

PLANNING DIVISION STAFF REPORT

January 10, 2022



PREPARED FOR THE PLAN COMMISSION

Project Address: 1124-1134 Regent Street (8th Alder District – Ald. Bennett)
Application Type: Demolition Permit and Conditional Use
Legistar File ID #: [68441](#) and [68442](#)
Prepared By: Chris Wells, Planning Division
Report includes comments from other City agencies, as noted.
Reviewed By: Kevin Firchow, AICP, Principal Planner

Summary

Applicant & Contact: Steve Shulfer; Sketchworks Architecture, LCC; 7780 Elmwood Ave, #208; Middleton, WI 53562

Property Owner: Roger Charly; 1230 Regent Street; Madison, WI 53715

Requested Actions: Consideration of a demolition permit to demolish a portion of a street-facing wall of a commercial building at 1124-1134 Regent Street; Consideration of a conditional use in the Traditional Shopping Street (TSS) District for an outdoor eating area for a restaurant-tavern, and Consideration of a conditional use in the TSS District for a walk-up service window located within ten (10) feet of a public sidewalk, all to allow conversion of a portion of a commercial building to be converted into a restaurant-tavern with outdoor eating area and two walk-up service windows at 1124-1134 Regent Street.

Proposal Summary: The applicant proposes to demolish a portion of an existing commercial building and convert a remaining portion of the building to a restaurant with an outdoor seating patio and two walk-up service windows on North Charter Street.

Applicable Regulations & Standards: This proposal is subject to the standards for demolition permits pursuant to Section 28.185(7), M.G.O. It is also subject to the standards for Conditional Uses [M.G.O. §28.183(6)] as Table 28D-2 in Section 28.061(1) notes that an *Outdoor eating area associated with a food and beverage establishment* as well as a *Walk-up service window located within ten (10) feet of a public right-of-way* both require conditional use approval.

Review Required By: Plan Commission.

Summary Recommendations: The Planning Division recommends that the Plan Commission find the standards met and **approve** the demolition permit to allow a street-facing façade to be demolished, and conditional uses in the Traditional Shopping Street (TSS) District – 1) for an outdoor eating area for a restaurant-tavern and 2) for a walk-up service window located within ten (10) feet of a public sidewalk - all to allow conversion of a portion of a commercial building to be converted into a restaurant-tavern with outdoor eating area and two walk-up service windows at 1124-1134 Regent Street. This recommendation is subject to input at the public hearing and the conditions from reviewing agencies in this report.

Background Information

Parcel Location: The subject site is a 27,587-square-foot (0.64-acre) parcel is located to the northeast of the intersection of Regent Street and North Charter Street. It is within Alder District 8 (Ald. Bennett); Wellhead Protection District #27; and the Madison Municipal School District.

Existing Conditions and Land Use: The site is currently developed with a roughly 12,000-square-foot, one-story commercial building. According to City Assessor’s Office records, it was originally constructed in 1922 and has been added onto twice. The building sits on the western half of the site with an automobile surface parking lot located on the eastern. The site is zoned Traditional Shopping Street (TSS) District.

Surrounding Land Uses and Zoning:

North: An automobile surface parking lot for University of Madison (Lot 50), beyond which is the University’s Fleet and Service Garage. Both are zoned Campus Institutional (CI) District;

South: Across Regent Street is a floral shop in the Traditional Shopping Street (TSS) District;

East: A McDonald’s in the TSS District; and

West: Across North Charter Street is a one-story office building for a property management company. It is zoned, TSS.

Adopted Land Use Plan: The [Comprehensive Plan](#) (2018) recommends Community Mixed-Use (CMU) uses for the subject site. The [Regent Street – South Campus Plan](#) (2008) recommends neighborhood mixed use for the subject site. The site is also within the boundary of the [Monroe Street Commercial District Plan](#) (2007), but this plan does not provide recommendations for this portion of Regent Street.

