



## Addendum- Report to the Plan Commission

July 6, 2009

Legistar I.D. #15038  
2609 East Washington Avenue  
Conditional Use

Addendum Prepared By:  
Heather Stouder, AICP  
Planning Division Staff

**Requested Action:** Approval of a conditional use for an outdoor eating and drinking area at a tavern in the C2 (General Commercial) District.

**Applicable Regulations & Standards:** Section 28.12(11) provides the guidelines and regulations for the approval of conditional uses. Outdoor eating areas are conditional uses in the C2 District per Sec. 28.09(3)(d).

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find that the conditional use standards can be met and **approve** the conditional use request subject to input at the public hearing and conditions from reviewing agencies.

### Previous Actions

The Plan Commission voted on June 15 to refer a decision on this case in order to obtain clarification from the City Attorney's Office and the Zoning Administrator on the following items:

- 1) Among the conditions of approval recommended by city agencies, which come directly from Madison General Ordinances?
- 2) What proposed changes to the site or use trigger the ordinance requirements identified?
- 3) What, if any, discretion do staff and the Plan Commission have in requiring or modifying these conditions?

In addition to enclosed memoranda from the City Attorney's Office and the Zoning Administrator, and the original June 15, 2009 staff report, this addendum has been prepared in response to the above questions.

### Findings

The answers to questions 1 and 3 above are relatively straightforward; while question 2 was perhaps more complicated as it pertains to this particular case.

*1) Among the conditions of approval recommended by city agencies, which come directly from Madison General Ordinances (MGO)?*

Upon review of recommended conditions of approval in the June 15, 2009 staff report, all but one recommended condition of approval (No. 1, which recommends prohibiting outdoor amplified sound after 10:00 PM) was linked directly to MGO. In this addendum, all recommended conditions of approval related directly to MGO, regardless of their cost and impact to the feasibility of the applicant's request, are unshaded and include references to specific sections of the MGO in ***bold, italicized text***. Based on a June 15, 2009 communication from zoning staff handed out at the June 15 Plan Commission meeting, three additional conditions of approval related to MGO (Nos. 16-18) have been incorporated to reflect ordinance requirements.

*2) What proposed changes to the site or use trigger the ordinance requirements identified?*

Question 2, related to the "trigger" for these conditions, is perhaps more complicated to answer as it pertains to this particular case. The business owner and tenant at 2609 East Washington Avenue is requesting a conditional use for an outdoor eating area at an existing tavern. Staff understands that the request is generally supported by neighbors and has no known opposition at the time of this writing.

As proposed, the three picnic tables on an existing concrete slab on the south side of the building would involve no change in the overall capacity or use of the establishment. While this property lies within the boundaries of Urban Design District 5, the proposal did not trigger review by the Urban Design Commission, as it was not considered to be a major exterior remodeling of the property. **MGO Sec. 33.24(4)(e)3**

As noted in the memoranda from the Zoning Administrator and the City Attorney's Office, "triggers" for the many ordinance requirements related to the site as a whole can be found in the following parts of the MGO:

**MGO Sec. 10.08(8)(j)**

"When a building permit is required for reconstruction or remodeling of an existing commercial site or a zoning or occupancy certificate is required for use or change of use for any land, building or structures, all of the existing, as well as the proposed, driveway approaches and parking facilities shall comply with all design standards as set forth in this ordinance."

**MGO Sec. 28.11(2)(a)**

"Scope of Regulations: The off-street parking and loading provisions of this ordinance shall apply as follows:

1. For all buildings and structures erected and all uses of land established after the effective date of this ordinance, accessory parking and loading facilities shall be provided as required by the regulations of the districts in which such buildings or uses are located..."

**MGO Sec. 28.12(5)**

"Zoning Certificates.

a) General Requirements. Except for lots used for garden purposes or for public recreation purposes, and without buildings or structures, and except as provided hereunder in Subsection (6) for a change in use, no permit pertaining to the use of land, buildings, or structures shall be issued by any officer, department, or employee of the City unless the application for such permit has been examined by the office of the Zoning Administrator and has affixed to it a certificate of the office of the Zoning Administrator indicating that the proposed use of land, buildings or structures and any future proposed buildings or structures comply with all of the provisions of this ordinance. Any permit or certificate of occupancy issued in conflict with the provisions of this ordinance shall be null and void."

**MGO Sec. 28.12(11)(g)**

"No application for a conditional use shall be granted by the Plan Commission unless such commission shall find all of the following (11) conditions are present. This includes:

...

7: That the conditional use shall conform to all applicable regulations of the district in which it is located..."

In this case, the clearest linkages between what is being requested and what is being required are that the request entails a **change in use** and **requires a zoning certificate** commemorating approval of an overall site plan to include the building, outdoor eating area, and off-street parking area (for this approval, no building permits or certificates of occupancy are required). As noted above, the need for a zoning certificate triggers compliance with MGO 10.08 and MGO 28.

