



PREPARED FOR THE PLAN COMMISSION

**Project Address:** 601 North Street  
**Application Type:** Conditional Use Alteration  
**Legistar File ID #** [41542](#)  
**Prepared By:** Timothy M. Parks, Planning Division  
Report includes comments from other City agencies, as noted.

## Summary

**Applicant:** Benjamin Altschul, Tip Top Tap, Inc.; 601 North Street; Madison.

**Property Owner:** Jane Capito; 1348 Jenifer Street; Madison.

**Requested Action:** Approval of an alteration to an approved conditional use for an existing outdoor eating area for a restaurant/ tavern located at 601 North Street to allow operation of the outdoor area after December 31, 2015 and to implement required noise abatement measures.

**Proposal Summary:** The applicant is requesting re-approval of his conditional use for an outdoor eating area for the Tip Top Tavern, which was set by condition of the Plan Commission to expire on December 31, 2015. As part of the same approval, the Commission required that a noise attenuation plan prepared by the applicant be submitted to the Building Inspection Division by September 1, 2015 for approval, which includes an implementation plan. The applicant indicates that implementation of those approved measures is ongoing. The applicant is seeking re-approval of his conditional use to allow the outdoor eating area to be available for customers for 2016 and beyond once the weather is amenable.

**Applicable Regulations & Standards:** Table 28-D2 in Section 28.061(1) of the Zoning Code identifies outdoor eating areas for restaurants and taverns as a conditional accessory use in the NMX (Neighborhood Mixed-Use District). Section 28.183 provides the process and standards for the approval of conditional use permits.

**Review Required By:** Plan Commission

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find the standards met and **approve** a conditional use alteration for an existing outdoor eating area for a restaurant/ tavern located at 601 North Street subject to input at the public hearing and the conditions from reviewing agencies beginning on page 4 of this report.

## Background Information

**Parcel Location:** The subject site is a 5,700 square-foot parcel located at the northeastern corner of Commercial Avenue and North Street; Aldermanic District 12 (Palm); Madison Metropolitan School District.

**Existing Conditions and Land Use:** The property is developed with a 1,665 square foot one-story commercial building containing the restaurant/ tavern, zoned NMX (Neighborhood Mixed-Use District).

**Surrounding Land Use and Zoning:**

North: Single-family residences, zoned TR-C4 (Traditional Residential – Consistent 4 District);

South: One-story warehouse building, zoned NMX (Neighborhood Mixed-Use District);

East: Single-family residences, zoned NMX;

West: Eken Park Condominiums, zoned PD; the former Grieg Club, zoned NMX.

**Adopted Land Use Plans:** The Comprehensive Plan identifies the subject site and 3 of the 4 corners of the North Street-Commercial Avenue intersection for Neighborhood Mixed-Use development; a Transit-Oriented Development node is recommended west of the site at the intersection of Packers and Commercial avenues.

The site and surrounding area are also located within the boundaries of the recently adopted Emerson East-Eken Park-Yahara Neighborhood Plan, which provides a series of neighborhood reinvestment strategies for the area generally bounded by State Highway 30/ Aberg Avenue on the north, N. Sherman Avenue on the west, the Yahara River on the south and E. Washington Avenue on the east. The plan includes the established neighborhood commercial node at Commercial Avenue and North Street in Focus Area 8, which it recommends be improved through beautification and branding enhancements that define the Emerson East and Eken Park neighborhoods and improve the corner’s business appeal. The plan otherwise contains no specific land use recommendations that should be considered with this conditional use request.

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

Requirements	Required	Proposed
Front Yard	0’	0’ (Existing)
Side Yards	5’	Existing; no change proposed
Rear Yard	20’	Existing; no change proposed
Usable Open Space	N/A	---
Maximum Lot Coverage	75%	Existing; no change proposed
Maximum Building Height	3 stories / 40’	1 story (Existing)
Auto Parking	13	4 (Granted admin. parking reduction)
Bike Parking	5	8
Loading	0	0
Building Forms	Free-Standing Commercial Building	Existing; no change proposed
<b>Other Critical Zoning Items</b>		
Yes:	Barrier Free	
No:	Urban Design, Floodplain, Wellhead Protection, Landmarks, Utility Easements, Adjacent to Park	
<i>Prepared by: Matt Tucker, Zoning Administrator</i>		

**Environmental Corridor Status:** The property is not located within a mapped environmental corridor.

**Public Utilities and Services:** The site is served by a full range of urban services, including seven-day Metro Transit service on Commercial Avenue.

## Previous Requests

On April 28, 2014, the Plan Commission approved a conditional use for an outdoor eating area for the Tip Top Tavern subject to conditions. The outdoor eating area was approved with conditions that use of the outdoor seating area by tavern patrons is not allowable after 10:00 PM nightly and that there be no outdoor amplified sound associated with the outdoor seating area.

