
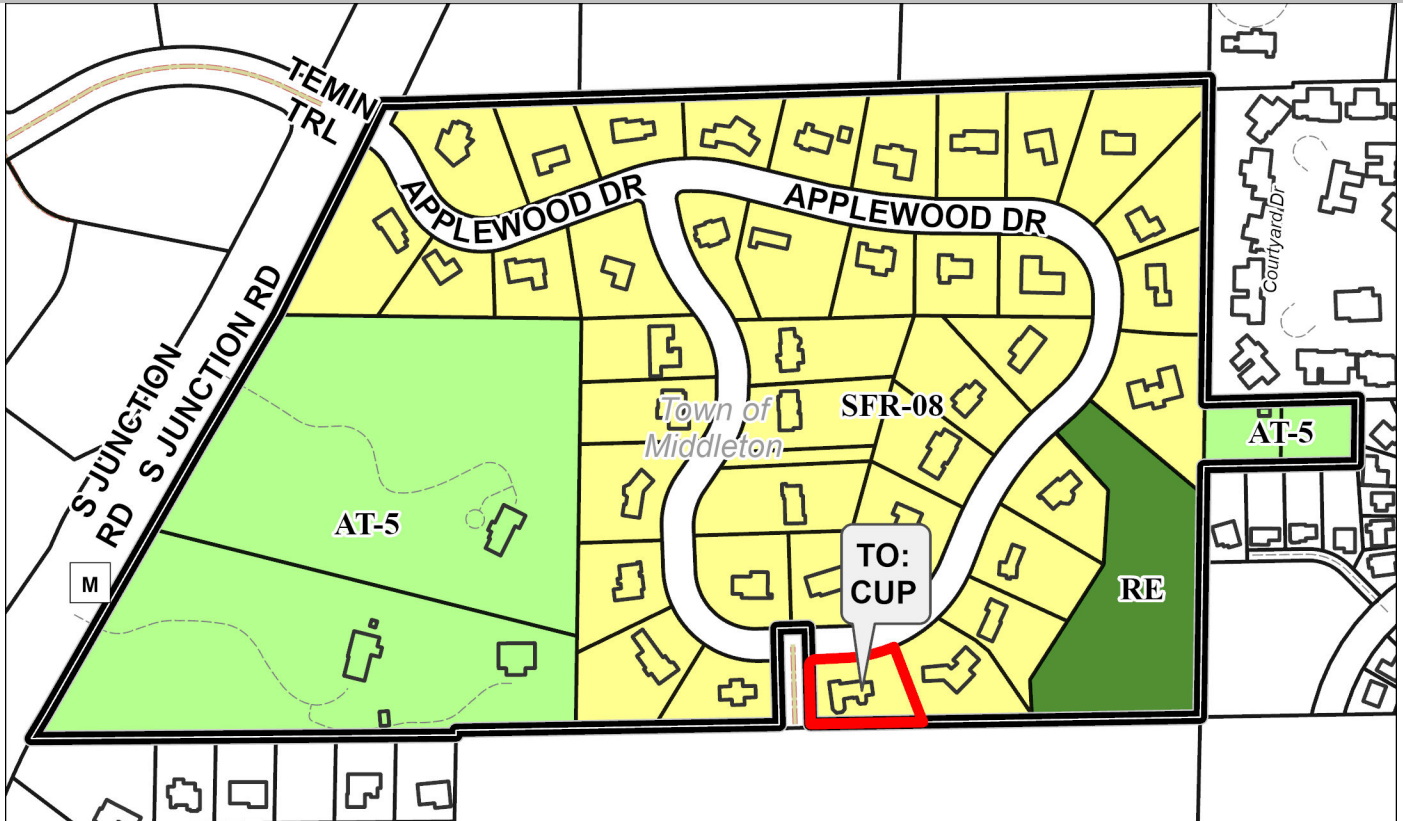


Staff Report  Zoning and Land Regulation Committee	<i>Public Hearing:</i> February 27, 2024	Conditional Use 02612	
	<i>Zoning Amendment Requested:</i> TO CUP: Transient or Tourist Lodging (Short-term Rental)	<i>Town/Section:</i> MIDDLETON, Section 27	
	<i>Size:</i> 0.7 Acres	<i>Survey Required:</i>	<i>Applicant:</i> MELISSA & CASEY HELBACH
	<i>Reason for the request:</i> Renewal for Transient or Tourist Lodging (Short-term Rental) (renewing the current CUP #2585)		<i>Address:</i> 6993 APPLEWOOD DRIVE



DESCRIPTION: Casey and Melissa Helbach request a renewal of their conditional use permit (CUP) for “transient or tourist lodging” (short-term vacation rental), with some modifications. The initial CUP ([CUP #2566](#)) was approved in 2022 and was renewed in April 2023 (with [CUP #2585](#)) for another year. The current CUP will expire on April 25, 2024. For this renewal, the applicants request the following changes to the conditions or terms of the permit:

- They request a 3-night minimum guest stay, rather than the 5-night minimum currently required.
- They request a 5-year CUP period, so that they would be required to apply for a new permit in 5 years rather than annually, which was required by the town for the permits issued in 2022 and 2023.

