

Appeal of Conditional Use Requirement for Single-Family Dwelling in Traditional Shopping Street (TSS) Zoning District

FEBRUARY 20, 2025

ZONING BOARD OF APPEALS

Change in Use Proposed

Building permit application received to remodel building and change use

Existing two-family dwelling – two unit proposed to become a single-family detached dwelling

(a) A zoning certificate is required before any permit relating to the use of land, buildings or structures is issued by any officer, department or employee of the City.

(e) No change in use shall be made until a zoning certificate has been issued by the Zoning Administrator.

(MGO 28.202 (3)(a) and (e))

Single Family Houses in Mixed Use Districts

	LMX	NMX	TSS	MXC	CC-T	CC	RMX	THV	Supplemental Regulations Sec. 28.151
Residential - Family Living									
Single-family detached dwellings		P/C	P/C		P/C				Y

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Mixed-Use and Commercial District Uses

(1) Table 28D-2 lists all permitted and conditional uses in the mixed-use and commercial districts.

(a) "P" means permitted in the districts where designated.

(b) "C" means allowed as conditional uses in the districts where designated, in compliance with all applicable standards.

(c) Uses indicated as "P/C" means permitted or conditional, depending on specific requirements in Supplemental Regulations, Sec. 28.151.

(d) "Y" means that there are specific requirements in Sec. 28.151 associated with a use.

MGO 28.061 (1)(a-d)

Supplemental Regulation

Single-Family Detached Dwelling. In the NMX, TSS, and CC-T Districts, single family detached dwellings constructed after the effective date of this ordinance require conditional use approval.

(MGO 28.151)

“Constructed”

Not defined in the zoning code

Construction is a broad term that we have generally considered to be all encompassing

Often additional words added in the code to be more clearly all encompassing (alter, modify, erect, remodel, add, enlarge, etc.)

Other times used more specifically with the word “new” or “newly”

Examples of “Constructed” and “Construction”

Accessory Dwelling Unit in Districts.

(j) For accessory dwelling units **constructed within the principal building**, the appearance or character of the principal building shall not be significantly altered so that its appearance is no longer that of a single-family dwelling. (28.151 (j))

(3) HIST-MH Mansion Hill Historic District. The HIST-MH suffix applies to all zoning lots located within the Mansion Hill Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be **constructed**, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Chapter 41 and the specific provisions of Sec. 41.22, in addition to the applicable requirements of the Zoning Code. (28.146 (3))

Examples of “Constructed” and “Construction”

(2) New Construction and Substantial Modification of Facilities and Support Structures.

(a) An application for a permit to engage in the siting or **construction of a new** mobile service support structure and facilities or to engage in a Class 1 collocation shall be submitted in writing to the Building Inspection Division and shall contain the following:

1. The name and business address of, and the contact individual for, the applicant.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.
4. If the application is to substantially modify an existing support structure, a construction plan...
5. If the application is to **construct a new** mobile service support structure, a construction plan...
6. If an application is to **construct a new** mobile service support structure...

(MGO 28.143 (2))

Examples of “Constructed” and “Construction”

(3) Attached Garage Setback. In **new buildings constructed after the effective date of this code** in order to avoid the monotonous and pedestrian-unfriendly appearance of facades dominated by garage doors, any street-facing wall that contains an attached garage door... (MGO 28.031 (3))

Reuse of Former School, Municipal Buildings or Places of Worship.

(a) Buildings **originally constructed** for use as public schools, municipal buildings, or places of worship in residential and special districts may be adapted for the following uses... (28.151)

Traditional Shopping Street (TSS) District

(1) Statement of Purpose.

The TSS District is established to encourage and sustain the viability of Madison's mixed-use corridors, which sustain many of the City's traditional neighborhoods. The district is also intended to:

- (a) Encourage pedestrian, bicycle and transit use as a means of accessing and moving through these corridors.
- (b) Encourage diversification of uses, including residential, commercial, and civic uses, in order to enhance the vitality and appeal of these areas.
- (c) Maintain the viability of existing residential buildings located within or adjacent to these corridors.
- (d) Encourage appropriate transitions between higher-intensity uses within TSS districts and adjacent lower-density residential districts.
- (e) Facilitate preservation, development or redevelopment consistent with the adopted goals, objectives, policies, and recommendations of the Comprehensive Plan and of adopted neighborhood, corridor or special area plans.

