

## REPORT TO THE BELOIT BOARD OF APPEALS

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**Meeting Date:** December 18, 2018

**Agenda Item:** 3

**File Number:** BOA-2018-02

**Applicant:** Liusong Su

**Owner:** Liusong Su

**Location:** 437 Harrison Avenue

**Existing Zoning:** R-1B, Single-Family Residential District

**Existing Land Use:** Single-Family

**Parcel Size:** 0.22 Acre

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### Request:

Liusong Su has filed an application requesting a Use Variance to Section 6.3.2(e)(4) of the City of Beloit Zoning Ordinance to allow a restaurant operation within a single-family home located at 437 Harrison Avenue.

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### Request Overview/Background Information:

City of Beloit inspectors recently discovered a home-based restaurant on the subject property, and ordered the operation to cease. Food service businesses are prohibited as home occupations. If the requested variance is approved, the applicant may be able to operate her restaurant after obtaining all necessary permits and licenses.

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### Key Issues:

- As shown in the attached photos, at some point in August or September of 2018 the applicant converted a portion of her home into a commercial kitchen and began operating a restaurant known as Golden Rice Bowl Beloit. All of the building renovations were completed without permits, and no permits were sought or issued for the restaurant. In order to legally operate, a restaurant must be located in the proper commercial district and must obtain permits from the City of Beloit and Rock County Public Health Department.
- On October 4, 2018, the Rock County Public Health Department issued a notice to the applicant for operating a restaurant without a permit, and ordered her to cease the restaurant operation.
- On October 15, 2018, Planning staff issued a notice of violation to the applicant for operating an unlawful home occupation in a Single-Family Residential Zoning District.
- On October 26, 2018, the City of Beloit Building Inspector issued a notice of violation to the applicant for performing extensive building alterations without a permit. The applicant was caught performing additional alterations on November 30, 2018 and an official Stop Work Order was issued at that time.
- On October 29, 2018, the City of Beloit Plumbing Inspector issued a notice of violation to the applicant for performing extensive plumbing work without a Plumbing Permit and without supervision of a Master Plumber.
- **Home Occupation Regulations:**
  - Section 6.3.2 of the Zoning Ordinance outlines home occupation regulations that are intended to permit residents to engage in customary home occupations, while ensuring that home occupations are not detrimental to neighborhood livability. Common home occupations in the City of Beloit include offices and hair salons. Uses that are considered disruptive to neighborhood integrity are prohibited, including vehicle repair, dispatch centers, animal care facilities, and all food service businesses.
  - The applicant did not contact Planning staff prior to opening her restaurant operation.
- The attached Public Notice was sent to 13 nearby property owners. Planning staff has not received comments.
- **Wisconsin Supreme Court Standards for Use Variances:**

The Wisconsin Supreme Court has established a standard for granting variances to zoning regulations. For Use Variances, the property owner and/or applicant has the burden of proving that the standard for granting such a variance has been met. In order to grant a Use Variance, the Board of Appeals must determine that **all of the following criteria** of Section 2-902 are satisfied:

  - (a) Granting of the variance will not be contrary to the public interest; and
  - (b) Due to special conditions, a literal enforcement of the zoning ordinance will result in practical difficulty or unnecessary hardship; and
  - (c) The variance is needed so that the spirit of the zoning ordinance will be observed, while public safety and welfare are secured; and
  - (d) Substantial justice will be done by granting the variance; and
  - (e) The property owner would have no reasonable use of the property without a variance.
- The attached Findings of Fact evaluate this application against the above standards.

**Findings of Fact: Use Variance to Section 6.3.2(e)(4) of the City of Beloit Zoning Ordinance to allow a restaurant operation within a single-family home located at 437 Harrison Avenue.**

Under the standards for a Use Variance in Section 2-902 of the Zoning Ordinance, Planning staff finds:

- (a) Granting of the variance **will** be contrary to the public interest; and

*The City's Home Occupation regulations are explicitly intended to prohibit home-based businesses that may result in noise, lights, traffic, and odor that may be disruptive to neighborhood livability.*

- (b) Due to special circumstances, a literal enforcement of the zoning ordinance **will not** result in practical difficulty or unnecessary hardship; and

*The courts have consistently held that hardship cannot be self-created, and that financial hardship or personal circumstances do not justify a variance. The applicant voluntarily converted a large portion of her home into a commercial kitchen in violation of numerous building code, plumbing code, zoning code, and health & safety standards. Therefore any claimed hardship is self-created.*

- (c) The variance **is not** needed so that the spirit of the zoning ordinance will be observed, while public safety and welfare are secured; and

*The intent of the Zoning Ordinance is to promote public health, safety, and welfare through land use regulation. The subject property and the surrounding area are planned and zoned for single-family dwellings.*

- (d) Substantial justice **will not be** done by granting the variance; and

*Granting the variance would help the applicant out of a difficult situation, but would not result in substantial justice for any other stakeholders. The applicant's culinary skills need to be utilized in an appropriate time and place.*

- (e) The property owner **would have** reasonable use of the property without a variance.

