio with alcohol sales and service associated with a tavern located at 409 West College Avenue, also identified as Parcel Number 31-3-1032-00; and

WHEREAS, the proposed outdoor patio expansion with alcohol sales and service is defined as a major change to Special Use Permits #17-02 and #15-05, a new Special Use Permit for a tavern with an outdoor patio with alcohol sales and service is required pursuant to Chapter 23 of the Municipal Code and if approved, Special Use Permit #2-23 will replace Special Use Permits #17-02 and #15-05; and

WHEREAS, the City of Appleton Plan Commission held a public hearing on April 12, 2023 on Special Use Permit #2-23, 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 #2-23 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 19, 2023.

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 #2-23 for a tavern with an outdoor patio with alcohol sales and service located at 409 West College Avenue, also identified as Parcel Number 31-3-1032-00, 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 #2-23 for a tavern with an outdoor patio with alcohol sales and service located at 409 West College Avenue, also identified as Parcel Number 31-3-1032-00, 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 #2-23:

- A. The applicant shall receive approval of a Liquor License and/or an Alcohol License Premise Amendment from the City Clerk prior to serving alcohol on the premise.
 - 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. 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.
 - F. Deliveries must continue to use the rear entrance so College Avenue traffic flow is not interrupted.
 - G. All dumpsters and/or waste containers shall be kept out of the alley (public right-of-way).
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.

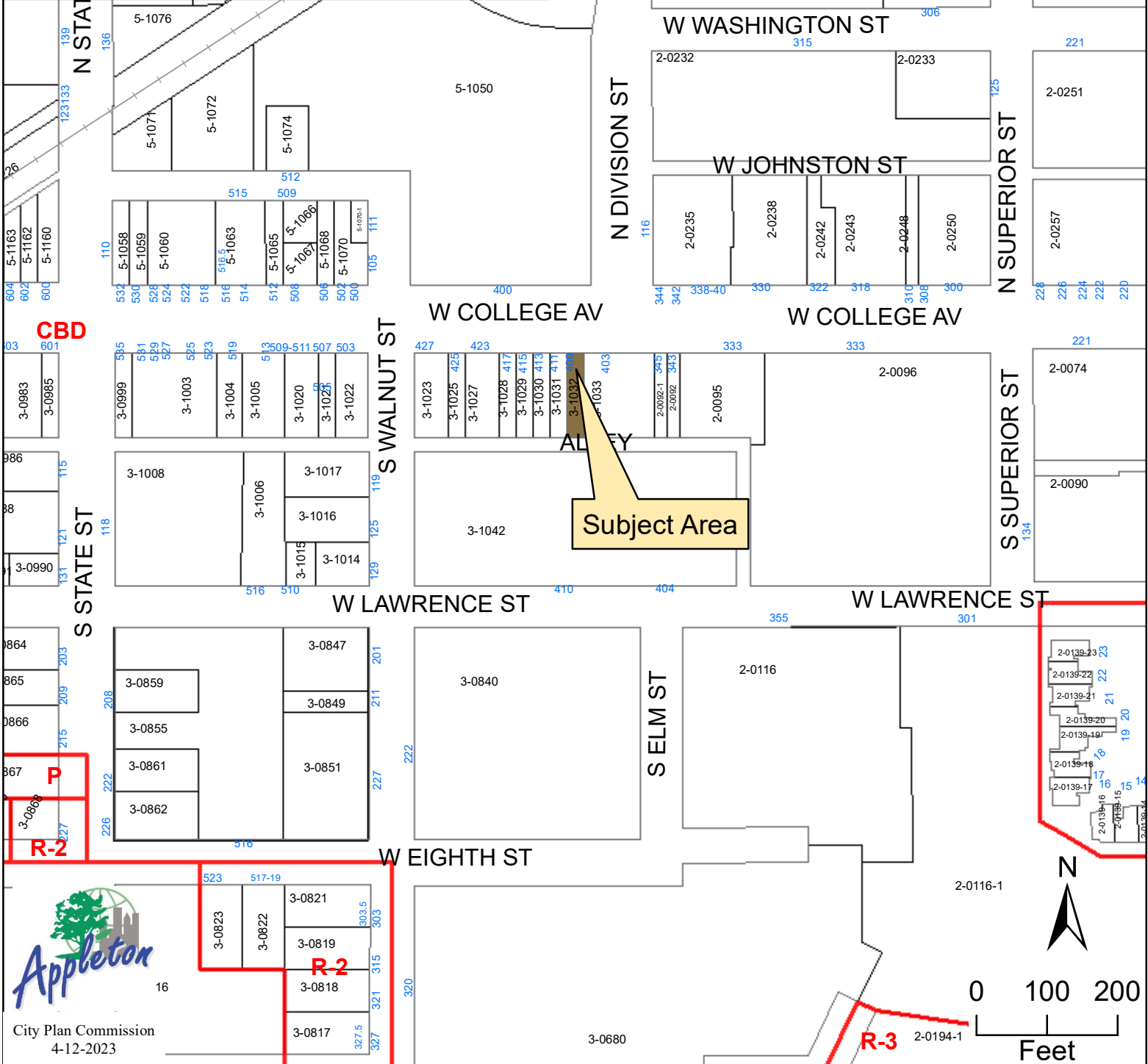
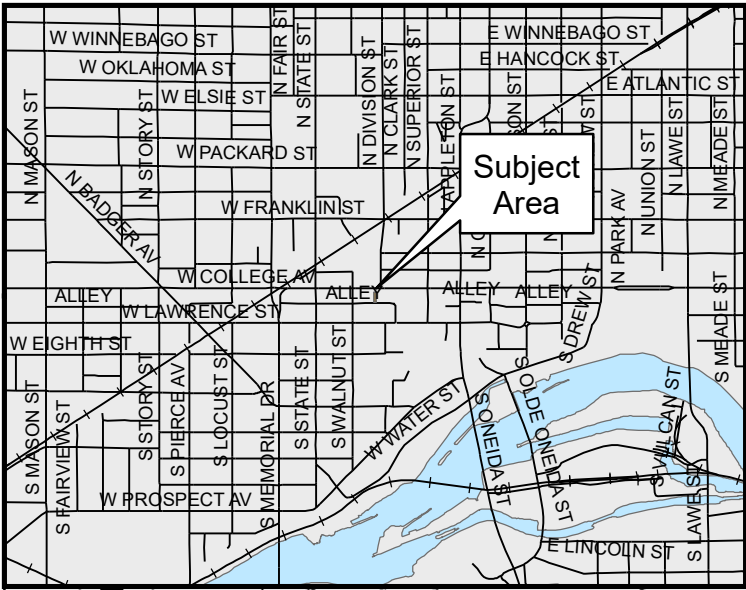
Adopted this _____ day of _____, 2023.

