PLANNING DIVISION STAFF REPORT

May 19, 2025

PREPARED FOR THE PLAN COMMISSION

Project Address: **709-711 E Johnson Street** (6th Alder District, Alder Davy Mayer)

Application Type: Conditional Use

Legistar File ID # 83269

Prepared By: Chris Wells, Planning Division
Report Includes Comments from other City Agencies, as noted

Reviewed By: Kevin Firchow, AICP, Principal Planner

Summary

Applicant: Matthew Tills, Knothe & Bruce Architects; 8401 Greenway Blvd Suite 900; Middleton, WI 53562

Contact: Jack Yip; Two Birds Madison LLC; 711 E Johnson Street; Madison, WI 53703

Property Owner: KM2 LLC; 709 E Johnson Street; Madison, WI 53703

Requested Action: Consideration of a conditional use in the Neighborhood Mixed-Use (NMX) District for an outdoor eating area open past 9:00 p.m. at 709-711 E Johnson Street.

Proposal Summary: The applicant proposes to establish a roughly 240-square-foot (roughly 42-foot-wide by 5½-foot-deep) outdoor eating area in between the building and the E Johnson Street public sidewalk. It will have capacity for 23 persons and be enclosed with temporary fencing. The outdoor eating area will operate seasonally, with the following hours: Daily from 4:00 p.m. to 10:00 p.m. No amplified music or additional lighting is proposed nor are any structural changes to the building or tenant space.

Applicable Regulations & Standards: This proposal is subject to the standards for Conditional Uses [MGO §28.183] as MGO §28.061(1) lists an *Outdoor eating area, temporary, associated with food and beverage establishment* which is open after 9 p.m. as a conditional use in the NMX (Neighborhood Mixed-Use) District. The Supplemental Regulations [MGO §28.151] contain further applicable regulations.

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 in the Neighborhood Mixed-Use (NMX) District for an outdoor eating area open past 9:00 p.m. at 709-711 E Johnson Street. This request is subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

Background Information

Parcel Location: The 9,217-square-foot parcel is located on the south side of E Johnson Street, between N Blount Street and N Livingston Street. It is located within Alder District 6 (Alder Mayer) and the Madison Metropolitan School District, and the Wellhead Protection District 24.

Existing Conditions and Land Use: The parcel contains a three-story, mixed-use building with 22 residential units and roughly 3,000 square-feet of ground floor commercial space. It was constructed in 2017.

Surrounding Land Use and Zoning:

Northeast: A three-story, 54-unit, mixed-use building with roughly 3,000 square feet of retail zoned Neighborhood Mixed-Use (NMX) District;

Southeast: A property zoned PD (Planned Development) District containing four 2-units; and a single-family residence in the TR-V2 (Traditional Residential – Varied 2) District;

Southwest: A one-story commercial building containing The Caribou Tavern and a self-serve laundry facility, zoned NMX; and

Northwest: Across E Johnson Street is a 9-unit condominium, zoned PD; a two-story, two-unit, zoned NMX; and 2-units zoned TR-V2.

Adopted Land Use Plan: The Comprehensive Plan (2023) and Tenney-Lapham Neighborhood Plan (2008) actually each recommend different uses for the two halves of the site. Both plans recommend Neighborhood Mixed-Use (NMU) uses southwest half. For the northeast half, the Comprehensive Plan recommends Low-Medium Residential (LMR) uses while the Tenney-Lapham Plan recommends Low-Density Residential (LDR) uses.

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. Metro Transit operates daily all-day transit service along East Johnson Street adjacent this property – with trips at least every 30 minutes (every 15 minutes or less during the day on weekdays).

Zoning Summary: The property is zoned UMX (Urban Mixed-Use district)

Other Critical Zoning Items	Wellhead Protection District; TOD Overlay District

Tables Prepared by Jacob Moskowitz, Assistant Zoning Administrator

Project Description, Analysis, and Conclusion

The applicant, representing Public Parking Bar, is requesting a conditional use for an outdoor eating area open past 9:00 p.m. at 709-711 E Johnson Street.

The space will serve the bar which is located on the ground floor of the three-story mixed-use building with 22 studio units. The roughly 240-square-foot (roughly 42-foot-wide by 5½-foot-deep) outdoor eating area is located along the building's northwest (E Johnson Street-facing) façade. It will have capacity for 23 persons and be enclosed with temporary fencing. The outdoor eating area will operate seasonally, with the following hours: Daily from 4:00 p.m. to 10:00 p.m. No amplified music or additional lighting is proposed nor are any structural changes to the building or tenant space.

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. Staff believes that this proposed use is compatible with both the Comprehensive Plan (2023) and Tenney-Lapham Neighborhood Plan (2008). The two plans each recommend different uses for the two halves of the site. Both plans recommend Neighborhood Mixed-Use (NMU) uses for the southwest half. For the northeast half, the Comprehensive Plan recommends Low-Medium Residential (LMR) uses while the Tenney-Lapham Plan recommends Low-Density Residential (LDR) uses.

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 as Staff believes that if well-managed, the proposed outdoor eating area should not result in significant negative impacts to the surrounding properties. Factors such as the limited scale and capacity of the proposed outdoor eating area; its placement along the sidewalk and orientation towards a busy street whose automobile traffic Staff anticipate will help drown out sounds generated by the outdoor patrons; the proposed hours of operation (which have support from the Tenney-Lapham Neighborhood Association, see Public Comment section later in this report); the lack of amplified sound; and the proposed conditions of approval will help mitigate anticipated impacts. Staff are mindful of the fact that there are residential units located on the floors above the proposed outdoor eating are location. To that end, two conditions of approval have been recommended: 1) that any doors to the outdoor area (from the bar) remain closed [not be propped open] at all times, and 2) that the windows of the bar be closed at 11:00 p.m. nightly. Staff point out that 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).

