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July 21, 2014

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Board of Adjustment
c/o Zoning Division
345 West Washington Ave.
3rd Floor
Madison, WI 53703

DANE COUNTY PLANNING & DEVELOPMENT

Hand Delivered.

Re: Appeal of Determination that Dane County proposed shelter use at 1490 Martin Street, Town of Madison, WI is a permitted use in a C-1 Commercial Zoning District

Dear Zoning Division:

Pursuant to secs. 4(a) & (d) of the Dane County Board of Adjustment Rules and Procedures, the Town of Madison and its governing body, the Town Board, by its attorneys, John M. Gerlach and Richard K. Nordeng, and the following Town of Madison residents with property neighboring 1490 Martin Street, Henry and Susan Bassett, 2030 Irwin Place, and William and Renee West, 2013 Irwin Place, also by their attorneys, John M. Gerlach and Richard K. Nordeng, submit this letter to serve as a Notice of Appeal of the Administrative Decision to the Board of Adjustment regarding a permitted use zoning determination for 1490 Martin Street, in the Town of Madison, WI - Parcel No. 032/0709-341-1663-3. The Bassetts have lived in their home for 46 years, and the Wests have lived in their home for 29 years.

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|--------------------------------------|--|
| <u>Date of Decision:</u> | June 24, 2014, see attached Decision |
| <u>Date of Receipt by Appellant:</u> | June 24, 2014 |
| <u>Administrative Officer:</u> | Hans Hilbert, Assistant Zoning Administrator |

Description of Project:

Dane County intends to purchase 1490 Martin Street and convert the building and premises to a "day resource center for the homeless" (shelter). Dane County will own the buildings and subcontract the services to a non-profit called Shine608. The County anticipates providing services to at least 100 individuals, 7-days a week, 12 hours a day, starting at 6:00 a.m. Homeless individuals not already present in the area will reach the shelter by public transportation and van service.

Authority Cited:

At paragraph No. 1 of the Zoning Administrator's June 24, 2014, decision, sec. 10.13(1)(a) of the Dane County Code of Ordinances is cited as authority justifying this permitted use determination. Said section states: "*Permitted uses.* (a) Retail and service uses including, but not limited to, grocery stores, drugstores, hardware stores, appliance and furniture stores, hardware stores, appliance and furniture stores, barbershops and beauty shops without limitation as to size." The Assistant Zoning Administrator contends that the shelter "is similar in nature to the retail and service uses listed."

The Appellants disagree with this interpretation of sec. 10.13(1)(a) given the facts of this case. A commercial district implies zoning for private for profit businesses, an implication, which is born out by the examples provided by the ordinance. Said sec. specifically refers to "retail and service uses" affiliated with retail business. All the examples the Ordinance uses to clarify "retail and service uses" clearly pertain to services in conjunction with the sale of retail goods and with general retail businesses, or to services provided in exchange for payment.

At paragraph No. 2 the Assistant Zoning Administrator indicates that a shelter is not listed as a permitted, conditional or prohibited use anywhere in the Zoning Code. Generally, "any use not listed as a permitted use in the District is **prohibited** in that District." See Dane County Code of Ordinances sec. 10.16(1)(a) (emphasis added). A shelter is not listed as a permitted use in the District and therefore a shelter is a prohibited use in the District and should not be allowed.

At paragraph No. 3 the Assistant Zoning Administrator states that the shelter will operate as a "service use which is similar in nature to other service uses currently operating under C-1 Commercial Zoning within the jurisdiction of Dane County Zoning." Similar in nature does not mean identical. The examples cited by the Assistant Zoning Administrator in paragraph No. 1 generally relate to commercial services operated by private entities.

At paragraph No. 4 the Assistant Zoning Administrator indicates that the proposed use does not require a conditional use permit or special exemption permit. There is no reference to the special exemption permit in the Dane County Zoning Code. Additionally, the Assistant Zoning Administrator has misstated the criteria for a conditional use permit and when one is required. First, the Code must identify a permitted conditional use within the Zoning District. Dane County Code of Ordinances sec. 10.255(2)(d). Second, all applications for a conditional use permit must be accompanied by both a site plan and an operational plan detailing without limitation anticipated noise, traffic, order, building size, and measures taken to mitigate impacts to neighboring properties. Dane County Code of Ordinances sec. 10.255(2)(e). Finally, the conditional use must meet standards set forth in sec. 10.255(2)(h) which both Dane County Zoning and local Town Board have the right to review. *See* Dane County Code of Ordinances secs. 10.255(2)(h) & (i).

At best this project might be considered a "governmental use" which is a conditional use within the C-1 District. The County would own the facility and the County would dictate its operation by subcontract.

Finally, the Dane County Zoning map currently shows that this property is in a R-4 Zoning District, not C-1. The proper Zoning District needs to be determined and documented for this property.

Petitioners Aggrieved by the Decision.

