

PLANNING DIVISION STAFF REPORT

May 6, 2019

PREPARED FOR THE PLAN COMMISSION



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

Application Type: Rezoning & Conditional Use

Legistar File ID #: [55383](#) & [55025](#)

Prepared By: Sydney Prusak, Planning Division
Report includes comments from other City agencies, as noted.

Reviewed By: Kevin Firchow, AICP, Principal Planner

Summary

Applicant & Contact: James McFadden; McFadden & Company; 380 W Washington Avenue; Madison, WI 53703

Property Owner: Ben Altschul; PO Box 43; Madison, WI 53701

Requested Action: Approval of a Zoning Map Amendment to rezone the property from Traditional Residential – Consistent 4 (TR-C4) to Neighborhood Mixed Use (NMX) and conditional uses to approve a tavern in a mixed-use building and construct an outdoor eating area.

Proposal Summary: The applicant proposes to construct an outdoor eating area for an existing tavern located in a mixed-use building. The seating area will be located immediately adjacent to the restaurant and will have a capacity of 36 persons.

Applicable Regulations & Standards: This proposal is subject to the standards for Zoning Map Amendments [MGO §28.182(6)] and Conditional Uses [MGO §28.183(6)]. The Supplemental Regulations [MGO §28.151] contain further regulations for taverns and outdoor eating areas associated with food and beverage establishments.

Review Required By: Plan Commission (PC) and Common Council (CC)

Summary Recommendations: The Planning Division recommends that the Plan Commission find that the approval standards for zoning map amendments are met, and forward the rezoning request 28.022 -- 00371 to the Common Council with a recommendation to **approve**. Furthermore, the Planning Division recommends that the Plan Commission find that the approval standards for conditional uses are met, and **approve** the conditional use requests. These recommendations are subject to input at the public hearing and the conditions recommended by the Planning Division and other reviewing agencies.

Background Information

Parcel Location: The 7,242-square-foot (.17-acre) subject site is located on the east side of North Sherman Avenue near the Almo Avenue intersection. It is located in Aldermanic District 12 (Ald. Abbas) and the Madison Metropolitan School District.

Existing Conditions and Land Use: The subject site contains a two-story, 2,564-square-foot mixed-use building. The first floor has an existing tavern (Busse's Markway Tavern), with one residential unit on the second floor. The property is currently zoned Traditional Residential – Consistent 4 (TR-C4).

Surrounding Land Uses and Zoning:

North: Coffee shop (Zippy Lube) with an outdoor eating area and commercial uses beyond, zoned Neighborhood Mixed Use (NMX));

South: Single-family and two-family residences, zoned TR-C4;

East: Single-family and two-family residences, zoned TR-C4; and

West: Single-family and two-family residences, zoned TR-C4 and a 22-unit apartment building, zoned NMX.

Adopted Land Use Plan: The [Comprehensive Plan \(2018\)](#) recommends Neighborhood Mixed-Use for the subject site. The [Northport-Warner Park-Sherman Neighborhood Plan \(2009\)](#) does not provide specific recommendations for the subject site.

Zoning Summary: The subject property currently zoned Traditional Residential – Consistent 4 (TR-C4), but as proposed the site will be rezoned to Neighborhood Mixed Use (NMX).

Requirements	Required	Proposed
Front Yard Setback	None	Existing front yard setback
Side Yard Setback: Where buildings abut residentially-zoned lots at a side lot line	Minimum side yard required in the adjacent residential district (TR-C4): 5'	Existing south side yard setback
Side Yard Setback: Where proposed buildings or abutting buildings have window openings in side walls within 6 feet of lot line	One-story: 5' Two-story or higher: 6'	Existing north side yard setback
Rear Yard Setback	20'	Existing rear yard setback
Usable Open Space	160 sq. ft. per lodging room or 1-bedroom unit; 320 sq. ft. for >1-bedroom units (320 sq. ft.)	Adequate
Maximum Lot Coverage	75%	Less than 75%
Maximum Building Height	3 stories/40'	2 story existing building

Site Design	Required	Proposed
Number Parking Stalls	No minimum required	None
Accessible Stalls	None	None
Loading	None	None
Number Bike Parking Stalls	Tavern: 5% of capacity of persons (2)	3
Landscaping and Screening	Yes	Yes (21)(22)
Lighting	None	None (24)
Building Forms	Not required	Existing building

Other Critical Zoning Items	Utility Easements, Barrier Free (ILHR 69), and Wellhead Protection District (WP-07)
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Tables Prepared by Jenny Kirchgatter, Assistant Zoning Administrator

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 Metro Transit service.

