

M E M O R A N D U M

To: City of Whitewater Plan and Architectural Review Commission

From: Chris Bennett, Director of Neighborhood Services

Date: March 13, 2022

Re: **Item # 4:** Public hearing regarding consideration of a Conditional Use Permit for a proposed Outdoor Café/Beer Garden at 156 W Whitewater Street, Parcel #/OT 00129 for Steve O’s LLC (Stephen Fairchild).

Summary of Request	
Requested Approvals:	Conditional Use Permit (CUP) for an outdoor café and beer garden
Location:	156 W. Whitewater St. 804 W. Walworth Avenue (Tax Key:/OT 00129)
Current Land Use:	Tavern/restaurant
Proposed Land Use:	Tavern/restaurant
Current Zoning:	B-2 Central Business District
Proposed Zoning:	Same
Future Land Use, Comprehensive Plan:	Central Business

Description of the Proposal:

Stephen Fairchild owns SteveO’s Flip Flops and Tank Tops, which is a tavern and restaurant at 156 W. Whitewater St., City of Whitewater. Fairchild submitted a CUP application to construct an outdoor café/beer garden in the parking lot to the east of the building on land he owns. The CUP is needed because Fairchild is expanding the existing use of the establishment.

Fairchild submitted detailed plans regarding his new outdoor area. Fairchild intends to use a space 24 feet by 40 feet in size to the east of the building for the new beer garden. Fairchild said he will increase staffing by a server and a doorman for the outside area. The area is to be contained with a decorative metal fence that contains two points of access. Renderings of the fence and furniture from Fairchild are included.

The “Class B” beer and liquor license allotted to Fairchild allows for service from 7 a.m. to 2 p.m. SteveO’s is open from 11 a.m. to 12 p.m. each day, with food served from 11 a.m. to 9 p.m. Fairchild said actual hours are closer to 9-10 p.m. for a time to close, but the extra time allows for parties and other gatherings that might run later.

The sidewalk in front of the establishment will need to be used to access the outdoor café until Fairchild builds an entry directly from the bar. Fairchild will need to apply for and secure a sidewalk café permit from

the city to facilitate access.

Noise on site must follow the guidelines in city ordinances. Any bands that play outside must do so without the aid of amplification equipment, and must follow the city's guidelines of a maximum sound level of 85 decibels with an equivalent continuous sound level of 75 decibels for one minute from 7 a.m. to 10 p.m. and a maximum sound level of 75 decibels with an equivalent continuous sound level of 60 decibels for one minute from 10 p.m. to 7 a.m.

Ample parking is available both on the street and in nearby municipal lots. Fairchild said parking for his vehicle and for the apartment above the establishment will not be affected. Per 19.51.160 minimum parking requirements are waived in the B-2 Central Business District.

Any signage is to be in accordance with the city's sign ordinance, which is 19.54.

Lighting must comply with 19.57 – General Performance Standards, and not be a nuisance to surrounding properties or businesses. Residences on the first floor in this zoning district are permitted only by CUP, and excess light is not expected to be a concern.

PLANNER'S RECOMMENDATIONS

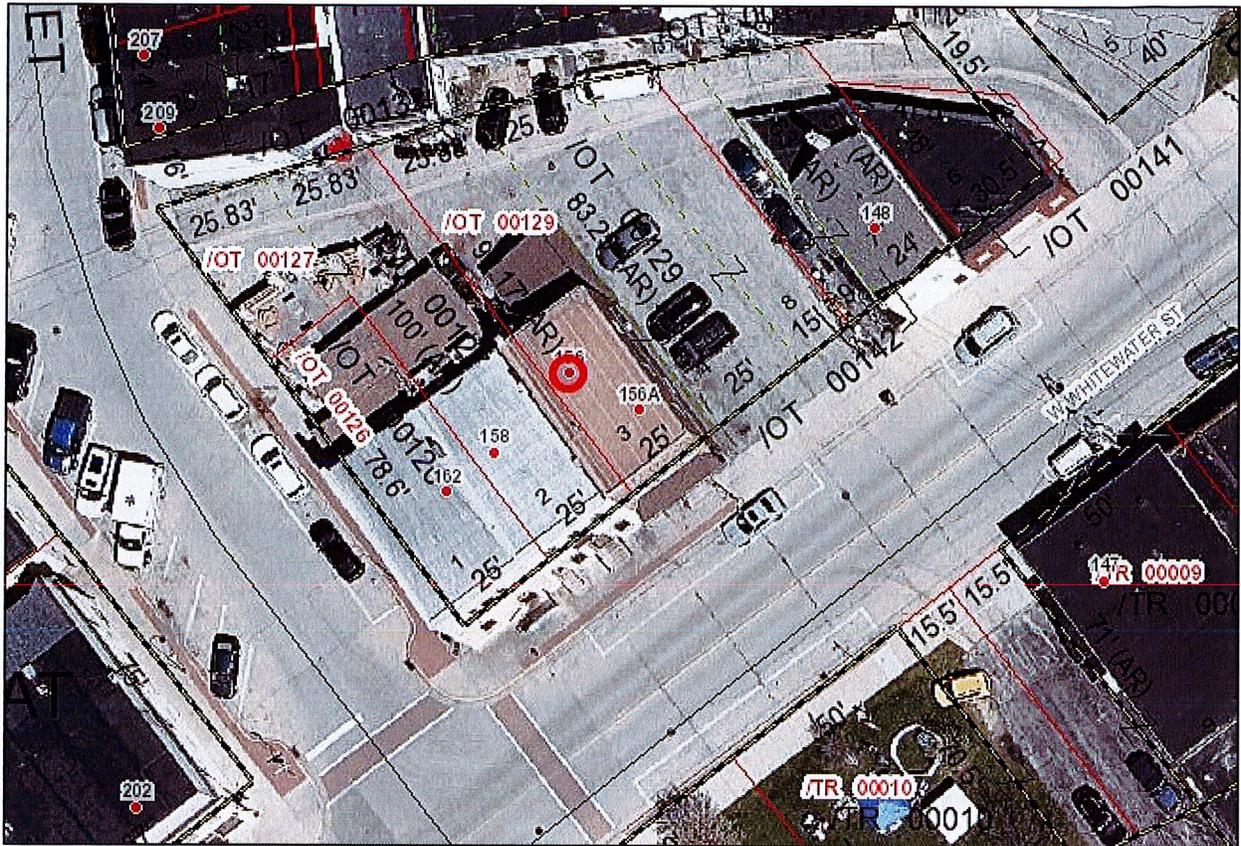
The city recommends the Plan and Architectural Review Commission approve Fairchild's Conditional Use Permit application, subject to the following conditions:

1. The conditional use permit shall run with the business owner and not the land. Any change in business ownership will first require approval of a conditional use permit amendment.
2. No alcohol is to be served outside the hours provided for by statute per the Class B beer and liquor license.
3. Alcohol is not to be carried or served outside unless the applicant applies for and receives a sidewalk café permit. Alcohol may be served until the establishment closes in the evening, or until bar time, whichever is earlier.
4. Applicant must follow all requirements in city ordinance 5.18 – Outdoor Private Property Café Permit and work with Neighborhood Services staff to secure a sidewalk cafe permit.
5. The property shall comply at all times with the city's noise and occupancy ordinances, and may be inspected by the city at any time to ensure such compliance.
6. Enough receptacles to contain the trash generated by the outdoor café shall be available.
7. Applicant will modify alcohol license to accommodate outdoor service of alcohol, if not already done.
8. Any additional conditions added by the PARC.