Zoning Summary: The subject property is zoned TSS (Traditional Shopping Street District):

Requirements	Required	Proposed
Front Yard Setback	0’ or 5’	0’ existing front yard
Side Yard Setback: Street side yard	0’ or 5’	0’ existing street side yard
Side Yard Setback: Where proposed buildings or abutting buildings have window openings in side wall(s) within 6’ of lot line	One-story: 5’ Two-story or higher: 6’	Adequate
Rear Yard Setback: For corner lots, where all abutting property is in a nonresidential zoning district	The required rear yard setback shall be the same as the required side yard setback: 5’	Adequate
Maximum Lot Coverage	85%	TBD (See Comment #8)
Maximum Building Height	3 stories/ 40’	1 story existing building

Site Design	Required	Proposed
Number Parking Stalls	Restaurant-tavern: 15% of capacity of persons (45)	37 (See Comments #9 & #11)
Accessible Stalls	Yes	None (See Comments #9 & #10)
Loading	Not required	None
Number Bike Parking Stalls	Restaurant-tavern: 5% of capacity of persons (15) General retail: 1 per 2,000 sq. ft. floor area (3) (18 total)	5 (See Comments #12 & #13)
Landscaping and Screening	Yes	Yes (See Comments #14 & #15)
Lighting	Yes	Existing lighting (See Comment #16)
Building Forms	Not required	Existing building

Other Critical Zoning Items	Barrier Free (ILHR 69) Utility Easements; Wellhead Protection District (WP-27)
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Tables prepared by Jacob Moskowitz, Assistant Zoning Administrator

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

Public Utilities and Services: The site is served by a full range of urban services. Metro Transit operates daily all-day transit service along Regent Street.

Project Description

The applicant requests approval of a demolition permit and two conditional uses at 1124-1134 Regent Street. These requests are subject to the approval standards for demolition permits and conditional uses.

The existing building has undergone several expansions over the years and the existing bicycle shop tenant will downsize and relocate to the eastern half of the building. The existing western half of the building is composed of two attached additions at the corner of Regent Street and North Charter Street. The applicant proposes to convert the front (Regent Street-facing) portion to a restaurant space and demolish the rear addition to provide space for an outdoor eating area.

According to the letter of intent, portions of the existing roof deck and steel structure from the demolished portion will be refinished to partially define the area of the outdoor eating area, which will also include an uncovered eating area, an artificial turf lawn, an outdoor fireplace, and several planter boxes. Submitted plans show a 135-patron capacity for the outdoor area. The outdoor seating area will be enclosed by a 42"-high fence with an entry from the restaurant interior and two exit gates, one to the parking lot and one to the North Charter Street sidewalk. A walk-up window for takeaway orders is proposed on the western wall, adjacent to the North Charter Street sidewalk. A second window for food delivery drivers is proposed a bit further to the north, just off the sidewalk and near the freight loading zone. To the east of the outdoor seating area, a small addition to the remaining portion of the building will house restrooms and mechanicals. No changes to the existing on-site surface parking are proposed. Hours of operation for the restaurant are proposed to be 11 a.m. to 12 a.m. (midnight) daily.

If approved, the applicant intends to begin demolition in April 2022, with project completion by August 2022.

Analysis & Conclusion

This proposal is subject to the standards for Demolitions [MGO §28.185(7)] Conditional Uses [MGO §28.183(6)], and the TSS District [MGO §28.065]. This request is also subject to the Supplemental Regulations [M.G.O. §28.151]. This section begins with a summary of adopted plan recommendations, and includes analysis of the demolition and conditional use approval standards.

Conformance with Adopted Plans

The [Comprehensive Plan](#) (2018) recommends Community Mixed-Use (CMU) uses for the subject site. The CMU category includes areas supporting an intensive mix of residential, commercial, and civic uses serving residents and visitors from the surrounding area and the community as a whole. The site is also within the boundary of the [Regent Street – South Campus Plan](#) (2008), which recommends neighborhood mixed use for the subject site, as well as a 6 story/88 feet maximum height. This plan also places the site within the Regent Street Shopping District, which includes minimum heights, setbacks and stepbacks, which are not applicable to this proposal, as the majority of the existing building is to remain. The site is also within the boundary of the [Monroe Street Commercial District Plan](#) (2007), but this plan does not provide recommendations for this portion of Regent Street.

