

**PLANNING DIVISION REPORT
DEPARTMENT OF PLANNING AND COMMUNITY
AND ECONOMIC DEVELOPMENT
of April 4, 2007**

RE: I.D. # 06074, Alteration to Planned Unit Development – 804 Williamson Street

1. Requested Action: Approval of a minor alteration to an existing planned unit development for an outdoor seating area located at 804 Williamson Street.
2. Applicable Regulations: Section 28.07 (6)(9) 4. d. provides the Director of Planning and Community & Economic Development or his designee the ability to grant minor alterations to the approved planned unit developments if the changes are compatible with the plans approved by the Common Council.
3. Report Prepared By: Timothy M. Parks, Planner

GENERAL INFORMATION

1. Applicant & Property owner: Megan Ramey, MoCo Market, LLC; 1023 Williamson Street, Unit 1; Madison.

Note: The Livingston Condominium Association, Inc. is the owner of the common areas located within the condominium project.
2. Development Schedule: The applicant wishes to proceed as soon as all necessary approvals have been granted.
3. Location: The proposed retail market will occupy a 1,470 square-foot space located on the first floor of a 36-unit residential condominium building located at the northeast corner of S. Livingston and Williamson streets; Aldermanic District 6; Madison Metropolitan School District. The proposed outdoor eating area will be located on a portion of a common patio located adjacent to the proposed market space. The entire mixed-use project is zoned PUD-SIP.
4. Surrounding Land Use and Zoning: The subject property is located west of the new Renaissance multi-family buildings at 824 Williamson Street and across S. Livingston Street from various office and service commercial uses in the 700-block of Williamson. The property borders a future 39-unit residential/ commercial building approved last year at 301 S. Livingston Street and across Williamson Street from single, two and multi-family residential buildings in C2 (General Commercial District) zoning.

STANDARDS FOR REVIEW

This application is subject to Section 28.07 (6)(9) 4.d., which provides the Director of Planning

and Community & Economic Development or his designee the ability to grant minor alterations to the approved planned unit developments if the changes are compatible with the plans approved by the Common Council. The Plan Director, who serves as the designated approving official for these alterations, has referred this matter to the Plan Commission for a recommendation and to provide an opportunity for public comment on the proposed outdoor eating area.

ANALYSIS, EVALUATION, CONCLUSION

The applicant has requested a minor alteration to an approved planned unit development to open an outdoor eating area to serve the MoCo Market located on the first floor of 804 Williamson Street. The market occupies a 1,470 square-foot space on the first floor of the 36-unit Livingston/Renaissance condominium project at the corner of S. Livingston and Williamson streets. The market sells convenience groceries, sundries, beer and wine, and fresh prepared foods intended primarily for carryout. The market includes seating for 15 people inside. The outdoor eating area will provide seating for 12 on a portion of a raised courtyard and handicap ramp that separates the two commercial spaces. Portions of the residential units in the PUD surround the courtyard above the proposed outdoor eating area. The applicant indicates that the outdoor space is intended for patrons who have purchased items in the store to take them to four tables on the patio to consume. No table service is proposed. The applicant does not indicate in her application whether outdoor amplified sound is proposed.

The building was approved as a part of planned unit development for the northeast corner of S. Livingston and Williamson streets in July 2004. The planned unit development was approved with 36 condominium units and two first-floor commercial spaces containing a total of 2,400 square feet, including a portion of the commercial space in the renovated former Schlitz brewery building on the corner. The two commercial spaces were generally identified in the application materials for limited, neighborhood-scale uses such as the market the applicant operates. The zoning text initially submitted with the planned unit development rezoning identified C1 limited commercial uses for the two first floor commercial spaces. Outdoor eating areas were identified in the text as permitted accessory uses for the permitted commercial uses. However, the zoning text was modified without staff approval prior to recording to change the list of permitted uses for the residential-commercial project to those as permitted in R6 zoning. Outdoor eating areas continued to be listed as permitted accessory uses.

Outdoor eating areas, however, are conditional uses in R6 zoning, which allows retail spaces such as the MoCo Market as part of residential buildings. Staff felt that the conflicting language in the recorded zoning text and the fact that the approved plans for the courtyard did not specifically identify the space as an outdoor eating area complicated the granting of a minor alteration to approve the specific plans for the outdoor area administratively. Staff believes that the use of a portion of the courtyard for an outdoor eating area generally falls within the intended uses for the space when the planned unit development was initially approved. However, staff felt it appropriate to ask for the Plan Commission's counsel before granting the request due to

ID #06074
804 Williamson Street
April 4, 2007
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potential concerns about the notification of residents of the possible use of the courtyard. To that end, public hearing notices have been sent regarding this matter so that residents within the condominium in particular may have the opportunity to comment on the proposed outdoor eating area before a decision is made whether or not to grant the minor alteration.

Lastly, if the minor alteration to the planned unit development is approved, staff will record an alteration to the zoning text for the overall project to restore the zoning for the commercial spaces as C1 limited commercial as approved by the Plan Commission and Common Council, which will more clearly identify the uses that are permitted and those that are not.

