



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: LINDA LEHNERTZ
Address: 512 S Paterson
Madison WI 53703
Daytime Phone: 256-7180 Evening Phone: same
Email: _____

1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to
Madison General Ordinance Section No. 28.141(4)(f); 28.141(5); 28.173(1) & (7)

2. When relevant to a specific property, fill out below:

Street Address: 906-910 Williamson

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: Linda Lehnertz

FOR OFFICE USE ONLY

Amount Paid: <u>\$200</u>	Zoning District: <u>TSS</u>
Receipt: <u>9040-0001</u>	Hearing Date: <u>11/19/15</u>
Filing Date: <u>10/16/15</u>	Published Date: <u>11/12/15</u>
Received By: <u>JK</u>	Appeal Number: <u>LNDAPP-2015-00001</u>
Parcel Number: <u>0709-134-0704-9</u>	GQ: _____
Alder District: <u>C-Margia Rummel</u>	

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:

PARKING

1. When commercial use is unspecified in a proposed new mixed-use building that requires conditional use approval, is the parking for the unspecified use(s) subject to MGO 28.141(4)(f)? Or, may the Zoning Administrator elect to use a set square footage-based calculation (1 parking stall per 400 square feet of area)?

MGO 28.141(4)(f) provides:

"Unspecified Uses. Where buildings are constructed without uses specified, the use with the highest parking requirement among all uses specified for the zoning district where the site is located shall be used to calculate off-street parking requirements."

The Zoning Administrator has said that using restaurant capacity to calculate parking (15% of capacity) would require assumptions to be made about capacity.

Despite the Zoning Administrator's current position, the first conditional use application in a TSS district for a mixed-use building subsequent to adoption of the new Zoning Code was for 1419 Monroe. This development did not have a specified use for the commercial spaces and, thus, was required to use the restaurant 15% capacity for calculating parking.

Site Design	Required	Proposed
Number parking stalls	72 residential (1 per du) 78 commercial (15% capacity) 150 total	18 residential 17 commercial 35 total (Please see p. 9, Condition No. 14) (Please see p. 9, Condition No. 12)
Accessible stalls	TBD	
Loading	0	
Number bike parking stalls	Residential = 94 Commercial = TBD (depending on use)	115 (Please see p. 9, Condition No. 13)
Landscaping	Yes	Yes
Lighting	Yes	existing
Building forms	Yes	Meets building forms requirements

Other Critical Zoning Items: Utility Easements, Barrier free (ILHR 69)

Compiled by Pat Anderson, Assistant Zoning Administrator

<https://madison.legistar.com/View.ashx?M=F&ID=2405149&GUID=DD710558-4C0A-4D32-8FE7-B42948AE0FD4>

As stated in the Staff Report for 1419 Monroe:

Staff believes that the proposal can meet Conditional Use Standard #10 related to automobile parking reductions, although review of this standard is somewhat dependent on the type of commercial tenant utilizing the 5,887 square foot corner commercial space. Assuming the most intense parking generator (a restaurant/tavern), the site would be required to have 150 total stalls, and is proposing 35 (77% reduction). To support this request, the applicant has provided a memorandum dated March 27, 2013, which is included in the Plan Commission materials.

<https://madison.legistar.com/View.ashx?M=F&ID=2405149&GUID=DD710558-4C0A-4D32-8FE7-B42948AE0FD4>

MGO 28.141(4)(f), recognizes that a new construction should have enough parking for whatever uses may go into the building(s). The intent of the ordinance is clear. This intent is reinforced by the provision on deferred parking (installation of parking can be deferred until needed, but the site plan must reflect the minimum required number of spaces), which also seeks to ensure minimum parking in compliance with the Zoning Code.

Requiring minimum parking only when the use of a space is determined can result in incremental parking reductions which individually meet parking reduction standards, but which in the aggregate do not meet those standards. For example, a parking reduction could be granted for the residential portion, then when a restaurant goes into one commercial space another parking reduction could be granted, then when the other commercial space opens as a coffee shop six months later, another parking reduction could be granted – allowing for the Zoning Administrator to make up to a 60 space reduction.

