

# PLANNING DIVISION STAFF REPORT

July 7, 2014



PREPARED FOR THE PLAN COMMISSION

**Project Address:** 2202 East Johnson Street  
**Application Type:** Conditional Use  
**Legistar File ID #:** [34332](#)  
**Prepared By:** Kevin Firchow, AICP, Planning Division  
Report Includes Comments from other City Agencies, as noted

## Summary

**Applicant:** Timm Heller; Tasc Force 2, LLC; 2202 East Johnson Street; Madison, WI 53704  
**Contact:** Scott Spilger; Fourth Wave Project, LLC; 414 N 7<sup>th</sup> Street; Madison, WI 53704  
**Property Owner:** Timm Heller; Tasc Force 2, LLC; 2202 East Johnson Street; Madison, WI 53704

**Requested Action:** The applicant requests conditional use approval to establish an outdoor eating area for restaurants in a property adjacent to a park.

**Proposal Summary:** The proposed building includes two restaurant tenants, Milio's Sandwiches and the 4 & 20 Bakery and Café. The proposed outdoor eating area includes seven small tables and outdoor seating for up to 14 persons that would be shared between both facilities.

**Applicable Regulations & Standards:** This proposal is subject to the standards for conditional uses [MGO Section 28.183(6)]

**Review Required By:** Plan Commission (PC)

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find that the conditional use standards are met and **approve** the conditional use request to construct and operate an outdoor an eating area for a restaurant at 2202 East Johnson Street. This recommendation is subject to input at the public hearing and the conditions recommended by the Planning Division and other reviewing agencies.

## Background Information

**Parcel Location:** The subject property is a 5,808 square foot site located at the intersection of East Johnson and 4<sup>th</sup> Streets. The site is within Aldermanic District 12 and within the limits of the Madison Metropolitan School District.

**Existing Conditions and Land Use:** The property includes a one-story, two-tenant building constructed in 2011. The area proposed for outdoor eating is currently utilized as a perimeter landscaping for the building.

### Surrounding Land Use and Zoning:

North: Demetral Field / East High School Practice Fields, zoned NMX (Neighborhood Mixed Use) District;

South: East High School zoned CI (Campus Institutional District) and single-family homes to the south west zoned TR-C4 (Traditional Residential-Consistent 4) District;

East: Single-Family homes, zoned TR-C4; and

West: City-owned public parking lot with Church beyond, zoned NMX.

**Adopted Land Use Plan:** The Comprehensive Plan recommends low density residential development for this site and the surrounding area. Within areas recommended for low density residential development, the Plan states that small scale commercial uses may be appropriate. Isolated commercial properties are typically not mapped at the Comprehensive Plan level, but should be identified in more site-specific neighborhood plans. The Emerson East-Eken Park Neighborhoods Plan, adopted in 1998, recognizes this site as an existing commercial property, and previously recommended the property be down-zoned to a neighborhood commercial district.

**Zoning Summary:** The property is zoned NMX (Neighborhood Mixed Use District)

Dimensional Requirements	Required	Proposed
Lot width	0'	44' existing
Front Yard Setback	0'	15' existing
Side Yard Setback	0'	8' LS, 6'RS
Rear Yard	20'	14'-4" existing
Maximum lot coverage	75%	TBD (See Comment # 21)
Maximum Height	3 stories/40'	1 story
Site Design	Required	Proposed
Number parking stalls	15% of capacity for restaurant. Milio's 24 4 & 20 Bakery & Café 20 Outdoor seating 14 Total capacity 58	0 (See Comment # 17)
Accessible stalls	0	0
Number bike parking stalls	5% capacity of persons (3)	TBD (See Comment # 18)
Landscaping	Yes	Yes (See Comment # 22)
Lighting	Yes	No change
<b>Other Critical Zoning Items</b>	Adjacent to park	

Table prepared by Matt Tucker, Zoning Administrator

**Environmental Corridor Status:** The subject site is not located in a mapped environmental corridor.

**Public Utilities and Services:** This property is served by a full range of urban services.

## Project Description, Analysis, and Conclusion

The applicant requests approval of a conditional use to establish an outdoor eating area that will be utilized by both restaurant tenants in the subject building. This request is subject to the conditional use approval standards.

The building was approved as a conditional use by the Plan Commission in 2011. This one-story structure includes two tenant spaces. As part of that proposal, the developer installed a six-foot wide public sidewalk

along the east side of the Fourth Street parking area. Landscape beds are currently installed between the face of the building and the sidewalk.

As part of this proposal, portions of this landscaped area would be removed and converted to an outdoor eating area. Per the letter of intent, two colors of concrete will be utilized to demark the limits of the outdoor eating area compared to the sidewalk. Plans also show the installation of 10 inch planter boxes to further define this edge. As noted in the comments from City agencies, these planter boxes may encroach upon the 8-foot wide sidewalk easement that surrounds the 6-foot wide mainline sidewalk. No permanent encroachment is allowed into the eight foot easement area and adjustments to the plan may be required. Agencies have requested more detailed site plans to show the location of the recorded easement, property lines, and other improvements.

