

May 13, 2024

The City of Madison Board of Zoning Appeals held a regular meeting on Monday, May 13, 2024, at 6:30 p.m. in City Hall. Scott Baldwin presided over the meeting with the following additional Board Members present: Mark Acosta, Nancy Burkhardt, Karl Eaglin, and Rick Farris. Also present: Devon Sharpe, Attorney; Ray Dibaya, Secretary/Associate Planner, and Nicole Schell, Director of Planning.

S. Baldwin noted that on page 2382, his comment when discussing the Findings of Fact was not recorded. No other corrections noted. S. Baldwin made a motion to approve the minutes as corrected – seconded by N. Burkhardt – Unanimous Consent Vote – all ayes – Final vote is five (5) in favor and none against – Motion carries.

- Prickett Properties, LLC – Conditional Use Permit for retail golf cart sales. Business open by appointment only; Heritage Trail building or property shall not be blocked.  
Location: 110 Cragmont St  
Zoned: Heavy Manufacturing (M-2)  
One-Year Renewal
- Jason J. Pattison– Conditional Use Permit for an in-home part-time law office.  
Location: 312 Vine St  
Zoned: Historic District Residential (HDR)  
One-Year Renewal
- Patricia Danda– Conditional Use Permit for in-home acupuncture practice.  
Location: 132 East St  
Zoned: Historic District Residential (HDR)  
One-Year Renewal
- Indiana Apartment Holdings, LLC– Conditional Use Permit for an apartment complex.  
Location: 2219, 2223, 2225, 2227, & 2213 Michigan Rd  
Zoned: Medium Density Residential (R-8)  
One-Year Renewal
- Riverside Tower, LP– Conditional Use Permit for a 50-unit multifamily complex dedicated to senior tenants.  
Location: 1001 W Second St  
Zoned: Historic District Residential (HDR)  
Two-Year Renewal
- Gene Armel (GTG Investments, LLC)– Conditional Use Permit for a mobile home.  
Location: 3680 W Long Way  
Zoned: Residential Agriculture (RA)  
One-Year Renewal
- Dugan Hollow Retreats – Conditional Use Permit for utilizing property for guest suites and cottages.  
Location: 1708 E Dugan Hollow Rd  
Zoned: Hillside (HS)

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One-Year Renewal

S. Baldwin noted that Renewals #1, #2, #3, #5, #6 and #7 had been paid but renewal #4 had not. S. Baldwin made the motion that the renewals that had been paid be approved – seconded by M. Acosta – Unanimous Consent Vote – Final vote is five (5) in favor and none against – Motion carries. S. Baldwin made the motion that a letter be sent by the Attorney to Indiana Apartment Holdings, LLC notifying them that their renewal fees had not been paid and the Conditional Use is therefore expired but will be renewed if paid before the next meeting.

***Renewals #1, #2, #3, #5, #6 and #7 were renewed in accordance with the motion and vote. Renewal #4 is conditionally renewed in accordance with the motion and vote.***

Tabled Applications:

1. **BZCU-24-4:** Tirrie Jenkins/Legacy of Hope – Conditional Use Permit for a Rooming and Boarding House to provide housing to individuals and families seeking immediate housing who are agreeable to sharing the housing space.

Location: 524 Jefferson St

Zoned: Historic District Residential (HDR)

S. Baldwin stated the application has been withdrawn.

New Applications:

1. **BZVU-24-2:** Bob Vonch – Variance of Use to allow a dwelling unit in open space.

Location: 407 E Vaughn Dr

Zoned: Open Space (OS)

Bo Turner – 1627 Fisher Ridge Road – With B&R Construction stated that they're requesting to add above the existing footprint of the building. He then elaborated on some of the work they were planning to do on the site.

S. Baldwin questioned the staff as to when the last flood that affected the property occurred, to which N. Schell responded that she's unsure as she wasn't employed by the City of Madison at that time, but that Mayor Bob Courtney may know the answer. N. Schell then stated that she knows that Vaughn Drive was underwater in 2017, but she was unsure if this property was affected.

B. Turner stated that the addition would be above the flood line as it is a second story building.

S. Baldwin noted that they're in an open space and a floodplain. He then asked the Board members if they had any questions or comments.

K. Eaglin questioned the applicant over whether the property was going to remain a rental or if they planned on selling it.

Bob Vonch – 1679 N Old SR 62 – The applicant, approached the podium and stated that he and his wife plan on residing upstairs, which is why they plan on making the property bigger. He added that the foundation was new and solid, and that everything was already established, they'd just like to add above the structure.

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S. Baldwin questioned B. Vonch over what exactly they'd be renting out, to which B. Vonch responded that they occasionally rent out the downstairs portion of the home. He mentioned that they sometimes rented it out during events such as the Regatta, or if friends visited during the holidays.

S. Baldwin asked B. Vonch if the property was their primary residence, to which B. Vonch stated that they primarily reside in 1679 N Old SR 62, but that they occasionally spend weekends at 407 E Vaughn Dr. He added that they sometimes spend days during the week there as well.

