



Conditional Use Overview

Prepared for Plan Commission Work Session

July 11, 2024

Introduction & Discussion Purpose

Background Information

- Review Conditional Use basics
- Discuss establishing Conditional Use conditions
- Review how conditions are currently presented in staff reports

Plan Commission Discussion

- Discussion and questions related to the conditional use process
- Discuss how comments can most clearly be presented to Commission.

Development Review Statistics

	2016	2017	2018	2019	2020	2021	2022	2023
Residential Approvals								
Single family lots (net)	303	415	1,329	262	80	26	50	155
Multifamily units (gross)	2,968	1,643	1,010	2,358	4,772	2,827	4,342	4,574
Commercial Retail Approvals								
Commercial/Retail Sq. Ft.	874,631	636,736	490,083	639,575	827,068	676,375	432,970	394,802
Hotel rooms	133	803	698	491	151	262	319	283
Proposals before Plan Commission								
Conditional Uses or CUP Alterations	108	87	98	85	103	88	84	71
Zoning Changes	33	30	24	34	39	26	30	36
Plats and CSMs	19	18	28	19	23	30	40	62
Demolitions	38	43	51	43	58	47	52	39

Note: "Net" Single-Family Lots Reflects the Total # of new single-family zoned lots Approved in a given year. "Gross" Multifamily Units are calculated by subtracting any existing (Demolished) units from the new multi family units approved.

What is a Conditional Use?

Zoning Code states, in part...

- The City is divided into zoning districts within which there are requirements for the use of land, and the bulk, design and location of buildings may be permitted as of right.
- However, there are certain uses that, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses without consideration of the impact there might be on neighboring land or public facilities, and of the public need for the particular use at a particular location.
- Nevertheless, such uses may be necessary or desirable to be allowed in a particular district provided that due consideration is given to the location, development and operation of such uses. Such requests are reviewed on a case by case basis, taking into account the unique circumstances of each.

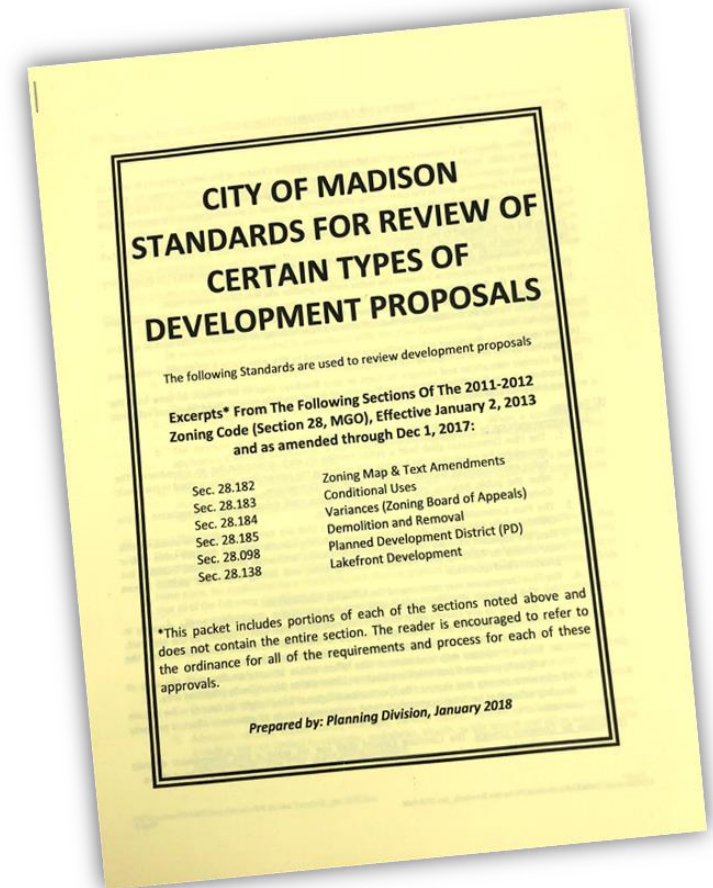
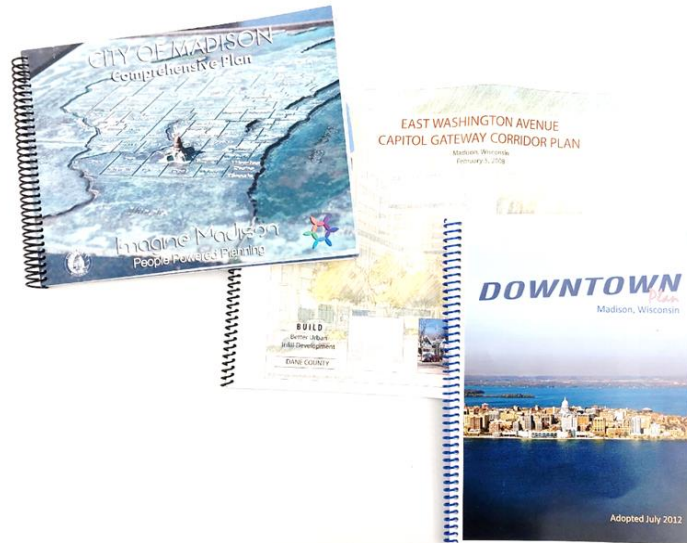
What is a Conditional Use?

