



CITY OF MADISON
ZONING BOARD OF APPEALS
APPEAL APPLICATION

\$200 Filing Fee

Ensure all information is **typed** or legibly **printed** using blue or black ink.

Notices are sent to the District Alderperson and to owners of record as listed in the Office of the City Assessor. Maximum size for all drawings is 11" x 17".

Name of Applicant: KITTY KOCOL (ON BEHALF OF ALL PERSONS LISTED ON ATTACHED MEMO)
Address: 1010 HAYWOOD DRIVE, MADISON, WI 53715 (AND ADDRESSES OF ALL PERSONS LISTED ON THE ATTACHED MEMO)
Daytime Phone: (608) 513-5980 Evening Phone: (608) 513-5980
Email: KITTYKOCOL@USA.NET

1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to Madison General Ordinance Section No. 28.205(5) AND OTHERS AS SPECIFIED IN ATTACHED
2. When relevant to a specific property, fill out below:
Street Address: 911 AND 909 DELAPLAINE CT; 825, 827, 829, AND 831 SOUTH BROOKS; 930, 922, 914, AND 910 HAYWOOD DRIVE IN MADISON, WISCONSIN
3. List of grounds for the appeal, statements, evidence of fact, and any additional information associated with the appeal are provided on a separate attachment.

Applicant Signature: *Kitty Kocol*

FOR OFFICE USE ONLY

Amount Paid: \$200 Zoning District: _____
Receipt: 011289-0001 Hearing Date: _____
Filing Date: 12/23/15 Published Date: _____
Received By: [Signature] Appeal Number: _____
Parcel Number: _____ GQ: _____
Alder District: _____

DECISION

The Board, in accordance with the findings of fact, hereby determines that the requested appeal for _____ is

- Approved Denied Conditionally Approved

Zoning Board of Appeals Chair:

Date:

MEMO

Date: December 17, 2015

From: The Near Neighbors of 8Twenty Park

Marissa Burack, 841 High Street, Madison, WI 53215 (marissaburack@gmail.com)
Martha Cash, 837 High Street, Madison, WI 53715 (cashtmn@aol.com)
Tom Cash, 837 High Street, Madison, WI 53715 (cashtmn@aol.com)
Jennifer Ginsburg, 840 Brooks Street, Madison, WI 53715 (ginsbuj@yahoo.com)
Pat Godar, 829 High Street, Madison, WI 53715 (godar.patrick@gmail.com)
Cherie Godar, 829 High Street, Madison, WI 53715 (cherie.godar@gmail.com)
Jason Hagenow, 841 High Street, Madison, WI 53715 (jshagenow@gmail.com)
Lori Hawkins, 830 High Street, Madison, WI 53715 (lori.hawkins@dwd.wisconsin.gov)
Erin Jacobsen, 842 High Street, Madison, WI 53175 (ehoelzel@uwalumni.com)
John Eric Jacobsen, 842 High Street, (aspengardenandlandscape@gmail.com)
Kitty Kocol, 1010 Haywood Drive, Madison, WI 53715 (kitty.kocol@usa.net)
David Maziarka, 834 High Street, Madison, WI, 53715 (dmazmail@yahoo.com)
David Salo, 828 South Brooks Street, Madison, WI 53715 (dsalo@yarinareth.net)
Dorothea Salo, 828 South Brooks Street, Madison, WI 53715 (dorothea@dsalo.info)
Janet Stockhausen, 825 and 838 High Street, Madison, WI 53715 (janets@merr.com)
Barry Stoner, 1010 Haywood Drive, Madison, WI, 53715 (barryjstoner@gmail.com)
Michele Wensman, 834 High Street, Madison, WI 53715 (mwensman@gmail.com)
Jeff Weyer, 840 Brooks Street, Madison, WI 53715 (madtowndiesel@yahoo.com)

To: City of Madison Zoning Administrator; Members of the City of Madison Zoning Board of Appeals; Members of the City of Madison Plan Commission; and District 13 Alder Sara Eskrich (delivered by email or US Postal service)

RE: Appeal requested from Zoning Board of Appeals RE: 8TWENTY Park

We, the Near Neighbors who live on the blocks adjacent to and near the proposed 8Twenty Park project in the City of Madison, Wisconsin, under the provisions of Madison General Ordinances (MGO) 28.205(5), request a Zoning Board of Appeals review of the City of Madison Zoning Administrator's determination for this housing development proposed by JT Klein, LLC.

