

## Appeal to the Zoning Board of Appeals

# 1933 Winnebago St – Conditional Use Requirement Dispute



# Introduction – Project Overview

- 1933 Winnebago St is a two-unit residential building located in the TSS district.
- The dwelling structure was originally constructed in 1900 as a single family home.
- Project: Convert the property into a single-family home with minor interior modifications
  - Specifically removing a few interior doors to create a continuous living space.
  - The entire project can be completed by a handyman **in under an hour**.

# Minimal Physical Changes Required

- Kyle Bunnaw, Plan Review and Inspection Supervisor, confirmed that the required continuity for a Single-Family Home is achieved with these simple steps:
  - Remove doors
  - Remove hinges
  - Fill recesses
- No plumbing, no electrical, no exterior alterations, no construction.
- The Building Permit Office confirmed that following these steps is all that is needed to meet the SFH definition for our project. *(email cited in Appendix)*

# Why We Are Here

- When we presented our plan to the zoning office on **Jan 2nd, 2025**, we were informed that we must apply for a conditional use permit under the following ordinance:

*Madison General Ordinance (MGO) § 28.151: "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."* (Note: The effective date is April 7th, 2011.)

- The zoning administrator has interpreted "constructed" to include our project—even though it involves nothing more than removing a few interior doors—requiring us to undergo the conditional use permit process, a lengthy and costly procedure that would delay our simple modifications by several months.
- Our goal is to demonstrate that our project does not meet the definition of "construction" under the ordinance and that the zoning office has applied an **inconsistent** and **evolving** interpretation to require a conditional use permit, rather than relying on a clear and reasonable reading of the law.

# Zoning Administrator's Initial Response Jan 17th, 2025

Zoning Administrator, Katie Bannon's Response: *"1933 Winnebago does not contain a single-family detached dwelling constructed before the effective date of this ordinance. It is not a single-family dwelling. Therefore, a **conditional use is required to establish a new single-family dwelling use.**" Jan 17th, 2025 (See Appendix)*

In addition, she cited the following properties that underwent conditional use permit (CUP) approval when they went through conversion.



