

# PLANNING DIVISION STAFF REPORT

May 20, 2024



PREPARED FOR THE PLAN COMMISSION

**Project Address:** 9453 Spirit Street, aka 305 Bear Claw Way (District 9, Alder Conklin)  
**Application Type:** Conditional Use  
**Legistar File ID #:** [82734](#)  
**Prepared By:** Lisa McNabola, Planning Division  
Report Includes Comments from other City Agencies, as noted  
**Reviewed By:** Kevin Firchow, AICP, Principal Planner

## Summary

**Applicant & Owner:** Ryan McMurtrie; United Financial Group, LLC/Ziegler at Elderberry II, LLC; 660 West Ridgeview Drive, Appleton, WI 54911

**Contact:** Kevin Burrow; Knothe & Bruce Architects; 7601 University Avenue, Suite 201, Middleton, WI 53562

**Requested Action:** Consideration of a conditional use in the Suburban Residential-Varied 2 (SR-V2) District to allow a residential building complex at 9453 Spirit Street.

**Proposal Summary:** The applicant is requesting approval of a residential building complex to develop 15 townhouse units in four buildings.

**Applicable Regulations & Standards:** Standards for conditional uses are found in MGO Section 28.183(6). Supplemental Regulations for residential building complexes are found in MGO Section 28.151. Per MGO Section 33.24(4)(c) Urban Design Commission review of the residential building complex is required.

**Review Required By:** Urban Design Commission (advisory recommendation) and Plan Commission

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find the approval standards for conditional uses are met and **approve** the request to construct a residential building complex in the Suburban Residential-Varied 2 (SR-V2) District at 9453 Spirit Street, subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

## Background Information

**Parcel Location:** The 56,943 square-foot (1.3-acre) parcel is located at the southeast corner of Bear Claw Way and Spirit Street. It is located within District 9 (Alder Conklin) and the Middleton/Cross Plains School District.

**Existing Conditions and Land Use:** Undeveloped land, zoned Suburban Residential-Varied 2 (SR-V2) District.

### Surrounding Land Use and Zoning:

North: Across Spirit Street, undeveloped land zoned Suburban Residential-Varied 2 (SR-V2) District; across Elderberry Road, single family residences zoned Traditional Residential-Consistent 1 (TR-C1) District and Suburban Residential-Consistent 2 (SR-C2) District; undeveloped land in the Town of Middleton;

East: Single family residences, zoned Traditional Residential-Consistent 3 (TR-C3);

South: Stormwater pond zoned SR-V2 District; across Bear Claw Way, multifamily residential zoned SR-V2 District; undeveloped land zoned TR-U1 District; Blackhawk Church, zoned PD; and

**West:** Across Bear Claw Way, undeveloped land zoned TR-U1 District, SR-V2 District and Agriculture (A).

**Adopted Land Use Plan:** The [Comprehensive Plan](#) (2023) recommends Low-Medium Residential (LMR) with a density range between 7-30 units per acre generally recommended. The [Elderberry Neighborhood Development Plan](#) (2018) recommends Residential Housing Mix 2 (HM2) with a density range between 8-20 units per acre generally recommended. More information on the housing types and design recommendations for the HM2 district are included in the 'Analysis' section of this report.

**Zoning Summary:** The property is zoned Suburban Residential-Varied 2 (SR-V2) District.

Requirements	Required	Proposed
Lot Area (sq. ft.)	22,500	56,943
Lot Width	60 ft	210 ft
Front Yard Setback	25 ft	12 ft (1.)
Side Yard Setback	10 ft	19 ft
Rear Yard Setback	30 ft	31 ft
Usable Open Space	4,800 sq ft	7,812 sq ft
Maximum Lot Coverage	60%	50%
Maximum Building Height	3 stories/40 ft	3 stories/40 ft

Site Design	Required	Proposed
Number Parking Stalls	15	30
Electric Vehicle Stalls	3 EV Ready	30
Accessible Stalls	None	None
Loading	None	None
Number Bike Parking Stalls	17	17
Landscaping and Screening	Yes	Yes
Lighting	Yes	Yes
Building Form and Design	Yes	Single-family attached

*Table Prepared by Jacob Moskowitz, Assistant Zoning Administrator*

**Environmental Corridor Status:** The subject site is not within a mapped environmental corridor.

**Public Utilities and Services:** This property is served by a full range of urban services with the exception of Metro Transit.

