

**CITY OF MADISON
INTER-DEPARTMENTAL
CORRESPONDENCE**

TO: Madison Plan Commission

FROM: Bradley J. Murphy, Planning Unit Director
Michael Waidelich, Principal Planner
Bill Roberts, Planner IV

DATE: February 2, 2006

SUBJECT: Proposed Amendment to the Zoning Code to Allow Certain Lodging Houses as Conditional Uses in the R3, R4, R4A, and R4L Districts

The proposed amendment to the Zoning Code was introduced by Ald. Judy Olson (District 6) at the request of the Madison Community Co-op. The amendment would allow lodging houses as a conditional use in the R3, R4, R4A and R4L zoning districts if they are owned and organized as qualifying nonstock corporations, partnerships or housing cooperatives as defined in the Zoning Code. The Zoning Code [Section 28.03(2)] defines a "lodging house" as follows:

"A lodging house is a residential building or a portion thereof, containing lodging rooms which accommodate five or more persons who are not members of the keeper's family. Lodging or meals or both are provided for compensation on a monthly or longer basis."

Lodging houses are listed as permitted uses in the R5 and R6 General Residence Districts, regardless of ownership. This proposal would expand the locations where lodging houses could be allowed as a conditional use to include the R3, R4, R4A, and R4L Districts, but only if owned by a qualifying nonstock corporation, partnership or housing cooperative.

Lodging Houses and the Family Definition

The issue of allowing lodging houses in additional zoning districts is primarily a land use issue and should not be confused with issues related to the Zoning Code's "family" definition, although the effects of that definition are relevant to the analysis. The Zoning Code definition of "family" [Section 28.03(2)1.] is:

1. "A family is an individual, or two or more persons related by blood, marriage or legal adoption, living together as a single housekeeping unit in a dwelling unit, including foster children, and not more than four (4) roomers, except that the term "family" shall not in R1, R2, R2S, R2T, R2Y, R2Z, R3, R4A and R4L residence districts, include more than one roomer except where such dwelling is owner-occupied. [emphasis added] In any residence district, a family may consist of two unrelated adults and the minor children of each. Such a family may not include any roomers except where the dwelling unit is

owner-occupied. For the purposes of this section, "children" means natural children, grandchildren, legally adopted children, stepchildren, foster children, or a ward as determined in a legal guardianship proceeding. Up to two (2) personal attendants who provide services for a family members or roomers who, because of advanced age or a physical or mental disability, need assistance with activities of daily living shall be considered part of the "family." Such services may include personal care, housekeeping, meal preparation, laundry or companionship."

For purposes of the definition of a "family," the Zoning Code [Section 28.03(2)2.b.] also provides that an "owner-occupied dwelling unit" shall include certain units where owner-occupants hold less than a 100% interest in the fee simple, including circumstances "where 100% interest in the fee simple is held by the following:

- i. a nonstock corporation which has been organized under Chapter 181 of the Wisconsin Statutes and which has qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, or by a partnership in which such nonstock corporation is the sole general partner, and the unit is leased to or managed by a housing cooperative which has been organized under Chapter 185 of the Wisconsin Statutes to manage and control cooperative residential real estate provided, however, that all residents of the dwelling unit are members of the corporation and of the cooperative; or
- ii. a housing cooperative which has been organized under Chapter 185 of the Wisconsin Statutes to manage and control cooperative residential real estate, and which has qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, provided that all residents of the dwelling unit are members of the cooperative; or
- iii. a housing cooperative which has been organized under Chapter 185 of the Wisconsin Statutes to manage and control cooperative residential real estate provided, however, that all members of the cooperative are residents of the dwelling unit."