3) *What, if any, discretion do staff and the Plan Commission have in requiring or modifying these conditions?*

According to a June 30, 2009 memorandum from the Assistant City Attorney (enclosed), the Plan Commission does not have the authority to waive ordinance requirements for specific proposals, unless the ordinance specifically provides that authority. As pertinent to this case, the Zoning Administrator has noted that the Plan Commission has the authority to waive the first portion of Condition No. 14, related to the height of landscaping features adjacent to a driveway (Planning Division staff does not recommend that this condition be waived.) Further, the Plan Commission has discretion in applying additional conditions of approval to a project to ensure that the standards for the approval of conditional uses are met as listed in MGO Sec. 28.12(11)(g).

Absent the other triggers discussed above, the Plan Commission could ostensibly find that the minor changes proposed to the site in this case were too insignificant to trigger full compliance of the site as a whole. However, for the unshaded conditions of approval related to this particular case, the ordinances do not differentiate based on the level of complexity involved in a proposed change in use, nor do they provide the Plan Commission with the authority to make these distinctions. Ordinance revision(s) by the Common Council would be necessary in order to provide such authority to the Plan Commission.

## Conclusion

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Based on input from the City Attorney's Office, Planning Division staff recognize that the Plan Commission has very limited discretion with regard to the recommended conditions of approval for this conditional use request. The request involves a change in use and requires a zoning certificate, both of which trigger compliance with MGO 10.08 and MGO Sec. 28, components of which cannot be waived by the Plan Commission. The Zoning Administrator has noted that even if the proposed outdoor eating area were a permitted use in the C2 District, it would require a zoning certificate and administrative site plan review for compliance with these ordinances.

Staff understands that the upgrades to the site and parking lot may necessitate an investment beyond that which is feasible for the applicant at this time. However, staff from reviewing agencies must be able to review an accurate site plan showing existing and proposed conditions prior to determining specific improvements that need to be made. As is the case with many conditional use requests, the site plan submitted for review by the Plan Commission lacks sufficient detail to demonstrate compliance with all relevant sections of the MGO, and several recommended conditions of approval simply restate parts of the MGO that must be complied with when final plans are submitted by the applicant.

As per MGO Sec. 28.12(11)(h)3, Plan Commission approval for a conditional use is considered null and void within twelve (12) months unless the use is commenced, and this may be extended for an additional twenty-four months by the Director of Planning and Community and Economic Development. Essentially, an approval would provide up to three years for the applicant and property owner to assess whether or not the investment in the site necessary for an outdoor eating area is worthwhile. While the incorporation of outdoor seating may not move forward in 2009, staff believes that approval of the conditional use request would allow ample time for the applicant to accurately portray existing site conditions, work with staff from reviewing agencies to better understand the level of investment necessary to meet MGO requirements, and decide whether moving forward with the proposal makes good business sense.

If the Plan Commission believes that the level of changes to this zoning lot should not require the noted ordinance requirements to be triggered, then an ordinance amendment would be needed to allow an exception to be made for certain projects.

Planning Division staff recommend that the Plan Commission **approve** the conditional use request subject to input at the public hearing and the recommended conditions of approval from reviewing agencies.

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## Recommendations and Proposed Conditions of Approval

Recommended conditions unrelated to Madison General Ordinances are shaded

### **Planning Division Recommendation** (Contact Heather Stouder, 266-5974)

The Planning Division recommends that the Plan Commission find that the conditional use standards can be met and **approve** the conditional use request subject to input at the public hearing.

1. Outdoor amplified sound on the patio is prohibited after 10:00 PM.
2. The applicant shall submit details on the proposed bicycle racks in the final plan set for staff review, and may work with staff on the design and location of bicycle parking prior to submitting the final plan set. **MGO 28.11(3)(h)2d**
3. The Plan Commission retains continuing jurisdiction over the approval of this conditional use. If complaints are received related to late-night noise on the outdoor patio in the future, the Plan Commission may further restrict the hours of operation. **MGO Sec. 28.12(11)(h)4**

