



Project Address: 517-521 Cottage Grove Road (District 15 - Ald. Foster)
Application Type: Conditional Use
Legistar File ID # [66111](#)
Prepared By: Chris Wells, Planning Division
Report Includes Comments from other City Agencies, as noted
Reviewed By: Kevin Firchow, AICP, Principal Planner

Summary

Applicant/Owner: Ryan Ramig; Dive LLC dba Dive Inn; 521 Cottage Grove Road; Madison, WI 53714

Requested Action: Consideration of two conditional uses in the Commercial Corridor-Transitional (CC-T) District - to allow free-standing vending and to add an outdoor eating area - in the parking lot of a tavern at 517-521 Cottage Grove Road.

Proposal Summary: The applicant proposes to have a free-standing vending (food carts) and add a small outdoor eating area in the tavern's (Drive Inn) parking lot located at 517-521 Cottage Grove Road. It is anticipated that there will only be one food cart on site at a time. The outdoor eating area will have seating for 16 and no associated amplified sound (music).

Applicable Regulations & Standards: This proposal is subject to the standards for Conditional Uses [MGO §28.183] as MGO §28.061(1) and M.G.O. §28.151 lists *free standing vending* and *outdoor eating areas associated with food and beverage establishments* as conditional uses in the Commercial Corridor – Transitional (CC-T) District. The Supplemental Regulations [MGO §28.151] contain further regulations for both uses.

Review Required By: Plan Commission.

Summary Recommendation: The Planning Division recommends that the Plan Commission find that the approval standards for Conditional Uses are met and **approve** the requests for free-standing vending within 200 feet of a residential use and an outdoor eating area on a property zoned CC-T (Commercial Corridor Transitional District) at 517-521 Cottage Grove Road. This request is subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

Background Information

Parcel Location: The subject site is considered one zoning lot that is comprised of two properties (which are both located on the south side of Cottage Grove Road between Mayer Road and Dempsey Road): the more westerly, 10,535-square-foot (0.13-acre) 517 Cottage Grove Road parcel and the adjacent 7,740-square-foot (0.18-acre) 521 Cottage Grove Road parcel to the east. The site is within Alder District 15 (Ald. Foster) and the Madison Metropolitan School District.

Existing Conditions and Land Use: Both sites are zoned CC-T. The 521 Cottage Grove Road parcel is developed with a two-story building. A tavern is located on the ground floor above which is a two-bedroom apartment. The majority of the rest of the site is paved. The adjacent 517 Cottage Grove Road site is entirely paved and contains surface automobile parking which serves the tavern and apartment.

Surrounding Land Use and Zoning:

- North:** Across Cottage Grove Road is a four-story mixed-use condominium building with ground floor commercial (including the Pinney Branch of the City of Madison Library) and residential units on the upper floors. It is zoned Traditional Employment (TE);
- East:** A one-story, commercial building, zoned Commercial Corridor – Transitional (CC-T);
- South:** Single-family residences in the Suburban Residential – Consistent 1 (SR-C1) District; and
- West:** A restaurant, zoned CC-T.

Adopted Land Use Plan: The [Comprehensive Plan \(2018\)](#) recommends Neighborhood Mixed-Use (NMU) for this property. The [Royster-Clarke Special Area Plan \(2009\)](#) recommends that the stretch along the south side of Cottage Grove Road which includes the subject site be redeveloped *“with a variety of commercial activities, including office employment and retail/service uses, as well as with mixed-use developments combining residential uses with employment or retail uses. Stand-alone residential buildings may also be appropriate in mixed-use areas at some locations.”*

Zoning Summary: The project site is currently zoned Commercial Corridor – Transitional (CC-T).

Requirements	Required	Proposed
Front Yard Setback	0’ or 5’	Adequate
Side Yard Setback: Other cases	None unless needed for access	Adequate
Rear Yard Setback	The lesser of 20% of lot depth or 20’	Adequate
Maximum Lot Coverage	85%	Existing lot coverage
Maximum Building Height	5 stories/ 78’	Existing 1-story building

Site Design	Required	Proposed
Number Parking Stalls	Tavern: 15% of capacity of person (7)	21 existing stalls
Accessible Stalls	Yes	Existing accessible stall
Loading	Not required	None
Number Bike Parking Stalls	Tavern: 5% of capacity of persons (2)	4
Landscaping and Screening	Not required	Existing landscaping
Lighting	Not required	Existing lighting
Building Forms	Not required	Existing building

Other Critical Zoning Items	Barrier Free (ILHR 69); Utility Easements
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Tables prepared by Jenny Kirchgatter, Assistant Zoning Administrator

Environmental Corridor Status: The subject site is not located in a mapped environmental corridor.

Public Utilities and Services: This property is served by a full range of urban services.