2. When a proposed new mixed-use building requires conditional use approval, is a parking reduction required to be requested and supported by the owner?

MGO 28.141(5), Table 28I-4 addresses minimum parking adjustments/reductions.

A reduction in the minimum number of parking spaces required may be granted through the following procedures:

1. For non-residential uses, the applicant may reduce the parking requirement by the greater of (5) parking spaces or ten percent (10%) of the required parking.
2. A further reduction of up to 20 spaces may be approved by the Zoning Administrator.
3. A reduction of more than 20 spaces but less than 25% of the required parking may be approved by the Director.
4. A reduction of more than 20 spaces and 25% or more of the required parking requires conditional use approval.

A parking reduction request must be initiated by the owner, who must submit information to support the argument for reducing the required number of spaces. Factors to be considered include but are not limited to: availability and accessibility of alternative parking, impacts on adjacent residential neighborhoods; existing or potential shared parking agreements; number of residential parking permits issued for the area; proximity to transit routes and/or bicycle paths and provision of bicycle parking; the characteristics of the use, including hours of operation and peak parking demand times; design and maintenance of off-street parking that will be provided; and whether the proposed use is new or an addition to an existing use.

The Zoning Administrator has determined that the owner would be required to submit information on a parking reduction once the use of the commercial space is known, otherwise zoning would not know the scope of the reduction. Yet the Interdepartmental Correspondence from Zoning to the Plan Commission reflects a parking reduction.

Site Design	Required	Proposed
Number Parking Stalls	Multi-family dwelling: 1 per dwelling (26) General retail/ service business: 1 per 400 sq. ft. floor area (12) (38 total)	21 enclosed (4)
Accessible Stalls	Yes	No (5)
Loading	No	No
Number Bike Parking Stalls	Multi-family dwelling: 1 per unit up to 2-bedrooms (26) 1 guest space per 10 units (3) General retail/ service business: 1 per 2,000 sq. ft. floor area (2) (31 total)	12 surface located in right-of-way 19 enclosed (31) (6)(7)
Landscaping	Yes	Yes (9)
Lighting	Yes	No (12)
Building Forms	Yes	Yes, Flex Building

4. A vehicle parking reduction will be required per Section 28.141(5). As the commercial tenant spaces are leased, the entire development must reflect compliance in the required amount, type and number of auto and bike parking spaces, to be reviewed prior to obtaining zoning approval for each future tenant space use.

Further, the Staff Report prepared for the Plan Commission states:

Along this portion of Williamson Street, it is not at all uncommon for commercial spaces (retailers and restaurants) to operate without off-street parking. Based on the relatively small size of the commercial spaces, and its location within easy biking and walking distance from thousands of residents, staff is comfortable supporting the proposal with no dedicated commercial parking.

<https://madison.legistar.com/View.ashx?M=F&ID=4055456&GUID=2A2EACF5-C97C-46F0-B999-65C14E2A1FA3>

Arguably, 906-910 has been granted a parking reduction should the commercial space (total of 4,428 sq. ft.) be used for any of the office uses, or retail uses, that require one parking stall per 400 square feet of floor area.

In contrast to this method, the owner of 1419 Monroe submitted a three page memorandum in support of the parking reduction.

<https://madison.legistar.com/View.ashx?M=F&ID=2405148&GUID=7689DF64-9158-4F25-ADAA-495F65BC395B>

The Interdepartmental Correspondence from Zoning to the Plan Commission, General or Standard Review Comment #4 (above), requiring parking compliance prior to obtaining zoning approval of each future tenant space, may clash with MGO 28.183(10)(b): once a building obtains conditional use approval and is built, “a change in use from one permitted use to another permitted use without any addition in square footage” is exempted from the requirement that changes on a lot where a conditional use is established obtain, in general, conditional use approval.

