

## MEMO

DEC 17 2015

**Date:** December 17, 2015Planning & Community  
& Economic Development**From: The Near Neighbors of 8Twenty Park**

Marissa Burack, 841 High Street, Madison, WI 53215 ([marissaburack@gmail.com](mailto:marissaburack@gmail.com))  
Martha Cash, 837 High Street, Madison, WI 53715 ([cashtmn@aol.com](mailto:cashtmn@aol.com))  
Tom Cash, 837 High Street, Madison, WI 53715 ([cashtmn@aol.com](mailto:cashtmn@aol.com))  
Jennifer Ginsburg, 840 Brooks Street, Madison, WI 53715 ([ginsbuj@yahoo.com](mailto:ginsbuj@yahoo.com))  
Pat Godar, 829 High Street, Madison, WI 53715 ([godar.patrick@gmail.com](mailto:godar.patrick@gmail.com))  
Cherie Godar, 829 High Street, Madison, WI 53715 ([cherie.godar@gmail.com](mailto:cherie.godar@gmail.com))  
Jason Hagenow, 841 High Street, Madison, WI 53715 ([jshagenow@gmail.com](mailto:jshagenow@gmail.com))  
Lori Hawkins, 830 High Street, Madison, WI 53715 ([lori.hawkins@dwd.wisconsin.gov](mailto:lori.hawkins@dwd.wisconsin.gov))  
Erin Jacobsen, 842 High Street, Madison, WI 53175 ([ehoelzel@uwalumni.com](mailto:ehoelzel@uwalumni.com))  
John Eric Jacobsen, 842 High Street, Madison, WI 53715  
([aspengardenandlandscape@gmail.com](mailto:aspengardenandlandscape@gmail.com))  
Kitty Kocol, 1010 Haywood Drive, Madison, WI 53715 ([kitty.kocol@usa.net](mailto:kitty.kocol@usa.net))  
David Maziarka, 834 High Street, Madison, WI, 53715 ([dmazmail@yahoo.com](mailto:dmazmail@yahoo.com))  
David Salo, 828 South Brooks Street, Madison, WI 53715 ([dsalo@yarinareth.net](mailto:dsalo@yarinareth.net))  
Dorothea Salo, 828 South Brooks Street, Madison, WI 53715 ([dorothea@dsalo.info](mailto:dorothea@dsalo.info))  
Janet Stockhausen, 825 and 838 High Street, Madison, WI 53715 ([janets@merr.com](mailto:janets@merr.com))  
Barry Stoner, 1010 Haywood Drive, Madison, WI, 53715 ([barryjstoner@gmail.com](mailto:barryjstoner@gmail.com))  
Michele Wensman, 834 High Street, Madison, WI 53715 ([mwensman@gmail.com](mailto:mwensman@gmail.com))  
Jeff Weyer, 840 Brooks Street, Madison, WI 53715 ([madtowndiesel@yahoo.com](mailto:madtowndiesel@yahoo.com))

**To:** Alders representing the residents of the City of Madison on the Common Council**RE: Appeal to the Common Council of the City of Madison RE: 8TWENTY Park**

We, the Near Neighbors, who are homeowners on the blocks adjacent to and near the proposed 8Twenty Park project in the City of Madison, Wisconsin, under the provisions of Madison General Ordinances (MGO) 28.183(5)(b), respectfully appeal the decision of the City of Madison Plan Commission to grant conditional use permits under an application for "Traditional Shopping Street" (TSS) zoning for the project known as the 8Twenty Park, proposed for construction on the block bounded by Park, Haywood, Brooks, and Delaplaine Court.

**We appeal because we believe the Plan Commission's decision failed to meet the required Approval Standards for the conditional use the Developer seeks for the project.**

On December 7, 2015, the Plan Commission voted to support mixed-use, TSS zoning for a building complex that is almost exclusively residential. In addition, it approved four conditional use permits, three of which are intended solely to increase density and mass from 15 dwelling units per acre to 95 dwelling units per acre:

- 1) **Increased Density:** 12 times the standard density under TSS (greater than 8 units per building)
- 2) **Increased Building Height:** 2.5 to 3 times the height of existing buildings in the neighborhood
- 3) **Increased Square Footage:** 4 times the standard square footage for TSS (a building complex of 115,500 square feet when the maximum standard is 25,000 square feet.
- 4) **Reduced Mixed-Use Requirement:** The conditional use actually narrowed the “mixed-use” of the building complex beyond the intention of TSS as the Developer is proposing a Traditional Shopping Street zoning — with no shopping in the building complex. The intent of the MGO is subverted by these conditional uses and they should not have been granted on an overlay of a TSS district.