Jacob A. Woodford, Mayor

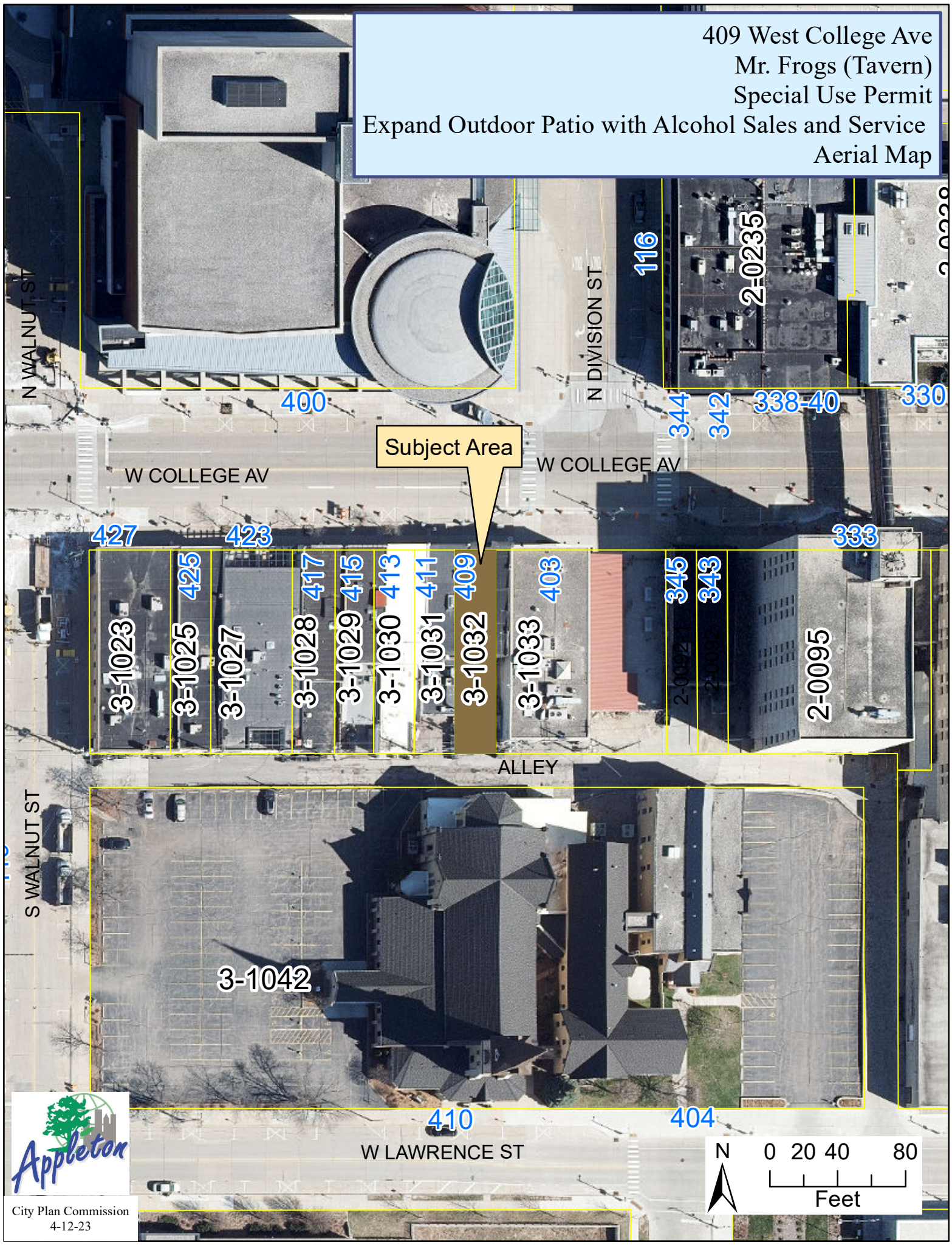
ATTEST:

Kami Lynch, City Clerk

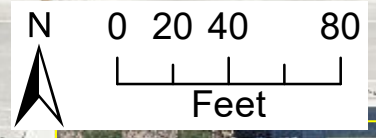
409 West College Ave
 Mr. Frogs (Tavern)
 Special Use Permit
 Expand Outdoor Patio
 with Alcohol Sales and Service
 Zoning Map