Demolition Permit Standards

At its October 5, 2021 meeting, the Common Council revised the City of Madison's demolition permits ordinance section to remove consideration of proposed future use for demolition applications. In order to approve a demolition request, the Plan Commission must consider the factors and information specified in §28.185(9)(c)

MGO and find that the proposed demolition or removal is consistent with the statement of purpose of the demolition permits section and with the health, prosperity, safety, and welfare of the City of Madison. The standards state that the Plan Commission shall consider the report of the City's historic preservation planner regarding the historic value of the property as well as any report that may be submitted by the Landmarks Commission. At November 15, 2021 meeting, the Landmarks Commission found that the existing building at 1124 Regent Street has no known historic value.

The Planning Division believes that the standards for Demolition Permits can be met.

Conditional Use Standards

In regards to conditional use approval standards, the Plan Commission shall not approve a conditional use without due consideration of the City's adopted plan recommendations, design guidelines, supplemental regulations, and finding that all of the conditional use standards of §28.183(6) M.G.O. are met. Staff advises the Plan Commission that in evaluating the conditional use standards, State law requires that conditional use findings must be based on "substantial evidence" that directly pertains to each standard and not based on personal preference or speculation. Outdoor eating areas are often accompanied by light and noise, which are sometimes called out in reference to conditional use approval standard 1, related to the detriment or endangerment of public health, safety, and welfare, and standard 3, regarding impairment or diminishment of uses, values, and enjoyment of other property in the neighborhood. Similar concerns may be raised with regards to the walk-up service windows, albeit on a smaller scale. Additionally, the location of the service window on a sidewalk may impose pedestrian traffic and safety issues. However, Staff believes that because the walk-up service window is located on a side street, off Regent Street, such issues will largely be avoided. Those same pedestrian-related concerns do not apply to the delivery service window given its location just off of the sidewalk and orientation such that any queueing will likely not occur on the public sidewalk. Finally, because of the location of the outdoor eating area behind the building, the intensity of surrounding development, the lack of nearby residential uses, and the urban characteristic of the surrounding environment, Staff believes that it is possible that the applicable standards of approval can be found met.

Supplemental Regulations

According to Table 28D-2 in MGO §28.061(1), both *Outdoor eating areas associated with a food and beverage establishment* as well as a *Walk-up service windows located within ten (10) feet of a public right-of-way* must adhere to the Supplemental Regulations found in MGO §28.151.

For *Outdoor Eating Areas Associated with Food and Beverage Establishments*, there are the following three supplemental regulations:

- (a) Primary access to the area shall be from within the establishment.
- (b) Hours of operation may be restricted and noise and lighting limits imposed as part of the conditional use approval.
- (c) Where the use is conditional, an appropriate transition area between the use and adjacent property may be required, using landscaping, screening, and other site improvements consistent with the character of the neighborhood.

For *Walk-Up Service Windows*, there is the single supplemental regulation:

- (a) If located within ten (10) feet of a public right-of-way, conditional use approval is required.

Staff believes the Supplemental Regulations can be found met.

Conclusion

Staff believes that given the surrounding uses and the plan recommendations, the Plan Commission can find the applicable demolition permit and conditional use standards of approval to be met and approve the demolition permit and two conditional use requests. Staff notes that as conditional uses, the Plan Commission retains “continuing jurisdiction” to review and resolve complaints that may arise on the operation of the conditional uses.

At the time of report writing, staff is unaware of any public comment on this proposal.

Recommendation

Planning Division Recommendations (Contact Chris Wells, (608) 261-9135)

The Planning Division recommends that the Plan Commission find the standards met and **approve** the demolition permit to allow a street-facing façade to be demolished, and conditional uses in the Traditional Shopping Street (TSS) District – 1) for an outdoor eating area for a restaurant-tavern and 2) for a walk-up service window located within ten (10) feet of a public sidewalk - all to allow conversion of a portion of a commercial building to be converted into a restaurant-tavern with outdoor eating area and two walk-up service windows at 1124-1134 Regent Street. This recommendation is 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 Timothy Troester, 608-267-1995)