S. Baldwin then asked B. Vonch if the addition would be for their use or for the rental, to which B. Vonch responded that it'd be for their use.

S. Baldwin then asked the Board members if they had any questions or comments.

M. Acosta asked the staff if the variance of use was to allow the structure to remain as it is. N. Schell responded that that was correct and added that the property is currently a dwelling unit and has been for a while, but because B. Vonch wants to add an addition to it, he needs a building permit, so they must bring the use into conformance for a building permit approval.

S. Baldwin noted that the property is open space, and that there is no provision in open space for any kind of residence, although some residences have been in that area for some time.

N. Burkhardt questioned B. Vonch over how long he owned the property and how long he's allowed people to stay on the premises. B. Vonch responded that he's owned the property for some time and that people have stayed downstairs on the premises since he's owned it. He also stated that the upstairs had always been reserved for only their use. N. Burkhardt noted that other properties around the area are permanently inhabited by residents, so she doesn't see an issue with B. Vonch's request.

S. Baldwin asked the Board members if they had any further questions or comments and then asked the audience if they would like to speak for or against this proposed variance of use.

S. Baldwin then stated that he had a few concerns. He noted that during his 7-year tenure on the Board that they've had several applicants that have tried to utilize Open Space for uses such as camping, amongst other uses. He also noted that they've approved conditional use permits with considerable restrictions because Open Space in Madison is considered special. He stated that variance of use approvals are typically only granted in special cases where damage has affected the property. He stated that in this instance, no damage has affected the home and it's merely a desire by the applicant to increase the size of the property, and that the zoning ordinance is clear on guidelines for Open Space. S. Baldwin stated that the ordinance, in section ten (10) permits nonconformities to continue until they're removed but doesn't encourage their survival. Further, he added, it states in section ten (10) in the ordinance that a nonconforming use of a structure, a non-conforming use of land, or a non-conforming use of a structure and land shall not be extended or enlarged after passage of this ordinance (the ordinance was passed in 2016). He further stated that section 10.60 in the ordinance states that if no structural alterations are made, any nonconforming use may be changed to another nonconforming use, equally or more appropriate. He added that in his view, the ordinance is clear about nonconforming uses, there are to be no additions and no enlargements. He also added that the property is not a primary residence, no damage has affected the property, and it's in the flood plain, which the federal government has strict rules for. He stated that he doesn't believe that the applicant faces an onerous cost for not having an addition to his

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occasional place of residence nor does the applicant face an unnecessary hardship in this instance. He mentioned the precedent that may be set with this application, which could lead to other residents in Open Space wanting to add additions to their homes. He then mentioned that in the past the Board has protected Open Space by the river because of its significance.

K. Eaglin stated he doesn't see how the addition would hamper the view of anything on the riverfront. He stated that the way the addition would sit on the structure, it would place it further away from Long Drive and the scenic view of the river. He also added that the addition would make B. Vonch and his family's getaways on the property more comfortable.

S. Baldwin then asked the audience and Board members if they had any further questions or comments.

R. Farris stated that he believes the ordinance's language is very clear and that this is not an acceptable reason to grant a variance.

S. Baldwin noted that the legislative body in Madison passed the ordinance with restrictions on what property owners could do in each zoning district. He added that section seven (7) in the ordinance prohibited residences in Open Space with the exception of homes that were already present when the ordinance was adopted. He then stated that due to his experience with judicial review, he finds that courts tend to go with the plain language of written documents. He then asked D. Sharpe if he had anything to add.

D. Sharpe stated that, much like the rest of the ordinance, if the option allows for it -- such as a variance of use -- if the Board wishes to approve, he doesn't see an issue with it. He also added that the use has been that way for a while already.

N. Burkhardt asked B. Vonch what the upstairs portion of the property consisted of. B. Vonch responded that they have a kitchen, bathroom, and an area for their bed. B. Vonch then discussed how an addition would allow them to expand the space for their bedroom.

K. Eaglin asked B. Vonch about the foundation and the existing footprint, which B. Vonch reiterated would not change. He also added that the foundation is strong, and that the property was underwater in the 1960s, yet it still stands today.

M. Acosta asked N. Schell for clarification on the vote, which she confirmed was a vote on whether B. Vonch could use the property as a dwelling unit. She added that he's already been before the Historic Board for the addition and that he'll have to follow all floodplain regulations.

K. Eaglin asked N. Schell if they were only voting on approval of 407 E Vaughn, which N. Schell responded was correct.

S. Baldwin then asked N. Schell for clarification for the variance of use approval, and why it was necessary in order for B. Vonch to receive a building permit. N. Schell responded that the variance would bring the property into conformance with the ordinance, which would then allow B. Vonch to file a building permit application for the second story addition. S. Baldwin then asked why other residences near Vaughn Drive haven't submitted variance of use applications, to which N. Schell responded that they haven't made any modifications to their property, but if they wanted to, they'd have to go through the same process.

