

May 8, 2023

The City of Madison Board of Zoning Appeals held a regular meeting on Monday, May 8, 2023 at 6:00 p.m. in City Hall. Scott Baldwin presided over the meeting with the following additional Board Members present: Mark Acosta and Nancy Burkhardt. Also present: Devon Sharpe, Attorney; and Joe Patterson, Secretary/Associate Planner. Absent: Rick Farris, Board Member; and Nicole Schell, Director of Planning.

No additions or corrections noted for the April 10, 2023 Minutes. N. Burkhardt made motion to approve the minutes as written – seconded by S. Baldwin. Unanimous Consent Vote – all ayes – Final vote is three (3) in favor and none against – Motion carries.

S. Baldwin noted that Renewals #1 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 three (3) in favor and none against – Motion carries.

Renewals #1 and #4 conditionally renewed in accordance with motion and vote.

S. Baldwin noted that, additionally, Renewal #2 had been paid and made motion that Renewal #2 be approved – seconded by M. Acosta – Unanimous Consent Vote – All ayes – Final vote is three (3) in favor and none against – Motion carries.

Renewal #2 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)

S. Baldwin noted that the applicant had requested this item to be tabled until the next regular meeting and made motion to table this application accordingly – Seconded by M. Acosta – Unanimous Consent vote – all ayes – Final vote is three (3) in favor and none against – Motion carries.

Application tabled in accordance with motion and vote.

New Applications:

- [illegible]

James Capps – 1471 Hill Bridge Rd, Utica KY – Owner of property and desire variance to build a home but setbacks would only allow for a very narrow home.

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: No, I see no impact. It will blend in with the surroundings.

N. Burkhardt: I agree, it's a new build, so I see no problem with it that.

S. Baldwin: I cannot see – Lots were meant to be built upon, and you can't build upon a lot that's five feet, wide house. I think that one's met.

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

M. Acosta: No, I think it will complement this area nicely.

N. Burkhardt: I agree with that comment.

S. Baldwin: We have not heard no testimony that building a house similar to other houses in the area will adversely affect anything. I think that one is met.

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

M. Acosta: Yes, as you pointed out, it would only allow for a five-foot wide house.

N. Burkhardt: I agree with that comment.

S. Baldwin: As I've stated before, five-foot wide houses are not practical.

N. Burkhardt made motion to approve the application as submitted – Seconded by M. Acosta – Roll Call vote – all ayes – Final vote is three (3) in favor and none against – Motion carries.

Application approved in accordance with motion and vote.

2. **BZVD-23-5:** Eric Justice by Jim Pruett, Real Estate Agent – Variance from Development Standards for setbacks and lot size to make the lot buildable for a single-family residence. Request setbacks and lot size in accordance with approved plat.

Location: 240 S Indian Cave Rd

Zoned: Residential Agricultural (RA)

Jim Pruett – Explained how other lots in the area have been developed previously and asked that the home be allowed to be built per the approved plat rather than what is required per the zoning requirements from the Zoning Ordinance.

S. Baldwin further discussed the previous history of homes in the area and how there have been issues with the plat differed from the requirements of the Zoning Ordinance and asked for the attorney's input regarding past issues and how the current applicant's request may be impacted by this.

D. Sharpe replied that the applicant is proceeding with the current application and this is the correct process in order to proceed with their plans and that many of the homes and lots in that subdivision would likely need to go through this same process as well. As long as the variance is requested and approved for a home to be built per the plat rather than per the Zoning Ordinance requirements, then that would prevent any other legal action for a perspective home owner on one of those lots.

Further discussion among Board Members, Staff, and Mr. Pruett resolved that this issue would resolve the peculiarity aspect of the Findings of Facts and how this would impact other potential homes in the subdivision.

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: No, as we stated this will fit in with the rest of the neighborhood. There will be no issue with the general welfare.

N. Burkhardt: I agree, as we discussed, the plat versus RA.

S. Baldwin: As injurious, well, apparently this is going to lead to more houses being built that have been built in the whole subdivision since it began, so I guess that one's met.

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

M. Acosta: No, no adverse effect.

N. Burkhardt: I agree, I see no adverse effect.

S. Baldwin: We have heard no testimony from a realtor or anybody saying that it would, 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: Yes, as pointed out to meet and use a lot as it was intended in the original plat, the application of the Zoning Ordinance would impair that.

N. Burkhardt: I agree with that comment.

S. Baldwin: The basic practical difficulty is is that they would not be at all in conformity with the requirements of RA so, and that is certainly not their fault. That subdivision was laid out not following the requirements of RA.

N. Burkhardt made motion to approve the application as submitted – Seconded by M. Acosta – Roll Call vote – all ayes – Final vote is three (3) in favor and none against – Motion carries.

Application approved in accordance with motion and vote.

3. **BZCU-23-29:** Dugan Hollow Retreats, LLC – Conditional Use Permit for continuation of short-term rental business consisting of a historic log cabin and four suites.

