



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: RUDY MOORE
Address: 711 ORTON CT
MADISON WI 53703
Daytime Phone: 608-616-0359 Evening Phone: _____
Email: twinotter@gmail.com

1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to Madison General Ordinance Section No. 28.151

2. When relevant to a specific property, fill out below:
Street Address: 711 ORTON CT
MADISON WI 53703

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: [Handwritten Signature]

FOR OFFICE USE ONLY	
Amount Paid: <u>\$200</u>	Zoning District: <u>TR-VI</u>
Receipt: <u>94261-0023</u>	Hearing Date: <u>10-17-19</u>
Filing Date: <u>8-15-19</u>	Published Date: <u>10-10-19</u>
Received By: <u>MWT</u>	Appeal Number: <u>LNOAPP-2019-00002</u>
Parcel Number: <u>071007315099</u>	GQ: <u>HIS-TE</u>
Alder District: <u>6</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:

Rudy Moore
711 Orton Ct.
Madison, WI 53703
608-616-0359

Building Inspection Division
ATTN: Matt Tucker
126 S. Hamilton St.
PO Box 2984
Madison, WI 53701

August 15, 2019

Dear Mr. Tucker:

This letter is a follow-up to my original request for an appeal of the Official Notice CB2019-193-04592, delivered July 30, 2019. Your response was dated August 1, 2019, an appeal is due within 15 days of the date of your letter, and therefore this appeal is timely filed.

The issue is whether my Tourist Rooming House satisfies the requirement that it be part of my primary residence. Ordinance § 28.151, ORD-15-00054 (b) states, "The tourist rooming house shall be the operator's primary residence."

The Division has interpreted Primary Residence to be equivalent to Dwelling Unit. However this interpretation does not comport with the Ordinance language nor the legal understanding of Primary Residence. And even if it did, my family and I occupy the dwelling unit that I also use as a Tourist Rooming House, and thus it is our Primary Residence.

I have been operating a Tourist Rooming House since November, 2015. I was one of the first Tourist Rooming Houses inspected and licensed. I've been licensed the entire time I've been operating. I've had a reinspection every year and have always received permission to continue operating. In each reinspection, the City has seen that my Tourist Rooming House is a part of my Primary Residence.

- I. THE ORDINANCE SPECIFIES A "PRIMARY RESIDENCE" WHICH IS NOT LIMITED TO A "DWELLING UNIT" AS INTERPRETED BY THE DIVISION.

“Primary residence” is not defined in the Ordinances. There is every reason to expect that my entire house should be considered my primary residence, but in particular that the Tourist Rooming House is part of my primary residence. The Division’s interpretation departs from the plain meaning of the Ordinance as passed by the Common Council.

§ 28.121 defines a Tourist Rooming House as

Tourist Rooming House: A building or portion thereof, other than a Hotel, Motel, Bed and Breakfast Establishment or Hostel, in which sleeping accommodations are offered for pay to tourists or transients. The definition does not include private boarding, lodging or rooming houses not accommodating tourists or transients.

§ 28.121 defines Dwelling Unit as

Dwelling Unit: One or more rooms which are arranged, designed or used as living quarters for one family only. Individual bathrooms and a complete kitchen facility, permanently installed, shall always be included with each dwelling unit. No dwelling unit may have more than one kitchen facility except that a single-family detached dwelling may have more than one kitchen facility provided the dwelling is designed, arranged or used as living quarters for one family only. For purposes of this exception, the family shall not include roomers.

The definition in the Ordinance of Tourist Rooming House inherently encompasses a building that has more than one family in it since tourists and transients are not from the same family as the host. The definition of Dwelling Unit includes one family only. Therefore the application of the definition of Dwelling Unit to a Tourist Rooming House conflicts with the controlling Ordinance.

II. THE LEGAL DEFINITION OF A PRIMARY RESIDENCE DEPENDS ON ALL THE FACTS AND CIRCUMSTANCES.

An inspection of the city Ordinances and state Statutes shows that the definition of Primary Residence depends on all the facts and circumstances.

