

MGO Sec. 28.183(5)(b) permits the alderperson of the district in which a conditional use has been approved by the Plan Commission to appeal that decision to the Common Council. The grounds for the appeal need to be specified, along with specific reference to the findings of the Plan Commission. I appeal the decision of the Plan Commission on July 7, 2014, regarding the conditional use approval of 706 Williamson Street, Legistar File ID #34335, on the following grounds.

### **Façade Articulation**

1. The building's ground floor facade, as approved by the Plan Commission, is not articulated at least every 40 feet and does not "relate to the human scale." The site plan reflects one possible articulation element on Williamson, approximately 10 feet in width, about 30 feet from the western edge of this approximate 125 foot wide building. The remainder of the building base is repetitive glass windows.

The Plan Commission did not discuss whether the ground floor was adequately articulated every 40 feet and whether the building base "relates to the human scale," so there are no findings.

2. The façade along the eastern approximate 80 feet of floors 2 through 5 along Williamson is not articulated. The only possible articulation element is the balconies.

The Planning Division Staff Report stated that the recessed balconies were an articulation feature. (These balconies are recessed approximately 4 feet from the façade.) The only other articulation feature is the "strong corner feature."

The Plan Commission did not discuss whether balconies were adequate façade articulation. Further, the 5/12/2009 draft language for the Commercial and Mixed Use Districts included balconies as elements that could *enhance* articulation ("Arcades, awnings, window bays, arched windows and balconies at intervals equal to the articulation interval.") "Balconies" was removed from the final ordinance language, suggesting that balconies cannot be used to enhance façade articulation, much less serve as stand-alone articulation elements. (This is in contrast to the Downtown and Urban Districts, where the ordinances specifically provide that balconies may be used to "reinforce the vertical intervals".)

The Plan Commission did not discuss whether balconies provide sufficient façade articulation, so there are no findings.

#### **MGO Sec. 28.060 GENERAL PROVISIONS FOR MIXED-USE AND COMMERCIAL DISTRICTS.**

##### **(2) Design Standards.**

(b) Façade Articulation. Consistent with the design of traditional storefront buildings, new buildings of more than forty (40) feet in width shall be divided into smaller increments, through articulation of the façade. This can be achieved through combinations of including but not limited to the following:

1. Façade Modulation (See Figure D3). Stepping back or extending forward a portion of the façade.
2. Vertical divisions using different textures or materials (although materials shall be drawn from a common palette).
3. Division into storefronts, with separate display windows and entrances.
4. Variation in roof lines by alternating dormers, stepped roofs, gables, or other roof elements to reinforce the modulation or articulation interval (See Figure D4).
5. Arcades, awnings, and window bays at intervals equal to the articulation interval.

...

(j) Building Articulation. (See Figure D7.) Buildings shall have horizontal and vertical articulation, which may include dormers, cornice detailing, recesses and projections, stepbacks of upper stories, changes in roof types and planes, building materials, and window patterns. The base of the building shall relate to the human scale, including doors and windows, texture, projections, awnings, canopies, and similar features.

### **Building Form**

Certain building forms are not allowed in a TSS district. Commercial Block Buildings are permitted, Flex Buildings are not.

A Commercial Block Building requires multiple uses on the ground floor. (The ordinance uses the plural with respect to the number of tenants. "...support a mix of commercial or office uses on the ground floor .." "... entry *to each* ground floor unit ..." "...storefronts or arcades at ground floor ...") (Emphasis added.) Without multiple uses, the building is a Flex Building, which is not allowed in a TSS district.

The building approved by the Plan Commission does not have multiple uses on the ground floor. Although it may be possible for the ground floor to be split into separate commercial spaces, it is also possible for the commercial space to be used by a single tenant.

Additionally, this building cannot be a Commercial Block Building because it, as approved by the Plan Commission, does not have "storefronts, stoops or patios along at least forty percent (40%) of the front ground floor façade along the primary abutting street."