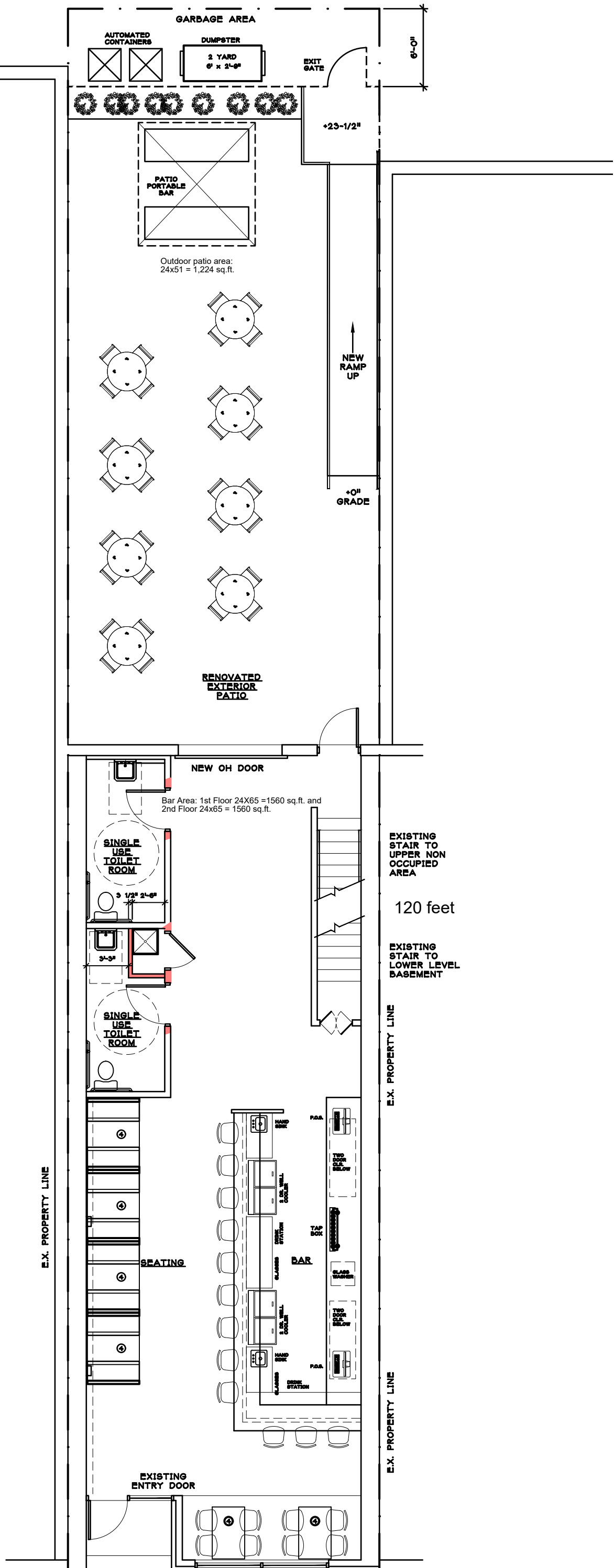
409 West College Ave
Mr. Frogs (Tavern)
Special Use Permit
Expand Outdoor Patio with Alcohol Sales and Service
Aerial Map



Subject Area



24 feet



FLOOR PLAN
 SCALE: 3/16"=1'-0" 

COLLEGE AVE

EXISTING BLDG.

STAGE
• SEATING
AREA
• LIVE
MUSIC

ROOM FOR GAMES
OR SEATING

CIRCULAR
BAR

CLOSET

EXISTING
R.R.
(ROUGH)

EXISTING
R.R.
(ROUGH)

EXIT STAIR

FIRE
ESCAPE

SECOND FLOOR PLAN (1562 G.S.F.)
SCALE: 1/4" = 1'-0"

NORTH



PLAN OF OPERATION AND LOCATIONAL INFORMATION

Business Information:

Name of business: Mr. Frogs

Years in operation: 9 months

(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 _____

Detailed explanation of proposed business activities:

Tavern

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

(square feet) 1st Floor: 1560 2nd Floor: 1562

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

(square feet) 1224

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: 80 persons.

Proposed Hours of Operation for Indoor Uses:

Day	From	To
Monday thru Thursday	7 pm	2 Am
Friday	7 pm	2 Am
Saturday	7 pm	2 Am
Sunday	7 pm	2 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 two 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 _____
- None. If none, leave the following questions in this section blank.

Size: 1224 square feet

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

Fencing Landscaping Other _____ Height 10 FT 8 feet

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

If yes, please describe:

Outdoor Patio: South side of property

Are there plans for outdoor music/entertainment? Yes No

If yes, describe how the noise will be controlled:

Staff controlled. Code Standard.

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

Proposed Hours of Operation for Outdoor Space:

Day	From	To
Monday thru Thursday	7 pm	2 Am
Friday	7 pm	2 Am
Saturday	7 pm	2 Am
Sunday	7 pm	2 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 anticipated from all equipment or other mechanical sources:

N/A

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

Staff controlled.

Off-Street Parking:

Number of spaces existing on-site: 0

Number of spaces proposed on-site: 0

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?

N/A

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:

D2, Chadwicks

Number of Employees:

Number of existing employees: 10

Number of proposed employees: 10

Number of employees scheduled to work on the largest shift: 6