Project Description

The applicant, on behalf of Busse's Markway Tavern, proposes to formally establish a mixed-use building with a tavern and construct an outdoor eating area. In order for this development to occur, the applicant proposes to rezone the property from Traditional Residential – Consistent 4 (TR-C4) to Neighborhood Mixed Use (NMX) as taverns and outdoor eating areas associated with food and beverage establishments are not allowed uses in the TR-C4 Zoning District. Furthermore, in order to construct the outdoor patio, the existing accessory building will need to be demolished.

According to the submitted materials, the outdoor eating area will be 420-square-feet and have 9 tables, for a total capacity of 36 persons. In terms of screening the outdoor patio, the applicant is proposing to install a three-and-a-half foot fence with masonry piers and landscape planters on the northern edge of the property line. The applicant is also proposing to install a new landscape hedge on the eastern end of the outdoor space, where no seating is proposed. Lastly, the applicant will install an eight-foot tall wood fence along the eastern edge of the outdoor eating area, abutting the rear yard of the subject site.

Supplemental Regulations

MGO §28.151 includes the following supplemental regulations for a Tavern, which is defined as “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 does not include kitchen facilities.” The supplemental regulations are:

- (a) Taverns shall not hold an entertainment license under Sec. 38.06(11)
- (b) Taverns shall at all times operate consistent with and according to the requirements of a valid alcohol license issued by the City.

The supplemental regulations for Outdoor Eating Areas are:

- (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.

Project Analysis and Conclusion

The proposed project is subject to the standards for Zoning Map Amendments [MGO §28.182(6)] and Conditional Uses [MGO §28.182(6)].

Conformance with Adopted Plans

The [2018 Comprehensive Plan](#) recommends Neighborhood Mixed Use (NMX), which is classified as “relatively small existing and planned Activity Centers that include residential uses, as well as retail, restaurant, service, institutional, and civic uses primarily serving nearby residents.” While the [Northport-Warner Park-Sherman Neighborhood Plan \(2009\)](#) does not provide specific recommendations for the subject site, it does recommend that “new infill mixed-use or commercial development along and/or adjacent to the major transportation

corridors incorporate traditional neighborhood design principals, especially regarding pedestrian-oriented features.”

The Planning Division believes that this rezoning request generally conforms to these recommendations. The tavern is an existing commercial use, and according to the applicant, it has been operating as a tavern since the prohibition era. If approved, the requested rezoning would convert a legal, non-conforming use into an approved conditional use.

Standards for Zoning Map Amendments

This proposal is subject to the standards for Zoning Map Amendments, as the subject property is proposed to be rezoned from Traditional Residential – Consistent 4 (TR-C4) to Neighborhood Mixed Use (NMX). MGO §28.182(6) states that, “Map amendments are legislative decisions of the Common Council that shall be based on public health, safety and welfare, shall be consistent with the Comprehensive Plan, and shall comply with Wisconsin and federal law. “Consistent with” has been defined in State Statutes as “furthers or does not contradict the objectives, goals and policies contained in the comprehensive plan.” Given that the [Comprehensive Plan \(2018\)](#) recommends Neighborhood Mixed Use for the subject site, staff believes that the proposed rezoning from TR-C4 to NMX is generally consistent with the plan recommendations. Therefore, the Planning Division believes that the standards for Zoning Map Amendments can be found met.

Conditional Use Standards

In regards to the approval standards, the Plan Commission shall not approve a conditional use without due consideration of the City’s adopted plan recommendations, design guidelines, and finding that all of the Conditional Use Standards of §28.183(6) MGO are met. Please note, recent changes to 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.

There are two conditional use requests before the Plan Commission: 1) Approval of an existing tavern; and 2) Approval of an outdoor eating area for the tavern. Given that the first request has been in operation for several decades, staff is supportive of its continuing use. Further elaboration and analysis is given to the outdoor eating area request.

