

Plan Commission
Meeting of March 7, 2022
Legistar 69382

This proposed ordinance would make outdoor eating areas (both permanent and temporary) a permitted use in many zoning categories as long as the area (1) closes by 9:00p.m., and (2) does not have amplified sound.

We request that permanent and temporary outdoor eating areas ("OEA's") continue to be a conditional use in NMX (Neighborhood Mixed-Use) and TSS (Traditional Shopping Street) zoning districts. This is needed to ensure that the uses, values and enjoyment of other property in the neighborhood for purposes already established will not be substantially impaired or diminished in any foreseeable manner (CU standard #3). Although the 9:00p.m. closing time and amplified sound prohibition do help to mitigate conflicts with residential uses, it does not address many potential conflicts in NMX and TSS areas.

A purpose of TSS zoning is to "maintain the viability of existing residential buildings located within or adjacent to these corridors." That viability would be put at risk if these OEA's become permitted uses. The following are examples of how residential viability has been maintained, and would no longer be maintained, if OEA's became a permitted use.

1. Location of OEA's

One proposal came before the Marquette neighborhood that would have placed a side OEA 15 feet from the neighboring residential bedrooms. Another proposal would have placed the OEA behind the establishment and abutting residential uses. In both cases, a front OEA was approved.

2. Denial of conditional use requests for OEA's

The Plan Commission has denied OEA's due to incompatibility with residential uses. Perhaps most notably, Plan Commission denied an OEA for the nightclub Plan B (Plan Commission allowed a smoking enclosure with a maximum capacity of 47 persons, no outdoor consumption of food or beverage, and no chairs or tables).

3. Capacity

The ordinance does not have any maximum capacity. Even a well-behaved group of 50 people is louder than a group of 10 people. When OEA's are close to residential uses, this can create an unending noise factor.

4. Opening hours

Some establishments serve breakfast, opening at 7:00 or 8:00 a.m. This can result in early rising for the residents and day-long noise when such an OEA abuts residential property.

5. Afterhours activity

Some existing OEA's have prohibitions on any activity after the OEA's closing time. This prevents, for example, smokers hanging out on the OEA creating noise until the establishment's closing time.

6. Sound mitigation

Various sound mitigation measures have been imposed, including: (1) requiring the door(s) to the OEA not be propped open (especially important when the establishment has an entertainment license and wishes to share the performances with customers sitting in the OEA); (2) ending acoustic musical performances at a relatively early hour (for an OEA about 70 feet away from a 50% and 60% income restricted residential building); and, (3) umbrellas to deflect sound from traveling up to residential condos.

7. Light mitigation

Some establishments have had lighting mitigation measures applied in excess of what is required by MGO 10.085. For example: (1) installation of an opaque curtain; and (2) lighting must be below the fence and facing down.

With conditional use approval, the Plan Commission has continuing jurisdiction. For some establishments, this serves as an incentive to talk with residential neighbors and reach compromises. If OEAs become a permitted use, there will, unfortunately, be establishments that will lose any interest in discussion and compromise.

Please keep permanent outdoor eating areas a conditional use in NMX and TSS.

Please make the new temporary outdoor eating areas a conditional use in NMX and TSS. These temporary areas have the same potential for adverse effects as permanent OEAs since they would (1) basically operate during the same time period (April 15th to November 15th) and (2) be able to continue to operate in future years under an approved site plan.

Respectfully Submitted,

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Michael Barrett
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Maryline Beurg
Bill Breisch
Dorothy Breisch
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From: Gary Tipler <garytip8778@gmail.com>

Sent: Thursday, March 3, 2022 11:57 AM

To: Stouder, Heather <HStouder@cityofmadison.com>; Benford, Brian <district6@cityofmadison.com>

Subject: Plan Commission Mar 7 Agenda No. 8, Outdoor Eating, Do not approve Private property zoning change proposal.

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March 7, Plan Commission Meeting
Agenda Item No. 8.
Create Outdoor Eating Area Streatery Roadway Cafe

Dear Plan Commission Members and Alder Benford,

Please keep the private property rezoning to outdoor eateries in rear and side yards a conditional use.

The problem lies in the re-zoning item of the proposed ordinance that would grant permanent use of private property for "temporary" outdoor patios for dining and drinking. All outdoor eateries are temporary within the seasonal context named in the proposal.

As a participant in neighborhood planning and permit reviews for decades, I have seen successful partnerships between restaurant proponents and neighbors that result for collaborative planning discussions. These have mitigated the potential problems that have arisen from noise, lighting that are disharmonious with livability of nearby residences and apartments. The partnership has made the Conditional Use process an easier process, introduced proponents and neighbors to understand the issues in advance of investments to create these outdoor spaces. As a result, there have been very few complaints about such establishments in the Williamson Street area. This collaborative process has helped engender support and patronage in the neighborhood.

Without collaborative planning that involved neighbors, I believe the granting of the proposed permanent rights will only lead to trouble by dumping the monitoring and adherence of the law upon nearby residents when problems arise. And they will.

Thank you for your consideration.

Gary Tipler
Jenifer Street

From: annewalker@homelandgarden.com <annewalker@homelandgarden.com>
Sent: Thursday, March 3, 2022 9:42 AM
To: Stouder, Heather <HStouder@cityofmadison.com>
Cc: Benford, Brian <district6@cityofmadison.com>
Subject: outdoor patio ordinance, #69382

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Dear Plan Commission, Ms Stouder, Alder Benford,

I live in the isthmus, in an area that has several outdoor patio's, and has for some years now. Some of those additions have worked well, and some have not. Isthmus neighborhoods are very walkable neighborhoods. Another way of saying that same thing is that homes and business's are located in close proximity to each other.

In the past, the Neighborhood Association looked at outdoor patios on a case by case basis. Finding a balance is important. As a long time volunteer, I have attended quite a few meetings over the years with area neighbors and business's proposing an outdoor patio, or some kind of addition to their business footprint. Some seemed, to me, (often with a few modifications), reasonable. Some.....oh my gosh!! Some, my sense was that the applicant was ambitious to expand *and* tone-deaf to neighbors reasonable concerns. For me, personally, I became aware of how important good process can be.

I support the continuation of the conditional use process.

I would also like to strongly support adding an educational component. Urban trees are precious. They also, often, have a shortened life span in urban settings. A great deal of the problems that urban trees experience are people generated. I believe, mostly, unintentionally. Please include education and a care manual for urban trees with city policy. A little care could go a very long way to a healthy urban tree canopy.

Best,

Anne Walker
Merry and Winnebago