

# PLANNING DIVISION STAFF REPORT

May 10, 2021



PREPARED FOR THE PLAN COMMISSION

**Project Address:** 1046 East Washington Avenue (2<sup>nd</sup> Aldermanic District, Ald. Heck)  
**Application Type:** Conditional Use  
**Legistar File ID #:** [64749](#)  
**Prepared By:** Colin Punt, Planning Division  
Report Includes Comments from other City Agencies, as noted  
**Reviewed By:** Kevin Firchow, AICP, Principal Planner

## Summary

**Applicant:** Tanya Zhykharevich; RED LLC; 316 W. Washington Ave. Suite 100; Madison, WI 53703

**Contact:** Matthew Tills; Morrison Tills Studio; 841 W. Lakeside St. Ste A; Madison, WI 53715

**Owner:** Stone House Development, Inc.; 1010 East Washington Ave. Suite 101; Madison, WI 53703

**Requested Action:** Approval of a Conditional Use to establish a restaurant-tavern in mixed-use building with outdoor eating area in a Traditional Employment district at 1046 East Washington Avenue per MGO §28.084(2).

**Proposal Summary:** The applicant seeks approval of a restaurant-tavern with two outdoor eating areas in an existing building.

**Applicable Regulations & Standards:** This proposal is subject to the standards for conditional uses, MGO §28.183(6).

**Review Required By:** Urban Design Commission (UDD 8), Plan Commission

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find that the conditional use standards are met and **approve** the requests to establish a restaurant-tavern with outdoor eating areas in an existing mixed-use building at 1046 East Washington Avenue. 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 93,389 square-foot (2.14-acre) parcel located on the northeasterly half of the block bounded by East Washington Avenue, North Ingersoll Street, East Mifflin Street, and North Brearly Street. The parcel has frontage along East Washington Avenue and Ingersoll and Mifflin Streets. It is within Aldermanic District 2 (Heck), Urban Design District 8, Tax Increment Financing District 36, and the Madison Metropolitan School District.

**Existing Conditions and Land Use:** The site, zoned TE (Traditional Employment District), is occupied by "The Arden," an 11-story mixed use building with 128 apartments and over 50,000 square feet of commercial space.

**Surrounding Land Uses and Zoning:**

- Northwest:** Across East Mifflin Street, Lapham Elementary School, zoned TR-V1 (Traditional Residential – Variable 1);
- Southwest:** 11-story Lyric mixed-use building, zoned TE (Traditional Employment);
- Southeast:** Across East Washington Avenue, a small manufacturing building and carwash, both zoned TE, and a 3-story apartment building, zoned PD (Planned Development District); and
- Northeast:** Across North Ingersoll Street, small commercial uses and a two-unit, zoned CC-T (Commercial Corridor – Transitional), and a mix single-family homes, 2-, 3-, and 4-units, zoned TR-V1.

**Adopted Land Use Plan:** The [Comprehensive Plan](#) (2018) recommends RMU (Regional Mixed Use) for the East Washington Avenue half of the block and MR (Medium Residential) for the East Mifflin Street half. The [Tenney-Lapham-Old Market Neighborhood Plan](#) (2008) recommends adding employment and medium density residential for 1000 block of East Washington Avenue. It states that businesses along East Washington Avenue should be consistent with the Employment designation. [East Washington Capitol Gateway Corridor](#) (2008) recommends the East Washington Avenue half of the block for employment and the East Mifflin Street side as medium-density residential/employment.

**Zoning Summary:** The subject property is zoned TE (Traditional Employment District):

Requirements	Required	Proposed
Lot Area (sq. ft.)	6,000 sq. ft.	93,467 sq. ft.
Lot Width	50'	281'
Front Yard Setback	None	Adequate
Side Yard Setback: Other cases	None unless needed for access	Adequate
Rear Yard Setback	Lesser of 20% lot depth or 20'	Adequate
Usable Open Space	20 sq. ft./ bedroom	Existing UOS
Maximum Lot Coverage	85%	Existing lot coverage
Minimum Building Height	22' measured to building cornice	11 story existing building
Maximum Building Height	5 stories/ 68'	11 story existing building

Site Design	Required	Proposed
Number Parking Stalls	Restaurant-tavern: 15% of capacity of persons (16)	Existing parking structure
Accessible Stalls	None	Existing parking structure
Loading	None	Existing loading area
Number Bike Parking Stalls	Restaurant-tavern: 5% of capacity of persons (5)	6 existing bike stalls
Landscaping and Screening	Not required	Existing landscape planters
Lighting	Not required	String lights
Building Forms	Not required	Existing building
<b>Other Critical Zoning Items:</b>	Urban Design (UDD 8), Barrier Free (ILHR 69)	

*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, representing RED Sushi, is requesting conditional use approval for a restaurant with an outdoor eating space at 1046 East Washington Avenue. The restaurant will occupy 4,332 square feet in the first floor of the southeast corner of the building along the East Washington Avenue. According to the applicant, the restaurant will offer counter service and take-out focus. Beer and wine will be available. Proposed hours of operation are 11 a.m. to 10 p.m. Sundays through Thursdays and 11 a.m. to 11 p.m. Fridays and Saturdays. The applicant is proposing two outdoor seating areas – one along the front façade and one along the mid-block alley.

