

PLANNING DIVISION STAFF REPORT

June 21, 2021



PREPARED FOR THE PLAN COMMISSION

Project Address: 824-826 East Johnson Street (2nd Aldermanic District, Ald. Heck)
Application Type: Conditional Use
Legistar File ID #: [65478](#)
Prepared By: Colin Punt, Planning Division
Report Includes Comments from other City Agencies, as noted
Reviewed By: Kevin Firchow, AICP, Principal Planner

Summary

Applicant: Kyle Johnson; Kinkin; 1221 Sherman Ave; Madison, WI 53703

Requested Action: Approval of a Demolition Permit for a residence and Conditional Uses to establish a restaurant-tavern in mixed-use building with outdoor eating area in a Neighborhood Mixed Use district at 824-826 East Johnson Street per M.G.O. §28.064(2).

Proposal Summary: The applicant seeks approval of a restaurant-tavern with an outdoor eating area and partial demolition of a residence to convert into an eating area.

Applicable Regulations & Standards: This proposal is subject to the standards for conditional uses, M.G.O. §28.183(6) and demolition permits, demolition permits M.G.O. §28.185(7).

Review Required By: Plan Commission

Summary Recommendation: The Planning Division recommends that the Plan Commission find that the demolition permit and conditional use standards are met and **approve** the requests to partially demolish a single-family residence and establish a restaurant-tavern with outdoor eating areas at 824-826 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 site is a 4,356-square-foot parcel located on the northwest side of East Johnson Street between North Livingston and North Paterson Streets. It is within Aldermanic District 2 (Ald. Heck), and the Madison Metropolitan School District.

Existing Conditions and Land Use: The site, zoned NMX (Neighborhood Mixed Use District), is developed with a one-story 1,030-square feet built in 1916. There is also a 550-square single-family residence built in 1890 at the rear of the lot.

Surrounding Land Uses and Zoning:

Northwest: A mix of single-family residences and small apartment buildings, zoned TR-V2 (Traditional Residential – Variable 2 District);

Southwest: Small mixed-use and apartment buildings, zoned NMX (Neighborhood Mixed Use District);

Southeast: Across East Johnson Street, small mixed-use buildings with first floor commercial space and apartments above, zoned NMX and PD (Planned Development District); and

Northeast: Two-unit residences zoned NMX.

Adopted Land Use Plan: The [Comprehensive Plan](#) (2018) recommends NMU (Neighborhood Mixed Use) for the blockface on which this site is located. The [Tenney-Lapham-Old Market Neighborhood Plan](#) (2008) also recommends neighborhood mixed use for the 800 block of East Johnson Street.

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

Requirements	Required	Proposed
Front Yard Setback	0' or 5'	Existing front yard
Side Yard Setback: Where proposed buildings or abutting buildings have window openings in side walls within 6' of lot line	Lot width <40': 10% lot width	Existing side yard (2)
Rear Yard Setback	20'	Adequate (2)
Maximum Lot Coverage	75%	71%
Maximum Building Height	3 stories/ 40'	1 story existing building

Site Design	Required	Proposed
Number Parking Stalls	Restaurant-tavern: 15% of capacity of persons (15)	None (3)
Accessible Stalls	None	None
Loading	Not required	None
Number Bike Parking Stalls	Restaurant-tavern: 5% of capacity of persons (5)	None (4)
Landscaping and Screening	Yes	Yes (5)(6)
Lighting	Not required	None
Building Forms	Not required	Existing commercial building Proposed accessory building (pavilion)
Other Critical Zoning Items:	Barrier Free (ILHR 69), Utility Easements, Wellhead Protection District (WP-24)	

Table Prepared by Jenny Kirchgatter, Assistant 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 has three requests: a conditional use for a restaurant/tavern, a conditional use for an outdoor eating area, and a demolition permit to partially demolish a single-family residence to repurpose into a dining area. The building at 824 East Johnson Street was most recently used as an office building, and is proposed to be converted to a restaurant/tavern, with a new addition at the rear of the building for ADA compliancy issues. The restaurant building will seat 37 patrons. A permitted use site plan has already been approved permitting conversion of the building to a restaurant.