*The applicant can continue to use the subject property as a single-family home, which is a completely reasonable use of the property. Planning staff advised the applicant prior to submittal of her application and fee that staff would be recommending denial of her request, and encouraged her to focus on buying or renting a commercial kitchen.*

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**Consistency with Comprehensive Plan:**

The Comprehensive Plan recommends Single-Family Residential – Urban uses for the subject property. The subject property's zoning district classification is consistent with this recommendation.

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**Sustainability:**

- **Reduce dependence upon fossil fuels – N/A**
- **Reduce dependence on chemicals and other manufacturing substances that accumulate in nature – N/A**
- **Reduce dependence on activities that harm life sustaining eco-systems – N/A**
- **Meet the hierarchy of present and future human needs fairly and efficiently – N/A**

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**Staff Recommendation:**

The Planning & Building Services Division recommends **denial** of the requested Use Variance to Section 6.3.2(e)(4) of the City of Beloit Zoning Ordinance to allow a restaurant operation within a single-family home located at 437 Harrison Avenue, based upon the attached Findings of Fact.

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**Attachments:** Location & Zoning Map, Photos, Application, Public Notice, and Mailing List.

# Location & Zoning Map

437 Harrison Avenue

BOA-2018-02



1 inch = 213 feet



Map prepared by: Drew Pennington, AICP  
Date: December 2018  
For: City of Beloit Planning & Building  
Date of Aerial Photography: March 2011

## PLANNING & BUILDING SERVICES DIVISION









# CITY of BELOIT

## Planning & Building Services Division

100 State Street, Beloit, WI 53511 Phone: (608) 364-6700 Fax: (608) 364-6609

### Board of Appeals Application Form

(Please Type or Print)

File Number: BOA-2018-02

1. Property Address: 437 Harrison Ave Beloit WZ 53511
2. Tax Parcel Number(s): ~~47507-9282~~ 13660220
3. Legal description: Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_

If property has not been subdivided, attach a copy of the complete legal description.

4. Owner of record: Liusong Su Phone: 608 322 5576
- 437 Harrison Ave Beloit WZ 53511
- (Address) (City) (State) (Zip)

5. Applicant's Name: Liusong Su
- 437 Harrison Ave Beloit WZ 53511
- (Address) (City) (State) (Zip)
- 608 481 1197 / 608 322 5576 / zhensuliusong@yahoo.com
- (Office Phone #) (Cell Phone #) (E-mail Address)

6. Present zoning: \_\_\_\_\_ Present use: \_\_\_\_\_
7. Proposed use (if different): \_\_\_\_\_
8. Purpose of application: ( ) "Area" Variance (  ) "Use" Variance  
( ) Appeal of order or decision of Administrative Official

9. Code from which relief is sought or appeal is taken:  
(  ) Zoning Ordinance ( ) Flood Plain Ordinance

10. State specific sections of code and Variance(s) requested: (Use separate sheet if necessary)  
6.3.2 Home Occupation  
(e)(4)

11. State specific hardship experienced by the applicant: (Use separate sheet if necessary)

Dear sir and madam; My name is Liusong Su. My husband is not in good health. I often accompany him to see the doctor. I have two children, A 12 year old daughter and A 9 year old boy. I take them to school and take them home after school. My husband will my children need my care! I don't have any other job, and I don't have any other income to pay for my family's daily expenses. My specialty is making chinese food. I ~~want~~ want to use my kitchen

(Continued on back)

to do business so that I can have a job and income to pay for my family's expenses.  
 If I continue to have no income, my family will get stuck. No money to pay: water, gas, electricity,  
 insurance, gasoline, no food to eat, please allow me to use my kitchen to let me have a job and income,  
 so I will proceed according to the requirements of relevant departments. Thank you very much!

12. In order for this application to be considered complete, the applicant must attach a scale drawing (1" = 20' usually works best) showing the location of property lines and their dimensions, existing buildings and improvements, all abutting properties and improvements thereon, and the proposed changes or additions. You are required to furnish a legible drawing with enough detail that will adequately advise and inform the Board.

The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

Li Song Su / Li Song Su / 10-18-2018  
 (Signature of Applicant) (Print name) (Date)

The owner's signature below grants permission for the applicant to apply for the variance and permission for the Board of Appeals and City staff to inspect the subject building(s) and/or property.

Li Song Su / Li Song Su / 10-18-2018  
 (Signature of Owner) (Print name) (Date)

The applicant acknowledges that this application is not deemed filed until dated and receipt acknowledged by a person authorized to receive the application. The applicant is entitled to receive a copy of the acknowledged application once it is officially reviewed and accepted.

