


To: Landmarks Commission

From: Bill Scanlon 
616 S, Ingersoll St., Madison 53703
Member, MNA Art and Culture Committee

Date: May 14, 2012

Subject: Item 26237 - Requested Amendment to Staff-recommended Condition

Staff recommends approval of the application to have a non-commercial work of art, a mural by world-renowned *grafiteiro* Panmela Castro, painted on the west wall of the Willy Street Co-op.

However, staff recommends this approval have the condition: "Zoning staff shall approve the design of the mural prior to its installation."

I request this condition be changed to: "This approval is contingent on the mural presenting a noncommercial message (Sec. 31.03(2), Madison Ordinances)."

Bases for the requested amendment:

(1) All parties concerned, including the artist, MNA's Art and Culture Committee, MNA, and the Willy Street Co-op, intend that the mural be a non-commercial work of art.

(2) The mural will be a "mural" and not be a "sign" (Sec. 31.03(2), Madison Ordinances). It will not have as its "primary purpose," or any of its purposes, "identifying, providing directions, or advertising any establishment, product, goods, or services."

(3) As a practical matter, it will be impossible for zoning staff to "approve the design of the mural prior to its installation." To begin with, the "design" of the mural will not be available, if at all, until just before its "installation" begins. Further, the mural is very large and its "design" is likely to change in the week-long course of its being "installed."

(4) If zoning staff approval were required and then would be denied (either explicitly or because it would not be feasible to obtain), there would be a very troubling constitutional problem of prior restraint. A constitutionally safer procedure is to allow the mural to be painted as determined by the artist (in collaboration with applicants and others) without requiring any prior governmental "approval" of the art but with the contingency that the mural present a "noncommercial message" as defined in the Sign Ordinance. If, after the mural is painted, some governmental authority deems it does not comply with the contingency, that authority can take appropriate action to deal with the situation.