## Project Description, Analysis and Conclusion

### Relevant Nearby Approvals

On May 21, 2013, the Common Council approved a request to rezone 33.2 acres of property located at 9601 Elderberry Road from A (Agricultural District) to TR-U1 (Traditional Residential–Urban 1 District), SR-V2 (Suburban Residential–Varied 2 District) and TR-V2 (Traditional Residential–Varied 2 District) (Legistar ID [29644](#)). The following developments have been approved near the subject site:

- #1** 9501 Spirit Street: A residential building complex with eight (8), three-story townhouse buildings with a total of 31 units (Approved 8/29/22, Legistar ID [72213](#))
- #2** 302 Chaska Drive: A residential building complex with four (4) three-story townhouse buildings with a total of 20 units. (Approved 8/29/22, Legistar ID [72214](#))
- #3** 304 Lakota Way: A residential building complex with five (5) two-story, four-unit residential buildings with a total of 20 units (Approved 1/9/23, Legistar ID [74544](#))
- #4** 9503 Elderberry Rd: A four-story, 162-unit, age restricted residential building (Approved 11/13/23, Legistar ID [79971](#))
- #5** 9453 Spirit Street: A three-story, 59-unit, age restricted residential building (Approved 11/13/23, Legistar ID [79970](#))



### Project Description

The applicant is requesting approval of a residential building complex to develop four (4) three-story townhouse buildings with a total of 15 units. The property is located at the corner of Spirit Street and Bear Claw Way. The proposed development includes:

- Building 1 - three-story, three-unit townhouse fronting Bear Claw Way
- Building 2 - three-story, four-unit townhouse fronting Bear Claw Way
- Building 3 - three-story, four-unit townhouse fronting Spirit Street
- Building 4 - three-story, four-unit townhouse fronting Spirit Street

Prior to receiving their advisory recommendation from the UDC, the applicant submitted [revised project plans](#) on April 30, 2024. These plans were updated to reflect comments provided by the Urban Design Commission during their informational presentation. The revised plans include changes to the building elevations and floor plans.

The applicant submitted [revised building elevations](#) on May 16, 2024 to reduce the building height by approximately 2 feet to comply with the 40 foot maximum building height in the SR-V2 District. The rooflines of the buildings were altered but the overall building design was not changed.

Each townhouse has two bedrooms, a private deck, and a two-car rear loaded garage. The front entrances are elevated from the street. The interior of the lot can be accessed from Spirit Street. The primary building materials for Buildings 1 & 4 are a light brown brick veneer and light tan brick veneer. The primary building materials for Buildings 2 & 3 are a dark red brick veneer and light grey brick veneer.

### Supplemental Regulations

Residential building complexes, defined as “a group of two or more residential buildings on a single parcel or tract of land, developed under single ownership and common management”, are subject to the following Supplemental Regulations per MGO Section 28.151:

- (a) Recreational areas may be required to serve the needs of the anticipated population.
- (b) Setback requirements may be reduced as part of the conditional use approval, provided that equivalent open space areas are provided.

- (c) Minimum distances between buildings shall equal the combination of the required side yards for each building, unless reduced by the Plan Commission as part of the conditional use approval.
- (d) An appropriate transition area between the use and adjacent property may be required, using landscaping, screening, and other site improvements consistent with the character of the neighborhood.
- (g) Shall be reviewed by the Urban Design Commission pursuant to Sec. 33.24(4)(c), MGO.
- (h) All Residential Building Complexes shall be submitted with a plan for building placement, circulation, access and parking, and information on the architectural design of the development.
- (i) Each building in a Residential Building Complex shall provide the lot area and usable open space required for the building type by the zoning district.

### **Conformance with Adopted Plans**

The density of the 15-unit complex is 11.5 units per acre. The proposed density is within the density range allowed in the existing SR-V2 zoning of up to 37.9 units per acre for attached single family dwellings up to eight units. Attached single family dwellings up to eight units are a permitted use in the SR-V2 district.

The proposed density is within the 7-30 unit per acre density recommended by the Comprehensive Plan (2023). It is also within the 8-20 unit per acre density recommended by the Elderberry Neighborhood Development Plan (2018), which identifies the subject site and most of the larger Paragon Place subdivision in Residential Housing Mix 2 (HM2). HM2 is recommended as a predominately higher-density single family designation, although other housing types compatible with single-family homes, including duplexes, four units, townhouses, and small-scale apartment buildings (4-8 units) are also recommended. Buildings should include front, side, and rear yards, with a maximum recommended height of three stories. Dwelling unit types in the HM2 area should be varied, and large areas of one housing unit type should be avoided.

