

City of Madison Board of Zoning Appeals
June 12, 2023

Minutes

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MADISON CITY BOARD OF ZONING APPEALS

The City of Madison Board of Zoning Appeals held a regular meeting on Monday, June 12, 2023 at 6:15 p.m. in City Hall. Scott Baldwin presided over the meeting with the following additional Board Members present: Mark Acosta, Nancy Burkhardt, and Rick Farris. Also present: Devon Sharpe, Attorney; and Joe Patterson, Secretary/Associate Planner. Absent: Nicole Schell, Director of Planning.

Minutes:

No additions or corrections noted for the May 8, 2023 Minutes. M. Acosta made motion to approve the minutes as written – seconded by S. Baldwin. Unanimous Consent Vote – all ayes – Final vote is four (4) in favor and none against – Motion carries.

May 8, 2023 Minutes approved in accordance with motion and vote.

Renewals:

1. Kathryn G. Ayers – Conditional Use Permit for a guest cottage and/or miscellaneous home business. There is to be no business signage and no walk-in customers.
Location: 1116 W Main St Zoned: Medium Density Residential (R-8)
One-Year Renewal
2. James Gurley – Conditional Use Permit for a tobacco packaging facility.
Location: 2900 Wilson Ave Zoned: Light Manufacturing (M-1)
One-Year Renewal
3. Anna Nguyen – Conditional Use Permit for a tea and/or gift shop.
Location: 1402 Bear St Zoned: Local Business (LB)
One-Year Renewal
4. Laser Command, LLC – Conditional Use Permit for a party center - indoor inflatables, party rental area and rooms, indoor family entertainment center. (Kangaroo's)
Location: 3000 N Shun Pike Zoned: Light Manufacturing (M-1)
One-Year Renewal
5. Knights of Columbus – Conditional Use Permit for a mobile home.
Location: 2250 Lanier Dr Zoned: Light Manufacturing (M-1)
One-Year Renewal
6. Petsense, LLC – Conditional Use Permit for housing of kittens/cats brought in through partnering shelters and rescues.
Location: 433 E Clifty Dr Zoned: General Business (GB)
One-Year Renewal
7. Darlisa Davis – Conditional Use Permit to operate a daycare center.
Location: 206 Green Rd Zoned: Medium Density Residential (R-8)
One-Year Renewal

S. Baldwin noted that Renewals #1, 3, 5, 6, and 7 had been paid and made motion that these renewals be approved – seconded by N. Burkhardt – Unanimous Consent Vote – Final vote is four (4) in favor and none against – Motion carries.

Renewals #1, 3, 5, 6 and 7 renewed in accordance with motion and vote.

S. Baldwin noted that Renewals #2 and #4 had not been paid and made motion that a letter be sent by the Attorney notifying that the renewals had not been paid and are therefore expired, but will be renewed if paid before the next meeting – seconded by N. Burkhardt – Roll Call Vote – All ayes – Final vote is four (4) in favor and none against – Motion carries.

Renewals #2 and #4 conditionally renewed in accordance with motion and vote.

Tabled Applications:

1. **BZCU-23-20:** Sharon Daghir – Conditional Use Permit for owner-occupied residence with short-term rentals primarily for travel nurses.
Location: 217 E Fourth St
Zoned: Historic District Residential (HDR)

Sharon Daghir – 217 E Fourth St – Following discussions with other travel nurses and with the hospital, it was decided that no special conditions would need to be included in the House Rules. They proceeded to submit the House Rules based on prior conversation with neighbors and Board Members taken into consideration.

Linda Knoble – Neighbor on E Fourth St – Had concerns regarding the quiet hours and how it would be enforced. After discussion with the Board and Staff regarding the enforcement mechanism of Conditional Uses and how they can be revoked for violations and how to report such violations, Ms. Knoble had no further questions.

No further comments from the Board or from the Public.

It was noted that this would be under Category 581.

