

From: [Chapelview HOA](#)
To: [Plan Commission Comments](#)
Subject: Regarding 76302 Cond Use - 652 Burnt Sienna Dr
Date: Monday, April 10, 2023 12:13:55 PM

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Members of the Plan Commission,

We, the Board of Directors for the Chapel View Homeowners Association, representing the residents; we believe the daycare center will be very good for our community. We **neither support nor oppose** the proposal but would like to present our concerns/comments about the development.

- The size of the enrollment of 159 kids is too big for our residential location. The provided estimation of traffic is unrealistic, as we believe 159 kids plus staff/workers at the daycare center would involve more than just 93 vehicles.
- This could potentially increase the traffic in the residential area and could become a safety issue, especially for those families with children who play outside.
- The intersection of Old Sauk Rd and Burnt Sienna Dr could become a bottleneck for residents wanting to turn left onto Old Sauk Rd from either Burnt Sienna Dr. During the morning hours, it is already difficult to make a left turn onto Old Sauk Rd. The same thing happens in the afternoon when children need to get picked up from school. We would like to see either an All-way stop sign or a roundabout added on Old Sauk Rd.
- During Winter, snow removal is not done frequently on Burnt Sienna Dr, it could become a hazard with the increased traffic.
- The architectural design of the building does not match the surrounding house.
- We suggest that No Parking be allowed on one side of Burnt Sienna till the end of daycare property for better traffic flow.
- We request that during construction of the daycare center the construction vehicles involved, only use Old Sauk Rd to access the property and avoid other residential roads.

Warm Regards,
ChapelView Homeowners Association Board

From: [S Goss](#)
To: [Plan Commission Comments](#)
Cc: elderberryrna@gmail.com; [Conklin, Nikki](#)
Subject: Daycare Center 652 Burnt Sienna
Date: Sunday, April 9, 2023 7:37:43 PM

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Dear Members of the Plan Commission:

The Elderberry Neighborhood Association is neither opposing or supporting the proposal for a daycare center at 652 Burnt Sienna. However, as president of ENA I would like to offer a few questions and comments, based on recent conversations with abutters and other residents:

- 1) Most important: Could heavy construction vehicles please be required to access the site via Old Sauk Road, even if it's not the absolute shortest route? The reason for this request is that there is no north-south connector street extending from Mineral Pt Rd. to Old Sauk Rd. (because Bear Claw Way has never been built north of Elderberry Rd.) This means all truck traffic to/from the south/southwest would use residential streets, creating a heavy burden for the roads and a lot of noise and dirt for residents. Of particular concern are trucks carrying dirt, gravel, and heavy building materials.
- 2) The landscaping design presented by the developer provides no screening for residents adjacent to the parking lot on the north side. Please consider requiring the developer to put a screen there, as well as to address landscaping concerns raised by Middleton Community Church..
- 3) Some residents of the nearby "cottages" are concerned about drainage. A 10,000 sf roof and 45 parking spaces will create a lot of runoff. When Chapel View came before the Commission in 2018, staff comments noted that this is an area extremely vulnerable to flooding. We await the storm water management review on whether this low lying parcel (situated in a watershed) can accommodate the additional runoff.
- 4) While the staff report says this project will have minimal impact on the neighborhood, this project will actually impact many residents due to its location and size. First, since there is no direct access to Old Sauk Rd., approaching cars will use adjacent streets such as Big Stone, Peach Lane and the northern end of Burnt Sienna. Second, since the interior of the neighborhood has no south-north connector street, as mentioned above, vehicles to/from south of the center will have to use a variety of other residential streets that connect to Elderberry Rd., especially Burnt Sienna and Straw Harvest.
- 5) You might want to examine the developer's numbers more closely. He states 93 vehicles will serve an enrollment of 160. How was this number determined? (What about staff vehicles, service vehicles, and vehicles picking up children from the after-school program?) Similarly the parking space plan may be optimistic; the developer estimates each parent needs only five minutes to drop off a child, but one of our residents recently timed his drop off requirement at 8.5 minutes.
- 6) Middleton Community Church is seeking a design change for the exterior of the building. A design consistent with neighboring architecture would make the center a better asset to our neighborhood.

