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January 11, 2023

VIA EMAIL (kbannon@cityofmadison.com)

Katie Bannon
City of Madison Zoning Administrator

Re: 2906 Landmark Place – Countryside Corporate Apartments
Application for Certificate of Occupancy

Dear Ms. Bannon:

I represent Ron Enterprises Wisconsin, LLC (the Hose family), which owns the property known as Countryside Corporate Apartments located at 2906 Landmark Place (the "Property").¹ The Property came under this City of Madison's zoning jurisdiction at the end of October, when the Town of Madison was dissolved and the Property was attached to the City. Pursuant to section 28.195 of the City's zoning code, the Hose family hereby submits this application for a certificate of occupancy for nonconforming use. I was unable to locate a specific form or any information about a filing fee on your website. If a form and/or fee is required, please let me know as soon as possible.

Overview

Section 28.195 of the City's zoning code outlines the procedure by which a property owner may obtain from the zoning administrator an "occupancy certificate" for a legal nonconforming use. The ordinance requires the owner to present you with "documentary evidence" that the use was a lawful permitted or conditional use at the time it originated and was made nonconforming by the adoption of this ordinance.

As explained more fully below, (i) Countryside Corporate Apartments (which includes both short-term and long-term rental of dwelling units) was a lawful permitted use under the Dane County zoning ordinance at the time the Hose family established that use in the late 1990s; and (ii) Countryside Corporate Apartments was made nonconforming when the property was attached to the City of Madison and the City amended its zoning ordinance to apply to the property.

Accordingly, Countryside Corporate Apartments is a legal nonconforming use under Wisconsin law and we respectfully request that you issue a certificate of occupancy recognizing that legal nonconforming use.

¹ Countryside Corporate Apartments has a mailing address of 3210 Coventry Trail, Suite A. Until its recent attachment to the City of Madison, the subject property had a street address of 2824 Landmark Place.

Background

- Countryside Apartments is a 64-unit apartment complex, consisting of two buildings with 32 dwelling units in each building. Countryside Apartments was constructed by Phillip Stark, of Stark Realty, in 1967 on a parcel of land then located in the Town of Madison.
- In 1967, all property in the Town of Madison was under the zoning jurisdiction of Dane County. At the time Countryside Apartments was constructed, the Property was zoned RH-1, where multifamily housing was a permitted use.
- In 1970, Dane County amended its zoning code to eliminate multifamily housing as a permitted use in the RH-1 zoning district. At that time, Countryside Apartments became a legal nonconforming use.
- In 1995, Phillip Stark and his partner sold Countryside Apartments to the Hose family.² The Property has been in the Hose family since then.
- An addendum to the 1995 Land Contract between Stark and the Hose family confirmed that the property was being rented to residential tenants and required the Hose family to comply with certain obligations regarding the ongoing operation of the apartments.³
- In connection with the 1995 purchase, the Hose family also signed and recorded a "Rental Unit Energy Efficiency Standards Stipulation," a document that was required at the time under a state law governing the energy efficiency of residential apartment buildings.⁴ The document was countersigned by an employee of the Wisconsin Department of Industry Labor and Human Relations (DIHLR) on July 11, 1995.
- The Hose family was concerned that the legal nonconforming zoning status of the Property would hamper its value, so, shortly after purchasing the Property, the Hose family filed a petition with Dane County to rezone the Property to the R-4 designation, where multifamily dwellings were classified as a permitted use.⁵
- The rezoning petition was granted by Dane County, effective November 22, 1995.⁶ The rezoning ordinance provides, "the sole permitted use shall be expressly limited to the use of

² See Land Contract, dated June 30, 1995, recorded with the Dane County Register of Deeds as Document No. 2689653, a copy of which is enclosed as Exhibit A.

³ *Id.*

⁴ See Rental Unit Energy Efficiency Standards Stipulation, recorded with the Dane County Register of Deeds as Document No. 2689654, a copy of which is enclosed as Exhibit B.

⁵ See letter from Hose Realty to Town of Madison board of supervisors, dated September 11, 1995 ("Non conforming status is bad for the property owner and the community, it limits repairs and improvements, even ones necessary to meet building codes, it impairs the ability to fix, renovate, improve, or finance the property"). Copy enclosed as Exhibit C.