The proposed development with townhouses/single-family attached dwellings reflects the density, bulk, and building characteristics recommended in HM2. It would add to the mix of housing types in this neighborhood, which currently consists of single family and large multifamily residential buildings. It would also complement the recent approvals adjacent to this site which include townhouses, small multifamily buildings, and larger multifamily residential buildings.

### **Conditional Use Standards**

The conditional use approval standards state that the Plan Commission shall not approve a conditional use without due consideration of the City's adopted plan recommendations, design guidelines, supplemental regulations, and finding that all of the conditional use standards of MGO §28.183(6) are met. Please note, recent changes to state law requires that conditional use findings must be based on "substantial evidence" that directly pertains to each standard and not based on personal preference or speculation.

Standard 8 states, "When applying the above standards to any new construction of a building or an addition to an existing building the Plan Commission shall find that the project creates an environment of sustained aesthetic desirability compatible with the existing or intended character of the area and the statement of purpose for the zoning district. In order to find that this standard is met, the Plan Commission may require the applicant to submit plans to the Urban Design Commission for comment and recommendation."

Per MGO Section 33.24(4)(c) Urban Design Commission (UDC) review of the residential building complex is required. The applicant provided an informational presentation to the UDC at their January 24, 2024 meeting. The applicant provided [revised project plans](#) on April 30, 2024 to address comments from the UDC. The revised plans include changes to the building elevations and floor plans. The UDC Secretary prepared a [Staff Report for the May 8, 2023 UDC meeting](#) (Legistar ID [81073](#)) which asked the UDC to provide feedback on the following:

- Staff noted that the elevations were updated to add interest and reduce blank wall expanses on highly visible end walls by incorporating windows or doors in the garage spaces at the first floor.
- The landscaping in the in the parking lot and lawn area, and the screening of transformers.

At their May 8, 2024 meeting the UDC recommended “final approval” with no conditions.

In closing, the Planning Division believes the conditional use approval standards can be found met, subject to the recommended conditions of approval.

## Recommendation

### Planning Division Recommendation (Contact Lisa McNabola, 243-0554)

The Planning Division recommends that the Plan Commission find the approval standards for conditional uses are met and **approve** the request to construct a residential building complex in the Suburban Residential-Varied 2 (SR-V2) District at 9453 Spirit Street, subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

### Recommended Conditions of Approval Major/Non-Standard Conditions are Shaded

### Engineering Division (Contact Tim Troester, 267-1995)

1. Enter into a City / Developer agreement for the required infrastructure improvements. Agreement to be executed prior to sign off. Allow 4-6 weeks to obtain agreement. Contact City Engineering to schedule the development and approval of the plans and the agreement. (MGO 16.23(9)c)
2. Construct Madison Standard street, terrace, and sidewalk improvements for Spirit Street.
3. Construct public sanitary sewer, storm sewer, and drainage improvements as necessary to serve the lots within the plat/csm. (MGO 16.23(9)(d))
4. This development is subject to impact fees for the Elderberry Impact Fee District. All impact fees are due and payable at the time building permits are issued (MGO Ch 20). Add the following note on the face of the plans: LOTS / BUILDINGS WITHIN THIS DEVELOPMENT ARE SUBJECT TO IMPACT FEES THAT ARE DUE AND PAYABLE AT THE TIME BUILDING PERMIT(S) ARE ISSUED.
5. Madison Metropolitan Sewerage District (MMSD) charges are due and payable prior to Engineering sign-off, unless otherwise collected with a Developer's / Subdivision Contract. Contact Mark Moder (608-261-9250) to obtain the final MMSD billing a minimum of two (2) working days prior to requesting City Engineering signoff. (MGO 16.23(9)(d)(4))
6. An Erosion Control Permit is required for this project. See Storm comments for permit specific details and requirements.

7. A Storm Water Management Report and Storm Water Management Permit is required for this project. See Storm comments for report and permit specific details and requirements.
8. A Storm Water Maintenance Agreement (SWMA) is required for this project. See Storm comments for agreement specific details and requirements.

This site appears to disturb over one (1) acre of land and requires a permit from the WDNR for stormwater management and erosion control. The City of Madison has been required by the WDNR to review projects for compliance with NR216 and NR-151 however a separate permit submittal is still required to the WDNR for this work. The City of Madison cannot issue our permit until concurrence is obtained from the WDNR via their NOI or WRAPP permit process. Contact Eric Rortvedt at 273-5612 of the WDNR to discuss this requirement. Information on this permit application is available on line: <http://dnr.wi.gov/Runoff/stormwater/constrformsinfo.htm>.