SUGGESTED FINDINGS TO BE MADE BY THE PLAN COMMISSION

Conditional Use Permits are required to be reviewed in relation to a set of standard criteria presented in the Zoning Ordinance (Section 19.66.050). See the following page for suggested findings:

Analysis of Proposed Conditional Use Permit for: 156 W. Whitewater St. (Tax Key:/OT 00129)		
<i>Conditional Use Permit Review Standards per Section 19.66.050:</i>		
STANDARD	EVALUATION	COMMENTS
1. The establishment, maintenance, or operation of the conditional use will not create a nuisance for neighboring uses or substantially reduce the values of property.	Yes	All regulations are complied with or will be. No concern from the city.
2. Adequate utilities, access roads, parking, drainage, landscaping, and other necessary site improvements are being provided.	Yes	All regulations are complied with or will be. No concern from the city.
3. The conditional use conforms to all applicable regulations of the district in which it is located, unless otherwise specifically exempted in this ordinance or through variance.	Yes	All regulations are complied with or will be. No concern from the city.
4. The conditional use conforms to the purpose and intent of the city master (comprehensive) plan.	Yes	All regulations are complied with or will be. No concern from the city.
5. The conditional use and structures are consistent with sound planning and zoning principles.	Yes	All regulations are complied with or will be. No concern from the city.





Neighborhood Services
Department
*Planning, Zoning, Code
Enforcement, GIS
and Building Inspection*
www.whitewater-wi.gov
Telephone: (262) 473-0540

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

A meeting of the PLAN AND ARCHITECTURAL REVIEW COMMISSION of the City of Whitewater will be held at the Municipal Building, Community Room, located at 312 W. Whitewater Street on the 13th day of March, 2023 at 6:00 p.m. to hold a public hearing regarding consideration of a Conditional Use Permit for a proposed Outdoor Café/Beer Garden located at 156 W Whitewater Street, Parcel #/OT 00129 for Steve O's LLC (Stephen Fairchild).

The Conditional Use Proposal is on file in the Neighborhood Services Office located at 312 W. Whitewater Street and is open to public inspection during office hours Monday through Friday, 8:00 a.m. to 4:30 p.m.

This meeting is open to the public. COMMENTS FOR, OR AGAINST THE PROPOSED PROJECT MAY BE SUBMITTED IN PERSON OR IN WRITING.

For information, call (262) 473-0540

Chris Bennett, Neighborhood Services Director



Neighborhood Services Department
Planning, Zoning, GIS, Code Enforcement
and Building Inspections

www.whitewater-wi.gov
(262) 473-0143

CONDITIONAL USE PERMIT APPLICATION

Address of Property: 156 West Whitewater St
Owner's Name: Stephen W Fairchild
Applicant's Name: Stephen W Fairchild Steve Os LLC
Mailing Address: 156 West Whitewater St.
Phone #: 262-275-2813 Email: steveofairchild@hotmail.com
Legal Description (Name of Subdivision, Block and Lot of other Legal Descriptions): Parcel # 107 00129
Lots 3 & 4 BLK 13 & WLY 15 Lot 8 sub of Lot 9 Blk 13

Existing and Proposed Uses:

Current Use of Property: Bar & Grill, parking lot
Zoning District: B-2
Proposed Use: Bar & Grill, outdoor cafe / "beer garden"

NOTICE: The Plan Commission meetings are scheduled on the 2nd Monday of the month. All complete plans must be in by 4:00 p.m. four weeks prior to the meeting.

Conditions

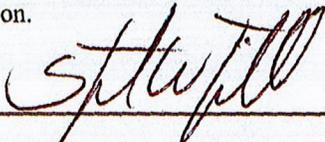
The City of Whitewater Zoning Ordinance authorizes the Plan Commission to place conditions on approved conditional uses. "Conditions" such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, plantation, deed restrictions, highway access restrictions, increased yards or parking requirements may be affected. "Conditional Uses" may be subject to time limits or requirements for periodic review by staff.

STANDARDS FOR REVIEW AND APPROVAL

The Plan and Architectural Commission shall use the following standards when reviewing applications for conditional uses. The applicant is required to fill out the following items and explain how the proposed conditional use will meet the standard for approval.

STANDARD	APPLICANT'S EXPLANATION
<p>A. That the establishment, maintenance, or operation of the Conditional Use will not create a nuisance for neighboring uses or substantially reduce value of other property.</p>	<p>Although applying for hours of operation in accordance with state laws, my actual hours of operation will not be later night, rather only open until dark or no later than 9:00 p.m.</p>
<p>B. That utilities, access roads, parking, drainage, landscaping, and other necessary site improvements are being provided.</p>	<p>I have no plans to change the current ground or infrastructure other than putting up a fence.</p>
<p>C. That the conditional use conforms to all applicable regulations of the district in which it is located, unless otherwise specifically exempted by this ordinance.</p>	<p>I will/am providing all necessary information on all applications to conform with the city regulations</p>
<p>D. That the conditional use conforms to the purpose and intent of the city Master Plan.</p>	

**Refer to Chapter 19.66 of the City of Whitewater Municipal Code, entitled CONDITIONAL USES, for more information.

Applicant's Signature: 

Date: 2/13/2023

Printed: Stephen W Fairchild

Cost Recovery Certificate and Agreement

The City may retain the services of professional consultants (including planners, engineers, architects, attorneys, environmental specialists, and recreation specialists) to assist in the City's review of an application for development review coming before the Plan and Architectural Review Commission, Board of Zoning Appeals, and/or Common Council. In fact, most applications require some level of review by the City's planning consultant. City of Whitewater staff shall retain sole discretion in determining when and to what extent it is necessary to involve a professional consultant in the review of an application.

The submittal of an application or petition for development review by an applicant shall be construed as an agreement to pay for such professional review services associated with the application or petition. The City may apply the charges for these services to the applicant and/or property owner in accordance with this agreement. The City may delay acceptance of an application or petition (considering it incomplete), or may delay final action or approval of the associated proposal, until the applicant pays such fees or the specified percentage thereof. Development review fees that are assigned to the applicant, but that are not actually paid, may then be imposed by the City as a special charge on the affected property.

