

**CITY OF MADISON
INTERDEPARTMENTAL
CORRESPONDENCE**

Date: May 6, 2024

To: Plan Commission

From: Katie Bannon, Zoning Administrator

Subject: 6910 E. Buckeye Rd. Home Occupation, Floodplain Violation

At its May 6, 2024 meeting, the Plan Commission will consider a Conditional Use request to allow an outside employee at a home occupation for the home office of a window washing and gutter cleaning business. The purpose of this memo is to provide details regarding the status of current code enforcement action for noncompliance with City code.

The City's Zoning Ordinance includes a provision that allow conditions to be applied to projects where applicants have demonstrated code compliance problems. Section 28.182(5(a)3. of the City of Madison Zoning Ordinance states:

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. In doing so, the Plan Commission may consider overdue taxes and/or fees and the applicant's history of compliance with relevant ordinances and approvals, including but not limited to, building and minimum housing code, zoning code and zoning approvals, and alcohol license provisions and approvals.

Current code enforcement action

Action Pro Window Cleaning Inc. purchased the subject property in October 2019. The property is in the Agricultural (A) zoning district. In January 2021, the City received a complaint that a contractor's shop type business was being operated at the property. The City investigated the complaint and found that a window and gutter cleaning (contractor's) business was being operated at the property, which is not an allowed use in the Agricultural (A) zoning district. An Official Notice of Violation was mailed to the owner. In June 2021, when the matter had not been resolved in a timely matter, the case was referred to the Office of the City Attorney for prosecution. In June 2022, during a reinspection associated with the case, the property was found to be in compliance as the business appeared to no longer be operating at the property.

In May 2022, the City and the Wisconsin Department of Natural Resources (WDNR) received a complaint that floodplain on the property was being filled. DNR floodplain management specialists have authority over the City's administration of State (and thereby Federal) floodplain regulations. However,

it is the City's responsibility to ensure compliance with these regulations, as laid out in Madison General Ordinance 28.121 Floodplain Overlay Districts. An inspection of the property found the complaint to be valid; the regulatory floodplain area on the property had been illegally filled while the property was owned by Action Pro Window Cleaning Inc. (maps below). The filled area is regulatory *Floodway* and cannot be filled in any circumstance. An Official Notice of Violation was sent to the owner in June 2022 for material (fill) placed within the F1 Floodway portion of the regulatory floodplain zoning map. The case was referred to the Office of the City Attorney for prosecution in September 2022 after no progress had been made following the June letter.

To date, no action has been taken to remedy this significant violation and the prosecution action remains active. Despite on-going conversations with both the owner and his attorney no settlement has been reached. Most recently, the owner's attorney stated that they have reached out to retired University of Wisconsin hydrologists for assistance. However, as the City has already explained, to restudy the floodplain would require full surveying and analysis of the floodway and floodplain area in question by a licensed civil engineer, submittal of required applications and modeling data to FEMA for review. The City has been part of these applications in the past, as prepared and submitted by licensed civil engineers. Based on the City's experience in floodplain management, Staff believe The only realistic remedy is removing the fill from the floodway, or engaging a licensed professional to studying the floodplain area and provide a course of action.

To address this ongoing violation, Staff recommends the following condition be applied to the current project:

If approved, the Conditional Use shall not be allowed to commence until a plan and action towards removal of illegally placed fill in the regulatory floodplain area has been approved and proceeds accordingly, to the satisfaction of the Zoning Administrator and in compliance with the floodplain overlay regulations in Chapter 28.

