

TO: MADISON COMMON COUNCIL

FROM: MIKE MURRAY AND KATHERINE SAMPLE, 632 KNICKERBOCKER STREET

RE: PROPOSED MONROE ST./KNICKERBOCKER ST. DEVELOPMENT

DATE: August 6, 2013

My name is Mike Murray and I was initially excited when I first learned that plans were in the works to redevelop the property on Monroe St. and Knickerbocker St. My wife Kate and I both thought that a well-planned development on that site would be a welcome addition to the neighborhood. However, the more I learned about the proposed development and the more that I have been personally engaged in the city's new zoning process, the less I have liked this project and, even more importantly, the more concerned I have become with Madison's approach to urban planning under the newly enacting zoning code.

My comments are not motivated by some easily ridiculed form of NIMBYism. Before we moved to Madison, my wife and I lived in a densely populated, mixed-use neighborhood in Seattle. We enjoyed such thoughtful development first-hand and certainly are not reactionaries regarding the prospect of change in our neighborhood. This does not, however, mean we are simply willing to accept any proposed development that will have serious consequences for our neighborhood that neither the developer nor the city are willing to effectively mitigate.

My concerns regarding the substance of this proposal directly relate to the standards by which all conditional use permits are to be approved or denied by the Plan Commission under s. 28.183(6) of the Madison Code of Ordinances. The process involving this proposal provided a meaningful test of whether these conditions have any meaning under Madison's new zoning regime. Unfortunately, after personally engaging in this process and receiving significant feedback from other neighborhoods, I must conclude that these conditional use standards are nothing more than suggestions. I would like to provide some relevant procedural and legal background to this situation that I believe is important to consider.

How Was the Neighborhood Informed that a Conditional Use Was Required?

This is an important process question and the answer is troubling. When the developer and city staff first presented the project to the neighborhood in April, both indicated that the

development easily met the TSS zoning standards and that the Plan Commission would only need to approve a demolition permit for the project. The accurate measurement was not revealed to the neighborhood until David and Linda Maraniss hired a real estate attorney who performed independent analysis of the project and properly calculated the gross mass in accordance with the relevant zoning standard. ***Without the help of their attorney, the neighborhood would have been completely unaware of its rights under the zoning code. This is an extremely troubling procedural issue because many neighborhoods do not have residents who can afford to hire an attorney to review development proposals.*** Quite simply, neighborhoods should not have to rely on private legal counsel to ascertain basic facts such as the gross mass of a proposed development.

Was the Accurate Measurement Included in the Staff Report to the Plan Commission?

No. When the developer submitted the conditional use application, the application still contained an inaccurate gross mass measurement. (27,532 gross square-feet). This miscalculation was unquestioningly used in the city staff report to the Plan Commission, even though calculating the mass based on the zoning code yields 29,090 gross square feet, which was even confirmed by developer's lawyer. Despite this fact, the Plan Commission still believed that the recommendations contained in the staff report warranted deference. At the very least, this incident indicates that a more critical eye is necessary when the city analyzes and provides recommendations regarding proposals from developers.

What is the Current Conditional Use Standard?

S. 28.163(6) states "[t]he 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, including design guidelines adopted as supplements to these plans. No application for a conditional use shall be granted by the Plan Commission unless it finds that **all** of the following conditions are present ..." (emphasis mine). The code then enumerates the 15 conditions that must be met in order to grant a conditional use. It is clear that significant doubts exist as to whether at least four of the relevant conditions are present in this case.

What are the Relevant Conditions in this Case?

1. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.

Significant correspondence from the neighborhood and public testimony before the Plan Commission indicated that the intersection of Monroe Street and Knickerbocker Street, in addition to Knickerbocker Street itself, cannot safely absorb the parking and traffic demands that will be generated by this proposal. Many neighbors from the highly relevant Parman Place have indicated that this similar development has greatly reduced the safety of their streets, which were kid-friendly before the influx of traffic generated by that development.

3. The uses, values and enjoyment of other property in the neighborhood for purposes already established will not be substantially impaired or diminished in any foreseeable manner.

This is most likely the standard that the proposed development most clearly fails to satisfy. As mentioned earlier, the Parman Place precedent is a project of this type, also on Monroe Street, also by this developer, which has resulted in substantial problems of traffic, parking, and noise that substantially impair existing uses, value, and enjoyment of nearby property. This precedent is especially strong, given the busy and dangerous intersection at Monroe and Knickerbocker and the insufficient parking on Knickerbocker. At the time Parman Place was proposed, neither city staff nor the developer accurately anticipated the problems it would create. Neither party appears ready or willing to learn from the Parman Place mistake.

In addition, many of the Knickerbocker development's proximate neighbors have raised a long list of valid concerns that will foreseeably impair or diminish the use, values and enjoyment of their properties. A 21-car garage will abut the neighboring residential house causing great disruption to their daily lives. Nearby houses will have far less privacy as a result of the many balconies that will overlook their properties. Property values of neighboring residences will surely drop. A cursory review of the correspondence from the neighborhood and the testimony before the Plan Commission would reveal an even more extensive list of concerns.

It is worth noting that Alder Zellers, who was the only member of the Plan Commission to vote against the conditional use permit, specifically stated that the project failed to meet standard 3.

She was the only Plan Commission member who specifically articulated how the proposal succeeded or failed to meet any of the enumerated standards.

6. Measures, which may include transportation demand management (TDM) and participation in a transportation management association have been or will be taken to provide adequate ingress and egress, including all off-site improvements, so designed as to minimize traffic congestion and to ensure public safety and adequate traffic flow, both on-site and on the public streets.