We are grateful to Heather Stouder for her help in rescheduling this hearing so we could have a chance to examine the details of the project. Thank you for consideration of the above items.

Sharon Goss
President, ENA

From: [S Goss](#)
To: [Plan Commission Comments](#); [Conklin, Nikki](#); [Stouder, Heather](#); elderberryna@gmail.com
Subject: objection to scheduled hearing
Date: Friday, March 24, 2023 1:26:19 PM

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Commissioners:

In mid-week I learned, by word of mouth, that a hearing is scheduled for 3/27 for a daycare center on Burnt Sienna Rd, within the Elderberry Neighborhood. Our NA was informed in mid-February of the developer's intent to file an application. The sole attachment was a site map. **We heard nothing subsequent to that email.**

We did not receive a formal letter of intent nor supporting materials such as enrollment size, staff size, design, landscaping, water runoff provisions, traffic flow, etc . (As I read the Conditional Use process laid out in the Zonng Code -- Section 3, Application Submittal -- notification is rrequired to the neighborhood association where applicable.) This is a large project with significant impact on our neighborhood, and we need time to review and discuss this. Compounding the problem is that no notices of a public hearing were posted at the construction site. So this project has moved forward without any public review. And incidentally an early search on Legistar turned up nothing.

In light of what appears to be another failed process (see next paragraph), WE REQUEST A POSTPONEMENT of the hearing for 652 Burnt Sienna now scheduled for 3/27.

Parenthetically, this is the third time in two years that projects within EN were not handled properly. (This means we're batting 0-3). The first, by UFG, was corrected by postponing the hearing. The second, Westwind by McKenzie, was totally kept a secret from start to finish; we learned of it only recently when we saw the developer's sign advertising lots. Now this! I'm sure you can understand we're frustrated. We would like to know what the city, including the Plan Commission, will do to ensure a legal process in the future.

On behalf of the many residents that will be impacted by this project, thank you for your attention to this problem.

Sharon Goss
President Elderberry NA

From: [Sarah Sund \(mod\)](#)
To: [Plan Commission Comments](#)
Subject: Written Statement for March 27, 2023 Plan Commission Public Hearing Regarding Agenda Item 76302 652 Burnt Sienna Drive Conditional Use Request
Date: Sunday, March 26, 2023 7:58:25 PM
Attachments: [Exhibit 1 Deed Restriction Lot 46.pdf](#)

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**City of Madison Plan Commission
Written Statement for March 27, 2023 Plan Commission Public Hearing
Regarding Agenda Item 76302 652 Burnt Sienna Drive Conditional Use Request**

This statement is written on behalf of Middleton Community Church (MCC) which is the property owner directly west of the above referenced address. MCC sold the property to Chapel View Development Company, Inc. and entered into a deed restriction with the same owner on October 23, 2018. (see attached document Exhibit 1).

The land development plans submitted to the City of Madison Plan Commission by The Bradford Real Estate Companies are not in keeping with several conditions on the deed restriction. MCC respectfully requests delay of any City approvals for this property until the current deed restrictions, and/or revised restrictions approved by both parties, are met and reflected on the proposed site development documents.

Thank you for your consideration of this request.

Sarah Sund
Moderator
Middleton Community Church

LICENSED TO DATATREE, WHO SHALL NOT SUBLICENSE OR RELICENSE BULK IMAGES

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

**DEED RESTRICTION
Lot 46**

DOCUMENT #
5449969
10/24/2018 09:04 AM
Trans Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 8

THIS DEED RESTRICTION (the "Agreement") is made this 23 day of October, 2018, between Middleton Community Church (the "Church") and Chapel View Development Company Inc., a Wisconsin corporation (the "Property Owner," together with Church, the "Parties").

