

## PLANNING DIVISION STAFF REPORT

April 26, 2021

PREPARED FOR THE PLAN COMMISSION



**Project Address:** 177 S Fair Oaks Avenue

**Application Type:** Conditional Use

**Legistar File ID #** [65481](#)

**Prepared By:** Timothy M. Parks, Planning Division

Report includes comments from other City agencies, as noted.

### Summary

**Applicant:** Brent Mann, Blind Shot Social Club; 5105 Turner Avenue; Madison.

**Contact Person:** Roger Smith, Design Coalition Architects; 2088 Atwood Avenue; Madison.

**Property Owner:** 131 S Fair Oaks, LLC/ McGrath Property Group; 730 Williamson Street, Suite 150; Madison.

**Requested Action:** Consideration of a conditional use in the Traditional Employment (TE) District for an outdoor eating area for a restaurant-tavern tenant in a mixed-use building; and consideration of a conditional use in the TE District for outdoor recreation.

**Proposal Summary:** The applicant is requesting approval of conditional uses for outdoor eating area and outdoor recreation associated with a 5,560 square-foot golf-themed restaurant-tavern located in the southernmost first floor commercial tenant space of the five-story “Garver Point” mixed-use building. Construction of the outdoor eating and recreation area will begin as soon as all regulatory approvals have been granted and the conditions of approval have been met. Completion is scheduled for May 28, 2021.

**Applicable Regulations & Standards:** Table 28F-1 in Section 28.082(1) of the Zoning Code identifies outdoor eating areas for restaurants and taverns and outdoor recreation as conditional uses in the TE (Traditional Employment) zoning district. Section 28.183 provides the process and standards for the approval of conditional use permits.

**Review Required By:** Plan Commission

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find the standards met and **approve** conditional uses for an outdoor eating area and outdoor recreation for a restaurant-tavern located at 177 S Fair Oaks Avenue subject to input at the public hearing and the conditions from reviewing agencies beginning on page 4 of this report.

### Background Information

**Parcel Location:** Approximately 3.4 acres of land generally located on the east side of S Fair Oaks Avenue at the Capital City Trail and opposite Gateway Place; Aldermanic District 6 (Benford); Madison Metropolitan School District.

**Existing Conditions and Land Use:** The proposed restaurant-tavern occupies the southernmost commercial space in the five-story Garver Point mixed-use building, zoned TE (Traditional Employment District).

### Surrounding Land Uses and Zoning:

North: Starkweather Creek, Olbrich Park North Plat, zoned TE (Traditional Employment District); Garver Feed Mill development, zoned PD;

South: Capital City Trail; Wisconsin & Southern Railroad; single- and two-family residences, zoned TR-V1 (Traditional Residential–Varied 1 District);

West: Madison Kipp Corporation, Fair Oaks Apartments, zoned TE;

East: Garver Feed Mill redevelopment, zoned PD.

**Adopted Land Use Plan:** The 2018 Comprehensive Plan recommends the subject site and Fair Oaks Apartments development across S Fair Oaks Avenue for Community Mixed-Use (CMU) development. Surrounding the subject site, Olbrich Park is recommended for Park and Open Space, while the Garver Feed Mill development is recommended for Employment. The Madison Kipp Corporation property across S Fair Oaks Avenue is recommended for Industrial. Properties south of the site across the Capital City Trail and railroad corridor are recommended for Low Residential uses.

The subject site is located within the boundaries of the Darbo-Worthington-Starkweather Neighborhood Plan, which was adopted by the Common Council on September 19, 2017. The neighborhood plan recommends that the subject site and nearby employment-oriented properties like the Madison Kipp Corporation site continue as employment uses. The plan specifically references the Kessenich's restaurant supply business that was razed to accommodate the Garver Point mixed-use building that now occupies the subject site. However, the plan was adopted after the land use applications to redevelop had been filed but before the project was approved by the Plan Commission.

**Zoning Summary:** The site is zoned TE (Traditional Employment District):

Requirements	Required	Proposed
Front Yard	0'	Existing
Side Yards	0'	Existing
Rear Yard	20'	Existing
Usable Open Space	N/A	Existing; no change proposed
Maximum Lot Coverage	85%	Existing; no change proposed
Maximum Building Height	5 stories / 68'	5 st. (Existing; no change proposed)
Auto Parking (Restaurant-tavern)	15% of capacity (38)	82
Accessible Parking	4	4
Bike Parking (Restaurant-tavern)	5% of capacity (13)	63 (See Zoning conditions)
Loading	None	0
Building Forms	Flex Building	Existing; no change proposed

#### Other Critical Zoning Items

Yes:	Utility Easements
No:	Urban Design, Floodplain, Wetlands, Wellhead Protection, Landmarks, Adjacent to Park, Barrier Free

*Prepared by: Jacob Moskowitz, Assistant Zoning Administrator*

**Environmental Corridor Status:** The property is not located in a mapped environmental corridor.

**Public Utilities and Services:** The site is served by a full range of urban services. Weekday Metro Transit service operates north of the site along Milwaukee Street and to the south along Atwood Avenue; weekend/holiday service operates on S Fair Oaks Avenue, with stops adjacent to the site at the Capital City Trail.