This provision applies to the R3, R4A and R4L zoning districts and allows dwelling units in these districts owned by qualifying nonstock corporations, partnerships or housing cooperatives to be occupied by up to five unrelated individuals, similar to what is allowed in the R4, R5 and R6 General Residence Districts. However, Section 28.03(2)2.d. specifies that in the R3, R4A and R4L residence districts, dwelling units owned and occupied as provided in Section 28.03(2)2.b.i, ii. or iii. shall be allowed only as conditional uses. Section 28.03(2)2.c. specifies that in the R1, R2, R2S, R2T, R2Y or R2Z residence districts, dwelling units owned and occupied as provided in Section 28.03(2)2.b.i, ii. or iii. shall be prohibited.

The current ordinance recognizes qualifying nonstock corporations, partnerships or housing cooperatives as an alternative ownership form that should be able to have more than one unrelated "roomer" in the R3, R4A and R4L Districts, as is allowed under more-common forms of owner-occupancy. The proposed ordinance change would go beyond this to allow essentially a different use in these zoning districts---specifically a lodging house with no limit on the number of roomers. Issues to be considered in evaluating the proposed amendment include: is a lodging house an appropriate use, compatible with the purposes of these zoning districts and the

neighborhoods where these districts are found; and, does ownership by a qualifying nonstock corporation, partnership, or housing cooperative have a meaningful bearing on the appropriateness of allowing the lodging house use in these districts?

Zoning District Statements of Purpose and General Characteristics

R3 Single-Family and Two-Family Residence District

28.08(4)(a) “Statement of Purpose. The R3 single-family and two-family residence district is established to stabilize and protect the essential characteristics of certain low density residential areas normally located in outlying urban parts of the City, and to promote and encourage a suitable environment for family life where children are members of most families. Development in the R3 single-family and two family district is primarily limited to single-family and two-family dwellings, low density multiple-family dwellings in planned residential developments, and certain community and recreational facilities to serve residents of the district.”

The R3 Single-Family and Two-Family Residence District allows all of the uses allowed in the R1 and R2 Single-Family Residence Districts, two-family dwellings (duplexes) and community living arrangements of not more than 15 persons, as well as nursery schools (day care), schools, parks, libraries and similar public facilities, along with defined accessory uses and specialized situations covered by the Zoning Code. (copy of section of the Zoning Code attached.) The R3 District is primarily intended for lower-density single-family and two-family residential uses. In practice, most R3-zoned areas consist mostly of two-family housing types, except in parts of a few older neighborhoods where R3 District zoning was applied to a more mixed housing situation in order to effectively prevent continued conversion of single-family houses to multiple-unit dwellings. As noted above, the family definition limits the occupancy of units in the R3 District and distinguishes between owner-occupied and non-owner occupied housing units.

R4 General Residence District

28.08(5)(a) “Statement of Purpose. The R4 general residence district is established to stabilize and protect the essential characteristics of certain medium density residential areas normally located in the outlying as well as some inlying urban parts of the City, and to promote and encourage a suitable environment for family life where children are members of most families. Development in the R4 general residence district is primarily limited to certain residential and institutional uses, such as single-family, two-family and multiple-family dwellings, and convalescent homes and certain community and recreational facilities to serve residents of the district.

The R4 General Residence District allows all of the uses in the R3 District, as well as multi-family dwellings, clubs and lodges, convalescent and nursing homes, hospitals, planned residential developments for the elderly on large lots, mission houses (not within a church), certain offices for non-profit community service organizations, and similar uses. (copy of section of the Zoning Code attached). Most of the additional uses are allowed only under specified conditions and/or when approved as conditional uses.

R4A Limited General Residence District

28.08(11)(a) “Statement of Purpose. The R4A limited general residence district is established to stabilize and protect the essential characteristics of certain medium density residential areas normally located in some inlying urban parts of the City, and to promote and encourage a suitable environment for family life where children are members of most families. Development in the R4A limited general residence district is primarily limited to certain residential uses such as single-family, two-family and multiple family dwellings.”

The R4A Limited General Residence District also allows all of the uses in the R3 District, as well as multi-family dwellings, but differs from the R4 District in not including many of the non-residential and institutional uses that are allowed in R4-zoned areas, such as clubs and lodges, convalescent and nursing homes, hospitals, large planned residential developments for the elderly, community service offices and mission houses. The R4A District was specifically created to stabilize certain older neighborhoods and preserve them as primarily residential areas. As in the R3 District, the family definition limits the number of roomers in non-owner-occupied housing, and is intended to discourage absentee owned housing rented to large groups of unrelated occupants.

