



CITY OF MADISON
ZONING BOARD OF APPEALS
APPEAL APPLICATION

\$200 Filing Fee

Ensure all information is **typed** or legibly **printed** using blue or black ink.

Notices are sent to the District Alderperson and to owners of record as listed in the Office of the City Assessor. Maximum size for all drawings is 11" x 17".

Name of Applicant: Marsha Rummel and Isador Knox, Jr.

Address: see attached

Daytime Phone: _____ Evening Phone: _____

Email: _____

1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to Madison General Ordinance Section No. 28.205(5)

2. When relevant to a specific property, fill out below:
Street Address: 1609 S Park St.

3. List of grounds for the appeal, statements, evidence of fact, and any additional information associated with the appeal are provided on a separate attachment.

Applicant Signature: see attached

FOR OFFICE USE ONLY	
Amount Paid: _____	Zoning District: <u>CC-T</u>
Receipt: _____	Hearing Date: <u>02-15-2024</u>
Filing Date: <u>see attached</u>	Published Date: <u>02-08-2024</u>
Received By: <u>see attached</u>	Appeal Number: <u>LNDAPP-2024-00002</u>
Parcel Number: <u>070926408034</u>	GQ: _____
Alder District: <u>13 - Evers</u>	

DECISION

The Board, in accordance with the findings of fact, hereby determines that the requested appeal for _____ is

Approved

Denied

Conditionally Approved

Zoning Board of Appeals Chair:

Date:



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Name of Applicant: Marsha Rummel
Address: 1029 Spaight St #6C
Madison WI 53703
Daytime Phone: 608-772-4555 Evening Phone: same
Email: district6@cityofmadison.com

1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to Madison General Ordinance Section No. M60 28.104, 28.006, 28.008, 28.211, 28.191

2. When relevant to a specific property, fill out below:

Street Address: 1609 S Park St
Madison WI

3. List of grounds for the appeal, statements, evidence of fact, and any additional information associated with the appeal are provided on a separate attachment.

Applicant Signature: Marsha Rummel

FOR OFFICE USE ONLY	
Amount Paid: \$200.00	Zoning District: CC-T
Receipt: 135794-0001	Hearing Date: 01-18-2024
Filing Date: 12-20-2023	Published Date: 01-11-2024
Received By: NJK	Appeal Number: LNDAPP-2024-00001
Parcel Number: 070926408034	GQ: _____
Alder District: 13- Evers	

DECISION

The Board, in accordance with the findings of fact, hereby determines that the requested appeal for _____ is

Approved

Denied

Conditionally Approved

Zoning Board of Appeals Chair:

Date:



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ZONING BOARD OF APPEALS
APPEAL APPLICATION

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Name of Applicant: ISADORE KNOX, JR
Address: 1735 BAIRD ST.
MADISON, WI 53713
Daytime Phone: (608) 443-8224 Evening Phone: (608) 443-8224
Email: DISTRICT14@CITYOFMADISON.COM

- 1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to Madison General Ordinance Section No. MGO 28.104, MGO 28.006, MGO 28.008
- 2. When relevant to a specific property, fill out below: MGO 28.211, MGO 28.191
Street Address: 1609 S. PARK ST.

3. List of grounds for the appeal, statements, evidence of fact, and any additional information associated with the appeal are provided on a separate attachment.

Applicant Signature: *Isadore Knox, Jr.*

FOR OFFICE USE ONLY			
Amount Paid:	<u>See Marsha Rummel application</u>	Zoning District:	<u>CC-T</u>
Receipt:		Hearing Date:	<u>01-18-2024</u>
Filing Date:		Published Date:	<u>01-11-2024</u>
Received By:		Appeal Number:	<u>LNDAPP-2024-00001</u>
Parcel Number:		GQ:	
Alder District:			

DECISION

The Board, in accordance with the findings of fact, hereby determines that the requested appeal for _____ is

Approved Denied Conditionally Approved

Zoning Board of Appeals Chair:
Date:

28.205 BOARD OF ZONING APPEALS.

5. Appeals to Decisions of the Zoning Administrator.

Appeals to the Zoning Board of Appeals may be taken by any person aggrieved, or by any officer, department, board or bureau of the City affected, by any decision of the Zoning Administrator.

