



Department of Planning & Community & Economic Development
Building Inspection Division

Website: www.cityofmadison.com

Madison Municipal Building
215 Martin Luther King, Jr. Boulevard
P.O. Box 2984
Madison, Wisconsin 53701-2984
TTY/TEXTNET 866 704 2318
FAX 608 266 6377
PH 608 266 4551

DATE: December 13, 2012
TO: Plan Commission
FROM: Matt Tucker, Zoning Administrator
SUBJECT: Occupancy Limitations and Enforcement History for 1329 W. Dayton St.

The Plan commission will consider a request to increase the allowed maximum occupancy for the subject property, as part of a PUD-SIP alteration request from the property owner. The City has pending violations on the currently illegally over-occupied property, which are being actively prosecuted. Final resolution of said violation cases awaits the outcome of this alteration request.

Occupancy limitations

With this PUD, the majority of the dwelling units are comprised of two individual bedrooms at the second-floor level and a third-level "loft space". The lone exception is unit "E" which has a single bedroom, a den space (not enclosed, so not a "bedroom") and a loft space. The dwelling units in the subject building have what staff would consider two bedrooms, which appear to have an implied approval for two persons to share each bedroom.

Within the PUD zoning text for the subject property, the occupancy per dwelling unit is limited to a maximum of four unrelated individuals. Within conventional zoning districts that would apply to similar development, the zoning code limits the occupancy of a dwelling unit to no more than five unrelated individuals, per the zoning code "family definition." Because the property is zoned PUD, an applicant may request flexibility above/beyond what is otherwise allowed in the zoning code, including an increased occupancy for a dwelling unit. Other similarly developed property with conventional zoning in the general area do not have the benefit of requesting additional occupancy, because base zoning limits the maximum occupancy to five unrelated individuals. Further, building code issues appear to be resolved to allow five unrelated individuals to occupy each dwelling unit.

There has been some discussion about allowing six unrelated individuals to occupy each dwelling unit. The City has some recent experience with occupancies greater than the "five unrelated" limit in the zoning code family definition. The unique recent examples where six unrelated individuals have been allowed to occupy a dwelling unit can be seen in parts of certain new developments, where dwelling units comprising six individual furnished bedrooms were approved with the PUD rezoning for the new development.

From a zoning consistency standpoint, I would support a change to the maximum occupancy, to allow up to five unrelated individuals to occupy each dwelling unit. This does not appear to be a case where additional occupancy above what is otherwise allowed in the code should be approved. It does not appear as though an adequate case has been made to support a greater occupancy than five unrelated individuals, so I would not recommend authorizing occupancy higher than five unrelated individuals per dwelling unit.

Enforcement history

The owner became aware of the over-occupancy problem in April 2011, when an Official Notice of Violation was sent to the owner. The owner then requested an administratively-approved alteration to increase the occupancy, which was denied on October 2011. It was expected the owner would reduce the occupancy to the legal level, but in this case, with knowledge that the property had a limitation of four unrelated individuals; the property owner chose to rent dwelling units in the structure at a greater than allowed occupancy for the 2011-2012 and 2012-2013 rental periods.

Our policy regarding enforcement of on occupancy violations is designed to work with the property owner and tenants, to have the occupancy returned to the legal limit in the shortest timeframe reasonably possible. Staff typically does not want to displace occupants of an over-occupied dwelling unit in times of inclement weather or to order occupants to move out within very short timeframes. Often, we can justify an extension of a few months, to a semester break or some other agreed timeframe by which the occupancy will be reduced to a legal level, as agreed to by the owner and occupants. This case is somewhat troubling due the fact the owner chose to re-sign leases for illegal occupancy with full knowledge of the violation. Once the legal occupancy limit is approved by the Plan Commission, staff would take appropriate steps to reduce the occupancy in consideration of the policy described above, is a reduction becomes necessary.

This case has been referred to the City Attorney's office for prosecution. Any action from the Plan Commission to modify the occupancy limitations will not impact the City's prosecution efforts for past or future violations.