R4L Limited General Residence District

The Statement of Purpose for the R4L Limited General Residence District is identical to that for the R4A District, and there are only minor differences from the R4A District allowed uses--- primarily the exclusion of certain uses related to parking lots and the reuse of existing school buildings owned by the Madison Metropolitan School District. The reasons for creating the separate R4L zoning district are unknown to current staff, but presumably were related to specific characteristics applicable to the single property mapped to this district. For purposes of this analysis, the R4L District is considered essentially identical to the R4A District.

Outside of a few older neighborhoods, areas zoned R4 usually are planned for, and predominantly consist of, relatively higher-density multi-family apartment and condominium buildings and complexes. However, in many older neighborhoods, large areas predominantly comprised of houses on individual lots are also zoned R4, R4A or R4L for historical reasons primarily reflecting existing relatively small lot sizes (smaller than the area required for new single-family or duplex lots until recently), or reflecting an existing mixture of single-family dwellings with two and three-flat structures---including past conversions of single-family houses to multi-family use. In many cases, these neighborhoods are not planned for, and do not support, further conversions of existing single-family housing to multi-family use or replacement of the existing housing stock with new multi-family buildings.

Analysis

R4 District

In R4-zoned areas planned for development as multi-family development areas, staff believe that the amendment to allow lodging houses owned by qualifying nonstock corporations, partnerships or housing cooperatives as a conditional use would be generally compatible with the purposes of

the district, and with the other permitted and conditional uses allowed in the district. In many cases, R4 Districts are predominantly characterized by relatively large multi-family buildings, and there is little reason to expect that even a large lodging house would not usually be an appropriate use that would fit-in with the surrounding uses.

However, in some R4-zoned areas, siting a lodging house with no limit on the number of roomers could be a problem. As noted above, in several older neighborhoods, large areas consisting primarily of single-family housing are currently zoned R4, and it is not generally intended to promote conversion or replacement of this housing with more intensive uses. For example, at many locations, converting a large older two-flat into a lodging house for 16 roomers would not be considered consistent with neighborhood objectives. The Zoning Code also requires one off-street parking space for each lodging room, and at some locations the parking requirement for lodging houses with large numbers of rooms could create additional negative impacts on the neighborhood.

Staff recognizes that there may be specific situations where an existing large dwelling would be suitable for more than five unrelated occupants, and the unit could be more fully utilized if the number of allowed roomers was increased. However, as defined in the Zoning Code, there is no limit on the number of roomers that can be in a lodging house. Staff would be more comfortable with the proposed ordinance revision (as it applies to the R4 District) if it were revised to provide some increase in the allowed occupancy of units owned by qualifying nonstock corporations, partnerships or housing cooperatives (perhaps as a conditional use), but retained a limit on the maximum number of roomers allowed. Additional study would be required to determine the appropriate basis for determining this number. In any case, if the ordinance is amended to allow certain lodging houses owned by specified entities as a conditional use, the review of any proposed lodging house should include careful consideration of the appropriateness of the site and the compatibility of the use with the particular building, surrounding neighborhood character and the recommendations of applicable plans.

R4A and R4L Districts

In general, areas zoned R4A and R4L (a single property) are physically very similar to many older R4-zoned neighborhoods. In fact, two-unit, three-unit, and smaller multi-family structures scattered within the existing housing mix may be more characteristic of some R4A areas than many older areas zoned R4; and the R4A District actually allows a slightly higher density (by not varying the lot area requirement based on the number of bedrooms in the unit). However, the more restrictive family definition limiting the number of roomers in non-owner-occupied housing was specifically applied to the R4A District because of concern that the housing in these neighborhoods was being converted to absentee-owned rental properties occupied by large groups of unrelated individuals (including University students).