REQUEST

Staff is requesting that the Plan Commission provide the Director of the Planning Division with a recommendation on whether or not to approve a proposed outdoor eating area for MoCo Market located at 804 Williamson Street. Staff recommends a condition prohibiting outdoor amplified sound and requests the Plan Commission consider whether a limitation should be placed on the hours of operation.

ZONING TEXT PUD(GDP-SIP)
The RENAISSANCE – Phase Two/Residential Condominiums
802/808 Williamson Street
Madison, WI 53703

Legal Description: The lands subject to this Planned Unit Development shall include those described on Exhibit A, attached hereto.

A. Statement of Purpose: This zoning district is established for the construction of two commercial spaces and 36 condominiums with 40 total bedrooms.

B. Permitted Uses:

1. Those that are stated as permitted uses in the R-6 zoning district.
2. Uses accessory to permitted uses listed above.
3. Commercial uses as allowed but not limited to:
 - a. Accessory uses directly associated with those permitted uses including parking for residents and guests, including outdoor seating for restaurants.
 - b. Temporary buildings for storage of building materials and equipment for construction purposes when on the same lot as a principle use for a period not to exceed the duration of such construction.

C. Lot Area: As stated on Exhibit A, attached hereto.

D. Floor Area Ratio:

1. Maximum floor area ratio permitted is 3.0.
2. Maximum building height shall be four (4) stories or as shown on approved plans.

E. Yard Requirements: Yard areas will be provided as shown on approved plans.

F. Landscaping: The landscaping will be provided as shown on approved plans.

G. Usable Open Space Requirements: Usable open space will be provided as shown on the approved plans.

H. Parking and Loading: Off-street and surface parking shall be provided as shown on the approved plans.

I. Signage: Signage will be allowed as per Chapter 31 of the Madison General Ordinances, as compared to the R-6 district, or signage will be provided as approved on the recorded plans.

J. Family Definition: The family definition for this PUD-SIP shall coincide with the definition given in Chapter 28.03(2) of the Madison General Ordinances for the R-6 Zoning District.

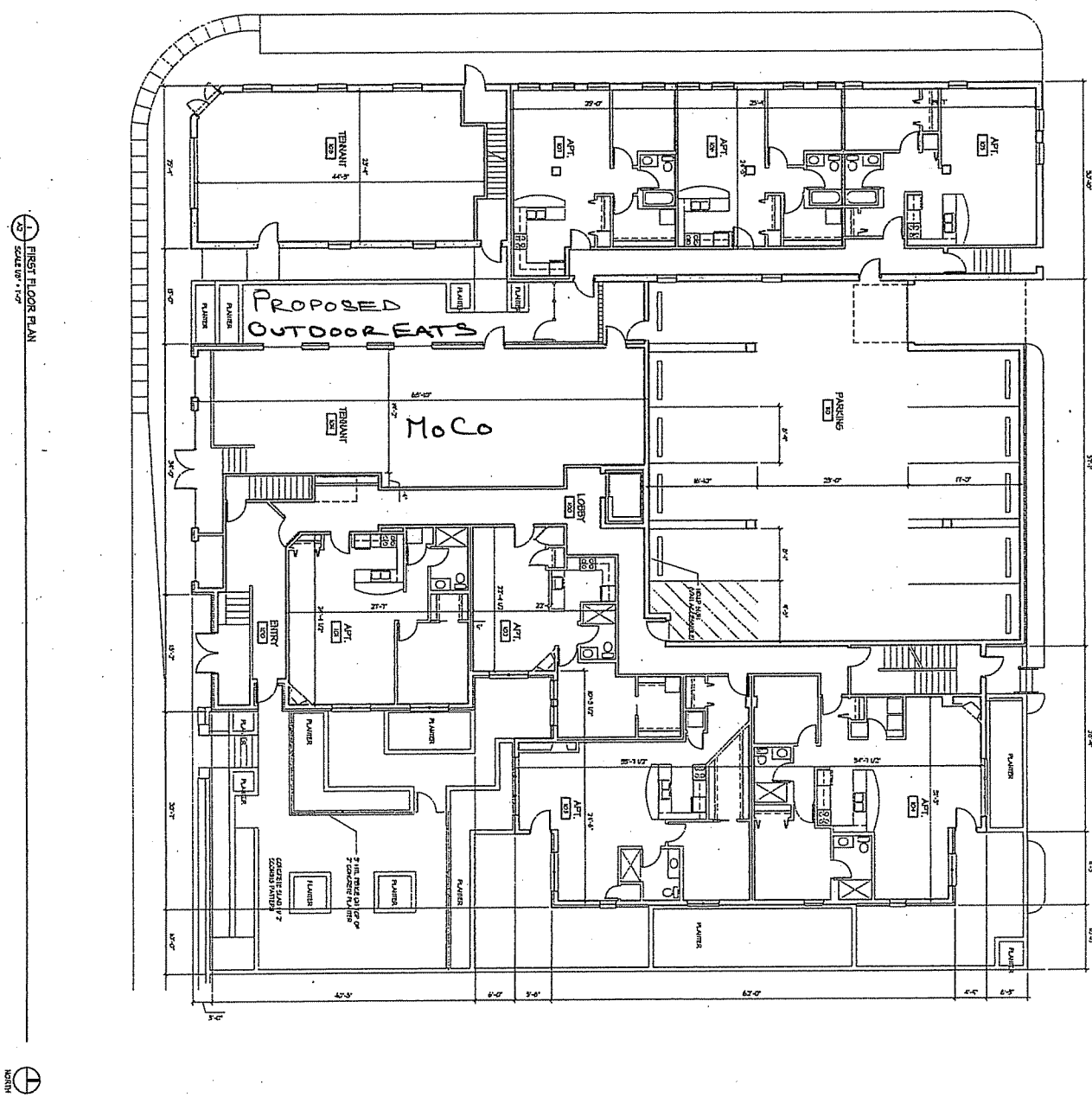
K. Alterations and Revisions: No alteration or revision of this Planned Unit Development shall be permitted unless approved by the City Plan Commission; however, the Zoning Administrator may issue permits for minor alterations or additions which are approved by the Director of Planning and Development and the alderperson of the district and are compatible with the concept by the city Plan Commission.

