



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: Ruby Marie Ltd Partnership, JDJ Import Company, LLC, and Prosit to You, Inc.

Address: c/o its Attorney: Robert C. Procter, 2 East Mifflin Street, Ste. 200, Madison, WI 537003-4269

Daytime Phone: (608) 283-6762 Evening Phone: same

Email: rprocter@axley.com

1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to
Madison General Ordinance Section No. 28.186(4)

2. When relevant to a specific property, fill out below:
Street Address: 138-148 S. Blair Street, and 506-522 E. Wilson Street

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: Robert Procter, atty for the Applicant

FOR OFFICE USE ONLY

Amount Paid: \$200.00

Receipt: 119757.0014

Filing Date: 6-9-22

Received By: NAK

Parcel Number: _____

Alder District: 10-BENFORD

Zoning District: H15-FS, H15-TL, UMX, PP, W3-17

Hearing Date: 7-21-22

Published Date: 7-14-22

Appeal Number: LNDAPP-2022-00001

GQ: _____

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:

GROUNDS FOR APPEAL

The Property subject to the Building Inspection Official Notice received conditional approval of its General Development Plan in 1994-95, which included the entire parking lot. The approvals are more than 25 years old, and predate the current version of the Ordinance cited in the Notices. Over that 25 years there have been a patchwork of approvals that have recognized that the owner has authorized an outdoor café with music since 1996. The owner respectfully disagrees with the City now interpreting the ambiguity of approvals that go back 25 years as a prohibition against outdoor music.

In addition, the outdoor café allows for 30 tables. The owner has not expanded the number of tables, just the distances between the tables. The distance between tables was expanded because of COVID.

As part of the initial approval, the owner requested outdoor dining and events. In 1995, the owner of the Property requested PUD / GDP Zoning Text approval, which included "a new year-round beer garden." When the City approved it, it did not include much text as to expected uses of the property.

The property owner will testify that it was his understanding from the approval process that the zoning text did not need to include specific text that outdoor music was allowed as part of the outdoor café and approved events. Instead, he was told he was approved for outdoor café, food, and alcohol, and that he would then need to get his Alcohol License modified with an Entertainment License for music. An Entertainment License is considered a modification to the existing alcohol license.

The owner's Alcohol License includes in its defined "premises" the outside areas of the Property including the outdoor café area. An Entertainment License is required for the "premises" to provide amplified or live entertainment. After receiving his zoning for an outdoor café, the owner followed the directions of the City to expand the "premises" of his Alcohol License to include the outdoor café and obtained his Entertainment License to allow for amplified, live entertainment for the Essen Haus premises, which includes the outdoor café. Outdoor amplified music was specifically prohibited for the Up North.

The owner has had outdoor live, amplified entertainment on the Essen Haus "premises" since 1996 in compliance with his approvals. Approval of an entertainment license requires that it have the proper zoning. The fact that live, amplified entertainment was allowed since 1996, an outdoor café was approved on the Alcohol License, and an Entertainment License was approved for the premises establishes that both the City and the owner understood that outdoor music was allowed under the existing zoning.

The owner subsequently received an alteration to his Specific Implementation Plan on or about March 25, 2014. In that approval, the Planning Division included as a condition of approval that "no **additional** outdoor amplified sound, or similar sound producing devices, shall be added as part of this approval." (Emphasis Added) This statement is consistent with the fact there was existing, approved outdoor amplified sound for the Essen Haus going back to 1996.

This Property has had a number of changes and approvals over the years. Unfortunately, the approvals could have been clearer; however, the approvals and City's actions are consistent with the fact that outdoor music was allowed under the zoning.



BUILDING INSPECTION OFFICIAL NOTICE

CASE NUMBER: CB2022-151-02595 **PROPERTY:** 140 S BLAIR ST
INSPECTION DATE: 05/31/2022 **INSPECTOR:** JACOB MOSKOWITZ
03:47 PM ASSISTANT ZONING ADMINISTRATOR
MAILED DATE: 05/31/2022 (608) 266-4560
jmoskowitz@cityofmadison.com

JDJ IMPORT COMPANY LLC
% ROBERT L WORM
514 E WILSON ST
MADISON, WI 53703-3431

This notice does not start any legal action. The Building Inspection Division is willing to answer questions pertaining to this Official Notice in order to assist you in correcting the violations. If you have questions or concerns, it is important to contact the inspector as soon as possible. You are responsible for contacting the assigned inspector before the due date to arrange for any reinspections requiring access to the interior of the property.

If the violations are not corrected by the due dates listed below, the Building Inspection Division may issue a citation or refer the case to the City Attorney's Office for prosecution. The Madison General Ordinances allow for a fee of \$75.00 to be charged for any inspections that do not result in full compliance, including inspections that result in an extended due date. To avoid penalties or fees you are encouraged to correct the violations as soon as possible in advance of the due date and then notify the assigned inspector to verify the corrections made. Compliance shall be on a continual basis. Continued or repeated violations may result in the issuance of citations without further warning or written notice.

Any items on this notice that are not corrected by the originally required compliance date may be subject to rent abatement claims. Items that could be subject to abatement in the inspector's opinion have been marked "Y" in the abatable column. Actual abatement and eligibility, if applied for, will be determined by the Hearing Examiner.

All applications for appeal of orders shall be submitted to the Building Inspection Director in writing within fifteen (15) days of the postmark on the Official Notice. Appeal information may be obtained by calling (608)266-4551.

Item No.	Violation Section No.	Abate	Corrections Required	Due Date
1.	28.186(4)	No	Discontinue all outdoor music or other outdoor entertainment on the zoning lot containing 134-148 S Blair St and 506-522 E Wilson St, other than the 6 permitted special events. Remove or obtain approvals for all elements added to the site without site plan approval, including outdoor seating, tents, stages, and bike parking. Properly install and maintain all elements of the approved site plan, including parking lot striping and accessible parking.	06/03/2022
<p>Recurring weekly outdoor music or other entertainment is not permitted as part of the approved Planned Development or shown on the approved plan. For site and building plans approved before June 1, 2014, a property owner or operator is required to bring the property into compliance with all elements of the approved site and building plan by July 1, 2014.</p>				



BUILDING INSPECTION OFFICIAL NOTICE

CASE NUMBER: CB2022-138-02419 **PROPERTY:** 150 S BLAIR ST
INSPECTION DATE: 05/23/2022 **INSPECTOR:** JACOB MOSKOWITZ
07:48 AM ASSISTANT ZONING ADMINISTRATOR
MAILED DATE: 05/23/2022 (608) 266-4560
jmoskowitz@cityofmadison.com

RUBY MARIE LTD PARTNERSHP
% ROBERT L WORM
514 E WILSON ST
MADISON, WI 53703

This notice does not start any legal action. The Building Inspection Division is willing to answer questions pertaining to this Official Notice in order to assist you in correcting the violations. If you have questions or concerns, it is important to contact the inspector as soon as possible. You are responsible for contacting the assigned inspector before the due date to arrange for any reinspections requiring access to the interior of the property.

If the violations are not corrected by the due dates listed below, the Building Inspection Division may issue a citation or refer the case to the City Attorney's Office for prosecution. The Madison General Ordinances allow for a fee of \$75.00 to be charged for any inspections that do not result in full compliance, including inspections that result in an extended due date. To avoid penalties or fees you are encouraged to correct the violations as soon as possible in advance of the due date and then notify the assigned inspector to verify the corrections made. Compliance shall be on a continual basis. Continued or repeated violations may result in the issuance of citations without further warning or written notice.

Any items on this notice that are not corrected by the originally required compliance date may be subject to rent abatement claims. Items that could be subject to abatement in the inspector's opinion have been marked "Y" in the abatable column. Actual abatement and eligibility, if applied for, will be determined by the Hearing Examiner.

All applications for appeal of orders shall be submitted to the Building Inspection Director in writing within fifteen (15) days of the postmark on the Official Notice. Appeal information may be obtained by calling (608)266-4551.

Item No.	Violation Section No.	Abate	Corrections Required	Due Date
1.	28.186(4)(a)	No	Discontinue outdoor music or other entertainment. Outdoor music or other entertainment is not permitted as part of the approved Planned Development or shown on the approved site plan.	05/27/2022