



PREPARED FOR THE PLAN COMMISSION AND COMMON COUNCIL

**Project Address:** 1612 Seminole Hwy. (District 10- Ald. Cheeks)  
**Application Type:** Zoning Map Amendment and Conditional Use  
**Legistar File ID #** [41558](#) and [41985](#)  
**Prepared By:** Jessica Vaughn, AICP, Planning Division  
Report Includes Comments from other City Agencies, as noted  
**Reviewed By:** Jay Wendt, Principal Planner

## Summary

**Applicant:** Mike Franklin, 1612 Seminole Hwy., Madison, WI 53711  
**Contact:** James Vincent, Designed by Jim Vincent, 233 S. Midvale Blvd., Madison, WI 53705  
**Property Owner:** M & M Investment Properties, LLC, 2752 Cross Country Cir., Verona, WI 53593

**Requested Action:** The applicant requests approval of a:

- Zoning Map Amendment to rezone the project site from Traditional Residential-Consistent 2 (TR-C2) to Neighborhood Mixed Use (NMX); and
- Conditional Use to continue the existing legal nonconforming restaurant-tavern and outdoor eating area uses in the NMX zoning district.

**Proposal Summary:** Restaurant-tavern and outdoor eating area uses are not permitted in the TR-C2 zoning district. To continue the operation of the existing uses in a manner that is consistent with the zoning code, rezoning the project site would be necessary. Therefore, the applicant is seeking approval of a Zoning Map Amendment to rezone the project site from a predominantly residential zoning (TR-C2) to a district where the existing restaurant-tavern and outdoor eating area uses are allowed uses (NMX). Restaurant-tavern and outdoor eating area uses are identified as conditional uses in the NMX zoning district. Therefore, the applicant is also seeking approval of a Conditional Use for the continuation of the existing legal nonconforming restaurant-tavern and outdoor eating area uses.

As part of the application, the applicant is proposing landscape and site improvements to bring the project site into compliance with required development standards pursuant to sections 28.142, "*Landscaping and Screening Requirements*," and 28.141, "*Parking and Loading Standards*," MGO.

**Applicable Regulations & Standards:** This proposal is subject to the standards for Zoning Map Amendments pursuant to Section 28.182(6), MGO, Conditional Uses pursuant to Section 28.183(6), MGO, and Supplemental Regulations pursuant to Section 28.151, MGO for restaurant-tavern and outdoor eating area uses.

**Review Required By:** Plan Commission and Common Council

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find that:

- The approval standards for Zoning Map Amendments are met and **forward** Zoning Map Amendment 28.022-00222, rezoning 1612 Seminole Hwy. from TR-C2 to NMX, to the Common Council with a recommendation to approve; and

- The approval standards for Conditional Use are met and **approve** the request to continue the restaurant-tavern and outdoor seating area uses at 1612 Seminole Hwy. subject to Common Council approval of the Zoning Map Amendment.

This recommendation is subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

## Background Information

**Parcel Location:** The project site is located at the northwest corner of the intersection of Seminole Hwy. and Warwick Way. The project site is comprised of approximately 20,334 square feet (0.47 acres). The site is in Aldermanic District 10 (Cheeks) and the Madison Metropolitan School District. The project site is not included in any adopted neighborhood or sub-area plans.

**Existing Conditions and Land Use:** Formerly known as Tony Frank's Tavern, Badger Tavern, currently in operation, is a restaurant-tavern use with an outdoor eating area located at 1612 Seminole Hwy. The existing restaurant-tavern and outdoor eating area uses are considered legal nonconforming uses because they are not permitted uses under the project site's current zoning designation, TR-C2, or former zoning designation, Single-Family Residence District (R2), under the previous, 1966 zoning code. According to city records, the use dates back to the 1940s, predating the both the current and former zoning codes. Therefore, the applicant is requesting approval of both a Zoning Map Amendment and Conditional Use to bring the use and site into compliance with the current zoning code.