Respectfully, we believe the purpose and intent of the City of Madison zoning law has been erroneously applied to the purpose and intent of this project.

The Greenbush Neighborhood Plan (2008) and its Revitalization Plan (2010) indicate that the portions of this block which lie outside the boundaries of the current Traditional Shopping Street zoning of Urban Design District 7 (and following completion of the St. Mary's Hospital Campus) — **are intended to be zoned residential.**

According to the Developer's applications to the City for Affordable Housing tax credits, for Land Use, and to the Urban Design Commission for approval, **8Twenty Park is multi-family, phased housing** in a range of affordable and market-rate units. More than 98% of the square footage of the complex is intended to be residential. The office on this site is incidental — except in one respect. It enables the Developer to request the buildings be considered "mixed-use" and thus provides the Developer an opportunity to request significant increases in height, mass and

dwelling unit density, and avoid the requirement of even a minimum of Usable Open Space for residents. We will explain how we believe **the City's zoning determination**, combined with the Developer's applications for Conditional Use, **result in failure to meet the intent of TSS and mixed-use districts**. Conversely, we will show **why we believe the project clearly fits the intent and purpose of residential zoning**.

According to MGO 28.064(1), the purpose of "Traditional Shopping Street" (TSS) zoning is to "encourage and sustain the viability of Madison's mixed-use corridors, which sustain many of the City's traditional neighborhoods." The project **fails to meet the intentions expressed in subsections (b) through (e)** with respect to **diversification of uses** (as the Developer is seeking to further narrow the uses), maintaining the **viability of existing homes**, encouraging **appropriate transitions** and **facilitating preservation that is consistent with the neighborhood plan**.

In direct opposition to the intent and purpose of TSS, the Developer requests conditional use permission to **reduce traditional shopping space to less than 2% of the entire complex**. TSS standards require that a *minimum* 75% of a building's first-floor be retail and mixed uses (which in a building complex of 115,000 square feet, with total first-floor square footage of approximately 24,000 square feet, would be equivalent to about 18,000 square feet of retail and mixed-use allocation). **The Developer plans to relocate his home office**; this 2,000 square foot usage is **the ONLY "mixed-use" in the entire building complex**. All other use is residential. We believe that one relocated home office fails to meet the Code's purpose and intent for TSS zoning, and that there are options for more appropriate, residential zoning available. Application of TSS zoning to this project simply **subjects the neighborhood to high human density while simultaneously depriving it of the expected, attendant benefits of TSS**. With no opportunity for the public to conduct trade in the complex, 8Twenty Park is actually a residential building complex that incidentally contains a small, private office. **It should be zoned residential**.

In addition to erroneous application of zoning based on the purpose and intent of the Code, we dispute what we believe are **two errors of fact** that the City made in advising Plan Commission members during their meeting on December 7, 2015. **We believe these errors substantially influenced the Commission's recommendation to extend the TSS zoning map**. We also believe that the City is responsible for an error of omission that compromised our ability to directly address these errors of fact during the meeting and prior to the Plan Commission's final recommendation to the Common Council.

A review of the proceedings will show that, at a pivotal moment in the discussion, Alder Zellers specifically asked why 8Twenty Park could not be zoned residential. In response, **staff replied that residential zoning types would not allow for inclusion of the Developer's private office in this complex**. We dispute this. According to MGO 28.032, Table 28C-1, **a real estate office is a permitted use** under all residential zoning types and **a management office is permitted with conditional use** under TR-V2, TR-U1 and TR-U2 residential zoning. Residential zoning also permits other types of offices, with and without conditional use. **We believe misguidance to Commission Members' on this matter will contribute to misapplication of the zoning code — not only for 8Twenty Park, but for similar projects in the future**. We believe the Plan Commission may well have reached a different decision had they understood there actually were options for this project under residential zoning.

Also during Plan Commission meeting on December 7, 2015, City **staff informed Plan Commission members that TSS zoning required 40 square feet of Usable Open Space per dwelling unit.** Though staff merely relayed what was in the City's Zoning report for the project, we dispute the accuracy of that information in the report. Under "Usable Open Space" the words "**none required**" is clearly stated in the zoning code under TSS (28.064, table on p.50). The Plan Commission members should have been correctly informed that in approving TSS zoning for this residential project, they were unintentionally blocking residents' rights to a guaranteed amount of Usable Open Space per dwelling unit.

