
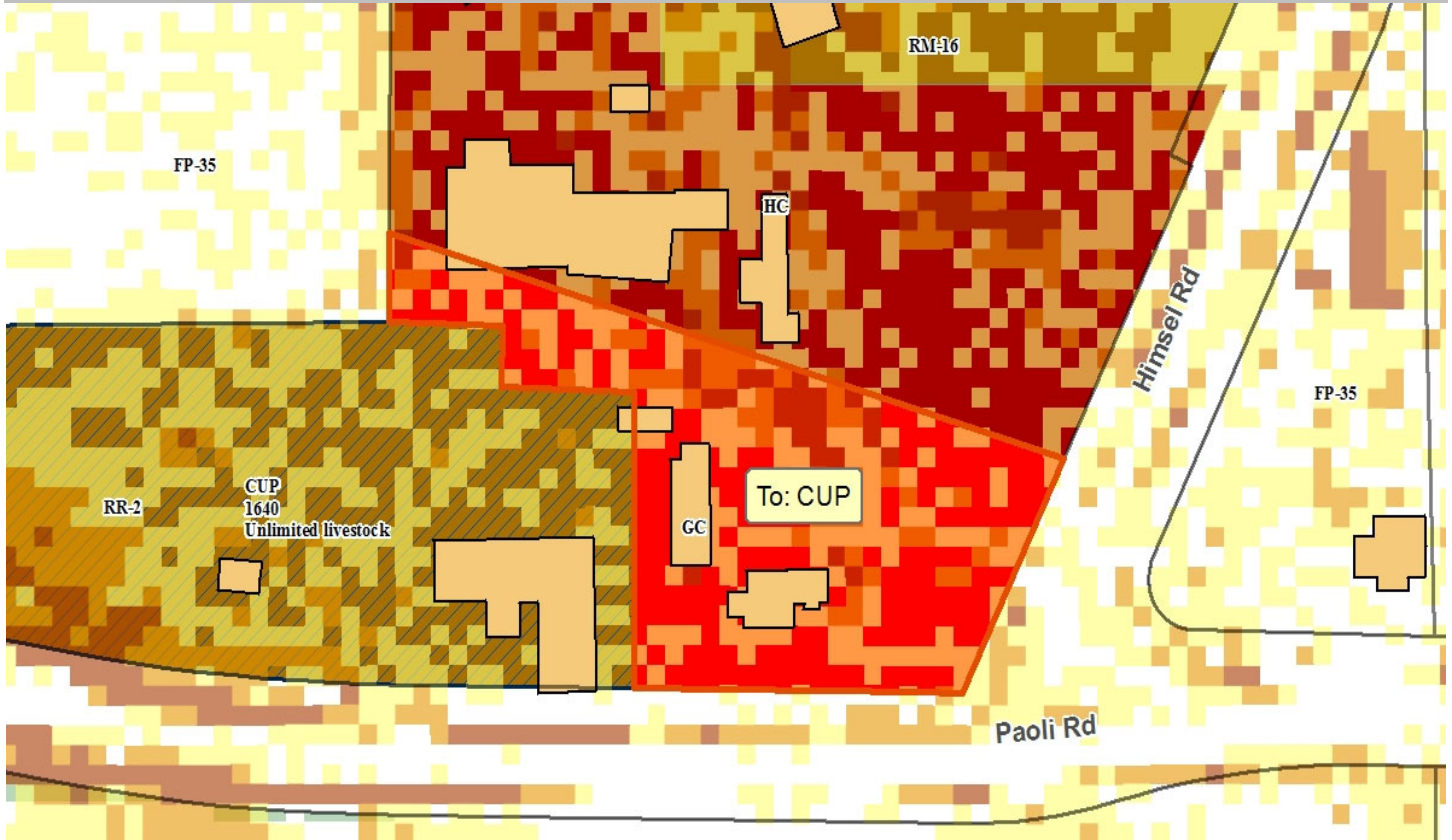


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| Staff Report  Zoning and Land Regulation Committee | <i>Public Hearing:</i> October 25, 2022 | | CUP 02575 |
| | <i>Zoning Amendment Requested:</i> TO CUP: Residential - single family residential | | <i>Town/Section:</i> MONTROSE, Section 3 |
| | <i>Size:</i> 0.8 Acres | <i>Survey Required.</i> | <i>Applicant</i> JACKIE R KALTENBERG |
| | <i>Reason for the request:</i> Bring existing residence into compliance with current zoning requirements | | <i>Address:</i> 1379 HIMSEL RD |



DESCRIPTION: Applicant Rachel Peters, owner of Heart in Heart Holdings LLC and the sole proprietorship Fit to be Satisfied, request approval of a conditional use permit (CUP) to continue to use a residential home as a residence in the GC General Commercial zoning district. Peters has an accepted offer to purchase the property from Jackie Kaltenberg. Approval of the CUP would enable her to continue to use the home as a residence, which is a long-standing legal nonconforming use since the property was first zoned C-1 under the old zoning code several years ago.