The city Ordinances do not define Primary Residence. The definition is interpreted broadly through the Ordinances. For instance, Ordinance § 39.03, in its definition of Homelessness, refers to a homeless person’s shelter as being their primary residence.

Similarly, state law does not define Primary Residence but uses it broadly. For example, Wisc. Stat. § 215.21(16)(a) considers a loan acquired for construction of a personal residence, but doesn’t specify the type of residence, number of units, or such. Wisc. Stat. § 70.11(4g)(a) considers property held for sale as a personal residence, but does not specify type. Wisc. Stat. § 71.07(9r)(b)2 even allows for outbuildings to a property to be considered an owner-occupied personal residence. Wisc. Stat. § 551.102(4m)(a) uses the entire primary residence for purposes of calculating net-worth.

There is even statutory support for a reading of primary residence that includes more than a single building. Wisc. Stat. § 79.10(1)(dm) “Principal dwelling” means any dwelling that is used by the owner of the dwelling as a primary residence on January 1 of the year preceding the allocation of a credit under sub. (9)(bm) and includes improvements that are classified, under ch. 70, as taxable real property or personal property.” (emphasis added)

The Division is inappropriately limiting Primary Residence to a Dwelling Unit since the Ordinances and Statutes use the term broadly.

III. MY FAMILY OCCUPIES THE TOURIST ROOMING HOUSE AND IS THEREFORE OPERATING IN COMPLIANCE OF THE ORDINANCE.

Even if the Board determines the Division’s interpretation of a Primary Residence should be the same as a Dwelling Unit, I occupy the dwelling unit where I operate my Tourist Rooming House.

From a purely operational standpoint, I use the part of the dwelling unit that I rent out as my own and it is my Primary Residence. My apartment is connected directly to the area that I rent out. I, my family members, and my personal guests sleep in the bedrooms at times. The only bathtub that I have is in the rented area and I use it to bathe my baby daughter. The only TV in the house is in the rented portion and I share that space with renters. Critical supplies, including clothing and household items are kept there. The space has access through my apartment, so it is an extension of the other part of my residence. Renters come through my portion of my residence to access the rented rooms. I receive mail at the address. Some utilities are signed up in my name at the address of the space. The exterior is gardened and managed as a single entity. There is a preponderance of evidence that shows this entire property is my primary residence.

City recognition suggests that the entire property can be considered my primary residence. The city has given my property a single parcel number for my entire residence. Because of this, if the city has a levy against my property, it is not incurred on any one particular unit in the residence, but rather on the whole property.

Through all of these facts and circumstances, it is clear that the portion of my home operated as a Tourist Rooming House is part of a dwelling unit that I occupy as my primary residence.

IV. THE POLICY REASONS FOR THE ORDINANCE ARE SATISFIED WITH MY OPERATION OF A TOURIST ROOMING HOUSE IN MY PRIMARY RESIDENCE.

The Ordinances limit Tourist Rooming Houses to properties that are the primary residence of the operator. Documentation in the Legislative Details shows that Counsel members were concerned with having owners present. I live in the house all the time and am present if there are any problems that develop. I speak frequently with neighbors to eliminate any disruption. I have set rules and enforce them to help maintain the residential nature of my house. In my situation, the purpose of having the operator be present in their primary residence is fulfilled. The Division's interpretation is an unnecessary narrowing of the language of the Ordinance that does not further the purpose of the Ordinance.