The Plan Commission did not discuss the building form, so there are no findings. (The need for multiple entries on Williamson was not discussed by staff as a building form requirement. Rather, multiple entries were an item that "would be required at any rate in the zoning review for final plans, but it should also probably be listed as a condition of approval if indeed this project is approved by the Plan Commission this evening." At approximately minute 3:20.)

MGO Sec. 28.062 MIXED-USE AND COMMERCIAL DISTRICTS BUILDING FORMS.  
Table 28D-3.

BUILDING FORM

Commercial Block Building (permitted in TSS)  
Flex Building (not permitted in TSS)

MGO Sec. 28.173 MIXED USE AND NON-RESIDENTIAL BUILDING FORMS.

(1) Commercial Block Building.

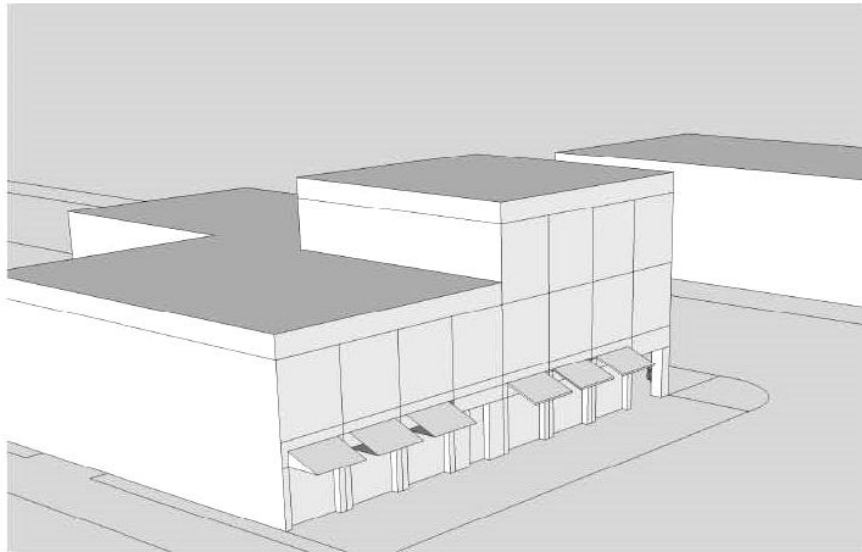
(a) Building Type. A multi-story building that is designed to support a mix of commercial or office uses on the ground floor with office, studio, lodging and/or residential units above.

Buildings are typically designed with storefronts or arcades at ground floor.

(b) Access and Entry. Principal entry to each ground floor unit shall be a direct entrance from the primary abutting street. Buildings shall be designed with storefronts, stoops or patios along at least forty percent (40%) of the front ground floor façade along the primary abutting street.

Parking, loading and trash disposal may be accessed from an alley or through a side yard or rear yard drive serving one or more buildings.

(c) Massing and Articulation. Maximum building length parallel to the primary abutting street shall not exceed one hundred sixty (160) feet without a significant articulation of the façade. Façades facing a public street shall be vertically articulated at a minimum interval of forty (40) feet. Entrances shall be provided at least every forty (40) feet along the primary abutting street.



...  
(7) Flex Building.

(a) Building Type. A variable building type at least two stories in height, designed to accommodate a variety of uses, including combinations of office, retail, lodging, and/or residential. A principal entrance should be oriented to the primary abutting street.

(b) Access and Entry. One or more ground floor entrances from the primary abutting street shall be provided.

(c) Massing and Articulation. Maximum building length along the primary abutting public street shall not exceed one hundred sixty (160) feet without a

significant articulation of the façade. Façades facing a public street shall be vertically articulated at a minimum interval of forty (40) feet.

MGO Sec. 28.211 DEFINITIONS.

Storefront. The street-level side of a commercial space, such as a store, shop or restaurant that faces the street.

### **Entries**

The entrances to the building were not reviewed by the Plan Commission. Staff informed the Commission that entrances would need to be added along Williamson. (The site plan only reflected one entrance to the ground floor commercial space, and that entrance was in the side alley.) The approval letter provides conditions for approval, including: “8. Entrances to the building shall be provided at least every 40 feet. *Note: This condition was added by the Plan Commission on July 7, 2014.*”

The Plan Commission did not address the need for the developer to make such entrances “visible and identifiable,” so there are no findings.

