

STAFF REPORT
Planning Commission Meeting July 30, 2018

AGENDA ITEM NO.: 3A

PROJECT NUMBER / TITLE: Application # 18-06

REQUEST: Special Use Permit (SUP) for Operation of a Drinking Establishment

LOCATION: 5612 Johnson Drive
Parcel KP27500000-0081
Vacant retail space on the north side of Johnson Drive between Reeds Road and Maple Street.

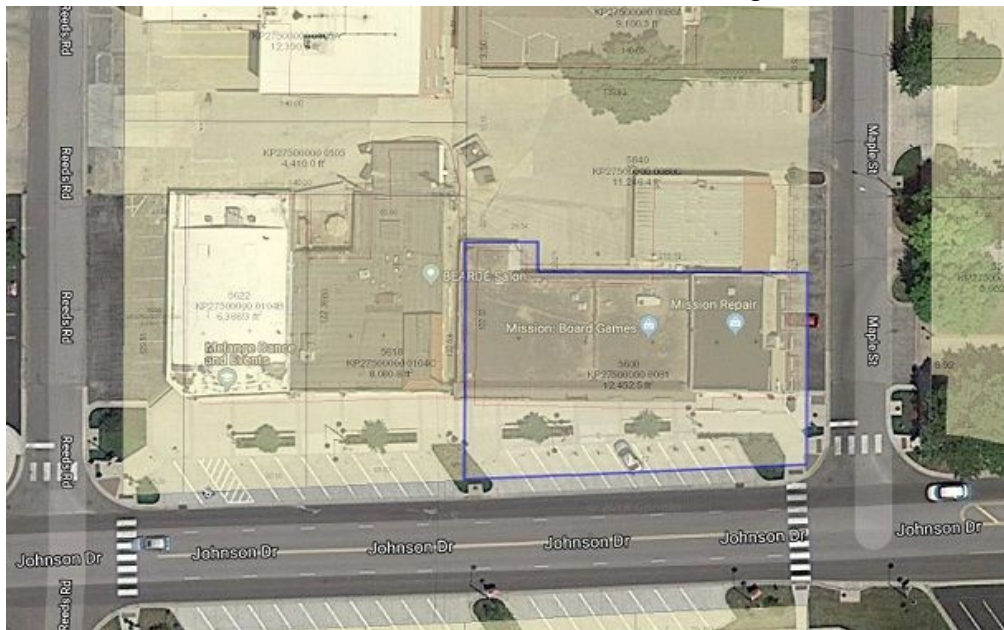
APPLICANT: Jonathan Williamson
Sandhills Brewing Company
13723 W. 81st Terrace
Lenexa, KS 66215

PROPERTY OWNER: Betty Benson
Benson Living Trust
6511 Dearborn
Mission, KS 66202

STAFF CONTACT: Brian Scott, Assistant City Administrator

ADVERTISEMENT: 7/10/2018 - The Legal Record Newspaper

PUBLIC HEARING: 7/30/2018 - Planning Commission



Property Information:

The subject address is 5612 Johnson Drive, a 1,750 square foot tenant space within a larger building that is located on the north side of Johnson Drive, mid-block between Reeds Road and Maple Street. The property is zoned as “MS-1” Main Street District 1.

Surrounding properties are zoned and developed as follows:

North: “PBP” Planned Business Park - ScriptPro Corporate Campus

East: “MS-1” Main Street District 1- Salon Bearde, Brian’s Bakery, and Melange Studio

West: “MS-1” Main Street District 1 - Mission Board Games and former Twisted Sisters

South: “MS-1” Main Street District 1 - City Park Land, site of Mission Market

Background:

The applicant is seeking a special use permit (SUP) to operate a drinking establishment at the subject address. In particular, the drinking establishment will be associated with a “nano-brewery” where the applicant will produce a variety of craft beer for sale and consumption on site.

A microbrewery is generally defined as a brewery operation that produces less than 15,000 barrels of beer a year. A nano-brewery is considered to be a scaled-down version of a microbrewery, often operated by a sole entrepreneur. The generally accepted industry definition of a nano-brewery is an operation that produces beer in small batches of three barrels or less, one barrel being 31 gallons.

Section 41-102 of the Kansas state statutes defines microbreweries as a brewery licensed by the Director of Alcoholic Beverage Control to manufacture, store and sell domestic beer and hard cider. A microbrewery is not considered to be a retailer [Subsection (y)(2) of K.S.A. 41-102]. And, a microbrewery is not considered to be a manufacturer [Subsection (p)(2) of K.S.A. 41-102]. The state statutes do not provide a distinct definition for nano-breweries, thus the legal notice for this application references “microbrewery.”