- (a) An appeal shall be taken within a reasonable time, as provided by the rules of the Zoning Board of Appeals.
- (b) The applicant shall file a notice of appeal with the Zoning Board of Appeals. The notice of appeal must specify the grounds for the appeal, including a specific reference to the terms of this chapter, state or federal law, or the state or federal constitution that the applicant believes were incorrectly applied.
- (c) The Zoning Administrator shall transmit all the papers constituting the record upon which the action appealed from was taken to the Zoning Board of Appeals.
- (d) Stay of Proceedings. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals that by reason of facts stated in the certificate, a stay would in her/his opinion cause imminent peril to life or property. In that case, proceedings shall not be stayed unless the Zoning Board of Appeals or a court of record grants a restraining order on application. A restraining order requires the applicant to show due cause and to notify the Zoning Administrator.
- (e) Notice. An appeal requires the following types of notice (See Sec. 28.181(5)):
 1. Mail – sent at least 10 days before the required public hearing.
 2. Publication - at least 7 days before the required public hearing.
- (f) Scheduling. The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal.
- (g) Rendering the Decision. The Zoning Board of Appeals, upon its findings, shall render a decision on the appeal within a reasonable time. The Board, upon the concurring vote of a majority of quorum, may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from.
- (h) Approval Criteria. The Zoning Board of Appeals may reverse or modify the decision appealed from if it determines that it is error based on the terms of this chapter, a lawful condition of approval established under this chapter, or a provision of a federal or statute or constitution.
 1. For appeals concerning increases in regional flood elevation the Board shall:
 - a. Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 foot may only be allowed after amending the flood profile and map and any appropriate legal arrangements are made with all adversely affected property owners.
 - b. Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot provided no other reasons for denial exist.
 2. For disputes concerning floodplain district boundaries:
 - a. If a floodplain district boundary is established by approximate or detailed floodplain studies, the map scale, and the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.
 - b. In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Zoning Board of Appeals.
 - c. If the boundary is incorrectly mapped, the Zoning Board of Appeals should inform the person contesting the boundary location to petition the Common Council for a map amendment.

6. Finality of Decisions of the Zoning Board of Appeals.

All decisions and findings of the Zoning Board of Appeals are considered final administrative determinations, and are subject to judicial review as provided by law.

1. The drive-thru pick-up window does not meet the requirement of MGO 28.104(8)(c): “Vehicle access sales and service windows shall be located under the building in which they are located, and the building shall have commercial or residential uses as allowed in the base district along the primary street frontage.”
2. The drive-thru ordering facility (menu board and a kiosk with an awning) does not meet the requirement of MGO 28.104(8)(c): “Vehicle access sales and service windows shall be located under the building in which they are located, and the building shall have commercial or residential uses as allowed in the base district along the primary street frontage.”
3. The vehicle access sales and service window(s) is an addition to the existing use. Under MGO 28.006, when there is an enlargement of or addition to an existing use, the site is subject to all regulations applicable to the zoning district. For 1609 S Park, that includes the TOD overlay. The TOD overlay, MGO 28.104(8)(b) does not allow drive aisles, driveways, vehicle access sales and service windows and drives between the primary street-facing façades and the primary street. MGO 28.006 lists various changes that can be made to an existing use which do not require the entire site to be brought into compliance. One of those changes is maintenance/resurfacing of parking areas, if there is no change to layout, circulation or entrances. 1609 S Park is making changes to layout, circulation and entrances, thus the entire site needs to be brought into compliance with the TOD overlay site standards for automobile infrastructure.
4. The now unused asphalt between the former Arby’s building and S Park St is a component of a Vehicle Access Sales and Service Window under the current definition in MGO 28.211. The legal use of that asphalt for drive-thru ingress or egress expired when either its conditional use permit or its nonconforming use status expired approximately one year ago (one year after Arby’s ceased operation). Pursuant to MGO 28.104(8)(b), as well as additional sections of the zoning code, a vehicle access sales and service windows drive is prohibited in this location. The use of that asphalt for vehicles is also a nonconforming use under MGO 28.191.
5. The Scope of Regulations in 28.006 refers to the Transition Rules in 28.008. Transition Rule (4) states: “Zoning districts, use lists and definitions applicable to previously approved documents, including rezonings, planned development districts, easements, deed restrictions and similar agreements, shall remain in force but shall be interpreted by the Zoning Administrator for consistency with the rules, definitions and other provisions of this ordinance.” The relevant sections of the current zoning ordinances (“this ordinance”) should have been applied to the subject land use application. Deference should not be given to previous, now unused, and expired nonconforming uses and/or conditional use permits.

