

Paul Kent  
2135 West Lawn Avenue  
Madison, WI 53711  
608-259-2665

September 28, 2016

Clerk of the Plan Commission  
215 Martin Luther King Jr Blvd.  
Madison, WI 53703

RE: Appeal of the Conditional Use Approvals for 2022 Monroe Street  
Plan Commission Matter No. 44170

Dear Clerk:

Enclosed please find an appeal of the conditional use approvals for 2022 Monroe Street issued by the Plan Commission on September 19, 2016. I received the list of persons notified from the planning department. It is our understanding that the notice went out to 53 addresses, only 36 notices were to owners, the remainder going to "occupants." Nevertheless, we have signatures from owners that are more than 20% of the total no matter how it is tallied. Please contact me with any questions or further notices regarding this matter. I can be reached at [pkent@staffordlaw.com](mailto:pkent@staffordlaw.com), 608-259-2665.

Sincerely,



Paul G. Kent

/PGK  
Enclosure



CITY OF MADISON

SEP 28 2016

Planning & Community  
& Economic Development

CITY OF MADISON COMMON COUNCIL

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In the Matter of a two Conditional Use Permits  
for the Construction of an Accessory Building  
with an Accessory Dwelling Unit at  
2022 Monroe Street,

Plan Commission Matter 44170

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**APPEAL OF PLAN COMMISSION DECISION**

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The undersigned residents (Residents), having been provided notice of a request for a conditional use permit related to an Accessory Dwelling Unit at 2022 Monroe Street, and the City of Madison Plan Commission having approved such request on September 19, 2016, the Residents hereby oppose and appeal that determination.

As grounds therefore, the Residents state as follows:

**Background on the Neighborhood Setting of the Proposed Use**

1. The property at 2022 Monroe Street is zoned TR-C2, a Traditional Residential-Consistent district. The purpose of such TR-C zones is set forth in the Madison General Ordinances (MGO) §28.041 (1) as follows:

(1) The TR-C Districts are established to **stabilize, protect and encourage throughout the City the essential characteristics of the residential areas** typically located on the Isthmus, near East and **near West** portions of the City, **and to promote and encourage a suitable environment for family life** while accommodating a full range of life-cycle housing. The Districts are also intended to:

(a) Promote the preservation, development and redevelopment of traditional residential neighborhoods **in a manner consistent with their distinct form and residential character.** (Emphasis added)

2. In TR-C2 Districts, single family detached buildings are permitted uses. MGO §28.043(2). A single family detached dwelling is defined as, “A building designed

exclusively for and occupied exclusively by one (1) family in one (1) dwelling unit, with yards on all sides.” MGO §28.211.

3. The even side of the 2000 block of Monroe Street backs on to the 2100 block of West Lawn Avenue. West Lawn Avenue is also zoned TR-C2.

4. The “distinct form and residential character” of Monroe Street and West Lawn Avenue is single family homes and ownership. The homes on these streets are comprised predominantly of single family owner-occupied homes. In fact, several of the few multi-family uses on Monroe Street have been converted back into single family homes in the past several years. There are now several families with children living on the 2000 block of Monroe and many more families with children on the 2100 block of West Lawn.

5. Nevertheless, given its proximity to the University of Wisconsin campus, the Edgewood College campus, and the 1000 to 1900 block Monroe Street Commercial District, maintaining the residential quality of the neighborhood is an on-going challenge. For this reason, the Monroe Street Commercial District Plan specifically listed as its goal to limit commercial development to three defined areas and preserve and enhance the residential character of the neighborhoods around the commercial districts. Plan at 9.

6. Similarly, the Madison Comprehensive Plan notes at 2-35, that “In general predominantly single-family blocks within established neighborhoods should continue in this use, since significant intensification in these areas could be detrimental to the neighborhood...”

7. This will be the first ADU in the Monroe Street/West Lawn corridor if not the entire Dudgeon Monroe Street neighborhood. There are two single family houses on Monroe Street in proximity to 2022 Monroe that are in need of significant repair, and could be the subject of sale or redevelopment in the near future. The decision on this ADU could affect those and other properties on this block.

8. In the TR-C2 zone, Accessory Dwelling Units are conditional uses. Conditional uses are just that, conditional. In articulating the purpose of conditional uses, MGO §28.183(1) states, “These uses may be necessary or desirable in a particular district **if sufficient consideration is given to their location, development and operation.**” (emphasis added).

9. The standards for approval of a conditional use in MGO §28.183(2) require that the Plan Commission consider applicable neighborhood development plans. This section also provides that the Commission shall not approve a conditional use unless it finds that 12 specific conditions are present including:

3. The uses, values and enjoyment of other property in the neighborhood for purposes already established will not be substantially impaired or diminished in any foreseeable manner.

4. The establishment of the conditional use will not impede the normal and ordinary development and improvement of the surrounding property for uses permitted in the district.

