



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: Ron Enterprises Wisconsin, LLC
Address: Attn: Ben Hose
3210 Coventry Trail, Madison, WI 53713-4216
Daytime Phone: 608.271.0101 Evening Phone: 608.271.0101
Email: benzhose@gmail.com

- 1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to Madison General Ordinance Section No. §28.195 - Cert. of Occupancy for Nonconforming Use
- 2. When relevant to a specific property, fill out below:
Street Address: 2906 Landmark Place – Countryside Corporate Apartments

- 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: [Signature], Authorized Agent

| FOR OFFICE USE ONLY | |
|---|--|
| Amount Paid: <u>\$200.00</u> | Zoning District: <u>SR-V2</u> |
| Receipt: <u>134817-0006</u> | Hearing Date: <u>12-21-23 / 03-21-2024</u> |
| Filing Date: <u>11-15-23</u> | Published Date: <u>12-14-23 / 03-14-2024</u> |
| Received By: <u>N-K</u> | Appeal Number: <u>LNDAPP-2023-00004</u> |
| Parcel Number: <u>070933405239</u> | GQ: _____ |
| Alder District: <u>10-FIGUEROA COVE</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:

Dan O'Callaghan
222 W. Washington Ave., Ste. 705
Madison, WI 53703-2745
direct: 608.888.1685
dan.ocallaghan@carlsonblack.com

November 8, 2023

City of Madison Zoning Board of Appeals
Department of Planning & Community & Economic Development
City of Madison Building Inspection Division

**Re: 2906 Landmark Place – Countryside Corporate Apartments
Appeal of Denial for a Certificate of Nonconforming Use Under MGO §28.195**

Dear Members of the Zoning Board of Appeals:

The Hose family hereby appeals the Zoning Administrator's denial of its application for a certificate of nonconforming use.

Overview

The Hose family has operated Countryside Corporate Apartments, a 64-unit apartment complex located at 2906 Landmark Place, since the 1990s. Long before the rise of Airbnb and VRBO, there was Countryside Corporate Apartments. The Hose family has been renting furnished apartments—for both short-term durations and longer-term durations—for nearly thirty years.

Until the Fall of 2022, Countryside Corporate Apartments was located in the Town of Madison. On October 30, 2022, the property was attached to the City of Madison pursuant to the 2002 Cooperative Plan between the Town of Madison and the cities of Madison and Fitchburg. Less than two weeks after the property came under the City's jurisdiction, the Hose family received a letter from a City zoning inspector ordering the family to cease operating an illegal hotel.

The Hose family promptly contacted the zoning office to explain there must be some mistake: the property had been lawfully operated as short-term furnished apartment rentals—not a hotel—for decades. The zoning inspector disagreed, asserting that, under the City's zoning code, "renting multiple apartments for less than 30-night stays means this property ... has been functioning as a hotel." In response, the Hose family noted the property only recently came under the City's zoning jurisdiction and asserted the family's right to continue operating the property as a legal nonconforming use.

On January 11, 2023, the Hose family applied to the City of Madison Zoning Administrator for a "certificate of occupancy for nonconforming use" under section 28.195 of the city's zoning code. Section 28.195 requires an applicant to present "documentary evidence that said use was a lawful permitted or conditional use at the time it originated." The family's application noted that short-term apartment rental was a permitted use under the 1990s-era Dane County zoning ordinance then in effect when the Hose family first bought the property in

the 1990s. The family supported its application with 92 pages of zoning ordinances, leases, permits and other legal documents.

After a long delay, and despite the substantial evidence the family provided, the Zoning Administrator denied the application in a two-sentence letter. The denial letter, which was made effective as of October 25, 2023, cited no facts and provided no reasons for the decision.

The family is appealing the denial.

Jurisdiction and Authority

The City's zoning code authorizes the Board of Zoning Appeals to hear and decide appeals where a party believes, as in this case, the Zoning Administrator made an error in interpreting the zoning code. The Board has the authority to reverse the denial. That is what the Hose family is requesting, the Hose family is requesting the Board order the issuance of a certificate of occupancy for a nonconforming use.

The code requires an appellant to specify the grounds for the appeal, including a specific reference to the terms of the zoning code and other applicable laws the applicant believes were incorrectly applied.