The residence at 826 East Washington is not occupied. The applicant intends to partially demolish the residence and convert into a partially-open-air pavilion that will be used to seat guests, provide storage, and house a server station. The pavilion will be open on its two south faces toward the restaurant building and outdoor seating area. A deck with fence and bench is proposed on the two southern sides of the pavilion. Siding, windows, door, and trim are intended for replacement. The rear yard between the two buildings will be utilized for patron seating. Plans show that the space will be paved with semi-pervious paving, and be landscaped with raised planting beds and a mid-story tree in a large structured planter. The outdoor space, including the pavilion, will seat 62 patrons.

Proposed hours of operation are 11 a.m. to 9 p.m. Monday to Thursday, 11 a.m. to 10 p.m. on Friday, 9 a.m. to 10 p.m. on Saturday, and 9 a.m. to 3 p.m. on Sunday. Deliveries will occur through the front door from East Johnson Street during the morning, approximately three or four days per week.

Adopted Plan Recommendations

The [Comprehensive Plan](#) (2018) recommends NMU (Neighborhood Mixed Use) for the blockface on which this site is located. NMU areas are nodes or corridors containing housing, shopping, and services that generally serves surrounding neighborhoods. Development is typically two to four stories, with densities generally less than 70 dwelling units per acre. The [Tenney-Lapham-Old Market Neighborhood Plan](#) (2008) also recommends Neighborhood Mixed Use for the 800 block of East Johnson Street. The neighborhood plan explicitly establishes a goal to continue the growth of the East Johnson Street business district in this area.

Conditional Use Standards

Section 28.061(1), M.G.O. lists both a restaurant-tavern and an outdoor eating area associated with a food and beverage establishment as Conditional Uses. 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. The surrounding buildings all contain residential units, though the building to the south is a mixed use building with first-floor office space and the lot to the rear of the site is developed with a garage structure at the rear lot line. The submitted plans show a 6-foot high wood fence with running bench along the southwest lot line and the portion of the northeast lot line between the two buildings where outdoor seating would occur. While ambient string lighting is proposed for the deck of the rear pavilion building, no other new outdoor lighting appears to be proposed within the outdoor eating area. The application does not indicate whether amplified outdoor sound is proposed for the outdoor eating area. Due to the close proximity to the outdoor eating area to the surrounding residences—within a few feet for many of the seats—staff recommends that amplified outdoor sound not be permitted, per recommended condition of approval 1. Because of the location of the outdoor eating areas in the rear of the building, with fencing and no outdoor amplified sound, and the urban characteristic of the surrounding environment, which is encouraged by the neighborhood plan, Staff believes that all applicable standards of approval can be found met.

Staff notes that as a conditional use, the Plan Commission retains "continuing jurisdiction" to review and resolve complaints that may arise on the operation of the conditional use.

Demolition Permit Standards

Demolition of an existing building wall facing a public street or 50% or more of the area of the exterior walls of a building requires Plan Commission approval. In order to approve a demolition request, M.G.O §28.185(7) requires that the Plan Commission must find that the requested demolition and proposed use are compatible with the purpose of the demolition section of the zoning code and the intent and purpose of the NMX District. Furthermore, the proposed use following demolition or removal should be compatible with adopted neighborhood plans and the Comprehensive Plan. Those recommendations are outlined above.

Per §28.185(7)(b) M.G.O., the Plan Commission must find that both the requested demolition and the proposed future use are compatible with the purpose of the demolition section and the intent and purpose expressed in the NMX zoning districts, which states they are established to encourage and sustain the viability of commercial nodes that serve the shopping needs of residents in adjacent neighborhoods. The district is also intended to encourage pedestrian, bicycle and transit use as a means of accessing these commercial areas and encourage diversification of uses, including residential, commercial, and civic uses, in order to enhance the vitality and appeal of these areas.

The demolition standards also 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 submitted by the Landmarks Commission. The Landmarks Commission reviewed the proposed demolition at its May 3, 2021 meeting and found that while it is unfortunate to lose an older vernacular home, the building at 826 E Johnson Street has lost integrity and has no known historic value.

Staff believes that the partial demolition and reuse of the residence at the rear of the site is appropriate for the intended use of the property, the intent and purpose of the zoning district, and the consistent with adopted plans.

Conclusion

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

At time of report writing, staff is unaware of any public comments.

