

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

Date: November 29, 2012

**MEMORANDUM**

TO: Plan Commission

FROM: Michael P. May, City Attorney  
Maureen O'Brien, Assistant City Attorney

RE: Action Needed on Referral of Grandview Commons  
Legistar Items 28116 and 28117

On November 27, 2012, on the advice of the City Attorney, the Common Council referred these matters back to the Plan Commission because several specific findings are not in the record.

A few hours before the Council meeting on November 27, I and others received a letter from an attorney representing homeowners near the project, asserting that three required conditions under the City's big-box ordinance, sec. 33.24(4)(f), MGO, were not met and that no waiver had been granted by the Plan Commission. (See attached letter). Our office met with Planning Division staff just before the Council meeting. We concluded that the combined actions of the Urban Design Commission and Plan Commission likely showed that the bodies considered the standards for approval in making their recommendation to the Council and found that two of the standards in question could be satisfied based on the conditions of approval. However, the record was not clear if the Plan Commission specifically granted a waiver from the requirements of sec. 33.24(4)(f), MGO as it relates to the standard for wall projections or recesses.

Under sec. 33.24(4)(f)2.c, MGO, the Plan Commission may waive the relevant requirements if it finds "that unique or unusual circumstances warrant special consideration to achieve a superior design solution." While we could have interpreted the Commission's approval as an implicit waiver, we recommended referral to the Plan Commission to make the necessary findings and state its reasons on the record. Courts have become increasingly tough on zoning bodies that fail to make their findings and reasoning on the record.

On referral to the Plan Commission, the Commission should make clear on the record whether it finds that all the standards for approval have been satisfied, based on the review and findings by it and UDC, or whether it finds the standard for a waiver to have been satisfied for some or all of the standards, and if so, why. The Commission need not take up other matters already decided by it if it chooses not to.

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I understand this legal memorandum will be presented to the Commission along with a report from staff of the Planning Division.

CC: Steve Cover  
Brad Murphy  
Tim Parks  
Lauren Cnare  
Jill Johnson  
Anne Monks