We reserve the right to supplement with additional details.

Timeliness

The timeline of our appeal is as follows:

- 11/20: Appeal filed
- 11/26: Alder Rummel requested an acknowledgement of receipt of the appeal and inquired as to next steps.
- 11/27: The ZA acknowledged receipt and said: “This is a highly unusual request so I need to consult with the City Attorney’s Office.”
- City Attorney Haas invited us to meet to discuss the appeal process.
- 11/29: We met with City Attorney Haas, ACA Smith, and Building Inspection Division Director Tucker.
- 12/11: We requested that our joint appeal be submitted put it on the ZBA's agenda for 12/21/23.
- 12/13: The ZA emailed us stating:
After consulting with City Attorney Haas, it was determined that since you are filing a notice of appeal as individuals and not acting on behalf of the City or City Council, the \$200 fee is required before the notice of appeal can be considered complete and be scheduled for a hearing with the ZBA. It’s too late to be on the December 21 ZBA agenda due to noticing requirements, but if we receive your fee before December 21, the appeal can be scheduled for the January 18 hearing.
- We each submitted the fee on or before December 21.
- 1/10: The ZA informed us our appeals were not timely.
- 1/11(late) or 1/12: The agenda was modified, adding to the description of our agenda item: “This item is removed from the agenda due to lack of timeliness when filing for appeal.”

Every appeal shall be taken within fifteen (15) days under rule B.1.

Our appeal was filed 20 days after the Plan Commission meeting. One could perhaps argue our appeals were not filed on November 20th since we did not pay the fees, but MGO 28.206 does not apply to an appeal filed by Alders.

- MGO 28.206 provides: “Application for an appeal filed by, or on behalf of, the owner or owners of the property affected \$200.”

We urge you to consider the following points in making your determination under rule B.1.

1. Wis. Stats. 62.23(7)(e)4. requires appeals to the ZBA to “be taken within a reasonable time.” MGO 28.205(5) provides that an “appeal shall be taken within a reasonable time, as provided by the rules of the Zoning Board of Appeals.”
 - The rules of the Zoning Board of Appeals are not publically available.
2. At our meeting on November 29th, ACA Smith told us our appeal did not appear to be timely. City Attorney Haas said that, in the past, exceptions have been made.
 - The fact that exceptions have been made in the past shows that 15 days is not a hard and fast rule. The reasons behind those exceptions should be explored

to determine whether our appeal fits into a prior exception or whether it merits a new exception.

3. Wis. Stats. 62.23(7)(e)4. requires that “an appeal shall be taken within a reasonable time, as provided by the rules of the board.” Those board rules need to provide a reasonable time.
 - Is 15 days a reasonable time? Of 10 Wisconsin municipalities that have their board rules available on their website, one has 20 days for filing an appeal, the other nine require an appeal to be filed within 30 days. The meaning of “a reasonable time” can be informed by what other municipalities deem reasonable.
4. Being busy is not an excuse, but our attention and focus as Alders was on the 2024 budget, which was not adopted until November 14th.

Appeals were timely filed under board rule B.3.

Insufficient Form. Any communication purporting to be an appeal or application to the Board for a permit shall be regarded as a mere notice of intent to seek relief until it is made in the form required. Upon receipt of any such communication, the writer shall be supplied with the proper forms for presenting his or her appeal and if he or she fails to supply the requested data in the proper form within ten (10) days in addition to the fifteen (15) days specified in Subsection (1) of this section, his or her case may be dismissed by the Board for lack of prosecution.

Alder Rummel had one of her constituents request the appeal form on our behalf. The form was requested on Sunday, November 12th. The ZA provided the form on Tuesday, November 14th at 3:50 p.m. (day 15 after the Plan Commission meeting). We filed our appeals on November 20th, well within the “ten (10) days in addition to the fifteen (15) days.”

We reserve the right to supplement with additional information.