PUD(GDP-SIP)Zoning
 The Renaissance – Phase II
 301 Livingston St. & 808 Williamson St.
 March 24, 2004

Legal Description: The lands subject to this Planned Unit Development District shall include the lands described in Exhibit A.

- A. **Statement of Purpose:** This zoning district is established to allow for the construction of a mixed-use development with 96 dwelling units and 2,400 square feet of commercial-retail space.
- B. **Permitted Uses:** Following are permitted uses within this P.U.D.
1. Multifamily residential uses as allowed in the R-5 zoning district.
 2. Commercial uses as allowed in the C-1 zoning district.
 3. Accessory uses including but not limited to:
 - a. Accessory uses directly associated with those permitted uses including parking for residents and guests including outdoor seating for restaurants.
 - b. Temporary buildings for storage of building materials and equipment for construction purposes when on the same lot as a principle use for a period not to exceed the duration of such construction.
- C. **Lot Area:** As shown on the approved plans.
- D. **Height Regulations:** As shown on the approved plans.
- E. **Yard Regulations:** As shown on the approved plans.
- F. **Landscaping:** Site Landscaping will be provided as shown on the approved plans.
- G. **Usable Open Space Requirements:** Usable open space will be provided as shown on the approved plans.
- H. **Parking & Loading:** Off-street and surface parking shall be provided as shown on the approved plans.
- I. **Family Definition:** The family definition shall coincide with the definition given in M.G.O. 28.03 for the R-5 zoning district.
- J. **Signage:** Signage will be allowed as per the C-1 zoning district.
- K. **Alterations and Revisions:** No alteration or revision of this Planned Unit Development shall be permitted unless approved by the City Planning Commission, however, the Zoning Administrator may issue permits for minor alterations or additions which are approved by the Architectural Review Committee, Director Of Planning and Development and the alderperson of the district and are compatible with the concept approved by the City Planning Commission.

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① FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"



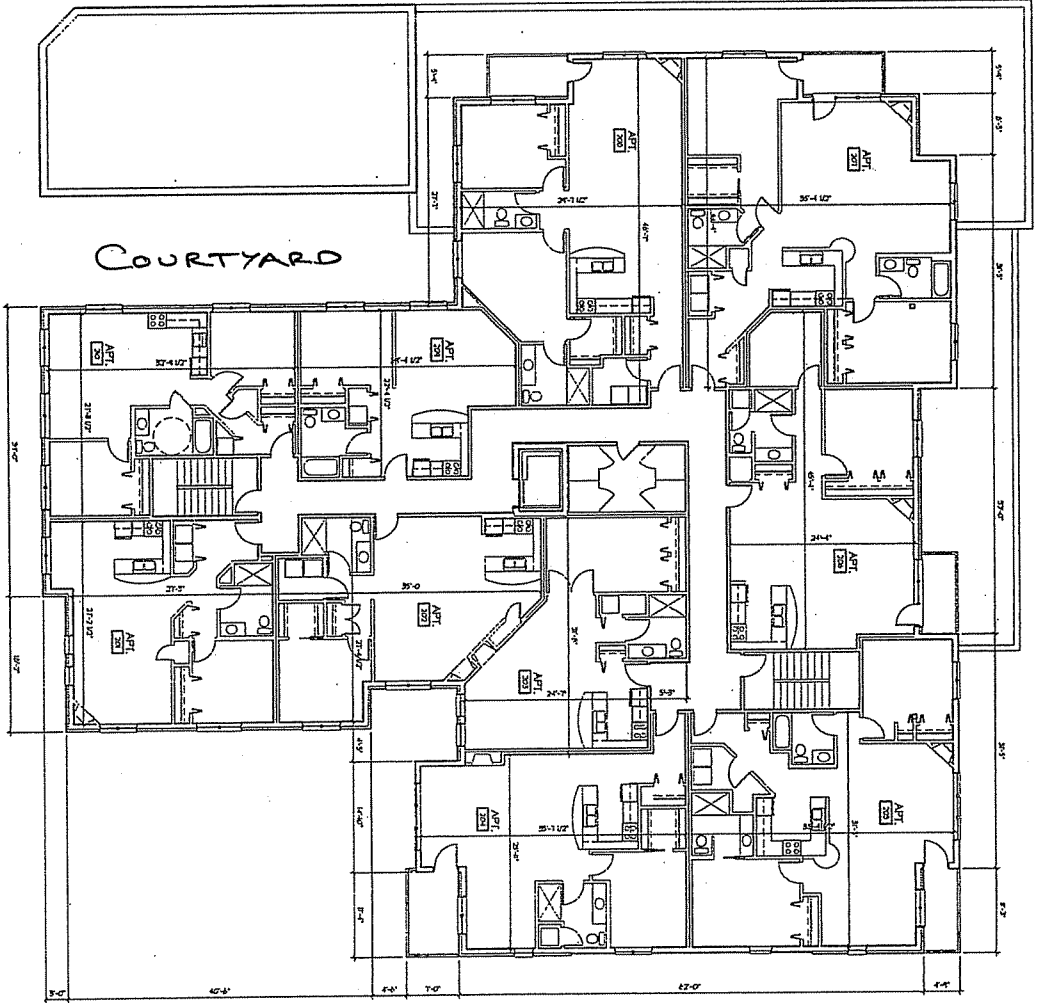
PROJECT
 The Livingston
 Residential Condominiums
 808 Wisconsin Street
 Madison, Wisconsin 53703