RECITALS:

WHEREAS, Property Owner acquired from the Church the property commonly known as Outlot 1 of Certified Survey Map No. 14935, as more particularly described on **Exhibit A** attached hereto (the "Parcel #1");

WHEREAS, Property Owner intends to acquire from a third party the property described on **Exhibit B** attached hereto (the "Parcel #2");

WHEREAS, the Church owns the property described on **Exhibit C** attached hereto ("Church Property");

WHEREAS, Property Owner intends to record a plat for a subdivision of Parcel #1 and Parcel #2 to be known as Chapel View, which will consist of approximately 46 lots (the "Plat");

WHEREAS, the Parties desire to place certain restrictions on that portion of Parcel #1 that will be known as Lot 46 of the Plat, as depicted on **Exhibit D** attached hereto (the "Property"); and

WHEREAS, upon the Property Owner's acquisition of Parcel #2, the Parties desire to place certain restrictions on that portion of Parcel #2 that will be known as part of Lot 46 of the Plat, as depicted on **Exhibit D**.

NOW, THEREFORE, the Parties agree as follows:

1. **Recitals.** The Recitals are incorporated into this Agreement.
2. **Use Restrictions.** The Property shall be restricted to the following uses: (i) intergenerational learning and care centers; and/or (ii) school/educational uses including, by way of example, but not limited to, day care, child care center, special care, nursery schools, pre-

Drafted by and Return Address

Attorney Robert C. Procter
Axley Brynelson, LLP.
2 E. Mifflin Street
Madison, WI 53703

See Exhibit A

Parcel Identification Numbers:

2897593

school, public or private schools, including ordinary accessory buildings for such school/ educational uses, provided that any such accessory building is in addition to another building whose principal use conforms to the restricted uses defined in this paragraph.

3. Materials/Design. Property Owner shall use materials and design in the construction of any improvements located on the Property that are complementary to or similar to the materials and design used in the single-family development known as the Plat of Chapel View located in the City of Madison, Wisconsin. The orientation on the site, scale, massing, materials and design of any building or parking lot on the Property shall minimize the visual impact of such building or parking lot as viewed from the West.

4. Review. The Church shall retain the right to review preliminary construction plans to ensure compliance with this Agreement, provided that the Property Owner retains sole discretion to construct any building on the Property in a manner consistent with this Agreement.

5. Right to Repurchase. In the event that Property Owner does not commence Development within two (2) years from the date of this Agreement (“Development Period”), the Church shall have the right to repurchase the Property. The Church may exercise its option to repurchase the Property by delivering written notice of such intent to the Property Owner within ninety (90) days after expiration of the Development Period. The repurchase price shall be determined by the average of two appraisals, with one appraisal from an appraiser selected by Property Owner and the other appraisal from an appraiser selected by the Church, with the Property being valued as of the date of the expiration of the of the Development Period. In the event Property Owner elects to proceed with the purchase after the repurchase price is determined, closing shall occur within sixty (60) days of the determination of the purchase price. The purchase price shall be payable in cash or other method acceptable to the Property Owner. Title to the Property shall be conveyed by the Property Owner to the Church by warranty deed, subject to matters shown on title to which Church does not object. Property Owner shall pay for the cost of the Church’s title insurance policy and any transfer taxes.

In the event of repurchase as provided in this section, Property Owner shall also be liable to the Church for all reasonable costs and expenses incurred in retaking and restoring the Property to marketable condition, and such costs and expenses shall be deducted from the amount of the purchase price paid to the Property Owner. Property Owner shall be deemed to consent to enforcement of the repurchase right described in this Section 5 on the above terms by specific performance.

