

STAFF REPORT
Planning Commission Meeting July 30, 2018

AGENDA ITEM NO.: 3B

PROJECT NUMBER / TITLE: Application # 18-07

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

LOCATION: 5880 Beverly Avenue
Parcel KF251208-3015
Currently Run-Rite Automotive

APPLICANT: Sara Charlson
Rockcreek Brewing Company
411 W. 46th Terrace, Suite 304
Kansas City, MO 64112

PROPERTY OWNER: Greg & Kelli Pesch
5880 Beverly Avenue
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 property is 5880 Beverly Avenue, a 5,706 square foot building located one half block north of Johnson Drive. The building is currently being utilized as an automotive repair shop doing business as Run-Rite Automotive. The property is zoned “MS-2” Main Street District 2.

Surrounding properties are zoned and developed as follows:

North: “MS-2” Main Street District 2 -Brazilian Jiu Jitsu

“DND” Downtown Neighborhood District - residential properties

East: “MS-2” Main Street District 2- Mission Kitchen and Bath

West: “MS-2” Main Street District 2 - Signature Logo Embroidery

South: “MS-1” Main Street District 1 - Dearborn Animal Clinic, Mission Fresh Fashion, and Flatlanders Ski Shop

Background:

The applicant is seeking a special use permit (SUP) to operate a drinking establishment at the subject property. In particular, the drinking establishment will be associated with a “nano-brewery” where the applicant will produce a variety of craft beers 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 Rockcreek Brewing Company, which intends to purchase the subject property for the purpose of developing a nano-brewery and associated tap room. The applicant will produce approximately 300 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 once or twice a week. 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. Other waste products

(general trash) will be disposed of in dumpsters located on the property. Rinse water will be deposited in floor drains that connect to the sanitary sewer.

The taproom is intended to accommodate approximately 50 patrons and will be open to the public Wednesday, 4 p.m. to 9 p.m.; Thursday 4 p.m. to 9 p.m.; Friday 11 a.m. to 10 p.m.; Saturday 11 a.m. to 10 p.m.; and Sunday 12 a.m. to 7 p.m.

It is anticipated that there will be as many as five (5) employees on site at peak times of operations.

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 special use permit.

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 condition of the SUP. The applicant intends to meet this requirement by offering limited menu items from a small kitchen on the premises. In addition, food trucks may be utilized on occasion to meet this requirement. The trucks would be parked on the property on the south side of the building, away from the residential area to the north.

Code review:

As previously identified, the property is located in the MS-2 zoning district. Section 410.220 of the City of Mission Municipal Code provides the following statement of intent for the MS-2 zoning district.

“The zoning of property as "MS2" Main Street District 2 is *intended to provide development opportunities consistent with the existing character surrounding the core of downtown Mission* (emphasis added). The objectives for this district are similar to "MS1", except residential and office uses are permitted on the ground floor level of mixed-use buildings or complexes in order to support the businesses in the downtown area. This district promotes multi-story structures with top-floor setbacks as described by the Mission/Rock Creek Redevelopment Masterplan.”

Section 410.220 (A) states, “No building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered, except for one (1) or more of the following uses, subject to the development and performance standards set forth in Section 410.260: 1) Any use permitted in District "MS-1", subject to the applicable development and performance standards.”

Thus, those uses that are permitted in the MS-1 zoning district are also permitted in the MS-2 zoning district with the same performance standards.

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)."

The subject property of this application is within 200 feet of the "DND" Downtown Neighborhood District. This is a zoning district that is intended to "offer a unique living environment that offers a variety of housing styles that supports the downtown businesses and stabilize the surrounding single-family neighborhoods." Staff believes that the requirement of a special use permit as stipulated in Subsection (H)(2) of Section 410.200 is 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 runs 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 property for this proposed SUP is located just off the Johnson Drive retail corridor and within the area designated as the downtown core. There is a kitchen and bath business to the east of the subject property and a embroidery shop to the west. To the south are various retail and services oriented businesses along Johnson Drive. To the immediate north is a jiu jitsu studio. Further north are single-family homes within a DND zoned district.

The proposed special use permit for a drinking establishment would be within keeping of the retail nature of this are 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 “MS-2” Main Street District 2. There is a residential zoned area further north that is zoned “DND” Downtown Neighborhood District and is intended to serve as a transition area between the downtown core and more traditional, single-family residentially zoned areas. There are no schools or churches in the area. The proposed special use permit for a drinking establishment would be in harmony with the existing zoning districts and permitted uses.

Furthermore, the proposed SUP is in keeping with the vision for the Johnson Drive corridor and downtown core 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 a “family/neighborhood friendly environment with limited hours, not open past 10 p.m.”