Grounds for the Appeal

There seems to be no dispute that the subject property was zoned in a manner that allowed apartment buildings (i.e. "multiple family dwelling," as that term was used in the 1990s-era zoning code) and that the two buildings in question were indeed constructed as apartment buildings—not a hotel—with 32 dwelling units in each building. There also seems to be no question that the rental of a furnished dwelling unit for a month or longer was (and is) a permitted use. If we understand correctly, the only question is this: whether the rental of some of those dwelling units for periods less than a month at a time somehow changed the fundamental character of the use from "multiple family dwelling" to "hotel"? It did not.

As explained in the application the Hose family submitted back in January, Dane County's 1990s-era zoning code did not make any distinction between dwelling units rented for a short period of time vs. dwelling units rented for a long period of time. That all changed when the County adopted a comprehensive revision to its zoning ordinance in 2019. Prior to 2019, the County's zoning ordinance did not include a requirement that dwelling units must be rented for a month at a time, or risk being re-classified as some other type of land use. The Wisconsin Court of Appeals has held that, when a zoning ordinance does not explicitly require a minimum period of occupancy, no such minimum exists:

The ordinance fails to require occupancy over a period of time, and we cannot impose such a requirement. ... We must construe the Ordinance in favor of the free use of property and cannot impose time/occupancy restrictions or requirements that are not in the zoning scheme ... we look at the language of the ordinance, which is about the use of the property, not the duration of that use. ... What matters is residential use, not the duration of the use. The words "single

family,” “residential” and “dwelling” do not operate to create time restrictions that the legislative body did not choose to include in the ordinance. ... There is nothing inherent in the concept of residence or dwelling that includes time. If the City is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law.

Heef Realty & Invs., LLP v. City of Cedarburg Bd. of Appeals, 361 Wis.2d 185, 861 N.W.2d 797 (Ct. App. 2015). In the situation at hand, Dane County did not amend its zoning ordinance to “draw a line” specifying a certain time period of occupancy until 2019. As the Dane County Zoning Administrator later explained in a presentation to the Zoning & Land Regulation Committee of the Dane County Board:

“Short term rentals is a fairly new land use. It is becoming very popular across the county and across the world. In our previous zoning ordinance, we didn’t have short term rental or tourist and transient lodging as a land use.”

Countryside Corporate Apartments was established long before the County’s new zoning ordinance took effect in 2019 and is therefore recognized as a legal nonconforming use under Wisconsin law. The Wisconsin Supreme Court has held that a property owner is entitled to rely on a legal nonconforming use when the owner demonstrates “by the preponderance of the credible evidence” that the property was “actually and actively being used” in the manner that is now prohibited under the current ordinance. *Millen v. Thomas*, 550 N.W.2d 134, 201 Wis.2d 675 (Ct. App. 1996). The Hose family believes they have met that burden. The credible evidence the family submitted (e.g. copies of re-zoning ordinances, permits, meeting minutes, correspondence with public officials, rental contracts, Yellow Pages advertising contacts, etc.) conclusively demonstrates that Countryside Corporate Apartments has been renting furnished apartments—for both short-term durations and longer-term durations—for nearly thirty years. Because the recent zoning code changes prohibit short-term rentals, Countryside Corporate Apartments is now a nonconforming use.

We understand that the advent of Airbnb and similar online platforms in the late 2000s and early 2010s, which prompted an explosion of short-term rentals in the marketplace, created headaches for local code enforcement officials all across the county. But it is important to note that Countryside Corporate Apartments predates all of that. Countryside Corporate Apartments has been in continuous operation for more than 25 years with the same business model.

Conclusion

For the reasons detailed above, and based on all of the evidence submitted with the Hose family’s January application, we respectfully request that the Board of Zoning Appeals reverse the Zoning Administrator’s denial, and order the issuance of a certificate under Section 28.195 of the City’s zoning code recognizing the long-established legal nonconforming use of the property.

Zoning Board of Appeals
November 8, 2023
Page 4

CARLSON BLACK

CARLSON BLACK O'CALLAGHAN & BATTENBERG LLP

Respectfully,

CARLSON BLACK O'CALLAGHAN & BATTENBERG LLP

A handwritten signature in black ink, appearing to read "Dan O'Callaghan". The signature is fluid and cursive, with the first name "Dan" being more prominent than the last name "O'Callaghan".

Daniel O'Callaghan

Enclosures