### **The Proposed Conditional Use(s)**

10. The owner of 2022 Monroe Street, Joel Bodilly removed a single car attached garage and sought to construct a two-car detached garage with a second story accessory dwelling unit (ADU). The unit is a one-bedroom apartment with a bathroom

and kitchen. As the Plan Commission staff noted in its September 19, 2016 report, two conditional use permits are required: one for an accessory building in excess of 576 square feet in a TR zoning district and the second for the ADU.

11. An ADU must meet the supplemental regulations in MGO §28.151. Among other things, “The number of occupants of the accessory dwelling unit shall not exceed one (1) family or two (2) unrelated individuals.”

12. Notice of the request and of a September 19, 2016 hearing was provided by postcard, postmarked September 9, 2016, to the Residents stating in relevant part as follow:

On August 17, 2016, an application was filed with the City of Madison Department of Planning and Community Development for approval of a **conditional use** in order to demolish an existing garage and construct a detached garage with accessory dwelling unit at **2022 Monroe Street...** (Emphasis in original).

13. Mr. Bodilly made inquiries to the Plan Commission as early as May 2016. However, Mr. Bodilly made no attempt to contact any of his neighbors about the nature of this proposal. No information about the proposal was made public until approximately September 15 when it was posted on line, and the staff memo on this project was not posted until after September 15. The Plan Commission held its hearing on Monday September 19, 2016.

14. As to the use of the ADU, Mr. Bodilly stated on September 15 in an email response to questions from Plan Commission staff, that, “I have not finalized how I would use the space and I believe it will change over the years based on needs.”

15. Often ADUs are referred to as “granny flats” and have been characterized in the local media as “a smart way to create extra housing opportunities for the elderly...” (*Wisconsin State Journal*, October 15, 2009) or allowing elderly residents to stay in their neighborhood (*Isthmus*, November 21, 2013). Such use by the elderly here is unlikely since the only access to the second story ADU is by an exterior exposed staircase with 13 steps.

16. At the Plan Commission hearing, several Residents expressed concerns about the potential use of the ADU as student rental and/or short term rental for use as a party house during football weekends and other events. Plan Commission staff noted that a student rental would be allowed if either the ADU or principal house was owner occupied at least six months out of the year, and that short term rental would be permissible provided that the ADU was not used exclusively for short term rentals.

17. At the conclusion of the hearing, the Plan Commission approved the staff recommendation to allow the ADU with the sole condition relating to the building design. The Plan Commission rejected any restrictions on the use of the ADU, based in part on staff statements, that the Commission had no authority to restrict the use and that such uses were approved in other areas of the City.

### **Grounds for Appeal**

18. **The notice provided to the residents was defective.** The Plan Commission identified that two conditional use authorizations are required for the proposed project. The notice only addressed the conditional use required for the ADU,

not the conditional use required for an accessory building in a TR district exceeding 576 square feet. The action authorizing the second conditional use is invalid.

19. **The Plan Commission decision is in violation of the zoning standards for a TR-C2 district under in MGO §28.041.** Allowing an unrestricted use of the ADU for short term or long term rentals effectively converts the TR-C2 zoning into a two-family zoning district and is not consistent with the “distinct form and residential character” of the neighborhood which is single family residences. The conclusion in the Plan Commissions staff report that the “single family residential land use will remain” is true in name only and is inconsistent with the purpose of the TR-C2 district.

20. **The Plan Commission decision is in violation of the conditional use standards in MGO §28.183** in the following respects:

A. Allowing an unrestricted use of the ADU for short term or long term rentals, such as football game day party use, can impair or diminish the use of surrounding properties by families with small children, and adversely impact the redevelopment or improvement of surrounding properties. MGO §28.183(6)(a) 2 and 3.

B. Allowing an unrestricted use of the ADU for short term or long term rentals is not consistent with the City of Madison Comprehensive Plan which provides that predominantly single-family blocks within established neighborhoods should continue in this use, since significant intensification in these areas could be detrimental to the neighborhood. It is also inconsistent with the Monroe Street Commercial District

Plan which seeks to promote, preserve and enhance the residential character of the neighborhoods between commercial districts. MGO §28.183(6)(a)(intro).

C. The assertion of Plan Commission staff at the hearing that an ADU should be allowed because they have been allowed in other neighborhoods is inconsistent with the requirement that a conditional use must be evaluated, “for the use at a particular location.” MGO §28.183(1). In addition, the staff’s conclusion in its September 19, 2016 staff memo, that the “proposed accessory building and use are commonly associated with residential uses,” is not true at this particular location. This will be the first ADU in this neighborhood.

21. **Unless additional conditions are imposed, the ADU is not a proper accessory structure at this location.** Under MGO §28.211, an accessory use is defined as, “A use on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure, and serving the occupants of the principal use or structure.” Allowing the ADU to be rented to an unrelated third party does not serve the occupants of the principal structure.

22. **The assertion by Plan Commission staff at the hearing that the Commission could not impose conditions limiting the scope of the ADU use is an incorrect statement of the law and inconsistent with MGO §28.183.** The fundamental difference between a permitted use and a conditional use is that the latter is only allowed upon the imposition of conditions. The range of conditions that can be imposed is broad. MGO §28.183(6)(b) provides in part: “Before granting a conditional use, the Plan



Commission may stipulate conditions and restrictions on the establishment, location, construction, maintenance and operation of the conditional use.” The claim that the Commission cannot impose a condition to limit the use of the ADU is contrary to law.

