

**PREPARED FOR THE PLAN COMMISSION**

Project Address: 2005 N Sherman Avenue (District 12 – Abbas)

Application Type: Zoning Map Amendment

Requested Action: ID [55383](#) – Approval of a request to rezone 2005 N Sherman Avenue from TR-C4 (Traditional Residential–Consistent 4 District) to NMX (Neighborhood Mixed-Use District)

Prepared By: Timothy M. Parks, Planning Division
Report includes comments from other City agencies, as noted

AddendumBackground

On March 5, 2019, James McFadden made an application on behalf of Ben Altschul, owner of Busse’s Markway Tavern, for approval of a request to rezone 2005 N Sherman Avenue from TR-C4 (Traditional Residential–Consistent 4 District) to NMX (Neighborhood Mixed-Use District) to allow the existing tavern use to continue on the first floor of a two-story mixed-use building. The rezoning request was accompanied by a conditional use request (ID [55025](#)) for an outdoor eating area for the tavern with a capacity of 36.

At its May 6, 2019 meeting, the Plan Commission referred the conditional use request and recommended referral of the zoning map amendment to the Common Council. In referring the requests, members of the Commission stated that they did not find that conditional use standards 1, 3 and 9 could be found met and requested that additional information be provided prior to this item returning to a future Commission meeting. This information included an operations plan, updated landscaping and parking plan, information on rules related to smoking, information related to deliveries and garbage pick-up, clarification on plans to keep northern windows and doors closed, updated information showing compliant bicycle parking, clarification on proposed lighting, information specifying distances to adjoining residential properties, and clarification on the timing of a possible conditional use request to establish a restaurant-tavern compared to a tavern, which is currently proposed. It was also requested that the establishment owner be present at the next Plan Commission meeting. The rezoning and conditional use requests have been on hold since the referral of the rezoning by the Common Council on May 21, 2019.

The property owner has operated a “Streeterly” temporary outdoor eating area adjacent to the northern wall of the tavern during the COVID-19 pandemic. Application materials included with a March 19, 2022 application to expand the premises licensed to serve intoxicating beverages indicate that the indoor capacity of the tavern was previously 49 persons, which was revised to a total of 49 inside and outside the tavern. The change of licensed premises was approved by the Alcohol License Review Committee on April 20, 2022 and by the Common Council on May 10, 2022.

Recent Zoning Code Changes

The Zoning Code was amended by Ordinance 22-00016 (ID 69382), on March 29, 2022 to allow ‘Temporary Outdoor Eating Areas’ associated with a food and beverage establishments in most Mixed-Use and Commercial zoning districts and in the Downtown zoning districts. The text amendment included the following definition for “Outdoor Eating Area, Temporary, Associated with Food and Beverage Establishment”:

“An extension of a premise, in parking lots or other on-site areas, temporarily repurposed for the public service and consumption of food and beverages.”

In the NMX zoning district, temporary outdoor eating areas may be a permitted or conditional use based on conformance with the following supplemental regulations:

- The hours of operation for any such area shall end at 9:00 PM unless approved as a conditional use by the Plan Commission;
- No amplified sound is permitted in the outdoor area unless approved as a conditional use by the Plan Commission;
- Allowed from April 15 to November 15; and
- Enclosures between 36 and 42 inches tall are required to separate outdoor area from parking; tables, chairs, etc. must be secured on-site when not in use, but those items do not need to be taken down at the end of service like in the case of a terrace/right of way café (such as on State Street)

The same text amendment also clarified the definition for other more traditional, permanent outdoor eating areas, as well as added supplemental regulations specific to them. As a result of the text amendment, a permanent outdoor eating area is one that is constructed as a permanent part of the business, such as on a patio or deck, with enclosures (fences, railings, canopies, etc.) that are permanently affixed to the ground and/or attached to the structure.

Ordinance 22-00033 (ID 70646), adopted on May 10, 2022, further amended the Zoning Code to make Brewpub, Catering, Incidental Alcohol Sales, Restaurant-Tavern, and Tavern **permitted** uses in the NMX district, whereas they had previously been allowed as conditional uses. The text amendment also revised the definition of “Tavern” as follows:

“An establishment where the principal and primary use is serving fermented malt beverages or intoxicating liquors for consumption on the premises and where food or packaged alcoholic beverages may be served or sold only as accessory to the primary use, and which may serve meals and include kitchen facilities.”