1. Madison Metropolitan Sewerage District (MMSD) charges are due and payable prior to Engineering sign-off, unless otherwise collected with a Developer's / Subdivision Contract. Contact Mark Moder (608-261-9250) 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))
2. Obtain a permanent sewer plug permit for each existing sanitary sewer lateral serving a property that is not to be reused and a temporary sewer plug permit for each sewer lateral that is to be reused by the development. The procedures and fee schedule is available online at <http://www.cityofmadison.com/engineering/permits.cfm>. (MGO CH 35.02(14))

City Engineering Division – Mapping Section (Contact Eric Peterson, (608) 266-4097)

3. The address of Budget Bicycle remains 1124 Regent St. The new restaurant address is 1134 Regent St.
4. The plans shall include a specific site demolition plan sheet.
5. Update the project sheet title bars to show the addresses of 1124 & 1134 Regent St.
6. The site plan shall reflect a proper street address of the property as reflected by official City of Madison Assessor's and Engineering Division records.

Zoning Administrator (Contact Jenny Kirchgatter, (608) 266-4429)

7. Section 28.185(9) requires that every applicant for a demolition or removal approval that requires approval by the Plan Commission is required to get a Reuse and Recycling Plan approved by the City Recycling Coordinator, Bryan Johnson at streets@cityofmadison.com prior to receiving a raze permit. Every person who is required to submit a reuse and recycling plan pursuant to Section 28.185(9) shall submit documents showing compliance with the plan within sixty (60) days of completion of demolition. A demolition or removal permit is valid for one (1) year from the date of the Plan Commission.
8. Provide calculations for the existing and proposed lot coverage with the final plan submittal. The lot coverage maximum is 85%. Lot coverage is defined as the total area of all buildings, measured at grade, all accessory structures including patios, etc., and all paved areas as a percentage of the total area of the lot, with the following exceptions: sidewalks or paved paths no wider than five (5) feet, pervious pavement, green roofs and decks. If the existing site currently exceeds 85% maximum lot coverage, proposed site improvements may not further increase lot coverage above the maximum.
9. Provide details of the existing parking lot, including the layout and dimensions of the parking stalls and accessible stalls.
10. Parking requirements for persons with disabilities must comply with MGO Section 28.141(4)(e) which includes all applicable State accessible requirements. Provide a minimum of two (2) accessible stalls striped per State requirements. A minimum of one (1) of the stalls shall be a van accessible stall 8 feet wide with an 8 foot wide striped access area adjacent. Show signage at the head of the stalls. Accessible signs shall be a minimum of 48" between the bottom of the sign and the ground. Show the accessible path from the stalls to the building. The stalls shall be as near the accessible entrance as possible. Show ramps, curbs, or wheel stops where required.
11. A minimum of 45 vehicle parking stalls are required equal to 15% of capacity of persons. A vehicle parking reduction will be required per Section 28.141(5). Submit an application for a parking reduction with the final plan submittal including information to support the request to reduce the required number of spaces.
12. Bicycle parking shall comply with the requirements of Sections 28.141(4)(g) and 28.141(11). Provide a minimum of 15 bicycle stalls for the restaurant-tavern equal to 5% of capacity of persons. A minimum of 3 bicycle stalls are required for Budget Bicycle Center retail business. The short-term bicycle parking stalls shall be located in a convenient and visible area at least as close as the closest non-accessible automobile parking and within one hundred (100) feet of a principal entrance. Note: A bicycle stall is a minimum of two (2) feet by six (6) feet with a five (5) foot wide access area. Provide a detail of the proposed bike rack.
13. If the required number of bicycle stalls cannot be provided on the site, a bicycle parking reduction will be required per Section 28.141(5). Submit an application for a bicycle parking reduction with the final plan submittal including information to support the request to reduce the required number of spaces.
14. Verify the percentage of site disturbance for the project. If the area of site disturbance is 10% or more of the development site, then the entire development site must be brought up to compliance with Landscaping and Screening Requirements Section 28.142. Submit the landscape plan and landscape worksheet stamped by the registered landscape architect. Per Section 28.142(3) Landscape Plan and Design Standards, landscape plans for zoning lots greater than ten thousand (10,000) square feet in size must be prepared by a registered landscape architect.