Section A: Background Information

----- To be filled out by the Applicant/Property Owner -----

Name of Applicant: Stephen W Fairchild

Applicant's Mailing Address: 126 West Center St
Whitewater WI 53190

Applicant's Phone Number: 262-275-2813

Applicant's Email Address: steveofairchild@hotmail.com

Project Information:

Name/Description of Development: Outdoor Cafe

Address of Development Site: 156 West Whitewater St

Tax Key Number(s) of Site: LOT 00129

Property Owner Information (if different from applicant):

Name of Property Owner: _____

Property Owner's Mailing Address: _____

STATEMENT OF USE

I intend to use a portion of my current parking lot as an enclosed (fence) outdoor café where I can serve food & drink. The area would be 24' wide x 40' long.

I currently have a bar & grill with a license from 7:00a.m. until 2:00 a.m. Sunday through Saturday with the city of Whitewater.

I have one person per shift or two in the event of the need of a door man.

1st shift - 11:00a.m. -5:00p.m.

2nd shift - 5:00p.m. until close. (typically, 10:00p.m.)

With the addition of the café, I would have a server & a doorman as well as the inside bartender, the same for each shift.

I intend to apply for food & drink service in the outdoor café from 7:00a.m. until 2:00 a.m. along with my current license with actual regular hours being 11:00a.m. until dark or no later than 9:00p.m.

- I am applying for the extended hours in the event of a special occasion to start early or end later within accordance of WI State laws of hours of operation.

I also intend to have live music in the form of small groups to perform outside within the time frame of my intended hours no later than 9:00p.m. unless for a special occasion. No large bands or large sound systems to create a disturbance.

There will be two pedestrian gates, one in front & one behind the café, for entrance/exit and garbage removal.

I would like to use the sidewalk from my bar entrance to the front gate for egress to the café until I am able to put a door in the bar for an indoor entrance. (see rendering)

The space would maintain parking for myself and two tenants for the apartment above my bar. (see ariel view photo).

There would be seating with 4-5 tables and chairs/stools. (see photos)

The fence surrounding the café would match what the city has along the railroad tracks in style, color, and height with brick or stone pillars as in the rendering. The pillars would be 2' x 2' square, no higher than 6'.

- o Description of items to be placed outside (standards are on next page)
- o Copy of a current certificate of commercial liability insurance in the amount of at least \$100,000 per occurrence. Original Certificate of Comprehensive General Liability Insurance for at least \$100,000 which names the City of Whitewater as additional insured and covered area includes the sidewalk cafe
- o A copy of applicable valid Wisconsin Seller's Permit
- o A copy of applicable valid Alcohol Beverage License (only if alcohol is to be served)

BASIC INFORMATION

****WILL YOU BE SERVING ALCOHOLIC BEVERAGES?**

Yes No

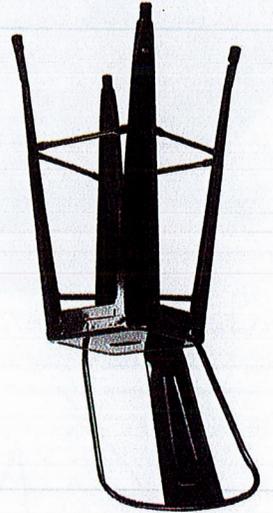
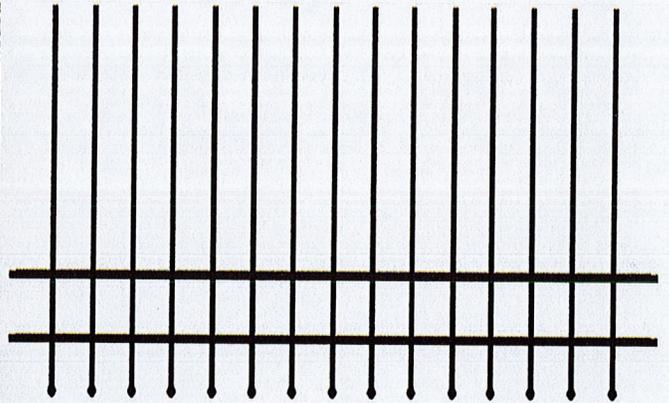
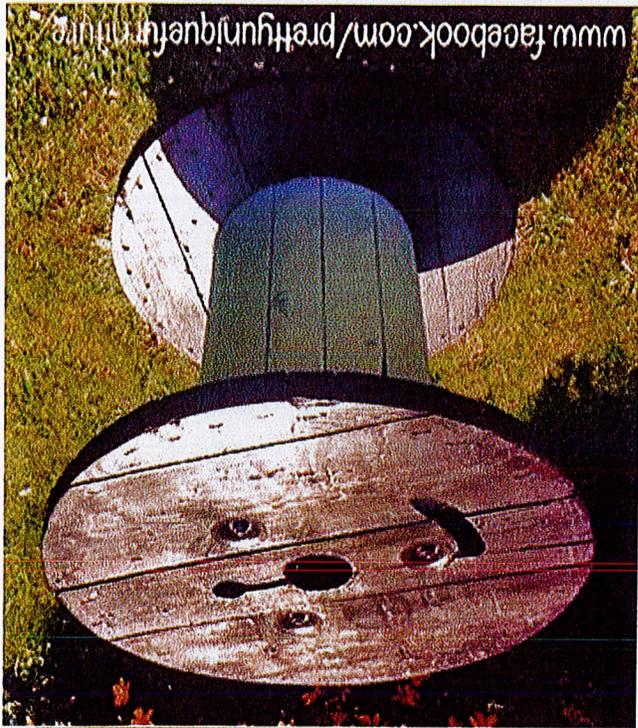
***If you answered "Yes" you will have to change your Alcohol Beverage License to include the sidewalk cafe. Please contact the City Clerk to make the necessary arrangements before Alcoholic Beverages can be sold.*

SITE PLAN LAYOUT SPECIFICATIONS

- Must be to Drawn Neatly with Straight Lines and all items Labeled with sizes
- Must be on 8-1/2" X 11" paper
- Must depict existing sidewalk area and adjacent private property
- Must depict proposed sidewalk cafe with placement of:
 - o chairs
 - o tables
 - o planters
 - o umbrellas
 - o other items to be placed in sidewalk cafe
- Must depict existing trees, doorways, steps, parking meters, sidewalk benches, trash receptacles, light poles and any other sidewalk obstructions
- Must show 4 feet of unobstructed sidewalk for public use

