



PLANNING DIVISION STAFF REPORT

November 21, 2022

PREPARED FOR THE PLAN COMMISSION

Project Address: 255 North Sherman Avenue (12th Alder District, Alder Abbas)

Application Type: Conditional Use

Legistar File ID # [74254](#)

Prepared By: Colin Punt, Planning Division
Report Includes Comments from other City Agencies, as noted

Reviewed By: Kevin Firchow, AICP, Principal Planner

Summary

Applicant: Douglas Pahl; Aro Eberle Architects; 433 W Washington Ave #400; Madison, WI 53703

Property Owner: Apollo Marquez; 255 N Sherman Ave; Madison, WI 53704

Requested Action: The applicant requests approval of conditional uses to establish a restaurant-nightclub and an outdoor eating area in an existing building zoned NMX (Neighborhood Mixed Use District) at 255 North Sherman Avenue.

Proposal Summary: The applicant proposes to establish a restaurant-nightclub with outdoor eating area in an existing commercial building. No structural changes to the building are planned.

Applicable Regulations & Standards: This proposal is subject to the standards for Conditional Uses [MGO §28.183] as MGO §28.064(2) lists restaurant-nightclub and outdoor eating areas open after 9 p.m. as conditional uses in the NMX (Neighborhood Mixed Use) District. The Supplemental Regulations [MGO §28.151] contain further applicable regulations for nightclubs and outdoor eating areas.

Review Required By: Plan Commission

Summary Recommendation: The Planning Division recommends that the Plan Commission find that the approval standards for conditional uses are met and **approve** the request to establish a restaurant-nightclub with outdoor eating area at a property zoned NMX (Neighborhood Mixed Use District) at 255 North Sherman Avenue. This request is subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

Background Information

Parcel Location: The 9,972-square-foot parcel is located at the southeast quadrant of the intersection of North Sherman Avenue and Erie Court. This parcel is located within Alder District 12 (Alder Abbas) and the Madison Metropolitan School District.

Existing Conditions and Land Use: The parcel contains a one-and-one-half story 5,032 square-foot commercial building constructed in 1957.

Surrounding Land Use and Zoning:

North: Across Erie Court, a two-story office building zoned NMX and single-family residence zone TR-C4;

East: A two-unit residence zoned TR-C4; and

South: Single-family residences zone TR-C4;

West: Across North Sherman Avenue, a park and commercial building in the Village of Maple Bluff.

Adopted Land Use Plan: The [Comprehensive Plan](#) (2018) recommends Low Residential (LR) for the site. The [Emerson East-Eken Park-Yahara Neighborhood Plan](#) (2016) identifies the nearby intersection of Sherman Avenue and Fordham Street as a mixed-use node, but does not include specific recommendations for this site.

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

Public Utilities and Services: This property is served by a full range of urban services.

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

Requirements	Required	Proposed
Lot Area (sq. ft.)	None	9,972
Lot Width	None	83 ft
Front Yard Setback	5 ft	Existing, no change
Max. Front Yard Setback	25 ft	Existing, no change
Side Yard Setback	5 ft	Existing, no change
Rear Yard Setback	20 ft	Existing, no change
Maximum Lot Coverage	75%	Existing, no change
Maximum Building Height	3 stories/40 ft	Existing, no change

Site Design	Required	Proposed
Number Parking Stalls	No minimum	8
Accessible Stalls	1	1
Loading	No	No
Number Bike Parking Stalls	5% of capacity	6 (see zoning comment 3)
Landscaping	Yes	Yes (see zoning comment 4)
Lighting	No	Yes
Building Forms	Existing	Existing, no change

Other Critical Zoning Items	Utility Easements
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Tables Prepared by Jacob Moskowitz, Assistant Zoning Administrator

Project Description, Analysis, and Conclusion

The applicant is proposing to establish a restaurant-nightclub with an outdoor eating area in an existing building at 255 North Sherman Avenue. The restaurant-nightclub is proposed to occupy the northern two-thirds of the upper floor (half-story above grade) of the existing building. The applicant plans to include programmed performances by small live bands or DJs. The planned outdoor eating area is approximately 750 square feet with a proposed capacity of approximately 35 patrons and is located on the north side of the building, between the street corner, the parking lot, and the building. The letter of intent indicates the outdoor eating space will remain open until 10 p.m. at the latest. Other than construction of the deck for the outdoor eating area, no changes are proposed to the exterior of the existing building. The applicant has not yet applied for an entertainment license to be reviewed by the ALRC.