Housing owned by qualifying nonstock corporations, partnerships and housing cooperatives is already considered to be owner-occupied under the family definition and can have up to five unrelated individuals in a unit. But because the family definition provisions of the R4A and R4L Districts specifically reflect a concern with tenure and occupancy, staff feels that the amendment to allow lodging houses with more than five unrelated occupants may be inconsistent with the intent of these zoning districts, which exist only in portions of older residential neighborhoods seeking to discourage further conversion of owner-occupied family housing to high-occupancy

rental units. As in the R4 District, staff might be less concerned if the increase in the allowed number of roomers were more limited and more clearly related to the characteristics of the specific dwelling unit.

R3 District

The R3 District supports low-density residential uses primarily consisting of single-family and two-family dwellings, and staff feel that lodging houses are not consistent with the purposes of the district, regardless of how they are owned and managed. Units owned by qualifying nonstock corporations, partnerships or housing cooperatives are already considered to be owner-occupied, and a family in these units may include up to four roomers under the existing Zoning Code. This number of roomers (which allows for up to five unrelated individuals in a dwelling unit) is appropriate to the housing stock that predominates in most R3 districts and should be sufficient to provide opportunities for housing owned and managed by these types of organizations. Allowing lodging houses with no limit on the number of occupants (other than Building Code requirements) appears unnecessary and incompatible with the purposes of this relatively low-density zoning district.

Conclusion and Recommendation

Staff do not support the proposed amendment of the zoning ordinance to allow lodging houses owned by qualifying nonstock corporations, partnerships or housing cooperatives as a conditional use in the R3 Single-Family and Two-Family Residence District because lodging houses with no limit on the number of occupants would be incompatible with the purposes of the zoning district and the general character of the housing stock in most R3-zoned areas. Rooming houses with five or fewer unrelated individuals are already allowed under the current ordinance if owned by these same types of organization.

Staff could support allowing lodging houses owned by qualifying nonstock corporations, partnerships or housing cooperatives as a conditional use in the R4 General Residence District, provided that adequate consideration is given in the review to the appropriateness of the proposed use as it relates to the specific site, the character of the building and the surrounding uses, and the recommendations of applicable neighborhood or other adopted plans. Staff's particular concern is with introducing large lodging houses into "overzoned" neighborhoods characterized primarily by single-family and other small-scale housing that would generally not be considered ideal locations for lodging houses with large numbers of occupants. The requirement that lodging houses be owned by a qualifying nonstock corporation, partnership or housing cooperative would effectively limit the potential number of these uses that might be proposed, and the conditional use process would allow for neighborhood input and staff review to help evaluate whether or not a specific site is a good location for the proposed lodging house, and whether the specific proposal meets the standards for conditional use approval.

Staff do not support allowing lodging houses with no limit on the number of roomers in the R4A and R4L Limited General Residence Districts. Although generally similar in many ways to the R4 District, the R4A and R4L Districts are virtually all located in older neighborhoods where there has been a desire to discourage continued conversion of the existing housing stock to higher-occupancy uses.

As noted in the analysis section, staff would be more comfortable with increasing the allowed number of roomers in the R4 districts (R4, R4A and R4L) if the ordinance revisions retained some limit on the maximum number of occupants and related this number to the characteristics of the specific unit.

Staff recommend that a substitute ordinance be prepared that would amend the Zoning Code to allow lodging houses owned by qualifying nonstock corporations, partnerships or housing cooperatives as a conditional use in the R4 District, but not in the R3, R4A or R4L Districts. Staff recommends that the Plan Commission recommendation specifically note the intent that any such lodging house uses be approved only at locations where the proposed use and occupancy is compatible with the characteristics of the site and the building, the surrounding neighborhood and the recommendations of applicable plans.

As an alternative, if the Plan Commission is interested in allowing this type of lodging house in the R4A and R4L districts, staff recommend that the ordinance be referred and that additional work occur to further limit the maximum number of occupants allowed.

ZONING

R3 R4 R4A R4L