The Planning Division anticipates that if well-managed, the proposed outdoor eating area may have limited impacts to the surrounding properties. Given that the outdoor patio area is located approximately 26 feet from the nearest residential property line, proper management of the space is critical to minimize the impacts. Conditional Use Standard #3 states, “The uses, values and enjoyment of other property in the neighborhood for purposes already established will not be substantially impaired or diminished in any foreseeable manner.” Due to this proximity to residential properties, Staff believes certain conditions of approval will be necessary to mitigate potential impacts.

While no amplified sound is proposed for the outdoor patio, staff will formalize this requirement as a condition of approval. Furthermore, the patio is proposed to be open daily from 2:00 pm to bar time. Staff has concerns about having the patio open until bar time due to potential conflicts with nearby residential uses and believes that establishing an earlier closing time will limit the negative impacts resulting from the outdoor space. As a condition of approval, the hours of operation for the outdoor eating area shall be limited to 2:00 pm to 10:00 pm daily. Furthermore, the Planning Division believes that all applicable Supplemental Regulations can be found met. Staff believes that the proposed solid fence on the rear property line will fulfill the transition requirement for adjacent properties. Staff notes that the tavern and outdoor eating area front onto North Sherman Avenue, which is

classified as a Standard Arterial Street. Given these considerations, the Planning Division believes that it may be possible for the Conditional Use Standards to be found met.

If the Plan Commission cannot find the approval standards to be found met, the Plan Commission shall specify its findings of fact and list the standard(s) that have not been met and the reasons such standard(s) was not met.

Lastly, if approved, the Plan Commission retains continuing jurisdiction over this conditional use, meaning that should complaints be filed, the Plan Commission could take further action on this conditional use as allowed in MGO §28.183(9)(d).

Public Input

At the time of report writing, staff received comments from nearby neighbors in opposition to the outdoor patio, especially in regards to the proposed hours of operation, overall noise levels, and increased activity on the site. The public comments are attached.

Conclusion

On balance, the Planning Division believes that this proposal can be found to meet the approval standards for Zoning Map Amendments and conditional uses. Staff notes that there are several concerns from nearby residents and recommends that the Plan Commission give careful consideration to the application materials and public comment in evaluating this request.

Recommendation

Planning Division Recommendation (Contact Sydney Prusak, (608) 243-0554)

The Planning Division recommends that the Plan Commission find that the approval standards for zoning map amendments are met, and forward the rezoning request 28.022 -- 00371 to the Common Council with a recommendation to **approve**. Secondly, the Planning Division recommends that the Plan Commission find that the approval standards for conditional uses are met, and **approve** the conditional use requests. These recommendations are subject to input at the public hearing and the conditions from reviewing agencies in this report.

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

Planning Division (Contact Sydney Prusak, (608) 243-0554)

1. No outdoor amplified sound (from music, televisions, etc.) or live musical performance shall be allowed in the outdoor seating area.
2. The outdoor eating and outdoor recreation areas shall close at 10:00 p.m., seven days a week. 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 areas following a recommendation by the district alder.
3. The doors on the northern wall of the establishment shall be closed at all times.

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

4. The Applicant shall submit, prior to plan sign-off but after all revisions have been completed, a digital CAD file (single file) to the Engineering Division with any private storm and sanitary sewer utilities. The digital CAD file shall be to scale and represent final construction. The CAD file shall be in a designated coordinate system (preferably Dane County WISCRS, US Ft). The single CAD file submittal can be either AutoCAD (dwg) Version 2013 or older, MicroStation (dgn) V8i Select Series 3 or older, or Universal (dxf) format and shall contain the only the following data, each on a separate layer name/level number a) Building Footprints b) Internal Walkway Areas c) Internal Site Parking Areas d) Other Miscellaneous Impervious Areas (i.e. gravel, crushed stone, bituminous/asphalt, concrete, etc.) e) Right-of-Way lines (public and private) f) Lot lines or parcel lines if unplatted g) Lot numbers or the words unplatted h) Lot/Plat dimensions i) Street names j) Private on-site sanitary sewer utilities (including all connections to public sanitary)k) Private on-site storm sewer utilities (including all connections to public storm)All other levels (contours, elevations, etc) are not to be included with this file submittal.NOTE: Email CAD file transmissions are preferred to: bstanley@cityofmadison.com (East) or ttroester@cityofmadison.com (West). Include the site address in the subject line of this transmittal. Any changes or additions to the location of the building, sidewalks, parking/pavement, private on-site sanitary sewer utilities, or private on-site storm sewer utilities during construction will require a new CAD file.
5. The Applicant shall close all abandoned driveways by replacing the curb in front of the driveways and restoring the terrace with grass. (POLICY)
6. The Applicant's project requires the minor restoration of the street and sidewalk. The Applicant shall obtain a Street Excavation Permit for the street restoration work, which is available from the City Engineering Division. The applicant shall pay all fees associated with the permit including inspection fees. (MGO 16.23(9)(d)(6))This permit application is available on line at <http://www.cityofmadison.com/engineering/permits.cfm>.