**The following points address our assertion that the Approval Standards for Conditional Use have not been met by the Plan Commission in its findings.**

According to Approval Standards under Conditional Use 28.183(6)(a), “**No application for a conditional use shall be granted by the Plan Commission unless it finds all of the following are present:**

**A. Conditional Use Approval Standard (a)1.** *“The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or general welfare.”*

**We believe this standard has not been met, and that the conditional uses approved by the Plan Commission will deprive residents of sufficient open space that is otherwise available to people who dwell in buildings that are zoned residential.**

- **Lack of Usable Open Space:** The City of Madison intended for residents to have Usable Open Space. Every type of residential zoning provides for this, from a maximum of 1,000 square feet per dwelling unit, down to the least amount in the densest residential zoning type (TR-U2) which requires a minimum of 140 square feet per dwelling unit. 8Twenty Park offers 77 square feet per unit. Under residential zoning provisions, **Madison zoning requirements for TSS districts do not provide a minimum of Usable Open Space for residents of “mixed-use” buildings** (28.064, table, p. 50).

- **Compressed Living:** There is a substantial body of scientific and health literature that indicates a lack of sufficient space is detrimental to human behavior, health and welfare. In the case of 8Twenty Park, this applies both to its future inhabitants whose living compression will be abnormally high, and to the residents of the surrounding neighborhood. The human experience is reduced and public health is compromised when people are deprived of sufficient space for reasonable daily movement. Affordable housing for vulnerable residents is a prime justification for 8Twenty Park. However, people who are vulnerable, have limited mobility, and families with children

are especially in need of outdoor space that is safe, protected from traffic and easily accessible. A 100 square foot “tot lot” is insufficient outdoor space that lacks ready access for parents and children.

- **Exceeds Maximum Residential Lot Coverage:** Related to our concern about density arising from misapplication of TSS to residential dwelling units, is maximum lot coverage. If approved as proposed, 8Twenty Park occupies 85% of a one-acre lot when **the very densest of residential zoning (TR-U2), EVEN with conditional use, allows no more than 80% lot coverage.** Again, the only benefit we see in misapplying the zoning code and subsequently approving conditional uses is to increase density for developer profitability.

**B. Conditional Use Approval Standard (a) 3.** *“The uses, value and enjoyment of other property in the neighborhood for purposes already established will not be substantially impaired or diminished in any foreseeable manner.”*

**We believe that Plan Commission members must be made fully aware that they were not correctly informed about the options available to zone 8Twenty Park as a residential project, and thereby ensure its residents the right to Usable Open Space as part of their human condition.**

- According to the Planning Division Staff Report; *“ Along the Haywood Dr. frontage, the proposed building is two stories taller than the existing multi-family buildings just across the street to the south. However, the stretch of property immediately across Haywood from the proposed four-story building is recommended for “Community Mixed-Use and zoned Traditional Shopping Street (TSS), signaling that redevelopment to the south could be supported at a scale comparable to this proposal.” (p.13)*
- The video record shows that members of the Plan Commission agreed with this as a likely outcome.

We agree with both the City’s report and Plan Commission members’ suggestions that if this project goes through with this zoning and these conditional uses, it will be incorrectly used in the future as a justification for similar misapplication of the zoning code — across the street, or anywhere in Madison.

We believe this will diminish quality of life for Madison residents who live in residential areas near mixed-use corridors. It will be harmful.

