

APPEAL OF PLAN COMMISSION'S DECISION

November 23, 2020 Meeting

Re: Proposed Development at 4606 Hammersley Road

Plan Commission Agenda Item 18 (Legistar File # 62600)

Appeal Submitted by Summit Woods Neighborhood Association

We, the undersigned residents of Summit Woods Neighborhood Association, OPPOSE the proposed development located at 4606 Hammersley Road. Therefore, we hereby APPEAL the City of Madison Plan Commission's November 23, 2020 decision approving the conditional use and demolition permits for the proposed development.

PROCEDURAL REQUIREMENTS

1. Jurisdiction and Authority for Appeal.
 - a. We, the undersigned residents, constitute residents entitled to notice of the development, including residents within 200 feet of the development, and residents of the neighborhood association. *See* Madison General Ordinance ("MGO") § 28.181(5) (Table 28L-2) (parties entitled to notice).
 - b. We appeal the Plan Commission's decision to the Common Council under the authority of MGO §§ 28.183(5)(b)(1) and (2)(c).
2. Timeliness of Appeal.
 - a. This appeal has been filed within 10 days of the final action of the Plan Commission, as required by MGO §§ 28.183(5)(b)(4).
3. Service of Appeal.
 - a. Required notice of this appeal has been served on the Secretary of the Plan Commission, Commissioner Heather Stouder, as required by MGO §§ 28.183(5)(b)(4). Due to the COVID-19 pandemic, this service has been effectuated via email (hstouder@cityofmadison.com).
 - b. Courtesy notice of this appeal has also been served, via email, on:
 - i. Alder Zach Henak, District 10 (district10@cityofmadison.com)
 - ii. Common Council (allalders@cityofmadison.com)
 - iii. Deputy Mayor Christie Baumel (cbaumel@cityofmadison.com)
 - iv. City Clerk Maribeth Witzel-Behl (clerk@cityofmadison.com)
 - v. City Attorney Michael Haas (mhaas@cityofmadison.com)
4. Effect of this Appeal.
 - a. The Secretary of the Plan Commission must transmit this appeal to the City Clerk, who then must transmit it to the Common Council, pursuant to MGO §§ 28.183(5)(b)(5).
 - b. The Common Council must fix a reasonable time for hearing the appeal and give the public notice of the hearing, pursuant to MGO §§ 28.183(5)(b)(6).
 - c. The Common Council must then decide the appeal within a reasonable time, pursuant to MGO §§ 28.183(5)(b)(6).

SUMMARY OF THE NEIGHBORHOOD'S POSITION

The Plan Commission failed to apply the proper “substantial evidence” standards for approving the conditional use permit application of the developer, as required by MGO § 28.183(6). The Plan Commission appears to have approved the plan based on the personal preferences of the developer and the perceived need for housing in the city, but failed to make the required factual findings supporting its decision. The Plan Commission also failed to adequately consider the detrimental effects that the development will have on the neighborhood. While our neighborhood would welcome a mixed-use development that enhances the neighborhood, this development detracts from the neighborhood and causes many safety and traffic concerns. The Common Council should require the developer to further modify its application to ensure that the plan gives “due consideration” to the City’s Comprehensive Plan and the needs of the neighborhood, and to ensure that the development application includes “substantial evidence” that all the conditional use approval standards have been met, as required by MGO § 28.183(6).

GROUNDS FOR APPEAL

1. The Plan Commission failed to provide specific findings of fact adequately explaining its rationale for approving the conditional uses of the developer’s plan, in violation of MGO § 28.183(5)(a)(5).
 - a. Pursuant to MGO § 28.183(5)(a)(5), the Plan Commission is required to render a decision based on specific findings of fact.
 - b. Pursuant to the Plan Commission Policies and Procedures Manual (“Manual”), Legistar 22007, which is adopted as law pursuant to MGO § 28.183(5)(a)(1), it is the responsibility of the Commission to explain how it came to a determination. *See Manual, p.15 (“Decision Making,” #3.)*
 - c. A simple statement that the “standards are met” is insufficient to inform the public of the reasons for the determination. *See Manual, p.15.*
 - d. The Plan Commission’s Staff Report and the record at the public hearing demonstrate that the Commission approved the application by simply stating that the standards were met, but without adequately explaining how it came to its determination or providing specific facts supporting its conclusion.
 - e. Absent adequate discussion of the required factors set forth in the ordinance, there is no basis for the public and this Council to conclude the Plan Commission considered those factors. *See Keene v. Dane County Board of Supervisors, 2004 WI App 26, ¶¶ 5-6, 269 Wis. 2d 488 (Ct. App. 2003) (absent reference to factors, requirements in ordinance are not satisfied).*
2. The Plan Commission failed to render an informed decision based on the evidence before the body, and prejudged the facts in the developer’s favor, in violation of its own policies and procedures which require integrity and lack of bias in its decisions.
 - a. The Plan Commission must make decisions based on the standards and the evidence before the body. *See Manual, p.15 (“Decision Making,” #3.)*