Additionally...

- The Plan Commission holds a public hearing and grants or denies the request for a conditional use using the standards provided in the Zoning Code.
- Should include clear findings related to standards.
- The Plan Commission may place conditions on its approval.
- Decision may be appealed to the Common Council.
- "Continuing jurisdiction" allows the Plan Commission to review certain complaints against a conditional use and hold a public hearing to reconsider, modify or revoke the use.

Conditional Uses vs. Rezoning Reviews

- While there are some similarities between Conditional Uses and other review types, there are also key differences related to the actions that the Plan Commission can take.



Conditional Uses vs. Rezoning Reviews

Conditional Use	Rezonings
Tied to specific project or ASPECTS of a project	Sets regulations for ANY development on a site.
Approval valid for up to 3 Years	Does not expire – Requires Council to change
City Ordinance requires "Due Consideration of Adopted Plans" when making findings related to Standards.	State Law Requires that Rezoning "Shall Be Consistent with the Adopted Comprehensive Plan."
Must find 16 Standards are met to approve	Legislative Decision based on Health, Safety, & Welfare
May Include Conditions of Approval	Generally CANNOT include Development-Specific Approval Conditions (Unless a "Planned Development")

Conditions & Conditional Uses

- A proposal may include multiple Conditional Uses – considered concurrently
- A condition should be directly related to the Conditional Use request(s)
 - **Dolan v. City of Tigard (US Supreme Court-1994)** - "Rational Nexus" Between condition & request
 - **Nollan v. California Coastal Commission (US Supreme Court-1987)** – "Rough Proportionality" Amount of exaction in condition must correspond to the specific burden from proposal.
- State Statute - Conditional Use decisions must be based on "Substantial Evidence" and not "Personal Preference."

Comments Provided to Plan Commission

Staff Reports currently include two types of comments:

- **Major / Non-Standard (in Gray Box)**: These are highlighted comments, typically to identify they are a) relatively unique to a proposal or b) that the comment is an existing requirement that could result in significant changes. As noted below, the Plan Commission could waive or modify some gray box comments.
- In some cases, gray box comments are "conditions" that are in addition to other requirements. These additional measures are found necessary for a conditional use to meet standards. When they are not ordinance (or statutory) requirements, these comments could be waived or modified by the Plan Commission.
- In other cases, "Gray Box" comments may highlight other requirements that would result in significant project alterations. In this case, this is not a comment that the Commission could alter.

Comments Provided to Plan Commission

- Staff Reports currently include two types of comments:
 - **General Requirements**: These are non-highlighted comments (Not in a Gray Box) These are typically references to other code or statutory requirements that would need to be met prior to permit issuance. They are provided as a reference and courtesy to applicants, but are not "conditions" and can not be waived or altered by the Plan Commission.

Comments Provided to Plan Commission

Staff believes that the proposed nightclub can be found to meet the Conditional Use Approval Standards and recommends that it be approved by the Plan Commission, subject to input at the public hearing and comments from reviewing agencies.

If approved, the Plan Commission retains continuing jurisdiction over this conditional use, meaning that should complaints be filed, the Plan Commission could take further action on this conditional use as allowed in MGO §28.183(9)(d).