⁶ See Dane County Ordinance Amendment No. 6382. Copy enclosed as Exhibit D.

the property for the present multifamily dwellings, consisting of, and limited to, two (2) apartment buildings with (32) apartments in each building.”⁷

- The rezoning approval required the Hose family to record a deed restriction with the Dane County Register of Deeds confirming that the Property could only be used as apartments, which they did.⁸
- The following year, the Hose family recorded a “Rental Unit Energy Efficiency Standards Certificate of Compliance” with Dane County, indicating that the apartment buildings had been inspected by a state-certified inspector and had passed the energy efficiency standards applicable to residential apartment buildings at the time.⁹
- In 1997, the Hose family began publicly marketing the Property as “Countryside Corporate Apartments” across a range of advertising outlets, including the *Yellow Book*, *Apartment Showcase Magazine*, and *Corporate Choices Magazine*.¹⁰ These advertisements indicated the apartments could be rented by tenants on a weekly or monthly basis and featured language such as “short term rentals,” “fully furnished short term rentals,” “luxury furnished apartments,” “executive apartments,” and “corporate apartments.” The apartments catered to long-term visitors; professionals temporarily working in Madison; and people permanently moving to or within Madison but temporarily without long-term housing.
- Several years after the Hose family first began publicly marketing the Property as Countryside Corporate Apartments, the boundaries of the Property were reconfigured via Certified Survey Map No. 9218 in order to accommodate an adjacent development project.¹¹ Page 1 of the CSM confirms that the Property was occupied by two “existing apartment building[s].” The CSM was approved by the Dane County Zoning and Natural Resources Committee, the Town of Madison and the City of Madison Plan Commission.
- In 2000, the Hose family registered the domain name “qualityhousing.com” and created a website for Countryside Corporate Apartments advertising “Short Term Rentals.”¹²

⁷ *Id.*

⁸ See Restrictions, recorded with the Dane County Register of Deeds as Document No. 2720630, a copy of which is enclosed as Exhibit E.

⁹ See Rental Unit Energy Efficiency Standards Certificate of Compliance, recorded with the Dane County Register of Deeds as Document No. 2746904, a copy of which is enclosed as Exhibit F.

¹⁰ Examples of some of these advertisements are enclosed as Exhibit G.

¹¹ See CSM No. 9218, recorded February 25, 1999, as Document No. 308528, copy enclosed as Exhibit H.

¹² See Internet Archive of qualityhousing.com website, April 5, 2001, available at: <https://web.archive.org/web/20010405043000/http://qualityhousing.com/>, copy attached as Exhibit I.

- In 2002, the Hose family transferred ownership of the Property from one corporate entity (Sally Properties, Inc.) to another (Ron Enterprises Wisconsin, LLC).¹³ The legal instrument that was recorded with the Dane County Register of Deeds to document that conveyance indicated on page 1 that the consideration for the transfer includes, "Intangible assets of Countryside Apartments: attributes of 'Corporate Apartments' concept, trade secrets, customer list, rental system, reputation, work force in place, etc."¹⁴
- In 2007, the Hose family redesigned the branding and website for the business and changed the URL to www.countrysidemadison.com.¹⁵ While the Hose family has made many technological and branding improvements since 2007, the business operations, services, and even the layout of the website have, by and large, remained the same.
- Over the years, the Hose family would occasionally seek building permits from the Town of Madison for various improvements or repairs to the Property. These permits were routinely granted and the required inspections were performed by the Town.¹⁶ At no time did the Town building inspector or any other Town official indicate that the use of the Property as short-term apartment rentals was a prohibited use under the Dane County Zoning ordinance. The same is true with respect to Dane County.
- At all times during its ownership and operation of Countryside Corporate Apartments, the Hose family has complied with Wisconsin's landlord-tenant laws governing the rental of dwelling units, including the practice of having written rental agreements with each tenant, regardless of the duration of their tenancy.¹⁷
- Over the past 27 years, the Hose family has occasionally found the need to pursue legal action to deal with tenants in default. In so doing, the Hose family has always complied with the Wisconsin laws governing eviction of tenants from residential dwelling units.¹⁸
- During the entire time the Hose family has operated Countryside Corporate Apartments, the Town of Madison assessed the property as a commercial apartment building.
- The Property was subject to annual safety inspections by the Town of Madison Fire Department. The Town of Madison was fully aware that the Property was being operated as

¹³ See Land Contract, recorded September 30, 2002, as Document No. 3556196, corrected November 14, 2003, per Document No. 3841516, copies enclosed as Exhibit J.

