

## Department of Planning and Zoning

149 Church Street  
Burlington, VT 05401  
Telephone: (802) 865-7188  
(802) 865-7195 (FAX)  
(802) 865-7142 (TTY)

David White, AICP, Director  
Ken Lerner, Assistant Director  
Sandrine Thibault, AICP, Comprehensive Planner  
Jay Appleton, GIS Manager  
Scott Gustin, AICP, Senior Planner  
Mary O'Neil, AICP, Associate Planner  
Nic Anderson, Zoning Clerk  
Elsie Tillotson, Department Secretary



**TO:** Development Review Board  
**FROM:** Scott Gustin *SG*  
**DATE:** April 19, 2011  
**RE:** 11-0668CU; 145-151 Elmwood Avenue

---

**Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Zone: NMU Ward: 3

Owner/Applicant: Tom & Amy Rugg / TRugg's Tavern, Inc.

**Request:** Increase seating capacity of existing bar. No site or exterior building changes proposed.

### **Applicable Regulations:**

Article 3 (Applications, Permits, & Project Review)

### **Background Information:**

The applicant is seeking conditional use approval to expand the seating within an existing bar. The currently permitted 50 seats (25 inside and 25 outside on the deck) would increase to 96 (66 inside seats and 30 outside on the deck). The proposed increase in seating will entail no changes to the site or to the exterior of the building. The current parking requirement is based on square footage, not the number of seats as per the previous ordinance; therefore, there is no change to parking based on the provisions now in effect. As the prior zoning permit stipulated a maximum number of seats, additional conditional use review is required for a change in seating. The seating requested reflects the maximum permissible by the Fire Marshal.

Previous zoning permit actions for this site.

- 7/8/02, Approval to install outdoor seating area for existing bar (25 seats)
- 10/10/01, Approval to replace vinyl siding on rear and front sides of the building
- 6/21/94, Approval to replace T-111 and vinyl siding with wood clapboard

**Recommendation: Consent conditional use approval** as per, and subject to, the following findings and conditions:

### **I. Findings**

#### **Article 3: Applications and Reviews**

#### **Part 5, Conditional Use & Major Impact Review:**

#### **Sec. 3.5.6, Review Criteria**

#### **(a) Conditional Use Review Standards**

#### **1. The capacity of existing or planned community facilities;**

The increased seating capacity will increase demands on municipal water and sewer service. Sufficient reserve capacity is available. A state wastewater permit will be needed. **(Affirmative finding as conditioned)**

*2. The character of the area affected;*

The subject property is located within the Neighborhood Mixed Use (NMU) zone. The neighborhood contains a mix of residential, commercial, educational, and public (cemetery) uses. The 2002 approval that allowed for the establishment of an outdoor seating area contained limitations on closing hours for the deck (10:00 PM), location of live entertainment (indoors only), and the maximum number of outdoor seats (25). These same conditions should be carried over with this approval, except that outdoor seating may increase to 30 seats. In doing so, the expanded bar should remain compatible with the character of the area. **(Affirmative finding as conditioned)**

*3. Traffic on roads and highways in the vicinity;*

There is no onsite parking. Patrons may use on-street parking or they may walk, bike, or take public transit to the bar. Given the lack of onsite parking, vehicular traffic impacts associated with the expansion are likely to be minimal. **(Affirmative finding)**

*4. Bylaws then in effect;*

As conditioned, the project appears to comply with all applicable city bylaws. The seating requested reflects the maximum permissible by the Fire Marshal. **(Affirmative finding as conditioned)**

*5. Utilization of renewable energy resources;*

Not applicable.

*6. Cumulative impacts of the proposed use;*

Impacts associated with the project are modest as noted in these findings. Except for the expanded seating, existing limitations on the bar will be carried over in this approval. **(Affirmative finding as conditioned)**

*7. Functional family;*

Not applicable.

*8. Vehicular access points;*

Not applicable.

*9. Signs;*

No new signage is included in this proposal. Any new signs will require separate zoning permits. **(Affirmative finding as conditioned)**

*10. Mitigation measures;*

As noted above, existing limitations on the bar, such as the hours of outdoor seating use and the location of live entertainment will be incorporated into this approval to limit noise impacts associated with the use. **(Affirmative finding as conditioned)**

*11. Time limits for construction;*

Not applicable.

*12. Hours of operation and construction;*

The existing zoning permit requires that use of the outdoor seating area end by 10:00 PM daily. This restriction will be incorporated into this approval. **(Affirmative finding as conditioned)**

*13. Future enlargement or alterations;*

In the event of future enlargement or alteration, permits would be required and reviewed under the regulations then in effect. **(Affirmative finding)**

*14. Performance standards;*

Not applicable.

