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Sent: Monday, September 15, 2014 10:57 PM

To: All Alders

Cc: Strange, John; Stouder, Heather; May, Michael; Cornwell, Katherine; Cover, Steven; Tucker, Matthew; Langer, Scott; Dryer, David

Subject: 706 Williamson appeal

APPEAL OF PLAN COMMISSION APPROVAL OF 706 WILLIAMSON

September 16, 2014

Dear Colleagues-

On July 17, I filed an appeal of the Plan Commission's July 7th, 2014 decision to grant conditional use for 706 Williamson Street (File ID 34335). The appeal is pursuant to Section 28.183(5)(b) of the Zoning Code, which allows the alderperson of the district to file an appeal within 10 days of the Plan Commission decision. The ordinance states: "The Secretary of the Plan Commission or his/her designee shall transmit the appeal to the City Clerk, who shall file the appeal with the Common Council. The Common Council shall fix a reasonable time for hearing the appeal, and decide the appeal within a reasonable time. The Common Council shall give public notice and due notice to the parties in interest." (Section 28.183(5)(b)5-7). The appeal was introduced on August 5 for a public hearing to be held during the Common Council meeting of September 2 which was referred because of lack of notice to the meeting of September 16. I will need 2/3 vote of the Common Council to reverse or modify the decision of the Plan Commission.

I hope you will support the appeal and reverse the decision of the Plan Commission. Given the considerable list of standards that I argue the PC did not making findings on, which are included in the attached chart and highlighted in the comments below, I believe an action to reverse PC decision is needed. Please let me know if you have questions.

The new zoning code adopts form-based zoning and elevates the conditional use process as a method to review development proposals when certain benchmarks are exceeded in specified zoning districts. During the adoption of the new zoning code, the Plan Commission recommended that the Council adopt a CU process to respond to neighborhood and alder concerns about public review and oversight that would be diminished as we moved away from Planned Unit Developments. Conditional use review by the PC was offered as a compromise between the PUD process (now Planned Development) which required review by the Urban Design Commission and revising the zoning districts to allow more development by right. The CU process gives the public the right to participate in the development review process and gives the Plan Commission authority to review zoning standards and plans when evaluating applications for new construction. The CU process bypasses the Council.

In the case of 706 Williamson, a conditional use application was required as the proposed six-story mixed use building has a gross square footage of 75,770sf and 55 dwelling units. The conditional use process is triggered because the height exceeds 3-stories permitted in the TSS district (MGO 28.065(3)(d), the # dwelling units is greater than 24 (MGO 28.151(c), and square

footage exceeds 25K sf (MGO 28.065(4)(a)). In addition, I believe a conditional use should also have been sought for a parking reduction.

The conditional use process has created a requirement for the PC to take on many of the duties of the Urban Design Commission. As required by ordinance and statute, the PC has legal authority to make findings whether standards required in the zoning code and adopted plans are met.

I believe the PC failed to substantially address many of the required zoning Design Standards in MGO 28.060(2)(a-j) and the required standards for Commercial Block buildings MGO 28.173(1)(a-c). In addition, the PC failed to give due consideration to the applicable plans and did not make findings under the conditional use standards for many required elements related to parking, lot coverage and the Commercial building form and design when they approved the demolition and conditional use application for 706 Williamson St. For example, the applicant did not provide architectural renderings in their application materials that showed the design of the commercial entrances as required by ordinance. I believe that the general welfare and best practices require, to the extent possible, that the design and other zoning requirements are shown and reviewed during the Conditional Use process by the Plan Commission and not left to staff administrative approval after the PC makes their findings.

The Plan Commission is charged with findings of fact and before granting a conditional use, the PC must find that the “conditional use conforms to all applicable regulation of the district in which it is located” Facade and building articulation are regulations that the conditional use must conform to.

In spite of the fact that the Plan Commission added condition #8 to the approval during their deliberations: "Entrances to the building shall be provided at least every 40 feet", the finding did not address the required façade articulation elements in both the TSS design standards and the BUILD design guidelines.

Further, I would argue that design review of submitted ground level articulation or design of the rooftop green space is beyond the scope of staff’s authority to make after PC approval. MGO 28.183(7) provides that the “Zoning Administrator... may approve minor alterations or additions...” Design of facade and building articulation is central to the look of the building and is not a minor alteration. I don’t believe staff has the authority to design and approve buildings.

The new zoning code approach to the conditional use process has raised the question of the appropriate scope of staff authority. This is a key issue for policy makers.

Marty Rifken, the developer for 706 Williamson will attend the Council meeting and show a new site plan with several commercial doors. I have not seen any renderings that show articulation of the ground floor façade. I talked with him during the last month and appreciate his cooperation but I believe the concerns I raise about whether the Plan Commission failed to make findings about the application of design standards for building forms, zoning requirements in the zoning code and applicable plans are still relevant.