1254 E Washington Ave



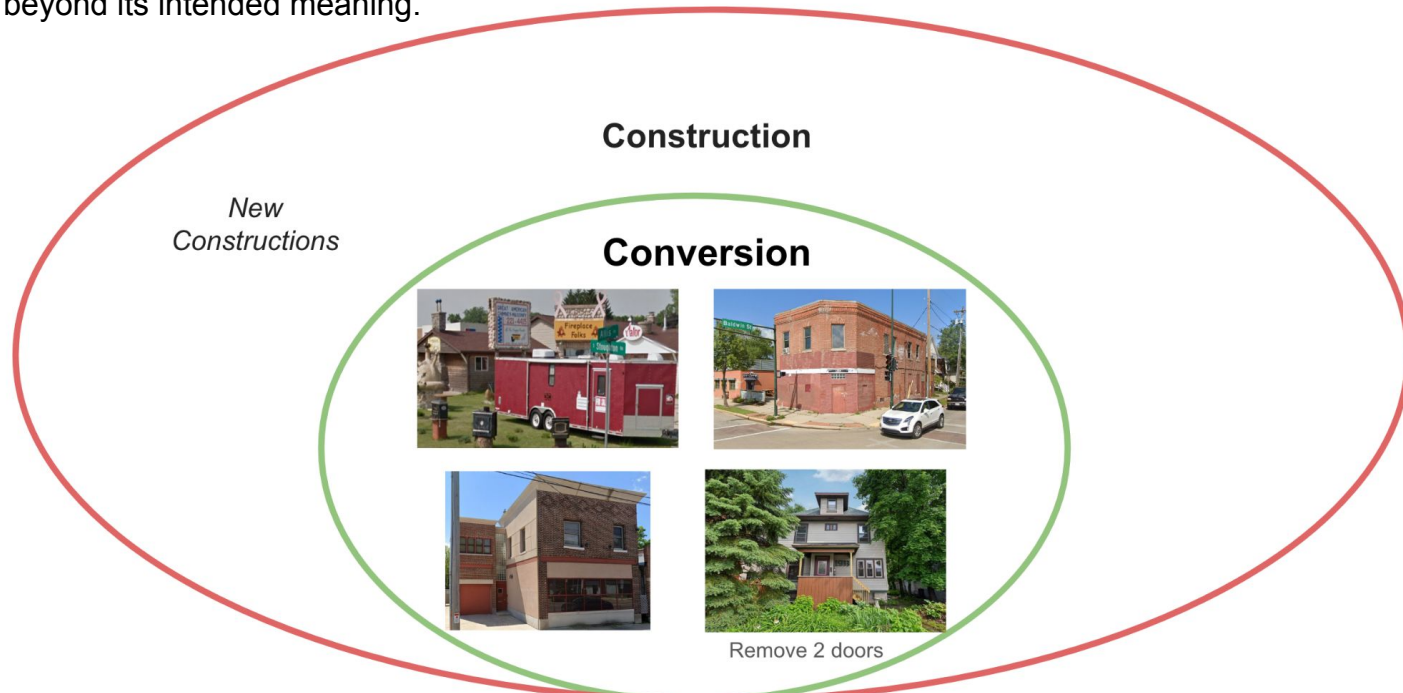
2725 Atwood Ave



1902 S Stoughton Rd

## Key Issues with Zoning Administrator's Initial Response Jan 17th, 2025

- **Problem:** This interpretation treats the term “**construction**” as **all encompassing**. All conversions are construction, including our project, which **only involves removing two interior doors**.
- By applying the same standard used for properties that underwent **major renovations** to become single-family homes, the zoning office **misclassifies our minimal modifications as construction**, expanding the ordinance's scope beyond its intended meaning.



## MGO treatment of “construction”

- MGO § 28.151 applies only to single-family dwellings "constructed" after the effective date (April 7, 2011).
- The term "construct" is not defined in the ordinance but follows its common meaning: to build something new, erect a structure, or undergo major renovation within the realm of construction.
- The ordinance does not state that all conversions require conditional use approval.
- A **reasonable** interpretation is that only conversions involving major renovations that effectively constitute construction should be subject to this ordinance.

# Plain Meaning Rule - MGO Definitions (§28.211)

- **MGO § 28.210(f) All words not defined shall have their common meaning.**
- The word “construct” is not specially defined in MGO Chapter 28.
- Removing interior doors and hinges in under an hour cannot align with any common definition of 'constructing' a structure.



## MGO Consistently Treats "Construction" and "Conversion" as different concepts

- MGO § 28.211: “This definition includes accessory buildings constructed in connection with a private garage or a private garage converted into a dwelling unit.”
  - ADU regulations distinguishes construction vs conversion.
- MGO § 28.049(d): Encourages converting multi-family dwellings back to SFH.
- MGO § 28.037(a): "No two-family twin dwelling shall be constructed or converted..."
  - If the City Council intended MGO § 28.151 to apply to conversions, they would have explicitly written it that way.
- Now that we have established that the ordinance distinguishes between construction and conversion as separate concepts, the next key question is how they differ.

# A Reasonable Interpretation of How Construction and Conversion are Different

## Construction

## Conversion

*New  
Constructions*

Some  
conversions  
involves  
construction:  
Katie's  
examples



Some conversion doesn't involve construction: our project



Remove 2 doors

## Precedent 1: 1934 Monroe St

- 1934 Monroe St is located in a **TSS District**
- In 2017, the property was “**converted from a cafe to a single family home** in order to use as a (8 or less) Child Daycare.” according to City of Madison's Licenses & Permit Records.
- Did not receive a conditional use approval for that change in use to single family.



## Precedent 2: 1146 E Washington Ave

- 1146 E Washington Ave is located in a **CC-T District**
- In 2024, the property was “***converted from a commercial building to single family***” according to Madison's Licenses & Permit Records.
- Did not receive a conditional use approval for that change in use to single family.



