



## REPORT TO CITY PLAN COMMISSION

**Plan Commission Public Hearing Date:** April 13, 2022

**Common Council Meeting Date:** April 20, 2022

**Item:** Special Use Permit #5-22 for restaurant with alcohol sales and service located at 1103 West College Avenue

**Case Manager:** Don Harp, Principal Planner

### GENERAL INFORMATION

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**Owner:** Jordan Banda – 1800 West Rogers Avenue

**Applicant:** Russell Leary – 1800 West Rogers Avenue

**Address/Parcel #:** 1103 West College Avenue (Tax Id #31-3-1064-00)

**Petitioner's Request:** The applicant is requesting a Special Use Permit for a restaurant with alcohol sales and service.

### BACKGROUND

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On December 2, 2021, the Inspections Division issued Building Permit #B21-1145 for remodeling the subject site into a restaurant with a bar area.

The Appleton Elks Lodge #337 sold the subject site to Jordan Banda (owner) pursuant to Warranty Deed Document #2230993, executed on April 16, 2021.

On May 19, 1998, Certificate of Occupancy and Compliance #98-41 was issued by the Inspections Division to allow the Appleton Elks Club to occupy the subject site for a place of entertainment.

On August 2, 1995, the Common Council approved Special Use Permit (SUP) #8-95 to permanently run with the Appleton Elks Lodge #337 for a "private club with a bar" located at 1103 West College Avenue. Note: SUP 8-95 cannot be transferred to another person/entity.

### STAFF ANALYSIS

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**Project Summary:** Mill City Public House is restaurant with alcohol sales serving lunch and dinner meals, including a bar area. In addition, take-out food orders will be offered. The business operations (dining, bar, kitchen/cooler/freezer, restroom and office areas) will utilize the ground floor of the 4,120 square foot building. The basement area is not included in this review.

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

**Outdoor Seating Area:** No outdoor alcohol sales and service is requested with this application.

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**Zoning Development Standards (Restaurant):** The review of the zoning development/off-street parking standards of the C-2 General Commercial District for the restaurant use is under the purview of the Inspections Division pursuant to Building Permit #B21-1145. Prior to the Certificate of Occupancy and Compliance being issued, the Inspections Division will ensure the remodeling project for the restaurant use complies with the Zoning Ordinance regulations.

**Zoning Ordinance Requirements (Alcohol Sales):** 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 requires a Special Use Permit in the C-2 District. In order to permit alcohol sales and service in conjunction with the proposed restaurant, 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.

**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. The adjacent land uses to the north are currently a mix of uses, including personal storage, retail and personal/professional services.

South: R-1B Single-family and R-2 Two-family district. The adjacent land uses to the south are currently one/two family residential.

East: C-2 General Commercial District. The adjacent land use to the east is professional office building.

West: C-2 General Commercial District. The adjacent land use to the west is an unoccupied commercial building.

**Appleton Comprehensive Plan 2010-2030:** Community and Economic Development staff has reviewed this proposal and determined it is compatible with the commercial 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 9.5 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.*

**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:* C-2 zoning allows restaurants with alcohol as a special use permit; 2. *zoning district regulations:* prior to the Certificate of Occupancy and Compliance being issued, the Inspections Division will ensure the remodeling project for the restaurant use complies with the Zoning Ordinance regulations pursuant to Building Permit #B21-1145; 3. *special regulations:* stipulations 1, 2, 3 and 4 (below) address the special regulations for restaurants with alcohol sales; 4. *consistent with comprehensive plan and other plans:* yes, see above analysis; 5. *Traffic ingress/egress:* the proposed use is not expected to create undue traffic congestion in the public streets, it is anticipated customers will utilize the existing driveway located on the alley to enter and exit the parking lot; 6. *landscaping and screening:* not applicable to this use. 7. *neighborhood compatibility with predominant land uses in this area:* the proposed use is located near other commercial uses in this area of 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 appeared on the March 22, 2022 TRG agenda. No negative comments were received from participating departments.