- b. Residents of our neighborhood submitted evidence to the Plan Commission clearly demonstrating that several conditional use standards had not been met, and outlining a variety of concerns with the development.
 - c. The Commission's Staff Report indicates that this evidence was included with the Plan Commission materials for consideration.
 - d. However, based on the record at the public hearing, it was evident that the Plan Commission's members had not adequately considered, and some had not even read, this evidence before making its determination.
 - e. Moreover, the failure to adequately consider the neighborhood's input at the public hearing also creates an impermissibly high risk of bias, appearing as though the Commission had prejudged the facts in the developer's favor. *See Keene v. Dane County Board of Supervisors*, 2004 WI App 26, ¶¶ 13-14.
 - f. Indeed, at the public hearing, the vast majority of the people who registered in favor of the project were associated with the developer and did not live anywhere near our neighborhood. The Plan Commission's substantial reliance on input from people that benefit from the project creates the appearance of bias, if not actual bias, rendering the decision improper. *See Keene v. Dane County Board of Supervisors*, 2004 WI App 26, ¶¶ 15-16.
 - g. The developer also owns large apartment properties within 200 feet of the development, raising the concern of a potential conflict of interest regarding notice to those residents who may not have known about the public hearing.
3. The Plan Commission failed to give the required "due consideration" to the City's Comprehensive Plan and zoning requirements, in violation of MGO § 28.183(6)(a).
 - a. Pursuant to MGO § 28.183(6)(a), the Plan Commission should not approve a conditional use without "due consideration" of the recommendations of the City of Madison Comprehensive Plan.
 - b. The Comprehensive Plan (2018) recommends Medium Residential (MR) for the eastern half of the parcel and General Commercial (GC) for the western half of the parcel.
 - c. Neither the Staff Report nor the Plan Commission's comments at the public hearing contain due consideration of the recommendations in the Comprehensive Plan.
 - d. The parcel is zoned Commercial Corridor-Transitional (CC-T), but the developer's plan is clearly not designed to be "mixed use."
 - e. Although the developer's plan contains a small "token" commercial space, in reality it is designed to be high-density development with 53 apartments, most likely to give the developer the most profit possible.
 - f. Further, based on the record at the public hearing, it appears that the Plan Commission approved this proposal based, in large part, on the perceived need to create more housing in the city.
 - g. Although the neighborhood understands and appreciates the need for housing in the city, that is not the standard that the Plan Commission is called upon to apply—and must apply—in deciding whether to approve this development under the appropriate conditional use standards.

- i. Standard 3 (uses, values and enjoyment of other property in the neighborhood will not be substantially impaired or diminished in any foreseeable manner); and
 - ii. Standard 9 (the project creates an environment of sustained aesthetic desirability compatible with the existing character of the area and statement of purpose for the zoning district).
 - b. Importantly, 84% of neighborhood residents surveyed believed that this development would negatively impact the feel, identity, and aesthetics of the neighborhood (Standard 9). Almost 87% believed it would negatively impact availability of on-street parking, particularly on Heritage Circle (Standard 3).
 - c. Selected concerns and objections of the neighborhood are noted at the end of this document, and will be presented to the Common Council during the required public hearing. *See* MGO §§ 28.183(5)(b)(6).
7. The Alder representing our neighborhood, Alder Zach Henak (District 10), did not adequately represent our neighborhood’s objections and concerns to the Plan Commission, either during the pre-application phase or during the public hearing. He did not respond when asked to pursue this appeal on the neighborhood’s behalf.

CONCLUSION AND RELIEF REQUESTED

The conditional use standards and zoning requirements set forth in both the ordinance and the Comprehensive Plan must be faithfully and consistently applied so that proposed developments can proceed in the principled way that the City of Madison has already decided. If the applicable standards are ignored and inapplicable standards applied, the applicable standards are rendered meaningless. Moreover, the high “substantial evidence” threshold exists so that any non-conforming uses are the exception, rather than the rule. The Plan Commission must also thoroughly evaluate and explain the proper conditional use standards that it is required to apply so that the Commission can be held accountable to the public. None of these principles have been effectuated here.