CONDITIONAL USE PERMIT DECISION MAKING: “Conditional uses” are those land uses which, because of unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review.

Prior to granting or denying a conditional use, the zoning committee shall make written findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the following standards:

- i. *General standards for approval of a conditional use under s. 10.101(7)(d);*
- ii. *Any prescribed standards specific to the applicable zoning district.*
- iii. *Any prescribed standards specific to the particular use under s. 10.103.*

The zoning committee must deny a CUP if it finds that the standards for approval are not met. The committee must approve a CUP if it finds that the standards for approval are met.

For any CUP, specific consideration must be given to the substantial evidence that the applicant has provided that the proposed use will meet the CUP criteria listed below, from Section 10.101(7)(d) of the Zoning Code:

- a. *That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare;*
- b. *That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use;*
- c. *That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;*
- d. *That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;*
- e. *That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and*
- f. *That the conditional use shall conform to all applicable regulations of the district in which it is located.*
- g. *That the conditional use is consistent with the adopted town and county comprehensive plans.*
- h. *If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).*

Standards specific to the applicable zoning district are noted in the “Factual Information” section below.

Zoning Code s. 10.103(13) lists no special requirements for residential use.

OBSERVATIONS/ FACTUAL INFORMATION: The subject property is a 0.8-acre lot (Lot 1 of CSM 2106) that contains the house, an accessory storage building, and a shed. Neighboring properties include a 5.2-acre lot to the north with a mix of HC Heavy Commercial and RM-16 Rural Mixed Use zoning, a 3-acre RR-2 lot to the west with residential and agricultural uses, and FP-35 Farmland Preservation parcels to the south and east across Paoli Road and Himsel Road, respectively.

In the application materials, the applicant has explained how the proposed residential use would meet the conditional use standards, including the fact that the house was constructed for this purpose, that it is served by an adequate water well and septic system, that there would be no signage or lighting associated with the use, and there would be no increase in traffic or potential nuisance factors that would impact the neighboring properties.

Standards Specific to the Applicable Zoning District

The existing building and proposed use appear to meet the requirements of the GC zoning district, including lot size, building size, and building setbacks. The GC district allows “residential and associated accessory uses” as a conditional use, provided the residential use meets all of the following criteria:

- a. *Comply with residential density standards of any applicable town comprehensive plan and the Dane County Comprehensive Plan*
- b. *Have visual screening from adjacent commercial areas*
- c. *Must provide appropriate parking, and internal pedestrian access for residents.*

The house was built for residential use and has been in residential use for several years. Fencing to the rear/west side of the house abutting an RR-2 lot with a CUP for unlimited livestock. There appears to be vegetative screening to the north abutting the HG lot. Based on historic aerial photos the residence pre-dates the structures on the adjacent land to the north. There appears to be adequate parking space on site (at least three spaces) for both the residence and the sewing and alteration business that is a permitted use under the site’s GC zoning. The petition includes a site plan, as is required for any CUP application in a commercial district per s. 10.270.

Resource Protection

The entire property is subject to Shoreland Zoning regulations due to its proximity to a pond to the north across State Highway 69. However there are no resource protection corridors on site. No construction is proposed with this CUP.

TOWN PLAN: The Town of Montrose/Dane County Comprehensive Plan supports CUPs for residential use in commercial zoning districts, provided general siting and impact abatement standards are met. As proposed, the CUP appears consistent with town plan standards. (For questions about the town plan, contact Senior Planner Brian Standing at (608) 267-4115 or standing@countyofdane.com)

TOWN ACTION: On September 6, 2022 the Town Board recommended approval of the CUP with no conditions.

STAFF RECOMMENDATION: Staff recommends that the ZLR Committee should determine if, by the substantial evidence presented, the proposed use satisfies or will satisfy the above conditional use requirements. Staff believes that the information provided by the applicant, in addition to the recommended conditions below, are sufficient to satisfy the CUP requirements.

Recommended Conditions of Approval:

1. The CUP is granted to allow the use of the existing single-family home as a residence, on Lot 1 of CSM 2106.
2. The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.
3. New and existing buildings proposed to house a conditional use must be located, constructed and maintained to meet the current requirements of the applicable sections of the Wisconsin Commercial Building Code or Uniform Dwelling Code.
4. The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the zoning administrator upon request.
5. Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.
6. Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
7. All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
8. Off-street parking must be provided, consistent with [s. 10.102\(8\)](#).
9. If the Dane County Highway, Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be borne by the landowner. Costs borne by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
10. The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site.
11. The owner must post, in a prominent place and in a form approved by the zoning administrator, a placard with the approved Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division.
12. The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours.
13. Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit. The holder of a conditional use permit shall be given a reasonable opportunity to correct any violations prior to revocation.
14. If any use allowed by an approved conditional use permit is abandoned for one year or more, the associated conditional use permit shall be terminated. Future re-establishment of an abandoned conditional use shall require approval of a new conditional use permit.

Any questions about this petition or staff report please contact Rachel Holloway at (608) 266-9084 or holloway.rachel@countyofdane.com