MGO Sec. 28.060 GENERAL PROVISIONS FOR MIXED-USE AND COMMERCIAL DISTRICTS.

(2) Design Standards.

(a) Entrance Orientation (See Figure D1). ... Entries shall be clearly visible and identifiable from the street, and delineated with elements such as roof overhangs, recessed entries, landscaping, or similar design features.

### **Maximum Height**

MGO Sec. 28.183(6) requires the Plan Commission, when considering a conditional use application, to give “due consideration” to an applicable neighborhood plan. The Common Council passed the resolution adopting the “Design Guidelines and Criteria for Preservation: Williamson Street 600-1100 Blocks Plan” (“BUILD”) by acclamation on January 18, 2005. BUILD provides for a maximum height of the lesser of 5 stories or 54 feet.

The Plan Commission determined that the neighborhood plan maximum height could be exceeded, and did have a full discussion of the issue. However, my question is whether the Commission can ignore the BUILD maximums.

BUILD is the “regulation” which is more restrictive or which imposes higher standards: there is an absolute maximum height. Whether BUILD comes within “regulations” is a matter of legal interpretation for the City Attorney’s office. However, since “regulations” seems to be a catch-all for the previously listed types of conditions (law, ordinance, statute, resolution or regulation of any kind), and since BUILD was adopted by resolution of the Common Council, it is an issue worth raising in this appeal.

## MGO Sec. 28.004 INTERPRETATION

(2) Where the conditions imposed by any provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, *resolution* or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail, unless an exception to this provision is specifically noted. (Emphasis added)

### **General Welfare and Public Interest**

One conditional use approval standard states a development cannot be detrimental to the general welfare. MGO Sec. 28.183(6)(a)1. Another states that the Plan Commission, when reviewing an increase in height, shall consider the public interest in exceeding the height recommendations. MGO Sec. 28.183(6)(a)12.

The “general welfare” and “public interest” is the promotion and conservation of property representative of Wisconsin’s urban heritage.<sup>1</sup> Wisconsin statutes authorize cities to regulate historic districts “to preserve the historic ... landmarks and property within the district and the character of the district.” Wis. Stats. 62.23(7)(em).

The character of Williamson Street, as stated in the “Third Lake Ridge Historic District Plan,” was, and currently is, as a transition between the neighborhood and high intensity uses.

“In this early period Williamson Street began to take on the function of being the edge of the neighborhood since there was a rail line and marshland to the north. Additionally it served as an important corridor to the river and points east. Finally the variety of residential and commercial developments which dotted the street and which served both the neighborhood and the wider community pointed to its functions as a mixed use street and as a seam between the neighborhood and high intensity commercial and industrial uses which developed around the turn of the century.”

The “Third Lake Ridge Historic District Plan” also specifically recognized that “the intent of the district legislation to preserve those buildings which best symbolize the district and can be used imaginatively and economically, and to insure that new construction in the area is designed to enhance and be compatible with old.”

BUILD balanced the need for more intensive use with retaining the historic context of Williamson. Thus, the lower heights along the 600 and 700 block street fronts of Williamson, with higher intensity uses possible on the back half of these blocks.

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<sup>1</sup> Wis. Stat. 44.30: Public policy. The legislature finds that the historic, architectural, archaeological and cultural heritage of the state is among the most important assets of the state and furthermore that the social, economic and physical development of contemporary society threatens to destroy the remaining vestiges of this heritage. It is therefore declared to be the public policy and in the public interest of this state to engage in a comprehensive program of historic preservation to promote the use and conservation of such property representative of both the rural and urban heritage of the state for education, inspiration, pleasure and enrichment of the citizens of this state.

The granting of a conditional use for this building brings high intensity use directly to Williamson Street and eliminates its historical context and status as a transitional street. The building would have 153 dwelling units per acre when the net residential densities within a Community Mixed-Use district generally should not exceed 60 dwelling units per acre.