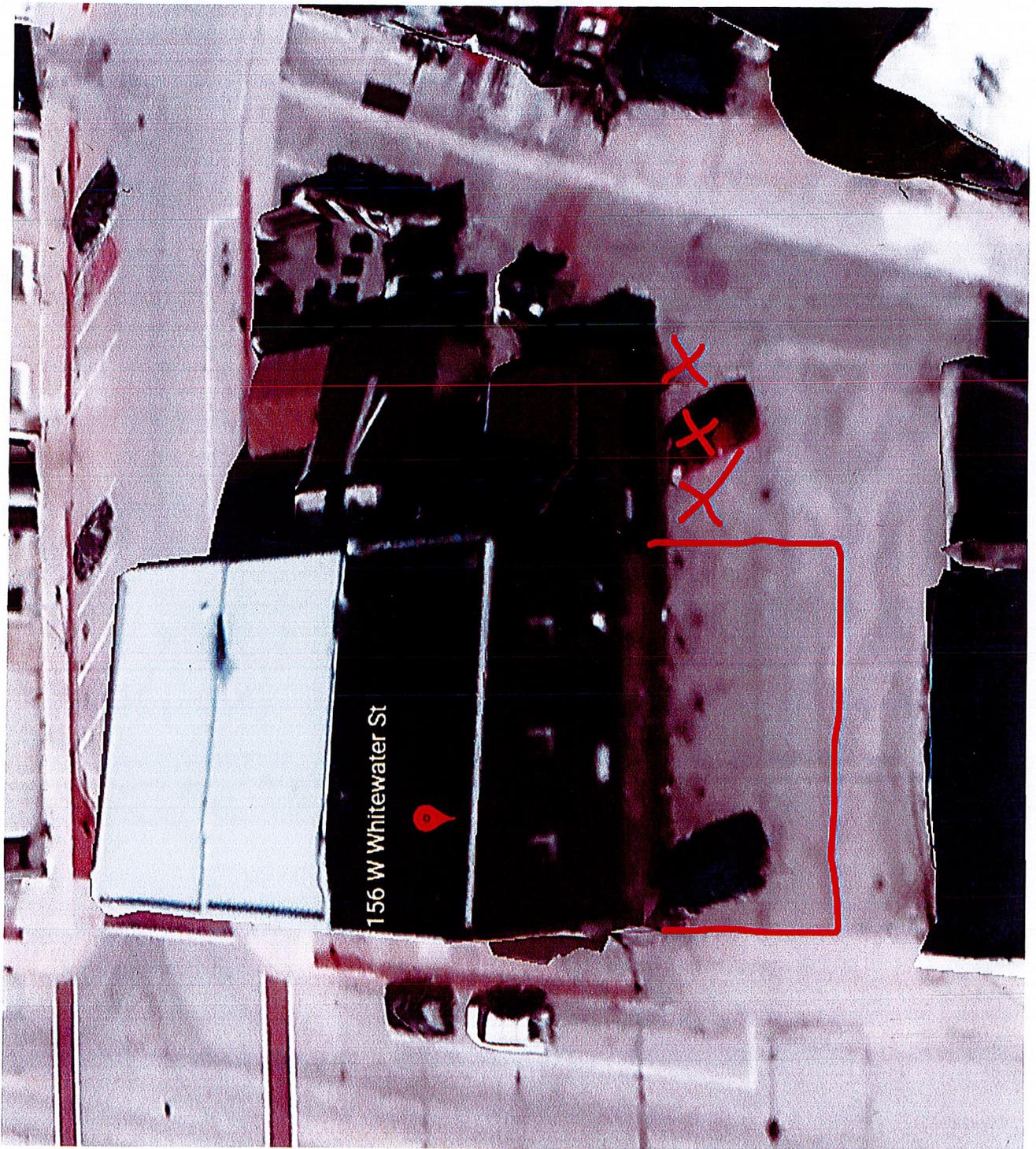
DESCRIPTION OF PLACED ITEMS OUTSIDE

- Must have picture or description of all proposed
 - o tables
 - o chairs
 - o umbrellas
 - o barriers (fencing, planters)
 - o all other objects to be placed on sidewalk
- Description or picture must be accompanied by dimensions