Findings of Fact

1. *Is in fact a Conditional Use as established under the provisions of Article V of the City of Madison Zoning Ordinance and appears on the Official Schedule of District Regulations adopted by Section 7.00 for the zoning district involved.*

M. Acosta: Yes, it matches 581.

R. Farris: Yes, I believe it fits in 581.

N. Burkhardt Yes, I believe it is.

S. Baldwin: 581 is the appropriate one.

2. *Will be harmonious with and in accordance with the general objectives, or with any specific objective of the City's Comprehensive Plan and/or the Zoning Ordinance.*

M. Acosta: Yes, I see it fitting well with it.

R. Farris: Yeah, I see it fitting well as well. I think it's meeting a need of our community.

N. Burkhardt I agree with those comments.

S. Baldwin: I see no – since it's 581 in the Schedule of Uses, which is part of the Comprehensive Plan. So, I think that one is met.

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3. *Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.*

M. Acosta: Yeah, property will stay as is which is already fitting to the area.
R. Farris: I agree with Mr. Acosta's comment.
N. Burkhardt Yes, I agree it will be harmonious.
S. Baldwin: The general vicinity is large house and so forth, so I think that one is met.

4. *Will not be hazardous or disturbing to existing or future neighboring uses.*

M. Acosta: I do not think it will be as long as the owners monitor the Rules of dealing with the noise and disturbance and all that.
R. Farris: Yeah, I think now that we have a set of House Rules, there shouldn't be any major issues.
N. Burkhardt I agree as long as the Rules are adhered to.
S. Baldwin: I agree. The enforcement of House Rules should take care of the disturbance.

5. *Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.*

M. Acosta: No issue, obviously already existing.
R. Farris: Yeah, all those services are currently being provided.
N. Burkhardt I agree.
S. Baldwin: It's downtown. All the utilities and so forth are there in abundance. That one is met.

6. *Will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community.*

M. Acosta: I see no issue whatsoever.
R. Farris: I see no reason to believe it will be detrimental to the community.
N. Burkhardt I agree with those comments.
S. Baldwin: I do not think renting two apartments is going to harm the community at all.

7. *Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.*

M. Acosta: No, I see no issue with that.
R. Farris: I see no reason to believe there will be issues with that either.
N. Burkhardt I see no reason for excessive noise or traffic.
S. Baldwin: I don't think two units of an apartment are going to overdo traffic. I think that one is met.

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8. *Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.*

M. Acosta: No, no issue.

R. Farris: No, a couple of extra vehicles is not going to cause traffic.

N. Burkhardt: I agree.

S. Baldwin: It's on major thoroughfares. That one is almost not even relevant.

9. *Will not result in the destruction, loss, or damage of natural, scenic, or historic features of major importance.*

M. Acosta: No, nothing determinantal at all.

R. Farris: No, nothing about the facilities are going to change. They're not a detriment now, so I don't think they will be going forward either.

N. Burkhardt: I agree with those comments.

S. Baldwin: Utilizing these buildings helps to preserve them so I think that one's met.

S. Baldwin made motion to approve the application as submitted for a one-year renewal term with the Conditions that the submitted rules are adhered to and no long-term leases allowed – Seconded by M. Acosta – Roll Call vote – all ayes – Final vote is four (4) in favor and none against – Motion carries.

Application approved in accordance with motion and vote.

New Applications:

1. **BZCU-23-39:** JKAK Investments, LLC – Conditional Use Permit for a mechanic shop and body shop.
Location: 2575 Wilson Ave Zoned: Light Manufacturing (M-1)

Scott Lynch – Realtor representing JKAK, the buyer of the property. Upon discovering that the property was zoned Industrial, they determined they needed to obtain a Conditional Use in order to use the property as a mechanic shop.

Further discussion stated that it was next to Madison School's bus depot which is a similar type of use. The previous/existing use as a mechanic shop had been in place for a number of years.

No further comments from the Board or from the Public.

It was noted that this would be under Category 641.

