



CITY OF MADISON  
ZONING BOARD OF APPEALS  
APPEAL APPLICATION

\$200 Filing Fee

Ensure all information is **typed** or legibly **printed** using blue or black ink.

Notices are sent to the District Alderperson and to owners of record as listed in the Office of the City Assessor. Maximum size for all drawings is 11" x 17".

Name of Applicant: Susan A Landsverk  
Address: 3614 Atwood Ave  
Madison WI 53714  
Daytime Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to Madison General Ordinance Section No. MGO 28.211 and others as specified in attached

2. When relevant to a specific property, fill out below:  
Street Address: Olbrich Park 3527 Atwood Ave, Madison, WI 53714

3.  List of grounds for the appeal, statements, evidence of fact, and any additional information associated with the appeal are provided on a separate attachment.

Applicant Signature: Susan A Landsverk

FOR OFFICE USE ONLY	
Amount Paid: <u>\$200</u>	Zoning District: <u>PR-WP-08</u>
Receipt: <u>27847-0008</u>	Hearing Date: <u>04-13-2017</u>
Filing Date: <u>3/21/17</u>	Published Date: <u>04-06-2017</u>
Received By: <u>PPA</u>	Appeal Number: <u>LND APP-2017-00002</u>
Parcel Number: <u>0710-081-0701-5</u>	GQ: _____
Alder District: <u>15</u>	

**DECISION**

The Board, in accordance with the findings of fact, hereby determines that the requested appeal for \_\_\_\_\_ is

Approved

Denied

Conditionally Approved

Zoning Board of Appeals Chair:

Date:

TO: ZONING BOARD OF APPEALS:

**APPEAL APPLICATION RE Biergarten at Olbrich Park at 3527 Atwood Avenue**

Submitted March 21, 2017 by Susan A. Landsverk, 3614 Atwood, Madison, WI, 53714

The Zoning Administrator determined that the Olbrich Biergarten did not need conditional use approval from the Plan Commission.

At the 3/7/2017 Common Council meeting, Alder Verveer quotes the use agreement language requiring Plan Commission conditional use approval and/or UDC approval. He asks why the language was in the use agreement and [5:23:47] "as of tonight have we made a determination, officially, that if the Council adopts the Use Agreement tonight, will or won't the BKM Group be required to visit the Plan Commission and/or Urban Design Commission? It's unclear to me." [Minute 5:23, Madison City Channel video of 3/7/17 Council meeting]

Eric Knepp, Parks Superintendent, addressed the need for UDC approval and deferred to the Zoning Administrator on the Plan Commission language.

Alder Verveer asked the Zoning Administrator: "My understanding, as of tonight, it's your determination, Matt, that, all things being equal, you believe that if the use agreement is adopted by the Council tonight and executed that BKM Group will not need to receive any specific Plan Commission approval, conditional use permit or otherwise?" [Minute 5:25]

The Zoning Administrator replied: "I haven't looked at the use agreement. I know that Claire contacted me back in November and we kind of talked conceptually about this project. And, as I stated earlier, we thought the use, the use of the stand for this type of activity, **this use of the park for this type of outdoor recreational space** was consistent with what you do in parks and weren't going to require any special approval from the City's Plan Commission." [Minute 5:25:40, emphasis added]

MGO Table 28G-1 provides "outdoor recreation" is a conditional use in the Parks and Recreation District. Outdoor recreation is a conditional use under both "Commercial Recreation, Entertainment and Lodging" and under "Accessory Uses and Structures." Thus, whether the Biergarten is a principal outdoor recreation use operated by a private commercial group, or whether the Biergarten is an accessory park use, Plan Commission conditional use approval is required.

Having outdoor recreation be a conditional use is consistent with the Comprehensive Plan. A Planning Division Staff Report, dated February 20, 2017, Legistar 45655, described the intent for Park and Open Space (P) development:

*Areas identified as P districts are the recommended "...locations for public parks, some types of public and private outdoor recreational facilities, conservation areas, some stormwater management drainageways and detention areas, cemeteries, and similarly relatively extensive uses that have an open space character and are not recommended for eventual development with more intensive uses" (Pg. 2-99, Comprehensive Plan). The Comprehensive Plan recognizes recreation areas and facilities as recommended land uses in P districts.*

The Common Council recently changed the ordinances to make "outdoor recreation" in most districts, including land zoned Parks and Recreation, a conditional use. Legistar 44251, enactment date of 11/10/2016, ORD-16-00092. This change had the support of Staff. The Planning Division Staff Report, prepared by Planning and Zoning Staff, described the change as:

This amendment changes various use charts to clarify that Outdoor Recreation is a Conditional Use, where allowed, either as a principal use or an accessory use.

Typically, outdoor recreation includes swimming pools, tennis courts, and volleyball courts, or similar outdoor activities or facilities that allow such activity to be conducted. The characteristics of the use, such as the hours of operation and the nature of the activity, are generally unique or vary, result in potential adverse impact on surrounding uses. For this reason, the use should be consistently classified as a Conditional Use in the Zoning Code.