**We believe that proper zoning NOW is essential in ensuring appropriate transitions between mixed-use and residential spaces along with neighborhood preservation in the future.**

**C. Conditional Use Approval Standard (a) 7.** *“The conditional use conforms to all applicable regulations of the district in which it is located;”*

**We believe this standard has not been met, and that this conditional use application is contrary to the intent and purpose of Traditional Shopping Street zoning — for the following reasons.**

- **Inadequate Traditional Shopping Space:** A 2,000 square foot, private office for the Developer appears to be the sole justification for a TSS map amendment for “mixed-use” zoning in a building complex that is otherwise completely residential. The proposed TSS map amendment is only available to a developer if the building is actually mixed use. In no way is the office necessary for the purpose of this building — other than to enable increased resident density — by layering conditional uses — for the profit of the Developer. **This is a thin subversion of legislative intent.** Objectively, 8Twenty Park is a residential building complex that contains ONE small, private office and *it should be correctly zoned residential.*
- **Actual Building Use does not match stated intent of TSS:** The stated purpose of 8Twenty Park is *“multi-family, phased affordable housing”*; the project is more than 98% residential (by square footage, as expressed in the Developer’s applications for Affordable Housing tax credits, for Land Use, to the Urban Design Commission for approval, to the Plan Commission for approval, and to the public in all open meetings). No information supplied by the Developer discusses retail or shopping except in the barest of mentions. Based on actual use (which is clearly residential) TSS zoning and layered conditional uses are a tortured application of zoning law that do not conform to legislative intent and set a bad precedent for future developers to “go shopping” for zoning.
- **Zero Neighborhood Shopping Gain:** Antithetical to the definition of TSS, if granted the conditional use permit to reduce non-residential space, the building complex will provide ZERO traditional shopping opportunity for residents and the public. Clearly, this is not the intent of TSS zoning and of conditional use overlay for its purposes.

**D. Conditional Use Approval Standard (a) 9.** *“When applying the above standards to any new construction of a building or an addition to an existing building the Plan Commission: a. Shall bear in the statement of purpose for the zoning district and b. May require the applicant to submit plans to the Urban Design Commission for comment and recommendation.”*

**We believe this standard has not been met, and that this conditional use application is contrary to the intent and purpose of the zoning district: Traditional Shopping Street (TSS) for the following reasons.**

- **Fails to Meet TSS Statement of Purpose:** The Developer has applied for conditional use to actually REDUCE the mixed-use portion of the building complex well beyond ordinance intention — so much that the building complex fails to meet the Statement of Purpose for “Traditional Shopping Street.” According to MGO 28.064, TSS zoning is intended to *“encourage and sustain the viability of Madison’s mixed-use corridors, which sustain many of the City’s traditional neighborhoods.”*
- **Lack of Diversification of Use:** Contrary to section (1)(b) for diversification of uses, the Developer is seeking conditional use in order to narrow the intended use. A TSS district is intended to encourage diversification of use. The proposed conditional use would permit the Developer to **reduce traditional shopping space to less than two percent (2%) of the entire building complex** when TSS minimum standards require 75% of first-floor space be for non-residential uses. In a building complex of 115,000 square feet, with total first-floor square footage of approximately 24,000 square feet, 75% of the first floors would be equivalent to about 18,000 square feet of non-residential uses — rather than the 2,000 square feet planned for non-residential use.
- **Doesn’t Maintain Viability of Existing Homes:** Contrary to subsection (1)(c) with respect to maintaining the **viability of existing homes**, the Developer is planning to demolish five existing homes.
- **Inappropriate Transitions:** Contrary to subsection (1)(d) encouraging appropriate transitions, the Developer offers a six-foot fence as the “transition” between a five and a four-story building and adjacent one and two story single family homes.
- **Doesn’t Facilitate Preservation:** Contrary to subsection (1)(e) for facilitating preservation that is consistent with the neighborhood plan, the Report of the City’s Planning Division Staff (November 18, 2015) acknowledges that outside the boundaries of Urban Design District 7, *the Greenbush Neighborhood Plan intends this block to be zoned low-density residential.*

**Finally, and regrettably, we believe Plan Commission members were misinformed by City staff** when Commission members inquired as to why the project could not be zoned residential. We believe that misinformation contributed substantially to the Plan Commission’s approval of the project and its conditional uses. **We protest this error and believe that if left uncorrected, it has the capacity to cause future misapplication of standards — which is harmful.**

- A review of the proceedings will show that, at a pivotal moment in the discussion, Alder Zellers specifically asked why 8Twenty Park could not be zoned residential. In response, staff replied that residential zoning types would not allow for inclusion of the Developer’s private office in this complex. However, according to MGO 28.032, Table 28C-1, a real estate office is a permitted use under all residential zoning types and a management office is permitted with conditional use under TR-V2, TR-U1 and TR-U2 residential zoning. Residential zoning also permits other types of offices, with and without conditional use.