¹⁴ *Id.*

¹⁵ See Internet Archive of qualityhousing.com website, October 12, 2007, available at: <https://web.archive.org/web/20071012080009/http://www.countrysidemadison.com/>, copy attached ss Exhibit K.

¹⁶ See e.g. Town of Madison Application for Building Permit, dated February 22, 2008, copy attached as Exhibit L.

¹⁷ Examples of some of these lease agreements are enclosed as Exhibit M. Note that names of tenants and other details have been redacted to protect tenant privacy.

¹⁸ See e.g. Dane County Circuit Court Case Nos. 2011SC001794, 2013SC003284 and 2019CV003033.

short-term corporate apartment rentals and the Town of Madison never notified the Hose family of any alleged zoning violations.

- On one occasion in the Spring of 2011, Town of Madison officials raised a question about room taxes. Town officials questioned whether Countryside Corporate Apartments ought to be paying room taxes to the Town of Madison on any leases with a duration shorter than 30 days. On March 16, 2011, Mr. Hose met with Renee Schwass, the Town Business Manager, and Scott Gregory, the Chief of Police, to discuss the issue. Mr. Hose left the meeting with the understanding that, because Countryside Corporate Apartments rented entire dwelling units, not rooms, the business did not fall within the definition of a hotel/motel and therefore was not subject to payment of room tax. The following day, Mr. Hose sent a certified letter to Chief Hose confirming his understanding.¹⁹ Mr. Hose received no further communications from the Town of Madison on the subject and the Town of Madison never required Countryside Corporate Apartments to remit room taxes on any of its apartment rentals.
- Over the past two plus decades, Countryside Corporate Apartments has earned a reputation both locally and nationally as being a high-quality corporate housing provider. The Hose family is very proud of the property's 4.8-star rating and the property's reputation with both customers and the community. Countryside Corporate Apartments has been recognized many times as being a top property nationally. For example, in 2015, J. Turner Research recognized Countryside Corporate Apartments as #42 in the U.S list of ORA Power Rankings., and the only property in Wisconsin on the top 100 list.²⁰
- On October 30, 2022, at 11:59 p.m., the Property was attached to the City of Madison pursuant to an attachment ordinance adopted under the 2002 Cooperative Plan between the Town of Madison and the cities of Madison and Fitchburg.²¹

Discussion

A. Countryside Apartments was a permitted use when first constructed in 1967.

When the Property was first developed in 1967, multifamily housing was a permitted use in the RH-1 zoning district under Dane County's zoning ordinance. Several years later, Dane County amended its zoning code to eliminate multifamily housing as a permitted use in the RH-1 zoning district. At that time, the use of the Property became a legal nonconforming use.²² In 1995,

¹⁹ See Letter from Josef Hose to Chief Gregory, dated March 17, 2011, copy enclosed as Exhibit N.

²⁰ See <https://www.jturnerresearch.com/oratopproperties2015>.

²¹ See Attachment Ordinance # ORD-22-00065, adopted July 12, 2022, and recorded December 1, 2022, as Document No. 5876458.

²² Wis. Stat. § 59.69 (10) ("An ordinance enacted under this section may not prohibit the continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure, or fixture is used at the time that the ordinances take effect ..."). For a more general discussion, see *a/so* Markham L.

the Property was rezoned to the R-4 designation, where multifamily dwellings were classified as a permitted use.²³ At that time, Countryside Apartments was once again a permitted use.

B. The Hose family began operating the Property as short-term corporate apartment rentals at a time when there were no zoning restrictions on short-term rentals.

In the late 1990s, the Hose family began operating the Property as “Countryside Corporate Apartments,” a short-term corporate apartment complex, where fully furnished dwelling units are rented to tenants on a week-to-week basis, month-to-month, or for a fixed period.²⁴ These rentals were subject to Wisconsin’s landlord-tenant laws governing the rental of residential dwelling units.²⁵ At the time, Dane County’s zoning code did not define short term rentals or “transient lodging” as a separate land use classification. At all times since the late 1990s, the Hose family has continuously operated the Property as Countryside Corporate Apartments, a use that has not expanded beyond the original 64 dwelling units that were originally constructed.