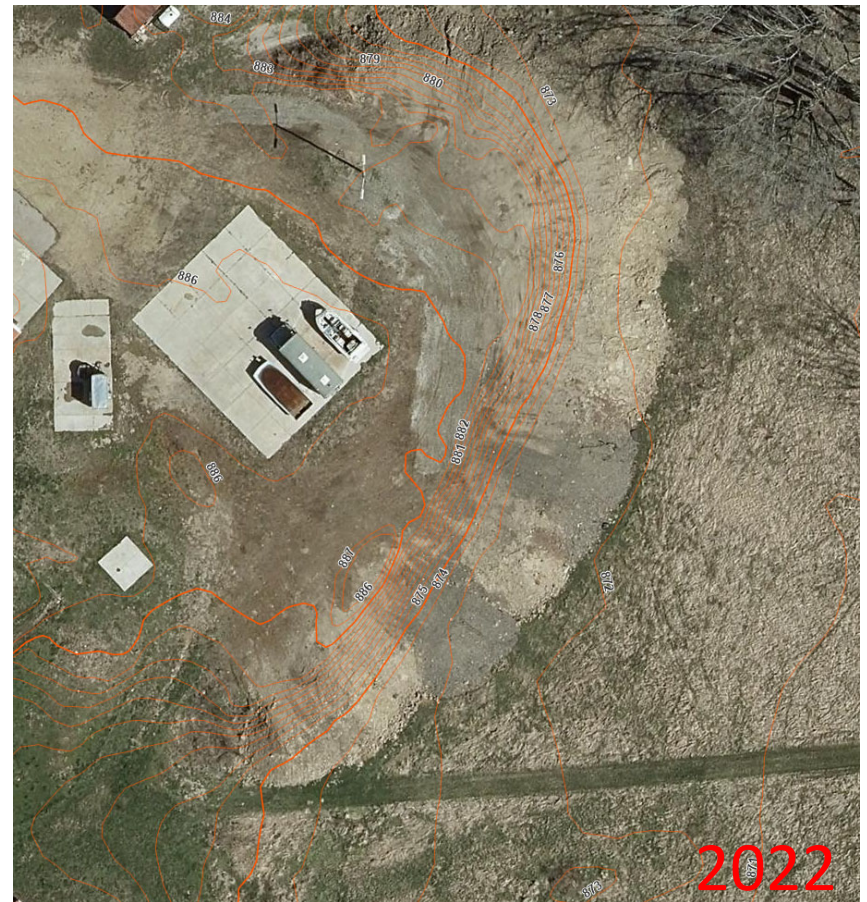
Staff believes such a condition is appropriate given the documented history of violations and non-compliance. Despite notice sent regarding the enforcement case in June 2022 and an active prosecution beginning in June 2023, no corrective actions have been taken nearly two years later. Staff asks the Plan Commission to use the tools given to them by Madison General Ordinance Section 28.182(5(a)3. to require the owner address this significant floodplain violation prior to executing a Conditional Use on the property.

Maps of floodplain fill evidence follow.

2016 And 2022 aerial photos



Contours with 2016 And 2022 aerial photos



2016 aerial photo, floodway boundary overlaid



FEMA

Flood Hazard Area 2017

FEMA Special Flood Hazard Area - BFL Not Determined

1% Annual Flood Chance - BFL Determined

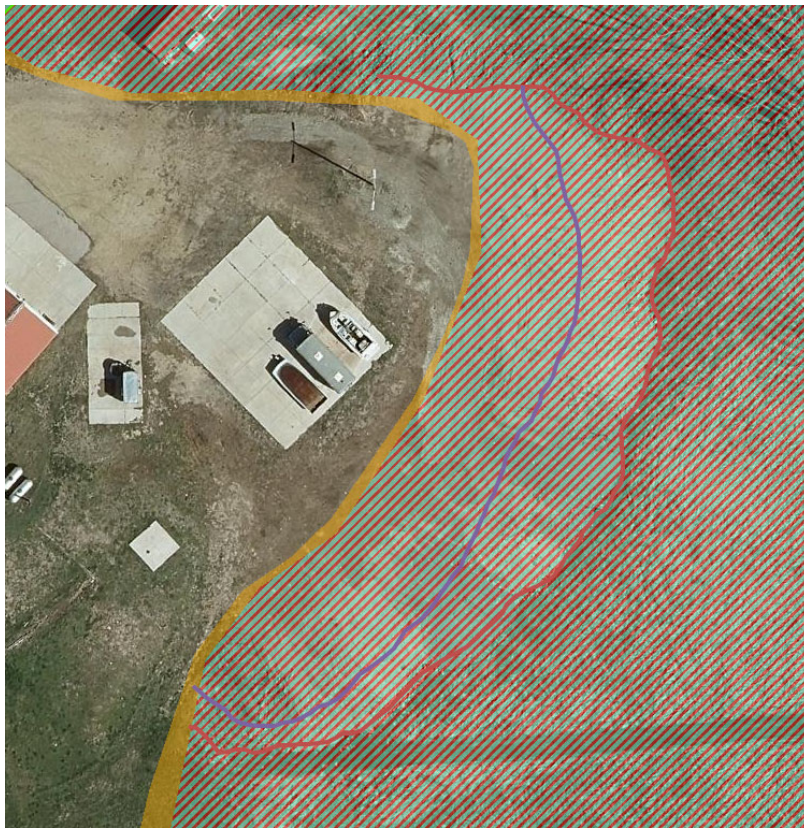
→ FEMA Floodway

Zone X .2% Annual Flood Chance

— 2016 edge of bottom of slope

— 2022 edge of illegal fill at bottom of slope

2022 aerial photo, floodway boundary overlaid



FEMA

Flood Hazard Area 2017

FEMA Special Flood Hazard Area - BFL Not Determined

1% Annual Flood Chance - BFL Determined

→ FEMA Floodway

Zone X .2% Annual Flood Chance

— 2016 edge of bottom of slope

— 2022 edge of illegal fill at bottom of slope

Remove illegal fill back to 2016 line, slope to remain not to exceed 2:1

Effective FEMA map 55025C0434H, effective on 9/17/2014

