

Plan Commission
Meeting of January 9, 2017
Agenda Item #13, Legistar #44822, Conditional uses for 904 Williamson

I urge the Commission to not approve the conditional use requests for (1) a parking reduction and (2) an outdoor patio on the western end of the building and (3) an increase in the capacity of the patio on the eastern end of the building.

I will be addressing the parking reduction in this comment letter. However, first a few brief comments on the other conditional uses.

- The proposed 16 person patio on the eastern side was approved by the Marquette Neighborhood Association as a 12 person capacity. This is the patio, and capacity, was approved by the ALRC and Common Council. Thus, ALRC and Council approval will be required to increase the capacity.
- The proposed 12 person patio on the western side was not approved by ALRC. If approved by the Plan Commission, this will also require ALRC and Council approval. The neighborhood has sought, as patio uses have become more common, to find a balance between business and residential concerns. Thus, patios are generally allowed at the front of the building, facing other commercial uses. This patio is at the corner of the building, on Paterson Street, where sound will easily carry up the street to the residences. (Yes, the Wisco patio is also on S Paterson and creates noise issues. But this is a long-standing use, back from a time before noise became an increasingly constant intrusion.)
- The Staff report claims the patio hours are consistent with ALRC approval. They are not. The applicant is requesting a use of the patios until 10:00 pm, Sunday through Thursday, and 11:00 p.m. on Friday and Saturday. As reflected in the Staff report, the ALRC and Council approved hours require the patio to close at 9:00 and 10:00, respectively.

City ordinances require minimum parking is TSS districts when a restaurant/tavern/nightclub/brewpub is within 300 feet of another establishment. However, the Zoning Administrator may approve a 20 stall reduction. Such reductions appear to be routinely approved. Thus, an establishment generally needs to have a capacity beyond 133 persons before the Commission is ever requested to approve a conditional use. In this particular case, there was already a 2 stall reduction approved for the residential portion of the building (even though City ordinances, Table 28I-4 appear to only allow reductions for non-residential uses) and then an 18 stall reduction for the restaurant.

Burden of Proof

The Staff report notes that if the Commission cannot find that the conditional use standards are met, the Commission needs to note which conditions are not met and the reasons such standards are not met and "place on file those conditional use requests without prejudice."

This is not quite in accordance with the Plan Commission Policy and Procedures Manual: "There is no right to a conditional use permit; the applicant has the burden to demonstrate that the standards for a conditional use can be met."

The applicant has not demonstrated that any condition is met. Table 28I-4 requires that the owner submit a request for a parking reduction. The owner must "must submit information to support the argument for reducing the required number of spaces." As of 1:30 p.m., January 9th, Legistar does not contain such information. Thus, the Commission could deny the request due to noncompliance with the ordinance requirements. Should the owner submit a justification in time for the Plan Commission meeting, part of the required materials for a conditional use would not have been made available for public review and comment. This would be no different than not making a conditional use application available until the meeting.

Though the Staff report claims the Commission needs to put this on file without prejudice if the Commission finds the conditions are not met, no reason for this action is provided. In contrast, the Plan Commission Policy and Procedures Manual, makes clear the Commission's options:

"Conversely, the Plan Commission should **Reject/ Deny** (or recommend **Rejection/ Denial**) of any project it feels does not meet the applicable standards and criteria for approval. In doing so, the Plan Commission shall specifically state the standards and criteria that the request does not meet and the reasons why those standards and criteria are not met.

In some cases, the Commission may **Place on File With** or **Without Prejudice** or recommend that the Common Council do so instead of rejecting or denying a request. A rejection, denial or placing on file with prejudice would prevent the same request from being made of the Commission for one calendar year. An application withdrawn by an applicant and placed on file without prejudice may be re-filed sooner than a year. Likewise, if the application is substantially altered as determined by staff and the Commission, it may be considered sooner than a year. A decision to place on file may be appealed in the same manner that a denial may be appealed."

Based on the Manual, it seems that Reject/Deny may be the more appropriate action should the Commission find the standards have not been met.

