

**PLANNING DIVISION REPORT  
DEPARTMENT OF PLANNING AND COMMUNITY  
AND ECONOMIC DEVELOPMENT  
January 26, 2009**

**RE: LD # 13349 Conditional Use-Continuing Jurisdiction Public Hearing – 1419 Monroe St.**

1. Requested Action: The Plan Commission has scheduled a continuing jurisdiction public hearing on the Stadium Bar “beer garden”.
2. Applicable Regulations: Section 28.12 (11) provides the guidelines and regulations for the approval of conditional uses. Section 28.12 (11) (4) states that the Plan Commission shall retain continuing jurisdiction over all conditional uses for the purpose of resolving complaints against all previously approved conditional uses.
3. Report Prepared By: Kevin Firchow, AICP, Planner

**GENERAL INFORMATION**

1. Contact: McJingles LLC; (The Stadium Sports Bar and Eatery) 1419 Monroe Street
2. Location: Approximately 18,270 square feet along the south side of Monroe Street. Aldermanic District 5; Madison Metropolitan School District.
3. Existing Conditions: This property includes the Stadium Sports Bar and Eatery.
4. The property is zoned C3 (Highway Commercial District).
5. Proposed Land Use: The applicant is responding to the continuing jurisdiction issues raised by the Zoning Administrator in his report of October 13, 2008 and supporting documents.
6. Surrounding Land Use and Zoning: The subject site is opposite University-owned open space adjacent to Camp Randall Stadium. This open space is zoned R5 (General Residence District) with the stadium zoned PUD-SIP (Planned Unit Development-Specific Implementation Plan). A University building and surface parking lot, zoned M1 (Limited Manufacturing District) is immediately adjacent to this property to the west and south. Multi-family residential properties, zoned R5 and PUD-SIP are located on the east side of Randall Avenue, with the closest units estimated to be 70 feet from the southern edge of the Stadium Bar parking lot.
7. Adopted Land Use Plan: The Comprehensive Plan recommends High Density Residential uses for this site.

## **STANDARDS FOR REVIEW**

This complaint is subject to the conditional use standards of Section 28.12 (11). The Plan Commission's continuing jurisdiction review authority is described in Section 28.11(11)(h)4 and is attached.

## **ANALYSIS, EVALUATION & CONCLUSION**

### **Previous Action**

At its meeting of October 20, 2008, the Plan Commission found that there was reasonable probability that this conditional use is operating in violation of the standards contained within Section 28.12 (11)(g) and referred this item for a Public Hearing under the Commission's continuing jurisdiction review authority. These findings were based, in part, on information prepared and compiled by the City Zoning Administrator and provided to the Commission for its October 20, 2008 meeting.

### **Current Conditional Use Approvals**

There have been multiple conditional use approvals on this property dating back to the original "beer garden" approval in June 1983. The first approval allowed for an area of nine (9) parking stalls, rented from the University, to be used as a "beer garden" in a fenced-in area for UW home football games. Several alterations to this approval have since been approved. A summary of related conditional use approvals and alterations is included as an appendix to this report.

These approvals have resulted in three basic "plans" for the use of this site as an outdoor recreation and outdoor eating "beer garden" area.

- 1) *Seasonal Recreation Area Plan*
- 2) *UW Home Football Games / Stadium Concert Plan*
- 3) *Year Round Outdoor Eating and Drinking Area Plan (The "Winter Parking" Site Plan)*

#### ***1) Seasonal Recreation Area Plan***

The Plan Commission approved a major alteration to the original conditional use in 1992. This approval included a substantial building addition and the inclusion of the "sports garden," a fenced-in outdoor recreation area with two (2) sport courts. This recreation area is smaller than the current "beer garden" area now allowed for UW home football games and is delineated on the approved site plan with a chain link fence. This approval included a condition stating that "exterior lighting used to illuminate the volleyball court, basketball court, etc., and exterior music shall be extinguished no later than 12:00 midnight." The associated site plan includes 15 off-street parking stalls.

## **2) *UW Home Football Games & Stadium Concert Plan***

Outdoor eating areas and drinking areas for home UW football games have been approved at this site since the original "beer garden" was approved in 1983. Various approvals over time have increased the size of this "beer garden" and conditions for the operation. Today, the Stadium Bar is allowed to utilize the entire parking lot for outdoor eating and drinking during UW home football games and stadium concerts.

In response to requests from area residents and alderpersons in the vicinity of Camp Randall Stadium, the City prepared a set of uniform operating standards for outdoor eating and drinking areas that operate on Saturdays of UW home football games. Standards address hours of operation, outdoor music, enclosures and security, and stadium concert operation. This information was contained in the "Uniform Operating Conditions Letter," sent out in June 1998.

Recipients of the letter were given the opportunity to return to the Plan Commission for a public hearing and review of their full conditional use permit if the recipient believed the uniform standards should not apply. In response to this letter, the owner of the Stadium Bar requested that the outdoor eating areas be allowed to remain open until 12:00 am, 365 days a year. This request was denied and the Plan Commission reaffirmed the uniform operating conditions for outdoor eating areas contained in the June 1, 1998 letter. This Plan Commission action modified and updated the conditional use approval. The other conditions contained in the original conditional use approvals remained in effect.

The Fire Department had previously approved a corresponding site plan, but this plan was never submitted to zoning staff for approval. This has become problematic for City staff as they monitor the conditional use operation during game days. Staff believe it is necessary that such a plan be prepared and approved. A conceptual site plan has been submitted showing the location of outdoor bars, stages, speakers, tents, and temporary non-game day storage as well as a game day management plan.

## **3) *Year Round Outdoor Eating and Drinking Area (The "Winter Parking" Site Plan)***

The other approved conditional use is a small, year-round outdoor eating and drinking area. This conditional use is in effect when neither the Seasonal Outdoor Recreation nor the UW Home Football Game conditional uses are in effect. The designated area for outdoor eating and drinking is adjacent to the east side of the building, occupying an area of roughly 55 by 8.5 feet. The "Winter Parking" Site Plan, was approved administratively in 1993 as a minor alteration, showing the exact limits of the outdoor eating and drinking area. This plan also shows the replacement of the seasonal recreation space with 14 additional parking stalls. This area closes at midnight.

### **Summary of Key Considerations**

There are several issues before the Plan Commission regarding this conditional use. As outlined below, one set of considerations relates to bringing the existing conditional use into compliance with the applicable conditional use standards and previous conditions of approval. A second set of considerations relates to alterations proposed by the Stadium Bar owners.

#### ***Key Items Related to Compliance with Current Conditional Use***

- 1) Confirm Operating Conditions
- 2) Resolve Outstanding Items from Previous Approvals
- 3) Provide Updated Site and Landscape Plans
- 4) Provide Management Operating Plans

#### ***Alterations Proposed by the Stadium Bar***

- 5) Review Request to Operate a Smaller “beer garden” for Additional Events at (at Camp Randall Stadium)
- 6) Review Request for Modifying the Volleyball Court Plan

#### ***1) Confirm Operating Conditions***

In meeting with the applicant, staff is aware that there is some disagreement on the terms of the conditional use, most specifically as they relate to events at Camp Randall Stadium. Staff recommend that the Plan Commission clearly confirm the operating terms for the Seasonal Recreation Area Plan, UW Home Football Games/Concert Plan, and the Year Round Outdoor Eating and Drinking Area described in the previous section. The Commission should specify any modifications when acting upon this item.

#### ***2) Resolve Outstanding Items from Previous Approvals***

The Zoning Administrator raised several issues in his correspondence to the Plan Commission outlining the need for a continuing jurisdiction hearing. Staff has been working with Stadium Bar owners to review site plans to resolve many of these issues. This is more fully addressed in the Zoning Administrator’s report. Issues include:

- a. Provide the ornamental fencing to replace existing chain link fence per the July 2004 conditional use minor alteration approval. Stadium Bar owners state this will be addressed in their correspondence dated January 20, 2009.
- b. Provide a contemporary landscape plan to be approved by staff. Landscape details were included on the concept site plans provided for Plan Commission review.
- c. Correct other violations including removal the semi-trailer and other non-permitted storage on site.

### ***3) Provide Updated Site and Landscape Plans***

Staff has been working with Stadium Bar representatives to provide updated site plans. Conceptual site plans were submitted to staff on January 15, 2009 and are included in the Plan Commission packets for reference, review, and comment. Staff expect the Stadium Bar owners to submit updated plans based on discussions at previous meetings. These updated plans have not been received. The current concept site plans include:

- a. **Seasonal Outdoor Recreation Site Plan (Two Volleyball Court Option)** This plan represents the current operation and staff believes to be substantially similar to the site plan approved in 1992. This plan identifies a storage area along the south side of the building to temporarily store items related to football Saturday “beer gardens.” New landscaping has been proposed on this and all site plans.
- b. **UW Home Football Game / Camp Randall Concert Site Plan** This plan reflects the 1994 minor alteration approval that allowed the entire site to be used as a “beer garden” for home UW football games and Camp Randall concert events specified in the Uniform Operating Conditions Letter.
- c. **Year Round Outdoor Eating / “Winter Parking” Site Plan** This plan is similar to the current plan on file, however, the boundaries of outdoor eating area are not delineated. This plan again shows the revised site landscaping. The area adjacent to the building’s east side is the designated area for year-round outdoor eating and drinking when the UW game day plan is not in effect.

These plans were not submitted in time to be routed to reviewing agencies for comments. Planning staff recommend that if approved by the Commission, the plans must also be approved by the City agencies that approve site plans. Similarly, the Landscape Plan would need to comply with City standards and need to be approved by City Planning and Zoning. Two additional site plans have been provided representing modifications requested by Stadium Bar representatives, as discussed in section 5, below.

### ***4) Provide Management Operating Plans for Approved Operations***

Staff requested the applicant submit management plans to address security, opening and closing procedures, amplified sound operation, and related operational items. Such plans were submitted to Planning staff on January 15, 2009. These include plans for operation of the UW Home Football Game “Beer Garden” as well as for operation of a proposed smaller “alternative beer garden” for the State High School Football Tournament, UW Spring Football Game, and the Crazy Legs Run. Specific operating plans for the “other similar events” in which the Stadium Bar owners wish to operate this smaller beer garden have not been provided.

Planning staff believe that approval of the site and management plans is an important part of ensuring that the operation of this conditional use is in compliance with the conditional use standards and previously approved conditions. Staff offer the following comment on the Football Game Day Management Plan.

- The management plan should describe the “staff uniform”, which should be readily recognizable and distinguishable to public safety or zoning officials. This condition has been applied to other “beer garden” operators.

***5) Review Request to Operate a Smaller “Beer Garden” for Additional Events (at Camp Randall Stadium)***

Stadium Bar representatives have indicated to staff that they believe that previous approvals allow for outdoor eating and drinking areas for Camp Randall events other than regular season home Badger Football Games. The Zoning Administrator has disagreed with this interpretation and Planning staff note that the 1998 Plan Commission decision reaffirmed the uniform operating conditions for outdoor eating areas and denied the bar’s request to operate a “beer garden” until 12:00 am, 365 days a year. In an attempt to clarify their operating terms, representatives from the Stadium Bar have proposed what they believe is a compromise to resolve this issue.

Their proposal calls for the operation of a smaller “beer garden” for three (3) specific additional events: a) UW Spring Football Game, b) the Crazy Legs Run, and c) the state High School football tournament. Additionally, bar owners have indicated they wish to operate this garden for “other similar events that may arise in the future.”

The proposed site plan (labeled by staff as the “Alternative Beer Garden”) shows this outdoor “beer garden” adjacent to the year round outdoor eating and drinking area, in an area measuring 2,460 square feet. The proposed “beer garden” would be smaller than both the full outdoor garden used for UW game days and the approved seasonal outdoor recreation area.

If the Plan Commission approves this plan in concept, the formal site plan would be subject to City agency review for compliance with applicable regulations. Plans should:

- Show general location of tent referenced in the management plan.
- Identify temporary fencing or other barriers used to separate the parking area from the “beer garden”.
- Identify all related improvements including the location of gates, toilets, and other outdoor items that would be placed within the “beer garden” or otherwise serve “beer garden” patrons.

Additionally, individual operation management plans have been prepared for the State Football Tournament, UW Spring Game, and the Crazy Legs Run. Staff offer the following comments:

*State Football Tournament Management Plan:*

- This event potentially has the latest hours of operation of the specified special events under consideration. The proposed plan does not specify an exact closing time but indicates food and beverage service stops one hour after completion of the last high school football game. According to this plan, the last game begins at 8:00 pm. Assuming a three-hour game plus the additional hour, the estimated the latest possible closing time would be midnight. Midnight would be consistent with the closing time of the outdoor recreation area, but later than other “beer garden” approvals. Staff recommend that the plan specify that the outdoor area will be closed at midnight, or by one-hour after the end of the last game, whichever comes sooner. Based on testimony provided at the public hearing, the Plan Commission may wish to consider an earlier end time if it deems it necessary in order for this operation to meet conditional use standards.
- The management plan should specifically note that this plan reflects the operation of the entire garden and not just the “tent.” This should be clarified as it relates to the closing time procedure.
- This plan should note the maximum capacity of the “beer garden”, which is presumably less than the 2,416 capacity allowed for the full UW Game Day crowd. This figure should be coordinated and confirmed with the Fire Department, as a condition of approval.

*Spring Game Management Plan:*

- A specific ending time should be established. This plan currently ties closing of the “beer garden” upon completion of a fund raising raffle (for Gilda’s Club). Staff believe an early-evening closing time for the “beer garden” would be consistent with the Stadium Bar’s wishes.
- The capacity needs to be confirmed. Staff understood Stadium Bar owners wish to utilize the smaller proposed “beer garden” for the Spring Game. The management plan, however, indicates the total capacity would be 2,416. That figure matches the capacity of the full “beer garden.”
- The opening time is not clearly specified, however, the plan states that the “beer garden” is fully set-up by 11:00 am. This appears to be in conflict with the music and television coverage scheduled to start at 10:00 am. Staff recommend that outdoor music and television coverage also begin at 11:00. This would allow for two hours of amplified sound before the game, as is allowed during other game days.

*Crazy Legs Management Plan:*

- Specify that the garden closes at 6:00 pm.
- The capacity needs to be confirmed.

### ***6) Review Request for Modifying the Volleyball Court Plan***

A final request from the Stadium Bar is to provide an alternative site plan for the Seasonal Outdoor Recreation Plan. The Stadium Bar wishes to have the flexibility to operate either a two (2) -volleyball court operation (as currently approved) or an expanded three (3)-volleyball court option (as proposed). Under the proposed plan, the entire parking area would be used for outdoor recreation and no on-site parking would be provided. Thus, if the Commission were to support the alternative site plan, it would also need to approve a parking reduction, similar to the exemption allowed under the UW Home Football Game / Camp Randall Concert Plan.

Planning and zoning staff note that the site is located close to a bike path, has transit service, and the site potentially has access to after-business-hours off-street parking on the adjacent University-owned parking lot. The third court would presumably attract more patrons. No further data has been provided to further evaluate the parking impacts on this request.

### **Conclusion**

There are several issues before the Plan Commission regarding this conditional use. As outlined in this report, one set of considerations relates to bringing the existing conditional use into compliance with applicable standards. A second set of considerations relates to alterations proposed by the Stadium Bar owners.

In regards to the existing conditional use, Section 28.12(11)(h)4 of the City Zoning Ordinance states that the Plan Commission may modify existing conditions and impose additional reasonable conditions in order to bring a conditional use into compliance with the standards set forth in Subdivision (g) of the above-referenced section or other conditions previously imposed by the Plan Commission. City staff has met with representatives from the Stadium Bar and believes progress towards addressing these issues is being made. Unless otherwise specified, any conditions applied to the conditional use should be met prior to any "beer garden" or outdoor recreation activity commencing later this year.

Considering the alterations requested by Stadium Bar officials, staff note that these pertain to both the "beer garden" and plans for seasonal outdoor recreation. Specifically, bar owners propose to operate a smaller "beer garden" for three (3) additional events: a) the State High-School Football Tournament, b) the UW Football Spring Game, and c) the Crazy Legs Run. These requests are accompanied with a proposed alternate site plan and operating management plans unique to each event. While staff do not believe that operating a "beer garden" for these additional events is consistent with the Uniform Operating Conditions adopted for stadium-area "beer gardens", it is possible for the Commission to amend these operating conditions should it find that the applicable standards are met. Staff does not believe enough information is available to approve the more open-ended request to operate this garden during "other similar events that may arise in the future." The bar owners' other request is to amend the conditional use to allow the addition of a third volleyball court to the Seasonal Outdoor Recreation Plan.



Staff believe these proposals can be viewed individually against the applicable standards. Each proposal provides different potential impacts based on the event purpose, size, and the proposed hours of operation.

Planning Division Staff believe that the conditional use standards may potentially be met if these alterations were approved with the conditions noted below, but note that testimony at the public hearing will need to be carefully considered in determining if the standards can be met. In concept, the operation of a smaller "beer garden" at this location for the three additional events would not have impacts on surrounding properties any greater and perhaps less than those associated with home football games. One could argue that the operation of the existing sand volleyball courts or even the Camp Randall events themselves may provide more opportunities for negative impacts on nearby properties. A similar argument could be made that adding one additional volleyball court would not provide a significant impact on surrounding properties, provided the loss of off-street parking is determined not to be problematic.

However, the conceptual site plans and operating plans were provided less than two weeks before the public hearing, well after the public hearing was scheduled and officially noticed. Thus, this information was not able to be circulated to all City agencies and applicable neighborhood associations as would be done for a typical conditional use hearing. Some interested parties may not be familiar with the proposed details. Considering this, the Planning Division believes that testimony from the public hearing is critical in assessing whether the conditional use standards are met for the alterations proposed by bar officials.

Careful consideration should also be given to the applicant's progress towards addressing previously documented concerns. If after the public hearing the Commission believes that further input is needed to fully assess any of the modifications requested by the bar's owners, a temporary referral may be necessary.

## **RECOMMENDATION**

### ***Recommendation – Part A***

Subject to the testimony provided at the public hearing, if the Plan Commission concurs, the Planning Division recommends that the Plan Commission find that the conditional use standards have been met and approve the following modifications and additional conditions necessary to bring the existing conditional use into compliance with the standards set forth in Section 28.12(11)(g) and previous conditions imposed by the Plan Commission.

1. Comments from reviewing agencies.
2. Unless otherwise specified, the following conditions shall be met prior to any "beer garden" or outdoor recreation activity commencing later this year.

3. That the applicant confirm the general terms of the three existing conditional uses including the following:
  - a. *Seasonal Outdoor Recreation Plan*: The outdoor eating/drinking and two volleyball courts are limited to the designated fenced-in area shown on the approved "Seasonal Outdoor Recreation" site plan. This area shall close at midnight, nightly, with lighting and exterior music ceasing at that time.
  - b. *UW Home Football Games & Stadium Concerts*: The uniform operating conditions established for stadium-area bars remain in effect for this establishment, per the 1998 approval letter. All procedures, including opening and closing times shall be consistent with standards established in that letter. These rules supercede other conditional use approvals on the days of UW home football games and concert events as allowed per the Uniform Operating Conditions letter. The entire parking area can be only utilized for a "beer garden" for the events specified in the Uniform Operating Conditions Letter, when operated in accordance to the approved site and management plans.
  - c. *Year Round Outdoor Eating and Drinking Area Plan ("Winter Parking" Site Plan)*: The year-round outdoor eating and drinking area is limited to the (8.5 by 55 square foot) area adjacent to the building shown on the "Winter Parking" site plan approved in 1993 or subsequent approved alterations. This area is to close at midnight. This outdoor eating and drinking area is not available after closing of the larger "beer garden" for UW home football games and Camp Randall concerts identified in the Uniform Operating Conditions Letter.
  
4. That the site plans and associated landscape plans for the a) Seasonal Outdoor Recreation Plan (two volleyball court), b) *Year Round Outdoor Eating and Drinking Area ("Winter Parking" Plan)*, and the c) UW Home Football Game / Camp Randall Concert Plan shall be approved by staff through the formal City agency site plan review process. The comments from reviewing city agencies shall be met before approval of the site plans and finalizing of the conditional use. In addition, the conceptual site plans shall be revised and approved by staff as follows:
  - a. Each plan shall be titled to reflect the specific approval as referenced above.
  - b. Identify the location where any tents would be installed.
  - c. Each plan shall clearly label and identify the areas in which outdoor eating and drinking is permitted.
  
5. All non-game day storage shall be consistent with the approved site and management plans.

6. That the operation plan proposed for "Football Game Day Management" be amended to further describe the "staff uniform", which shall be readily recognizable and distinguishable to public safety or zoning officials. Additionally, the plan shall indicate the site shall be arranged in accordance to the approved site plan for UW Home Football Games & Stadium Concerts.
7. That the previously approved ornamental fencing (or an acceptable alternative approved by staff) be installed to replace existing chain link fence per the July 2004 conditional use minor alteration approval.
8. That the refrigerated semi-trailer and other storage not permissible under City ordinances be removed.

***Recommendation – Part B***

In considering the alterations proposed by the Stadium Bar for the smaller "beer garden" for the three specified events and the addition of a third volleyball court, the Planning Division recommends the Plan Commission approve these modifications should it find that the conditional use standards are met after consideration of the applicant's materials, public hearing testimony, and staff comments. These recommendations are subject to the conditions stated below. The Plan Commission should specify its recommendation for each of these specified alterations. The Division does not recommend that the open-ended request to operate the smaller "beer garden" for "other similar events that may arise in the future" be approved, as adequate data has not been furnished for the operation of the facility to review this request against the applicable conditional use standards.

This recommendation is subject to the conditions stated below:

9. Comments from reviewing agencies.
10. That if a smaller "beer garden" is approved by the Plan Commission for the State High School Football tournament, the management plan be amended as follows:
  - a. The management plan specifies the outdoor area will be closed at midnight, or by one-hour after the end of the day's last game, whichever comes sooner.
  - b. The management plan shall specify that the site shall be arranged in accordance to the approved smaller "alternative beer garden" site plan.
  - c. The management plan shall specifically note that this plan reflects the operation of the entire garden and not just the "tent." This shall be clarified as it relates to the closing procedure.
  - d. This management plan shall note the maximum capacity of the "beer garden", which is presumably less than the 2,416 capacity allowed for the full UW Game Day garden. This figure shall be coordinated and confirmed by the Fire Department.

11. That if a smaller "beer garden" is approved by the Plan Commission for the UW Spring Football Game, the management plan be amended as follows:
  - a. A specific early-evening ending time shall be established, per approval of City Staff. This plan currently ties closing of the "beer garden" upon completion of a fund raising raffle (for Gilda's Club).
  - b. The management plan shall specify that the site be arranged in accordance with the approved smaller "alternative beer garden" site plan. Additionally, the capacity for this smaller "beer garden" shall be confirmed and this figure revised and approved by the Fire Department. The management plan now indicates the total capacity would be 2,416, which matches the capacity figure for the full "beer garden", not the smaller garden proposed here.
  - c. That music and television coverage shall not begin before the opening of the garden. This time should be clarified as 11:00 am, allowing for two hours of operation prior to the game.
  
12. That if a smaller "beer garden" is approved by the Plan Commission for the Crazy Legs Run, the management plan shall be amended as follows:
  - a. Specify that the garden closes at 6:00 pm.
  - b. Specify that the site shall be arranged in accordance to the approved smaller "alternative beer garden" site plan.
  - c. The capacity shall be confirmed and approved by the Fire Department
  
13. That if the Plan Commission approve any of the uses utilizing the proposed smaller "alternative beer garden" site plan, this plan shall be submitted and approved by city site plan reviewing agencies and amended to:
  - a. Identify temporary fencing or other barrier approved by City staff to separate the parking area from the "beer garden."
  - b. Identify the location where any tents would be installed.
  - c. Identify all related improvements including the location of gates, toilets, and other outdoor items that would placed within the "beer garden" or otherwise serve "beer garden" patrons.