The shared outdoor eating area is proposed to have a 14 person occupancy, consisting of seven two-seat tables adjacent to the building. The hours of operation are proposed to be tied to the hours of the 4 & 20 Bakery. Currently these hours are listed as 7:00 am- 2:30 pm Monday through Saturday and 8:30 am to 2:30 pm on Sunday. These hours are expected to expand to 7:00 pm on weekdays. For the purposes of evaluating this proposal, staff assume the longer hours.

Like with the initial development proposal, this request is also considered development adjacent to a park. That is its own conditional use to assess the impact of the proposed development on natural resources, drainage patterns, pedestrian traffic and recreational uses of the park. The Parks Division submitted a report with no comments on this request and staff do not anticipate the establishment of this outdoor eating area will have an impact on the adjacent park.

While several concerns were raised by nearby residents when the building was initially proposed, staff is not aware of any neighborhood concerns on this conditional use application. Like with any outdoor eating area in relatively close proximity to residential units, there remains the possibility for conflicts. If well-managed, the proposed outdoor eating area is anticipated to have minimal negative impacts. If approved, the Plan Commission would retain "continuing jurisdiction" authority, meaning that should complaints arise, the Commission could take further action, requiring additional restrictions or possible revocation of the conditional use should it find the approval standards cannot be met.

## **Recommendation**

### **Planning Division Recommendation** (Contact Kevin Firchow, 267-1150)

The Planning Division recommends that the Plan Commission find that the conditional use standards are met and **approve** the conditional use request to construct and operate an outdoor eating area for a restaurant at 2202 East Johnson Street. This recommendation is subject to input at the public hearing and the conditions recommended by the Planning Division and other reviewing agencies.

### Recommended Conditions of Approval

Major/Non-Standard Conditions are Shaded

1. That the site plans be revised to specifically show the proposed paving details for the proposed colored concrete. Plans shall accurately depict the location of the recorded easement and the relationship to proposed improvements. These details shall be approved by staff.

### City Engineering Division (Contact Janet Schmidt, 261-9688)

2. The site plan shall show and dimension the existing Lot lines, the limits of the Public Sidewalk Easement per Doc. No. 4779770 and the location of the existing improvements along with the proposed improvements on the lot. Any of the proposed improvements for the outdoor seating proposed within the Public Sidewalk Easement shall be noted on the plan. A Consent to Occupy Easement Document may be required to be drafted and recorded by the City of Madison Office of Real Estate Services for any improvements that are planned and approved within the public sidewalk easement.
3. The area downstream of this site has flooding problems. The Applicant shall provide infiltration such that there is no increase in volumetric discharge off the site during the 10-year rain event.
4. All work in the public right-of-way shall be performed by a City licensed contractor. (MGO 16.23(9)(c)5) and MGO 23.01)
5. This project falls in the area subject to increased erosion control enforcement as authorized by the fact that it is in the ROCK RIVER TMDL ZONE and by Resolution 14-00043 passed by the City of Madison Common Council on 1/21/2014. You will be expected to meet a higher standard of erosion control than the minimum standards set by the WDNR.
6. The applicant shall demonstrate compliance with Section 37.07 and 37.08 of the Madison General Ordinances regarding permissible soil loss rates. The erosion control plan shall include Universal Soil Loss Equation (USLE) computations for the construction period. Measures shall be implemented in order to maintain a soil loss rate below 7.5-tons per acre per year.
7. Effective January 1, 2010, The Department of Commerce's authority to permit commercial sites, with over one (1) acre of disturbance, for stormwater management and erosion control has been transferred to the Department of Natural Resources (WDNR). The WDNR does not have an authorized local program transferring this authority to the City of Madison. The City of Madison has been required by the WDNR to continue to review projects for compliance with NR216 and NR-151 but a separate permit submittal is now required to the WDNR for this work as well. The City of Madison cannot issue our permit until concurrence is obtained from the WDNR via their NOI or WRAPP permit process.

