

# Appeal of Denial of Nonconforming Use Certificate 2906 Landmark Place

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MARCH 21, 2024

ZONING BOARD OF APPEALS

# Town of Madison Attachment

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Similar City zoning districts to their previous County zoning districts were applied to Town properties with the attachment of former Town of Madison properties to the City

City staff identified former Town properties that may need a Tourist Rooming House Permit

Countryside Apartments identified as a property providing transient lodging

# Background

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Previous zoning under the County did not allow hotels or indoor commercial lodging

Current City zoning district, SR-V2, also does not allow hotels

Notice of Violation issued for a hotel operating in zoning district where it's not an allowed use

Nonconforming use certificate application filed

Nonconforming use certificate application denied

Appeal filed

# Lawful Nonconforming Uses

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Must be *lawful* nonconforming use

Appellant has asked me to approve a use based on it being lawful when it was under Dane County Zoning's jurisdiction

No proof has been provided that Dane County Zoning approved this use or considered it lawful

All Dane County approvals were for “multiple family dwelling”

Dane County has its own Zoning Administrator and Zoning staff

Under City's zoning code, hotels are for transients and temporary lodging. Multi-family dwelling units are for permanent residence

# Nonconforming Uses – MGO 28.191

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## **28.191 NONCONFORMING USES.**

(1) The lawful nonconforming use of a building, structure, or land existing on the effective date of this ordinance may be continued although it does not conform to the provisions of this ordinance, provided that:

- (a) Structural repairs or structural alterations to the building or structure shall not exceed fifty percent (50%) of the total assessed value of the building or structure.
- (b) The nonconforming use shall not be extended or expanded.
- (c) The building or structure does not become and remain vacant for a continuous period of twelve (12) months.
- (d) The nonconforming use of the land does not cease for a continuous period of twelve (12) months.

# Lawful Nonconforming Use

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**Burden of Proof:** When a property owner claims the property should have nonconforming status, it is their burden of proof to show they have a legal nonconforming use.

**Standard of proof:** Property owner must prove legal nonconforming by the greater weight of the credible evidence. Can show photos, tax records, witnesses may show when the use began, that it was lawful when it began, and has continued without significant interruption.

# Demonstrating the Vested Right

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**Preexistence** – the use predated the current zoning

**Legal Use** – the use was legal when it started. A previously illegal use can not be made retroactively legal just because it has been continuous.

**Active Use** – the use has not stopped for more than 12 continuous months

**A valid permit** (if one had been required)

**The use has not moved** – the vested right only exists at that particular location.

# Keeping Nonconforming Use Status

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Only the original use is protected

The current use must be the same or substantially related to the original use in order to be protected

Normal increase in business volume is acceptable – but use changes and expansions beyond expansion for increased business ends the status



# Lawful Nonconforming Uses

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I did not receive sufficient information to determine that this was a lawful nonconforming use in Dane County

Therefore, the lawful nonconforming use certificate was denied

I have asked the appellant to provide information from Dane County Zoning about what they would have considered this use and whether it was allowed under County zoning before the attachment, but that information has not been provided

# Lawful Nonconforming Uses

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“Hotel” and “motel” uses were in Dane County’s zoning code in 1995 and remain in their zoning code as “indoor commercial lodging”

Dane County’s zoning code related to “tourist rooming houses” was changed in 2019

“Indoor commercial lodging” is specifically *not* “transient or tourist lodging” under Dane County zoning

# 1995 Dane County Zoning Code Definitions

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*Hotel.* A building in which board and lodging are provided to the transient public for compensation.

*Motel.* A building containing sleeping rooms for the temporary accommodation of tourists and not for permanent occupancy except by the owner or resident operator.

*Multiple family dwelling.* A building designed or intended to be used by more than two (2) families living independently of each other.

(Dane County Zoning Code 10. 01, 1995)

# Current Dane County Zoning Code Definitions

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## (74) Indoor commercial lodging.

(a) A building or premises that provides lodging to transient or tourist guests, that meets at least one of the following criteria:

1. Provides more than eight rooms available for transient guests; or
2. Provides accommodations for more than twenty transient or tourist guests at a time.

(b) Indoor commercial lodging may include, but is not limited to: hotels, motels, inns or resorts.

(c) Indoor commercial lodging does not include: incidental room rental, transient or tourist lodging, campgrounds, rooming houses, duplexes or multifamily residences.

(Dane County Zoning, 10.004)

# Current Dane County Zoning Code Definitions

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(159) Transient or tourist.

(a) A person who travels to a location away from his or her permanent or legal address for a short period of time, not to exceed twenty-nine days, for vacation, pleasure, recreation, culture, business or employment.

(Dane County Zoning, 10.004)

# Current Dane County Zoning Code Definitions

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## (160) Transient or tourist lodging.

(a) A residence that rents more than two, but not more than eight, bedrooms to transient guests or tourists, where all of the following apply:

1. Rooms are rented to no more than a total of 20 individuals who are not members of the landowner's family.
2. Length of stay does not exceed twenty-nine (29) consecutive days for each registered guest.

(b) Transient lodging houses may include, but are not limited to: bed and breakfasts, hostels and recreational cabins.

(c) **Transient lodging does not include:** incidental room rental, campgrounds, duplexes, multifamily housing, institutional residential, indoor institutional, community living arrangements, rooming houses or **indoor commercial lodging.**

(Dane County Zoning, 10.004)

# Conclusion

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Under City of Madison zoning, rentals of 30 days or more are allowed in this zoning district (SR-V2) as “multi-family”

Less than 30 day rentals would make the use “hotel,” which is not an allowed use in this district under City of Madison zoning

No evidence provided that Dane County Zoning ever approved the use of the property for transient guests – as a “hotel” or “motel” under its previous zoning code or as “indoor commercial lodging” under its current zoning code