The larger outdoor seating area includes 32 seats on an existing concrete patio immediately south and directly accessible from the restaurant space, adjacent to the private alley between Arden and Lyric buildings. The area will be enclosed by semi-permanent steel fencing panels and planters. Entry and exit through the restaurant is proposed through a new storefront glass door to be installed in the existing glass storefront facade. Hours of operation will be the same as indoor space. The smaller outdoor seating area includes 10 seats along the East Washington facade of the storefront near the restaurant entry. Seats and tables in this location will be available during lunch service only (11 a.m. to 3 p.m.) and stored during evening hours. No alcohol consumption will be permitted in the front seating area. There will be no outdoor amplified sound at either seating area.

Interior seating is proposed to be approximately 50. Total occupancy, including patrons and employees, for both inside and outside, is anticipated to be approximately 110.

Other associated proposed site modifications include replacement of a window on the alley-facing facade with a service door, modification of HVAC louvers, adding a curb ramp between the alley and patio, and installation of screening for furniture storage and restaurant equipment

Parking will be available in the attached structured parking within the Arden building. The application materials show additional parking on East Washington Avenue. However, parking shown in the public right-of-way is not approvable through this conditional use approval. The applicant also anticipates access to the alley for a supplemental pick-up and delivery location. For vehicles using the alley, only right turns will be allowed onto East Mifflin Street and an enhanced flashing stop sign will be installed for vehicles exiting onto East Mifflin Street.

The application anticipate build-out to begin in May 2021, with opening scheduled for autumn 2021.

### **Adopted Plan Recommendations**

Three adopted plans include recommendations for this block, which are split between the portion of the block along East Washington Avenue (typically a more intense commercial or mixed-use recommendation) and East Mifflin Street (typically a more residential recommendation). This section will focus only on the portion of the block along East Washington Avenue. The Comprehensive Plan (2018) recommends Regional Mixed Use (RMU) for this site. The RMU category represents the most intensively developed areas outside of downtown. These areas typically include large-scaled sites supporting multi-story buildings with a variety of multifamily housing options and commercial activities. There is no height limit in RMU districts. The Tenney-Lapham-Old Market Neighborhood Plan (2008) recommends Employment uses for the East Washington Avenue half of the block. The plan notes that businesses along East Washington Avenue should be consistent with the Employment designation, which does not include retail. The East Washington Capitol Gateway Corridor (2008) recommends employment uses for the East Washington Avenue half of the block and recommends that the area should remain mixed use with employment, residential and public uses connected by existing community spaces. While

the neighborhood and corridor plans emphasize the employment uses in this area, staff notes that the Comprehensive Plan (which recommends a mix of uses at this site) does note that service establishments can locate in employment districts to serve users of the area.

### **Urban Design District 8**

This site is within Urban Design District 8. The proposal has been reviewed and approved by the Urban Design Commission Secretary.

### **Conditional Use Standards**

In regards to conditional use approval standards, 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. In this case, because of the location of the outdoor eating areas in the alley and along East Washington Avenue, the intensity of surrounding development, and the urban characteristic of the surrounding environment, Staff believes that all applicable standards of approval can be found met.

### **Conclusion**

Staff believes that given the surrounding uses, the proximity to East Washington Avenue, the plan recommendations, and the submitted management plan, the Plan Commission can find the applicable conditional use standards of approval to be met and approve the conditional use request. 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 conditional use standards are met and **approve** the requests to establish a restaurant-tavern with outdoor eating area in an existing mixed-use building at 1046 East Washington Avenue. 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

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

1. 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.
2. 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.
3. 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 and Chapter 33 Urban Design District 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)

4. This site appears to have a land use that will result in their inclusion as a restaurant class sanitary sewer customer. This will charge commercial kitchen facilities a higher sanitary sewer fee per gallon than domestic users and is based on strengths of waste measured at representative similar customers throughout the City. If the applicant desires, a sampling structure may be installed, as part of the initial construction at their cost, to allow site-specific sampling of their waste to determine sanitary sewer charges specifically for this site. If no sampling structure is installed, this site will default to the restaurant class code in MGO Chapter 35. If you have questions on the restaurant class sewer charges please contact Megan Eberhardt at Meberhardt@cityofmadison.com or 608-266-6432.

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

5. 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.
6. 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.
7. 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.
8. All parking facility design shall conform to MGO standards, as set in section 10.08(6).

9. All bicycle parking adjacent pedestrian walkways shall have a 2 foot buffer zone to accommodate irregularly parked bicycles and/or bicycle trailers.
10. 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.
11. Items in the Right-of-Way are not approvable though site plan approval. The applicant shall remove all reference to private interest amenities in the public Right-of-Way as they are not approvable through the Site Plan Review process.
12. In an effort to reduce traffic impacts to the E. Mifflin Street bike boulevard, the applicant shall work with Traffic Engineering to reduce the amount of vehicles using the alley.

**Fire Department** (Contact Bill Sullivan, (608) 886-4691)

13. Provide a secondary means of egress for the customer seating areas.

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

14. Metro Transit operates daily all-day transit service along East Washington Avenue, adjacent this property. Bus stop ID #1650 is on the north side of East Washington Avenue, west of North Ingersoll Street.

*The Parks Division, Forestry Section, Water Utility, and City Engineering Division - Mapping Section have reviewed this request and have recommended no conditions of approval*