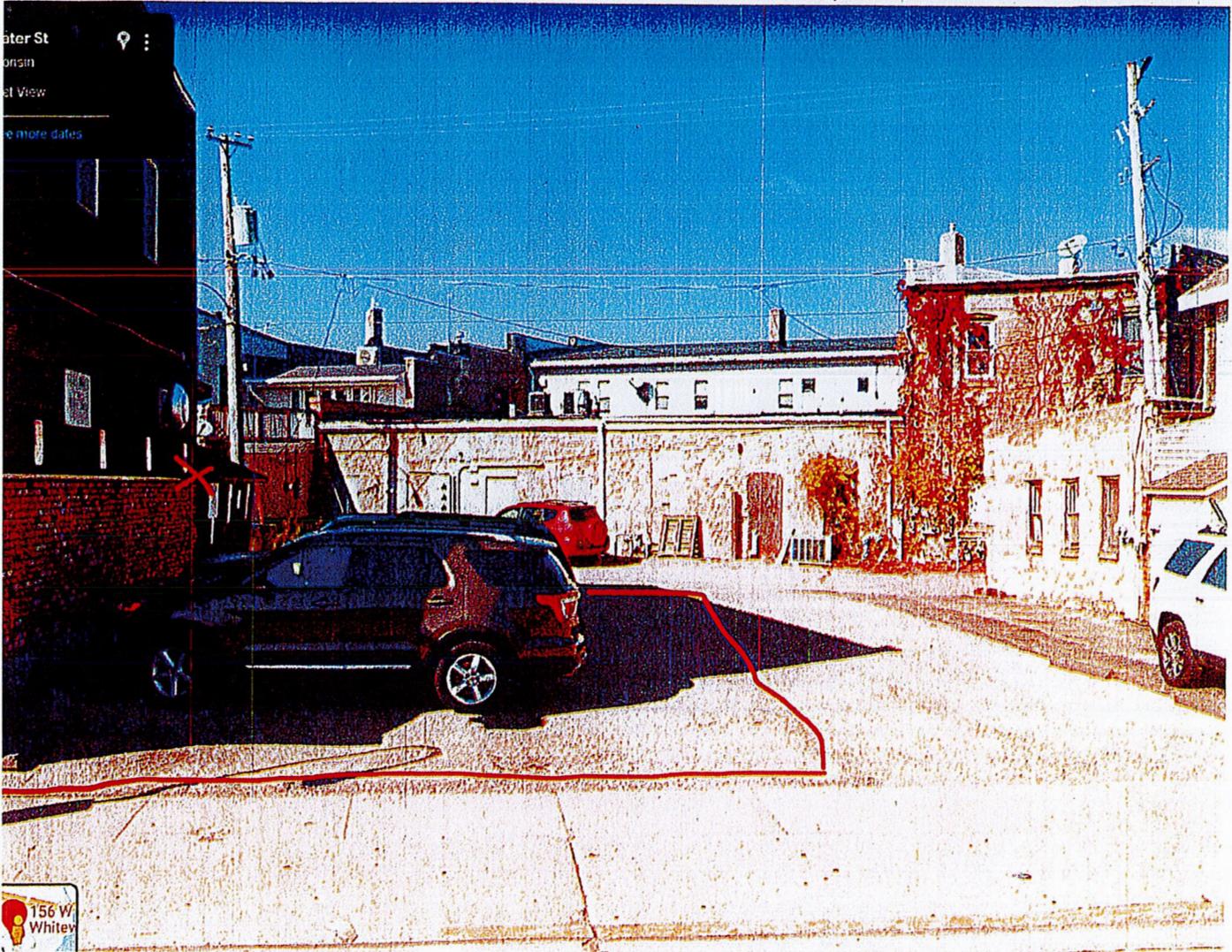
TOP
Cake & Parking

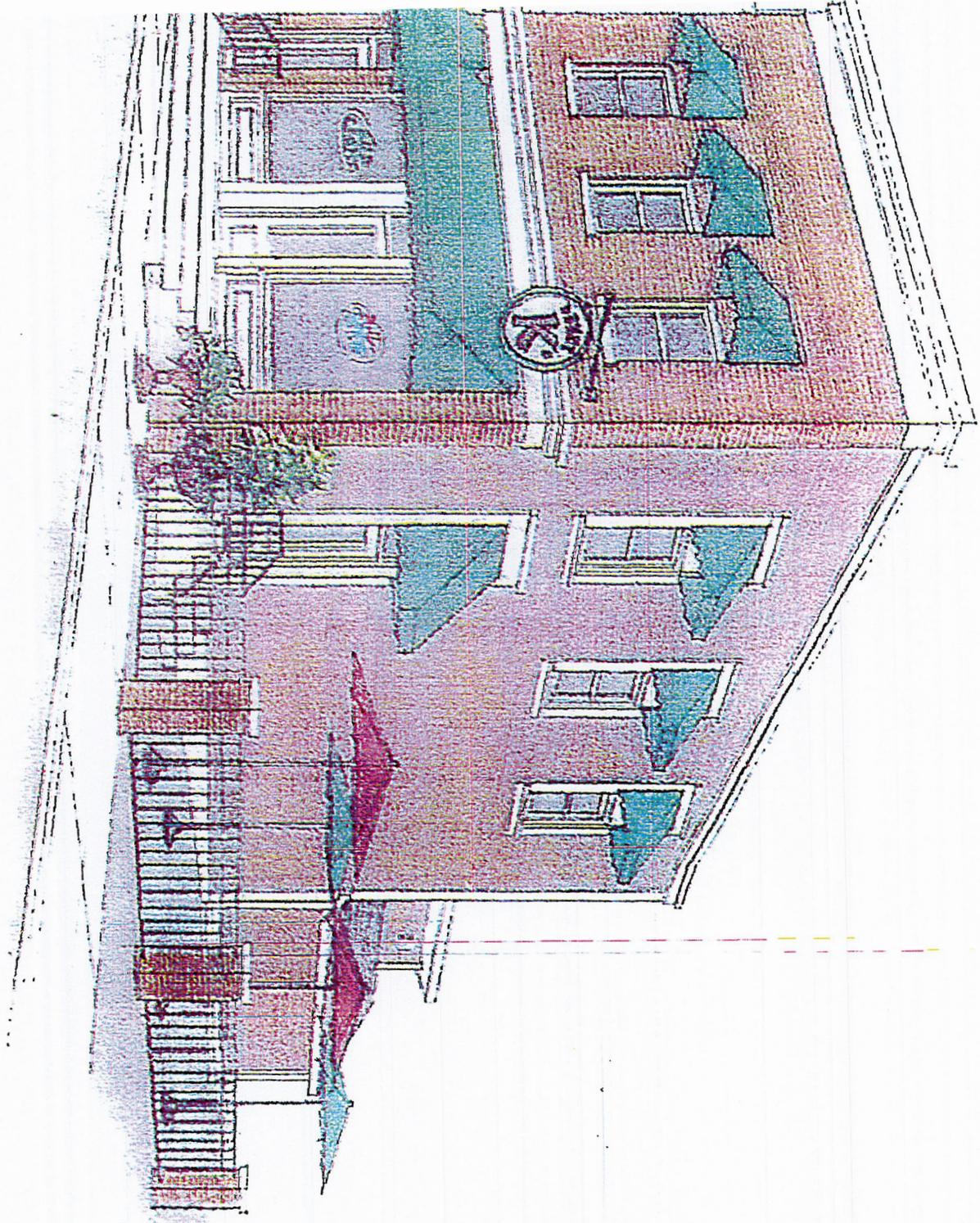
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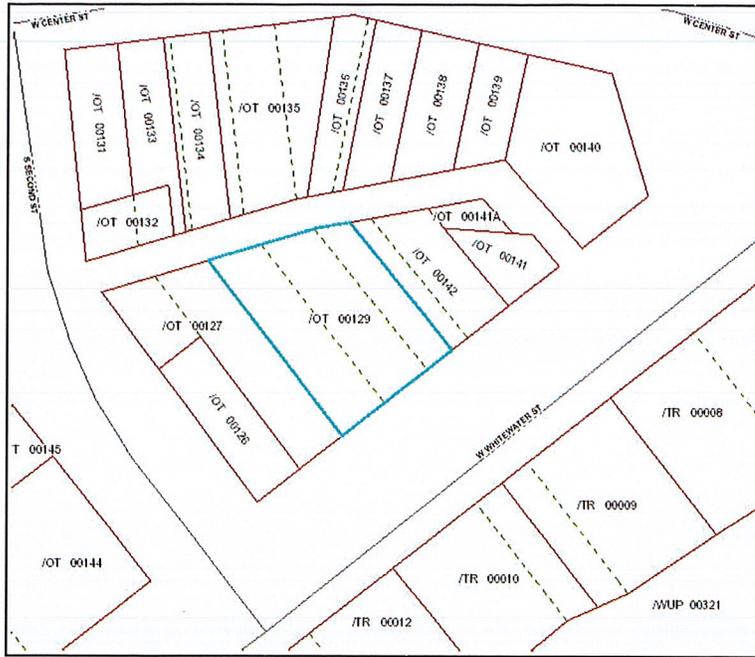


156 W Whitewater St

7' N







Walworth County, WI Land Information Division

Property Details

Municipality: CITY OF WHITEWATER
 Parcel Number: /OT 00129
 School District: 6461-WHITEWATER UNIFIED SCHOOL DISTRICT
 Zoning District:

Owner Information

Owner Name: STEVE O'S LLC
 Owner Name 2:
 Mailing Address: 156 W WHITEWATER ST
 WHITEWATER WI, 53190

2022 Valuation Information

Land: \$38,800.00
 Improvements: \$226,200.00
 Total: \$265,000.00
 Acres: 0.1400
 Fair Market Value: \$276,700.00
 Assessment Ratio: 0.9577422900
 Mill Rate: 0.0182041150

