



Department of Planning & Development
Planning Unit

Website: www.cityofmadison.com

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March 1, 2005

Mr. Rod Ripley
5625 Cobblestone Drive
Madison, WI 53714

RE: 1421 Regent Street

Dear Mr. Ripley:

At the request of the Madison Common Council, the Plan Commission was asked to address a potential noise complaint relating to an approved conditional use located at 1421 Regent Street for a restaurant/bar/outdoor eating area operating on UW home football game Saturdays. This matter was considered by the Plan Commission on February 7, 2005. After discussion, the Plan Commission decided it would consider this some time after September 19, 2005.

The Plan Commission requested that prior to this matter returning to the Plan Commission, that City Zoning staff conduct a review of the site to ensure the conditions of approval of the conditional use are being implemented. The Commission asked that we give you a copy of the City's noise ordinance. It was also suggested that City staff send you a letter strongly encouraging compliance with the conditions of your conditional use approval. The property has had a conditional use permit to operate an outdoor eating area on Saturdays of UW home football games for some time. Attached are the standards which are applicable to all conditional use applications in the City of Madison.

On May 23, 1994, the Plan Commission approved a conditional use permit for this site for the business known as Terrazzo's Restaurant. A copy of the Plan Commission's approval letter dated May 25, 1994 is attached for your information. Attached is a copy of the approved site plan specifically noting conditions related to the access gates being closed on Jefferson Street and the location of the portable toilets. **This site plan is the approved plan for the operation of the outdoor eating area and must be used for the continuing operation of your facility.** It was noted by the neighborhood that the previous owner/operator serviced the portable toilets between 2:00 a.m. and 4:00 a.m. Please instruct your portable toilet provider to refrain from servicing these facilities at late hours. The recently approved City-wide sound-noise regulation ordinance prohibits the collection of refuse with a collection truck between 10:00 p.m. and 6:00 a.m. within 200-feet of any residential zoned district. This applies to truck placement and collection of portable toilets.

In addition to those conditions, the City developed some uniform conditions which apply to all outdoor areas that operate on football game days. Those conditions were delineated in a June 1, 1998 letter to James Luedtke and are listed as the following:

1. **HOURS OF OPERATION**

For University of Wisconsin, or Green Bay Packer afternoon football games the outdoor eating area shall be open no later than 8 p.m. For games with kick-off after 5 p.m. the outdoor area shall be open no later than 10 p.m.

2. **OUTDOOR MUSIC**

Outdoor live or amplified music or sound shall not be permitted before 10:00 a.m. and shall be allowed only if already specifically approved by the Plan Commission at the time of granting your original conditional use permit. This is one of the biggest issues for nearby residents. Please try to keep music volume at a reasonable level. The City will be applying the decibel level limitations in the provisions of the noise ordinance if complaints are received regarding the operation of any outdoor facility that has music or amplified sound (copy attached). The current Madison General Ordinances prohibit noise levels within outdoor eating areas above 65 dba. A copy of the City's noise ordinance is attached. **If complaints are received that are found to exceed this level, we will schedule a new public hearing before the Plan Commission which may result in the modification or revocation of your conditional use permit.**

3. **FENCE ENCLOSURE, SECURITY GUARDS, LITTER CONTROL AND PORTABLE TOILETS**

If you have a license to sell alcohol in an outdoor eating area, the Alcohol License Review Committee has established conditions for operation for these applications that involve fencing, security guards, toilet facilities, litter, etc. All businesses that sell alcohol must comply with the requirements imposed by the Alcohol License Review Committee at the time of issuance of your original application to expand or change your licensed premises to include the outdoor eating area.

4. **STADIUM CONCERTS**

If you open the outdoor eating area for any proposed stadium concerts (U2, Rolling Stones, etc.) the outdoor eating area shall close no later than 1 hour after the start of the concert and remain closed for the evening.

All of these standards and conditions are in addition to any applied by the Alcohol License Review Committee. These standards and conditions are enforced by the Zoning Administrator and the Plan Commission under the Plan Commission's continuing jurisdiction of conditional uses. One of the purposes for this "continuing jurisdiction is to resolve complaints against previously approved conditional uses.

