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March 19, 2007

Outline of Testimony to the City Plan Commission

Scott Herrick, attorney for Harold Langhammer and The Varsity of Madison LLC (632 University Ave.)

Re. 620 University Avenue: conditional use (and rear yard variance) request: Opposed

My client owns "The Varsity," a 27-bedroom apartment one door away, overlooking the proposed rooftop facilities. I sketched our opposition to the variance and conditional use in my March 14 memo, which focused on the ordinance standards for zoning variances and which I will not repeat here. In general terms, my clients' key concerns are:

- a. Noise burden on tenants, with direct impact on marketability and property value;
- b. Usage, trespass, congestion, maintenance, safety, and noise issues associated with increased traffic at rear;
- c. Very doubtful formal qualification for variance;
- d. If these requests imply an expansion or modification of the applicant's licensed liquor operations, my client opposes that expansion or modification;
- e. Very doubtful formal qualification for conditional use.

More particularly, we are convinced the application does not qualify under the Ordinance standards, at MGO 28.12(11)(g): Standards. No application for a conditional use shall be granted by the City Plan Commission unless such commission shall find *all of the following* conditions are present (*my emphasis*):

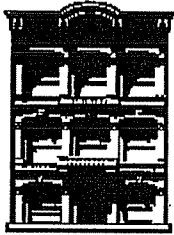
- 1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the *public health, safety, or general welfare*. (Am. by Ord. 13,232, 2-11-03) ...
- 3. That the *uses, values and enjoyment of other property in the neighborhood* for purposes already established shall be *in no foreseeable manner substantially impaired or diminished* by the establishment, maintenance or operation of the conditional use.
- 4. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- 5. That adequate utilities, access roads, drainage, parking supply, *internal circulation improvements, including but not limited to vehicular, pedestrian*, bicycle, public transit and other necessary site improvements have been or are being provided.

6. That measures, which may include transportation demand management (TDM) and participation in a transportation management association have been or will be taken ***to provide adequate ingress and egress, including all off-site improvements, so designed as to minimize traffic congestion and to ensure public safety and adequate traffic flow, both on-site and on the public streets.*** (Am. by Ord. 13,422, 10-24-03)

In addition to these legal and practical concerns, my clients and I are offended by the applicants' failure to advise and consult Harold Langhammer early on, like Harold always does when he develops his own plans - like he did in fact with the Okoneks at the beginning of the planning work for The Varsity. Why must an owner of student housing in the campus area be in constant brush-war conflict with the tavern industry? Why must a good neighbor like Harold maintain virtually an intelligence operation to track such things and protect his housing operations and basic property values against encroachments by drinking, smoking, and "entertainment?"

It's hard enough to offer and maintain decent, quiet, safe housing on campus and on University Avenue in particular. This very doubtful conditional use would only make it more difficult.

SH/hs



CENTRAL PROPERTIES

513 N. Lake Street
Madison, WI 53703
Telephone: 608-255-1767

March 19, 2007

TO: Plan Commission
RE: JohnnyO's Rooftop Garden, Univ Ave
From: Harold Langhammer

I have asked our attorney, Scott Herrick, to appear this evening to represent our interests in this matter.

I spoke with the neighborhood representative, Jeff Erlinger, this morning. He told me that he had written to your staff requesting a postponement of this item from tonight's agenda. He asked if I would make available space for a neighborhood meet in our building, and I willingly agreed, as I have not been informed by the applicant concerning this project. I said that the basement space at 401 N. Lake Street is open and would be appropriate for a neighborhood meeting. Jeff said he would prepare leaflets for this purpose, for both our building and adjoining properties. This would happen sometime in the first two weeks of April.

My concerns about this project are twofold. (1) We have 27 bedrooms, meaning anywhere from 27 to 35 students living in our building. They are students, not party goers. Many of them are from overseas. They ABSOLUTELY need a quiet apartment to study and live in, just as they now have. The documents sent from your office mentioned nothing about noise. But Jeff said this morning that outdoor speakers were planned. Is this true? I don't know, because nothing was presented to me timely and early as it should have been. I still don't know any details concerning amplified noise, people noise, hours, etc. That is why I welcome Jeff's suggestion for a public meeting.