**APPENDIX - SUMMARY OF CONDITIONAL USE APPROVALS**

Date	Summary of Approval / Action	Notes
June 6, 1983	<p><b>Approval – Conditional Use Permit (CU)</b>            Approval allowed nine (9) parking stalls rented from UW to be used as a “beer garden” in a fenced in area on UW football games.</p>	<p>Original Plan Commission conditional use approval for outdoor eating/drinking areas</p>
August 8, 1986	<p><b>Approval – Alteration to Existing CU</b>            Extended the hours of “beer garden” operation until 11:00 pm (instead of 7:15 pm for night football games.)</p>	<p>Administrative Approval</p>
May 12, 1988	<p><b>Approval – Alteration to Existing CU</b>            Allowed use of the outdoor patio for one outdoor concert (May 20, 1988), staying open until 8:30 pm</p>	<p>Administrative Approval            Also approved by ALRC</p>
June 15, 1992	<p><b>Approval - Alteration to Existing CU</b>            Approved the outdoor eating and recreational area. This includes the “sports garden” with one (1) volleyball court and one (1) basketball court. Approval includes a condition stating that “exterior lighting used to illuminate the volleyball court, basketball court, etc., and exterior music shall be extinguished no later than 12:00 midnight.” This approval also included a significant building addition.</p>	<p>Plan Commission Approval</p>
April 12, 1993	<p><b>Approval – Alteration to Existing CU</b>            An alternative site plan was approved to provide for “Winter Parking Areas” in the area where sport courts otherwise occur.</p>	<p>Administrative Approval</p>
September 22, 1994	<p><b>Approval – Alteration to Existing CU</b>            Approval allowed the entire property (including parking area) to be used for outdoor eating and drinking for special events at Camp Randall.</p>	<p>Administrative Approval</p>

- Continued on next page -

Date	Summary of Approval / Action	Notes
June 1, 1998	<b>Uniform Operating Conditions Letter</b> Letter provided uniform operating standards for outdoor eating areas that operate on Saturdays of UW home football games. This included standards on hours of operation, outdoor music, enclosures and security, and stadium concert operation. Recipients of the letter were given the opportunity to return to the Plan Commission for a public hearing and review of their full conditional use permit if the recipient believed the uniform standards should not apply.	Administrative Approval
September 14, 1998	<b>Denial - Alteration to Existing CU</b> In response to the June 1, 1998 Uniform Operating Conditions Letter, the owner requested that the outdoor eating areas be allowed to remain open until 12:00 am, 365 days a year. This request was denied and the Plan Commission reaffirmed the uniform operating conditions for outdoor eating areas contained in the June 1, 1998 letter.	Plan Commission Approval  The Plan Commission action modified and updated the conditional use approval. All other conditions contained in the original conditional use approval remain in effect.
July 19, 2004	<b>Approval - Alteration to Existing CU</b> This approval included an interior remodeling and replacement of the existing chain link fence with more ornamental "Omega Fencing".	Administrative Approval  New fencing never installed.

CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511

Date: January 23, 2009

**MEMORANDUM**

TO: Plan Commission

FROM: Katherine C. Noonan, Assistant City Attorney

RE: Stadium Bar Conditional Use

In 1983, a conditional use was approved to use property at 1419 Monroe Street, Madison, WI as a beer garden for UW home football games on Saturdays. Since that time, a number of major and minor alterations have been requested for this use; some were approved, others not. Approved changes include expansion of hours of operation, increase in specific events for which the beer garden can operate, and addition of outdoor volleyball courts.

In 2008, the Plan Commission was informed of complaints regarding the business operation at 1419 Monroe Street. These complaints related to the increasing number of events for which the beer garden opened and how the site was used for these events, unapproved alterations to the existing site plan, use and volume of amplified sound, hours of operation on event days, and failure to meet conditions of approval from 2004.

Pursuant to Sec. 28.12(11)(h)4., the Plan Commission has continuing jurisdiction over all conditional uses for the purpose of resolving complaints. After reaching an initial determination that there was merit to the complaints about 1419 Monroe Street, the Plan Commission scheduled a public hearing. At that time, the Commission will consider whether the existing conditions, including all those applied at and subsequent to the initial approval, continue to meet the standards in Sec. 28.12(11)(g). If not, Sec. 28.12(11)(h)4. states that the existing conditions may be modified, new conditions may be added, or if the standards cannot be met, the conditional use may be revoked.

A conditional use is not a property right, therefore its loss, or modification cannot be challenged as an unconstitutional taking. *Rainbow Springs Golf Club, Inc. v. Town of Mukwonago*, 2005 WI App 163. It is a planning tool that allows uses that may be consistent with the zoning district, but that would create special problems if allowed to locate and operate as a matter of right. *Delta Biological Resources, Inc. v. Board of Zoning Appeals of City of Milwaukee*, 160 Wis.2d 905, 911 (Ct. App. 1991); *Edward Kraemer & Sons, Inc.*, 183 Wis.2d 1, 16 (1994). As such, a conditional use will be approved only when it meets specific standards, and conditions often are attached to insure satisfaction of the standards. *Edward Kraemer & Sons*, 183 Wis.2d at 6-7.