## Previous Approval

On November 6, 2017, the Plan Commission approved a demolition permit and conditional uses to demolish a warehouse/retail building and construct a five-story mixed-use building with approximately 11,000 square feet of commercial space and 161 apartment units at 131 (now 171) S Fair Oaks Avenue. Among the conditional uses approved for the mixed-use building were speculative general retail and food and beverage uses for the first floor commercial spaces.

## Supplemental Regulations

Section 28.151 of the Zoning Code includes the following supplemental regulations for Outdoor Eating Areas:

- (a) Primary access to the area shall be from within the establishment.
- (b) Hours of operation may be restricted and noise and lighting limits imposed as part of the conditional use approval.
- (c) 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 following supplemental regulations apply to Outdoor Recreation:

- (a) A minimum 25-foot setback area maintained as open space shall be provided along the perimeter of the site wherever it abuts a residential district.
- (b) If the use will be available to the general public, an arterial or collector street of sufficient capacity to accommodate the traffic that the use will generate shall serve the site. Ease of access to the site by automobiles, transit, bicycles, and pedestrians shall be considered as a factor in the review of any application.
- (c) The site shall be designed in such a way as to minimize the effects of lighting and noise on surrounding properties. Hours of operation may be restricted and noise and lighting limits imposed as part of the conditional use approval.
- (d) 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.

## Project Description

The applicant is seeking approval of conditional uses for an outdoor eating area and outdoor recreation associated with a golf-themed “social club”/restaurant-tavern to be located in the southernmost first floor commercial space in the five-story “Garver Point” mixed-use building on the parcel addressed as 171 S Fair Oaks Avenue.

The proposed outdoor eating and recreation will be located on the existing terrace area at the southwestern corner of the mixed-use building. Seating for 40 patrons, an outdoor fire pit, and putting green are proposed along the southern and western facades of the 5,560 square-foot restaurant-tavern, as shown on the attached plans for the conditional use. The existing outdoor terrace area is separated from the adjacent city sidewalk and site entry driveway by a concrete wall with a metal railing, as well as a planter. There is an existing vegetative screen of trees and columnar shrubs along the length of the south edge of the site across the driveway from the proposed outdoor eating and recreation area.

The letter of intent indicates that the hours of operation for the outdoor area will be 10:00 AM–10:00 PM seven days/ week. The posted occupancy of the entire restaurant-tavern (including the proposed outdoor area) is 234 occupants.

## Analysis and Conclusion

Restaurant-taverns are conditional uses in the TE zoning district. However, food and beverage and general retail uses were speculatively approved by the Plan Commission for the first floor of the mixed-use building with the larger project approvals in 2017. However, Plan Commission approval is required prior to the issuance of permits and occupancy of the proposed outdoor eating and recreation elements of the existing restaurant-tavern use.

The Planning Division believes that the conditional use standards and supplemental regulations for the proposed outdoor eating and outdoor recreation area can be met subject to the hours of operation contained in the letter of intent, the customary prohibition on outdoor amplified sound, and the other conditions recommended by reviewing agencies. Staff does not believe that the proposed outdoor eating and recreation area will have an adverse impact on the uses, values and enjoyment or normal and orderly development of surrounding properties, which includes a mix of commercial, residential, and employment uses nearby. The letter of intent notes that the nearest residence are located 165 feet from the outdoor area, though staff estimates that off-site residential uses may be further than 200 feet from the proposed patio area.

No alder, public, or neighborhood association comments have been received as of the writing of this report that would suggest that the Plan Commission could not approve the request as submitted. As with any conditional use, the Plan Commission retains continuing jurisdiction in the event that complaints are received about any of the conditional uses associated with the subject site, which could result in more restrictive conditions being applied if deemed necessary.

## Recommendation

### Planning Division Recommendation (Contact Timothy M. Parks, 261-9632)

The Planning Division recommends that the Plan Commission find the standards met and **approve** a conditional use for an outdoor eating area and outdoor recreation for a restaurant-tavern tenant located at 177 S Fair Oaks Avenue subject to input at the public hearing and the following conditions:

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

### Planning Division

1. That the hours of operation for the outdoor eating and recreation area shall be until 10:00 PM as stated in the letter of intent. No service shall occur in the outdoor area after the closing hour on a given day, and patrons

may not utilize the outdoor patio area after those hours for smoking or otherwise. 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 outdoor eating and recreation area following a recommendation by the district alder.