BUILDING FORM

Summary

MGO Subchapter 28K defines various building forms in order to “identify and establish basic design parameters” which, in part, encourages building forms that respect their context. MGO 28.171(1). MGO 28.173(1) addresses Commercial Block Buildings and MGO 28.173(7) addresses Flex Buildings. 906-910 was originally identified by Zoning as a Flex Building. Upon questioning by an Alder (since Flex Buildings are not allowed in TSS districts), planning staff reported that Zoning considers 906-910 a Commercial Block Building.

The actual description of these two types of building forms does not provide clear differentiation. The history of the zoning code rewrite provides some indications of differences, as do the graphics in the zoning ordinance. Staff, during the rewrite process, said that the building form standards are objective. Various buildings approved since implementation of the zoning code rewrite have been identified as Flex Buildings, a few have been identified as commercial buildings. In reviewing the building forms for those projects, 906-910 has characteristics of a Flex Building.

906-910 Designated Building Form

Zoning designated 906-910 Williamson a Flex Building, as stated in the Interdepartmental Correspondence from the Assistant Zoning Administrator to the Plan Commission.

TSS ZONING CRITERIA

Requirements	Required	Proposed
Front Yard Setback	25' maximum	2.2'
Side Yard Setback: Where proposed buildings or abutting buildings have window openings in side walls within 6 feet of lot line	One-story: 5' Two-story or higher: 6'	LS- 0 RS- 6'
Rear Yard Setback	20'	21.7'
Usable Open Space	40 sq. ft. per unit (26 x 40 = 1,040 sq. ft.)	5,635 sq. ft. (8)
Maximum Lot Coverage	85% (11,200.45 sq. ft.)	84.7% (8)
Maximum Building Height	3 stories/ 40'	4 stories/ 54'

Site Design	Required	Proposed
Number Parking Stalls	Multi-family dwelling: 1 per dwelling (26) General retail/ service business: 1 per 400 sq. ft. floor area (12) (38 total)	21 enclosed (4)
Accessible Stalls	Yes	No (5)
Loading	No	No
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Landscaping	Yes	Yes (9)
Lighting	Yes	No (12)
Building Forms	Yes	Yes, Flex Building

The Staff Report also reflected 906-910 as a flex building.

<https://madison.legistar.com/View.ashx?M=F&ID=4055456&GUID=2A2EACF5-C97C-46F0-B999-65C14E2A1FA3>

Alder Rummel questioned staff since flex buildings are not allowed in the TSS district. Staff agreed and said that:

“After checking in with Zoning staff this morning, this is considered a “Commercial Block” building, rather than a “Flex” building, and still meets the necessary (more specific) standards for Commercial Block buildings, which are allowed in TSS.”

Standards: MGO 28.173(1) and (7)

Building Type:

Flex: A variable building type at least two stories in height, designed to accommodate a variety of uses, including combinations of office, retail, lodging, and/or residential. A principal entrance should be oriented to the primary abutting street.

Commercial Block: A multi-story building that is designed to support a mix of commercial or office uses on the ground floor with office, studio, lodging and/or residential units above. Buildings are typically designed with storefronts or arcades at ground floor.

Both building forms are more than one story, and both accommodate various uses. A Commercial Building does not envision residential on the first floor, though residential may be on the first floor of a Flex Building (906-910 does have residential on the first floor).

Access and Entry

Flex: One or more ground floor entrances from the primary abutting street shall be provided.

Commercial Block: Principal entry to each ground floor unit shall be a direct entrance from the primary abutting street. Buildings shall be designed with storefronts, stoops or patios along at least forty percent (40%) of the front ground floor facade along the primary abutting street. Parking, loading and trash disposal may be accessed from an alley or through a side yard or rear yard drive serving one or more buildings

Both building forms can have multiple entries. A Commercial Block building requires that each ground floor unit have a direct entrance from the primary abutting street (which does not hold true for the residential units at 906-910). Commercial Block buildings require storefronts/patios/stoops, while Flex buildings may apparently opt to use storefronts/stoops/patios.