The applicants requested similar modifications for their permit renewal in 2023. See Staff Recommendation section below for more information.

OBSERVATIONS/ FACTUAL INFORMATION: The property is in residential use and is less than one acre in size. The neighboring land uses are residential on most sides (in the Town of Middleton) and agricultural / open space (in the City of Madison) to the south. The property is located in Applewood Hill, a residential subdivision with 43 lots.

Transient or tourist lodging is listed as an allowable conditional use in the SFR-08 zoning district. State statutes limit local regulation of short term rentals that are offered for 7-29 days. Local governments may require a permit to be obtained, and can regulate proposals that would involve rental periods shorter than 7 days. For rental periods of 7-29 days, local

governments can require a permit, but may only limit rentals to no less than 180 days (either consecutive or non-consecutive) in any consecutive 365 day period. The Town of Middleton does not currently have a licensing ordinance for short-term rentals. The applicants are proposing rental periods of less than 7 days.

RESOURCE PROTECTION: There are no resource protection corridors on or within 300 feet of the property.

COMPREHENSIVE PLAN: The property is located in the town's residential planning area. There are no specific policies in the plan addressing transient lodging. The property is also in the area designated, per the intergovernmental agreement, to eventually go into the City of Madison. The proposal appears consistent with the Town and County Plans. (For questions about the town plan, contact Senior Planner Curt Kodl at (608) 266-4183 or kodl@countyofdane.com)

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 findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the standards required to obtain a conditional use permit. Below is the list of the applicable standards from Section 10.101(7)(d) of the Zoning Code, and a summary of the relevant facts including the applicant's testimony with regards to meeting the standards.

1. *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.*

All short term rentals must be licensed through Public Health Madison & Dane County (PHMDC) and inspected annually to verify the operation meets all requirements of Wisconsin law related to general public health. The applicant has obtained a PHMDC license.

The CUP application describes the proposed rental operations plan and house rules. The applicants state they will manage the property, will continue to live in the home, that they will provide their contact information to their neighbors, that there is no planned construction, and that there will be no outdoor signage, no outdoor storage, and no outdoor "activities" on site (though guests would have access to the back yard).

2. *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.*

The owners indicate that off-street parking is provided and required for tenants, and rental rules stipulate no parties, no events, no large gatherings, no smoking, no animals, minimum age requirement of 25 years to book the rental, and quiet hours from 10:00pm to 8:00am. They have agreed to limit the number of guests to a maximum of eight adults at a time, have restricted use of the outdoor hot tub, and have complied with all other restrictions of their current permit.

Some or all of these measures were made into conditions of approval for the original CUP, see staff recommendations below. For example, limits on the number of guests and establishing quiet hours are commonly used to control noise, which is a common concern that arises with short-term rental proposals.

3. *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.*

Applicants state that their guests will not impede the normal and orderly development and improvement of the surrounding properties. This property and most of the surrounding properties are already developed as single-family residential lots, and no exterior changes to the property are proposed in association with the proposed conditional use. The lands to the south are undeveloped; however, the proposal is not expected to impede the development of that land.

4. *That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.*

The utilities, access roads, drainage, and other improvements needed for the proposed use are comparable to those necessary for a single-family house that is not used for short-term rentals. According to permit records and the application, the septic system serving the property is sized for 4 bedrooms / 8 adults. Public Health staff indicate that the design capacity of the existing system is based on residential code (150 gallons/day, or 2 adults/ bedroom). If the owners ever wish to rent to more than 8 adults, the existing system would need to be evaluated by a licensed professional and upgraded to meet applicable code standards.

5. *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.*

Off street parking is provided for the property by an existing driveway and garage. No changes are proposed. The applicants provide garage parking for 3 vehicles, require guests to park off-street, and that they will limit the number of guest vehicles to 5 (see CUP conditions below).

6. *That the conditional use shall conform to all applicable regulations of the district in which it is located.*

The proposed use conforms to the applicable regulations of the SFR-08 zoning district. Transient or tourist lodging is listed as an allowable conditional use in the SFR-08 zoning district.

7. *That the conditional use is consistent with the adopted town and county comprehensive plans.*

As noted above, the proposal appears consistent with the Town and County Comprehensive Plans.

8. *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).*

Not applicable.

POTENTIAL NUISANCES ASSOCIATED WITH THE CONDITIONAL USE: The potential nuisances that pertain to short-term rentals most likely involve noise, vehicle traffic, and sanitary waste management. The CUP application addresses how these potential nuisances are handled as noted above. In addition, potential conditions of approval specific to this CUP can be developed after public input and deliberation by town and the ZLR Committee. Under Dane County Zoning Ordinance section 10.103, there are no other special requirements for short-term rental operations.

TOWN ACTION: On February 22, 2024 the Town Board approved the CUP renewal with the same conditions that are currently on the rental operation (see Recommendations section below for the conditions).