The Plan Commission is expecting that Zoning staff will closely monitor the management and operation of this tavern under your ownership and management to ensure that the above standards are complied with. It is staff's intent to monitor the operation of your outdoor seating area on UW home football days and provide the results of these inspections to the Plan Commission and neighborhood association. The Plan Commission will consider this matter following the first home football game and may, at that time, and could conclude that the conditional use standards are no longer being satisfactorily met and may reopen the conditional use permit for the purpose of applying additional standards and limitations on this outdoor eating area. We are hoping that this is not necessary.

It is very important that you share this letter with any managers, operators or staff of your business to ensure that they clearly understand the conditions of approval applicable to this outdoor eating area.

Finally, after two pages of warnings and rules, I would like to welcome you and your partners as the new owners, wish you the best of luck and offer our assistance if you have questions. Please feel free to contact me or Bill Roberts at 266-4635.

Sincerely,

Bradley J. Murphy, Planning Unit Director

C: Attorney Michael May
Mark A. Olinger, Director, Department of Planning and Development
Bill Roberts, Planner IV
Ald. Heidt
Noble Wray, Police Chief
Julie Kerr, Vilas Neighborhood Association

The Zoning Code Sec. 28.12(11) includes the following provisions regarding conditional uses:

- (a) Statement of Purpose. The development and execution of this ordinance is based upon the division of the City into districts, within which districts the use of land and buildings, and bulk and location of buildings and structures in relation to the land, are mutually compatible and substantially uniform. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use at a particular location. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development, and operation of such uses. Such uses are classified as conditional uses and fall into two (2) categories:

1. Uses publicly operated or traditionally affected with a public interest.
2. Uses entirely private in character, but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public
3. facilities.

The following provisions are thus established to regulate these conditional uses which require special consideration.

- (g) Standards. No application for a conditional use shall be granted by the City Plan Commission unless such Commission shall find all of the following conditions are present:

1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.
2. That the City be able to provide municipal services to the property where the conditional use is proposed, given due consideration of the cost of providing such services.
3. That the uses, values and enjoyment of other property in the neighborhood for purposes already established shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
4. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
5. That adequate utilities, access roads, drainage, parking supply, internal circulation improvements, including but not limited to vehicular, pedestrian, bicycle, public transit, and other necessary site improvements have been or are being provided.
6. That measures, which may include transportation demand management (TDM) and participation in a transportation management association, have been or will be taken to provide adequate ingress and egress, including all off-site improvements, so designed as to minimize traffic congestion and to ensure public safety and adequate traffic flow, both on-site and on the public streets.
7. That the conditional use shall conform to all applicable regulations of the district in which it is located.
8. That when applying the above standards to an application by a community living arrangement the City Plan Commission shall:
 - a. Bear in mind the City's general intent to accommodate community living arrangements.

- b. Exercise care to avoid an over-concentration of community living arrangements which could create an institutional setting and seriously strain the existing social structure of a community. Considerations relevant for this determination are:
 - i. The distance separating the proposed community living arrangement from other such facilities.
 - ii. The capacity of the community living arrangement and the percent the facility will increase the population of the community.
 - iii. The total capacity of all the community living arrangements in the community.
 - iv. The impact on the community of other community living arrangements.
 - v. The success or failure of integration into communities of other community living arrangements operated by the individual or group seeking the conditional use permit.
 - vi. The ability of the community to meet the special needs, if any, of the applicant facility.
9. That when applying the above standards to any new construction of a building or an addition to an existing building, the City Plan Commission:
 - a. Shall bear in mind the statement of purpose for the zoning district, such that the proposed building or addition at its location does not defeat the purposes and objective of the zoning district; and
 - b. May require the applicant to submit plans to the Urban Design Commission for comments and recommendations; and
 - c. May consider the use of the proposed building as it relates to the City's Land Use Plan.

When a Conditional Use application is denied, the Plan Commission shall furnish the applicant in writing those standards that are not met and enumerate reasons the Commission has used in determining that each standard was not met.