

The staff report states:

A conditional use proposal, such as this, is subject to the rules and regulations that are in place at the time an application is filed unless an applicant voluntarily agrees to be reviewed under the newer standards. The applicant has confirmed in writing that they wish to be considered under this revised ordinance.

Allowing an applicant to choose the version of an ordinance under which a proposal will be reviewed is contrary to MGO 28.008:

Any application that has been filed with the Department of Planning and Community and Economic Development or Building Inspection Division and has been determined to be fully complete by the City, prior to the effective date of this ordinance, **shall** be regulated by the terms and conditions of the ordinances and codes that were in place at the time of filing. (emphasis added)

The use of "shall" requires that the ordinance in effect at the time of filing be used. See MGO 28.210, Rules of Construction:

- (1) In the construction of this ordinance, the following rules shall be observed and applied, except where the context clearly indicates otherwise:

...

- (c) The words "shall," "must," and "will," are mandatory and not discretionary.

The context of the word "shall" in MGO 28.008 does not indicate that it means anything other than mandatory. Previous staff reports discuss this ordinance as being mandatory.

- Legistar 72210 staff comments: "Finally, this site is located the recently adopted Transit Oriented Development zoning overlay district, which requires vehicle access sales and service windows be integrated within or under a building. However, staff notes that this application **is subject to the regulations in place at the time of application** and therefore the requirements of the TOD overlay district are not applicable." (emphasis added)
<https://madison.legistar.com/View.ashx?M=F&ID=11588116&GUID=6A3104EF-0DD7-4678-A795-B2D267CE0728>
- Legistar 74908 staff comments: "Staff also notes that site is located within the recently adopted Transit Oriented Development zoning overlay district, which requires vehicle access sales and service windows be integrated within or under a building. However, this application **is subject to the regulations in place at the time of application**, prior to adoption of the TOD ordinance, and therefore the requirements of the TOD overlay district are not applicable." (emphasis added)
<https://madison.legistar.com/View.ashx?M=F&ID=11588115&GUID=02D91387-DB72-4287-A78B-7246F6CC3299>

The ordinance in effect at the time the application was submitted said: "For all Building Forms other than (b) above, parking shall not be placed between the front facade of a building and the abutting street. Parking shall be located to rear or side of principal building; parking abutting the primary street frontage is limited to seventy (70) feet in width or fifty percent (50%) of lot frontage, whichever is less." The court said: "The ordinance plainly does not provide for parking to be located below the building."

Respectfully submitted,
Linda Lehnertz