*15. Conditions and safeguards;*

Approval of this project will be conditioned to implement the purposes of the zoning regulations.

## **II. Conditions of Approval**

1. Total seating shall be limited to 96 (30 outdoor and 66 indoor), the maximum permissible by the Fire Marshal.
2. Hours of use for the outdoor seating area must end daily by 10:00 PM.
3. Entertainment in the form of live bands, DJs, or amplified music shall be limited to inside the establishment and is specifically prohibited to be audible outside of the bar.
4. No site or exterior building changes are included in this permit.
5. **This approval is valid for 1 year.** The applicant shall return to the Development Review Board in April 2012 to report any violations/complaints issued for the property. The Board may remove the 1 year limitation if no or few complaints or violations have occurred. The Board, based on information received, may also limit the capacity of the operation if it determines that the bar is creating a nuisance for surrounding residents.
6. All outdoor signage is subject to a separate zoning permit.
7. Noise associated with this use shall be subject to the city's Noise Ordinance.
8. Standard conditions 1-18.



**In RE:** 149 Elmwood Avenue, CU-2003-004, NC Zone, Tax ID # 044-3-279-000

**Applicant:** Tom Rugg for T. Rugg's Tavern

**Request:** Conditional use to install an outdoor seating area for the existing bar (T. Rugg's Tavern) in accordance with Articles 3, 5, 17 & 20.

**Members Present:**

Albert Cicchetti, Chair  
Julie Campoli  
Mary Gade  
Austin Hart  
Glenn Jarrett  
Eleanor Briggs Kenworthy  
Annmarie Deitrich

**Evidence Presented:** The Board examined the materials submitted in support of this request.

**Staff Comments:**

**Request:** Conditional Use to install an outdoor seating area (5 tables seating 25 people) for the existing bar (T. Rugg's Tavern).

**Applicable Regulations:** Article 3 (Zoning Districts), Article 5 (Use, Density and Dimensional Requirements), Article 10 (Parking Requirements), Article 17 (Conditional Uses) and Article 20 (Non-Conforming Uses)

**Background Information:**

- ZP 94-493; Replace existing T1-11 and vinyl siding with wood clapboard siding on the mixed use structure (bar/residential), approved 6/21/94.
- ZP 02-189; Replace vinyl siding on rear and Elmwood Ave sides. Front and North Street sides to remain wood with wood trim, approved 10/10/01.

All who spoke were sworn in under oath by Albert Cicchetti.

**Tom Rugg:** Submitted statement.

**Heidi Dlubac:** Clarified staff recommendations in response to statement. Still adverse finding regarding character of the area.

**Tom Rugg:** Is in a commercial district. Building to the west is Carpenters Union and have no apartments. There are three apartments in T. Rugg building and one in another building as well as two in another. No outdoor seating after 10:00 p.m.

**Eleanor Briggs Kenworthy:** Revaluation after it opens.

**Tom Rugg :** Haven't used it yet. Noted city council approved outside consumption permit.

**Austin Hart:** Noted no dimensional standards affected by the proposal.

**Members Present:**

Albert Cicchetti, Chair  
Julie Campoli  
Glenn Jarrett  
Mary Gade  
Austin Hart  
Annmarie Deitrich

Board member Eleanor Briggs Kenworthy was not present.

**Motion: Austin Hart**

I move that the Board approve the request for conditional use to install an outdoor seating area for the existing bar (T. Rugg's Tavern) located at 149 Elmwood Avenue, (portion of first floor) in the NC Zone in accordance with Articles 3, 5, 17 & 20.

The Board's approval is based on the written materials submitted and testimony taken at the public hearing and is subject to the following conditions:

**I. Findings**

**Article 3: Zoning Districts**

**Section 3.1.4:** The NC district is intended to provide for limited commercial uses in residential areas where the character of the neighborhood merits protection by a suitable residential/commercial mix where such commercial uses provide neighborhood-oriented goods and services and/or employment opportunities. Bar/Tavern use is not a permitted use within the NC zoning district. However, the non-conforming use is a grandfathered use. **(Affirmative Finding)**

**Article 5: Use, Density & Dimensional Requirements:**

**Section 5.1.4 Permitted Uses:** The current use is a non-conforming use within the NC District and is subject to conditional use approval. **(Affirmative Finding)**

**Article 10: Parking**

No change in parking requirements as there is no net change in seating.