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 MGO §28.183(6) are met. The [Comprehensive Plan](#) (2018) recommends Low Residential (LR) for the site. The [Emerson East-Eken Park-Yahara Neighborhood Plan](#) (2016) identifies the nearby intersection of

Sherman Avenue and Fordham Street as a mixed-use node, but does not include specific recommendations for this site. While the Comprehensive Plan does recommend residential uses for the site, the plan text does note that a limited amount of nonresidential uses may also be located within residential categories; staff notes that commercial uses have occupied this site for at least 60 years.

Staff believes that the Conditional Use Standards can be found met and provides further discussion on Standard 3.

Conditional Use Standard #3 states that, *“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.”* The Planning Division believes that this standard can be found met. Staff notes that there are a variety of residential uses in close proximity, including 29 single- and two-family residences within 300 feet, but that the outdoor eating area is proposed for a street corner adjacent to North Sherman Avenue. When considering the information provided by the applicant, the Planning Division does not anticipate that the establishment of this use and hosting live entertainment indoors will have significant impacts on surrounding properties. Recommended conditions such as ensuring exterior doors remain closed during performances and not permitting outdoor amplified music can help minimize any impacts.

Supplemental Regulations

According to Table 28D-2 in MGO §28.064(2), a restaurant-nightclub must adhere to the Supplemental Regulations found in MGO §28.151:

- (a) Capacity may be as high as five (5) square feet per person.
- (b) Shall hold entertainment license under Sec. 38.06(11), MGO.
- (c) Shall at all times operate consistent with and according to the requirements of a valid liquor alcohol license issued by the City.

Staff believes that all of the Supplemental Regulations can be found met.

Conclusion

On balance, Staff believes that the proposed restaurant-nightclub and outdoor eating areas can be found to meet the Conditional Use Approval Standards and recommends that it be approved by the Plan Commission, subject to input at the public hearing and comments from reviewing agencies.

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).

Recommendation

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

The Planning Division recommends that the Plan Commission find that the approval standards for conditional uses are met and **approve** the request to establish a restaurant-nightclub with an outdoor eating area at a property zoned NMX (Neighborhood Mixed Use District) at 255 North Sherman Avenue. This recommendation is subject to input at the public hearing and the following conditions:

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

Planning Division (Contact Colin Punt, 243-0455)

1. The outdoor eating area shall close by 10 p.m.
2. Exterior doors shall remain closed and not be propped open during musical performances.

Zoning Administrator (Contact Jacob Moskowitz, 266-4560)

3. The bicycle stalls do not appear to meet dimensional requirements for 6 stalls. A bicycle stall is a minimum two (2) feet by six (6) feet with a five (5) foot wide access area.
4. Submit the landscape plan and landscape worksheet. Landscaping displaced by this project must be replaced elsewhere onsite.
5. Maximum capacity to be established by the Director of the Building Inspection Division, not to exceed the number of available seats, plus staff, plus a reasonable number of people waiting for seats, as shown on the floor plan consistent with approved capacity.
6. Must serve food at all hours it is open.
7. Patio may not have outdoor amplified sound unless approved as a conditional use in the future.

City Engineering Division – Mapping Section (Contact Julius Smith, 264-9276)

8. Add the nightclub area address of 255 N Sherman Ave Suite 201 & the lower kitchen area as Suite 102. 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.

Traffic Engineering Division (Contact Sean Malloy, 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 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.
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).
13. All bicycle parking adjacent pedestrian walkways shall have a 2 foot buffer zone to accommodate irregularly parked bicycles and/or bicycle trailers.
14. The applicant shall adhere to all vision triangle requirements as set in MGO 27.05 (No visual obstructions between the heights of 30 inches and 10 feet at a distance of 25 feet behind the property line at streets and 10 feet at driveways.). Alteration necessary to achieve compliance may include but are not limited to; substitution to transparent materials, removing sections of the structure and modifying or removing landscaping elements. If applicant believes public safety can be maintained they shall apply for a reduction of MGO 27.05(2)(bb) - Vision Clearance Triangles at Intersections Corners. Approval or denial of the reduction shall be the determination of the City Traffic Engineer.
15. The applicant shall provide a clearly defined 5' walkway from the front door to the public Right of Way 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 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.
17. Applicant shall submit for review a waste removal plan. This shall include vehicular turning movements.
18. 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.

The following agencies reviewed the request and recommended no conditions of approval:
City Engineering Division, Fire Department, Parks Division, Forestry Section, Metro Transit