Supplemental Regulations

Section 28.151 of the Zoning Code includes the following supplemental regulations for Outdoor Eating Areas:

(a) Primary access to the area shall be from within the establishment.

(b) Hours of operation shall end at 9:00 p.m. in all districts except for MXC, CC and RMX, unless extended as part of the conditional use approval.

(c) No amplified sound is permitted in all districts except MXC, CC and RMX, unless allowed as part of the conditional use approval.

(d) 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.

Staff believes that all of the Supplemental Regulations can be found met with the recommended conditions of approval.

Public Comment

At the time this staff report was finalized, Staff have received only one public comment – a letter of support from the Tenney-Lapham Neighborhood Association (the letter has been added to the public record for this request). The applicant presented this proposal at the neighborhood association's May 8th meeting at which the TLNA discussed the following conditions and unanimously voted in favor of the proposal:

a) Outdoor seating will close at 10:00 p.m. daily
b) The outdoor seating area will not at all impede the public sidewalk space at any time
c) Public Parking offered to close bar windows at 11:00 p.m.
d) Public Parking will remain cognizant about bar noise and amenable to neighbor complaints
e) TLNA requested the consideration of rounded corners to the enclosure of the seating area

Regarding the five items listed above, Staff note that the proposed hours of operation of the outdoor eating area listed in (a) are the same as those proposed by the applicant; (b) is already satisfied as such encroachment is not allowed (see Engineering's recommended condition (Condition #6, below); (c) has been agreed to by the applicant and recommended by the Planning Division (see Condition #4, below); (d) is already covered by the Plan

Commission's continuing jurisdiction (per MGO §28.183(9)(d)); and (e) has been recommended by the Planning Division (see Condition #5, below).

Conclusion

Staff believe that the proposed outdoor eating area with operating hours past 9:00 p.m. 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 Chris Wells, (608) 261-9135)

The Planning Division recommends that the Plan Commission find that the approval standards for conditional uses are met and **approve** the request in the Neighborhood Mixed-Use (NMX) District for an outdoor eating area open past 9:00 p.m. at 709-711 E Johnson Street. This request is subject to the input at the public hearing and the following conditions recommended by the reviewing agencies:

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

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

1. There shall be no amplified sound, including, but not limited to television, ambient music or musical performances, in the outdoor eating area unless allowed as part of the conditional use approval.

2. That the hours of operation for the outdoor eating area shall be Daily from 4:00 p.m. to 10:00 p.m., after which time the outdoor eating area shall be closed, with no service or seating in the outdoor area. Patrons may not utilize the outdoor patio area after these hours for smoking or otherwise. In the future, the Director of the Planning Division may consider a minor alteration to the conditional use to further modify the hours of operation for the outdoor eating area following a recommendation by the district alder.

3. That any doors to the outdoor area (from the bar) remain closed [not be propped open] at all times.

4. That the windows of the bar be closed at 11:00 p.m. nightly.

5. That the applicant consider rounded corners to the enclosure of the outdoor seating area.

Engineering Review Main Office (Contact Timothy Troester, (608) 267-1995)

6. Relocate outdoor seating area, including fence, outside of the right-of-way into private property.

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

7. Revise the plan, remove the old line of the previous right of way and move the line to the new right of way that is 2.5 feet further east. This is the correct boundary of the parcel.

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

8. The applicant shall provide a fence/barrier to secure their outdoor seating area from encroaching onto the City Right of Way/Easement to be approved by Traffic Engineering.

Zoning Administrator (Contact Jacob Moskowitz, (608) 266-4560)

9. Meet applicable building/fire codes. The capacity shall be established for the outdoor eating area. Occupancy is established by the Building Inspection Unit. Contact Building Inspection staff at (608) 266-4551 to help facilitate this process.

10. If you have a license to sell alcohol in an outdoor eating area, the Alcohol License Review Committee will establish conditions for operation, which involve fencing, security guards, toilet facilities, litter, etc. All businesses that sell alcohol must comply with the requirements imposed by the Alcohol License Review Committee at the time of issuance of your original application to expand or change your licensed premises to include the outdoor eating area. It is your responsibility to have the outdoor service area added to your licensed premise. Please contact the City Clerk's office for assistance ALRC issues.

Metro Review (Contact Timothy Sobota, (608) 261-4289)

11. In coordination with any public works improvements or encroachment agreements, the applicant shall maintain a clear accessible area across the concrete boarding pad surface and public sidewalk along the length of the existing Metro bus stop on the south side of East Johnson Street, east of North Blount Street (#1397).

12. The applicant is encouraged to install and maintain a concrete amenity pad surface and dedicated seating (bench) - either as part of the private landscape plan or in the public right-of-way area - serving the curbside bus stop zone on the south side of East Johnson Street, east of North Blount Street. If located in the public right-of- way, the applicant shall submit a Privilege in Streets (Bus Bench) application for review by the City. An approved Encroachment Agreement, for the bus bench, shall be executed prior to sign off. Contact City Real Estate to start the Privilege in Streets (Bus Bench) application process. (MGO 10.31)

13. The applicant shall include the location of these transit facilities on the final documents filed with their permit application so that Metro Transit may review the design.

14. Metro Transit operates daily all-day transit service along East Johnson Street adjacent this property – with trips at least every 30 minutes (every 15 minutes or less during the day on weekdays).

The following agencies reviewed the request and recommended no conditions of approval: Fire Department, Parks Division, Forestry, Water Utility, and Parking Utility.