DRAWING
 FIRST FLOOR PLAN

DATA
 Project # 20004
 Date 08/20/01
 Drawn by JH

A2

3



Ⓐ SECOND FLOOR PLAN (THIRD FLOOR PLAN SIMILAR)
SCALE: 1/8" = 1'-0"



SUTTON
ARCHITECTURE
301 CO. ROAD
MADISON, WI 53703
TEL: 608-251-0441 FAX: 608-251-0444

PROJECT
The Livingston
Residential Condominiums
802/808 Wisconsin Street
Madison, Wisconsin 53703

DRAWING
SECOND FLOOR PLAN

DATA
Sheet: 2002
Date: 08/08
Drawn by: JH

A3

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**CITY OF MADISON
INTERDEPARTMENTAL
CORRESPONDENCE**

Date: March 28, 2007

To: Plan Commission

From: Kathy Voeck, Assistant Zoning Administrator

Subject: 804 Williamson St., Miner alt to PUD(GDP-SIP)

Present Zoning District: PUD(GDP-SIP)

Proposed Use: Miner alteration to a PUD(SIP) to allow an outdoor eating area

Conditional Use: Note: Outdoor eating areas are a conditional use in conventional zoning districts.

MAJOR OR NON-STANDARD REVIEW COMMENTS (Comments which are special to the project and/or may require additional work beyond a standard, more routine project). **NONE.**

GENERAL OR STANDARD REVIEW COMMENTS

ZONING CRITERIA

Bulk Requirements	Required	Proposed
Lot Area	Existing	Existing
Lot width	Existing	Existing
Usable open space	Existing	Existing
Front,, side & rear yards	Existing	Existing
Building height	Existing	Existing

Site Design	Required	Proposed
Number parking stalls	8 (restaurant use, capac. 27)	Existing parking *
Accessible stalls	Existing	Existing
Loading	Existing	Existing
Number bike parking stalls	Existing	Existing
Landscaping	Existing	Existing
Lighting	Existing	Existing

Other Critical Zoning Items	
Urban Design	Yes
Historic District	Yes
Landmark building	No
Flood plain	No
Utility easements	None shown
Water front development	No
Adjacent to park	No
Barrier free (ILHR 69)	Yes

We have no problem with the proposed project.

* Since this project is being rezoned to the **(PUD)** district, and there are no predetermined bulk requirements, we are reviewing it based on the criteria for the **C-2** district, because of the surrounding land uses.

VIA EMAIL TRANSMISSION

March 6, 2007

To Whom It May Concern:

I am writing on behalf of the Livingston Condominium Board of Directors to express the support of the Livingston Condominium Association for Megan Ramey's proposed use of outdoor seating with food and beverage service for MOCO, located at 804 Williamson Street. MOCO is part of the Association, as are the Livingston Condominium residents.

MOCO's unit, which is Unit 804, is designated in the Condominium by-laws as a commercial unit, specifically intended for commercial use. Further, the by-laws provide that the only restrictions, other than those provided for by zoning ordinances, are that the space may not be used for (i) Taverns; (ii) Restaurants with grills or deep fryers; or (iii) any use open to the public or which produce sound or vibration [impacting the public] between the hours of 10:30 p.m. and 6:00 a.m. Ms Ramey's business plan for her unit is entirely consistent with the restrictions stated in the Association's by-laws.

Ms. Ramey has worked with the Livingston Condominium Association since the summer of 2006 to openly discuss her plans for her space and to address the residents' concerns. Through this exchange, she worked to ensure that her business is developed in a manner which is respectful to the residents and consistent with her stated goal of providing the Williamson Street neighborhood with a quality, locally owned business and to help ensure the economic vitality of the Williamson Street neighborhood.

Ms. Ramey addressed Livingston residents at two meetings, where she detailed her plan for the use of the outdoor patio space, hours of operation, serving of alcoholic beverages, maintaining a smoke-free environment, as well as other aspects of her business plan. She was receptive to specific requests of residents and, though not legally required to, changed aspects of her business plan to accommodate some of those requests.