Location: 1708 E Dugan Hollow Rd

Zoned: Hillside (HS)

Don Hawk – Current owner of the property, previously owned by Jim Macke. The property has a historic log cabin and some guest suites located on it which have been used for rentals and they desire to continue the use as the prior owners have. Mr. Hawk gave some additional background on their personal background and their intentions to eventually move to the areapreserve and protect the property as it is and to continue to be respectful of the area and the neighbors.

N. Burkhardt inquired if there would be a local manager on site until the Hawks move to the area to which Mr. Hawk confirmed they had multiple contractors already line up in case any issues arose and would be very reachable for those issues as well.

No additional questions from the Board. Floor opened for public comment.

Tony Waltz – Owns land to the east of them and is very supportive of their request.

Andrew Forrester – Representing Visit Madison and wanted to express that the Hawks have had discussions with them, and they have been spectacular tourism partners. They have been working with the neighbors and community and think that they are a great example of what we want and hope we'll see even more like this.

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

S. Baldwin noted that this would be per Section 11.71 of the Zoning Ordinance.

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, I do.

N. Burkhardt: Yes, as it was in the past.

S. Baldwin: I agree. This is the same thing that they approved in 2013 with the previous owner.

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: Sure, with the tourism goals and economic goals. Again, it's just a continuation of an existing operation.

N. Burkhardt: I agree with that comment.

S. Baldwin: I agree. They are continuing to use a very nice place to bring people here. I think that one's met.

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, absolutely.

N. Burkhardt: I agree, yes.

S. Baldwin: It is kind of like a State park over there and blends right in.

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

M. Acosta: I'd say not hazardous or disturbing. They have the rules in place for quietness and there have been no issues in the past since 2013.

N. Burkhardt: I agree they didn't have issues in the past and the current neighbors are agreeing with it.

S. Baldwin: It seems to me that enforcement of their comprehensive system of rules will obviate any problems with that one.

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: Yeah, everything is existing already.

N. Burkhardt: I agree.

S. Baldwin: They have public facilities. They have sewer there. The one part is served by a septic system that's had a long history of no problems brought up. I think 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: No, it's an existing operation. Nothing additional is being added.

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N. Burkhardt: I agree. It's no detriment and will increase the economic welfare.

S. Baldwin: If they operate like the past ten years, it should be a benefit to the economic welfare of this town.

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 don't think so. The operating rules they have address all those issues.

N. Burkhardt: I agree, they have a set of House Rules.

S. Baldwin: Excessive production of traffic and all these, well, there's been a ten-year history of the same use and no problems so I think that one is met.

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: Yes, I see no issue with traffic.

N. Burkhardt: I agree.

S. Baldwin: Once again, there's been a ten-year history of this kind of use and no known complaints.

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

M. Acosta: That's a known fact, that they are going to preserve that.

N. Burkhardt: I agree with that.

S. Baldwin: I think this use has demonstrated that it helps preserve these things and not harm them.

S. Baldwin made motion to approve the application as submitted for a one-year renewal term with the Condition that the submitted rules are adhered to – Seconded by M. Acosta – Roll Call vote – all ayes – Final vote is three (3) in favor and none against – Motion carries.

Application approved in accordance with motion and vote.

New/Old Business:

1. Russell N. Linville – Conditional Use Permit to operate an automobile repair business.

Location: 1801 Allen St

Zoned: Medium Density Residential (R-8)

One-Year Renewal

2. One Scientific, Inc – Conditional Use Permit for an engineering office and lab.

Location: 2715 Clifty Dr

Zoned: General Business (GB)

One-Year Renewal

3. Kimberly S Taylor for Jefferson County Transitional Services – Conditional Use Permit to house a maximum of ten (10) residents - nine (9) Transitional Services residents and one (1) manager. Transitional Services rules to be maintained.

Location: 309 St Michaels Ave / 515 E Second St

Zoned: Historic District Residential (HDR)

One-Year Renewal

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S. Baldwin noted that Past Due Renewal #1 had paid and, in accordance with original motion, was thereby renewed.

S. Baldwin noted that Past Due Renewal #2 had not paid their renewal fees and made motion that the Attorney send them a letter notifying the applicant that their renewal had expired and would need to be reapplied for unless the renewal fees were paid for by the next meeting and that Staff attempt to make contact with the applicant to determine if the business was still in operation – Seconded by M. Acosta – Roll Call vote – all ayes – Final vote is three (3) in favor and none against – Motion carries.

Past Due Renewal #2 conditionally expired in accordance with motion and vote.

S. Baldwin noted that Past Due Renewal #3 had not paid their renewal fees and made motion that the Attorney send them a letter notifying the applicant that their renewal had expired and would need to be reapplied for unless the renewal fees were paid for by the next meeting – Seconded by M. Acosta – Roll Call vote – all ayes – Final vote is three (3) in favor and none against – Motion carries.

Past Due Renewal #3 conditionally expired in accordance with motion and vote.

No further business brought before the board.

M. Acosta made motion to adjourn – Seconded by S. Baldwin – Unanimous Consent vote – Final vote is three (3) in favor and none against – Motion carries.

Meeting adjourned at 6:38pm in accordance with motion and vote.

BY ORDER OF THE CITY OF MADISON BOARD OF ZONING APPEALS

Scott Baldwin, Chairman

Joe Patterson, Secretary/Associate Planner