Conditional Use Standards

Condition #3. The uses, values and enjoyment of other property in the neighborhood for purposes already established will not be substantially impaired or diminished in any foreseeable manner.

There is currently a 745 restaurant/tavern/nightclub capacity within a block. Several establishment have parking that meets, or is close to meeting, ordinance requirements (La Kitchenette, Umani, and Bahn Thai). That leaves a capacity of 611.

Capacity	Address	Name
99	852	Wisco
50	901	That BBQ Joint
114	916	Madison Sourdough
300	924	Plan B
48	940	Pig in a Fur Coat

15% of 611 is 84 parking stalls. There are 24 stalls at Plan B (and 2 accessible stalls). Thus, the parking shortage is 60 stalls. Fuego's parking reduction of 26 stalls (at 15% of capacity) would create a gap of 86 stalls. Or, to state it another way, only 24 stalls of 118 would be provided (20% of the total minimum number of stalls). Although Plan B is supposedly required to maintain the shared parking agreement, it seems most patrons find it easier to park in the closer residential area.

The Staff reports looks to the proposed parking ramp as a solution. As noted, it is proposed and a few years off. Further, the Park+ Model was used to support the need for this ramp. The Park+ model used ¼ mile as what people are willing to walk. The walking distance from 901 Williamson to the corner of E. Main and Livingston is .3 miles. At best, 901 Williamson is at the outer edge of what people are willing to walk.

Will the residential area be impaired or diminished? It already has been and as restaurant/taverns continue to grow on Williamson, there will be further impairment due to parking difficulties, noise from patrons, trash and other undesirable results.

Condition #10: When applying the above standards to an application for a reduction in off-street parking requirements, the Plan Commission shall consider and give decisive weight to all relevant facts, including but not limited to, the availability and accessibility of alternative parking; impact on adjacent residential neighborhoods; existing or potential shared parking arrangements; number of residential parking permits issued for the area; proximity to transit routes and/or bicycle paths and provision of bicycle racks; the proportion of the total parking required that is represented by the requested reduction; the proportion of the total parking required that is decreased by Sec. 28.141. 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 a small addition to an existing use.

1. The availability and accessibility of alternative parking. There is little nearby parking. As noted all the way back in 2011, Traffic Engineering recognized the parking pressure:
"TE staff would like to note that an example of this type of proposed land use and on-street parking would be the Williamson Street commercial and residential areas. TE notes there are problems at times with on-street parking in the residential areas adjacent to the commercial uses."
http://www.cityofmadison.com/planning/projects/conditional/documents/1843MonroeStreet_DispoLetter.pdf

2. Impact on adjacent residential neighborhoods. Please see above discussion under Condition #3.
3. Existing or potential shared parking arrangements. The lease, as submitted to the ALRC, permits the customers to park in the Plan B lot. For a shared parking agreement to be valid, there has to be enough parking spaces, based on things such as businesses with different business hours. Since this matter is before the Commission as a conditional use, I can only believe that the business hours overlap and adequate parking is not actually available in the Plan B lot.

However, there are other local parking lots, such as Stuck & Irwin, or the 303 S Paterson lots. Unless Mr. Chvala can adequately explain why there are no viable options for shared parking, the parking reduction request should be rejected on this basis alone.

4. Number of residential parking permits issued for the area. The residential parking permit count is provided in the Staff report. This data is from 2013, or 3 years out of date. Further, the main concern is not persons who will be stopping by during the day for lunch, when many residents are at work or school (thus not needing a parking permit since the permit is only required to park for more than 2 hours between 8:00 a.m. and 6:00 p.m.). The concern is the evening and weekend parking, times when the establishment is likely to be busier, along with the other existing establishments, which is also the time when residents are looking for parking.
5. Proximity to transit routes and/or bicycle paths and provision of bicycle racks. At the moment, there are not even enough bike racks to meet the minimum requirements.