Following a meeting on August 22, 2006, all Livingston owners were provided the opportunity to vote regarding Ms. Ramey's intent to use the patio section of the property she had purchased for additional seating for her customers and for food and beverage service, which would include beer and wine. Fifteen residents voted in favor of and six residents voted against Ms. Ramey's use of her outdoor patio space for the previously expressed purposes. Ms. Ramey's use of the outdoor patio space was approved on September 4, 2006.

VIA EMAIL TRANSMISSION

March 6, 2007

To Whom It May Concern:

My name is Beth G. Joffe. My husband and I own and reside at 802 Williamson St, Unit #4 ("802-4"). Our home is part of the Livingston Condominium Association. I write on behalf of my husband and me to express our support for Megan Ramey's proposed use of outdoor seating with food and beverage service, including beer and wine service, for MOCO, located at 804 Williamson Street, Madison, Wisconsin. MOCO is part of the Association, as are the Livingston Condominium residents.

Unit 802-4 is located directly across from MOCO's patio. Our front door, our bedroom window, and glass balcony door open just a few feet from MOCO's patio. Additionally, our outdoor space (the balcony) is located just above MOCO's patio. Arguably, we are the Livingston residents most impacted by MOCO's use of its patio area, given our proximity to it.

When we purchased our unit, we were advised of the intended use of MOCO's space, including the patio space. Additionally, we reviewed the by-laws of the Association prior to our purchase and confirmed that the by-laws expressly approve MOCO's intended use. We support Megan Ramey and MOCO's use of its patio area for outdoor seating and food and beverage service, including beer and wine service, within the hours she has outlined to the residents of the Livingston Condominium Association (I believe that to be until 8:00 p.m. on weekdays and earlier on weekends).

Sincerely,

Beth & Aaron Joffe
Residents and Owners of 802 Williamson St., #4
Madison, WI 53703
(608) 230-5718

Murphy, Brad

From: Judy Olson [jolson@operationfreshstart.org]
Sent: Friday, March 30, 2007 5:19 PM
To: Tucker, Matthew; Murphy, Brad
Subject: FW: Courtyard between 802 and 808 Livingston

More on MOCO...

-----Original Message-----

From: Joffe, Beth G [mailto:BJoffe@seyfarth.com]
Sent: Friday, March 30, 2007 4:37 PM
To: David Bridgeford
Cc: Bridget Rogers; Chris Reining; Mike Schulz; Judy Olson; Rose Sage
Subject: RE: Courtyard between 802 and 808 Livingston

David,

Thank you for forwarding the information concerning your belief that the patio attached to 804 Williamson is actually a common area, as opposed to a common element reserved for MOCO's exclusive use, to the Board's attention. I have consulted with the other Board members and have forwarded your information to them. My response, therefore, is sent on behalf of the Board of Directors of the Livingston Condominium Association.

In short, the Board's official response is that this information does not change the position of the Livingston Condominium Association. The condominium residents voted a majority in favor of MOCO's proposed use of the patio adjacent to its indoor space for outdoor dining, and the Board officially ratified that vote and has notified Megan Ramsey of this decision. The information you have presented does not alter the Board's position nor the Association's approval of MOCO's intended and exclusive use of the patio area adjacent to it, which is circumscribed by the brick wall and metal railing (as to be distinguished from the common walkway and small patio area just in front of the entrance to 802).

I will be forwarding the Board's response to Megan Ramey as well.

Sincerely,

Beth G. Joffe
President, Livingston Condominium Association

Beth Golub Joffe | SEYFARTH SHAW LLP | 131 S. Dearborn, Suite 2400, Chicago, IL 60603 |
Direct: (312) 460-5503 | Fax: (312) 460-7503 |
E-mail: bjoffe@seyfarth.com | www.seyfarth.com | Assistant: Susan Hampton (312) 460-6291

-----Original Message-----

From: David Bridgeford [mailto:dbridgeford@mac.com]
Sent: Thursday, March 29, 2007 11:10 AM
To: Joffe, Beth G
Cc: Bridget Rogers; Chris Reining; Mike Schulz; Judy Olson
Subject: Courtyard between 802 and 808 Livingston

Hi Beth,

I just wanted to follow up to our conversation yesterday where I indicated that I had recently discovered that the patio between 802 and 808 Livingston is a common area available for the use of all Unit Owners. I have examined the Declaration of Condominium and the Plat recorded January 11, 2006. The Declaration is a document which we were given prior to purchase. I examined the Plat at the Register of Deeds Office. Based on my review of these documents it is my opinion

that the patio between 802 and 808 Livingston is a common area. This patio is accessible from the exits to 802, the sidewalk from the street and the exits to 804. The Declaration and Plat recorded January 11, 2006 are part of my deed and my title insurance policy.

I have enclosed two documents for your review. The first is Megan's deed which I obtained online which does not mention the patio between 802 and 808. The second is a "Correction Affidavit" which was signed by the Developer on the same day as Megan's deed. (I obtained this document online as well.) In this "Correction Affidavit" the Developer attempts to change the designation of the patio from a common area to a limited common element, which would give her exclusive use of the patio. As you may know, the Developer sold all other Units prior to the closing on the commercial unit. After examining the relevant law, I am of the opinion that this "Correction Affidavit" has no legal significance and that the patio remains a common element.