Tax Information

First Dollar Credit: \$74.47
 Special Assessment: \$0.00
 Delinquent Utility Charge: \$0.00
 Managed Forest Land Taxes: \$0.00
 Total Billed: \$4,749.61
 Net Tax \$4,749.61
 School Credit: \$441.66
 Lottery Credit: \$0.00
 Special Charges: \$0.00
 Private Forest Crop Taxes: \$0.00
 Woodland Tax Law Taxes: \$0.00

Tax Jurisdictions

WHITEWATER UNIFIED SCHOOL DIST \$1982.35
 WALWORTH COUNTY \$803.29
 CITY OF WHITEWATER \$1862.05
 GATEWAY TECHNICAL \$176.39

Elected Officials / Voting Districts

Supervisory District: Al Stanek (D4)
 State Representative: Ellen Schutt (R) (Wisconsin's 31st Assembly District)
 State Senator: Stephen Nass (R) (Wisconsin's 11th Senate District)
 US Representative: Bryan Steil (R) (Wisconsin's 1st District)
 US Senator: Ron Johnson (R), Tammy Baldwin (D)

Special Assessments / Charges

Soil Classification

Soil Type	Soil Name	Acres
PsB	PLANO SILT LOAM, 2 TO 6 PERCENT SLOPES	0.1369

Property Address

156 W WHITEWATER ST WHITEWATER
 156A W WHITEWATER ST WHITEWATER

Legal Description

LOTS 3 & 4 BLK 13 & WLY 15' LOT 8 SUB OF LOT 9 BLK 13 ORIGINAL TOWN
 CITY OF WHITEWATER

Disclaimer

The information provided in this property information page is not official information. All official tax information is recorded in the Walworth County Treasurer's Office. To verify tax payment/payoff status, contact the Walworth County Treasurer's Office at 262-741-4251.

Chapter 19.30 - B-2 CENTRAL BUSINESS DISTRICT

19.30.010 - Purpose.

The B-2 district is established in the city's historic downtown area to accommodate retail, service, office, community, and support residential uses for citywide and regional benefit, and to advance the city's downtown revitalization objectives as expressed in adopted city plans.

(Ord. No. 1914A, 2-18-2016)

19.30.020 - Permitted uses.

Permitted uses in the B-2 district include:

- A. Art and school supply stores;
- B. Arts and crafts galleries;
- C. Automotive parts sales stores, automobile sales lot and show rooms and lots;
- D. Antique or collectible shops;
- E. Bakeries or candy stores, with products for sale on premises only;
- F. Catalog and e-commerce sales outlets;
- G. Hotels and motels;
- H. Appliance repair stores, including computer sales and service;
- I. Barbershops, day spas, and beauty parlors;
- J. Banks and other financial institutions;
- K. Bookstores, stationery stores, retail office supply stores, and newsstands;
- L. Caterers;
- M. Clothing and shoe sales and repair shops;
- N. Clinics, medical and dental;
- O. Coffee shops;
- P. Cultural arts centers and museums;
- Q. Department stores;
- R. Drug stores;
- S. Florist or garden shops;
- T. Gift shops;
- U. Grocery stores;

- V. Hardware stores;
- W. Insurance, real estate, or similar agencies;
- X. Interior decorating shops;
- Y. Jewelry stores;
- Z. Paint stores;
- AA. Offices;
- BB. Post offices;
- CC. Public parking lots;
- DD. Restaurants, ice cream shops, and cafes;
- EE. Sporting goods shops;
- FF. Tourist information and hospitality centers;
- GG. Toy stores;
- HH. Travel agencies;
- II. Variety stores;
- JJ. Dance studios;
- KK. Movie theaters;
- LL. Charitable or nonprofit institutions and facilities;
- MM. Tourist homes and bed and breakfasts;
- NN. Residential uses above the first floor, limited to nonrelated household sizes applicable in the R-1 and R-2 districts (see Section 19.09.520);
- OO. Existing residences must meet the following standards:
 - 1. A limit of three unrelated persons.
- PP. Any other similar uses not specifically listed above.

(Ord. No. 1914A, 2-18-2016)

19.30.025 - Permitted accessory uses.

Permitted accessory uses in the B-2 district include:

- A. Garages for storage of vehicles, equipment or materials in conjunction with operation of the principal use on the lot;
- B. Off-street parking and loading areas, subject to landscaping and screening requirements where applicable;
- C. Outside storage or trash dumpsters where enclosed by a decorative opaque fence, wall and/or landscaping designed to provide a total visual screen;

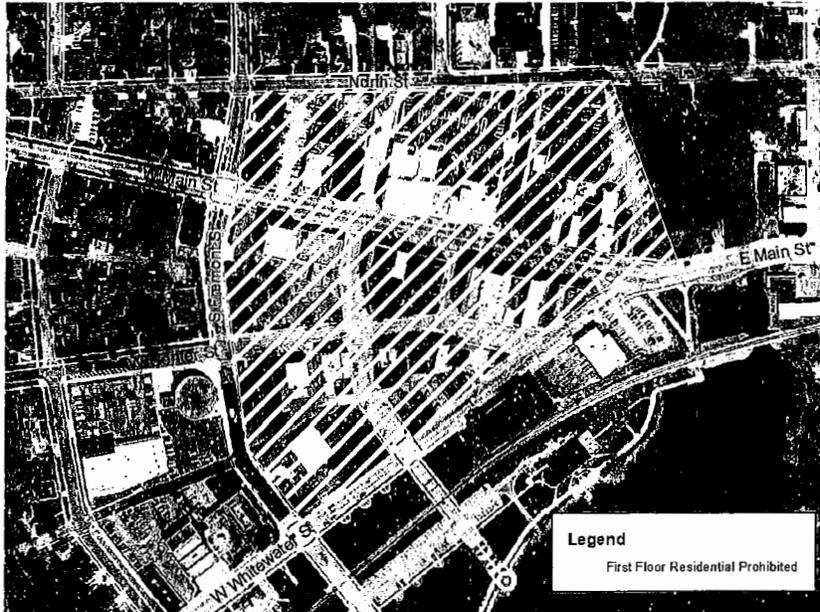
- D. Outside display and temporary storage of motor vehicles where the principal use on the lot includes the sale, repair, or servicing of such motor vehicles. No vehicle in an inoperable condition shall be stored outdoors for greater than thirty days;
- E. Outdoor seating for restaurants, coffee shops, cafes, taverns, or similar uses, within areas designated by site plan review or other city approval processes;
- F. Essential services.

(Ord. No. 1914A, 2-18-2016)

19.30.030 - Conditional uses.