Today, the project site is comprised of the principal building generally located on the western portion of the project site fronting Warwick Way, a freestanding garage (constructed in 2006) that is located in the rear yard, and a 21-stall parking lot located on the eastern portion of the project site along the Seminole Hwy. frontage. With its corner location, the project site has frontage on both Seminole Hwy. along its eastern edge and Warwick Way on the south, both of which provide access to the project site.

Currently, the project site does not comply with the landscape requirements pursuant to Section 28.142, MGO, specifically those related to screening and development frontage.

The project site is currently zoned Traditional Residential-Consistent 2 (TR-C2).

### **Surrounding Land Use and Zoning:**

North: Residential uses, TR-C2 zoning;

South: W. Beltline Hwy. Right-of-Way; TR-C2 zoning;

East: Residential uses; Traditional Residential-Consistent 1 (TR-C1) zoning; and

West: Residential uses; TR-C2 zoning.

**Adopted Land Use Plan:** The City of Madison Comprehensive Plan ("Comprehensive Plan") recommends Low Density Residential (LDR) for the project site, which is generally defined as areas that are "...characterized by relatively low densities and a predominance of single-family and two-unit housing types" (City of Madison Comprehensive Plan, Pg.2-79). Although the Comprehensive Plan does recognize the LDR land use designation as being primarily residential in nature, it also recognizes that small scale, neighborhood serving commercial uses are appropriate within LDR neighborhoods: "Within designated Low Density Residential areas, commercial

uses are limited to small scale establishments providing convenience goods or services to neighborhood residents” (City of Madison Comprehensive Plan, Pg.2-81).

**Zoning Summary:**

Requirements	Required	Proposed
Front Yard Setback	25’ maximum	Adequate: existing building
Side Yard Setback: Where buildings abut residentially-zoned lots at side lot line.	Minimum side yard required in the adjacent residential district: 6’	Adequate: existing building
Rear Yard Setback	20’	Adequate: existing building
Maximum Lot Coverage	75%	Less than 75% (See comment no. 11)
Number Parking Stalls: Restaurant-tavern Use	Minimum: 0 Maximum: 40% of capacity of persons, 40	20
Accessible Stalls	Yes	2
Loading	No	No
Number Bike Parking Stalls: Restaurant-tavern Use	5% of capacity of persons, 5	5 (See comment no. 12)
Landscaping and Screening	Yes	Yes, existing landscaping (See comment no.’s 13, 14, 15)
Lighting	Yes	No (See comment no. 17)
Building Forms	No	Existing building

Other Critical Zoning Items	Y/N
Barrier Free (ILHR 69)	Yes
Utility Easements	Yes
Wellhead Protection District	Yes, WP-10

*Zoning Tables prepared by: Jenny Kirchgatter*

**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**

In order to bring the project site into compliance with the current zoning code, the applicant is requesting the approval of both:

- A Zoning Map Amendment to rezone the project site from a primarily residential zoning district, TR-C2, to a mixed use zoning district, NMX, where the existing uses are permitted through Conditional Use; and
- A Conditional Use for the continuation of the existing legal nonconforming restaurant-tavern and outdoor eating area uses in the NMX zoning district.

Only a minimal amount of change will occur on the already developed project site, including:

- Landscape improvements along Seminole Hwy. to provide screening of the existing parking lot;
- The installation/repair of the existing fence along the northern property line to provide screening;
- The siting of bike parking; and
- The construction of a refuse enclosure to adequately screen the dumpster area.

Overall, the proposed site improvements will bring the project site into compliance with the landscape and parking standards pursuant to sections 28.141, "*Parking and Loading Standards*" and 28.142, "*Landscaping and Screening Requirements*," MGO.

No changes to the existing buildings are proposed.

## Analysis and Conclusion

### Zoning Map Amendment

Pursuant to Section 28.182(6), MGO, "Text amendments or 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." The Planning Division believes that the rezoning request can be found to be consistent with the Comprehensive Plan, given the shared intent between the Comprehensive Plan Low Density Residential (LDR) land use designation and the proposed Neighborhood Mixed-Use (NMX) zoning.