The Williamson St Build Plan provides recommendations for façade articulation that the staff report did not mention in their plan review. The Plan Commission did not give due consideration to any of the recommendations in the BUILD plan which recommend horizontal elements, breaking up the massing, providing a variation in rooflines, setbacks or constructing angled and recessed corner entrances. (p 27, 33, 36-37, 47).

The proposal was mostly reviewed based on the BUILD Plan's height recommendation in Zone III: "The height of a new building shall not exceed 54 feet or five stories, whichever is less". (p 32). The issue was whether the height could be raised from 5 to 6 stories, not whether the height could be raised from 3 stories permitted by right in the TSS district to 6 stories.

The Plan Commission determined that the neighborhood plan maximum height could be exceeded, and did have a discussion of the issue, but the rationale was based on future redevelopment that would require conditional use approvals instead of compatibility with existing or intended character. Redevelopment potential is not a standard for CU approval.

The PC did not acknowledge that 706 Williamson at six-stories will impinge on the Capitol views from Jenifer St. The Downtown Plan identifies Jenifer as a "key view" and one of "Eight major streets [that] have views that terminate on the State Capitol and provide premier corridors for views to and from the Capitol." (Views and Vistas map, page 32). If the building was 5 stories and the corner cut back, the view might not be diminished, but the PC did not address this.

The BUILD Plan, like other special area and neighborhood plans, is not an ordinance, but 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 to adopt the Williamson St BUILD Plan in 2005.

The question is whether the Commission can ignore the BUILD maximums based on MGO and the Comprehensive Plan. MGO 28.004(2) provides: 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)

BUILD is the "regulation" which is more restrictive or which imposes higher standards. There are maximum heights based on zones and detailed criteria for building articulation.

The Comprehensive Plan, 2-50, provides that that two of the policies for mixed use districts are (1) to "ensure that future development and redevelopment activities in City planned mixed-use areas are consistent with the recommendations of the City of Madison's Comprehensive Plan, adopted detailed neighborhood development plans, and similar special area plans" and (2) to "require that individual development projects in mixed-use areas follow the design standards and criteria of the areas' adopted neighborhood or special area plans."

In the past, Planning Staff and the Plan Commission believed that compliance with neighborhood plans was required. I am not sure what changed their opinion, since there has not been a change in the Comprehensive Plan. Now our adopted plans are being treated as advisory and inconsistently applied depending on the project.

The effect of neighborhood plans on development is an important one. Current plans, like the Downtown Plan, have been adopted as supplements to the Comprehensive Plan. Older plans, like the Williamson St BUILD, have not. Should plans that are supplements have greater weight? How will developers know what standards to apply if neighborhood plans can be dismissed or ignored without explanations that make sense?

As stated in MGO Section 28.183(6)(a), “The 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 as 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.

I believe that the conditional use standards are not met for 1, 2, 3, 4, 5, 6, 7, 9, 10 12. Please see the chart for a detailed explanation. I will provide copies of the supporting documents at your desks.

The building is insufficiently articulated as approved, both on the ground floor and the upper stories. The ground floor commercial entrances were not shown in submitted drawings, they did not show the required articulation of storefronts, stoops or patios with entrances shown every 40’ per Sec 28.060(a-c). Beyond the glass corner element, the building lacks detail described in the Design Standards for the TSS district. Balconies are the main change in plane but they are not called out as articulating elements listed in MGO 28.060. Those elements are façade modulation, vertical divisions using different textures or materials, storefronts, with separate display windows and entrances, variation in roof lines, and arcades, awnings or window bays at intervals equal to the articulation interval.

Based on the conditions described in the staff report, the proposed building fails to provide high quality design.

1. Forty percent of the bedrooms have no outside windows. 2. The building does not meet the lot coverage standards for usable open space such as a green roof or balconies. 3. The driveway egress abuts the sidewalk putting pedestrians and bicyclists at risk. 4. There is no off street loading zones for residents to move in/out or for commercial users to receive deliveries. 5. The off street parking does not meet the 1:1 for residential dwelling units. 6. The staff report raised the issue of whether there was adequate parking supply for commercial tenants but a request was not made by the applicant for a parking reduction nor did the PC grant a conditional use to reduce parking. A conditional use should have been sought given the reductions in parking supply did not meet the zoning requirement in Sec 28.141(5), Table 28I-4.

If the PC had referred this proposal to the Urban Design Commission as they had the option to do, I am positive that the proposal would not have received initial let alone final approval without addressing required commercial entrances; usable open space, green roof, impervious pavement and other storm water strategies; windowless interior bedrooms; parking structure efficiency; lack of loading zones; lack of adequate vision clearance at the garage entrance; lack of sufficient parking supply; step backs and articulation of the Blount and Williamson St facades; and articulation of the roof.

As approved, I do not believe that the proposed building creates an environment of sustained aesthetic desirability. Too many required elements were not addressed by the Plan Commission and I don't believe it serves the public interest in high quality design, especially in a historic district, to leave these details to staff approval. I believe that the most efficient course of action is to reverse the approval of the Plan Commission.

Thanks for your consideration and your time.

Marsha Rummel
District 6