**Requested Relief**

The appellant Residents request the following relief:

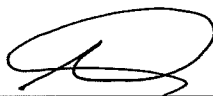
A. That the conditional use for the ADU and the conditional use for an accessory structure larger than 576 square feet be denied;

B. In the alternative, if the conditional uses are granted that ADU be further conditioned on the following:

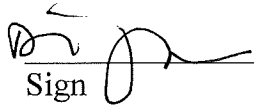
(1) The ADU may not be used for temporary lodging or a “tourist room”; and

(2) Any use of the ADU must be limited to family members or care givers of the family members of the principal structure, and not roomers.

Marcia Standiford      MARCIA Standiford      2122 West Lawn Ave. 53711  
Sign                              Print Name                              Address

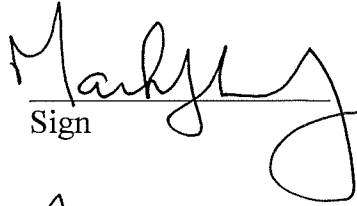
      Andrew Dean      2114 West Lawn Ave. 53711  
Sign                              Print Name                              Address

Sara Campbell      Sara Campbell      2115 West Lawn Ave  
Sign                              Print Name                              Address  
53711

  
Sign

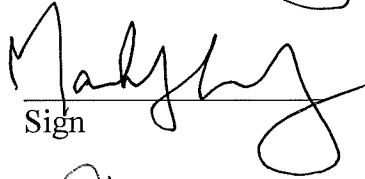
Dianne Jenkins  
Print Name

212 S West Lawn Ave Madison 53711  
Address

  
Sign

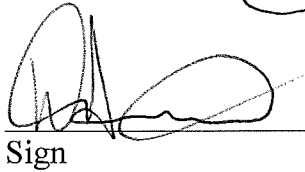
MARK LANDGRAF  
Print Name

2130 West Lawn Ave  
MADISON, WI 53711  
Address

  
Sign

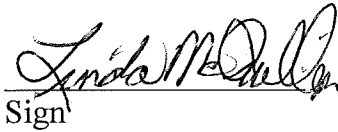
MARK LANDGRAF  
Print Name

2126 West Lawn Ave  
MADISON, WI 53711  
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David Swinnen  
Print Name

2117 West Lawn Ave  
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Linda McQuillen  
Print Name

2107 West Lawn Ave  
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MARY A. LUNDA  
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2105 West Lawn Ave.  
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Paul & Kent  
Sign                      PAUL & KENT                      2135 West Lawn Ave  
Print Name                      Address

Jacquelyn H. Thomas  
Sign                      Jacquelyn H. Thomas                      816 Lincoln St.  
Print Name                      Address

J. Mark Thomas  
Sign                      J. Mark Thomas                      816 Lincoln St.  
Print Name                      Address

Ryan J. Wozniak  
Sign                      Ryan J. Wozniak                      2102 Monroe St.  
Print Name                      Address

Gimone Gutwiler  
Sign                      GIMONE GUTWILER                      2139 W. LAWN, MADISON  
Print Name                      Address

Jana Hughes  
Sign                      Jana Hughes                      2141 West Lawn Ave,  
Print Name                      Address

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Sign                      Print Name                      Address

*Elizabeth Fernandez*  
Sign

Elizabeth Fernandez  
Print Name

2104 Monroe St.  
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Madison, WI

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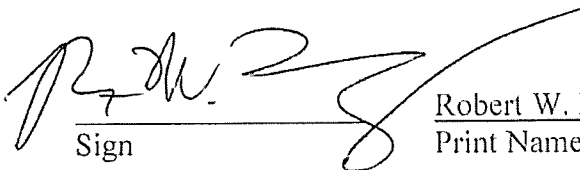
Address

A. That the conditional use for the ADU and the conditional use for an accessory structure larger than 576 square feet be denied;

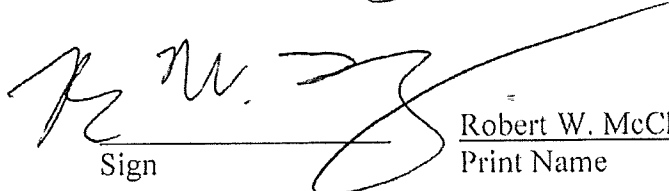
B. In the alternative, if the conditional uses are granted that ADU be further conditioned on the following:

(1) The ADU may not be used for temporary lodging or a "tourist room"; and

(2) Any use of the ADU must be limited to family members or care givers of the family members of the principal structure, and not roomers.



Robert W. McChesney      2118 West Lawn Avenue  
Print Name                      Address



Robert W. McChesney      2120 West Lawn Avenue  
Print Name                      Address

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Sign                                      Print Name                      Address

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