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 subject property of this special use permit is suitable for the proposed use as a drinking establishment. It is currently an automotive repair shop, and has been for several years. With a moderate conversion, it will offer the space needed to operate a nano-brewery producing 300 barrels a year and associated tap room.

The existing property that is the subject of the proposed special use permit is suitable for the restricted use under the MS-2 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. It should not have any negative impact on nearby property. The proposed use of the property will not be any more intensive than the existing use. There may be an occasional food truck parked on the property, but this will be on the south side of the building.

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 is not currently vacant. The property is an automotive repair shop and has been for many years. The owner is interested in selling.

The property is not nor has been vacant.

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 minimal impact on the surrounding properties. The hours of operation will be limited to the afternoon and 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, nor the existing automotive repair shop. Consequently, the benefit to public health, safety and welfare by retaining the applicable restrictions is limited.

The owner of the property is interested in selling the property, and it has been on the market for several months. If the proposed application for a special use permit is denied, the property could remain on the market for several more months. As an automotive repair shop, it is a unique property to sell and one that will require considerable investment to be made ready for another type of use.

In addition, Section 410.340 of the Municipal Codes speaks to Development standards and prohibited uses within the Downtown Overlay District. Body shops, auto glass installation shops, tire shops, and similar auto service establishments are prohibited uses when located within 100 feet of a residentially zoned district. This would be the case with the current business, which has been grandfathered under this provision as legal non-conforming use. This stipulation offers another layer of complexity with respect to owner's ability to sell his building to another individual for a similar use.

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 subject property is not sold.

7. The master plan or comprehensive plan.

Municipal Code Section 410.220, Statement of Intent for the "MS-2" Main Street District 1 states, "The zoning of property as "MS2" Main Street District 2 is *intended to provide development opportunities consistent with the existing character surrounding the core of downtown Mission* (emphasis added). The objectives for this district are similar to "MS1", except residential and office uses are permitted on the ground floor level of mixed-use buildings or complexes in order to support the businesses in the downtown area."

The statement of intent for the "MS-1" zoning district 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. 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. This will be something of a destination use 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 and downtown core.

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 special use permit 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 approximately 30 on-street parking spaces along Johnson Drive within 150 feet of the subject property of the proposed special use permit. Fifty spaces of public parking will be available in the parking structure one block south of this property once the Mission Trails project is complete. The proposed use will be open primarily in the early evening hours, when other surrounding uses may be closed. Thus, there should not be a high demand for on street parking.

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-2" 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 300 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 SUP 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 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.

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 immediate 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 is very similar in concept to this application. If approved both concepts can work in tandem to create an economic synergy of sorts for those that like to partake in 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.

Parking

The MS-2 zoning district stipulates that four (4) off-street parking spaces shall be provided on the premises for each one thousand (1,000) square feet of gross floor area; provided however, that properties whose nearest property line is within two hundred (200) feet of the nearest public off-street parking lot, two and one-half (2½) off-street parking spaces shall be provided on the premises for each one thousand (1,000) square feet of gross floor area. This would equate to 23 parking spaces required on site.

There is no proposed change to the existing property other than the use. The property is not currently striped for parking. In looking at an aerial photo of the property, it would appear that there would be enough space available for 15-18 vehicles to be parked on the property. In addition, the applicant has indicated that the current owner of the property, who will continue to own the commercial property to the immediate north, is willing to allow the applicant to utilize parking on his property.

There are also approximately 30 on-street parking spaces along Johnson Drive within 150 feet of the subject property. If the applicant is able to utilize the on-street parking along Johnson Drive, they will then be able to accommodate 14 parking space on site given the stipulation of two and one-half parking spaces on the premises for each 1,000 square feet of gross floor area.

There will also be a public parking lot available one block south in the parking structure to be built with the Mission Trails apartment complex. This structure is to provide up to 50 parking spaces for general public parking.

Staff would recommend that the stipulation that an off-street public parking lot be waived in lieu of public on-street parking.

Staff Recommendation

Staff recommends the Planning Commission recommend approval of Case #18-07 to the City Council for a special use permit for the use of 5880 Beverly Avenue 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. Hours of operation for the drinking establishment will be limited to 40 hours or less a week.
4. The subject property 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.

Staff also recommends that a waiver be granted to the stipulation that properties whose nearest property line is within two hundred (200) feet of the nearest **public off-street parking lot**, be allowed to reduce their required parking to two and one-half (2½) off-street parking spaces for each one thousand (1,000) square feet of gross floor area. Specifically, such waiver would allow the applicant to count **public on-street parking** within 200 feet of the property in order to meet this provision.

Planning Commission Action

To be determined at the time of consideration.

City Council Action

To be determined at the time of consideration.