Massing and Articulation

Flex: Maximum building length along the primary abutting public street shall not exceed one hundred sixty (160) feet without a significant articulation of the facade. Facades facing a public street shall be vertically articulated at a minimum interval of forty (40) feet.

Commercial Block: Maximum building length parallel to the primary abutting street shall not exceed one hundred sixty (160) feet without a significant articulation of the facade. Facades

facing a public street shall be vertically articulated at a minimum interval of forty (40) feet. Entrances shall be provided at least every forty (40) feet along the primary abutting street.

Massing and articulation are the same, other than Commercial Block buildings must have an entrance every 40 feet.

Zoning Code history

The Zoning Code rewrite introduced the concept of building forms. Building forms were created to establish base forms for various building types. Building forms are one element used to establish base-line regulations to ensure quality development. The standards applicable to the various building forms are objective standards.

Sources:

“The new code introduces the concept of **building forms**. **Section 28.033 Residential District Building Forms** lists the building forms permitted in each residential district. **Subchapter 28K Building Form Standards** further defines the various building forms.”

Zoning Code Comparison, Existing Code and New Draft Code (Revised for 3-15-2011 Common Council meeting)

<https://madison.legistar.com/View.ashx?M=F&ID=1771803&GUID=47D7B62E-821F-4EDC-BFE6-4C20ABBCDFCA>

The Department of Planning and Community and Economic Development prepared a General Project Summary for the March 15, 2011 Common Council meeting on the zoning code rewrite.

<https://madison.legistar.com/View.ashx?M=F&ID=1771804&GUID=57179515-9ED6-4359-A4F7-C4103E27FAAC>

The ordinance merges *land-use based* and *form based* principles

- Design requirements have been incorporated into commercial and mixed-use districts
- Building forms have been created, to establish base forms for various building types
- Building material list

(page 12, 17 of 33)

How a form-based code differs from conventional zoning (page 11 of 33):

- Rules for building form as important as land use regulation
- Emphasis on mixed-use and mixed housing types
- Greater attention to streetscape and design of public realm; and the role of individual buildings in shaping the public realm
- Standards for building form and mass consciously based on context and/or desired changes

Design requirements and building forms establish base-line regulations to ensure quality development. (page 21 of 33).

Planning, Zoning, and Attorney's Office Staff addressed suggestions/questions/comments made by Plan Commission and Urban Design Commission members in Memorandum 1 to the Plan Commission. One

suggestion/question/comment (#72) was: “The standards seem general. Who decides whether they’ve been met? Make them objective.” Staff recommended no change as staff “believes that the building form standards are sufficiently objective.”

<http://legistar.cityofmadison.com/attachments/a4dbce5a-1a2a-4485-969e-61ee8a60b117.pdf>

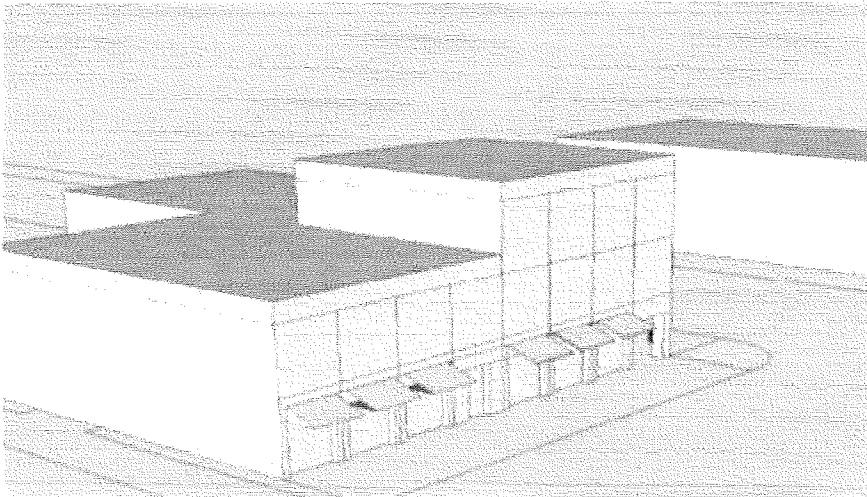
Graphics

Building forms have associated graphics. The Zoning Code Comparison, Existing Code and New Draft Code (Revised for 3-15-2011 Common Council meeting) identified one project objective, #3, as:

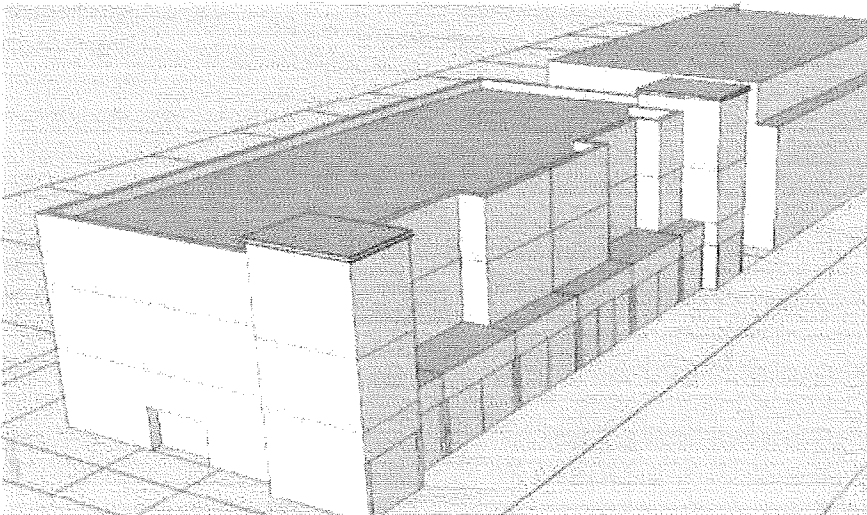
The City desires a Zoning Code that includes **graphics that illustrate regulations** and make the Code easy to use.

<https://madison.legistar.com/View.ashx?M=F&ID=1771804&GUID=57179515-9ED6-4359-A4F7-C4103E27FAAC>

Commercial Block Building, MGO 28.173(1), Figure K12: Typical Commercial Block Building:



Flex Building, MGO 28.173(7), Figure K23: Typical Flex Building:



MGO 28.173(1) provides examples of commercial block buildings.

