

October 15, 2012

Plan Commission

Subject: Legistar ID #27595, Conditional use for an outdoor eating area and parking reduction at 809 Williamson

Dear Plan Commission Members:

I wish to comment on the proposed outdoor eating area at 809 Williamson Street.

I believe it is important to remember that even though this property has a Williamson Street address, implying more of a commercial district, the patio will sit in the middle of a primarily residential block. The Planning Division report states there are residential uses on three sides of this property that are close to the proposed patio. Such a location has the potential to negatively impact residents.

The neighborhood association approved the patio, with conditions, largely on the basis that the restaurant's operator would be the Underground Kitchen. Underground Kitchen is a restaurant that the neighborhood is familiar with, and believes to be a responsible operator. However, despite Underground Kitchen's reputation, conditions were believed necessary to protect the quality of life for residents.

Conditions recommended by the Planning Division

The conditions proposed by the Planning Division report are essential to protecting that quality of life.

- 1. The outdoor eating area shall close no later than 10:00 pm, nightly*

Since the patio is in the middle of a block, this condition allows the nearby residents the ability to sleep without undue noise. The Plan Commission has, over the past several years, imposed patio closing times on other patios located close to residential uses (e.g., Hotel Red, Umami, Hong Kong Cafe). The Echo Tap has closing time for food and beverage service, but the patio can be used for smoking after the closing time. However, the Echo's patio is street side, not in the middle of a block, and is in a higher density area. Allowing Underground Kitchen patrons to use the patio after the 10:00 pm closing would defeat the purpose of the condition, which is primarily a noise control measure.

- 2. That this conditional use be non-transferable to another operator. Such a change will require approval of an alteration to this conditional use permit.*

Neighborhood support was based on Underground Kitchen's reputation, the belief that this is a responsibly run business, and that the clientele is interested in enjoying good food rather than having a party time. An outdoor patio would not have been approved by the neighborhood had the business been, for example, a sports bar.

3. *There shall be no outdoor amplified sound on the property.*

This is another fairly standard condition when patios are located close to residences. For example, in the recent years, the Plan Commission imposed this condition on the Greig Social Club, Mason Lounge, Umami, Barrique's, Echo Tap, Zuzu Cafe, and Bella Italia.

Additional conditions that should be imposed

1. *Smoking*

At a neighborhood meeting, one of the operators of the Underground Kitchen stated that smoking would not be allowed on the property. Thus, the Plan Commission should consider imposing this as a condition. If not, smoking should at least be prohibited on the west side of the building. Otherwise, residents with open windows could be subjected to second-hand smoke, a known carcinogen.

2. *Screening Fence*

Mr. Marten's plans reflect an 8' decorative fence along the west property line. The renderings also reflect a row of trees (perhaps arborvitae). The distance between the fence the residential building, 409 S. Livingston, is reflected as 1'4" in the renderings. An 8' fence would impede maintenance of the residential building.

The Plan Commission addressed a similar issue when a fence was proposed between Plan B and the neighboring residential building. The Planning Division report stated that the City Attorney said the Plan Commission (1) should only decide whether a fence should be approved and (2) could not require the fence to be moved further onto Plan B's property.

A 6'-8' high fence is not required between the 809 Williamson and 409 S. Livingston since the Livingston property, although a "residential building" pursuant to Madison General Ordinances, is zoned C2 commercial.

The Plan Commission should consider prohibiting the fence and require that any trees be planted such that, when mature, they do not cross the property line. Without these conditions, the owners of the residential building will be unable to maintain the rear of the building. It is worth noting that Mr. Martens stated at a neighborhood meeting that he was aware at the time the rear addition was made to 409 S. Livingston property, that it was nonconforming and did not have City approval, but that he took no action.

3. *Work with neighbors*

The location of this proposed restaurant could result in unforeseen issues arising between the residents and the restaurant. Such issues could include overall noise levels, the

clanking of unlocking bicycles late at night, boisterous foot traffic as patrons travel from the sidewalk to the door of the restaurant.