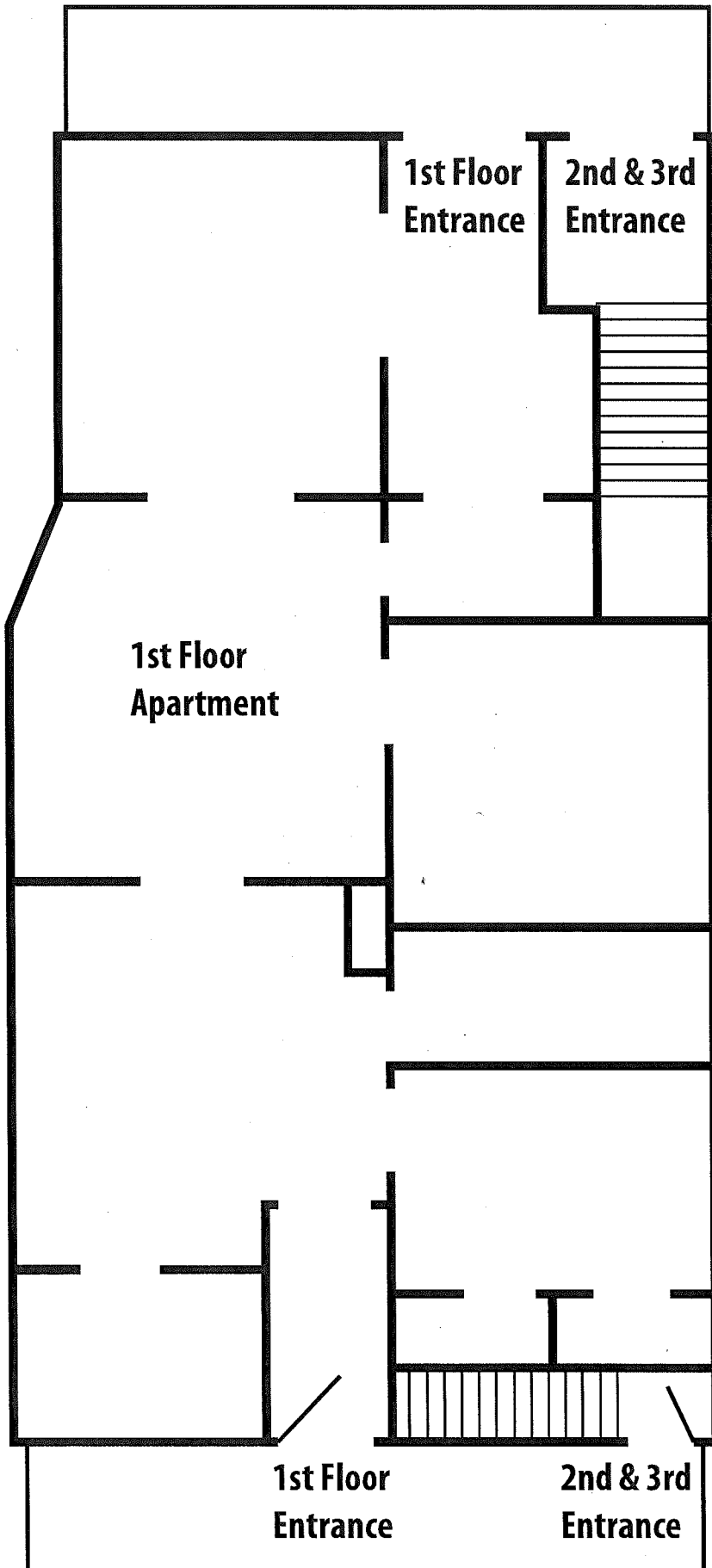
In short, because the property is used as my personal residence, because the city Ordinances do not define personal residence narrowly, and because the state Statutes do not either, I am operating my Tourist Rooming House in my personal residence and therefore comply with the city Ordinances. I obtained my license before I offered my unit for rent and, indeed, when there were only 13 other licensed rentals. The city inspects my unit every year and finds it to be operating within the rules.

I therefore respectfully request that you rescind the Official Notice at issue.