Findings of Fact

1. *Is in fact a Conditional Use as established under the provisions of Article V of the City of Madison Zoning Ordinance and appears on the Official Schedule of District Regulations adopted by Section 7.00 for the zoning district involved.*

M. Acosta: Yes, it meets 641.

R. Farris: Yes, I think it does and fits into 641.

N. Burkhardt: I agree it is.

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S. Baldwin: 641 is the appropriate one.

2. *Will be harmonious with and in accordance with the general objectives, or with any specific objective of the City's Comprehensive Plan and/or the Zoning Ordinance.*

M. Acosta: Yes, it's going to make use of an area similar to in the past. Having an occupant there would be a good thing.

R. Farris: Yeah, I agree as well. I think it fits in with the overall Comprehensive Plan.

N. Burkhardt: I agree with that.

S. Baldwin: Yes, using buildings that were designed to be used is the general idea.

3. *Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.*

M. Acosta: Yes, I think the applicant always kept this place looking nice and may be an improvement to this location.

R. Farris: Yeah, I mean the structure was used for similar type business activity prior to this. I think it fits right in.

N. Burkhardt: I agree. It's just a continuation of prior services.

S. Baldwin: I agree. The general vicinity is yet another bus garage with work on school buses.

4. *Will not be hazardous or disturbing to existing or future neighboring uses.*

M. Acosta: No, no more than it had been before.

R. Farris: No, I don't see any reason to believe that it will be.

N. Burkhardt: No, I don't see a problem with that.

S. Baldwin: I really don't see any hazardous problems there. I think that one is met.

5. *Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.*

M. Acosta: No issues. Certainly already served.

R. Farris: Yeah, those services are already in existence and being provided.

N. Burkhardt: I agree with that.

S. Baldwin: That's adequately provided with all necessary utilities.

6. *Will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community.*

M. Acosta: No, it will be a benefit.

R. Farris: Yeah, I think it will be a positive move for the business owner and good for our community.

N. Burkhardt: I agree with those comments.

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S. Baldwin: Keeping a business going is not detrimental to anything.

7. *Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.*

M. Acosta: I don't envision that any more than what has been there before.

R. Farris: Yeah, I don't think anything excessive. It'll blend right in and a lot of people may not even know that there's a change in occupants.

N. Burkhardt: I agree.

S. Baldwin: Mr. Farris put it very well. Nobody will even know you're there and you're farther away from any residences than you were in the old location because you had houses right across the street at the old one and here, you're off back off the road. I think this actually an improvement.

8. *Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.*

M. Acosta: It already has existing vehicular approaches.

R. Farris: Yeah, I don't see any reason to believe it's going to cause problems with traffic.

N. Burkhardt: I see no interference.

S. Baldwin: I don't either. It'll be tow trucks going in and cars driving out. Not in any great numbers.

9. *Will not result in the destruction, loss, or damage of natural, scenic, or historic features of major importance.*

M. Acosta: No, no impact like that there.

R. Farris: Yeah, there will be no changes in that regard.

N. Burkhardt: I see nothing significant.

S. Baldwin: Neither do I. I don't think there's any historic features there.

S. Baldwin made motion to approve the application as submitted for a ten-year renewal term – Seconded by M. Acosta – Roll Call vote – all ayes – Final vote is four (4) in favor and none against – Motion carries.

Application approved in accordance with motion and vote.

2. **BZVD-23-7:** Regina Erlewein – Variance from Development Standards for setbacks to build a two-story deck in place of existing single-story deck and patio. Request a zero-lot line on the north property line abutting the south side of 927 W Second St.

Location: 929 W Second St Zoned: Historic District Residential (HDR)

Regina Erlewein – 929 W Second St – Discussed with the Board the nature of the layout of the properties and the history of deck and patio usage and the planned two-story deck and her neighbor is very supportive of the plans.

No further questions or comments from the Board. No further comments from the public.

Findings of Fact

1. *The approval will not be injurious to the public health, safety, morals and general welfare of the community.*

- M. Acosta: I don't see any of this in any way. It's mainly used in the same space as before.
- R. Farris: I don't see any reason to believe it will either. The applicant has already sought approval of adjoining landowners and sounds like they've worked it out amongst themselves.
- N. Burkhardt: I agree. If anything, she's making it safer for both of them and improving the problems that are currently present.
- S. Baldwin: Since this is a request for a zero-lot line which, frankly, you can't even see. It's replacing something that was there. I see no damage at all in this regard.