Conditional uses in the B-2 district include:

- A. Drive-in or drive-through type establishments;
- B. Entertainment establishments, not including adult entertainment establishments;
- C. Taverns and other places selling alcoholic beverages by the drink; including expansion of existing uses for which consideration shall be given but is not limited to, conditions regarding the following issues:
 - 1. Parking;
 - 2. Type of business;
 - 3. Signage;
 - 4. Outdoor seating;
 - 5. Provisions for avoiding noise and lighting nuisances;
 - 6. Buffering and fencing;
 - 7. Compatibility with the immediately surrounding neighborhood or district.
- D. Liquor or tobacco stores;
- E. Public and semipublic uses, except for parking;
- F. Automotive servicing and repairs;
- G. First floor residential uses are allowed as a conditional use; except as provided below:
 - 1. First floor residential uses are prohibited in any building located in the area within the boundary of Whitewater Creek on the east (prohibited on west side of creek only), North Street on the north (prohibited on south side of street only), Fremont Street on the west (prohibited on east side of street only), Whitewater Street on the south (prohibited on north side of street only), and the portion of West Main Street from the intersection of Whitewater Street east to the Whitewater Creek (prohibited on north side of street only).



H. Light industrial/retail uses such as:

1. Electronics;
2. Pottery;
3. Craft/woodwork;
4. Printing;
5. Contractor shops (heating, electrical, plumbing, general contractor office);
6. Lumberyards;
7. Other similar uses.

I. Conditional uses in the B-2 district are subject to the following restrictions:

1. No outside storage, unless screened as to Section 19.57.140;
2. No environmental emission;
3. All truck delivery during weekdays;
4. All dumpster locations outdoors must be screened by a fence and landscaping;
5. All of the requirements of Chapter 19.51, traffic, parking and access, and Chapter 19.57, general performance standards, to be met.

J. Laundromats or dry cleaning;

K. Hospitals;

L. Wholesale trade of durable and nondurable goods.

(Ord. No. 1914A, 2-18-2016; Ord. No. 2024A, § 1, 9-21-2021)

19.30.040 - Architectural design standards.

Within the B-2 district, there shall be no minimum required ordinance design and dimensional standards or setbacks. This is being done to allow the most flexibility in the reuse and redevelopment of the downtown. Because of the lack of predefined architectural design standards, all proposed construction and remodeling activities requiring a zoning permit shall require the design review and approval of the city plan and architectural review commission in compliance with Chapter 19.63, plan review.

Also within the B-2 district, all uses are exempted from the parking requirements of Section 19.51.130, except if off-street parking is specifically required for a particular conditional use under Section 19.30.030.

(Ord. No. 1914A, 2-18-2016)

19.30.050 - Park fees.

All residential development shall be subject to a park acquisition fee per dwelling unit and a park improvement fee per dwelling unit, payable before a building permit is issued. The fee will be recommended by the parks and recreation board and then approved by the common council. The fee will be on record at the city clerk's office. The amount of these fees may be reduced by any fee amount previously paid or credited at the time of subdivision, or by fifty percent if the new housing units are created as a result of the conversion or remodeling of a preexisting building. The park acquisition fee may also be reduced if sufficient land area was provided for park purposes at the time of subdivision, based on the calculations in Section 18.04.030(a)(1) of the Whitewater Municipal Code. The fee amounts shall be set by the city council.

(Ord. No. 1914A, 2-18-2016)

Chapter 5.18 - OUTDOOR PRIVATE PROPERTY Cafe PERMIT

Sections:

5.18.010 - Purpose.

To further encourage the revitalization of the downtown and other areas of the city, including the development of social and economic activity, the city council finds and determines:

- (1) That there exists a need for outdoor eating facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and food and beverage consumption.
- (2) That outdoor private property cafes will permit enhanced use of the private property for outdoor food and beverage consumption, and will promote economic activity in the area.
- (3) That the existence of outdoor private property cafes encourages additional outdoor food and beverage consumption. Therefore, a need exists for regulations and standards for the existence and operation of outdoor private property cafes to ensure a safe environment.
- (4) That the establishment of permit conditions and safety standards for outdoor private property cafes is necessary to protect and promote public health, safety, and welfare.

(Ord. No. 1799A, § 1, 8-3-2010)

5.18.020 - Definitions.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

"Outdoor private property cafe" shall mean creating an outdoor facility on part of a premises used for the purpose of consuming food or beverages.

(Ord. No. 1799A, § 1, 8-3-2010)

5.18.030 - Permit required.

- (a) An applicant may apply to the neighborhood services director or his or her designee for a permit to allow an establishment to operate an outdoor private property cafe. The neighborhood services director or designee may approve, approve with conditions or restrictions, or deny a permit where necessary to protect the public health, safety or welfare; to prevent a nuisance from developing or continuing, or due to violation of this section, the City Code of Ordinances, or applicable state or federal law.
- (b) Before a permit may be issued, the application and site plan shall be reviewed for approval by the

chief of police, city fire department and city building inspector.

- (c) Each permit shall be effective for one year from July first until June thirtieth.
- (d) The permit issued may be transferred to a new owner only for the location and area listed in the permit. The transferred permit shall be valid only for the remainder of the period for which it was originally issued. A new certificate of insurance must be filed with the city before the permit transfer.
- (e) A property shall be exempt from the requirements of this chapter if its outdoor private property cafe has an existing outdoor private property cafe approved by a City of Whitewater zoning permit.
- (f) If the city council expands the description of the alcohol licensed premises in the applicant's alcohol license to include an outdoor private property cafe area, the applicant's current conditional use permit, that allows sale of alcohol beverages by the drink, shall be deemed to allow the serving of alcohol in the outdoor private property cafe area, and the applicant will not be required to obtain an amended conditional use permit for the outdoor private property cafe area. Any request by an applicant to the city council to amend the described premises under its alcohol license shall include a copy of its application for an outdoor private property cafe permit. The city staff shall send a notice of the council meeting, at which the request will be acted on, to all plan commission members; to the owners of record according to the tax bills (and to the address of the property, if different than the owner's) of premises within three hundred feet of the licensed establishment. Unintentional failure to accomplish these notifications shall not invalidate the procedures.

(Ord. No. 1799A, § 1, 8-3-2010)

5.18.040 - Permit application.

Application for a permit to operate an outdoor private property cafe shall be submitted to the city and shall include at least the following information:

- (1) Completed city application form.
- (2) Copy of a current certificate of commercial liability insurance in the amount of at least one hundred thousand dollars per occurrence. It is the sole responsibility of the applicant to renew the liability insurance yearly.
- (3) A general layout drawing which accurately depicts the dimensions of the existing premises site, the proposed location of the outdoor private property cafe, size and number of tables (including type), chairs (including type), steps, planters, and umbrellas, location of doorways, trees, light poles and any other obstructions, either existing or proposed, within the outdoor private property cafe area. The type of barrier proposed must also be specified, including

height and material. This layout shall be submitted on eight and one-half-inch by eleven-inch paper, suitable for reproduction. If additional landscaping is proposed, a detailed landscape plan must be provided.