City Engineering – Mapping (Contact Jeffrey Quamme, (608) 266-4097)

7. The site plan shall identify lot and block numbers of recorded Plat.
8. Considering the proximity of the proposed site improvements to the side property lines, a property survey prior to the placement of the new improvements is strongly recommended to assure accurate placement within the parcel.

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

9. 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; vision triangles; 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.
10. 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.

11. 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.
12. All parking facility design shall conform to MGO standards, as set in section 10.08(6). At this time no parking stall are dimensioned for a proper review.
13. All bicycle parking adjacent pedestrian walkways shall have a 2 foot buffer zone to accommodate irregularly parked bicycles and/or bicycle trailers.
14. All pedestrian walkways adjacent parking stalls shall be 7 feet wide to accommodate vehicle overhang, signage and impediments to walkway movements. Any request for variance shall be submitted to and reviewed by City Traffic Engineering.
15. The applicant shall provide a clearly defined 5' walkway clear of all obstructions to assist citizens with disabilities, especially those who use a wheel chair or are visually impaired. Obstructions include but are not limited to tree grates, planters, benches, parked vehicle overhang, signage and doors that swing outward into walkway.
16. "Stop" signs shall be installed at a height of seven (7) feet 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.
17. Dimensions of the driveways shall be noted on the plan including the width of driveway and width of driveway flares or curb cut.
18. The applicant shall remove and replace with curb and gutter and note on the plan the removal of the existing Northern driveway.
19. Secure parking facility. This is usually done with continuous six (6) inch curb, timbers, preformed wheel stops, guardrail erected at a height of eighteen (18) inches or fencing of sufficient strength to act as a vehicle bumper.
20. The applicant shall demonstrate use of loading zone with turning template.

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

21. Submit the landscape plan and landscape worksheet identifying the existing and proposed trees, shrubs, and landscape plantings. Because the area of site disturbance is more than 10% of the entire development site, the entire development site must be brought up to compliance with the landscaping and screening requirements Section 28.142.
22. Screening is required adjacent the Zoning district boundary along the south property line. Screening shall be provided alongside and rear property boundaries between commercial/ mixed-use districts and residential districts. Verify that the existing hedge adjacent the south side property line will provide year-round foliage or install a screening fence between six (6) and eight (8) feet in height.

23. The capacity shall be established for the outdoor eating area. Occupancy is established by the Building Inspection Unit. Contact Building Inspection staff at (608) 266-4559 to help facilitate this process.
24. If exterior site lighting is provided, submit an exterior lighting plan and fixture cut sheets with the final plan submittal. Exterior lighting provided shall be in accordance with City of Madison General Ordinances Section 10.085.
25. 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.

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

26. All outstanding fire code violations shall be corrected prior to MFD signing off on the final site plan.

Forestry Review (Contact Brad Hofmann, (608) 266-4816)

27. Additional street trees are needed for this project. All street tree planting locations and trees species within the right of way shall be determined by City Forestry. Please submit a site plan (in PDF format) to Brad Hofmann – bhofmann@cityofmadison.com or 266-4816. Tree planting specifications can be found in section 209 of City of Madison Standard Specifications for Public Works Construction –
28. Contractor shall contact City Forestry Brad Hofmann bhofmann@cityofmadison.com or 266-4816 at least one week prior to planting to schedule inspecting the nursery stock and review planting specifications with the landscaper.