### ***The following conditions have been submitted by reviewing agencies:***

#### **Traffic Engineering Division** (Contact John Leach, 267-8755)

4. When the applicant submits final plans for approval, the applicant shall show the following: items in the terrace as existing (e.g., signs and street light poles), type of surfaces, existing property lines, addresses, one contiguous plan (showing all easements, all pavement markings, building placement, and stalls), signage, percent of slope, vehicle routes, dimensions of radii, aisles, driveways, stalls including the two (2) feet overhang, and a scaled drawing at 1" = 20'. **MGO Sec. 10.08(7)(a)&(b) Items to be shown on the site plan.**
5. The applicant shall modify the gravel areas to bituminous, or Portland Cement concrete in accordance with City of Madison standards and specifications. All off-street facilities shall be paved in accordance to City of Madison General Ordinance Section 10.08(6)(a) 10. The applicant shall note type of pavement in the parking lot. **MGO Sec. 10.08 (6)(a)10 All Commercial lots shall be paved.**
6. The applicant shall design the surface parking area for stalls and backing up according to Figure II of the ordinance using the 9' or wider stall for the commercial/retail area. The applicant shall dimension the parking spaces according to MGO. **MGO Sec. 10.08(6)(a)2&3 Parking Design Standards.**
7. The parking facility shall be modified to provide for adequate internal circulation for vehicles. This can be accommodated by eliminating a parking stall at the dead ends. The eliminated stall shall be modified to provide a turn around area ten (10) to twelve (12) feet in width and signed "No Parking Anytime." **MGO Sec. 10.08 (6)(a)6 Internal Circulation as to prevent backing onto the right-of-way.**
8. Public signing and marking related to the development may be required by the City Traffic Engineer for which the developer shall be financially responsible. **MGO Sec. 10.08(4)(c)2 Financially responsible for improvements for access.**
9. The applicant shall indicate the type of bicycle racks to be installed (please contact Arthur Ross, City Traffic Engineering at 266-4761 with questions regarding this item). **MGO Sec. 28.11(3)(h)2.d**
10. A "Stop" sign shall be installed at a height of seven (7) feet at the driveway approach. All signs at the approaches shall be installed behind the property line. All directional/regulatory signage and pavement markings on the site shall be shown and noted on the plan. **MGO Sec. 10.08(5) Special Provision for Entrances.**

11. The intersection shall be so designed so as not to violate the City's sight-triangle preservation requirement which states that on a corner lot no structure, screening, or embankment of any kind shall be erected, placed, maintained or grown between the heights of 30 inches and 10 feet above the curb level or its equivalent within the triangle space formed by the two intersecting street lines or their projections and a line joining points on such street lines located a minimum of 25 feet from the street intersection in order to provide adequate vehicular vision clearance. **MGO Sec. 10.25(3) Intersection Vision Clearance.**

**Zoning Administrator** (Contact Pat Anderson, 266-5978)

12. Meet all applicable State accessibility requirements **referenced in MGO Sec. 28.11(3)(m)** including but not limited to:
  - a. Show signage at the head of the accessible stalls. Accessible signs shall be a minimum of 48" between the bottom of the sign and the ground.
  - b. Show the accessible path from the stalls to the building. The stalls shall be as near the accessible entrance as possible. Show ramps, curbs, or wheel stops where required.
13. Provide a minimum of two bike-parking stalls in a safe and convenient location on an impervious surface to be shown on the final plan. The bike racks shall be securely anchored to the ground or building to prevent the racks from moving. NOTE: A bike-parking stall is two feet by six feet with a five-foot access area. **MGO Sec. 28.11(3)(e)**
14. Within 10' from a driveway crossing of a street lot line, any landscaping/screening shall not exceed 2' in height for vision clearance. **MGO Sec. 28.04(12)(d)2 (does not apply to conditional uses).** No landscape elements shall be maintained between the heights of 30 inches and 10 feet above the curb level within the 25' vision triangle of the street corner. **MGO Sec. 28.04(12)(e)**
15. If you have a license to sell alcohol in an outdoor eating area, the Alcohol License Review Committee has established conditions for operation for these applications that 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. **MGO Sec. 38**

**NOTE:** Three additional conditions of approval based on a June 15, 2009 communication from zoning staff have been added as follows:

16. Lighting is not required. However, if it is provided for the commercial/retail portion of the parking, it must comply with City of Madison outdoor lighting standards (see parking lot packet). Lighting will be limited to .08 watts per square foot. **MGO Sec. 28.11(3)(h)4**
17. The applicant shall submit a landscape plan for approval by staff demonstrating compliance with the City's landscaping requirements. **MGO Sec. 28.04(12)(b)**
18. The parking lot must be entirely paved to meet ordinance specifications. **MGO Sec. 28.11(3)(h)2**

**Fire Department** (Contact Scott Strassburg, 261-9843)

19. Per the International Fire Code (IFC) Chapter 10 and MGO 34, the applicant shall submit an approved capacity with the site plan and post the capacity of the fenced in area in accordance IFC 2006 edition. **MGO Sec. 34**
20. The proposed outdoor fenced in area shall not be located at, adjacent to or obstruct the required exits from the building. **MGO Sec. 34**
21. The applicant shall provide and maintain exits from the outdoor eating area in area in accordance with the IFC 2006 edition. **MGO Sec. 34**
22. The applicant shall submit a seating plan for the proposed fenced in area. **Ensures compliance with MGO Sec. 34**

**City Engineering Division** (Contact Janet Dailey, 261-9688)

This agency submitted a response for this request with no comments.

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

This agency did not submit a response for this request.

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

This agency did not submit a response for this request.