Related Approvals

On May 19, 2021, the Alcohol License Review Committee approved a Class B Combination Liquor & Beer license request (File ID# [65230](#)) for the Dive Inn. Their motion included the following two conditions: 1. Outdoor patio shall close by 10:00 p.m. on weekdays, and by midnight on weekends. 2. A privacy fence shall be erected at the rear of the property.

Project Description

The applicant, who owns the property and is the proprietor of the tavern located on the property, Dive Inn, is applying for two conditional uses - for free-standing vending located within 200 feet of a residential property and for an outdoor eating area.

Regarding the free-standing vending request, the applicant intends to host a local food cart on the subject site throughout the year. The cart will be positioned at the northeast corner of the 521 Cottage Grove Road site, along the eastern property line, near the public sidewalk. (The applicant has indicated this location on the submitted site plan for review.) While it is anticipated that there will only be one food cart on site at a time, the specific vendor will likely vary from day to day or week to week. According to the submitted materials, the hours of operation are proposed to be 11 a.m. to 8 p.m. As proposed, none of the potential vendors will have any affiliation with the tavern, in terms of food production and sales. Each will be required to obtain appropriate City vending licenses and follow all applicable vending rules. Vendors are also expected to be self-sufficient and provide their own generating power. Furthermore, no change in capacity for the tavern is requested at this time.

The outdoor eating area will be located directly in front of the tavern, along the public sidewalk. It will be roughly 480 square-feet in size, contain four 4-person tables, and be enclosed with a split-wood fence. The applicant notes in their submitted materials, that the occupancy of this outdoor eating area (16 persons) will not be in addition to their interior capacity. (This is consistent with their alcohol license approval). Also consistent with their recently approved alcohol license are their proposed hours of operation for the outdoor eating area: 11:00 am – 10:00 pm on the weeknights and 11:00 am – 12:00 am on the weekends. Note: the alder is in support of these hours of operation given their consistency with the alcohol license approval. Lastly, the applicant notes that there will be no amplified sound associated with the outdoor eating area and it will be bussed by Dive Inn staff.

In addition to the changes noted above, the applicant will restripe the parking stalls on the 517 Cottage Grove Road site. This will include the addition of an accessible stall as well as bicycle parking stalls to the northwest of the tavern. In order to comply with the conditions associated with their alcohol license approval, they will be installing a six foot tall wooden fence along the southern property line of both sites.

Project Analysis and Conclusion

This proposal is subject to the standards for Conditional Uses (M.G.O. §28.183) as M.G.O §28.061(1) and M.G.O. §28.151 lists *free standing vending and outdoor eating areas associated with food and beverage establishments* as conditional uses in the Commercial Corridor – Transitional (CC-T) District. In regards to the approval standards, the Plan Commission shall not approve a conditional use without due consideration of the City's adopted plan recommendations, design guidelines, and finding that all of the conditional use standards of M.G.O. §28.183(6) are met.

Conformance with Adopted Plans

The [Comprehensive Plan](#) (2018) recommends Neighborhood Mixed Use (NMU) for this property. The NMU category includes relatively small activity centers that include residential, retail, restaurant, service, institutional, and civic uses. This use further diversifies the mix of commercial uses in the Comprehensive Plan's NMU-designated area. The [Royster-Clarke Special Area Plan](#) (2009) recommends that the stretch along the south side of Cottage Grove Road, which includes the subject site, be redeveloped "*with a variety of commercial activities, including office employment and retail/service uses, as well as with mixed-use developments combining residential uses with*

employment or retail uses. Stand-alone residential buildings may also be appropriate in mixed-use areas at some locations.” The Planning Division believes that the addition of free-standing vending and an outdoor eating area on the subject site are both compatible with the adopted plan recommendations. Staff do not believe the addition of these uses will prevent either of the subject parcels or its neighbors from eventually developing in a manner more consistent with the plan recommendations.

Conditional Use Standards

The Planning Division believes that this proposal can be found to meet the Conditional Standards of Approval. Regarding the proximity to the residential units, staff first note that the applicant has confirmed that the two-bedroom apartment located on the second floor is being converted into an office. Staff also note that the nearest single-family residences are located over 175 feet south of the planned location of the food cart and outdoor eating area, while the condominium units, located to the north across Cottage Grove Road, are located roughly 150 feet away. Staff anticipates that this separation will limit possible negative impacts related to smells and noise generated by the two uses. Regarding the concerns about noise, Staff also note that: 1) the capacity of the outdoor eating area is just 16 persons; 2) the applicant is not proposing any amplified sound (music) for the outdoor eating area; and 3) as a condition of approval from their recent alcohol license approval, the applicant will be installing a six-foot-tall fence along the southern property line. Specific to the food cart request, staff believe the proposed hours of operation as well as the plan to have just one food cart on site at a time, will further help mitigate negative impacts. Lastly, regarding the proposed hours of operation of the outdoor eating area, Staff note that the Alder is comfortable with the current request (since it is consistent those approved for their associated alcohol license approval). Staff notes that 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).