The Plan Commission should consider a requirement that the landlord and tenant, Mr. Martens and Underground Kitchen, work with the neighborhood to resolve any concerns that may arise.

The neighborhood first learned the details of the proposed restaurant and patio at a Marquette Neighborhood Association Board meeting in April 2012. Even at that time noise was a concern, especially from the patio, as well as late hours. Since April, there have been a number of meetings on this proposal. Noise remained a major concern, whether from the patio, restaurant mechanicals or smoking patrons. It was not until Mr. Martens revealed his revised plans, which only has a patio at the front of the property, at the September MNA meeting, that the resident's concerns were largely allayed.

Though allayed, the concerns of residents have not been eliminated. This is due, in part, to experience with other establishments on Williamson Street which have generated undue noise, parking issues, and waste issues (whether strewn cigarette butts or sidewalk regurgitation). These issues have resulted in many residents wanting conditions prior to approval to forestall concerns from turning into problems.

Parking

Mr. Martens is requesting a reduction of 29 parking places. In part, this request is based upon customers having access to a 50 stall lot owned by Mr. Martens that is about half a block away. Unless something has changed, this reason is a bit misleading. Mr. Martens was asked at least several times by residents to execute an agreement with Underground Kitchen for parking and/or have a sign permitting parking. Mr. Martens steadfastly refused to do so. Thus, any parking in Mr. Marten's lot will still carry the risk of a ticket/towing and thus is not really parking available to Underground Kitchen patrons.

The rationale for a parking reduction also includes the reason that a "significant" portion of business will be from the neighborhood, which is committed to alternative transportation. Yet in a Wisconsin State Journal article at the end of September, one of the owners of Underground Kitchen is reported as saying that the Johnson Street restaurant is more of a neighborhood restaurant while the Williamson Street restaurant will be their "flagship restaurant." This certainly implies that Underground Kitchen expects to attract a significant portion of its business from non-neighborhood residents, almost certainly requiring parking.

Another reason includes Marty Rifkin's parking ramp. The rationale states this ramp is "in the final planning." Thus, the ramp is not available to Underground Kitchen's patrons and will not be for some time.

Another reason is that the restaurant is close to bike paths and bus stops, a rationale also used by Plan B when seeking a parking reduction. Based on the number of Plan B patrons that parked on residential streets, it appeared that few used alternative means of transportation.

Another rationale is that evening parking agreements are being negotiated with 826 and 754 Williamson. This is the only clearly valid reason to allow for a parking reduction. Such agreements should be negotiated prior to approval of the conditional use parking reduction.

The Plan Commission included the following conditions for Plan B in 2009 when it sought a parking reduction. (Plan B was seeking a 39 stall reduction, while Mr. Martens is seeking a 29 stall reduction.)

That this conditional use for a parking reduction shall be non-transferable and shall not apply to future owners and operators of the property. Future owners and operators shall make a new conditional use application for a continuation of this parking reduction.

That the applicant maintains the approved shared parking agreement at 600 Williamson Street (Gateway Center). If the terms of that agreement change, resulting in a substantial reduction in the number of offstreet stalls available for 924 Williamson Street, the applicant shall be responsible for securing other offstreet parking arrangements to address the loss of stalls.

The applicant shall provide written notice of changes in the status of all shared parking agreements impacting this property to the Director of the Department of Planning and Community and Economic Development and the Zoning Administrator. The applicant shall be responsible for securing other offstreet parking arrangements to address the loss of stalls. The applicant may be required to obtain approval of a minor or major alteration to this conditional use, should it be determined that the revised shared-parking terms provide fewer off-street spaces or provide spaces that less effectively serve 924 Williamson Street.

That the applicants / operators develop a plan to educate patrons about the parking available in the East Rail Corridor (along E. Main Street).

It may be appropriate for the Plan Commission to impose similar requirements on this application.

Respectfully Submitted,

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Co-signers:

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