15. Show the trash enclosure area on the site plan. All developments, except single family and two family developments, shall provide a refuse disposal area. Such area shall be screened on four (4) sides (including a gate for access) by a solid, commercial-grade wood fence, wall, or equivalent material with a minimum height of six (6) feet and not greater than eight (8) feet. Submit a detail of the trash enclosure.
16. Verify whether new parking lot or site lighting will be installed. New parking lot lighting must comply with MGO Section 10.085 outdoor lighting standards. If parking lot site lighting is provided, submit a lighting photometric plan and fixture cut sheets with the final plan submittal.
17. Per Section 28.186(4)(b), the property owner or operator is required to bring the property into compliance with all elements of the approved site plans by the date established by the Zoning Administrator as part of the site and building plan approval. Work with Zoning staff to establish a final site compliance date.
18. 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.

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

19. Provide a fire sprinkler system throughout the areas under going a change of use and any additions or Level II alterations.
20. Open flame devices are not permitted in an assembly occupancy.

Forestry (Contact Bradley Hofmann, (608) 267-4908)

21. Contractor shall take precautions during construction to not disfigure, scar, or impair the health of any street tree. Contractor shall operate equipment in a manner as to not damage the branches of the street tree(s). This may require using smaller equipment and loading and unloading materials in a designated space away from trees on the construction site. Any damage or injury to existing street trees (either above or below ground) shall be reported immediately to City Forestry at 266-4816. Penalties and remediation shall be required. Add as a note on the plan set.
22. As defined by the Section 107.13 of City of Madison Standard Specifications for Public Works Construction: No excavation is permitted within 5 feet of the trunk of the street tree or when cutting roots over 3 inches in diameter. If excavation is necessary, the Contractor shall contact Madison City Forestry (266-4816) prior to excavation. City of Madison Forestry personnel shall assess the impact to the tree and to its root system prior to work commencing. Tree protection specifications can be found on the following website: <https://www.cityofmadison.com/business/pw/specs.cfm> Add as a note on the plan set.
23. On this project, street tree protection zone fencing is required. The fencing shall be erected before the demolition, grading or construction begins. The fence shall include the entire width of terrace and, extend at least 5 feet on both sides of the outside edge of the tree trunk. Do not remove the fencing to allow for deliveries or equipment access through the tree protection zone. Add as a note on the plan set.

24. Street tree pruning shall be coordinated with Madison Forestry at a minimum of two weeks prior to the start of construction for this project. All pruning shall follow the American National Standards Institute (ANSI) A300 - Part 1 Standards for pruning. Add as a note on the plan set.
25. Section 107.13(g) of City of Madison Standard Specifications for Public Works Construction addresses soil compaction near street trees and shall be followed by Contractor. The storage of parked vehicles, construction equipment, building materials, refuse, excavated spoils or dumping of poisonous materials on or around trees and roots within five (5) feet of the tree or within the protection zone is prohibited. Add as a note on the plan set.
26. All proposed street tree removals within the right of way shall be reviewed by City Forestry before the Plan Commission meeting. Street tree removals require approval and a tree removal permit issued by City Forestry. Any street tree removals requested after the development plan is approved by the Plan Commission or the Board of Public Works and City Forestry will require a minimum of a 72-hour review period which shall include the notification of the Alderperson within who's district is affected by the street tree removal(s) prior to a tree removal permit being issued. Add as a note on the plan set.
27. An existing inventory of street trees located within the right of way shall be included on the landscape, site, demo, and utility plans. The inventory shall include the following: location, size (diameter at 4 1/2 feet), and species of existing street trees. The inventory should also note if a street tree is proposed to be removed and the reason for removal.
28. The Developer shall post a security deposit prior to the start of the development to be collected by City Engineering as part of the Developers Agreement. In the event that street trees are damaged during the construction process, City Forestry will draw from this deposit for damages incurred.

The Planning Division, Traffic Engineering, Parks Division, Water Utility, and Metro Transit have reviewed this request and recommended no conditions of approval.