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S. Baldwin then presented the Findings of Fact and instructed Board members to explain their reasoning for or against the approval and noted that three (3) yes votes were needed to pass a favorable motion and three (3) no votes were needed to pass an unfavorable motion.

Findings of Fact

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

R. Farris: No, I don't think approval of the application will be injurious to any of those things.

M. Acosta: I agree, I don't see this having any impact on anything.

N. Burkhardt: No, I see no impact on those issues.

K. Eaglin: No impact, and we're using the same foundation for this addition.

S. Baldwin: Injurious to the public health, safety, morals... I don't 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 substantially adverse manner.*

R. Farris: No, I don't think approval of the application will have an adverse effect on the adjacent properties.

M. Acosta: Yeah, I see no impact to the adjacent properties.

N. Burkhardt: I see no impact as that building's been used in that capacity for a while already.

K. Eaglin: No impact at all to that area.

S. Baldwin: On one side I believe there's a parking lot, so obviously it's not going to harm that. The other side is, I believe a dwelling unit that's been there forever. I think that one's met too.

3. *The need for the variance arises from some condition peculiar to the property involved. And what is it?*

R. Farris: In my mind we're trying to use a grandfather condition to skirt the written ordinance that excludes this particular use, and I personally can't get there. I don't believe there's any peculiar condition to this property that would warrant approving this variance.

M. Acosta: I tend to agree with Mr. Farris, It's difficult to identify a peculiar condition to that property. I do see a peculiar occurrence along Vine Drive with a number of homes and buildings that are in the same condition in the floodplain, in the open spaces, different things. So, it might be considered peculiar in the sense that there are other like buildings in that area.

N. Burkhardt: I find the peculiarity that it has been used for that for quite a while, and I think we just need to bring it into conforming uses. The neighbors are in that same situation, they just haven't had to come for this conforming use. But the situation's been there, and it's been used in that capacity. And I don't see a problem with it.

K. Eaglin: I don't see a problem with it either because the variance, like I said before, is just for 407 E Vaughn. They used it for that, now just going to be just some more space for them to use in their own private weekends and use, and a little more comfortable for the folks.

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S. Baldwin: Obviously, the peculiarity is the fact that that's open space which does not allow any kind of residential, however, the building has been there for ages and so the building is caught in this problem that arises with our zoning ordinance that modern day uses have changed, but the building was already there. There definitely is a peculiar condition involved here.

4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.*

S. Baldwin: So, what is the unnecessary hardship which would fit in with the whole business of having to make a variance of use? Mr. Farris?

R. Farris: I'm going back to the ordinance as it's written, this is not their permanent residence, and I don't believe that there is an unnecessary hardship here.

M. Acosta: I'm going to have to agree with Mr. Farris to the ordinance as written. And the conditions that he mentioned, I don't see an unnecessary hardship as it exists today given the use.

N. Burkhardt: I see the unnecessary hardship as they wouldn't be able to use the property as they have for so long in the past. When they bought the property, they were using it as a residence and they've used it for that many years and now, all of a sudden, they can't use that? I find that a hardship.

K. Eaglin: I agree, I think by restricting this we're causing the owners a hardship. I mean, all they want is just some comfortable space built out of the site of anything that is in view of the river. I just think the hardship would be on the folks if we don't approve this.

S. Baldwin: In my view, is it an unnecessary hardship that a sort of a getaway enjoyment property which is not a primary residence that's not been damaged by fire or flood or whatever, is that an unnecessary hardship that outweighs the very plain language of the zoning ordinance? In my view I don't think that one's met.

5. *The approval does not interfere substantially with Madison's comprehensive plan.*

R. Farris: I think it does interfere with the comprehensive plan. The Comprehensive Plan is very clear on having green space on Vaughn Drive.

M. Acosta: I don't see it interfering as it already exists on a footprint as is. I don't see that interfering with the green space area. There'd be no green space gained or lost through this application.

N. Burkhardt: I agree, I don't see it interfering, because if they're not able to use it as a residence, then are you just going to have an empty building there? And I don't think that's what the comprehensive plan outlines.

K. Eaglin: I see no interference with green space or anything else that has to do with Heritage Walk or the view of the river. I think it should be allowed.

S. Baldwin: The comprehensive plan is -- well it's both that large document that was written a few years ago -- but it's also section seven (7), which outlines the uses allowed in each various zoning district and the various parts of section ten (10) indicate that the zoning ordinance does not want non-conforming uses to be enlarged upon, although it certainly does allow for their continued use. And as far as a weekend getaway enjoyment type house--I don't think the issue here--in my mind-- is not that they wouldn't be able to use it, it's just with an addition, sure it'd be a better

K. Eaglin made the motion to approve the application as submitted – Seconded by N. Burkhardt – Roll Call vote – Final vote is three (3) in favor and two (2) against – Motion carries.

Ray Dibaya, Secretary/Associate Planner