As you know, I have opposed Megan's use of the patio for outdoor commercial dining since she first proposed the idea almost a year ago due to the fact that the courtyard is narrow and deep and conversations on the patio sound like they are happening right outside my windows on the third floor. I am also aware that you have supported her use of the patio for outdoor commercial dining. I send you (and the other Board Members) this information since it sheds new light on the issue of her use of the patio for outdoor commercial dining.

Thanks,

David.

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

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Murphy, Brad

From: David Bridgeford [dbridgeford@mac.com]
Sent: Monday, April 02, 2007 2:48 AM
To: Murphy, Brad; Parks, Timothy; Tucker, Matthew
Subject: Opposition to Moco Market's Application for an alteration to an approved and recorded PUD-SIP, Plan Commission Agenda, April 9, 2007

Dear Mr. Murphy, Mr. Parks and Mr. Tucker,

I am in opposition to Moco Market's Application for an alteration to an approved and recorded Planned Unit Development (Plan Commission Agenda, April 9, 2007). I own one of the condominiums at the property in question, which is known as The Livingston and I submit this opposition on my behalf. The application should be denied since the courtyard/patio which is the subject of the application is owned in common by all the Unit Owners. Further, the location of the proposed use would cause a reduction in property values and significant disturbances to a number of homeowners. I would appreciate it if you would forward my opposition to the Plan Commission members for their review prior to the Plan Commission meeting of April 9, 2007.

On August 26, 2006 Megan Ramey, (owner of Moco Market, the Applicant) came before our condominium association and presented a plan to purchase one of the two commercial spaces at the condominiums at 800, 802, 804 and 808 Williamson Street. She represented to those present that the Developer of The Livingston planned to be an investor in her business. The Livingston has 36 residential and 2 commercial units. The other commercial unit is owned by an advertising agency. There was no objection to her business or purchase of the Unit at 804 Williamson Street. However, there was significant concern over her proposal to use the courtyard/patio adjacent to her unit for an outdoor commercial eating and drinking area. The courtyard/patio is about 10 feet wide and 45 feet deep 4 stories high and is surrounded by 9 residential owners who have patios and/or windows on the courtyard. The courtyard/patio is adjacent to a condominium walkway and is accessible to anyone from this sidewalk or the exits from 802 or the exits of the commercial space. This long, narrow space has dramatically poor acoustics due to the hard brick and cement surfaces.

Some unit owners at the meeting reported that normal conversations on the courtyard/patio could be heard word for word through closed windows, three stories up. There was one report by a homeowner that she could hear a homeless person on the courtyard/patio pee into a bag through closed windows three stories up. I also talked at the meeting about how conversations on the courtyard/patio sound like they are taking place right outside your window. (I live on the third floor and both my windows are on this courtyard/patio.) About 75% of the homeowners at The Livingston do not have windows or patios on this courtyard and some expressed interest in having the space sold promptly. There was also discussion about whether the City would or would not approve the use of the courtyard/patio for an outdoor commercial eating and drinking area. Additionally, there was some confusion over whether the courtyard/patio was part of the property of the commercial space or was owned in common. (I assumed at the time that the courtyard/patio was a limited common element for the exclusive use of the commercial space owner. It would have made no sense for Megan, or anyone else, to propose having exclusive use over a courtyard/patio which belonged to all the Unit Owners.) The members present took an informal and anonymous vote and approximately 40 percent of the members present were opposed to the use of the courtyard/patio for an outdoor commercial eating and drinking area.

Despite significant objections from the homeowners and doubt over whether the City would approve

the use of the courtyard/patio for an outdoor commercial eating and drinking area, the Applicant purchased the property in December, 2006. No attempt was made by the Applicant to alter the approved and recorded PUD-SIP prior to her purchase.

On February 21, 2007, the Applicant appeared before the ALRC to get a class B combination liquor and beer license to cover both the interior of her unit and the courtyard/patio. The application for the interior was approved, but the application for the courtyard/patio was denied based on concerns that the Plan Commission had not approved the use of the courtyard/patio for an outdoor commercial eating and drinking area and the disturbance that would result to many of the owners at The Livingston.

The Applicant now comes to the Plan Commission seeking an alteration of the approved and recorded PUD-SIP. The application should be denied since the Declaration and Plat of the Livingston Condominiums which were recorded January 11, 2006 by the Developer (Livingston Properties) provide that the courtyard/patio in question is a common element which is available for the use and enjoyment of all unit owners. This is consistent with the fact that about 40% of the Unit Owners do not have individual patios or balconies. I discovered the fact that the courtyard/patio is a common element only recently while researching the Application. Both my deed and my title insurance policy incorporate the Declaration and Plat by reference. My deed specifically includes an undivided percentage interest in all the common elements. The Declaration provides that "none of the real estate which is part of the Common Elements may be abandoned, subdivided, encumbered, sold, or transferred except by amendment of this Declaration." Section 703.09 of the Wisconsin Code provides that a recorded condominium declaration may only be amended with the written consent of two thirds of the total number of unit owners. That section also provides that written consent of a unit owner is not effective unless it is approved in writing by the first mortgagee of the unit. Finally, that section provides that any proper amendment to the Declaration is not effective until it is recorded. Section 703.11 (5) provides the exact same procedure for amending a condominium plat.