Supplemental Regulations

M.G.O. 28.151 contains further regulations for both uses. For free standing vending, specifically the requirement that in non-residential districts, free-standing vending is a conditional use if located 200 feet or less from a property line of a lot with residential use, such as those immediately south of the subject parcel. The supplemental regulations also include regulations regarding hours of operation, site plan approval, and the necessary vending and food and/or beverage licensing. As noted above, none of the potential vendors have any affiliation with the tavern, in terms of food production and sales. Each will be required to obtain appropriate City vending licenses and follow all applicable vending rules. Vendors are also expected to be self-sufficient and provide their own generating power.

For the outdoor eating area, the supplemental regulations note that 1) the primary access to the area shall be from within the establishment; 2) the hours of operation may be restricted and noise and lighting limits imposed as part of the conditional use approval; and 3) where the use is conditional, an appropriate transition area between the use and adjacent property may be required, using landscaping, screening, and other site improvements consistent with the character of the neighborhood.

The Planning Division believes the supplemental regulations listed above are satisfied by the proposal and the conditions of approval.

Public Input

At the time of report writing, staff did receive one public comment from the Lake Edge Neighborhood Association noting their support for the proposed food cart and outdoor eating area. A copy of this letter is included in the Legistar file for this item. Staff was also contacted by the property owner to the east with concerns related to the impacts of the proposed uses on their site, given the location of the proposed uses along the shared property line. Staff understands they are contacting the applicant to discuss these concerns.

Conclusion

Staff believe this proposal is compatible with adopted plan recommendations and can be found to meet the conditional use approval standards and supplemental regulations. Given the distance from the nearest residential units, the additional fencing (screening) which will be added along the southern property line, the proposed hours of operation of the food cart, the limit of the number of food carts on site at a time to one, the limited size and capacity of the outdoor eating area, and the prohibition of amplified sound associated with the outdoor area, staff anticipates that many possible impacts that can be caused by such uses will be limited. Regarding the proposed hours of operation of the outdoor eating area, Staff note that the Alder has indicated support for the current request (since it is consistent with the associated alcohol license approval). Finally, 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 Chris Wells, cwells@cityofmadison.com)

The Planning Division recommends that the Plan Commission find that the approval standards for Conditional Uses are met and **approve** the request for free-standing vending within 200 feet of a residential use and an outdoor eating area on a property zoned CC-T (Commercial Corridor Transitional District) at 517-521 Cottage Grove Road. This request is subject to the input at the public hearing and the following conditions:

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

Planning Division (Contact Chris Wells, cwells@cityofmadison.com)

1. That the number of food carts allowed on the site at a time be limited to one (1). In the future, the Director of the Planning Division may consider a minor alteration to the conditional use to further modify the number of food carts allowed on the site at time following a positive recommendation by the district alder, as described in the Zoning Code.
2. That the hours of operation for the food cart(s) on site shall be 10:00 am to 9:00 pm daily, including set up and take down. No part of the operator's free-standing vending equipment or operation may remain on the property outside the hours of operation. In the future, the Director of the Planning Division may consider a minor alteration to the conditional use to further modify the hours of operation for the food cart(s) following a positive recommendation by the district alder, as described in the Zoning Code.

3. That the hours of operation for the outdoor eating area on site shall be 11:00 am to 10:00 pm on weeknights and 11:00 am to 12:00 am on weekends. In the future, the Director of the Planning Division may consider a minor alteration to the conditional use to further modify the hours of operation for the food cart(s) following a positive recommendation by the district alder, as described in the Zoning Code.
4. There shall be no amplified sound, including, but not limited to television, ambient music or musical performances, in (or associated with) the outdoor eating area.

Zoning Administrator (Contact Jenny Kirchgatter, (608) 266-4429)

5. The free-standing vending operation shall follow Supplemental Regulations Section 28.151 for Free-Standing Vending.
6. The capacity shall be established for the outdoor eating area. Occupancy is established by the Building Inspection Unit. Contact Building Inspection staff at (608) 266-4559 to help facilitate this process.
7. Submit a detail of the proposed fencing for the outdoor eating area.
8. Per Section 28.186(4)(b), the property owner or operator is required to bring the property into compliance with all elements of the approved site plans by the date established by the Zoning Administrator as part of the site and building plan approval. Work with Zoning staff to establish a final site compliance date.

The City Engineering, City Engineering-Mapping, Traffic Engineering Division, Fire Department, Parks Division, Forestry Section, Water Utility, and Metro Transit have reviewed this request and have recommended no conditions of approval.