As referenced above, parking and traffic are major concerns for this project. While the motion before the Council does contain some appreciated improvements in this regard, they are insufficient. The fact that this standard had not been met is so apparent that one of the Plan Commission members who, while voting to grant the conditional use, stated that Alder Ellingson "should be prepared for a plan B and plan C on the traffic issue for this neighborhood" because, in his opinion, the traffic in that immediate neighborhood is "a nightmare now."

This statement is indicative of the lack due consideration that the relevant conditions for the approval of a conditional use have received throughout this process. It is obvious to almost every person who has paid the slightest attention to the traffic and parking situation in the area that Knickerbocker St. is not well suited to absorb the traffic and parking demands that will be generated by this project. City Traffic Engineering has tried to wave away these concerns, just as they did for Parman Place, but they are unwilling to approve switching the ingress/egress for the project to Monroe St. precisely because of safety issues with the already dangerous intersection. Further, it is nearly impossible for them to accurately gauge the true traffic and parking impact of the project, as they do not know what business will fill the retail space, which even they admit is the most important variable in the equation. Alternative suggestions by neighbors to effectively address these issues have been rejected by the developer and city staff.

So what is our neighborhood left with under this alleged standard? Does the Plan Commission vote down the proposal because this standard was most likely not met? No. Does the city provide robust options to truly mitigate these problems as suggested in detail by the neighborhood? No. What we get are a few modest mitigation efforts and a suggestion to our Alder that she come up with an unspecified plan B or C for traffic for when the situation becomes completely untenable. For other neighborhoods that will surely find themselves in a similar situation, this is not a heartening result.

12. When applying the above standards to an application for height in excess of that allowed in the district, the Plan Commission shall consider recommendations in adopted plans; the impact on surrounding properties, including height, mass, orientation, shadows and view; architectural quality and amenities; the relationship of the proposed building(s) with adjoining streets, alleys, and public rights of ways; and the public interest in exceeding the district height limits.

As numerous other presenters and neighbors have indicated, there are serious inconsistencies between the proposed project and the adopted Monroe Street Commercial Plan. The Monroe Street Commercial Plan does not recommend demolishing the residential property for redevelopment. The plan calls for special "value-added" features to be present in any proposed development that exceeds 3 stories in height. Nothing in the plan provides any unique compensating features to the neighborhood to justify the extra height. In fact, the "value-added" by this project to the neighborhood is so sparse that members of the Plan Commission cited the 20 feet of green space that the development will have as a buffer with the Maraniss' property as a boon to the neighborhood. This feature seems like far less of a "value added" once one considers that is actually mandated by the city zoning code and represents no concession on the part of the developer.

Why Are These Standards so Important?

These standards are supposed to provide a crucial counterweight to proposed developments that exceed the already generous mass and height guidelines contained in the new zoning code.

They are especially important when proposed commercial development adjoins or encroaches into residential neighborhoods, which are often ill suited to absorb development that exceeds these guidelines without substantially impairing or diminishing the existing uses, values or enjoyment of neighboring properties. If the Rouse proposal were proposed to replace an existing business across Monroe St., many of these concerns would be greatly mitigated by the fact that it would be surrounded by other commercial properties. However, when a development encroaches into a residential neighborhood, it is imperative that these standards are taken seriously to ensure that the very real interests of existing residential neighborhoods are protected.

This concern is especially valid for our vicinity of the Monroe St. corridor since there are several other smaller commercial properties nearby that could potentially be sold in the future

to the east and west of the current proposal. If the precedent is set that developers can ignore these standards along the Monroe St. corridor without meeting the conditional use standards or providing adequate mitigation efforts to residential neighbors, then there is no reason why many existing smaller commercial properties will not be sold to developers with the unstated understanding that the city will simply rubber stamp any proposal that exceeds the current size limits. Our neighborhood simply is not situated to absorb that volume of development and this troubling prospect is causing great trepidation to those neighbors who are watching our struggle unfold from a few blocks away.

PUBLIC POLICY CONSIDERATIONS

The zoning code was recently rewritten to facilitate development, but to do so by striking a balance between the interests of the city for infill and preservation of existing neighborhoods. This new zoning code should be viewed to establish a high burden to show that projects that exceed the generous new development standards clearly and indisputably meet the requirements for conditional use. To do otherwise suggests that developers can exceed and disregard this new code at will. After going through this process, I am very worried that our situation is going to become routine.

I believe this is a terrible precedent that will result in the approval of many more developments that do not meet the conditional use standards and do not fit with existing neighborhoods. If this process continues to play out in a similar manner, neighborhoods across the city will learn the hard way that our zoning standards do not have meaning and that public input and participation in the planning process make no difference. Make no mistake; this will eventually lead to significant backlash against ANY development, whether well or ill conceived. If this backlash is strong enough, it will undermine the undeniably valuable goals of progressive urban planning and increased density.

And while these are values that I share, they should not be so blindly pursued that they undermine one of Wisconsin's proudest progressive traditions: a robust, participatory democracy.

Though I know that our cause faces an uphill struggle, I strongly urge the Common Council to vote to refer this proposal back to the Plan Commission so that sufficient revisions can be negotiated between the developer and the neighborhood. Doing so would indicate that this body is committed to achieving the appropriate balance between the need for development and the very real needs of existing neighborhoods.

If the Council decides to approve the inadequate compromise proposed by Alder Ellingson, I hope that at the very least this experience will serve as an impetus for changes in the zoning process that will safeguard the interests and voices of our city's neighborhoods.