(MGO 28.065)

Traditional Shopping Street (TSS) District

(1) Statement of Purpose.

The TSS District is established to **encourage and sustain the viability of Madison's mixed-use corridors**, which sustain many of the City's traditional neighborhoods. The district is also intended to: ...

- (b) **Encourage diversification of uses, including residential, commercial, and civic uses**, in order to enhance the vitality and appeal of these areas.
- (c) **Maintain the viability of existing residential buildings located within** or adjacent to **these corridors**.

(MGO 28.065)

Why Not Make All Single-Family Permitted Uses?

“Encourage and sustain the viability of Madison's mixed-use corridors”

Could be counter to the statement of purpose of the district to be approving additional single-family uses in the district without more nuanced consideration

Why Not Make All Single-Family **Conditional** Uses?

“Maintain the viability of existing residential buildings located within... these corridors”

Would be an additional requirement for buildings built as or currently used as single-family houses

Why Not Make All Single-Family **Not Allowed** Uses?

“Encourage diversification of uses, including residential, commercial, and civic uses”

“Maintain the viability of existing residential buildings located within... these corridors”

Making an existing use a nonconforming use can make it difficult to obtain financing for a property – to purchase the property, to finance repairs, etc.

Policymakers have generally wanted to avoid creating nonconforming uses

Could be appropriate in the district in some cases

Code Intent

Single-Family Detached Dwelling. In the NMX, TSS, and CC-T Districts, single family detached dwellings constructed after the effective date of this ordinance require conditional use approval.

(MGO 28.151)

Changing to a single-family house use will involve construction

Seems that the intent was to not to make existing single-family houses nonconforming uses and allow buildings originally built as single-family houses to be permitted uses

And to not to allow more single-family houses in these mixed-use districts without consideration from the Plan Commission

Conditional Uses – Statement of Purpose

This Chapter divides the City into districts where the design, use, bulk and location of buildings and structures are compatible. However, some uses, and in some cases, design, bulk, and building location, have unique characteristics, and therefore cannot be properly allowed as unrestricted permitted uses. The City requires consideration, in each case, of their impact on neighboring land or public facilities, and of the public need for the particular use at a particular location.

These uses may be necessary or desirable in a particular district if sufficient consideration is given to their location, development and operation.

(MGO 28.183 (1))



Impact if “Constructed” is Interpreted to Mean *Only* Newly Constructed

Mixed-use buildings, permitted use non-residential uses, and missing middle housing could be changed into single family dwellings without any consideration from the Plan Commission

Seems contrary to the intent of the district

Two Questions – Single-Family Detached Dwelling Constructed Before Effective Date of Ordinance



Was the building originally built as a single-family house, prior to 2013?

OR



Does the property currently have a pre-2013 zoning certificate for a single-family house?

1933 Winnebago - Building Inspection History

1962 to present - used continuously as a two-family dwelling

1991 – alteration to existing conditional use for two-family dwelling

2025 – proposed change in use from two-family dwelling to single-family dwelling

Two Questions – Single-Family Detached Dwelling Constructed Before Effective Date

What was the building originally built as a single-family house, prior to 2013?

- No evidence that 1933 Winnebago has been used as anything other than a two-family house

Does the property currently have a pre-2013 zoning certificate for a single-family house?

- No, there is no zoning certificate prior to 2013 for a single-family dwelling

Examples of Conditional Uses Considered by Plan Commission for Single-Family Dwellings in Mixed-Use Zoning Districts

1902 S Stoughton – 2024 conditional use for a single-family dwelling in CC-T district

1254 E Washington – 2024 conditional use for a single-family dwelling in TSS district

2725 Atwood – 2016 conditional use for a single-family dwelling in TSS district

None of these proposed a new construction building

Conclusion

The zoning districts included in the supplemental regulation are mixed-use districts

TSS district is intended for mixed-use neighborhood corridors

“Construct,” “constructed,” and “construction” are undefined, broad terms used in different ways throughout the zoning code

Supplemental regulation intention was that any additional, post-2013 single-family houses in mixed-use districts receive consideration from the Plan Commission through the conditional use process

Overtaking this interpretation would mean that mixed-use buildings, missing middle housing, and non-residential uses could be changed to single family houses in these mixed-used districts as permitted uses