**Article 17: Appeals, Conditional Uses and Variances**

**Section 17.1.5 Conditional Uses:** (a) Approval shall be granted only if the Development Review Board, after public notice and hearing, determines that the proposed Conditional Use shall not adversely affect the following general standards:

- 1) *The capacity of existing or planned community facilities;*

- 2) *The character of the area affected;*
- 3) *Traffic on roads and highways in the vicinity;*
- 4) *Bylaws then in effect; or*
- 5) *Utilization of renewable energy resources.*

**(1) Community facilities.** This is a developed area with existing infrastructure. Moving 25 seats outside would not adversely affect the capacity of existing community facilities. **(Affirmative Finding)**

**(2) Character of the area.** The NC district is intended to provide for limited commercial uses in residential areas where the character of the neighborhood merits protection by a suitable residential/commercial mix. The proposed outdoor seating area for the bar/tavern use, a prohibited use, may not be appropriate in the surrounding residential area. However, approval from the Liquor Board stipulated that the tables/seating must be moved back inside the building by 10 pm. to mitigate any noise issues during the summer months when residents have their windows open. The Liquor Board also requested that there be a condition that limits the number of patrons outside and a prohibition on music/bands/entertainment from being outside the establishment. The applicant also provided a letter from the Burlington Police Department stating that only 9 complaints have been filed since 2000 and that T. Ruggs tavern has not historically been a source of general complaints or disorderly behavior. The applicant will be required to rope off (or make it clear to customers in some other manner that the area is not available) the same number of seats indoors as are being used outdoors, but not to exceed the maximum number of outdoor seats, which is 25. With conditions to insure appropriate noise levels are maintained, this proposal should not have an adverse effect on the character of the neighborhood. **(Affirmative Finding as Conditioned)**

**(3) Traffic.** No change in parking requirements. **(Affirmative Finding)**

**(4) Bylaws.** Zoning requirements have been met with this proposal in regards to non-conforming and conditional uses as per the findings herein. **(Affirmative Finding)**

**(5) Renewable Energy.** Proposal has no impact on renewable energy resources. It would have to meet current building code requirements for energy efficiency. **(Affirmative Finding as Conditioned)**

**Article 20 Non-conforming Uses**

**Section 20.1.5 Conditional Use Approval** *Any change or modification to a non-conforming use shall require conditional use approval by the Development Review Board in accordance with the provisions of Section 20.1.6 and Article 17.* The proposal is in conformance with Article 17, Conditional Uses, as per the findings herein. **(Affirmative Finding)**

**Section 20.1.6(b) Enlargement** *Nonconforming uses may be enlarged within the existing lot (extension into an adjoining lot is permitted if such lots are under single ownership as of April 26, 1973) by up to an aggregate of twenty-five per cent (25%) of the floor area, building or structural capacity existing at the time that the use first became nonconforming. Such enlargement shall be permitted only if such change shall not result in greater noncompliance with respect to dimensional requirements such as setbacks, coverage, and height limits and if parking requirements for the change are met.* Per the City Assessor's Records, the total floor area for the tavern use is 2029 sf. The proposed rear deck for the 5 tables/25 seats must not exceed 507.25 sf to be in compliance with this Article. **(Affirmative Finding as Conditioned)**

II. Conditions of Approval

1. Hours of use for the outdoor seating area must end daily at 10:00 p.m.
2. The total number of seats for the tavern/bar shall not exceed 50 seats.
3. Entertainment in the form of live bands, DJs or amplified music shall be limited to inside the establishment and is specifically prohibited to be audible outside of the existing bar.
4. The proposed deck for the outdoor seating shall be limited to 507.25 sf.
5. Applicant shall return to the Development Review Board by July 1, 2003 reporting any violations/complaints issued for the property. If no violations or complaints have occurred, the 1 year time limit will be removed by staff.
6. The applicant will be required to rope off (or make it clear to customers in some other manner that the area is not available) the same number of seats indoors as are being used outdoors, but not to exceed the maximum number of outdoor seats, which is 25.
7. Applicant is responsible for obtaining all necessary city permits and for meeting all city codes.
8. Standard permit conditions 1-14.
9. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required.
10. **A Zoning Certificate of Occupancy must be issued by the Department of Planning and Zoning PRIOR to use and/or occupancy of the subject premises. Prior to issuance, the Department of Planning and Zoning must certify that work and conditions of approval associated with your Zoning Board of Adjustment application have been met. The Property Owner must submit a Certificate of Completion certifying that the project as described by the Applicant/Property Owner and approved by the Zoning Board of Adjustment has met its conditions of approval PRIOR to the issuance of a Zoning Certificate of Occupancy.**

**Seconded:** Julie Campoli.

**Vote:** 6-0.

Dated at Burlington, VT this 16<sup>th</sup> day of JULY, 2002.

Respectfully Submitted,

  
Albert Cicchetti, Development Review Board Chair

---

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court. (Zoning Ordinance Article 17, Section 17.1.7 Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.

---