STAFF RECOMMENDATION: Staff recommends postponement at this time, due to neighbor opposition in accordance with the ZLR Committee's adopted rules and procedures. We also recommend that the ZLR Committee determine whether they have sufficient facts and information from the applicant at this time. If more information is needed it can be requested at the public hearing.

As noted above, the applicants are asking to reduce the minimum guest stay from 5 nights to 3 nights, and to extend the renewal period from every year to every 3 years. Below are additional facts to consider.

- Under Zoning Code s. 10.101(7) town boards may act on a CUP at their option and may impose conditions that they find necessary to meet the standards for approving a CUP. There is no process for resolving disputes over CUP conditions, except that anyone aggrieved by an approval or denial may appeal to Circuit Court.
- In 2023 for the first renewal, Helbachs requested a minimum 4-day guest stay and a 5-year renewal period. The Town Board did not grant the changes, but maintained the 5-night and 1-year restrictions based on concerns expressed by neighbors at town meetings. The ZLR Committee approved CUP 2585 with the town's conditions.
- Neither the Town nor Dane County have received any formal complaints for the short-term rental operation, so there are no documented violations of the current permit. The County has received one public comment opposed to petition #2612, by a neighbor who cites the private neighborhood covenants, traffic safety concerns, and the likelihood that parties would cause a disturbance (see public comments in ZLR packet).
- The Sheriff's office has confirmed that they were called out to the property one time in the past year, for a disturbance involving four people using the outdoor hot tub in September. The guests were responsive and the

situation was immediately resolved (see February 14, 2024 email from Brandi Anderson). Since that time, the Helbachs have restricted guests' use of the hot tub.

Staff believes the applicant has provided sufficient evidence to mitigate the concerns. This includes the maximum occupancy of 8 adults, the provision of off-street parking and the limited number of vehicles, and other rental terms (e.g., minimum guest booking periods, quiet hours, and the restriction on use of the hot tub). The proposal complies with the allowances provided in state law and the zoning ordinance. In addition, the Helbachs have complied with all of the conditions of their current CUP, including providing their personal contact information to the Applewood Homeowners Association.

Potential conditions of approval are listed below reflecting the town's approval conditions. The conditions are unchanged from those of the current permit CUP #2585.

As noted above, under the current Chapter 10 zoning ordinance there is no process for resolving disputes over CUP conditions, except that anyone aggrieved by an approval or denial may appeal to Circuit Court. The town's approval stands as-is. Staff recommends approval with the conditions below.

CUP 2612 Potential Conditions of Approval

1. The Town finds that the proposal meets the general standards for conditional use permits per Dane County Ordinances 10.101(7)(d)1.
2. The Town finds that the proposed conditional use is consistent with the adopted Town Comprehensive Plan.
3. The CUP is granted subject to all standard conditions specified in Dane County Zoning Ordinance Section 10.101(7)(d)2, as applicable.
4. This conditional use permit shall expire in the event the property is sold or transferred to another owner. Continuation or extension of an expired conditional use requires re-application and approval by the Town Board and Dane County.
5. The applicant shall comply with all licensing and permitting requirements for short-term rentals.
6. Landowner will apply for, obtain and maintain an appropriate transient or tourist lodging rental license from Madison/Dane County Department of Public Health.
7. The rental shall be limited to 8 overnight guests.
8. This Conditional Use Permit shall expire one (1) year after the effective date. Landowner may renew the CUP by successfully obtaining a new CUP prior to the expiration date.
9. The maximum number of allowable rental days within a 365-day period is 180 days. The landowner must notify the Town Clerk in writing when the first rental within a 365-day period begins.
10. Quiet hours shall be 10:00pm to 8:00am, all days of the week.
11. No more than 5 overnight vehicles shall be on the premises at any one time. All vehicles must be parked on paved driveway surfaces or inside the existing garage and maintain adequate access for emergency vehicles.
12. No pets allowed.
13. Any new outdoor lighting shall be downward directed, designed to minimize ambient spill and shall comply with all applicable requirements of the Town of Middleton.
14. 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.
15. The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site.
16. 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.
17. Failure to comply with any imposed conditions, or to pay reasonable Town/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 reasonable opportunity to correct any violations prior to the revocation.

18. If the transient or tourist lodging operation is abandoned for one year or more, this conditional use permit shall be terminated. Future re-establishment of an abandoned conditional use shall require approval of a new conditional use permit.
19. The operation of all-terrain vehicles, ATVs, and snowmobiles by occupants of the transient or tourist lodging operation shall be prohibited on the property.
20. Signage is prohibited.
21. Fireworks are prohibited.
22. The owner, or their designated emergency contact person, be available within one (1) hour to address any problems.
23. Emergency contact information shall be provided to the neighbors, Applewood Homeowners Association President, the Town of Middleton, and Dane County Zoning Division.
24. The owner or operator must provide the Town of Middleton Clerk with a copy of the current rental agreement no later than the date of issuance of the CUP. In the event the agreement is modified in any manner, the modified agreement must be provided to the Town of Middleton Clerk within ten (10) calendar days of the date the modified agreement is placed in use.
25. The rental period shall be a minimum of 5 nights.
26. Landowner will conduct a background check on any prospective renter.

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