As this site is greater than one (1) acre, the applicant is required by State Statute to obtain a Water Resources Application for Project Permits (WRAPP) from the Wisconsin Department of Natural Resources, prior to beginning construction. This permit was previously known as a Notice of Intent Permit (NOI). Contact Eric Rortvedt at 273-5612 of the WDNR to discuss this requirement. Information on this permit application is available on line <http://dnr.wi.gov/Runoff/stormwater/constrformsinfo.htm> (NOTIFICATION)

8. Prior to approval, this project shall comply with Chapter 37 of the Madison General Ordinances regarding stormwater management. Specifically, this development is required to a) detain the 2, 10, & 100-year storm events and b) Complete an erosion control plan and complete weekly self-inspection of the erosion control practices and post these inspections to the City of Madison website – as required by Chapter 37 of the Madison General Ordinances.
9. The applicant shall submit, prior to plan sign-off, digital PDF files to the Engineering Division (Jeff Benedict or Tim Troester). The digital copies shall be to scale, and shall have a scale bar on the plan set. (POLICY and MGO 37.09(2)) PDF submittals shall contain the following information: a) building footprints, b) internal walkway areas, c) internal site parking areas, d) lot lines and right-of-way lines, e) Street names, f) Stormwater Management Facilities, and g) detail drawings associated with stormwater management facilities (including if applicable planting plans).
10. 20. The applicant shall submit prior to plan sign-off, electronic copies of any Stormwater Management Files including: a) SLAMM DAT files; b) RECARGA files; c) TR-55/HYDROCAD/Etc... and d) Sediment loading calculations.
11. All outstanding Madison Metropolitan Sewerage District (MMSD) are due and payable prior Engineering sign-off, unless otherwise collected with a Developer's / Subdivision Contract. Contact Janet Schmidt (608-261-9688) to obtain the final MMSD billing a minimum of two (2) working days prior to requesting City Engineering signoff. (MGO 16.23(9)(d)(4)).

**Traffic Engineering** (Contact Eric Halvorson, 266-6527)

12. There is insufficient information to properly review this plan to see what if any impacts there are on the public Right-of-Way and how this site will impact multimodal travel. Expect additional requirements upon delivery of a complete site plan. Please see the General or Standard Review Comments for the standards of a complete site plan.
13. The applicant shall submit one contiguous plan showing proposed conditions and one contiguous plan showing existing conditions for approval. The plan drawings shall be scaled to 1" = 20' and include the following, when applicable: existing and proposed property lines; parcel addresses; all easements; pavement markings; signing; building placement; items in the terrace such as signs, street light poles, hydrants; surface types such as asphalt, concrete, grass, sidewalk; driveway approaches, including those adjacent to and across street from the project lot location; parking stall dimensions, including two (2) feet of vehicle overhang; drive aisle dimensions; semitrailer movement and vehicle routes; dimensions of radii; and percent of slope.
  14. The Developer shall post a security deposit prior to the start of development. In the event that modifications need to be made to any City owned and/or maintained traffic signals, street lighting, signing, pavement marking and conduit/handholes, the Developer shall reimburse the City for all associated costs including engineering, labor and materials for both temporary and permanent installations.
  15. The City Traffic Engineer may require public signing and marking related to the development; the Developer shall be financially responsible for such signing and marking.
  16. All parking facility design shall conform to MGO standards, as set in section 10.08(6).

**Zoning Administrator** (Contact Pat Anderson, 266-5978)

17. No off-street parking facilities are being provided for this development. Previous administrative parking reductions of six parking stalls have been approved as part of tenant build-outs. The amount of parking required for this use is within the allowances per Sec. 28.141(5) that may be reduced administratively by the Zoning Administrator. This approval shall include a nine stall parking reduction for the existing facility and increased capacity of these restaurants.
18. For bike parking, final plans shall show a minimum of three bike parking stalls, designed as short-term bike parking per Sec. 28.141(11). The bike racks shall be securely anchored to the ground or building to prevent the racks from moving. Final bike parking and bike rack location shall be shown on final plans submitted for sign-off. NOTE: A bike-parking stall is two feet by six feet with a five-foot access aisle. Provide a detail or photo of bike rack installation.
19. Pursuant to Section 28.142 (2)(d) Any displaced landscaping elements must be replaced on the site or a revised landscaping plan must be prepared for the site.
20. Signage approvals are not granted by the Plan Commission. Signage must be reviewed for compliance with Chapter 31 Sign Codes of the Madison General Ordinances. Signage permits are issued by the Zoning Section of the Department of Planning and Community and Economic Development.
21. Provide lot coverage calculations for existing development and proposed expansion. NOTE: if existing development exceeds 75% lot coverage, pervious paving must be used for new outdoor seating area, as this does not count toward an increase in lot coverage.
22. The submitted site and landscaping plan do not appear consistent in regard to areas of the site that are to be landscaped and areas that are to be paved. Final plans shall match.

**Fire Department** (Contact Bill Sullivan, 261-9658)

23. The Madison Fire Department does not object to this proposal provided the project complies with all applicable fire codes and ordinances. Ensure all exit and exit widths are maintained.
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**Parks Division** (Kay Rutledge, 266-4816)

This agency submitted a report with no recommended conditions of approval.

**Water Utility** (Contact Dennis Cawley, 266-4651)

24. This property is not in a wellhead protection district. All wells located on this property shall be abandoned if no valid well operation permit has been obtained from the Madison Water Utility.

**Metro Transit** (Contact Tim Sobota, 261-4289)

This agency did not provide comments for this request.