



REPORT TO CITY PLAN COMMISSION

Plan Commission Meeting Date: April 10, 2024

Item: Minor Amendment to Special Use Permit #12-00 for a sidewalk café with alcohol sales and service located in front of 523-525 West College Avenue within the amenity strip along West College Avenue

Case Manager: Don Harp

GENERAL INFORMATION

Owner/Applicant: Christopher Nelis, OB's Brau Haus

Address/Parcel #: 523-525 West College Avenue (Tax Id #31-3-1003-00)

Petitioner's Request: The applicant is requesting a Minor Amendment to Special Use Permit #12-00 for a sidewalk café with alcohol sales and service in front of the tenant space within the amenity strip along West College Avenue.

BACKGROUND

On September 6, 2000, the Common Council approved with conditions Special Use Permit #12-00 to expand the restaurant with alcohol sales.

In 2021, Special Use Permit #12-00 (SUP #12-00) was transferred to the applicant for the operation of a restaurant/brewpub with alcohol sales for the property located at 523-525 West College Avenue.

STAFF ANALYSIS

Project Summary: The applicant is proposing a sidewalk café with alcohol sales and service in front of the tenant space within the amenity strip along West College Avenue per attached map.

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

General Policy Statement on Beer/Liquor Licensing: An on-premises consumption alcohol license holder may serve alcoholic beverages in the sidewalk café area, also known as the amenity strip, as long as a Special Use Permit has been granted for the sidewalk café and the license has been amended to include the parameters of the sidewalk café through a premises amendment application. In addition, pursuant to Section 9-262 of the Municipal Code, the license must comply with all regulations pertaining to sidewalk cafes.

Municipal Code Requirements: The subject property has a zoning designation of CBD Central Business District. Per Section 9-262(b)(3) of the Municipal Code, a sidewalk café with alcohol sales and consumption requires a Special Use Permit or, in this case, an amendment to the current Special Use Permit.

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

(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 ten (10) percent.

The proposed 236.5 square foot sidewalk café area constitutes less than 10% expansion.

- 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 #12-00, as the subject site will continue to be used for a restaurant /brewpub with alcohol sales and consumption.

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

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 institutional in nature.

North: CBD Central Business District. The adjacent land uses to the north are currently a mix of commercial uses and residential uses (second floor apartments).

South: CBD Central Business District. The adjacent land use to the south is a bank (Wells Fargo).

East: CBD Central Business District. The adjacent land use to the east is a cocktail lounge (Deja Vue).

West: CBD Central Business District. The adjacent land use to the west is a restaurant with alcohol sales (Sushi Lover).

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.

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.

According to the applicant's proposed development plan and plan of operation, the proposed sidewalk café with alcohol sales and service will be operated in accordance with Section 9-262(b) of the Municipal Code. The proposed sidewalk café with alcohol sales and service does not appear to be incompatible with the neighborhood character or inconsistent with purpose and intent of Central Business Zoning District or the 2010-2030 Comprehensive Plan. Conditions are drafted for this request to offset any potential impacts to the public interest (welfare or well-being of the general public).

Technical Review Group (TRG) Report: This item was placed on the April 2, 2024 Technical Review Group Agenda for discussion. 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.

RECOMMENDATION

Staff recommends, based on the above, that Minor Amendment to Special Use Permit #12-00 for a sidewalk café with alcohol sales and service in front of 523-525 West College Avenue (Tax Id #31-3-1003-00) within the amenity strip along West College Avenue, 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. All applicable codes, ordinances, and regulations, including but not limited to Fire, Building, and Health Codes and the Noise Ordinance, 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.
2. 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.
3. Compliance with the plan of operation is required at all times. Changes to the plan of operation shall be submitted to the Community and Economic Development Department for review and approval.
 - **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.
4. Any deviations from the approved Development Plan may require a major or minor amendment request to this Special Use Permit pursuant to Section 23-66(g) of the Zoning Ordinance.
 - **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.
5. The use of the College Avenue amenity strip for the operation of a sidewalk café with alcohol sales and service shall conform to the standards established in Chapter 9, Article III, Alcoholic Beverages and Sidewalk Cafes 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.