Sincerely,

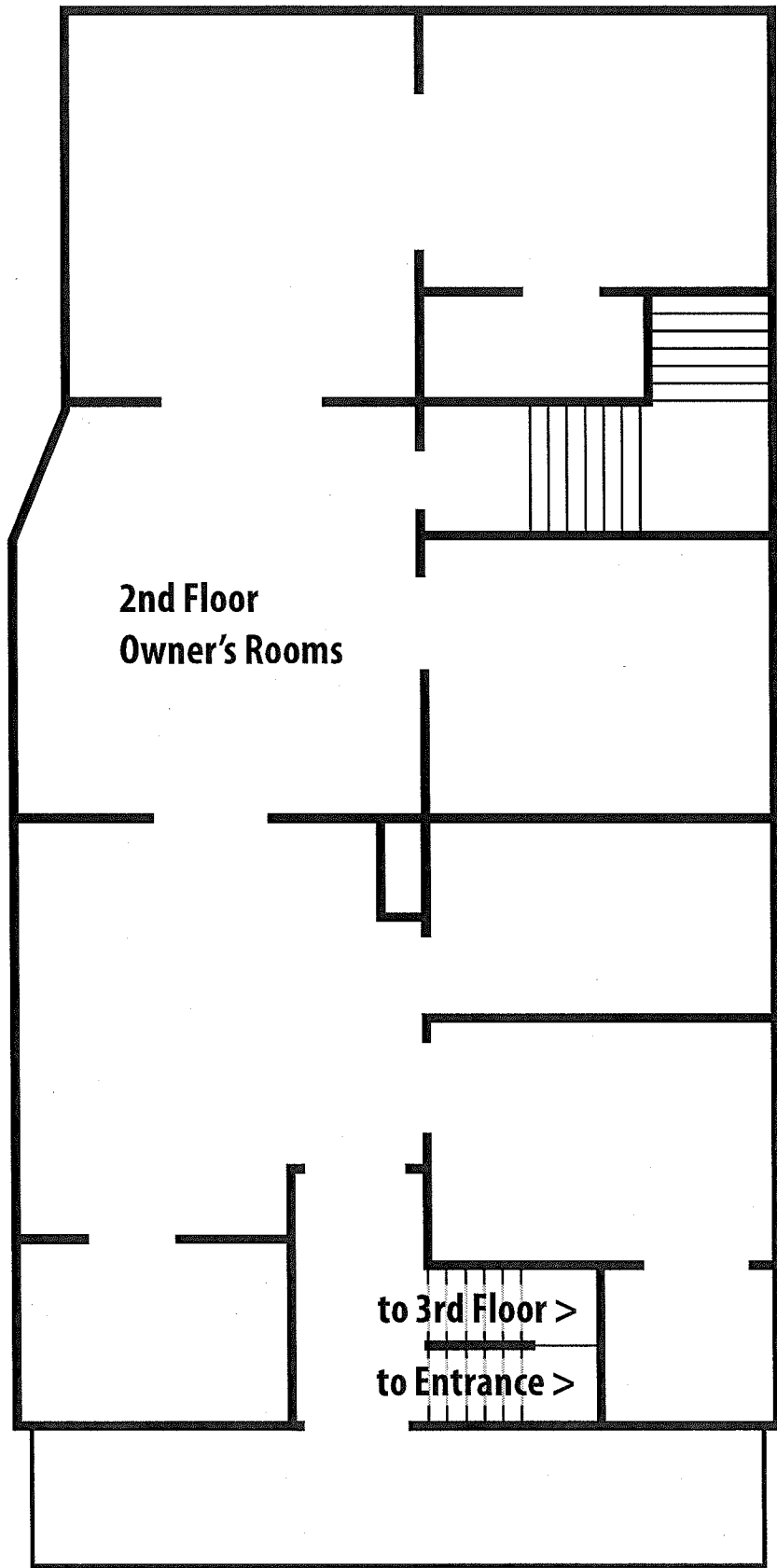
A handwritten signature in black ink, appearing to read 'Rudy Moore', written in a cursive style.