# Precedents That Break the Zoning Administrator's Interpretation

## **February 13, 2025 – In-Person Meeting with Zoning Administrator.**

We met with Katie Bannon and presented two properties (1934 Monroe St & 1146 E Washington Ave) that converted to single-family dwellings without conditional use approval. Katie was unaware of the precedents and had no immediate comment.

### Key Issue:

- These two properties directly contradict the interpretation she gave us, which stated that all conversions require conditional use approval. Her interpretation fails to account for these cases, creating an inconsistency in how the ordinance has been applied.

# Zoning Administrator's Interpretation of Construction and Conversion Jan-17th Version



???



???

**Construction**

*New  
Constructions*

**Conversion**



Remove 2 doors

# Zoning Administrator's Shifting Interpretation - Timeline

## **February 18, 2025 – Follow-Up with Revised Interpretation**

*"The reason neither [Monroe St & Washington Ave] was required to get conditional use approval is because they were both originally constructed as single-family houses prior to 2013."*

— Katie Bannon (email)

**Interpretation Shift:** Now distinguishes between buildings that were originally built as single-family homes and are converting back to single-family homes (exempt) versus buildings that were not originally built as single-family homes (requiring conditional use).



# Zoning Administrator's Interpretation of Construction and Conversion Feb-18th Version

## Construction

*New Constructions*

**Conversion w/o  
Original SFH Status**



Remove 2 doors

## Conversion w/ Original SFH Status





# Concerns on Katie's Shifting Interpretation

- How can any reasonable person read Madison General Ordinance (MGO) § 28.151 and arrive at the Zoning Administrator's interpretation, which introduces qualifiers like "original single-family status" that do not appear anywhere in the actual ordinance text?
- Between January 2nd and February 18th—a span of 47 days—the Zoning Administrator never stated that buildings originally constructed as single-family dwellings were exempt from conditional use approval.
- *If the ordinance had been consistently interpreted and applied, why was this key distinction only introduced after we independently found precedents that contradicted the initial interpretation?*

# Selective Enforcement & Lack of Transparency

## Repeated Requests Deflected

- We have sent **four emails** requesting what evidence was cited in 2017 and 2024 to exempt 1934 Monroe St & 1146 E Washington Ave from conditional use approval.
- The Zoning Administrator **has not answered how these decisions were made.**

## Unequal Burden of Proof

- The Zoning Administrator now requires us to prove that our house was originally a single-family home. Yet, she refuses to disclose what proof was required for past exemptions.
- How were those determinations made, and why won't they tell us?

## Contradiction: Unequal Access to Evidence

- **For 1933 Winnebago:** Records from 1962 were provided to justify requiring conditional use approval.
- **For 1934 Monroe & 1146 E Washington:** No documentation provided, no transparency on what was reviewed at the time.

## Key Conclusion:

This discrepancy exposes a pattern of selective enforcement, where the interpretation of the ordinance has evolved over time rather than being consistently applied. The lack of a clear, documented standard suggests that the current interpretation may not have even existed in 2017 or 2024.

# Zoning Administration Should Be Clear and Fair

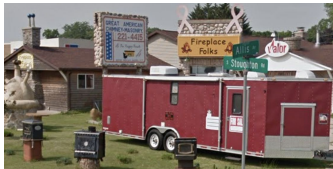
- **Zoning laws should be clear and understandable** – Ordinances must be applied transparently, without hidden qualifiers known only to City officials.
- **Unelected officials should not override elected representatives** – Arbitrary reinterpretation of ordinances weakens democratic governance and public trust.
- **Consistency in enforcement matters** – Allowing shifting interpretations creates uncertainty and undermines fairness in zoning decisions.