The applicant is associated with Sandhills Brewing Company, which currently operates a nano-brewery in Hutchinson, Kansas. The applicant intends to reproduce this concept under the same name at the subject address in Mission. The applicant will produce approximately 150 barrels of beer a year on premises for consumption in the tap room that will also be on premises. There may be limited retail sales of the product over the counter in the form of growlers and packaged beer.

Hours of production will be during normal business days. The applicant intends to receive deliveries of products one or twice a week through a backdoor behind the subject address. There will be no distribution of the product from this location.

Waste byproducts will be primarily spent grains, which the applicant will keep in a sealed container inside the premises until time of disposal. Disposal will be through donations to local farmers as animal feed or compost. Other waste products (general trash) will be disposed of in dumpsters provided by the landlord behind the building. Rinse water will be deposited in floor drains that connect to the sanitary sewer. Any

odors that may emanate from the brewing process will be limited and, in the words of the applicant, “create aromas similar to that of baking bread.”

The taproom is intended to accommodate approximately 50 patrons and will be open to the public in the afternoon and early evening hours on Thursdays, Fridays, and Saturdays.

It is anticipated that there will be as many as three (3) employees on site at peak times of operations. There are no parking requirements in the MS-1 zoning district. There are 38 on-street parking spaces in this block of Johnson Drive.

Section 41-308b of the Kansas state statutes provides that a microbrewery may sell domestic beer and other alcoholic liquor for consumption on the licensed premises as authorized by the Club and Drinking Establishment Act. Subsection (a)(6) of K.S.A. 41-308b states that such sales to consumers shall only take place during times when clubs and drinking establishments are authorized to serve and sell alcoholic liquor (9 a.m. to 2 a.m. the following day). The applicant will be required to obtain a license from both the State of Kansas and the City of Mission to operate a drinking establishment in order to comply with the SUP.

The state statute further stipulates that in certain counties, Johnson County being one of them, food must be offered in addition to domestic beer and alcoholic liquor, and that the food sales must be at least 30% of the total gross sales for the drinking establishment. This will also be a requirement of the SUP. The applicant intends to meet this requirement by collaborating with local restaurants to offer a menu to patrons that is facilitated through the tap room. In addition, food trucks may be utilized on occasion to meet this requirement.

Code review:

Municipal Code Section 410, Article V stipulates zoning regulations for properties located in the MS-1 zoning district. In particular, Municipal Code Section 410.170 - Permitted Uses - Subsection (F) states, “*clubs and drinking establishments shall be allowed after issuance of a special use permit as prescribed in Chapter 445, Article III, Section 445.180 et seq* (emphasis added).” Section 410.200 - Development Standards - Subsection (H)(2) further states, “*Food service establishments serving cereal malt beverages and clubs or drinking establishments serving alcoholic liquor shall be allowed where the sales of food for consumption on the premises exceeds thirty percent (30%) of the annual gross income for the establishment, provided that the exterior walls of clubs and drinking establishments are at least two hundred (200) feet from the nearest residentially zoned property line. A special use permit shall be required for clubs and drinking establishments within two hundred (200) feet of residentially zoned property* (emphasis added).”

While the subject address of this application is not within 200 feet of a residentially zoned area, staff believes that the requirement of a SUP as stipulated in Subsection (F) is still applicable.

Municipal Code Section 445.180(C) provides that the Planning Commission and City Council may designate such other uses as appropriate for a SUP upon a finding that the use is appropriate in a certain location, but is not listed as allowed in any district or is only allowed in a district which contains other uses inappropriate in this subject location.

According to Section 445.190 special uses may be approved by action of the City Council after recommendation from the Planning Commission. Special uses may be approved with conditions including, but not limited to, the following:

1. Requirements for special yards, open spaces, density, buffers, fences, walls and screening.
2. The installation of landscaping and maintenance.
3. Provisions for erosion control.
4. Limitations on ingress and egress movements into and out of the site and traffic circulation.
5. Limitation on signage.
6. Limitation on hours of operation and other characteristics of operation.
7. Conditions specifically listed under the individual special use.
8. Other conditions deemed necessary to ensure compatibility with surrounding land uses.

In addition, Section 445.220 of the Municipal Code states that special use permits generally run with the use of the property. Conditions placed must be clearly spelled out in the motion for approval. Section 445.230 of the City Code allows for the termination of a SUP at any time for several reasons. This includes non-compliance with any special conditions placed or if conditions in the neighborhood have changed to the extent that approval of the permit would be clearly unwarranted if being applied for at the time of revocation.

Special Use Permit:

Section 440.140.E, Criteria for Considering (SUP) applications, lists the criteria to be used by the Planning Commission and City Council in the consideration of this application. An evaluation of these criteria is as follows:

1. The character of the neighborhood.

The subject address for this proposed SUP is located along the Johnson Drive retail corridor. There is dance studio and hair salon to the east of the subject address and a retail game shop and former coffee shop to the west. Across the street to the south is a public park, and the site of the City's market. To the north is the corporate campus of ScriptPro.