(Ord. No. 1799A, § 1, 8-3-2010; Ord. No. 2003A, § 1, 7-21-2020)

5.18.050 - Permit fees.

There shall be no application fee for outdoor private property cafe permits.

(Ord. No. 1799A, § 1, 8-3-2010; Ord. No. 2003A, § 2, 7-21-2020)

5.18.060 - Outdoor private property cafe standards.

The following standards, criteria, conditions, and restrictions shall apply to all outdoor private property cafes, provided, however, that the neighborhood services director or designee may impose additional conditions and restrictions to protect and promote the public health, safety, or welfare, to prevent a nuisance from developing or continuing, and to comply with this section, the City of Whitewater Code of Ordinances, and all applicable state and federal laws.

- (1) Outdoor private property cafes are restricted to the property to which the permit is issued.
- (2) Tables, chairs, umbrellas or other fixtures in the outdoor private property cafe:
 - (A) Shall not be placed within five feet of fire hydrants, alleys, or bike racks. Shall not be placed within five feet of a pedestrian crosswalk or corner curb cut.
 - (B) Shall not block designated ingress, egress, or fire exits from or to the establishment, or any other structures.
 - (C) Shall be maintained in a clean, sanitary and safe manner.
- (3) Outdoor private property cafes shall be located in such a manner that a distance of not less than four feet is maintained at all times as a clear pedestrian path in and out of the outdoor private property cafe area (occasional reduction to thirty-six inches may be allowed by the neighborhood services director to accommodate trees, light poles, street signs or other permanent structures.) For the purpose of the minimum clear path, trees, light poles and all similar obstacles shall be considered obstructions.
- (4) The outdoor private property cafe, along with any sidewalk or roadway immediately adjacent to it, shall be maintained in a neat and orderly manner at all times. Debris shall be removed as required during the day and again at the close of each business day.
- (5) Plant tubs may be located in the outdoor private property cafe. Plant tubs shall be maintained in a safe, neat, clean, and presentable manner.
- (6)

Umbrellas and other decorative material shall be made of treated wood, canvas, cloth, or similar material that is manufactured to be fire-resistant. No portion of an umbrella shall be less than six feet eight inches above the ground.

- (7) Signs to be used in the outdoor private property cafe shall be in accordance with Chapter 19.54 of the City Code of Ordinances. However, the neighborhood services director may allow temporary easel signs.
- (8) No food preparation, food or beverage storage, refrigeration apparatus, or equipment shall be allowed in the outdoor private property cafe unless authorized by the neighborhood services director.
- (9) No amplified entertainment shall be allowed in the outdoor private property cafe unless authorized by the city manager or designee as part of a special event.
- (10) A copy of the site plan, as approved in conjunction with the current outdoor private property cafe permit, shall be maintained on the permittee's premise and shall be available for inspection by city personnel at all times.
- (11) The outdoor private property cafe permit covers only the outdoor cafe area described in the permit. Indoor operations will be governed by other applicable regulations.
- (12) Outdoor private property cafes shall not operate after ten p.m. or before seven a.m. A conditional use permit amendment (as opposed to an outdoor private property cafe permit) shall be required if alcohol will be served outdoors past ten p.m.
- (13) The city manager, chief of police, the neighborhood services director or their designees may temporarily order the termination of the outdoor private property cafe for public health and safety reasons.
- (14) If alcohol is served in the outdoor private property cafe on any date or at any time, the area encompassing the outdoor private property cafe shall be roped off or otherwise enclosed by a freestanding barrier on all dates and times while in use, even when alcohol is not being served. The barrier shall be at least three feet high. The barrier can include, but is not limited to, attractive fence segments, flowers/plants, artwork and decorative menu boards. The neighborhood services director shall approve the barrier to assure that it is safe and visually appealing.
- (15) The city, its officers and employees, shall not be responsible for outdoor private property cafe fixtures that are relocated or damaged.

(Ord. No. 1799A, § 1, 8-3-2010; Ord. No. 2003A, §§ 3, 4, 7-21-2020)

5.18.070 - Alcohol licensing and service of alcohol beverages.

- (a) A permittee may sell and serve alcohol beverages in an outdoor private property cafe only if the permittee complies with all the requirements for obtaining an alcohol beverage license, and the outdoor private property cafe area is listed on the alcohol beverage license application as being a part of the licensed premises.
- (b) Alcohol may be served at outdoor private property cafes under the following conditions:
 - (1) The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
 - (2) The retail alcohol beverage license premises description includes the outdoor private property cafe in the description of the licensed premises as an extended area.
 - (3) The retail alcohol beverage license permits the sale of the type of alcohol beverages to be served in the outdoor private property cafe.
 - (4) The alcohol beverages are sold by the licensee or licensee's employees.
 - (5) Alcohol beverages are served by the licensee or the licensee's employees in compliance with alcohol beverage laws, ordinances and regulations.
 - (6) The permittee shall be responsible for policing the outdoor private property cafe area to prevent underage persons from entering or remaining in the outdoor private property cafe, except when underage persons are allowed to be present on the licensed premises under applicable laws.
 - (7) The permittee shall not allow patrons of the outdoor private property cafe to bring alcohol beverages into the outdoor private property cafe from another location, other than the licensed premises, nor to carry open containers of alcohol beverages, served in the outdoor private property cafe, outside the outdoor private property cafe area.
 - (8) At times of closing or during times when consumption of alcohol beverages is prohibited, permittee shall remove from the outdoor private property cafe area all containers used for or containing alcohol beverages. No container of alcohol beverages shall be present in the outdoor private property cafe between ten p.m. and seven a.m.

(Ord. No. 1799A, § 1, 8-3-2010; Ord. No. 2003A, § 5, 7-21-2020)

5.18.080 - Revocation or suspension.

The approval of an outdoor cafe permit is conditional at all times. An outdoor private property cafe permit may be revoked or suspended by the neighborhood services director or designee where necessary based on a violation of this chapter or to protect the public health, safety, or welfare, to prevent a nuisance from developing or continuing, in emergency situations, or due to noncompliance with this section, the City Code of Ordinances, or applicable state or federal law.

(Ord. No. 1799A, § 1, 8-3-2010)

5.18.090 - Appeal.

A revocation, suspension, or denial of a permit may be appealed by the permittee to the common council. If the neighborhood services director's decision is appealed, the common council shall hold a hearing and either grant, grant with conditions, or deny the permit. The permit holder or applicant shall be notified of the common council appeal meeting and shall have the right to be heard prior to a decision.

(Ord. No. 1799A, § 1, 8-3-2010)

5.18.100 - Penalty.

The penalty for violation of this section shall be a forfeiture of not less than fifty dollars or more than two hundred dollars per day for each violation, together with the costs of prosecution.

(Ord. No. 1799A, § 1, 8-3-2010)