Staff supports this amendment.

The appeal of the Zoning Administrator's decision is within the jurisdiction of the Zoning Board of Appeals. This is not a case where the Zoning Administrator merely provided the Council with information the Council needed to make a decision. Rather, the Council relied upon the Zoning Administrator's decision that Plan Commission approval was not required, as evidenced by Alder Verveer's questions. Further, the City has determined the Zoning Administrator has the power and authority to make a decision on whether a matter needs to go before the Plan Commission. Assistant City Attorney John Strange said in an email to Alder Rummel, dated March 6, 2017:

"Even with that language [Use Agreement language requiring conditional use approval from the Plan Commission], the city cannot require the applicant to get conditional use approval if Zoning does not actually require it."

The "Zoning" referred to by Assistant City Attorney Strange is the "Zoning Administrator" and not the Zoning Code. This is evidenced by the sentence immediately following that quote: "I hope this helps you understand Zoning's interpretation of how the code applies to the beer garden at Olbrich Park and your options moving forward."

Also, in an e-mail response to Alder Rummel on Mar 6, 2017, at 8:32 AM, Zoning Administrator Matthew Tucker referred to the biergarten as an accessory use to the park facility rather than outdoor recreation and made a determination based on his interpretation:

Marsha- You are correct, the principal land use of a "tavern" is not a listed in the PR zoning district. This is not a problem, however, because we consider the alcohol sales biergarten activity as an accessory use to the park facility, not as a separate principal use requiring its own approval. Parks approached us last year about the biergarten concept, we told them we considered the outdoor alcohol sales/biergarten space as accessory to the park use, and it would not be considered a "tavern" per the zoning code, so there is no zoning problem.

Let me know if you have any questions. Matt Tucker

**From:** Rummel, Marsha  
**Sent:** Sunday, March 05, 2017 12:10 AM  
**To:** Tucker, Matthew; May, Michael; Viste, Doran; Soglin, Paul  
**Subject:** Park and recreation zoning

When I look at the zoning code in the table 28 G it appears to me that a tavern is not checked as a permitted or conditional use in the parks and rec zoning. The Olbrich biergarten received a tavern license (70/30 alcohol to food). Am I interpreting this correctly that a tavern would not be allowed in Olbrich Park? And if I am correct, what are the options?

I am appealing the Zoning Administrator's decisions to the Zoning Board of Appeals as a Biergarten at Olbrich will adversely impact me.

**Applicable Ordinances:**

MGO 28.211

Recreation, Outdoor. A facility for outdoor conduct, viewing, or participation in recreational activities, which may include one or more structures. This term includes but is not limited to a golf facility, tennis, basketball or volleyball court, soccer, baseball or football field, sporting club, amusement park, miniature golf course, swimming pool, water park, an outdoor stage, band shell, or amphitheater.

MGO 28.004(1)

This ordinance should be interpreted as a permissive zoning ordinance, which means that the ordinance permits only those principal and accessory uses and structures that are specifically enumerated in the ordinance. In the absence of a variance or special exception, any uses or structures not specifically permitted by the ordinance are prohibited.

MGO 28.095(2)

Permitted and Conditional Uses.

See Table 28G-1 for a complete list of allowed uses within the Parks and Recreation District.

MGO Table 28G-1 (following page)

	A	UA	CN	PR	AP	Supplem Regulati
<b>Commercial Recreation, Entertainment and Lodging</b>						
Bed and breakfast establishment	P					Y
Golf course	C			C		Y
Lodge, private club, reception hall				C		Y
Outdoor recreation	C	C	C	C	C	Y
Stadiums, auditoriums, arenas				C		
Tourist rooming house	P				P	Y
<b>Automobile Services</b>						
Auto rental					P	Y
<b>Parking and Storage Facilities</b>						
Parking facility, private					C	
Parking facility, public					P	
Parking lot (surface) exceeding maximum parking	C	C	C	C	C	
<b>Accessory Uses and Structures</b>						
Accessory building or structure	P	P/C	P	P		Y
Accessory dwelling unit						Y
Accessory retail alcohol sales				P	P	
Caretaker's dwelling	P	P	C	P		Y
Catering				P	P	
Coffee shop, tea house				C	P	
Composting	P	P	P	P	P	
Day care home, family	P/C					Y
Emergency electric generator	P	C	C	C	P	Y
General retail	P				P	
Health/sports club					P/C	
Home occupation	P/C					Y
Hotel, inn, motel, hostel					P/C	
Keeping of chickens	P	P	P	P	P	Y
On-site agricultural retail, farm stand	P	P	C	C		Y
Outdoor cooking operation	P/C	P/C	P/C	P/C	P/C	Y
Outdoor eating area associated with food & beverage establishment				C		Y
Outdoor recreation	C	C	C	C	C	Y
Outdoor sales events	C	C		P/C		Y
Outdoor storage	P	P/C	P/C		P	Y
Parking facility, public			P	P		
Portable storage units	P					Y
Professional office, general office					P	