9. The applicant is notified that the City of Madison is an approved agent of the Department of Safety and Professional Services (DSPS) and no separate submittal to this agency or CARPC is required for this project to proceed.
10. Revise the site plan to show all existing public sanitary sewer facilities in the project area as well as the size, invert elevation, and alignment of the proposed service. (POLICY)
11. This project will disturb 20,000 sf or more of land area and require an Erosion Control Plan. Please submit an 11" x 17" copy of an erosion control plan (pdf electronic copy preferred) to Megan Eberhardt (west) at [meberhardt@cityofmadison.com](mailto:meberhardt@cityofmadison.com), or Daniel Olivares (east) at [daolivares@cityofmadison.com](mailto:daolivares@cityofmadison.com), for approval.

Demonstrate compliance with Section 37.07 and 37.08 of the Madison General Ordinances regarding permissible soil loss rates. Include Universal Soil Loss Equation (USLE) computations for the construction period with the erosion control plan. Measures shall be implemented in order to maintain a soil loss rate below 5.0 tons per acre per year. The WDNR provided workbook to compute USLE rates can be found online at <https://dnr.wi.gov/topic/stormwater/publications.html>

Complete weekly self-inspection of the erosion control practices and post these inspections to the City of Madison website - as required by Chapter 37 of the Madison General Ordinances.

12. Prior to approval, this project shall comply with Chapter 37 of the Madison General Ordinances regarding stormwater management. Specifically, this development is required to submit a Storm Water Management Permit application, associated permit fee, Stormwater Management Plan, and Storm Water Management Report to City Engineering. The Stormwater Management Permit application can be found on City Engineering's website at <http://www.cityofmadison.com/engineering/Permits.cfm>.

The Storm Water Management Plan & Report shall include compliance with the following:

Report: Submit prior to plan sign-off, a stormwater management report stamped by a P.E. registered in the State of Wisconsin.

Electronic Data Files: Provide electronic copies of any stormwater management modeling or data files including SLAMM, RECARGA, TR-55, HYDROCAD, Sediment loading calculations, or any other electronic

modeling or data files. If calculations are done by hand or are not available electronically, the hand copies or printed output shall be scanned to a PDF file and provided to City Engineering. (POLICY and MGO 37.09(2))

Rate Control New Development: Detain the 200 - year storm events, matching post development rates to predevelopment rates and using the design storms identified in Madison General Ordinances Chapter 37.

TSS New Development: Reduce TSS by 80% (control the 5-micron particle) off of newly developed areas compared to no controls.

Submit a draft Stormwater Management Maintenance Agreement (SWMA) for review and approval that covers inspection and maintenance requirements for any BMP used to meet stormwater management requirements on this project.

13. Submit, prior to plan sign-off but after all revisions have been completed, digital PDF files to the Engineering Division. Email PDF file transmissions are preferred to: bstanley@cityofmadison.com (East) or ttroester@cityofmadison.com (West).

**Traffic Engineering** (Contact Sean Malloy, 266-5987)

14. The applicant shall submit one contiguous plan showing proposed conditions and one contiguous plan showing existing conditions for approval. The plan drawings shall be to engineering scale and include the following, when applicable: existing and proposed property lines; parcel addresses; all easements; vision triangles; pavement markings; signing; building placement; items in the terrace such as signs, street light poles, hydrants; surface types such as asphalt, concrete, grass, sidewalk; driveway approaches, including those adjacent to and across street from the project lot location; parking stall dimensions, including two (2) feet of vehicle overhang; drive aisle dimensions; semitrailer movement and vehicle routes; dimensions of radii; and percent of slope.
15. The Developer shall post a security deposit prior to the start of development. In the event that modifications need to be made to any City owned and/or maintained traffic signals, street lighting, signing, pavement marking and conduit/handholes, the Developer shall reimburse the City for all associated costs including engineering, labor and materials for both temporary and permanent installations.
16. The City Traffic Engineer may require public signing and marking related to the development; the Developer shall be financially responsible for such signing and marking.
17. All parking facility design shall conform to MGO standards, as set in section 10.08(6).
18. All bicycle parking adjacent pedestrian walkways shall have a 2 foot buffer zone to accommodate irregularly parked bicycles and/or bicycle trailers.
19. The applicant shall adhere to all vision triangle requirements as set in MGO 27.05 (No visual obstructions between the heights of 30 inches and 10 feet at a distance of 25 feet behind the property line at streets and 10 feet at driveways.). Alteration necessary to achieve compliance may include but are not limited to; substitution to transparent materials, removing sections of the structure and modifying or removing landscaping elements. If applicant believes public safety can be maintained they shall apply for a reduction of MGO 27.05(2)(bb) - Vision Clearance Triangles at Intersections Corners. Approval or denial of the

reduction shall be the determination of the City Traffic Engineer.