Our Understanding of Construction and Conversion re: Our House

Construction

Conversion

*New  
Constructions*



Remove 2 doors

## Our Interpretation Aligns with the Ordinance and Ensures Fair Application

- **Plain Language Compliance** – MGO § 28.151 applies only to dwellings **constructed** after the ordinance's effective date.
- **No Hidden Qualifiers** – The ordinance does not redefine “constructed” to mean “originally built as single-family.”
- **Construction ≠ Conversion** – Some conversions require construction, others (like ours) do not.
- **Predictable and Fair** – Prevents selective enforcement and shifting administrative interpretations.
- **Legislative Intent Matters** – The City Council distinguished construction from conversion for a reason.
- **No Unintended Loopholes** – Our interpretation does not allow unrestricted single-family conversions in mixed-use districts.

# Wisconsin State Case Law: Strict Interpretation of Zoning Ordinances

Wisconsin law requires zoning ordinances to be clear and unambiguous—broad, undefined interpretations like the City's are arbitrary and unenforceable:

*“Zoning ordinances are in derogation of the common law and are to be construed in favor of the free use of private property. To operate in derogation of the common law, the provisions of a zoning ordinance must be clear and unambiguous.”*

— HEEF Realty & Investments, LLP v. City of Cedarburg Board of Appeals, [2015 WI App 23](#), [361 Wis. 2d 185](#), [861 N.W.2d 797](#), [14-0062](#).

## A Vote for Clarity & Fairness

- Our Project Does Not Involve Construction
  - Removing two interior doors does not meet any reasonable definition of "construction."
  - No structural changes, no new building, and no major renovations.
- Applying a Reasonable Interpretation of the Ordinance
  - MGO § 28.151 applies CUP only to single-family homes *constructed* after 2011.
  - Our project is a **conversion** without construction, meaning CUP is **not required**.
- Request to the Zoning Board of Appeals
  - We respectfully request that the ZBA rule that our project does **not** require a Conditional Use Permit to convert into a single-family home, as it does not involve construction under any reasonable interpretation of the ordinance.

If the ZBA were to accept the Zoning Administrator's evolving interpretation—*despite the inconsistencies, shifting qualifiers, and lack of textual support*—we are prepared to present evidence that our house was originally built as a single-family home.



# 1933 Winnebago Original Use - Single Family Dwelling

## 1. Historical Maps & Records

- **1942 Sanborn Map:** Our house is labeled as a **single-family dwelling** (not a duplex or multi-unit).

## 2. Structural Evidence

- **Single main entrance:** Typical of single-family homes, rather than separate entrances for two units.
- **Original open archway retrofitted into a unit entry door:** Suggests later conversion into a two-unit dwelling.

## 3. American Foursquare Home Design

- Our house was built in the American Foursquare architecture style, a style traditionally used for **single-family homes the early 1900s.**

All of the above has already been shared with the Zoning Administrator.



# 1933 Winnebago Original Use - Single Family Dwelling

**Citation:** Sanborn Fire Insurance Map from Madison, Dane County, Wisconsin. Sanborn Map Company, Vol. 2, 1942. Map. [Library of Congress Link](#).



## RESIDENTIAL OCCUPANCY SYMBOLS

**D.** Single family unit or as qualified by a numeral.

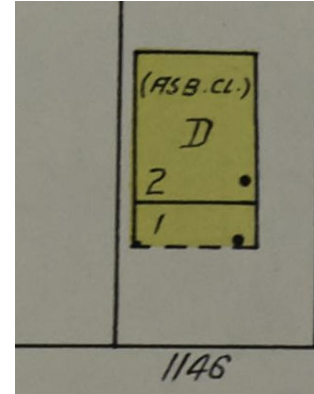
**F. - APTS.** A multi-family residential building corresponding with local Rating Bureau definition in family units per floor, story height, & separation of entrance.