Therefore, the Summit Woods Neighborhood Association APPEALS the Plan Commission’s November 23, 2020 decision approving the conditional use permit application for the proposed development at 4606 Hammersley Road.

By filing this appeal, we request that the Common Council fix a reasonable time for hearing the appeal and give the public notice of the hearing, as required by MGO §§ 28.183(5)(b)(6). This Council should also require the developer to further modify its conditional use application so that we, as neighborhood citizens, can support a smaller development plan that enhances, rather than detracts from, our neighborhood.

Respectfully submitted,
Resident Sarah K. Larson (Atty. SBN 1030446)
On behalf of the Undersigned Residents of
the Summit Woods Neighborhood Association
(Signatories begin on p. 7, below)

SELECTED OBJECTIONS AND CONCERNS OF THE NEIGHBORHOOD

(Evidence submitted to the Commission is linked [here](#), [here](#), and [here](#).)

1. The 3-story height of the building exceeds every other building in the neighborhood.
 - a. The building will significantly block the sunlight to the residences nearby.
 - b. The building will impede sight lines for cars, pedestrians, and bicyclists at the intersection of Pontiac Trail and Hammersley, because the building abuts right up to the sidewalk.
 - c. The city will need to reconfigure that intersection to ensure safety of pedestrians and bicyclists entering and exiting the Southwest Bike Path.
2. The so-called “transitory design elements” do not mitigate the aesthetic concerns.
 - a. The step-backs are not sufficient or appropriate when one considers that the building abuts right up to the sidewalk; the building will still appear 3 stories or even 3.5 stories high from most vantage points.
 - b. Unlike every other multi-family property in the vicinity, the building abuts right up to the sidewalk, leaving very little green space to plant landscaping.
 - c. The so-called “intensive” landscaping will not shield the 3-story building, particularly when one considers the lack of landscaping and lack of upkeep in the adjacent apartment complex owned by the same developer.
 - d. Any 4-story trees that currently exist will likely be removed or die when the development is constructed.
3. The density of this 53-unit apartment complex, which will house at least 64+ residents, far exceeds every other building in the neighborhood. This one building will unsustainably add:
 - a. Approximately 8% more residents to our 721-person neighborhood.
 - b. Approximately 12% more households to our 377-household neighborhood.
 - c. Approximately 11% more housing units to our 422-housing-unit neighborhood.
4. The 64+ additional vehicles added to our neighborhood will be detrimental to public safety and endanger pedestrians and bicyclists in our neighborhood, 21% of whom are children (aged 0-17).
 - a. The main thoroughfare through the neighborhood, Pontiac Trail, is a rural road with no curb, gutter, or sidewalks, and is not designed to withstand this increase in traffic on the road.
 - b. The traffic study submitted by the developer did not adequately account for current usages of the streets in the neighborhood, instead largely relying on old data from about ingress/egress.
5. Concerns about traffic safety and traffic congestion include:
 - a. Egress and ingress at Hammersley/Midvale
 - b. Egress and ingress at Yuma/Midvale
 - c. Shopping parking lot “cut through” when egressing south onto Verona Road
 - d. Back-up into Midvale intersection when ingressing west onto Hammersley Road

SUMMIT WOODS RESIDENTS SIGNING THIS APPEAL
(all addresses are Madison, WI 53711)