C. Countryside Corporate Apartments became a legal nonconforming use when the County amended its zoning code in 2019 to classify the short-term rental of dwelling units as a distinct land use.

In 2016, the Dane County board appointed a subcommittee to begin studying a set of comprehensive revisions to the County’s zoning code.²⁶ The subcommittee adopted a timeline that included a list of topics to be considered, including additional regulation of dwelling unit rentals.²⁷ At the subcommittee meeting where short term rentals was a topic of discussion, Dane County zoning staff presented a slide show to the subcommittee explaining that short-term rentals (sometimes referred to as “transient lodging”) was a land use classification that was not regulated by the then-current Dane County zoning ordinance.²⁸

and Milligan D., Zoning NONCONFORMITIES: APPLICATION OF NEW RULES TO EXISTING DEVELOPMENT, Center for Land Use Education, UW-Stevens Point.

²³ Dane County Ordinance Amendment No. 6382, effective Nov. 22, 1995.

²⁴ See “Background” section of this letter.

²⁵ See *generally*, Wis. Stat. ch. 704 and Wis Admin Code. Ch., ATPC 134.

²⁶ Dane County Resolution #2015 RES-431, adopted Feb. 8, 2016, available at: <https://dane.legistar.com/LegislationDetail.aspx?ID=2550438&GUID=5FA44ED0-820E-4B0F-A4EE-BD106B70D300>.

²⁷ See ZLR Comprehensive Revision of Chapter 10 Subcommittee, Meeting schedule/topics for discussion, available via Dane County Legistar File # 2016 MIN-341, available at: <https://dane.legistar.com/LegislationDetail.aspx?ID=2866524&GUID=A8EEDB5B-EA37-49A8-B5BB-5EC02A17A643>.

²⁸ See Comprehensive Revisions of Dane County Zoning Ordinance, a staff report presented to the *Comprehensive Revision of Chapter 10 Subcommittee*, a subcommittee of the Zoning & Land Regulation Committee of the Dane County Board, Oct. 24, 2016, available at: <https://dane.legistar.com/LegislationDetail.aspx?ID=2851716&GUID=CF57D4E1-043B-4DAE-AD43-9AE7169063EC>, excerpts enclosed as Exhibit Q.

The notion that short-term rentals were, at the time, unregulated by Dane County zoning was well understood. In a subsequent report to the Zoning & Land Regulation Committee, the County Zoning Administrator explained it this way:

“Short term rentals is a fairly new land use. It is becoming very popular across the county and across the world. In our previous zoning ordinance, we didn’t have short term rental or tourist and transient lodging as a land use.”²⁹

The zoning re-write subcommittee finished its work and presented a draft code that included “transient lodging” as a new land use classification.³⁰ After further discussion and revision, the new zoning code was finally adopted by the Dane County board on January 17, 2019. The new zoning code became effective within the Town of Madison on March 14, 2019, following its ratification by the town board.³¹

The County’s new zoning code regulates the rental of multifamily dwelling based on the duration of the rental. If a multifamily dwelling unit is rented to a person or family for 29 consecutive days or more, the code does not prohibit or otherwise limit the rental (so long as the residential use is otherwise permitted in the applicable zoning district) and the land use is classified simply as “multiple family dwelling.”³² If a dwelling unit is rented for fewer than 29 consecutive days to a tenant who has another permanent address, the tenant occupying the dwelling unit is defined as a “transient or tourist”³³ and the land use is classified as “Transient or tourist lodging.”³⁴ Again, this is a new land use classification that did not exist prior to 2019.

By the time the new zoning code was adopted in 2019, Countryside Corporate Apartments had been renting dwelling units to tenants on a “short-term” (*i.e.* less than 29 days) for over 20 years. To the extent this land use fell within Dane County’s new definition of *Transient or Tourist*

²⁹ Presentation by Roger Lane, Dane County Zoning Administrator to the June 8, 2021, meeting of the Zoning & Land Regulation Committee of the Dane County Board. Available at: https://dane.granicus.com/player/clip/1467?view_id=1&redirect=true&h=368705f7524a72ab4fd4926689967d6d.