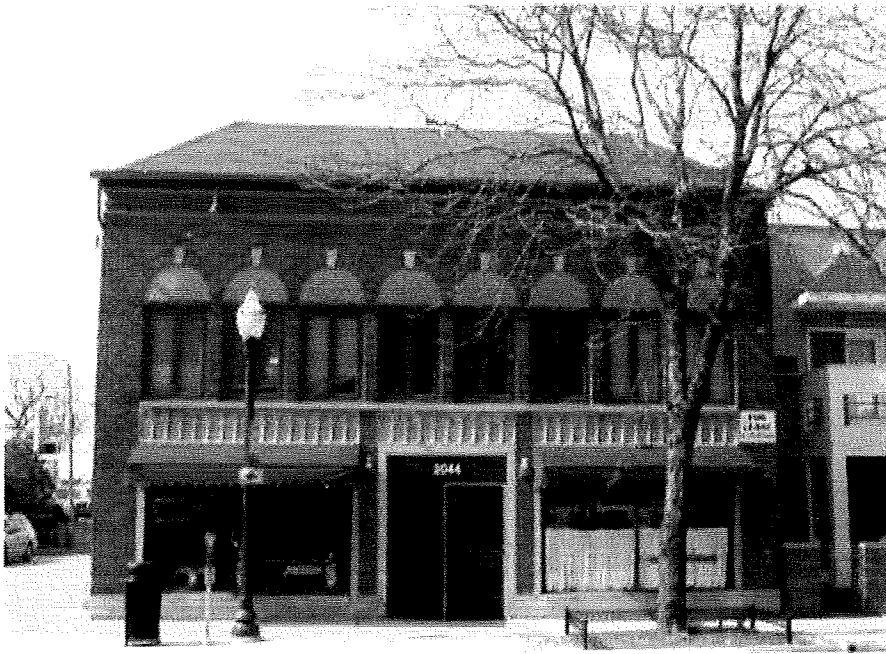
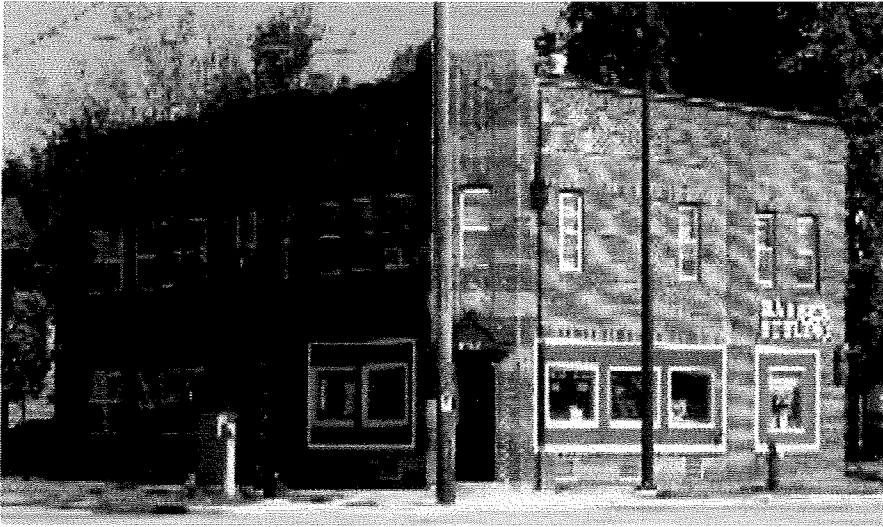


Figure K13: Typical Commercial Block Building Photo 1 (top)

Figure K14: Typical Commercial Block Building Photo 2 (bottom)

MGO 28.173(7) does not provide examples of Flex Buildings. However, examples were provided in the zoning rewrite material from at least September 2009 through March 2015.



<https://madison.legistar.com/View.ashx?M=F&ID=1763295&GUID=C25D81CA-016A-4A48-B169-0B306F5E942E>

Legistar #15932, Building Form, final draft 9-15-09.pdf (Item #19)

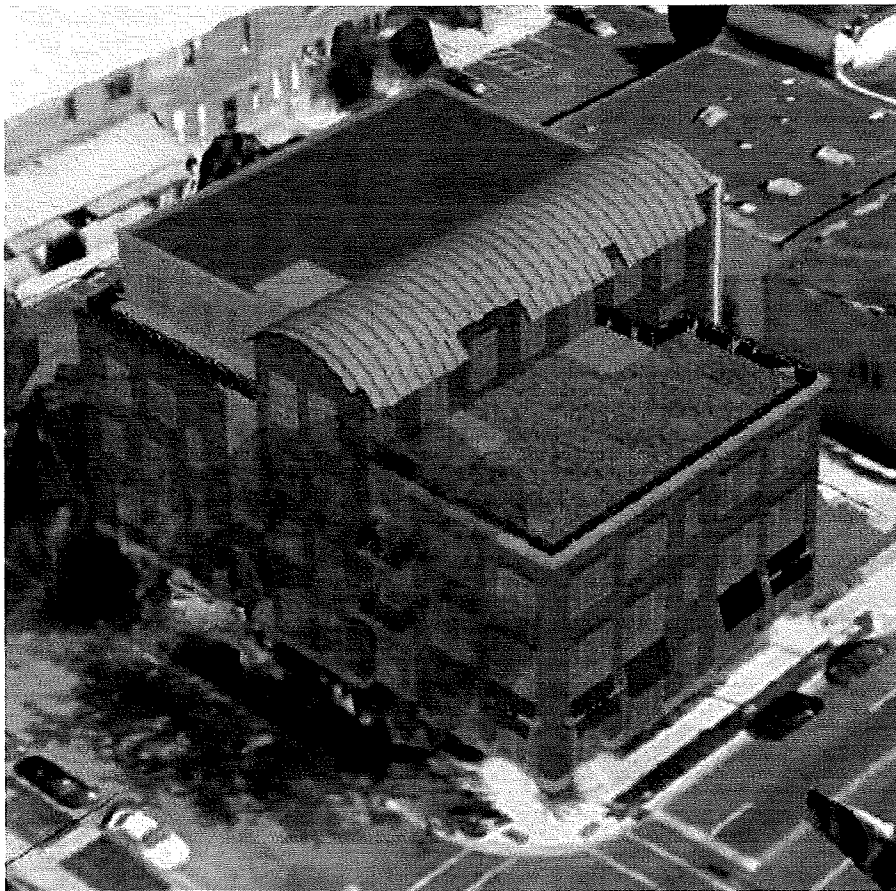
<https://madison.legistar.com/View.ashx?M=F&ID=1758188&GUID=504E85D3-64BA-4063-A51C-BC59BEDD0D92>