The Comprehensive Plan recommends low density residential development for the project site and surrounding properties. Within the LDR neighborhoods, the Comprehensive Plan recognizes that a limited amount of other non-residential, commercial land uses may be appropriate, including "small-scale establishments providing convenience goods or services to neighborhood residents" (City of Madison Comprehensive Plan, Pg. 2-81). The intent of the proposed NMX zoning district is "to encourage and sustain the viability of commercial nodes that serve the shopping needs of residents in adjacent neighborhoods" (Section 28.064, MGO). The NMX zoning district is also intended to encourage diversity of uses and to encourage pedestrian and bicycle use. Given the shared intent of providing neighborhood amenities to surrounding residential neighborhoods, the LDR land use designation and the NMX zoning district are believed to be generally consistent in this context.

Staff has also considered the long term development impacts of the NMX district should the property redevelop or a change of use occur. Given that the NMX zoning district is a slightly more permissive, more intense zoning, the question remains as to the development potential permitted under the NMX zoning and its compatibility with the surrounding development. Overall, the NMX zoning district, both as it pertains to use and development standards, is sensitive to residential development. Within the NMX zoning district many of the more intense nonresidential uses are permitted only through Conditional Use approval, a process that ensures that the compatibility of nonresidential uses in proximity to residential uses be evaluated, and their adverse nuisance impacts mitigated.

Similar to the list of permitted uses in the NMX zoning district, the development standards are also sensitive to residential development in terms of mass and scale. The NMX development standards encourage creating a transition between residential and nonresidential areas, including stepping building heights, maintaining consistent side yard setbacks, and creating compatible building mass and scale. While many of the development standards may be modified, it can only be done through Conditional Use approval, a process through which building compatibility would be evaluated.

Overall, given the intent of the NMX zoning district to encourage neighborhood serving commercial amenities, and the sensitivity of the district's development standards to residential development, the Planning Division believes that the proposed rezoning request from TR-C2 to NMX is compatible with the intent of the Comprehensive Plan LDR land use designation.

### **Conditional Use**

Restaurant-tavern and outdoor eating areas are allowed as conditional uses in the NMX zoning district. As such, they are subject to the Conditional Use review criteria pursuant to Section 28.183(6), MGO, as well as the supplemental regulations pursuant to Section 28.151, MGO. In this case, because the existing restaurant-tavern and outdoor eating area are both existing uses, predating the current zoning code, they are considered legal nonconforming uses.

Generally, the intent of the Conditional Use review is to determine if a particular site is an appropriate location for a proposed use, to evaluate the compatibility of that use with surrounding uses and development, and to mitigate potential nuisance impacts to surrounding properties. As part of the Planning Division review and recommendations, staff has proposed conditions intended to mitigate potential adverse impacts related to the general operating characteristics of the restaurant-tavern and outdoor seating area uses, including limiting the hours of outdoor service, amplified music and capacity. In addition, conditions are also proposed that will provide for additional site screening along Seminole Highway.

The Planning Division believes that the revised plans can meet the Conditional Use approval standards. Given the scale of the existing use and its longevity in this location as a neighborhood amenity, coupled with the proposed site improvements, including site screening and landscaping, and the proposed conditions, staff believes that the continuation of the restaurant-tavern and outdoor eating area uses are compatible and consistent with their surroundings. In addition, based on the submitted information, staff does not anticipate that these uses will result in significant impacts to surrounding properties. 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 Section 28.183(9)(d), MGO.

At the time of report writing, staff was not aware of any concerns on this request.

## **Recommendation**

### **Planning Division Recommendation** (Contact Jessica Vaughn, (608) 267-8733)

The Planning Division recommends that the Plan Commission find that:

- The approval standards for Zoning Map Amendments are met and **forward** Zoning Map Amendment 28.022-00222, rezoning 1612 Seminole Hwy. from TR-C2 to NMX, to the Common Council with a recommendation to approve; and
- The approval standards for Conditional Use are met and **approve** the request for the continuation of the existing restaurant-tavern and outdoor eating area uses in the Neighborhood Mixed-Use (NMX) zoning district at 1612 Seminole Hwy. subject to Common Council approval of the Zoning Map Amendment.

