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March 25, 2024

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Katie Bannon
Zoning Administrator
City of Madison
215 Martin Luther King Jr Blvd, Room 017
Madison, WI 53703

Subject: **Failure to apply Zoning Code correctly, contrary to MGO 28.008(1)
Legistar File ID No. 82116, 3722 Speedway Rd**

Dear Ms. Bannon:

The recently published staff report for the above application for conditional use permits (CUPs) raises an important legal question: Where in the Zoning Code does it allow an application for a CUP to be reviewed under standards approved after the application was filed?

This question is important because the staff report for this application, dated March 25, 2024, claims, without a citation:

A conditional use proposal, such as this, is subject to the rules and regulations that are in place at the time an application is filed **unless an applicant voluntarily agrees to be reviewed under the newer standards.** (Emphasis added.)

I've reviewed Chapter 28 of the Madison General Ordinances (Zoning Code) thoroughly a number of times, and I am unable to find anything in the Zoning Code that allows the applicant for a CUP to opt out of the standards in effect when the application was filed. Absent such an exception in the Zoning Code, the law is clear and unambiguous:

Any application that has been filed with the Department of Planning and Community and Economic Development or Building Inspection Division and has been determined to be fully complete by the City, prior to the effective date of this ordinance, **shall be regulated by the terms and conditions of the ordinances and codes that were in place at the time of filing.** (Emphasis added.) [MGO 28.008\(1\)](#).

In addition, regarding the construction of the Zoning Code, "shall" as used in MGO 28.008(1) means mandatory:

The words "shall," "must," and "will," are mandatory and not discretionary. (Emphasis added.) [MGO 28.210\(1\)\(c\)](#).

Regarding exceptions to MGO 28.008(1) and its application, the Zoning Code states:

Where the conditions imposed by any provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, **the regulations which are more restrictive or which impose higher standards or requirements shall prevail,** unless an exception to this provision is specifically noted. (Emphasis added.) [MGO 28.004\(3\)](#).

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In addition, the interpretation of MGO 28.008(1) in the staff report for this application is contrary to past practice in staff reports. I am not aware of any instance where the Zoning Code has been interpreted by staff to allow an applicant to opt out of, "the terms and conditions of the ordinances and codes that were in place at the time of filing." If the Zoning Code has been previously been interpreted as it is in the staff report for this application, it is still contrary to the law.

Whereas the subject application was filed on or about February 2, 2024, and the new ordinance was approved by the common council on March 5, 2024, the subject application shall be regulated by the terms and conditions of the ordinances and codes that were in place at the time of filing, and the new ordinance regarding the location of parking is not applicable.

And whereas the public was first informed of this novel interpretation of the Zoning Code on or about Friday, March 22, 2024, and this matter is on the plan commission agenda the next business day, today, Monday, March 25, time is of the essence. For the above reasons, I respectfully request that the staff report be corrected to reflect that the ordinance regarding parking which was in effect when this application was filled applies to this application:

For all Building Forms other than (b) above, parking shall not be placed between the front facade of a building and the abutting street. **Parking shall be located to rear or side of the principal building**; parking abutting the primary street frontage is limited to seventy (70) feet in width or fifty percent (50%) of lot frontage, whichever is less. (Emphasis added.) MGO 28.064(4)(c), (February 2, 2024).

In conclusion, it is imperative that the letter and the spirit of the Zoning Codes is followed, and the public have complete confidence in the process to approve CUPs. Failure to do so creates significant legal liability for the plan commission and city, and continues to erode public trust in this process.

Thank you for your prompt attention to this important matter. I look forward to a timely reply and confirmation the record has been corrected.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Saloutos', with a stylized, looped initial 'A'.

Alex Saloutos

cc: Mark L. Barnes
Brian S. Nimityongskul
Graham P. Petit
Carol M. Richard
Matt Wachter
Bill Fruhling
All alders
Plan Commission