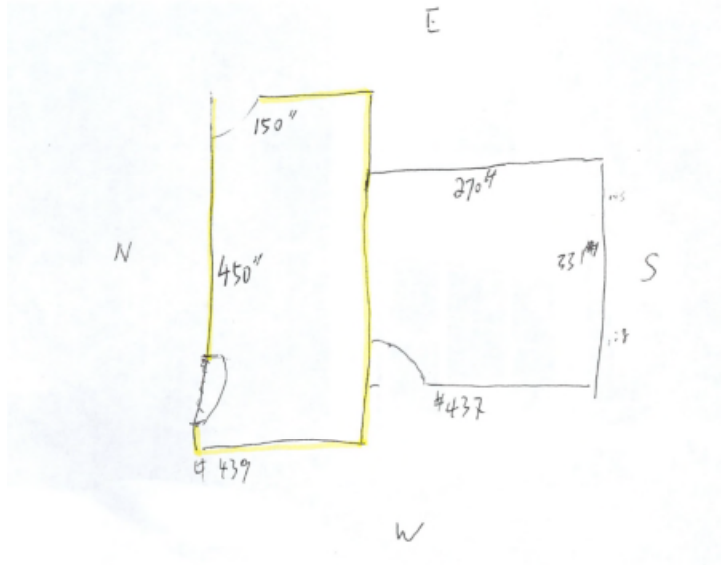
Hearings are usually held in City Hall Forum, City Hall, 100 State Street at 7:00 P.M.

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Planning & Building Services Division for acceptance by the filing deadline date prior to a scheduled Board of Appeals meeting. This application must be submitted with the \$200.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, which is typically between \$5.00 and \$20.00.

<b>To be completed by Planning Staff:</b>	
Filing fee: <u>\$200.00</u> Amount paid: <u>\$200.00</u>	Meeting date: <u>Dec. 11, 2018</u>
Application accepted by: <u>Draw Pennington</u>	Date: <u>11/6/18</u>
No. of notices: _____	X mailing cost (\$0.50) = cost of mailing notices: \$ _____
Date Notice Published: _____	Date Notice Mailed: _____



Application Attachments (Restaurant Area in Yellow)





COMMUNITY DEVELOPMENT DEPARTMENT

**NOTICE TO THE PUBLIC**

December 4, 2018

To Whom It May Concern:

Liusong Su has filed an application requesting a Use Variance to Section 6.3.2(e)(4) of the City of Beloit Zoning Ordinance to allow a restaurant operation within a single-family home located at:

**437 Harrison Avenue.**

City of Beloit inspectors recently discovered a home-based restaurant on the subject property, and ordered the operation to cease. Food service businesses are prohibited as home occupations. If the requested variance is approved, the applicant may be able to operate her restaurant after obtaining all necessary permits and licenses.

The following public hearing will be held regarding this requested Variance:

**Board of Appeals:** Tuesday, December 18, 2018, at 5:00 PM or as soon thereafter as the matter can be heard in The Forum, Beloit City Hall, 100 State Street.

**The public is invited to attend this hearing. We are interested in your opinion.**

You may appear at the hearing or submit a letter to the Board of Appeals, 100 State Street, Beloit, Wisconsin 53511, to either support or oppose the applicant's request.

The Board of Appeals may grant a "Use" Variance **only** if it finds that all of the following facts are true:

1. Granting of the variance will not be contrary to the public interest; and
2. Due to special conditions, a literal enforcement of the zoning ordinance will result in practical difficulty or unnecessary hardship; and
3. The variance is needed so that the spirit of the zoning ordinance will be observed, while public safety and welfare are secured; and
4. Substantial justice will be done by granting the variance; and
5. The property owner would have no reasonable use of the property without a variance.

**For additional information, contact Drew Pennington, AICP in the Planning & Building Services Division by phone at (608) 364-6711 or by email at [penningtond@beloitwi.gov](mailto:penningtond@beloitwi.gov).**

*Anyone bringing handouts to the meeting must bring ten (10) copies and submit them to the Recording Secretary before the meeting begins. Staff is unable to leave the meeting area to make copies.*

Sandra Manning C/O Shawn Townsend 2020 Glen Ave Beloit, WI 53511
James & Shelly Cronin 1719 Emerson Street Beloit, WI 53511
Gary Weinkauff 1822 Emerson Street Beloit, WI 53511
430 Harrison LLC 430 Harrison Ave Apt. 302 Beloit, WI 53511
Salvador Valles 1157 Prairie Ave Beloit, WI 53511
Nicholas & Rebekah Bower 426 Wisconsin Ave Beloit, WI 53511
Ashley Houchins 440 Wisconsin Ave Beloit, WI 53511
Liusong Su 437 Harrison Ave Beloit, WI 53511
Lucas Schulz 1950 Royce Ave Beloit, WI 53511
Oswaldo Voysest 208 Bluff Street Beloit, WI 53511
Rock County Christian School (Via Email) 916 Bushnell Street Beloit, WI 53511
Jose & Linda Carrillo 1010 Bushnell Street Beloit, WI 53511
Rita Apted P.O. Box 1259 Beloit, WI 53511
Amy Piper 3734 W. Bass Creek Rd Beloit, WI 53511