The practical effect of the second amendment allows taverns to have kitchens and serve full menus if desired, whereas they were only previously allowed to serve packaged food to patrons. The supplemental regulations applying to taverns, that they shall not hold an entertainment license under MGO Section 38.06(11) and shall operate consistent with and according to the requirements of a valid alcohol license issued by the City, did not change with this text amendment.

Updated Request

The applicants submitted revised application materials on May 16, 2022 seeking approval of NMX zoning for the property. Following approval of the rezoning, the applicant will seek formal approval for a permitted use temporary outdoor eating area, which will be located along a portion of the northern property line where the Streeterly is located. A site plan submitted with the May 2022 materials shows seating for 20 patrons in the outdoor area. **No conditional use approvals are being requested for the proposed temporary outdoor eating area at this time**, meaning that the area will close by 9:00 PM and there will be no amplified sound outdoors. If later hours and/or amplified sound are desired in the future, the applicant will be required to request those from the Plan Commission by separate application.

Analysis

As Planning staff recommended in its report for the May 6, 2019 Plan Commission hearing, staff believes that the request to rezone 2005 N Sherman Avenue from TR-C4 to NMX is consistent with the standards for approval and

the Comprehensive Plan, which recommends the subject site for Neighborhood Mixed-Use (NMU). Given the apparent longstanding use of the property and plan recommendation, staff feels that it would be appropriate to provide conforming zoning to the property. If the NMX zoning is approved, the tavern and proposed temporary outdoor eating area will be allowed as permitted uses.

As of the drafting of this report, no public comments have been received on the May 2022 rezoning request. A neighborhood meeting to discuss the rezoning and temporary outdoor eating area was held on May 9, 2022.

Recommendation

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

The Planning Division recommends that the Plan Commission find the standards met and forward Zoning Map Amendment ID 28.022-00371, rezoning 2005 N Sherman Avenue from TR-C4 to NMX, to the Common Council with a recommendation of **approval** subject to input at the public hearing and the following conditions:

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

City Engineering Division (Contact Brenda Stanley, (608) 261-9127)

This agency has reviewed the request and recommended no conditions of approval.

City Engineering Division – Mapping Section (Contact Jeff Quamme, (608) 266-4097)

1. Identify the plat, lot and block numbers of the recorded plat on the final plans.
2. Note: Considering the proximity of the proposed site improvements to the side property lines, particularly fencing, a property survey prior to the placement of the future improvements is strongly recommended to assure accurate placement within the parcel.
3. Provide more information on the use of the second floor of the building, including whether bar patrons are allowed, whether it is used for storage, or if there are living quarters. Submit a floorplan in PDF format to Lori Zenchenko (lzenchenko@cityofmadison.com) that includes a floorplan for each floor on a separate sheet for the review and development of a complete interior addressing plan.

Traffic Engineering Division (Contact Sean Malloy, (608) 266-5987)

4. The applicant shall remove their northernmost driveway and replace with curb and gutter, which shall be noted on the final plan.
5. "Stop" signs shall be installed at a height of seven (7) feet from the bottom of the sign at all Class III driveway approaches, including existing driveways, behind the property line and noted on the plan. All directional/regulatory signage and pavement markings on the site shall be shown and noted on the plan.
6. Note: The applicant shall secure their outdoor patio area with a substantial barrier.

Zoning Administrator (Contact Jacob Moskowitz, (608) 266-4450)

7. Following approval of the rezoning to NMX, a permitted use site plan review may be required.

Fire Department (Contact Bill Sullivan, (608) 261-9658)

This agency has reviewed the request and recommended no conditions of approval.

Water Utility (Contact Jeff Belshaw, (608) 261-9835)

This agency has reviewed the request and recommended no conditions of approval.

Metro Transit (Contact Tim Sobota, (608) 261-4289)

This agency has reviewed the request and recommended no conditions of approval.

Parks Division (Contact Kathleen Kane, (608) 261-9671)

This agency has reviewed the request and recommended no conditions of approval.

City Forestry Section (Jeffrey Heinecke, (608) 266-4890)

This agency has reviewed the request and recommended no conditions of approval.