The shelter will likely both give rise to new problems and exacerbate existing problems in the area, including impacts on public properties, private neighboring

properties, and public services. Although there are often legitimate and unfortunate reasons why a person is homeless, studies indicate a significant percentage of homeless people suffer from some form of mental illness, as well as drug and alcohol dependency problems and criminal records. It is inevitable that the Town's Emergency Medical Services (EMS) will be required to routinely respond to this location at significant cost to the Town. Individuals using the shelter likely will not have medical insurance or otherwise have funds to pay for the EMS services provided. The Town's Police department and the Town's EMS likely will experience a high volume of calls as a result of the increase in activity in the area and the byproducts of the facility, impacting or preventing timely response to other calls in the Town. The Town's Police Department will have to respond to the expected increased occurrences of public intoxication and drug use.

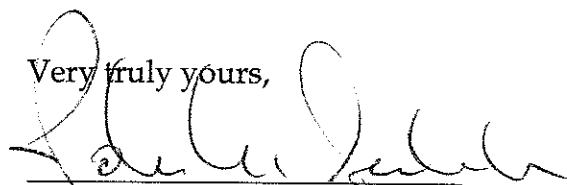
A Town park is directly across the street from the proposed shelter, much of the area is devoted to residential use, and the Town Hall is less than a block away. With an initial estimate of up to a hundred homeless individuals spending at the very least their days in this area, it can be anticipated that the shelter will also impact the use of these neighboring areas, including excessive use of restrooms, sheltering in the buildings or parks during the day and evening, increased litter such as empty beer and liquor containers, and general public order. The likely significant use of and impact on these facilities by the shelter's clientele will be detrimental to the quality of life in surrounding properties, much of which is residential.

Moreover, the extended hours of this facility over the weekend and resultant impacts, including the shuttling of dozens of homeless individuals as early as 6 a.m., undoubtedly will impact the Appellants as well as other neighboring residents and property owners and their financial investments, such as reduced property values, and quality of life, including a reduction in the safety and use of Town parks and their very yards. The anticipated reduction in property values and reduction in financial investments in the area will have a significant impact on the Town's tax base. Simply put, the shelter will likely diminish the value and enjoyment of the surrounding properties, including the Town Hall, the neighborhood, and the Town as a whole.

The Appellants also believe that there is a greater likelihood that the Determination was not impartial considering that the Assistant Zoning Administrator rendered an opinion on behalf of his employer, Dane County, necessitating further review.

Additional information will be submitted prior to the hearing pursuant to the rules of the Board of Adjustment.

Very truly yours,



John M. Gerlach

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Cc: Roger Lane, Zoning Administrator ✓
Hans Hilbert, Assistant Zoning Administrator
David Gault, Assistant Corporation Counsel
Henry and Susan Bassett
William and Renee West
Town of Madison Town Board



Dane County Planning & Development Zoning Division

June 24, 2014

TO: Travis Myren
Director of Administration, Dane County

FROM: Hans Hilbert
Assistant Zoning Administrator, Dane County

RE: Formal Permitted Use Determination

Hans
Hilbert

Digitally signed by Hans Hilbert
DN: cn=Hans Hilbert, o=Dane
County Planning and
Development, ou=Zoning,
email=hilbert.hans@countyofdane.
com, c=US
Date: 2014.06.24 15:18:05 -05'00'

Thank you for your request for an interpretation of a permitted use in the C-1 Commercial Zoning District. The day resource center is a service use that will operate during normal business hours, and offer services and amenities to members of the public. Based on the information submitted in your request, dated June 23, 2014, I have determined that a day resource center is a permitted use which may be lawfully established in the C-1 Commercial Zoning District, provided it conforms with all requirements and regulations of the C-1 District.

This determination has been based on the following:

1. Dane County Code of Ordinances section 10.13(1)(a) states "Retail and service uses including, but not limited to, grocery stores, drugstores, hardware stores, appliance and furniture stores, barbershops and beauty shops without limitation as to size" are permitted uses in the C-1 Commercial Zoning District. It is my determination that a day resource center is a service use that, for purposes of land use regulation, is similar in nature to the retail and service uses listed.
2. The Dane County Code of Ordinances does not explicitly define a day resource center, nor is such an explicit use exclusively listed as a permitted, conditional, or prohibited use elsewhere in the ordinance.
3. The proposed day resource center will operate as a service use which is similar in nature to other service uses currently operating under C-1 Commercial Zoning within the jurisdiction of Dane County Zoning. Other similar service uses permitted by Dane County Zoning include youth service centers, tax/financial planning centers, fitness centers, food pantries, temporary employment centers, as well as the existing Hospitality House at the proposed site. These uses, which are not explicitly defined, are currently permitted as service uses within the C-1 Commercial Zoning District.
4. I have determined that the proposed use is not of similar nature to uses that would require a conditional use permit or special exemption permit. Such conditional uses require site suitability to allow for specific regulation of such things as: noise, odor, traffic, building size, overnight accommodations, licensed premises, unusual or extended hours of operation, large crowds, and uses that may not be compatible with surrounding land uses unless such use is specifically regulated.

I hope that this determination has satisfied your request. Please do not hesitate to contact me with any additional questions or comments. This determination may be appealed by any party aggrieved by the decision. Any appeal must be filed within 30 days after the date of receipt of this written decision by filing a notice of appeal with the Dane County Zoning Division in accordance with the rules of the Dane County Board of Adjustment.

CC: Roger Lane, Zoning Administrator