Rudy Moore



↑
to Street

Rudy Moore
711 Orton Ct.
1 of 3

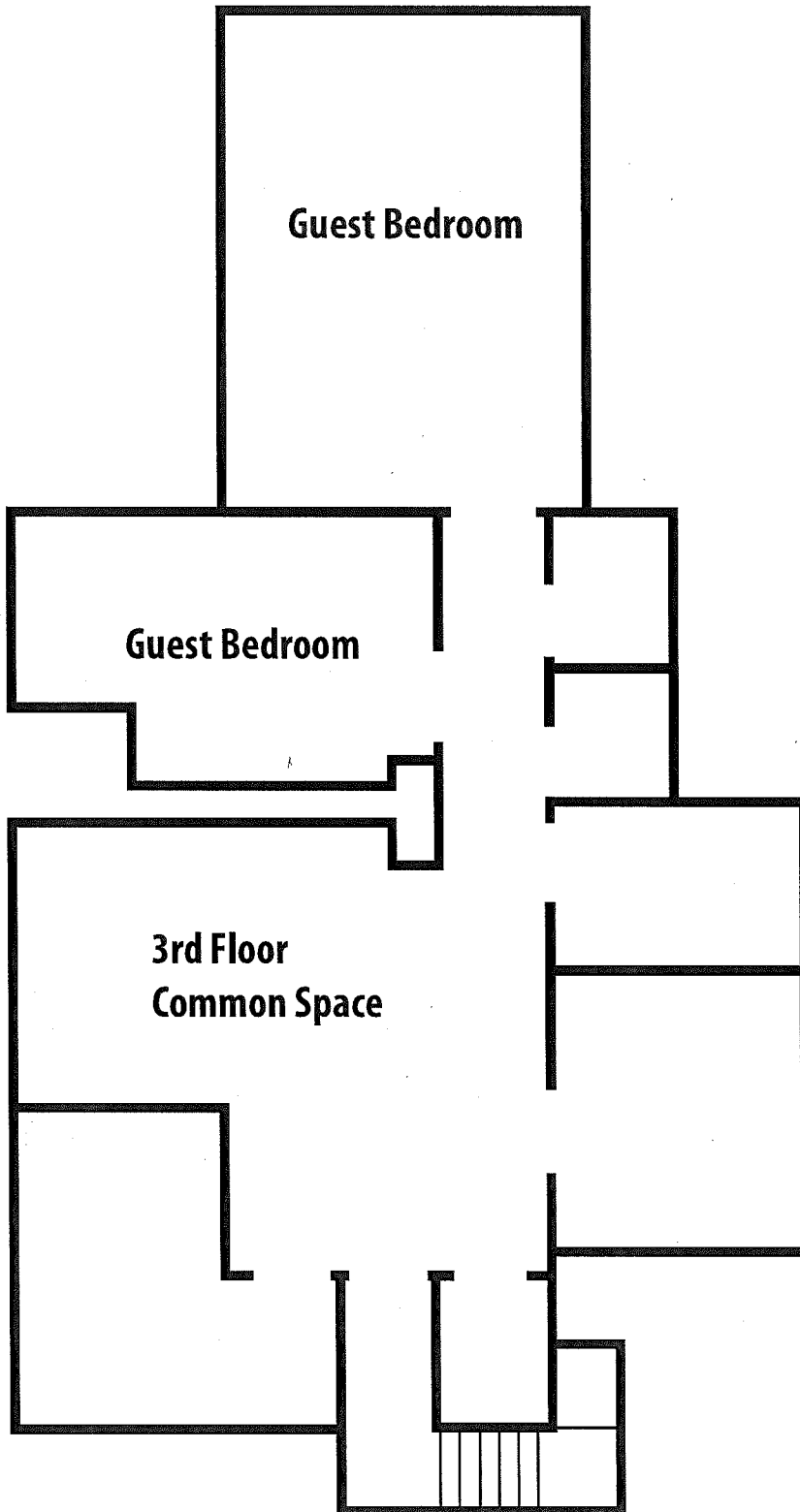


**2nd Floor
Owner's Rooms**

to 3rd Floor >

to Entrance >

**Rudy Moore
711 Orton Ct.
2 of 3**



Rudy Moore
711 Orton Ct.
3 of 3