<i>David Yang</i>	<i>1207 Pontiac Trail*</i>
<i>Douachee Xiong</i>	<i>1207 Pontiac Trail</i>
<i>Phia Yang</i>	<i>1209 Pontiac Trail</i>
<i>Cherkhua Yang</i>	<i>1209 Pontiac Trail</i>
<i>Kumai Yang</i>	<i>1209 Pontiac Trail</i>
<i>Suabcua Yang</i>	<i>1209 Pontiac Trail</i>
<i>Cliff Lewis</i>	<i>1214 Pontiac Trail</i>
<i>Ingrid Watson</i>	<i>1214 Pontiac Trail</i>
<i>Cynthia Matlage</i>	<i>1206 Pontiac Trail</i>
<i>Sheryl Henderson</i>	<i>1201 Pontiac Trail</i>
<i>Ella McLeester</i>	<i>1202 Pontiac Trail</i>
<i>Rob Meyer</i>	<i>1202 Pontiac Trail</i>
<i>Lynn Diener</i>	<i>4514 Hammersley Road #8</i>
<i>Doris Vargas</i>	<i>4514 Hammersley Road #5</i>
<i>Sarah Klein</i>	<i>4514 Hammersley Road #5</i>
<i>Jenny Bright</i>	<i>4514 Hammersley Road #1</i>
<i>Lois Faye</i>	<i>4514 Hammersley Road #6</i>
	<i>*Italics denotes residents within 200 feet of proposed development</i>
Chris Eshen	6 Heritage Circle #1
Taehee Kim	6 Heritage Circle #5
Michael Notaro	6 Heritage Circle #3
Matthew Ahrens	6 Heritage Circle
Meagan Blazewicz	6 Heritage Circle
Maleeha Qazi	16 Heritage Circle # 7
Anne Knezevic	28 Heritage Cir. #7
Karen Nelson	1102 Pontiac Trail
Patrick McGuire	925 Pontiac Tr
Shannon Stahl	943 Pontiac Trl
Jill Stahl	943 Pontiac Trl
Dr. Mara Eisch	918 Pontiac Trail
Susan Vilbrandt	938 Pontiac Trl.
William Lanier	938 Pontiac Trl.
Tom Stevens	933 Pontiac Trail
Tess Mattis	933 Pontiac Trail
Crystal DiChiara	934 Pontiac Trail
Nick DiChiara	934 Pontiac Trail

Nelson Holmberg	949 Pontiac Trail
Sara Stauber	1111 Starlight Dr
Sarah Larson	1013 Chieftain Lookout
Layne Larson	1013 Chieftain Lookout
Mya Starling	4605 Windigo Trl
Eric Meyers	4605 Windigo Trl
Anne Niendorf	4610 Windigo Trl
Chris Niendorf	4610 Windigo Trl
David Daniel	4705 Windigo Trail
Janet Daniel	4705 Windigo Trail
Tim Hughes	4701 Windigo Trail
Diane Hughes	4701 Windigo Trail
Thomas Baker	4606 Windigo Trail
Jenny Lee	4606 Windigo Trail
Fern Kanitz	4609 Windigo Trail
Arthur Kanitz	4609 Windigo Trail
Sarah Curry	4501 Windigo Trail
Tom Curry	4501 Windigo Trail
Tom Schuster	4602 Windigo Trail
Troy Sprecker	4509 Onaway Pass
Kim Sprecker	4509 Onaway Pass
Kyle Sprecker	4509 Onaway Pass
Luke Sprecker	4509 Onaway Pass
Diana Nava	4509 Onaway Pass
Steph Costello	4510 Onaway Pass
Rebecca Malke	4613 Onaway Pass
Raju Eliganti	4613 Onaway Pass
Shelley Reidt	4506 Onaway Pass
Mike Danzinger	4506 Onaway Pass
Valerie Heinzen	4601 Onaway Pass
Charles Buse	10 Nokomis Ct
Ruth Bronston	10 Nokomis Ct
Jon Stielstra	13 Nokomis Ct
JoAnn Stielstra	13 Nokomis Ct
Harold Sabot	9 Nokomis Ct
Donna Sabot	9 Nokomis Ct
Heather Williams	4 Boston Ct.
Cynthia Wright	4 Boston Ct.
Charlotte Leydon	1 Boston Ct
Mark Knaebe	6 Boston Ct
Moirra McConnell	6 Boston Ct

Tracy Hammerstrom	2 Rosewood Circle
Ryan Fitz	2 Rosewood Circle
Milo Westler	9 Rosewood Circle
Hollis Westler	9 Rosewood Circle
Andrea Harris	934 Mohican Pass
Jodi Carlson	942 Mohican Pass
Jeffrey Carlson	942 Mohican Pass
Chris Schacherer	1022 Mohican Pass
Elizabeth Dohrn	1106 Mohican Pass
Chris Boyd	1118 Mohican Pass
Lisa Wing	1118 Mohican Pass
Suzanne Brooks	902 Mohican Pass
Donald Brooks	902 Mohican Pass
Fritz Brooks	902 Mohican Pass
Steve Schwartz	1013 Mohican Pass
Sam Kolich	1101 Mohican Pass
Jennifer Kolich	1101 Mohican Pass
Susan Lochen	1102 Mohican Pass
Steven King	4426 Hammersley Rd
Jane Brader	938 S Midvale
Patricia Bennett	942 S. Midvale Blvd
Tricia Fry	4430 Yuma Dr.
Kathleen Otterson	4414 Cherokee Drive
Nira Scherz-Busch	4421 Boulder Terrace
Willim J. Busch	4421 Boulder Terrace