Recommendation

Planning Division Recommendation (Contact Colin Punt, (608) 243-0455)

The Planning Division recommends that the Plan Commission find that the demolition permit and conditional use standards are met and **approve** the requests to partially demolish a single-family residence and establish a restaurant-tavern with outdoor eating areas at 824-826 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

Planning Division (Contact Colin Punt, (608) 243-0455)

1. No outdoor amplified sound shall be permitted in the outdoor eating area.

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

2. Section 28.185(7)(a)5. requires that if a demolition or removal permit is approved, it shall not be issued until the reuse and recycling plan is approved by the Recycling Coordinator, Bryan Johnson at streets@cityofmadison.com. Every person who is required to submit a reuse and recycling plan pursuant to Section 28.185(7)(a)5. 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.
3. Show the rear yard setback and side yard setbacks for the renovated pavilion building.
4. A minimum of fifteen (15) parking stalls are required equal to 15% of capacity of persons. A vehicle parking reduction will be required per Section 28.141(5). Submit a request for a parking reduction with the final plan submittal including information to support the argument for reducing the required number of spaces.
5. A minimum of five (5) bicycle stalls are required equal to 5% of capacity of persons. A bicycle parking reduction will be required per Section 28.141(5). Submit a request for a bicycle parking reduction with the final plan submittal including information to support the argument for reducing the required number of spaces.
6. Screening is required adjacent the Zoning district boundary along the rear property line. Screening shall be provided along side and rear property boundaries between commercial/ mixed-use districts and residential districts. Screening shall consist of a solid wall, solid fence, or hedge with year-round foliage, between six (6) and eight (8) feet in height. Submit a detail of the screening fence with the final plans.
7. Provide a detail of the proposed service, refuse and equipment screening enclosure.
8. 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.
9. 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.
10. 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.

City Engineering Division - Main Office (Contact Brenda Stanley, (608) 267-9127)

11. Applicant shall provide an ownership/maintenance agreement (recorded) for the sanitary sewer shared lateral prior to plan approval.
12. Revise plans to show sewer lateral location for building in back of lot. If it is connected to sewer lateral that serves the building that fronts onto E. Johnson St., applicant shall add note to plan that lateral is connected to 824 E. Johnson St.
13. 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>. (M.G.O. CH 35.02(14))
14. Revise plan set to show more information on proposed drainage for the site, including downspout locations. Use either spot elevations and drainage arrows or proposed contours to show the required drainage information. (POLICY)
15. Submit, prior to plan sign-off but after all revisions have been completed, a digital CAD file (single file) to the Engineering Division that is to scale and represents final construction with any private storm and sanitary sewer utilities.
16. Submit, prior to plan sign-off but after all revisions have been completed, digital PDF files to the Engineering Division. Email PDF file transmissions are preferred to: bstanley@cityofmadison.com (East) or ttroester@cityofmadison.com (West).

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

17. Site plans indicate a "Paved Walk to Easement" to the rear of the site. Applicant shall provide the recorded easement document providing the pedestrian access rights over the portion of Lot 5, Block 140 to the rear of this site.

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

18. The applicant shall submit one contiguous plan showing proposed conditions and one contiguous plan showing existing conditions for approval. The plan drawings shall be to engineering scale 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.
19. 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.

20. 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.
21. All bicycle parking adjacent pedestrian walkways shall have a 2 foot buffer zone to accommodate irregularly parked bicycles and/or bicycle trailers.
22. Applicant shall submit for review a Commercial Delivery Plan. This plan will include times, vehicle size, use of loading zones and all related turning movements.
23. Items in the Right-of-Way are not approvable though site plan approval, work with City Real Estate to start the 'Privilege in Streets' process to obtain an Encroachment Agreement for items in the Right-of-Way (bicycle racks, planters, etc.).

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

24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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.

30. 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.

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

31. A Water Meter Application Form and fees must be submitted before connecting to the existing water lateral. Provide at least two working days notice between the application submittal and the scheduled lateral connection/extension. Application materials are available on the Water Utility's Plumbers & Contractors website (<http://www.cityofmadison.com/water/plumbers-contractors>), otherwise they may be obtained from the Water Utility Main Office at 119 E Olin Ave. A licensed plumber signature is required on all water service applications. For new or replacement services, the property owner or authorized agent is also required to sign the application. If you have questions regarding water service applications, please contact Madison Water Utility at (608) 266-4646.
32. The Madison Water Utility shall be notified to remove the water meter at least two working days prior to demolition. Contact the Water Utility Meter Department at (608) 266-4765 to schedule the meter removal appointment.

The Fire Department, Parks Division, and Metro Transit have reviewed this request and have recommended no conditions of approval