Legistar #12186, Land Use Bldg Form 111008.pdf (Item #5)

<https://madison.legistar.com/View.ashx?M=F&ID=1762669&GUID=8BA842CE-F316-4D95-96F7-EF7F646750A1>

Legistar #15932, New Zoning Code Part 4 (Item #6)

906-910 Williamson



<https://madison.legistar.com/View.ashx?M=F&ID=3645323&GUID=8381A16D-4164-4E2D-908E-B072F36F3BD7> (906-910 Williamson, Landmarks submission)

Examples of Buildings Designated Flex Buildings

Legistar File ID #35639

707-709 Rethke Ave.

November 10, 2014 Staff Report: Building Form is a Flex Building

<http://www.cityofmadison.com/planning/projects/conditional/documents/35639StaffComments.pdf>



VIEW ON RETHKE AVENUE

http://www.cityofmadison.com/planning/projects/reports/707ra_site.pdf

5110 High Crossing (Legistar #37163, 37372)

Interdepartmental Correspondence, from Zoning Administrator to Plan Commission

April 20, 2015

Hotel is a flex Building

<https://www.cityofmadison.com/planning/projects/conditional/documents/37372Comments.pdf>



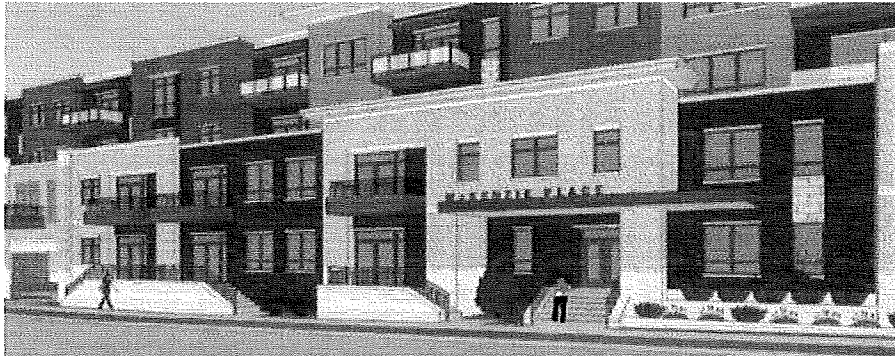
<https://madison.legistar.com/View.ashx?M=F&ID=3709192&GUID=29ACD84B-46B3-4F6B-B7D9-284D15183FC6>

Legistar File ID #39483

2107-2249 Sherman Ave.