CITY OF APPLETON
RESOLUTION FOR MINOR AMENDMENT TO SPECIAL USE PERMIT #12-00
OB'S BRAU HAUS
523-525 WEST COLLEGE AVENUE

WHEREAS, On September 6, 2000, the Common Council approved Special Use Permit #12-00 to expand the existing restaurant with alcohol sales (Old Bavarian Restaurant) located at 523 West College Avenue by occupying 525 West College Avenue, the adjoining building on the west side; also identified as Parcel Number 31-3-1003-00; and

WHEREAS, in 2021, Special Use Permit #12-00 was transferred to Christopher Nelis, owner of OB's Brau Haus restaurant/nightclub, who has applied for a Minor Amendment to Special Use Permit #12-00 for a proposed sidewalk café with alcohol sales and service located within the College Avenue amenity strip in front of 523-525 West College Avenue, also identified as Parcel Number 31-3-1003-00; and

WHEREAS, the City of Appleton Plan Commission held a public meeting on April 10, 2024 on the Minor Amendment to Special Use Permit #12-00 at which all those wishing to be heard were allowed to speak or present written comments and other materials; 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 #12-00 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 #12-00 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 #12-00, 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 #12-00 for a sidewalk café with alcohol sales and service adjacent to 523-525 West College Avenue, also identified as Parcel Number 31-3-1003-00, within the amenity strip along West College Avenue based upon the following standards and determinations: (List reason(s) why the Minor Amendment to Special Use Permit #12-00 was denied)

3. If YES, the City of Appleton Plan Commission hereby approves the Minor Amendment to Special Use Permit #12-00 for a sidewalk café with alcohol sales and service adjacent to 523-525 West College Avenue, also identified as Parcel Number 31-3-1003-00, within the amenity strip along West College Avenue 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 #12-00

1. All applicable codes, ordinances, and regulations, including but not limited to Fire, Building, and Health Codes and the Noise Ordinance, shall be complied with.
2. The premises shall be kept free of litter and debris.
3. Compliance with the plan of operation is required at all times. Changes to the plan of operation shall be submitted to the Community and Economic Development Department for review and approval.
4. Any deviations from the approved Development Plan may require a major or minor amendment request to this Special Use Permit pursuant to Section 23-66(g) of the Zoning Ordinance.
5. The use of the College Avenue amenity strip for the operation of a sidewalk café with alcohol sales and service shall conform to the standards established in Chapter 9, Article III, Alcoholic Beverages and Sidewalk Cafes of the Municipal Code.

*Note: The above-referenced conditions replace the original conditions of Special Use Permit #12-00.

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 _____, 2024.

Jacob A. Woodford, Mayor

ATTEST:

Kami Lynch, City Clerk

PLAN OF OPERATION AND LOCATIONAL INFORMATION

Business Information:

Name of business: OB'S BRAU HAUS

Years in operation: ≈ 25 years

(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:

CURRENTLY A RESTAURANT W/ FULL BAR AND DINNER SERVICE. AFTER 10 PM WE ~~FEED~~ OPEN AS A BAR ONLY.

I'M SUBMITTING THIS APPLICATION TO ADD TO MY EXISTING LIQUOR LICENCE DESCRIBED PREMESIS TO ADD OUTDOOR CAFE WITH ALCOHOL SALES & SERVICE

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

PROPOSED CHANGES INCLUDE ADDING A OUTDOOR CAFE W/ BEER AND ALCOHOL SALES WITH FOOD OUTDOORS AT PICNIC TABLES DURING RESTAURANT HOURS.

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

(square feet) 5942.50 5760.00

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

(square feet) 5942.50

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: 2200 ³⁰⁰ persons.

Proposed Hours of Operation for Indoor Uses:

Day	From	To
Monday thru Thursday	4pm	2am
Friday	4pm	2:30am
Saturday	4pm	2:30am
Sunday	usually closed	

(NORMAL
BAR
HOURS)

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: 182.5 square feet

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

☐ Fencing ☐ Landscaping ☒ Other NONE Height _____ feet

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

If yes, please describe:

BEER, WINE, LIQUOR

Are there plans for outdoor music/entertainment? Yes ____ No X

If yes, describe how the noise will be controlled:

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

Proposed Hours of Operation for Outdoor Space:

Day	From	To
Monday thru Thursday	4pm	9:30pm
Friday	4pm	9:30 pm
Saturday	4pm	9:30 pm
Sunday	usually closed	

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:

DON'T EXPECT ANY NOISE AS THE CUSTOMERS WILL BE DINING AT THE TABLES.

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

PEOPLE WILL BE DINING SO THERE WON'T BE ANY EXPECTED OR ANTICIPATED NOISE ARISING FROM THE CAFE

Off-Street Parking:

Number of spaces existing on-site: 0 (PARKING AVAILABLE ON COLLEGE OR RAMP)

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?

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:

APPLE PUB, C-VINE, DEJA VU LOUNGE

Number of Employees:

Number of existing employees: ~ 12

Number of proposed employees: ~ 12

Number of employees scheduled to work on the largest shift: ~ 12

Minor Amendment to Special Use Permit #12-00
Sidewalk Cafe with Alcohol Sales and Service
OB'S Brau Haus
523-25 West College Avenue