Recommendation

Planning Division Recommendation (Contact Colin Punt, 243-0455)

The Planning Division recommends that the Plan Commission find that the approval standards for conditional uses are met and **approve** the request to establish a nightclub with outdoor eating area at a property zoned UMX (Urban Mixed Use District) at 418 East Wilson Street. This recommendation is subject to input at the public hearing and the following conditions:

Recommended Conditions of Approval Major/Non-Standard Conditions are Shaded

Planning Division (Contact Colin Punt, 243-0455)

1. Exterior doors shall remain closed and not be propped open during karaoke or other live musical performances.

Example of staff recommended Major/Non Standard Condition that is not otherwise a requirement that could be waived or altered by Plan Commission.

Comments Provided to Plan Commission

Example of staff noted comments that reference ordinance requirements, these cannot be waived.

An example of a Major/Non-Standard Comment. In this case, this references other requirements and cannot be waived by the Plan Commission. It was highlighted as it could result in significant changes to a project.

Zoning Administrator (Contact Jacob Moskowitz, 266-4560)

2. Hours of operation for the outdoor eating area shall end at 9:00 p.m. unless extended as part of a future conditional use approval.
3. No amplified sound is permitted in the outdoor eating area unless allowed as part of a future conditional use approval.

City Engineering Division – Mapping Section (Contact Julius Smith, 264-9276)

4. The Site Plan Possibly indicates encroaching into a right of way. The Applicant shall confirm and note on the plans all encroachments, including, (but not limited to) balconies, roof overhangs and underground vaults. Make an application with City of Madison Real Estate for a privilege in streets agreement. Link as follows - <http://www.cityofmadison.com/developmentcenter/landdevelopment/streetencroachment.cfm>. An approval of the development does not constitute or guarantee approval of any encroachments within a public right of way.

From Plan Commission Approval to Sign-Off

- After final action, staff prepares a "Disposition Letter" for an application. If approved, conditions of approval are copied from staff report. Any additional or modified comments from the Plan Commission are designated as such.
- Comments are organized by City Reviewing Agency, though "Major/Non-Standard Comments" are not highlighted as they are in the staff report.
- Letter concludes with the next steps the applicant needs take to initiate the sign-off and permitting process.
- A copy of a Disposition Letter is uploaded to the Legislative File.
- Modifications to letter format are currently being discussed as part of the City's initiative to improve the sign-off process.

Sign-Off Process Tracking

- Once an applicant initiates the sign-off process, Agency review status can be [tracked online](#).
- The report lists any comments that need to be addressed prior to completing this process.

PROJECT: LNDUSE-2023-00049 Address: 1233 Regent ST Current Revision #: 0

Submitted by: WI Housing Preservation Corp
Contact: Mike Slavish
608.289.8054
mslavish@whpc.com
Project Type: Land Use
Description: Demolish an auto repair garage to construct a five-story apartment with 50 units.
Status: Agency Reviews in Process
Revision History: [0](#)

Review	Status	Reviewer	Reviewed
Engineering Mapping	Approved	Julius Smith	Jul 3 2024
Engineering Review Main Office	Add'l Info Req'd	Timothy Troester	Oct 21 2023
Fire Review	Approved	Matt Hamilton	Oct 30 2023
Forestry Review	Approved	Bradley Hofmann	Nov 2 2023
Lighting Review	Add'l Info Req'd	Shannon Davis	May 23 2024
Metro Review	Approved	Timothy Sobota	Nov 6 2023
Parking Review	Approved	Trent Schultz	Jan 8 2024
Parks Review	Approved	Ann Freiwald	Oct 18 2023
Planning Review	Approved	Colin Punt	Dec 14 2023
Recycling Coordinator	Approved	Bryan Johnson	May 30 2024
Traffic Engineering Review	Add'l Info Req'd	Timothy Stella	Oct 31 2023
Water Utility Review	Approved	Jeff Belshaw	Oct 30 2023
Zoning Review	Approved	Jacob Moskowitz	Jun 14 2024

Framing Questions For Discussion

- Are there questions about the Conditional Use process or how the Plan Commission can establish conditions?
- Are there instances of conditions that you thought would have improved a proposal, but were not able to be added as conditions?
- The City is currently studying ways to improve the sign-off and permitting process and there has been feedback requesting clarifications on how this information is presented. Does the Plan Commission have feedback on how this information is presented?



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