6. Landscape Screening. The Property Owner agrees to install and maintain a continuous year-round landscape screen (“Landscape Screen”) along the west side of the Property abutting the Church Property. The Landscape Screen shall include a combination of evergreen and deciduous trees and shrubs, with not more than thirty percent being deciduous, initially at least two-gallon size and eighteen inches high at the time of planting and maintained to a minimum height of twelve (12) feet within three (3) years of planting, planted at a density of five per two hundred square feet of planting area, together with other living ground cover planted to attain a coverage of ninety percent within three years of planting. The plantings and the location of the plantings shall be agreed to by Property Owner and the Church within ninety (90)

days of the date of this Agreement. The Landscape Screen shall be installed no later than July 15, 2019.

7. Walkway Easement. The Property Owner hereby grants to the Church, its members and invitees (collectively, the "Church Parties") a perpetual right of way and easement for a walkway on the Property, as may exist in the future and as may be relocated from time to time, to allow for pedestrian access between the Church Property and the Property (the "Walkway Easement"). The use of the Walkway Easement by the Church Parties shall be subject to such reasonable rules and requirements that the Property Owner applies to all persons using the Walkway Easement, including the Property Owner's employees, guests, invitees and customers. Any changes to the Walkway Easement shall require the Church's written consent.

8. Amendment to Agreement.

(a) Upon Property Owner's acquisition of Parcel #2, the parties shall record an amendment to this Agreement amending the definition of Property to include that portion of Parcel #2 that will be known as part of Lot 46.

(b) Upon the recording of the Plat, the Parties agree to amend this Agreement by replacing Exhibit D with the legal description of the Property, as amended.

(c) In the event amendments to this Agreement are not promptly filed on account of Property Owner's action or inaction, title to Parcel #1 shall revert to the Church and all but One Hundred Thousand Dollars (\$100,000) of the purchase price of the Property shall be refunded to the Property Owner.

9. Covenants Running with the Land. This Deed Restriction shall burden the Property and shall run with the land and shall be for the benefit of the Church and its successors and assigns and be binding upon the Property Owner and its successors and assigns. This Deed Restriction shall be governed by, and construed in accordance with, the laws of the State of Wisconsin. Any changes to this Deed Restriction must be approved in writing by the Church.

10. Expiration. This Agreement shall expire ten years from the date of execution and shall automatically renew for additional periods of ten years each. Notwithstanding the foregoing, either party may terminate Sections 2, 3, 4 and/or 5 of this Agreement effective as of the end of the then-current ten-year period by written notice to the other party no later than sixty (60) days prior to the end of the then-current ten-year period. To be effective, the notice terminating Sections 2, 3, 4 and/or 5 shall be recorded by the party providing such notice within thirty (30) days of providing such notice to the other party.

11. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

[Signature Page and Acknowledgement Next Page Following]

EXHIBIT A

Parcel #1 Legal Description

Outlot One (1) of Certified Survey Map No. 14935, recorded in the Dane County Register of Deeds Office in Volume 105 of Certified Survey Maps, pages 94-101, as Document No. 5444639, in the City of Madison, Dane County, Wisconsin.

Part of 251/0708-212-0101-2

EXHIBIT B

Parcel #2 Legal Description

Lot Two (2), Certified Survey Map No. 6407, recorded in the Office of the Register of Deeds for Dane County, Wisconsin, on May 21, 1991, in Volume 31 of Certified Survey Maps, Pages 120, 121, and 122, as Document No. 2263459, now located in the City of Madison, Dane County, Wisconsin.