The fact that there is a bike path close by, and bus routes, should not determine whether parking can be reduced. Yet, this is the strongest argument offered in the Staff report. This argument could be applied to most of the TSS districts: Williamson, Atwood, Monroe, and Regent. The bus argument could be applied to University (near Campus Drive) and South Park. If the Council thought that these alternate modes of transportation were an adequate reason to reduce minimum parking requirements, then there would not have been any need for the minimum parking requirements.

6. The proportion of the total parking required that is represented by the requested reduction. The 8 stall reduction to the 26 stall requirement is a 31% reduction.

7. The proportion of the total parking required that is decreased by Sec. 28.141. The total parking minimum parking is 51 stalls. 23 stalls are provided. Thus, the Commission is being asked to allow the reduction to reach 28 stalls, or a 55% reduction in minimum parking requirements.
8. 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. Hours of operation and peak demand times will substantially overlap with the other restaurants/taverns/nightclub.
9. Whether the proposed use is new or a small addition to an existing use. This is a new use and it is a large use. Capacity of 176 persons is larger than any other nearby establishment, except for Plan B.

Prior Conditional Use parking reductions on Williamson

The Plan Commission has not approved a parking reduction as a conditional use other than for Plan B. Plan B was approved in 2008, prior to the expansion of restaurant-taverns, and there was not really a reduction – the Commission required a shared parking agreement to cover the lack of on-site parking places.

The Staff report notes Plan B received an 88 stall parking reduction. This would seem to imply that if the Plan Commission can reduce 88 stalls, the Commission can certainly reduce 8 stalls.

This would be a specious conclusion.

1. The original reduction occurred when City ordinances required parking for 30% of capacity. The staff report reflected a 39 stall reduction, but, according to a May 2011 staff report, the approved reduction was 58 stalls.
<https://madison.legistar.com/View.ashx?M=F&ID=1772148&GUID=C8785D83-5ED4-4A34-AC38-0EBD8B96BAFF>
2. The Commission required a maintenance of a shared parking agreement to cover the loss of on-site parking, per the approval letter:
 - "30. That the applicant maintains the approved shared parking agreement at 600 Williamson Street (Gateway Center). If the terms of that agreement change, resulting in a substantial reduction in the number of offstreet stalls available for 924 Williamson Street, the applicant shall be responsible for securing other offstreet parking arrangements to address the loss of stalls.
 31. The applicant shall provide written notice of changes in the status of all shared parking agreements impacting this property to the Director of the Department of Planning and Community and Economic Development and the Zoning Administrator. The applicant shall be responsible for securing other offstreet parking arrangements to address the loss of stalls. The applicant may be required to obtain approval of a minor or major alteration to this conditional use, should it be determined that the revised shared-parking terms provide fewer off-street spaces or provide spaces that less effectively serve 924 Williamson Street."
<https://madison.legistar.com/View.ashx?M=F&ID=1760058&GUID=4637FC71-B654-4705-91CB-FC4A24DD91C9>
3. The Plan Commission knew that there was already a signed agreement in place with the Gateway Shopping Center for 60 stalls, and the information was included in Commissioner's meeting packets.

<https://madison.legistar.com/View.ashx?M=F&ID=1759527&GUID=45771798-8C52-42FD-A8E4-D980F6113D7E>

4. The most recent approval of a conditional use related to parking for Plan B was in May 2011. The approval letter made clear that prior approval conditions remained in effect. Those prior approval conditions included (1) maintenance of the shared parking agreement and (2) the parking reduction is non-transferrable.
5. Since the Plan B reduction was approved, several things have changed. Wisco no longer has parking at 901 Williamson. Madison Sourdough began operations. Pig in a Fur Coat replaced a pizza place, changing from a more local establishment to one that gets City-wide customers. That BBQ Joint has a larger customer base than the more recent past establishments. Parking pressures have been increasing, and such pressure will continue to impact the residential area. Mr. Chvala was well aware of neighbor's concerns about lack of parking when he sought conditional use approval for this property.

Respectfully Submitted,
Linda Lehnertz