Sec. 28.12(11)(h)4. authorizes the Plan Commission's continuing jurisdiction of conditional uses, prescribes the procedure for its application, and notes the options for addressing complaints, i.e., modifying conditions, adding conditions, or revocation.

The owner knows of the specific complaints before the Plan Commission and has submitted a letter, dated January 20, 2009 suggesting a possible resolution. The Plan Commission may fashion its own resolution and if so, the hearing need not be set over. Due process concerns are implicated only if the Plan Commission chooses to address complaints about which the owner has had no notice, which is unlikely, given the broad nature of the complaints, e.g., number and type of events, hours of operations, amplification, and specifics of the proposed site plan.






Department of Planning & Development  
**Building Inspection Division**

Website: [www.cityofmadison.com](http://www.cityofmadison.com)

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**TO:** Plan Commission  
**FROM:** Matt Tucker, Zoning Administrator   
**DATE:** January 22, 2009  
**SUBJECT:** Status Update, Outdoor Eating/Beer Garden Conditional Use, Stadium Sports Bar

In the time since the Plan Commission determined that a continuing jurisdiction hearing be scheduled for the subject Conditional Use, staff have been meeting with the property owners and their agent to identify and reconcile issues surrounding the operation of this Conditional Use. The goal of these meetings, along with the goal of the continuing jurisdiction hearing, is to clarify the conditions of approval, operational characteristics, and the site plans for this conditional use. Clarification of conditions and an updated, approved site plan will result in two benefits:

1. The owners and operators of the property will have a clear understanding in regard to the City's expectations relative to the operation of this Conditional Use, and
2. Zoning staff will have a clear understanding of the conditions of approval when inspecting the property or reviewing complaints about the Conditional Use.

Progress has been made on some accounts, but there are yet some unresolved issues that the Plan Commission will be asked to clarify or resolve at the upcoming public hearing. The following summary of issues represents the results of these meetings. My comments are represented in italics.

The following issues/problems were previously identified for resolution or clarification, to which staff and the business owners have come to an agreement:

- The observance of unapproved alterations to the site plan during certain events. *The applicant proposes to have site plans approved for each component of the conditional use, including an agreement as to when improvements will be installed. Draft site plans have been submitted which appear to address the areas of concern. These plans have not been approved, pending the outcome of the hearing.*
- The use and volume of outdoor amplified sound and compliance with established closing hours for "beer garden" operations. *This type of issue is dealt with during the operation of "football Saturday" events. No violations were observed during the October and November home games. This will be monitored for ongoing compliance.*
- The fact that conditions applied to previous approvals have not all been met, including the construction of a decorative fence along Monroe Street that was a condition applied in 2004. *An acceptable agreement has been reached to have the required improvements installed during the summer of 2009.*

The following issues/problems were previously identified for resolution or clarification, to which staff and the business owners have not come to a resolution:

- What constitutes a “special event” at Camp Randall Stadium, and which events the entire property may be used for beer garden purposes. *This issue has not been resolved, and has been included as a topic of discussion in the Planning Division staff report.*
- Developing a common understanding in regard to the ”Football Saturdays” activities as they differ from the year-round small outdoor eating/drinking space approval. *Staff requests this issue be resolved as part of the clarification of conditions that apply to the Conditional Use, as referenced in the Planning Division staff report.*

In the course of our meetings and as the result of our inspections during the fall of 2008, the following issues/problems were identified for resolution or clarification, to which staff and the property owners have come to a resolution:

- Parking/storage of a “over the road” refrigeration trailer on the property during the football season. *The property owner has verbally indicated that the trailer will be removed after each game.*
- Striping of the parking lot has worn and is in need of replacement. *The property owner has indicated a willingness to correctly stripe the parking lot in accordance with the adopted plan, once approved by the Plan Commission and various city agencies.*
- The open storage of materials related to “Football Saturday” events. *An acceptable plan has been put forth to manage the temporary storage of materials associated with Football Saturday events.*