

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

MEMORANDUM

To: Al Martin, Urban Design Commission
From: Lara Mainella, Assistant City Attorney
Date: November 4, 2014
RE: ID # 35894, 1309 S. Park St. Comprehensive Design Review, windsock

Item No. 2 on your agenda is a request for Comprehensive Design Review (CDR) to approve a windsock with the business name on it, displayed above the roof of a coffee shop in UDD No. 7.

This will require the UDC to apply the CDR ordinance in Ch. 31 and the sign guidelines for UDD No. 7 in MGO 33.24(14).

I. Comprehensive Design Review of a Prohibited Sign.

This is an unusual request for CDR because it seeks permission for a prohibited sign. The question for the UDC is whether or not the criteria for CDR support the approval of a prohibited sign.

The following Madison General Ordinances are relevant to your review:

The windsock is an “attention getting object,” prohibited by MGO 31.045(3)(g)2. “Hazardous or Prohibited Signs, Structures, and Conditions.”

2. Attention-Getting Objects. All Attention-Getting Objects, defined in Sec. 31.03(2), whether or not attached to or displayed in connection with a sign, are prohibited. Flags and decorative and promotional banners allowed under Sec. 31.075¹ are not considered “Attention-Getting Objects.”

Attention-getting objects are defined in MGO 31.03(2) as:

“An object made of flexible material whether or not it contains text, logos or any other images such as a streamer, pinwheel, pennant or other such device; suspended, hung, pinned or otherwise fastened to a sign or other structure in such a manner that the object is permitted to spin, fly, flap or otherwise move in the wind. Flags and decorative and promotional banners allowed under Sec. 31.075¹ are not considered ‘attention getting objects.’”

¹ This windsock does not qualify as a flag, decorative or promotional banner under MGO 31.075.

The Comprehensive Design Review (CDR) process is described, in relevant part, in MGO 31.043(4) and (4)(b):

“(4) Comprehensive Design Review (“CDR”). The Urban Design Commission may approve a Comprehensive Sign Plan on a building site or zoning lot to allow special allowances for all signs on private property regulated under this Chapter beyond the restrictions contained elsewhere in this Chapter, and may incorporate other approvals authorized in Secs. 31.043(2) and (3) in order to meet the following purpose:

The purpose of a Comprehensive Design Review is to determine whether unique, exceptional, and innovative use of materials, design, color, lighting, and other design elements, resulting in visual harmony created between signs, building(s), and building site, are sufficient to warrant special allowances beyond the restrictions contained elsewhere in this Chapter. For the signs included in the Comprehensive Design Review, the restrictions of this Chapter shall not apply and there shall be no predetermined requirements for those signs except those requirements which shall be made part of the approved Comprehensive Sign Plan. The resulting Comprehensive Sign Plan shall encompass the new sign(s) requested by the applicant and approved by the UDC, and any approved modifications to existing signs on the same building site or zoning lot.”

“(4)(b) Comprehensive Design Review Criteria. The UDC shall apply the following criteria upon review of an application for a Comprehensive Sign Plan:

1. The Sign Plan shall create visual harmony between the signs, building(s), and building site through unique and exceptional use of materials, design, color, any lighting, and other design elements; and shall result in signs of appropriate scale and character to the uses and building(s) on the zoning lot as well as adjacent buildings, structures and uses.
2. Each element of the Sign Plan shall be found to be necessary due to unique or unusual design aspects in the architecture or limitations in the building site or surrounding environment; except that when a request for an Additional Sign Code Approval under Sec. 31.043(3) is included in the Comprehensive Design Review, the sign(s) eligible for approval under Sec. 31.043(3) shall meet the applicable criteria of Sec. 31.043(3), except that sign approvals that come to Comprehensive Design Review from MXC and EC districts pursuant to 31.13(3) and (7) need not meet the criteria of this paragraph.
3. The Sign Plan shall not violate any of the stated purposes described in Secs. 31.02(1) and 33.24(2).
4. All signs must meet minimum construction requirements under Sec. 31.04(5).
5. The Sign Plan shall not approve Advertising beyond the restrictions in Sec. 31.11 or Off-Premise Directional Signs beyond the restrictions in Sec. 31.115.
6. The Sign Plan shall not be approved if any element of the plan:

- a. presents a hazard to vehicular or pedestrian traffic on public or private property,
 - b. obstructs views at points of ingress and egress of adjoining properties,
 - c. obstructs or impedes the visibility of existing lawful signs on adjacent property, or
 - d. negatively impacts the visual quality of public or private open space.
7. The Sign Plan may only encompass signs on private property of the zoning lot or building site in question, and shall not approve any signs in the right of way or on public property.”

Comprehensive Design approval powers are very broad. There nothing in the Comp Design ordinance that says the UDC cannot approve a prohibited sign. Sec. 31.043 is silent on attention getting devices and silent on prohibited signs, so under the current definition of Comprehensive Design, the UDC may consider whether to approve this windsock.

It is immaterial whether or not the windsock was intended as a “sign” or advertisement. The question is whether it is permissible under ch. 31, and if not, does it meet the criteria for the UDC to approve it via Comprehensive Design under 31.043(4)?

II. Impact of UDC ordinance.

Comprehensive Design requires you to consider the “purpose” section of the UDC ordinance, MGO 33.24(2):

33.24(2) “Purpose And Intent. It is hereby declared a matter of public policy that the design, appearance, beauty and aesthetics of all public and private buildings, structures, landscaping and open areas are a matter of public concern and as such must be controlled so as to promote the general welfare of the community. The purpose of this section is:

- (a) To assure the highest quality of design for all public and private projects in the City.
- (b) To protect and to improve the general appearance of all buildings, structures, landscaping and open areas in the City; to encourage the protection of economic values and proper use of properties.
- (c) To encourage and promote a high quality in the design of new buildings, developments, remodeling and additions so as to maintain and improve the established standards of property values within the City.
- (d) To foster civic pride in the beauty and nobler assets of the City, and in all other ways possible assure a functionally efficient and visually attractive City in the future.”

While the CDR criteria does not mention Urban Design Districts, the UDC routinely considers district guidelines for any signs that come before the body and are located in an Urban Design District. Here are the sign guidelines for UDD No. 7:

33.24(14)(d) "Basis for Design Review."

"6. Signage.

a. Guidelines.

- i. Preferred sign types include building mounted signs, window signs, projecting signs, and awning signs.
- ii. Signs should be simple and easy to read.
- iii. Sign colors should relate to and complement the primary colors of the building facade.
- iv. Sign design and placement should fit the character of the building and to obscure architectural details.
- v. Signage should generally be centered within the prescribed signage area of the building.
- vi. Plastic box signs are highly discouraged.
- vii. Internally illuminated signs displaying illuminated copy should be designed so that when illuminated, the sign appears to have light-colored copy on a dark or non-illuminated background.
- viii. Individually mounted backlit letters are an encouraged form of signage.
- ix. The use of small, well-designed building-mounted light fixtures is a preferred method of illuminating signage. No sign or portion of sign shall change its level of illumination more than once every one (1) hour.
- x. Freestanding signs should be attractively designed. Signs should be coordinated with adjoining properties and public street signage to avoid visual clutter.
- xi. Electronic changeable copy signs, if permitted in the District, shall comply with 31.046(1) which requires that electronic changeable copy signs in Urban Design Districts shall not alternate, change, fade in, fade out, or otherwise change more frequently than once every one (1) hour."

III. Summary:

The Urban Design Commission must consider whether to approve an attention-getting object (windsock) that is prohibited by ch. 31 through the Comprehensive Design Review process in MGO 31.043. This requires findings as to whether the windsock can meet the criteria of MGO 31.043(4) and (4)(b). The UDC should also consider whether the windsock can meet the guidelines for signs in UDD No. 7 found in MGO 33.24(14)(d)6.