20. The applicant shall provide a clearly defined 5' walkway clear of all obstructions to assist citizens with disabilities, especially those who use a wheel chair or are visually impaired. Obstructions include but are not limited to tree grates, planters, benches, parked vehicle overhang, signage and doors that swing outward into walkway.
21. "Stop" signs shall be installed at a height of seven (7) feet from the bottom of the sign at all class III driveway approaches, including existing driveways, behind the property line and noted on the plan. All directional/regulatory signage and pavement markings on the site shall be shown and noted on the plan.
22. The applicant shall show the dimensions for the proposed class III driveway including the width of the drive entrance, width of the flares, and width of the curb cut.

**Zoning** (Contact Jacob Moskowitz, 266-4560)

23. Provide Setback requirements may be reduced as part of the conditional use approval, provided that equivalent open space areas are provided.

**Parks Division** (Contact Ann Freiwald, 243-2848)

24. Park Impact Fees (comprised of the Park Infrastructure Impact Fee, per MGO Sec. 20.08(2)), and Park-Land Impact Fees, per MGO Sec. 16.23(8)(f) and 20.08(2) will be required for all new residential development associated with this project. This development is within the West Park-Infrastructure Impact Fee district. Please reference ID# 13117.8 when contacting Parks about this project.

**Forestry Section** (Contact Brandon Sly, 266-4816)

25. As defined by Madison General Ordinance 10.10, City Forestry will assess the full cost of the street tree installation to the adjacent property owner. City Forestry will determine street tree planting sites and tree species type. Street tree planting will be scheduled after there is substantial completion of the new plat development along the street segment.

**Water Utility** (Contact Jeff Belshaw, 261-9835)

26. The developer shall construct the public water distribution system and services required to serve the proposed subdivision plat/CSM per MGO 16.23(9)(d)(3).
27. All public water mains and water service laterals shall be installed by a standard City subdivision contract / City- Developer agreement. Applicant shall contact City Engineering Division to schedule the development of plans and the agreement. See Engineering Division comments for additional information.

**Metro Transit** (Contact Tim Sobota, 261-4289)

28. The proposed development is outside Metro Transit's paratransit service area. The closest bus stop with scheduled bus service is over one and one half miles walking distance, and the parcels would be greater



than the 3/4 mile regulatory distance from all day scheduled service - for passengers who might be eligible for door-to- door paratransit service.

**City Engineering Division – Mapping Section** (Contact Jeffrey Quamme, 266-4097)

29. The owner/developer are collectively responsible to contact the utility companies to coordinate the overstory shade trees proposed within the utility easements within this site.
30. Submit a site plan and a complete set of building Floor Plans (for each individual building) in PDF format to Lori Zenchenko (lzenchenko@cityofmadison.com) that includes a floor plan of each floor level on a separate sheet/page for the development of an interior and building addressing plan for the proposed multi-building complex. Each building page should include a key locator and north arrow. Also, include a unit matrix for the apartment buildings.

The Addressing Plan for the entire project shall be finalized and approved by Engineering (with consultation and consent from the Fire Marshal if needed) PRIOR to the Verification submittal stage of this LNDUSE with Zoning. The final approved stamped Addressing Plan shall be included in said Site Plan Verification application materials or a revised plan shall provided for additional review and approval by Engineering.

Per 34.505 MGO, a full copy of the approved addressing plan shall be kept at the building site at all times during construction until final inspection by the Madison Fire Department.

For any changes pertaining to the location, deletion or addition of a unit, or to the location of a unit entrance, (before, during, or after construction), a revised Address Plan shall be resubmitted to Lori Zenchenko to review addresses that may need to be changed and/or reapproved.

**Parking Utility** (Contact Trent Schultz, 246-5806)

31. The applicant shall submit a Transportation Demand Management (TDM) Plan to tdm@cityofmadison.com. The TDM Plan is required per MGO 16.03. Applicable fees will be assessed after the TDM Plan is reviewed by staff.

The following agencies reviewed the request and recommended no conditions of approval: Fire Department