Although a document was sent to the Unit Owners in August of 2006 giving the Unit Owners a choice to vote to allow the buyer of the commercial space to use the courtyard/patio for the use of its patrons, only 15 of the unit owners voted to approve this action. This is well short of the 25 unit owners required by Section 703.09 of the Wisconsin Code.

On December 21, 2006 the Developer conveyed Unit 804 to the Applicant. There is no mention of the courtyard/patio in the deed. At the same time, the Developer signed a document which purports to change the courtyard/patio from a common element to a limited common element which would give exclusive use of the courtyard/patio to the Applicant. This document was recorded as a "Correction Affidavit." I discovered this document doing a property search. In this document, the Developer states that the courtyard/patio on the condominium plat "should have been identified on the Plat as a limited common element appurtenant to Unit 804." This document was signed and recorded after the Developer had sold the other 37 condominium units. I received no notice of this recorded document from the Developer or anyone else.

I advised the Livingston Board of Directors of my discovery in writing on March 29, 2007. The following day I received an "official response" from the President of the Board of Directors that she had consulted with the other Board members. She stated that the Board's position that Moco Market was entitled to exclusive use of the courtyard/patio for an outdoor eating and drinking area remained unchanged. The Condominium Association's belief that a "majority of owners" or the Board of Directors can give exclusive use of a common element to Moco Market is completely unsupportable by any legal authority.

Although the Developer states in the Correction Affidavit that not identifying the courtyard/patio as a limited common element was an error, it is worth noting that the site plans recorded with the approved

PUD-SIP show the space as a "Plaza." To me, use of the word "Plaza" means space available for the use of all Unit Owners. In addition, I received a floor plan which included the first floor from the realtor for the Developer when I picked out my parking space. This document identifies the space in question as a "Courtyard." Again, this designation implies space available for the use of all Unit Owners. The Plan Commission should also consider the site plans submitted with the Livingston Railroad Corridor PUD-SIP application on August 23, 2006 by the same Developer. In these plans, the space in question is shown to be a "Plaza." There is no record of the Developer applying to the City for any alteration of the approved and recorded PUD-SIP at any point in the process.

Even if not identifying the courtyard/patio as a limited common element were an error, It is clear that the Developer and the Applicant have failed to comply with the requirements of sections 703.09 and 703.11(5) regarding amending a declaration or plat. The recorded "Correction Affidavit" has no legal significance. Although Section 236.295 of the Wisconsin Code does provide a way to correct errors on a plat or certified survey map, the section is intended to cover only scrivener's errors. Section 236.295 cannot be used to alter title or ownership in any way. In addition, Section 236.02(2m) provides that a correction instrument may only be drafted by a "licensed land surveyor." Here, the correction instrument was signed by Scott Lewis, the president of Livingston Properties. Finally, Section 703.09 (d) requires the text of the Condominium Declaration to contain a description of the limited common elements and the unit to which the use of each is restricted. Although the text of the Declaration describes the limited common elements in paragraph 9, there is no mention of the courtyard/patio in question. Is this another mistake? (The Declaration was drafted by the Developer's attorney.) And there has been no amendment to the original Declaration. Accordingly, the space in question is a common element and the Plan Commission cannot give exclusive use of the courtyard/patio to the Applicant.

Finally, and most importantly, even if the Condominium Association were to legally amend the Declaration and Plat giving exclusive use of the courtyard/patio to the Applicant, it is clear that the Commission would still have an obligation to deny the application. Outdoor commercial eating and drinking is of such unique and varying characteristics, that under the Madison Zoning Code, it is not classified as a permitted use in any particular district. The Zoning Code requires the Plan Commission to consider the impact of the proposed use on the neighbors and the need for this use at the particular location. Clearly, the proximity of the proposed use to several residential owners and the echo chamber acoustics of the courtyard/patio could cause a reduction in the property values of the affected owners. Also, several owners have expressed concern about diminished enjoyment of their property. There are also security, safety and legal liability issues to consider.

In addition, there has been no showing by the Applicant in her letter of intent of the need for an outdoor commercial eating and drinking area in the space. According to Scott Lewis' PUD-SIP submission for the Livingston Railroad Corridor which is directly to the north of The Livingston there are 21 restaurants and 3 coffee shops within a 4-block area. Many of those restaurants have outdoor dining in more suitable spaces. I can think of no other outdoor commercial eating and drinking area in Madison which presents such an obvious conflict between diners and property owners. Under these circumstances, the Zoning Code requires the Commission to deny the application for an outdoor commercial eating and drinking area.

With the approval of the PUD-SIP for both The Livingston on Williamson Street and the Livingston Railroad Corridor on Livingston Street, the Plan Commission has changed the area from 32 units per acre under C2 zoning to around 90 units per acre. With these changes in density comes a responsibility to insure that residents and owners are not intruded on in ways which can easily be avoided. For the foregoing reasons, the Plan Commission should deny the application.