TSS zoning of 8Twenty Park will deprive occupants — in this case, veterans, people with disabilities, and low and moderate-income households — **a human right — the right to have open space that is required in ALL Madison's residential zoning** and that the City clearly intended. TSS zoning at 8Twenty Park will literally push people into the streets for outdoor recreation whereas residential zoning intentionally provides for this fundamental necessity. **This is yet another reason that we believe that TSS zoning must certainly be an incorrect application of the Code for this residential purpose;** the City would not intentionally allow or enable this given the standards stated under MGO 28.004. (See conclusion, Page 4.)

Related to our concern about density arising from misapplication of TSS to residential dwelling units, is **maximum lot coverage.** If approved as proposed, 8Twenty Park occupies 85% of a one-acre lot when **the densest residential zoning (TR-U2) conditionally allows no more than 80% lot coverage.** Again, the only benefit we see in misapplying the zoning code is to increase density for developer profitability.

Building type is yet another issue. **Neither the Developer nor the City have made the case that this building type is permissible under TSS zoning, even conditionally.** Table 28D-2, under "Residential-Family Living" shows that TSS does not permit conditional use for a "multi-family building complex," defined as "a group of two or more buildings on a single parcel or tract of land, developed under single ownership and common management." Objectively, this "phased" (a word used by the Developer) project begins with one building for a specified population, followed by second building on the same parcel to be built and occupied later by an undetermined population. Sharing a garage, driveways, surface parking and a "tot lot" — these "Phases" are actually separate buildings. **We ask the Zoning Board of Appeals to also consider allowability of this building type under TSS.**

We note that the Developer's original iteration of this project actually called for TR-U2 residential zoning. (See the one-page, JT Klein map entitled, "Proposed Zoning" dated June 12, 2015 that we distributed to Plan Commission members and entered into the record during the meeting on December 7, 2015.) **We remain deeply concerned that the Developer has been guided or directed to reverse course — away from residential zoning and towards mixed-use TSS.** The City Planning Division Staff Report, and members of the Plan Commission members, have stated that the **8Twenty Park project is likely to be followed by another such building complex** to the south on Haywood. **We believe that proper zoning NOW is essential to neighborhood preservation in the future.**

In addition to objections on the merits of substance, we have a procedural objection. **The City's zoning analysis for this project was not provided in advance of the December 7, 2015**

Plan Commission meeting as is the City's usual practice. The Planning Division Staff Report, completed November 18, 2015 stated it would be appended by a separate zoning report. (See pages 2 and 23). On December 2, 2015, we explicitly requested the missing zoning analysis from the Zoning Administrator. We received a response with the link to documents that did not include the analysis. On December 3rd, we again contacted the Zoning Administrator, noting that the zoning analysis was still missing. We received no response. On the seventeenth day after the Planning Division Staff report was issued, **during the Plan Commission meeting itself**, we learned that the zoning report had finally been completed and submitted that very day. Upon this discovery, we immediately requested a copy **but we were told there were no copies available at the meeting for distribution to members of the public.** This obstructed our ability to most effectively petition our government. It gave the Plan Commission virtually no time to review the zoning report, and we had no opportunity to present information to the contrary that we must now provide in this appeal.

In light of:

- a) **the mismatch between the actual use of the building and the zoning requested;** and
- b) **the clear intent of Madison's residential zoning code** (and its application of conditional use permits) to require designation of a minimum of Usable Open Space for residents; and
- c) **errors in zoning code interpretation** that resulted in misinformation provided by City staff to Plan Commission members during their deliberation; and
- d) **the City's failure to provide the public and the Plan Commission a reasonable amount of time to review and consider the City's zoning analysis;** and
- e) for all other reasons argued in this document related to purpose and intent of MGO 28, **we believe the Zoning Board of Appeals should reject the Zoning Administrator's application of TSS zoning to this project.** The Common Council should give fair consideration of residential zoning to this project, and fair consideration to any relevant conditional use permitted within residential zoning.

In closing, under MGO 28.004 entitled "Interpretation," sub (2); "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.)

We thank you and appreciate your consideration and response.