On July 27, 2015, the Plan Commission modified the conditions of approval for the outdoor eating area following a complaint and continuing jurisdiction review to bring the conditional use into compliance with the standards set forth in Section 28.183(6) of the Zoning Code. The modified conditions were:

1. That the patio door remain closed [not be propped open] at all times.
2. That no patrons may utilize the outdoor patio area after hours for smoking or otherwise.
3. That a noise attenuation plan prepared by the applicant be submitted to the Building Inspection Division by September 1, 2015 for approval, which includes an implementation plan.
4. That the hours of operation for the outdoor eating area remains until 10:00 p.m. seven days a week.
5. That the conditional use approval for the outdoor eating area expires on December 31, 2015. [Thereby requiring the applicant to submit a new conditional use application to the Plan Commission to consider at a public hearing and approve prior to the patio opening on or after January 1, 2016.]

## **Project Description, Analysis and Conclusion**

The applicant is seeking re-approval of a conditional use for an outdoor eating area for the Tip Top Tavern at 601 North Street, at the northeastern corner of Commercial Avenue. The conditional use initially granted in 2014 expired at the end of 2015 pursuant to a condition placed on it by the Plan Commission in July 2015 following a continuing jurisdiction public hearing (see previous section of this report).

The outdoor eating area is a 1,156 square-foot space located along the north wall of the one-story commercial building. The outdoor patio contains 10 tables and seating for 40 persons. The northern and eastern edges of the outdoor area are enclosed by an 8-foot tall wood fence with 2-foot lattice top, to which the applicant proposes to install sound-absorbing panels in an effort to limit noise from the outdoor area at the property lines. Additionally, the applicant proposes to use larger, heavier umbrellas at some of the tables in the outdoor eating area in an effort to shroud those tables. No expansion of the outdoor area is proposed.

The letter of intent submitted with the alteration outlines the steps taken to date by the applicant to address the issues and conditions stemming from the 2015 complaint and conditional use modification, and provides additional detail on the steps to be implemented with the current request, including information on the sound-absorbing panels that will be installed and signage intended to encourage patrons of the outdoor area to limit noise out of respect to neighbors. A "Patio Closing Checklist" for employees is also included, which outlines the procedures taken by the establishment to close the outdoor area by 10:00 p.m. The applicant is not requesting to modify the hours of operation for the outdoor eating area at this time.

The Planning Division believes that the conditional use standards can be met to allow the outdoor eating area to continue to operate. The applicant has worked closely with the Zoning Administrator to address the issues that resulted in the 2015 complaint and continuing jurisdiction hearing. Staff believes that the additional measures proposed to further reduce the impact of the outdoor area on surrounding properties beyond the measures previously required as conditions of the conditional use modification are appropriate, and staff will work with the applicant to ensure that those measures are fully implemented following approval. Staff believes that the applicant is more committed to the successful operation of the outdoor eating area than previously, and that the existing conditions of approval and the proposed additional enhancements will allow the restaurant/ tavern and outdoor eating area to coexist with the surrounding residential uses. Accordingly, staff is not recommending an expiration date for this conditional use request. As always, however, the Plan Commission retains continuing jurisdiction on this and all conditional uses in the event that concerns about the outdoor eating area reemerge.

## Recommendation

### Planning Division Recommendation (Contact Timothy M. Parks, 261-9632)

The Planning Division recommends that the Plan Commission find the standards met and **approve** a conditional use alteration for an existing outdoor eating area for a restaurant/ tavern located at 601 North Street subject to input at the public hearing and the following conditions:

**Recommended Conditions of Approval:** Major/Non-Standard Conditions are Shaded

#### Planning Division

1. That the hours of operation for the outdoor eating area remain until 10:00 p.m. seven days a week. No patrons may utilize the outdoor patio area after hours for smoking or otherwise. The Director of the Planning Division may consider a minor alteration to the conditional use in the future to further modify the hours of operation for the outdoor eating area following a recommendation by the district alder.
2. That the patio door remain closed [not be propped open] at all times.
3. That the patio plan be clearly revised to show where the sound-absorbing panels will be installed. Final approval of the noise attenuation plan for the outdoor eating area shall be granted by the Zoning Administrator and Planning Division staff prior to use of the outdoor area.
4. Outdoor amplified sound, including from televisions, ambient music or musical performance, is prohibited.

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

This agency reviewed this request and has recommended no conditions or approval.

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

This agency reviewed this request and has recommended no conditions or approval.

#### Zoning Administrator (Contact Matt Tucker, 266-4551)

5. If outdoor lighting is provided, it must comply with Madison General Ordinances Section 10.085 outdoor lighting standards

#### Traffic Engineering Division (Contact Eric Halvorson, 266-6527)

6. The applicant shall submit one contiguous plan for approval. The plan drawing 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.

**Water Utility** (Contact Dennis Cawley, 261-9243)

7. Note: All operating private wells shall be identified and permitted and any unused private wells shall be abandoned by the Madison Water Utility in accordance with MGO Section 13.21.

**Parks Division** (Contact Janet Schmidt, 261-9688)

This agency reviewed this request and has recommended no conditions or approval.

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

This agency reviewed this request and has recommended no conditions or approval.