³⁰ See ZLR Public Hearing Draft, dated Oct. 23, 2018, available at: <https://dane.legistar.com/LegislationDetail.aspx?ID=3707048&GUID=BD1778CC-B253-4C29-8322-21CB750AEAA0>, excerpt attached as Exhibit P. Following the public hearing, the code definition of the new “Transient or Tourist Lodging” use classification was further revised as set forth in a staff memo to ZLR, dated Dec. 6, 2018, copy enclosed as Exhibit Q.

³¹ See Town of Madison Resolution to Adopt the Comprehensively Revised Dane County Zoning Ordinance, dated Mar. 11, 2019, copy enclosed as Exhibit R.

³² DCO § 10.004(104) (“Multiple family dwelling. A dwelling designed or intended to be occupied by more than two families”).

³³ DCO § 10.004(159)(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.”). This classification does not clearly apply to a short-term tenant who does not have another permanent address.

³⁴ DCO § 10.004(160).

Lodging, Countryside Corporate Apartments was a continuous legal nonconforming use, protected under state law.³⁵

D. Countryside Corporate Apartments' status as a legal nonconforming use continued when the Property was attached to the City of Madison.

Wisconsin law protects a property owner's right to continue a legal nonconforming use. This foundational principle of zoning law was explicitly acknowledged by City of Madison planning staff in the memo to the city council (copy attached) that accompanied the ordinance that brought the subject property under the City's zoning jurisdiction when the property was attached to the City just over a month ago:

Any uses in [sic] legally in existence pursuant to Dane County zoning at the time that the attachment to the City and proposed zoning take effect on October 30, 2022 at 11:59 p.m. may continue as nonconforming uses, buildings or structures, or lots (as applicable), and will be subject to the regulations for nonconformities outlined in Subchapter 28M of the City's Zoning Code.

The Property first became subject to the City's zoning code at 11:59 p.m. on October 30, 2022.³⁶ Countryside Corporate Apartments was a legal nonconforming use under the Dane County zoning code prior to that time and it continues to be a legal nonconforming use under the City's zoning code.³⁷

Conclusion

For more than 20 years, the Hose family has continuously occupied the Property as an apartment complex where dwelling units are rented to tenants on a week-to-week basis, month-to-month, or for a fixed period. Under Wisconsin law, such use is protected as a continuous, legal nonconforming use. For all of the reasons set forth in this application, the Hose family respectfully requests that you issue a certificate under Section 28.195 of the City's zoning code recognizing the long-established legal nonconforming use of the Property.³⁸

³⁵ Wis. Stat. § 59.69 (10). *See also* DCO § 10.102(7)(b)1. ("The lawful principal use of a building or premises existing at the time of adoption of this ordinance may be continued as a nonconforming use").

³⁶ *See* City of Madison Ordinance #ORD-22-00089, enacted September 16, 2022, available at: <https://madison.legistar.com/LegislationDetail.aspx?ID=5724174&GUID=04FCE652-D7B8-4898-88B4-EDC33303F734>.

³⁷ *See* MGO § 28.191 ("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.")

³⁸ In making this request, Ron Enterprises Wisconsin, LLC waives none of its rights under Wisconsin law to continue relying on the legal nonconforming status of the Property.

Ms. Bannon
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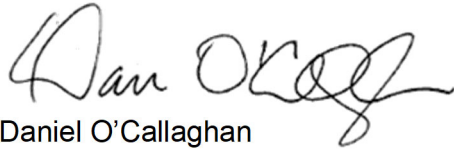
CARLSON BLACK

CARLSON BLACK O'CALLAGHAN & BATTENBERG LLP

On behalf of the Hose family, we look forward to your decision on this application as soon as possible. If you have any questions or concerns, please don't hesitate to contact me.

Respectfully,

CARLSON BLACK O'CALLAGHAN & BATTENBERG LLP

A handwritten signature in black ink, appearing to read "Dan O'Callaghan". The signature is fluid and cursive, with the first name "Dan" written in a larger, more prominent script than the last name "O'Callaghan".

Daniel O'Callaghan

Enclosures

cc: Atty. Angela Black
Ben Hose, Countryside Corporate Apartments