2. That any doors to the outdoor area remain closed [not be propped open] at all times.
3. Outdoor amplified sound, including from televisions, ambient music, or musical performance, is prohibited.
4. The applicant shall provide the total occupancy (seated and standing) of the proposed outdoor eating and recreation area on the final plans.

**City Engineering Division** (Contact Brenda Stanley, 261-9127)

5. Per the Wisconsin Department of Natural Resources (WDNR) closure letter, this property was closed with residual soil and/or groundwater contamination (BRRTS #02-13-580290 Kessenichs LTD). Written approval from the WDNR is required prior to disturbing the existing barrier cap. Submit copy of WDNR approval letter to Brynn Bemis (608.267-1986, [bbemis@cityofmadison.com](mailto:bbemis@cityofmadison.com)). If no excavation of pavement is anticipated, this comment does not apply.
6. Submit, prior to plan sign-off but after all revisions have been completed, a digital CAD file (single file) to the City Engineering Division that is to scale and represents final construction with any private storm and sanitary sewer utilities.
7. Submit, prior to plan sign-off but after all revisions have been completed, digital PDF files to the City Engineering Division. E-mail PDF file transmissions are preferred to: [bstanley@cityofmadison.com](mailto:bstanley@cityofmadison.com) (East) or [ttroester@cityofmadison.com](mailto:ttroester@cityofmadison.com) (West).

**City Engineering Division—Mapping Section** (Contact Jeff Quamme, 266-4097)

8. In October 2018, there was a tenant build-out request for 175 S Fair Oaks Avenue (Katie West - Oakbrook Corp), splitting the space and creating a 177 S Fair Oaks Avenue. This submittal seems to wall up that entrance and combine that space along with another to the east. Submit a Floor Plan in PDF format to Lori Zenchenko ([lzenchenko@cityofmadison.com](mailto:lzenchenko@cityofmadison.com)) for the review and approval of the interior addressing plan. The Addressing Plan for the entire project shall be finalized and approved by Engineering (with consultation and consent from the Fire Marshal if needed) prior to the application submittal for this conditional use for final approval with Zoning. The approved Addressing Plan shall be included in the final application. For any changes pertaining to the location, deletion or addition of a unit, or to the location of a unit entrance, (before, during, or after construction), a revised Address Plan shall be resubmitted to Lori Zenchenko to review addresses that may need to be changed and/or reapproved. The final revised Addressing Plan shall be submitted by the applicant to Zoning to be attached to the final filed approved site plans.

**Traffic Engineering Division** (Contact Sean Malloy, 266-5987)

9. The applicant shall secure their site in order to prevent encroachment onto the adjacent public sidewalk.

**Zoning Administrator** (Contact Jacob Moskowitz, 266-4560)

10. Per the supplemental regulations, the site shall be designed in such a way as to minimize the effects of lighting and noise on surrounding properties. Hours of operation may be restricted and noise and lighting limits imposed as part of the conditional use approval.
11. The plans as shown include the removal of many surface bike parking stalls from the original site plan approval. Provide detail of all uses on the site in order to verify that sufficient bike parking is provided. Bicycle parking shall be located in a convenient and visible area on a paved or impervious surface within 100 feet of a principal entrance. Note: A bicycle stall is a minimum two (2) feet by six (6) feet with a five (5)-foot wide access area. Provide a detail of the existing or proposed bike racks.

**Fire Department** (Contact Bill Sullivan, 261-9658)

12. The Madison Fire Department recommends against fire pits in assembly occupancies, especially those serving alcohol. Unless the unit is an enclosed and listed fire place, a separate submittal and approval will be required for the specific design and installation of the fire pit.

**Water Utility** (Contact Adam Wiederhoeft, 266-9121)

This agency reviewed this request and has recommended no conditions or approval.

**Parks Division** (Contact Kathleen Kane, 261-9671)

This agency reviewed this request and has recommended no conditions or approval.

**Forestry Section** (Contact Bradley Hofmann, 267-4908)

This agency reviewed this request and has recommended no conditions or approval.

**Metro Transit** (Contact Tim Sobota, 261-4289)

13. In coordination with any public works improvements, the applicant shall maintain or replace the concrete boarding pad surface at the existing Metro bus stop on the east side of S Fair Oaks Avenue, north of the railroad tracks (#1353). The applicant shall include the location of these transit amenities on the final documents filed with their permit application so that Metro Transit may review the design.