This recommendation is subject to input at the public hearing and the conditions recommended by the reviewing agencies.

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

**Planning Division** (Contact Jessica Vaughn, (608) 267-8733)

1. Prior to final approval and building permit issuance, the Applicant shall submit final plans for review and approval by staff, including:
  - a. A revised Letter of Intent that reflects the same hours of operation, parking and seating as indicated on the plans and liquor license.
  - b. A detailed Landscape Plan that shows development frontage landscaping along Seminole Highway consistent with Section 28.142(5), MGO.
2. The outdoor eating area shall not be used for food and beverage service or outdoor activity after **10:00 PM**, 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 eating area following a recommendation by the district alder.
3. There shall be no amplified sound, including, but not limited to television, ambient music or musical performances, in the outdoor eating area.
4. Pending review by the Building Inspection Division, the capacity of the outdoor eating area shall not exceed **49 persons**.

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

5. The agency reviewed this request and has recommended no conditions or approval.

**City Engineering Review Mapping** (Contact Jeff Quamme, (608) 266-4097)

6. The site plan shall accurately show the limits of all pavement and impervious areas, particularly the west side of the site plan where this detail is missing.

**Traffic Engineering Division** (Contact Eric Halvorson, (608) 266-6527)

7. 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; 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; semi-trailer movement and vehicle routes; dimensions of radii; and percent of slope.
8. All parking facility design shall conform to Section 10.08(6), MGO.
9. Traffic Engineering will no longer be accepting paper plans; to ensure a timely review all submittals will include an electronic copy (.pdf preferred).

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

10. The capacity for Tony Frank's was set at 53, which includes both patrons and customers. Contact Building Inspection regarding the need for a plan review to increase the inside capacity. An outside capacity will also need to be obtained from Building Inspection. Both capacities shall be posted in accordance with MGO.

**Zoning Administrator** (Contact Jenny Kirchgatter, (608) 266-4569)

11. Provide a calculation and plan detail for lot coverage with the final submittal. Clearly show the extent of the impervious surface/ paved area west of the restaurant building. The lot coverage maximum is 75%. Lot coverage is defined as the total area of all buildings, measured at grade, all accessory structures including pools, 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.
12. Provide a minimum of five (5) short-term bicycle parking stalls 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. Show the dimensions of the bicycle stalls on the site plan. 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. Submit the landscape plan and landscape worksheet stamped by the registered landscape architect. Per Section 28.142(3), *Landscape Plan and Design Standards*, MGO, landscape plans for zoning lots greater than ten thousand (10,000) square feet in size must be prepared by a registered landscape architect. The landscape plan shall show existing as well as proposed landscaping. Provide adequate development frontage landscaping adjacent Seminole Highway per Section 28.142(5), *Development Frontage Landscaping*, MGO. Landscaping and/or ornamental fencing shall be provided between buildings or parking areas and the adjacent street(s), except where buildings are placed at the sidewalk.
14. Screening is required adjacent the zoning district boundary along the north and west property lines. Screening shall be provided along both 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.
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. The outdoor eating area shall meet applicable building and fire codes. The outdoor capacity shall be established by the Building Inspection Unit.
17. Exterior lighting provided shall be in accordance with Section 10.085, MGO. Provide an exterior lighting plan and fixture cut sheets, with the final plan submittal.

**Parks Division** (Contact Kay Rutledge, (608) 266-4714)

This agency has reviewed this request and has recommended no conditions at this time.

**Water Utility** (Contact Dennis Cawley, (608) 261-9243)

18. All operating private wells shall be identified and permitted by the Water Utility in accordance with Section 13.21, MGO. All unused private wells shall be abandoned in accordance with Section 13.21, MGO.

**Metro Transit** (Contact Timothy Sobota, (608) 261-4289)

This agency has reviewed this request and has recommended no conditions at this time.