The proposed special use permit for a drinking establishment would be within keeping of the retail nature of Johnson Drive and would not have an adverse impact on the character of the existing neighborhood.

2. The zoning and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zoning and uses.

Properties that surround the subject address are all either “MS-1” Main Street District 1 or “PBP” Planned Business Park District. There is no residential zoned area nearby nor any schools or churches. The proposed special use permit for a drinking establishment would be in harmony with the existing zoning districts and permitted uses.

Furthermore, the proposed special use permit is in keeping with the vision for the Johnson Drive corridor as envisioned by the City of Mission’s Comprehensive Plan, the Johnson Drive Guidelines and other master plans for this district. The proposed use associated with the SUP will add to the retail and economic viability of the corridor by attracting visitors to the area. The applicant has described the proposed use as “family friendly environment...not a late-night or party establishment.” The hours that the tap room will be open are limited to the afternoon and early evening hours.

The zoning and uses of nearby properties are in harmony with the proposed special use permit and will not be adversely impacted by the proposed special use permit.

3. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.

The property that this proposed SUP will be tied to is suitable for the proposed use as a drinking establishment. The entire building has three retail spaces, one of which had been a coffee shop, until recently.. There is currently a bakery in the building to the west. So, there has been, or is, other eating establishments

The existing property that is the subject of the proposed special use permit is suitable for the restricted use under the applicable MS-1 zoning district that would require a special use permit.

4. The extent to which approval of the application would detrimentally affect nearby properties.

As stated above, the proposed use for the special use permit will be a “family friendly environment,” and will be open to the public for only limited hours.

There proposed special use permit will have no detrimental effects on nearby property.

5. The length of time the property has remained vacant as zoned.

The subject property was a retail clothing accessory shop until this past winter when it was closed. The property has been vacant for approximately six months. There have been several retailers that have closed along Johnson Drive in the past year.

The property has been vacant for approximately six months.

6. The relative benefit to the public health, safety and welfare by retaining applicable restrictions on the property as compared to the destruction of the value of the property or hardship to the owner association with denying its request.

The proposed SUP for a drinking establishment will have no detrimental impact on the surrounding properties. The hours of operation will be limited to the afternoon and early evening hours for a few days out of the week. In addition, the production of beer would not be any more detrimental than the production of other food products in a restaurant or bakery type setting, which is a permitted use in this zoning district. Consequently, the benefit to public health, safety and welfare by retaining the applicable restrictions is limited. The applicant, however, has undertaken a significant investment in time and financial resources to make this property useable as a nano-brewery and drinking establishment. This investment would be lost if the application for a SUP is not granted. In addition, the landlord of the subject property would be without a tenant and the space not readily usable for another retail tenant without considerable investment.

The relative benefit to the public health, safety and welfare by retaining the applicable restriction would be minimal as compared to the loss of economic value if the restrictions were to remain.

7. The master plan or comprehensive plan.

Section 410.160 Statement of Intent for the "MS-1" Main Street District 1 states, "The zoning of property as "MS1" Main Street District 1 is intended to provide development opportunities consistent with the existing character within the core of Downtown Mission. Downtown Mission is the original commercial district within the City. The majority of buildings in the core of downtown have been constructed to the public right-of-way. Public parking lots are available and on-street parking is present to serve the downtown businesses. The result is a character unique to downtown that is not found elsewhere in the City. The "MS1" District provides for the majority of retail uses, while encouraging an active streetscape with a pedestrian friendly shopping environment. This district restricts automobile oriented uses and does not allow offices on the ground floor level. The district is also intended to allow multi-story buildings with office and residential uses above the ground floor level. Multi-story buildings with top-floor setbacks are encouraged within this district as described in the Mission/Rock Creek Redevelopment Masterplan. In addition, the district is intended to allow flexibility from the normal development standards found elsewhere in the City." There are variety of permitted uses within this zoning including retail and speciality retail, prepared food, food for home, and entertainment.

The Comprehensive Plan, and subsequent master plans and guiding documents speak to a pedestrian oriented environment along Johnson Drive with a mix of uses and activities that provides for a lively downtown environment. This application for a SUP to operate a drinking establishment would be in keeping with that vision.

This will be a unique retail experience in that patrons will be partaking in speciality craft beers not normally found in bars or restaurants in the area. The proposed use created a "destination" in that those that are interested in craft beer will come from

throughout the region. Patrons will most likely take advantage of their time in Mission and frequent other shops and restaurants while here.

The proposed special use permit for a drinking establishment associated with a nano-brewery is compatible with the vision of the City of Mission's Comprehensive Plan and various master plans for the Johnson Drive corridor.

8. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.

The proposed SUP will not have any adverse impact on the capacity or safety of the surrounding road network. The applicant is anticipating creating a tap room space that will accommodate upwards of 50 patrons. This number of potential patrons is not unusual and will not create an adverse impact on traffic patterns in the area. There are 38 on-street parking spaces along Johnson Drive in the block of the subject address of the proposed special use permit. There are more in the adjoining blocks. The proposed use will be open primarily in the early evening hours, when other uses along Johnson Drive may be closed. Thus, there should not be a high demand for on street parking during the hours that this proposed use would be open.

The proposed special use permit will not have any adverse impact on the capacity or safety of the surrounding network or present parking problems in the vicinity.

9. The recommendation of the professional staff.

The City' professional staff believes that the proposed application for a special use permit to operate a drinking establishment conforms with the intent of the "MS-1" zoning district, the City of Mission's Comprehensive Plan, and master plans guidelines for this area.

10. The extent to which utilities and services, including but not limited to, sewers, water service, police and fire protection, and parks and recreation facilities, are available and adequate to serve the proposed use.

The applicant is seeking a SUP to operate a drinking establishment that will be associated with a nano-brewery. The nano-brewery will produce a total of 150 or less barrels of beer a year in small batches. This production will have no negative impacts on existing utility services including electric, water and sanitary sewer. In addition, there will be no impact on existing public services including public safety services.

The proposed special use permit will not have any impact on utility services or public safety services of the City.

11. The extent to which the proposed use would create excessive stormwater runoff, air pollution, water pollution, noise pollution or other environmental harm.

The proposed special use permit is associated with an existing building. There will be no additional stormwater runoff associated with this use. The brewing process

will be during normal business hours and will have no negative environmental impact in terms of water pollution or noise pollution. The applicant has indicated that any odors from the brewing process will be minimal and similar to baking bread.

The proposed special use permit will not create any excessive stormwater runoff, air pollution, water pollution, noise pollution, or other environmental harm.

12. The extent to which there is a need for the use in the community.

There is no defined “need” for the proposed special use in the community. However, the proposed special use will have a positive economic impact on the community. Please see below.

13. The economic impact of the proposed use on the community.

As previously stated, the subject address is currently a vacant retail space along the Johnson Drive corridor. The proposed SUP for a drinking establishment will be associated with the operation of a nano-brewery. This is a unique use that plays into the “makers” movement, which has become a strong component of the post recession economy. The makers movement emphasizes individual entrepreneurs utilizing their creativity and skills to produce products on a small scale for sale and consumption to the general public in the area. These types of entrepreneurs seek out inexpensive locations to establish their businesses and often become the fabric of a unique economic renaissance for the area.

There is an application for a SUP currently in the process of consideration that supports another business very similar in concept to this application. If approved, both concepts can work in tandem to create an economic synergy of sorts for those who enjoy specialty craft beer. This could be an opportunity to attract visitors from areas beyond Mission to spend time and financial resources in the Mission community. In addition, there may be other opportunities that result from this “synergy” including dining and unique retailing.

The completion of the Mission Trails apartment building at 6201 Johnson Drive and the Gateway apartment building at 4801 Johnson Drive will result in as many as 500 additional residents living in this corridor. These residents will mostly likely prefer to walk or bicycle to nearby shops and restaurants in the area. This will support the economic vibrancy that the City has been actively seeking for this corridor. And, this application for a proposed SUP for a drinking establishment associated with a nano-brewery will complement this environment.

The proposed application for a special use permit for a drinking establishment to be associated with a nano-brewery will support and enhance the economic environment of the Johnson Drive corridor and the Mission community.

14. The ability of the applicant to satisfy any requirements applicable to the specific use imposed pursuant to the zoning district regulations.

The applicant will be able to satisfy the requirements that are applicable to the specific use imposed pursuant to the zoning district regulations.

Staff Recommendation

Staff recommends the Planning Commission recommend approval of Case #18-06 to the City Council for a special use permit for the use of 5612 Johnson Drive as a drinking establishment. The special use permit would run with the use of the property with the following conditions:

1. The holder(s) of this special use permit for a drinking establishment, and any future assignees, will maintain in good standing all licensures for a drinking establishment as required by the State of Kansas and the City of Mission.
2. The holder(s) of this special use permit will be required to meet the stipulation of a drinking establishment in that sales of food for consumption on the premises exceeds thirty percent (30%) of the annual gross income for the establishment.
3. The subject address of the special use permit will be kept in a clean and orderly manner and not present or cause to be presented any nuisances and/or violations of the Municipal codes of the City of Mission.
4. Hours of operation for the drinking establishment will be limited to 40 hours or less a week.

Planning Commission Action

To be determined at the time of consideration.

City Council Action

To be determined at the time of consideration.