**RECOMMENDATION**

Staff recommends, based on the above, that Special Use Permit #5-22 for a restaurant with alcohol sales and service located at 1103 West College Avenue (Tax Id #31-3-1064-00), 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:

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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.*

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. 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.*

**CITY OF APPLETON  
RESOLUTION FOR SPECIAL USE PERMIT #5-22  
RESTAURANT WITH ALCOHOL  
1103 WEST COLLEGE AVENUE**

**WHEREAS**, Russell Leary, Mill City Public House, has applied for a Special Use Permit for a restaurant with alcohol sales and service located at 1103 West College Avenue, also identified as Parcel Number 31-3-1064-00; 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 April 13, 2022 on Special Use Permit #5-22, 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 #5-22 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 20, 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 #5-22 for a restaurant with alcohol sales and service located at 1103 West College Avenue, also identified as Parcel Number 31-3-1064-00, 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 #5-22 for a restaurant with alcohol sales and service at 1103 West College Avenue, also identified as Parcel Number 31-3-1064-00, 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 #5-22:**

- 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. 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.
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

## PLAN OF OPERATION AND LOCATIONAL INFORMATION

### Business information:

Name of business: Mill City Public House

Years in operation: New

(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:

Full service bar & grill style restaurant. Regular lunch and dinner service wed-Saturday. Once-per-month specialty dinner on Monday evening. Dine-in and takeout offered.

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

(square feet) 4500

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

(square feet) 4500

**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: 99 persons.

**Proposed Hours of Operation for Indoor Uses:**

Day	From	To
Monday thru Thursday <i>Wed- Thurs only</i>	11am	9pm
Friday	11am	9pm
Saturday	11am	9pm
Sunday	closed	

**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 \_\_\_\_\_

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

Size: \_\_\_\_\_ square feet

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

Fencing  Landscaping  Other \_\_\_\_\_ Height \_\_\_\_\_ feet

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

If yes, please describe:

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

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

Day	From	To
Monday thru Thursday		
Friday		
Saturday		
Sunday		

**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:

Standard HVAC, we do not anticipate any mechanical noise issues.

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

Indoor space is isolated, with no outdoor seating planned we do not anticipate noise issues.

**Off-Street Parking:**

Number of spaces existing on-site: 13

Number of spaces proposed on-site: ~~25~~ 25 \*  
\* Parking agreement with 1109 W College.

**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?

Street access is adequate.