**Plan Commission members should have been correctly informed that other residential zoning options were available that would ensure residents the right to Usable Open Space, including residential options that would enable the Developer to gain increased density without misapplying the zoning code.**

For the reasons outlined above, we protest:

- a) **The Failure of the Plan Commission's decision to meet ALL the Approval Standards** for Conditional Use as required under MGO 28.183(6)(a), numbers 1., 3. and 7; and
- b) **Incompatibility with the clear intent of Madison's residential zoning code** (and its application of conditional use permits) to require designation of a minimum of Usable Open Space for residents; and
- c) **Errors in zoning code interpretation** that resulted in misinformation provided by City staff to Plan Commission members during their deliberation.
- d) **Misapplication of Zoning:** The developer's misapplication of TSS Zoning and applications for conditional uses that combined, skirt both TSS AND residential requirements for use and space, resulting in density well beyond residential standards and legislative intent.

**We believe the Common Council should reject the recommendations the Plan Commission applied to this project; request that staff re-evaluate the residential zoning options available to govern this proposal; and advise the Developer to re-apply for zoning that conforms to the purpose and intent of Madison General Ordinances for this project.**

Finally, we note that under **28.183(6)(a)** "The City Plan Commission shall not approve a conditional use without due consideration of the recommendations in the City of Madison Comprehensive Plan and any applicable neighborhood, neighborhood development, or special area plan..." However, according to City staff analysis, the City of Madison Comprehensive Plan and the Greenbush Neighborhood Plan recommends low density, residential zoning for the portions of this block outside the boundaries of the current Traditional Shopping Street zoning of Urban Design District 7. (Planning Division Staff Report, November 18, 2015, Page 6.)

While we understand that the City and the Developer may have compelling reasons to authorize increased dwelling density beyond the existing City plans, **we believe that such increase should occur within the protective framework of the RESIDENTIAL code and its available conditional use(s).**

**We continue to strongly support affordable housing on this property but within a density that is reasonable and humane for occupants and neighbors.**

We thank you and appreciate your consideration and response.

### Appeal from Action by Plan Commission

*To the Secretary of the Plan Commission, the Honorable Mayor  
and Common Council of the City of Madison*

The undersigned hereby make and file formal appeal under the provisions of Section 28.183(5)(b) of the Madison General Ordinances of the City of Madison. against the findings of the Plan Commission on December 7th, 2015 regarding the project known as 8Twenty Park St. Specific references are outlined in the prior pages of this appeal.

In support of said appeal, I / we represent and show the Secretary of the Plan Commission, the Honorable Mayor and Common Council of the City of Madison as follows: that I / we am / are the property owners notified who object to the establishment of the conditional uses for the proposed development known as 8Twenty Park St.

Name (print or type)	Signature	Date Signed (print or Type)	Property Owned (Address)
MARISSA BURACK	<i>Marissa Burack</i>	12/14/15	841 HIGH.
KITTY KOCOR	<i>Kitty Kocor</i>	12/14/2015	1010 Haywood DR.
Harlie Giennot	<i>Harlie Giennot</i>	12/14/2015	833 High St.
Erin Jacobson	<i>Erin Jacobson</i>	12/14/2015	842 High St
John Eric Jacobson	<i>John Eric Jacobson</i>	12/14/2015	842 High St
Patrick Godar	<i>Patrick Godar</i>	12-14-2015	829 High St.
Cherie Godar	<i>Cherie Godar</i>	12-14-2015	829 High St.
Janet I Stockhausen	<i>Janet I Stockhausen</i>	12-14-15	825 High St.
Janet I Stockhausen	<i>Janet I Stockhausen</i>	12-14-15	838 High St.
Jennifer Gmsburg	<i>Jennifer Gmsburg</i>	12-14-15	840 S. Brooks St.
Jeff Weyer	<i>Jeff Weyer</i>	12-14-15	840 S. BROOKS ST.
Dorothea Salo	<i>Dorothea Salo</i>	12-14-15	828 S. Brooks St.
David Salo	<i>David Salo</i>	12/14/15	828 S Brooks St.
Lori Hawkins	<i>Lori Hawkins</i>	12/14/15	830 High St

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