2. *The use and value of the area adjacent to the property included in the variance will not be affect in a substantially manner.*

- M. Acosta: No, on the contrary it would be an improvement to replace the moldy structures and improving the general area as well.
- R. Farris: Yeah, I think it's an improvement. I think it's a win-win for both the applicant and the neighbor.
- N. Burkhardt: I agree. She's improving the area.
- S. Baldwin: We have heard, certainly, no testimony from a realtor or anybody that says property values are going to be hurt, so I think that one is met.

3. *The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.*

- M. Acosta: Yeah, strict application would not allow her to use that three-foot space of her own yard and put in place what she wants to put in place.
- R. Farris: Yeah, strict application would not allow the project to move forward. It's just another example of the situations we run into with these downtown properties.
- N. Burkhardt: I agree with those comments.
- S. Baldwin: I think those are well put. It's the same thing we run into in these tiny properties down here that were built long ago. So, I think that is a sufficient practical difficulty.

R. Farris made motion to approve the application as submitted – Seconded by N. Burkhardt– Roll Call vote – all ayes – Final vote is four (4) in favor and none against – Motion carries.

Application approved in accordance with motion and vote.

3. **BZVD-23-6:** Mark Viterna – Variance from Development Standards for setbacks to allow for construction of a single-family residence. Request zero-lot lines on the north, south, and west lot lines.
Location: 524 Walnut St Zoned: Historic District Residential (HDR)

Mark Viterna – Property is owned by his business and he is representing the property. Mr. Viterna gave a brief history on the recent events of the property with respect to the demolition of the prior structure due to unsafe and blight concerns. The prior owner decided to leave town and sold the property to him as Mr. Viterna owned

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an adjacent property. Additional discussion was held regarding the location of the actual lot lines and how the adjacent homes and an existing tree are all situated. Lot lines would need to be established and verified to ensure a proper zero-lot line is maintained. There was also discussion that Mr. Viterna considered utilizing this property just as additional yard space for his neighboring property but wanted to pursue this avenue to see if it could be a potential use as a dwelling unit as well.

No further questions or comments from the Board. No comments from the public.

Findings of Fact

1. *The approval will not be injurious to the public health, safety, morals and general welfare of the community.*

M. Acosta: No, it'll have a positive impact.

R. Farris: Yeah, I think it will have a positive effect as well.

N. Burkhardt: I think it's an improvement for the community.

S. Baldwin: I see no harm to the general welfare because that particular neighborhood is pretty well built with houses right next to each other, narrow, and right up to the sidewalk. It's very similar.

2. *The use and value of the area adjacent to the property included in the variance will not be affect in a substantially manner.*

M. Acosta: No, No, they will be improved and, to your point, what you're requesting fits in with so many other houses and lots in that same neighborhood.

R. Farris: Yeah, I think, worst-case scenario, he buys a lot, doesn't build and just adds green space, so it's an improvement to the neighborhood either way.

N. Burkhardt: I agree, it's an improvement over what's already there.

S. Baldwin: There was a house there for years and years and years and years. Another house is going back to what it was, only a better house.

3. *The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.*

M. Acosta: Yeah, it makes it virtually impossible to build a functional house with a sixteen, fifteen width type of thing.

R. Farris: Yeah, I mean, it kills the project.

N. Burkhardt: I agree with the size of the lot and home.

S. Baldwin: I agree. A narrow lot. Twenty-two feet with six feet total in setbacks leaves a fifteen-foot wide house. Mobile homes are bigger.

S. Baldwin made motion to approve the application as submitted contingent upon surveys being performed – Seconded by M. Acosta – Roll Call vote – all ayes – Final vote is four (4) in favor and none against – Motion carries.

Application approved in accordance with motion and vote.

New/Old Business:

- Joe Patterson, Secretary/Associate Planner