**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: None within two blocks.

Stuc's Pizza - 110 N Douglas Street  
Pierri's Pizza - 815 W College Ave

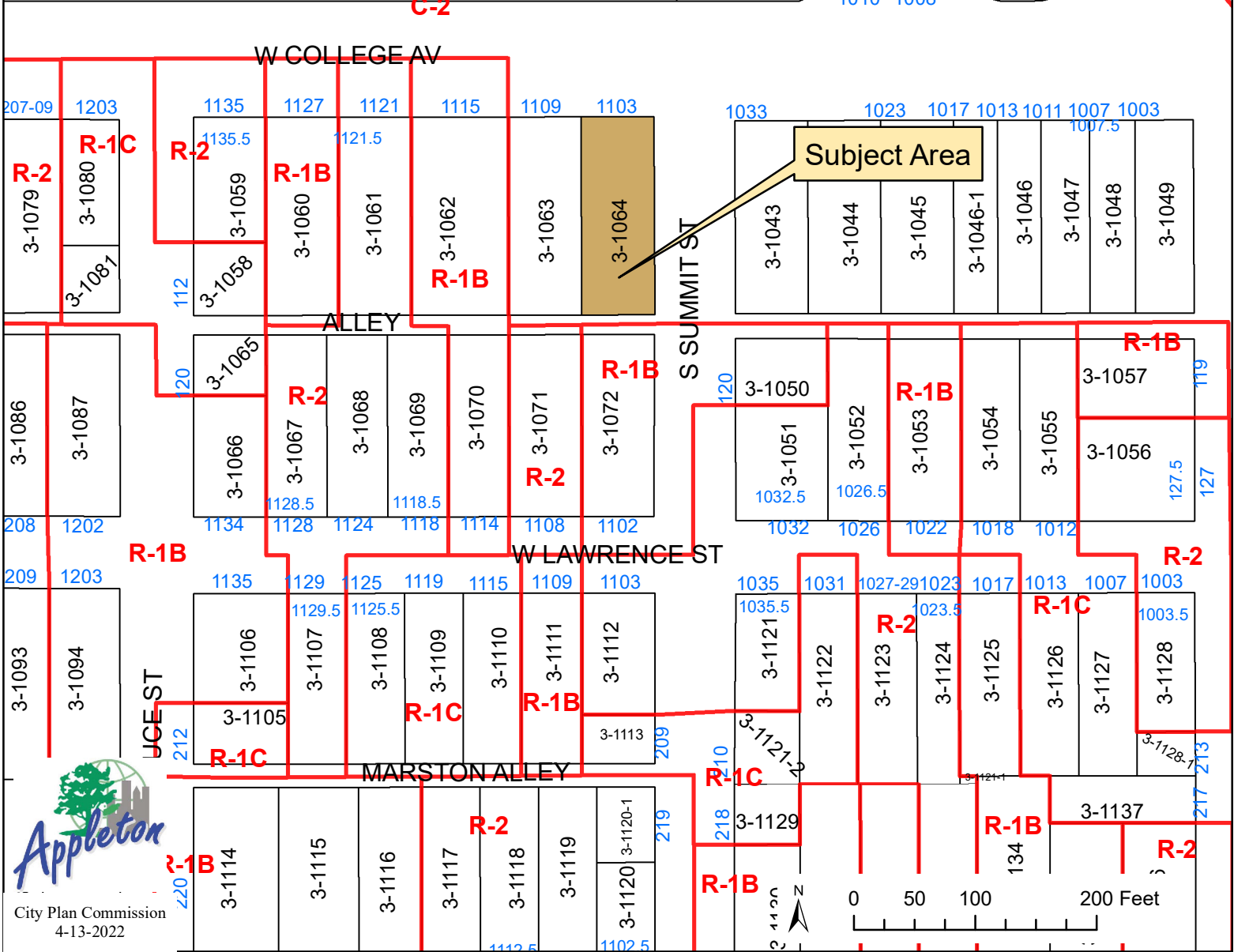
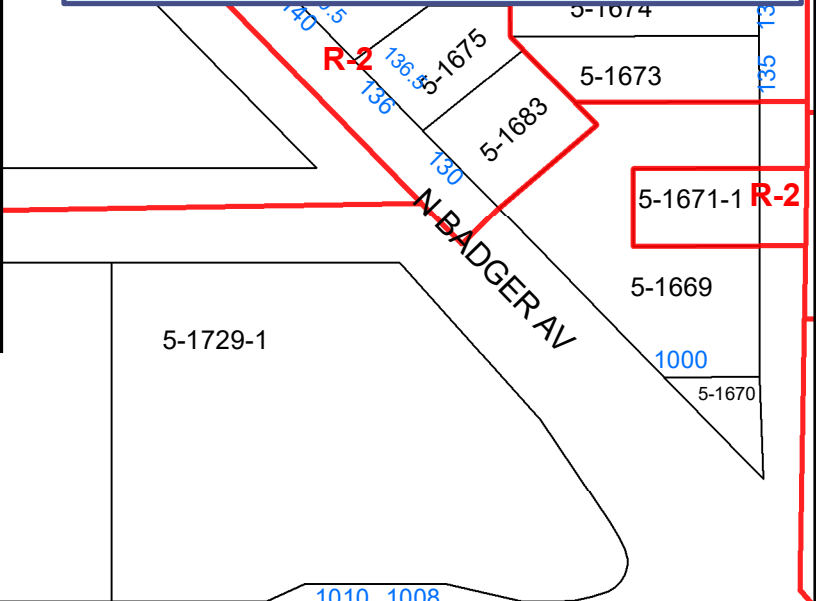
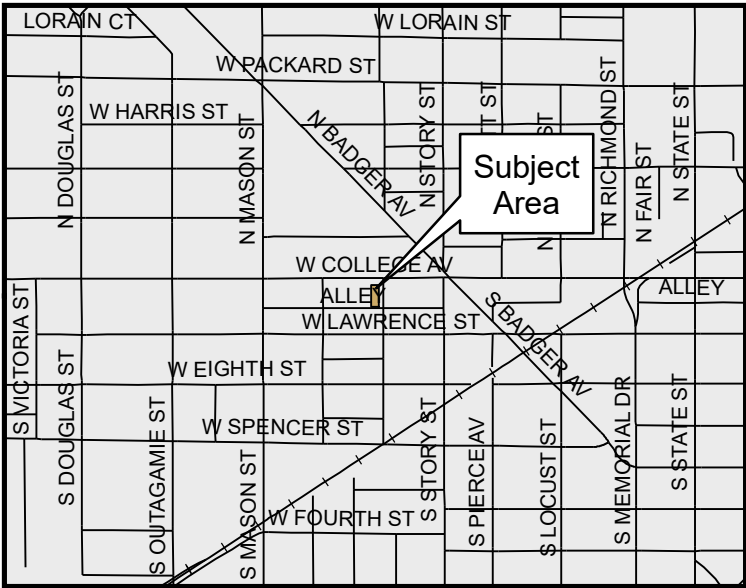
**Number of Employees:**

Number of existing employees: —

Number of proposed employees: 8

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

Special Use Permit  
 Restaurant with Alcohol sales and service  
 1103 West College Avenue  
 Zoning Map



W COLLEGE AV

Special Use Permit  
Restaurant with Alcohol sales and service  
1103 West College Avenue  
Aerial Map

1109

1103

3-1063

3-1064

Subject Area

S SUMMIT ST

ALLEY



City Plan Commission  
4-13-2022