August 24, 2015 Staff Report: Building Form is a Flex Building

<https://www.cityofmadison.com/planning/projects/conditional/documents/39483StaffComments.pdf>



<https://madison.legistar.com/View.ashx?M=F&ID=4024844&GUID=A82725D8-F7B9-4941-A7CA-712DF570B545>



<https://madison.legistar.com/View.ashx?M=F&ID=4038187&GUID=18C61228-1378-4EC4-82FE-946F93ADAE67>

(reconfigured corner element, addendum to Staff Report, 9/21/15)

425-534 W Johnson

November 10, 2014

Interdepartmental Correspondence, from Assistant Zoning Administrator to Plan Commission
Building Form is a Flex Building

<https://www.cityofmadison.com/planning/projects/conditional/documents/33467Comments.pdf>



<https://madison.legistar.com/View.ashx?M=F&ID=3314377&GUID=08FB1A3C-B930-4A05-A21A-A990F8F54197>

Legistar File ID #36997

114 N. Bedford St.

March 23, 2015, Staff Report: Building Form is a Flex Building



<https://madison.legistar.com/View.ashx?M=F&ID=3600826&GUID=BFE56B80-47FF-4CE7-BC45-0F443055D0B9>

(Revised submission to Landmarks)

Example of Building Designated Flex or Commercial Block

Legistar File ID # 29716

418 E. Wilson Street

May 20, 2013 Staff Report: Building Form is Commercial Block or Flex Building

<http://www.cityofmadison.com/planning/projects/conditional/documents/29716StaffComments.pdf>



<https://madison.legistar.com/View.ashx?M=F&ID=2510779&GUID=ADCE8E09-0268-450D-BC9E-E3C5513202D0>

Examples of Buildings Designated Commercial Block

Legistar File ID #34633

2158 Atwood Avenue

August 11, 2014

Meets building forms for Commercial Block Building



 SOUTH ELEVATION - ATWOOD AVE.
1"=10'

http://www.cityofmadison.com/planning/projects/reports/2158aa_site.pdf

Legistar File ID # 30334
2620 Monroe Street &
665 Knickerbocker Street
July 8, 2013

Building Form is a Commercial Block Building

<http://www.cityofmadison.com/planning/projects/conditional/documents/30334StaffComments.pdf>



<https://madison.legistar.com/View.ashx?M=F&ID=2555129&GUID=1977B82F-5D6D-4372-944A-6464BC759AB2>

Example of Building Designated TBD

Legistar File ID #37586

3414 Monroe Street

April 20, 2015

Building Forms required, proposed building TBD.

<https://madison.legistar.com/View.ashx?M=F&ID=3709502&GUID=7C9BD724-0769-4D7B-BBCB-E65155E49C9D>



Building from Glenway Street and Monroe Street

<https://madison.legistar.com/View.ashx?M=F&ID=3687202&GUID=6CBF5DBC-3005-440A-8B8E-AF1A4F62402C>

Other TSS District Projects

Legistar File ID # 36811

2501-2525 University Avenue

February 23, 2015

No zoning summary, building form not addressed, but in TSS district

<https://madison.legistar.com/View.ashx?M=F&ID=3604445&GUID=E713F4A3-9B50-45B8-B820-49F64F14A053>



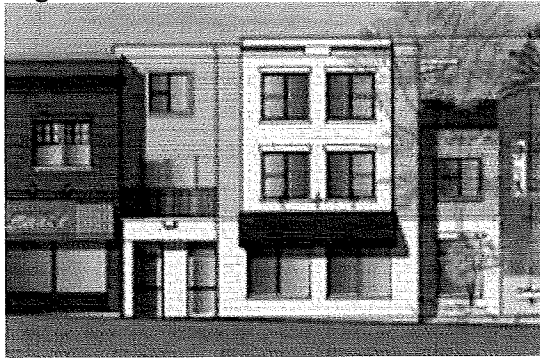
<https://madison.legistar.com/View.ashx?M=F&ID=3604445&GUID=E713F4A3-9B50-45B8-B820-49F64F14A053>

Projects where the zoning summary reflected “yes” for building form requirements and “meets requirements” under proposed:

Legistar File ID # 33218, 2223 Atwood Avenue, April 7, 2014



Legistar File ID #30531, 712 Harrison St. & 1902 Monroe St., July 22, 2013;



Legistar File ID #29212 and # 29224, 1419 Monroe Street, April 8, 2013.