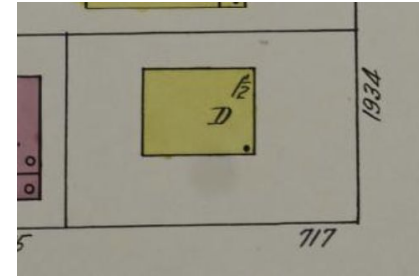
# Original Single Family Dwellings



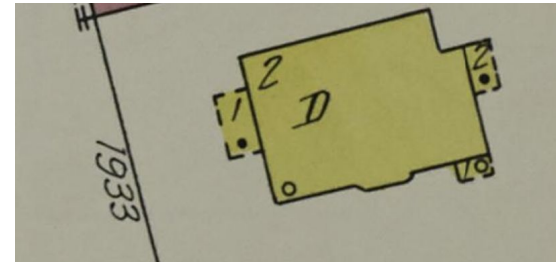
1146 E Wash  
*D = Single Family*  
*No conditional use required*



1934 Monroe  
*D = Single Family*  
*No conditional use required*



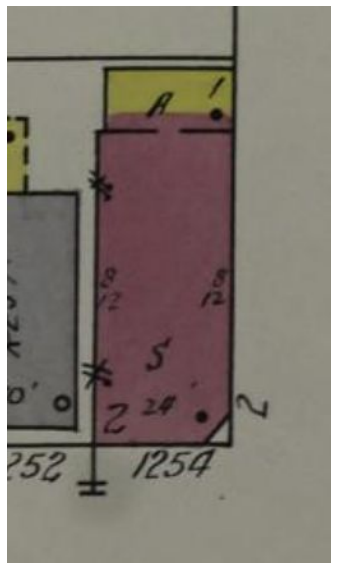
1933 Winnebago  
*D = Single Family*



# Precedents cited by Zoning Admin



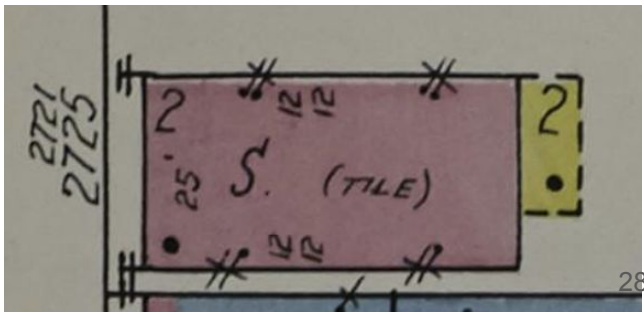
1254 E Washington  
S = Store



1902 S Stoughton  
1942 map data not available



2725 Atwood Ave  
S = Store





**Thank You!**



# Appendix

# Rebuttal

## City's Own Examples Prove Our Point

- The City's cited uses of "constructed" in their slides #8, 9, and 10 involve **major interior or exterior alterations** that change **appearance or structure**.
- **Accessory Dwelling Units (ADUs)** – Example focuses on whether the *appearance or character* of the building is altered.
- **New mobile service structures** – Example involves **new support structures** or **substantial modifications** that impact external form.
- **Attached garage setbacks** – Example refers to **newly constructed buildings** and their *facade appearance*.
- **Public school/municipal building conversions** – Example involves adapting institutional buildings to residential, which likely requires **structural changes**.

→ **Unlike these examples, our project has no external changes and does not alter the building's structural form.**

# Rebuttal

## Our Case Is Fundamentally Different from Their Slippery Slope Argument

- The City argues that allowing this **two-family to single-family** conversion without conditional use would set a precedent for allowing **any** mixed-use or non-residential building to become a single-family home.
- This is **a logical fallacy**. There is a **clear distinction** between:
  - **Our project:** A two-family home converting back to a single-family home **without altering its exterior** or structure. Simple removal of two interior doors.
  - **What they fear:** A commercial or mixed-use building undergoing a **fundamental change in appearance or character**.

→ The zoning code's intent is to regulate changes that impact neighborhood character, not minor interior adjustments like ours.



# Appendix - Communication with Kyle Bunnow- Pt 1

**From:** Alex Li <[jungang.alex@gmail.com](mailto:jungang.alex@gmail.com)>

**Sent:** Thursday, January 9, 2025 12:07 PM

**To:** Bunnow, Kyle <[KBunnow@cityofmadison.com](mailto:KBunnow@cityofmadison.com)>

**Subject:** Request for Clarification on Code Enforcement Legality and Requirements

You don't often get email from [jungang.alex@gmail.com](mailto:jungang.alex@gmail.com). [Learn why this is important](#)

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Mr. Bunnow,

I hope this message finds you well. I am reaching out to seek clarification regarding certain requirements imposed by the building inspection department during my recent interaction about converting my two-unit property into a single-family home. Specifically, the inspector stated that:

1. All spaces must be "continuous," which I understand may be a legitimate requirement.
2. However, I was further informed that door trims must be removed, and any evidence of hinge dents on trims would disqualify the space from meeting the "continuity" standard.
3. When I inquired how hinge dents affect continuity, I was told that it is about the intention—i.e., the possibility of reinstalling a door in the future.

I find these additional requirements puzzling and potentially overreaching. I would appreciate your assistance in clarifying the following:

1. Could you provide the specific building code, zoning regulation, or city ordinance that explicitly supports these requirements, particularly the removal of door trims and the treatment of hinge dents?

The primary code element relevant to this question is SPS 320.07(27) that defines a "Dwelling Unit". This section outlines *"Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others. "Dwelling" and "dwelling unit" do not include a primitive rural hunting cabin."* Within this

# Appendix - Communication with Kyle Bunnow- Pt 2

**To:** Bunnow, Kyle <[KBunnow@cityofmadison.com](mailto:KBunnow@cityofmadison.com)>

**Subject:** Clarification on Minimum Requirements for Doorway Conversion

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Kyle,

Thank you for your previous responses to my inquiries and for providing clarification on the city's expectations regarding dwelling unit continuity. I'm reaching out to determine the **minimum acceptable requirements** for converting a door into a continuous doorway.

To ensure compliance while avoiding unnecessary modifications, I've outlined several detailed scenarios below and would appreciate your confirmation of whether each meets the city's requirements. My primary concern is whether filling, sanding, or aesthetic treatments (painting/varnishing) of the wood are explicitly required, and whether the inner trim must be removed.

## Proposed Scenarios

### Scenario 1: Door and Hardware Removed, No Additional Work

1. Remove the door from the hinges. Yes
2. Remove all hinge hardware from the frame. Yes

# Appendix - Zoning Administrator's Response Jan-17th



**Bannon, Katherine J**

Fri, Jan 17, 12:18 PM



to me ▾

Hi Jungang,

The existing building's approved zoning use at 1933 Winnebago is two-family dwelling. Any change in use requires approval from Zoning to determine if it meets zoning code requirements for that use. The proposed new use is single-family dwelling. When a new use is proposed, we look at the use chart. In this case, the property is zoned TSS, so we look at the use chart under 28.061 (1). Single-family dwelling is listed as P/C in the TSS district with a reference to the supplemental regulations under MGO 28.151.

MGO 28.151 states:

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.

1933 Winnebago does not contain a single family detached dwelling constructed before the effective date of this ordinance. It is not a single family dwelling. Therefore, a conditional use is required to establish a new single family dwelling use.

The words "construction" and "constructed" are broad terms that include

# Appendix - Zoning Administrator's Response Feb-18th

1934 Monroe St and 1146 E  
Washington Ave ➤ Inbox x



**Bannon, Katie J**

Tue, Feb 18, 10:08 AM (2 days ago)



to me ▼

Hi Jungang,

You had asked me to determine whether 1934 Monroe St and 1146 E Washington Ave received conditional use approvals when they received building permits to be converted to single family detached dwellings in 2018 and 2024, respectively. I looked through our records and determined that neither received a conditional use approval for that change in use to single family. The reason neither was required to get a conditional use approval is because they were both originally constructed as single-family houses prior to the effective date of the current zoning ordinance (1/2/13). Let me know if you have any other questions.