Respectfully submitted,

David Bridgeford
808 Williamson St., Unit 309

Murphy, Brad

From: Katie Evers [katiekristine3@yahoo.com]
Sent: Monday, April 02, 2007 9:08 AM
To: Parks, Timothy; Tucker, Matthew; Murphy, Brad
Cc: jolson@operationfreshstart.org
Subject: Opposition to Moco Market's Application for Outdoor Eating Area at 804 Williamson Street, Plan Commission Agenda, April 9, 2007

Dear Mr. Parks, Mr. Murphy, and Mr. Tucker,

I oppose the application for an outdoor commercial eating area at 804 Williamson Street. I would appreciate it if you could forward my opposition to the members of the Plan Commission prior to the April 9th Plan Commission meeting. Unfortunately, due to a schedule conflict, I will not be able to appear in person at the hearing.

I am Katie Evers; I own the condo, #210, directly above MOCO Market. I have a living room window and a bedroom window directly above the MOCO patio. Any sort of noise that happens between 808 and 802 (the patio area) is very loud in my condo. This Winter I could hear shoveling of the snow as if it were happening inside of my condo. Also any sort of conversation that happens down there, I can hear word-for-word. MOCO had a private party on Saturday, March 31st and some people sat out on the patio... I was doing some work and was easily distracted by all the conversations that were happening. Like I said, I can hear everything that the people were talking about... including the shuffling of the chairs, etc.

I know that majority of Livingston accepts the use of the patio but most of these owners are not affected by the noise. If I didn't live where I live, I would have no idea how bad it really is... but for most of the people that surround the patio, it is a major disturbance. I will be very affected if the patio use is allowed, for outdoor dining, and will be disappointed because I work very hard to afford to live where I live and I have really grown to like Livingston and the area... and I don't think I will feel the same way if I am constantly being disrupted by people sitting in the patio of MOCO. I understand that living in a condo, you have to deal with noises of others, etc. as I know others have to deal with noises of me. This, I understand, in fact, I could hear muffling voices from inside of MOCO throughout the party on March 31st, but this is something that I expect to hear and know that it is something that I can't do anything about... but if there is anything that I can do to stop the use of the patio, I do want to do what I can.

I, also, have recently been informed that the patio is a common area and I do not consent to Megan the use of the space for an outdoor commercial eating area.

Thank you for time and for listening. I sincerely hope that I can make a difference and that I can help stop the use of the patio for outdoor eating.

Let me know if you have any questions.

Thanks,

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Murphy, Brad

From: Sherie Hohs [sheriehohs@yahoo.com]
Sent: Monday, April 02, 2007 2:44 PM
To: Parks, Timothy; Tucker, Matthew; Murphy, Brad
Cc: jolson@operationfreshstart.org
Subject: Opposition to Moco Market's Application for Outdoor Eating Area at 804 Williamson Street, Plan Commission Agenda, April 9, 2007

Dear Mr. Parks, Mr. Murphy and Mr. Tucker,

My name is Sherie Hohs and I oppose the application for an outdoor commercial eating area at 804 Williamson Street. I would appreciate it if you could forward my opposition to the members of the Plan Commission prior to the April 9th Plan Commission meeting. Unfortunately, I will be out of the country and unable to appear in person at the hearing.

I am the owner of 808 Williamson St. #310 on the third floor of The Livingston, directly above the narrow space that is the proposed seating venue for MoCo Market. As someone greatly affected by this proposition, I want you to know my perspective on the issue.

I love living in an urban setting. I have no problem with street noise, the train sirens, or the Fire Station down the street. But outdoor dining and drinking in the 804 courtyard is a serious concern to me. When I purchased my condo in March of 2006, I was told that a law firm was buying the commercial space below. Never did I imagine that there would be people eating and drinking on this small patio.

The acoustics of the narrow courtyard and its proximity to homeowners would make it a horribly disruptive place for outdoor eating and drinking. Unoccupied, noise has already been an issue in this space. Due to the layout of the courtyard, every small noise echoes and is amplified throughout. With my windows closed and blinds drawn, I can hear word for word conversations of neighbors in the courtyard. When I think of the large volume of MoCo customers who will be utilizing this space (7 days a week; mornings, afternoons, & evenings) I am aware of how this noise will adversely affect living & working in my home. MoCo's website is marketing the patio as a place for dogs & their owners- this will result in further noise and pet waste issues.

<!--[if !supportEmptyParas]-->I strongly believe that outdoor commercial dining in this space will result in a very disruptive living environment.

I am not alone in my opposition - there are 9 other condos with windows and patios in direct proximity to the 804 patio, and a strong majority of these owners are greatly opposed to outdoor dining and alcohol consumption on this patio. At last vote, **1/3 of ALL** condo owners at the Livingston were opposed to this use.

Just recently, I was informed that the 804 patio is in fact a common area for our building. As an owner, I do not consent to MoCo's use of the space for an outdoor commercial eating area.

Thank you for your time and consideration on this very important issue. I hope the Plan Commission will look out for the welfare of the Livingston residents affected when considering the application for an outdoor commercial eating area at 804 Williamson Street, and vote "NO."

Sincerely, <!--[endif]-->

Sherie Hohs
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