Part of 251/0708-212-0106-2

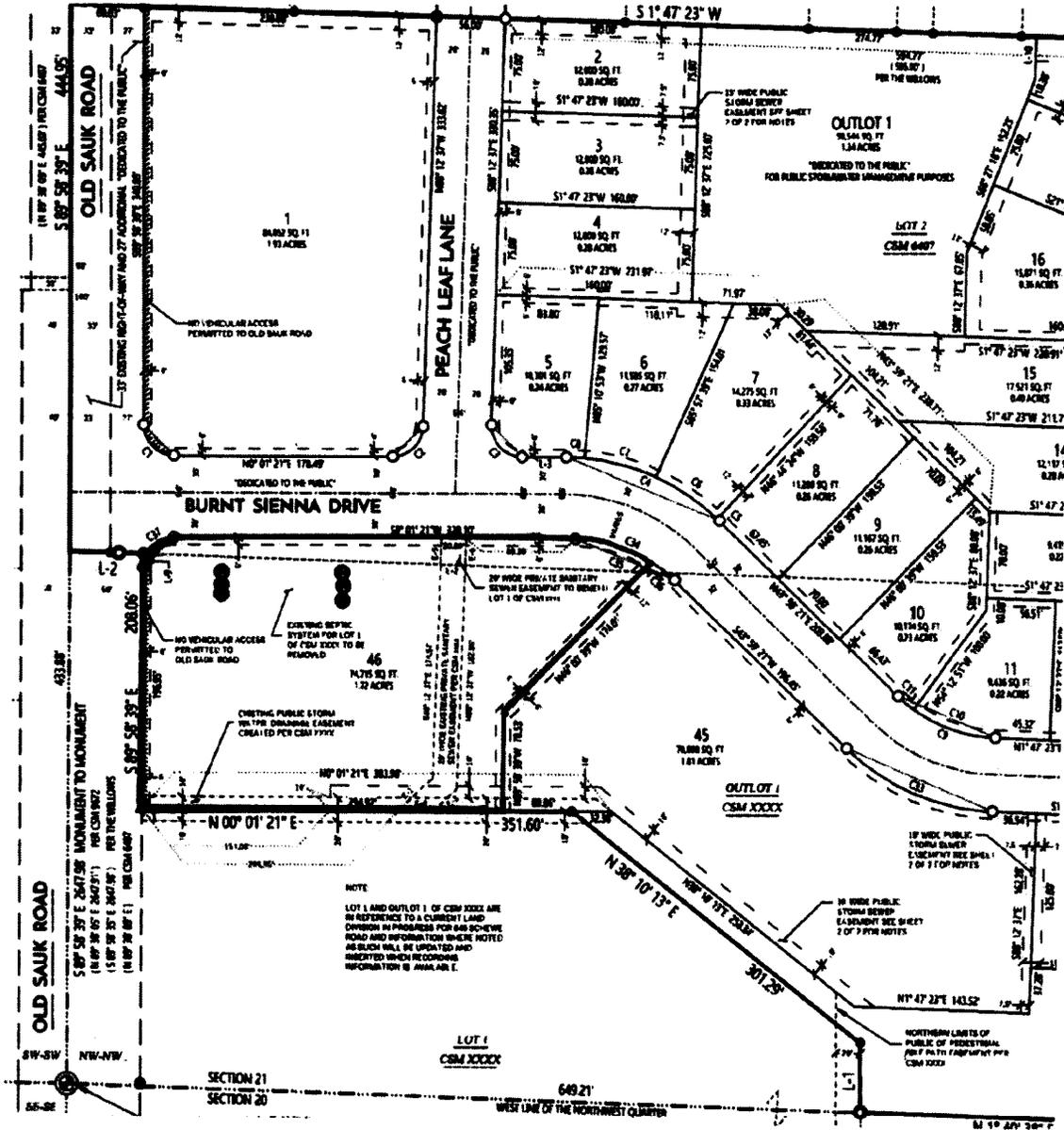
EXHIBIT C

Church Property Legal Description

Lot One (1) of Certified Survey Map No. 14935, recorded in the Dane County Register of Deeds Office in Volume 105 of Certified Survey Maps, pages 94-101, as Document No. 5444639, in the City of Madison, Dane County, Wisconsin.

Part of 251/0708-212-0101-2

EXHIBIT D
The Property



Part of Tax Parcel Nos. 251/0708-212-0101-2 and 251/0708-212-0106-2
 19443994.16

Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by:

[Handwritten Signature]