Thanks,

**Katie**

**Katie Bannon, AICP** *(she, her)*

Zoning Administrator

City of Madison Building Inspection Division

# Appendix – Process for pulling old records

Bunnow, Kyle

Wed, Feb 19, 7:13 AM (1 day ago)



to me ▾

Alex,

We do have some records for older buildings however the further back in time you go the less documentation is available. Staff would need to manually search the microfiche archives to review what may be available. I do not know if there is anything for the property at 1934 Monroe St or 1146 E Washington Ave. If you would like to make a request, please send an inquiry to [binspection@cityofmadison.com](mailto:binspection@cityofmadison.com). Please include as many specific parameters as you are able. Thank You.



**Kyle Bunnow, P.E.**

**Plan Review and Inspection Supervisor**

City of Madison Building Inspection Division  
Madison Municipal Building  
215 Martin Luther King Jr Blvd Suite 017  
Madison, Wisconsin 53701-2984  
Tel: 608-266-6503  
<https://www.cityofmadison.com/dpced/bi>

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**From:** Alex Li <[jungang.alex@gmail.com](mailto:jungang.alex@gmail.com)>

**Sent:** Tuesday, February 18, 2025 3:45 PM

**To:** Bunnow, Kyle <[KBunnow@cityofmadison.com](mailto:KBunnow@cityofmadison.com)>

**Subject:** Inquiry on Public Records for Original Use of Buildings

We are **NOT** arguing:

## Construction

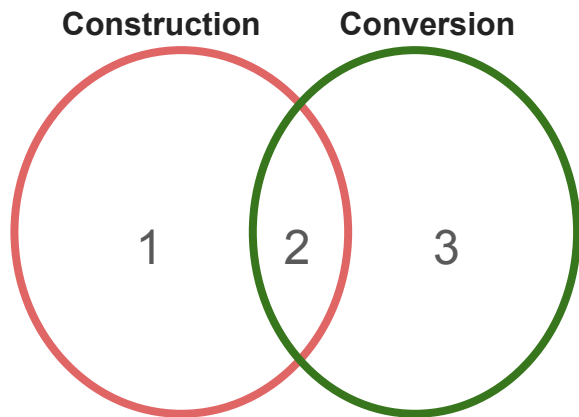
*New  
Constructions*

## Conversion



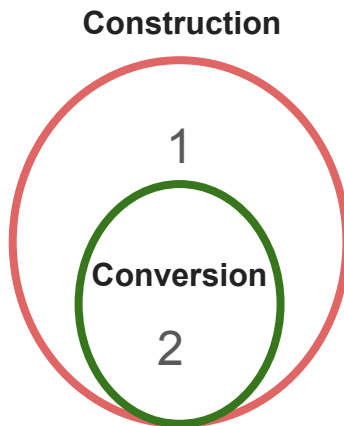


## How Are Construction and Conversion Different - Three Possibilities



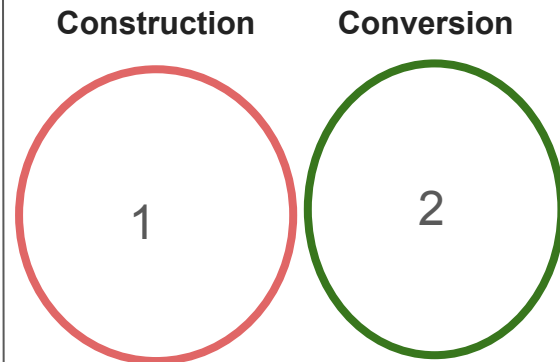
### **This is where we stand:**

1. Some construction are not conversion: new constructions
2. Some conversions involves construction: Katie's examples
3. Some conversion doesn't involve construction: our project



### **This is where Katie's stand (Jan 17th Version):**

1. Some constructions are just new constructions.
2. All conversions (establish a use) are constructions.



### **Third possibility (WE DO NOT SUPPORT THIS!!!)**

1. All constructions are new constructions.
2. All conversions are not constructions.

Million dollar question: Which interpretation best reflects a common-sense reading of 'construction' and 'conversion'?