(2) The exiting issue is CRITICAL. As my attorney stated in his earlier letter to you, I have not given permission to cross our property for the purpose of pedestrians either exiting on a regular basis or for milling around outside. It would both constitute a nuisance for our tenants whose apartments are in that area, and a danger for people dead ended there. When the Church Key expanded their alcohol license, restrictions were added requiring them to NOT have customers exiting to the rear, to create sound proofing between the buildings and to clean up the bar trash of their patrons daily.

I would like to emphasize this last point to you, that of clean up. Even though the clean up obligation is on the bar(s) causing the mess, it is our family and our employees who, EVERY DAY have to clean up the bottles and slop left over from their activities. I invite each of you as you are driving in the morning by JohnnyO's, the Church Key and our

building which houses the Associated Bank, to take a look at the sidewalk. Do the beer bottles come from the bank?

I mention this for this REASON, and this reason only. We CAN clean up the mess from our neighbors without irritating our tenants. And we do so on a daily basis. But if this project goes forward, and the noise levels are such as to keep our tenants awake at night or interfere with their studies, what can we do then? Joe or Susie come, with their lawyer fathers, and say something to this effect: 'The place is unlivable. I pay \$12,000 a year for tuition etc. etc., and she/he can't study. We're breaking our lease.' What do we say to that father? What does the city say to us? Why should we be the ultimate financial loser when the bar owner neighbors are making money selling alcohol? If this project goes forward, no matter what conditions might eventually be placed upon it, it should be at the PERIL of the applicant, by which I mean that ANY financial losses incurred by us should immediately be reimbursed by the applicant or that 'roof garden' shut down, and that there is a mechanism in place to do just that without us having to spend a fortune in legal fees, or years in court.

Parks, Timothy

From: Jeff Erlanger [jeff.erlanger@gmail.com]
Sent: Monday, March 19, 2007 2:06 PM
To: Murphy, Brad; Parks, Timothy
Cc: Scott Herrick; info@houseofwisconsincheese.com; harold@centralapts.com; Johnny O; Jeff Butler; Stephen D. Brown; state-langdon Neighborhood; Capitol Neighborhoods - Executive Committee
Subject: updated letter

Dear Planning Commission members,

My name is Jeff Erlanger and I'm chair of the State-Langdon Neighborhood District (a district of Capitol Neighborhoods Inc). I'm writing to request a delay in Johny O's Restaurant and Bar's, 620 Univ. Ave, request to build a Rooftop Terrace. My request for a delay should not be seen as an attempt to keep delaying until the project is shelved, but rather should be seen as my attempt to get ample feedback from neigh. residents. State-Langdon is not like other CNI districts or other neigh. associations; it often takes coordinating w/ our alder so we can get free postcards announcing the meeting, and 2-3 weeks of notice/reminders, at a minimum, to get a good turnout. I first heard of 620 Univ. Ave's. request Feb 18th and was told it'd appear on your agenda March 19th. Within 2 weeks, I met w/ the owner, Johny O, and several nearby property owners. I learned there is concern from a landlord, who sent you a letter dated March 14th, who is concerned the noise from a rooftop terrace would negatively impact his residents. I would like to have a neigh. meeting Mon, March 26th to give residents a chance to give feedback.. This meeting will happen w/ short notice (less than a week but that's necessary w/ spring break) Even w/ our communication capabilities these days, a month from start to finish just isn't enough time, I ask for a delay to your next meeting.

Sincerely,

Jeff Erlanger

State-Langdon Neigh.. District, Chair

On 3/14/07, **Murphy, Brad** <BMurphy@cityofmadison.com> wrote:

Jeff, you can send it to me and Tim and we will get it to the Commission.

Brad Murphy
 Planning Division Director
 Dept. of Planning & Community & Economic Development
 PO Box 2985
 Madison WI 53701-2985
 608 266 4635
 608 267 8739 FAX

From: Jeff Erlanger [mailto:jeff.erlanger@gmail.com]
Sent: Tuesday, March 13, 2007 3:22 PM
To: Murphy, Brad
Cc: Parks, Timothy
Subject: Re: march 19th agenda of planning commission

Is there an e-mail address for the commission or do I send it to you? Thanks, -Jeff

On 3/13/07, **Murphy, Brad** <BMurphy@cityofmadison.com> wrote: