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## Introduction

Williamson is part of the Third Lake Ridge Historic District. The 800 south block, the proposed project site, is an intact historic block (other than the applicant's 803 building, built in 2018, and 817). The Landmarks Commission determines whether new construction meets the adopted standards and guidelines for a particular historic district as set forth in Chapter 41. The Third Lake Ridge's standards and guidelines were created in 1979 and remain unchanged.

The Landmarks Commission approved the 817 project applying the Third Lake Ridge Historic District standards. Those standards are limited to a "visually compatible with historic resources" in terms of gross volume, height, proportion and rhythm of solids to voids in the street facade(s), materials used in the street facade(s), design of the roof, and the rhythm of buildings masses and spaces.

The decision of the Landmarks Commission that this project is "visually compatible" is certainly worthy of consideration. But it is not a decision that the Plan Commission should defer to since the Landmarks Commission standards are vastly different than the Plan Commission standards.

In particular, this Commission needs to take into account BUILD II (which is discussed in detail later in this letter). "These related plans can provide detail and specific implementation actions, fine tune larger concepts, and react to rapidly developing issues, and provide in-depth analysis not possible at a citywide level." (page 7) "If an inconsistency is identified between this [Comprehensive] Plan and a reasonably contemporary sub-area plan, substantial weight should be given to the sub-area plan." (page 125)

The Comprehensive Plan recognizes the broad scope of the Plan Commissions purview: "Ultimately, determination as to whether a development proposal has an appropriate transition to existing development is up to the Plan Commission when the project requires a conditional use approval ... subject to relevant standards established in city ordinances, such as zoning, *historic preservation*, and urban design districts. (page 38, emphasis added.)

[Attachment A](#) is a panorama of the south 800 block of Williamson, prepared in connection with BUILD II and reflects the space that would be occupied by the 817 project. The highlighted street numbers are the mixed-use buildings (commercial on the first floor, residences above), and all of these buildings sit close to the sidewalk.

## DATA

Only properties with a commercial use sit near the sidewalk. The table reflects statistics for those buildings.

Address	Gabled?	Stories*	Bldg width	Footprint*	Main	Height at	Gross
	False front?		Ft***		Height**	top of roof***	Volume****
805	yes, no	2	33	780	20	30	19,500
811	yes, no	2	29	1,148	22	30	29,848
831	yes, yes	2	24	1,281	24	29	33,947
853	yes, yes	2	44	2,160	24	29	57,240

\*Assessor

\*\*Sanborn Map 1942, height of building in feet from ground to roofline

\*\*\*Estimates, except 831 height is as reflected on site plan

\*\*\*\*Gross volume is the volume of the main building plus the attic mass estimated at 1/2

### Proposed 817 project

	Bldg width	Footprint	Height**	Gross
	Ft*			Volume
Front	60	3,342	40	133,680
Back	80	4,000	33.5	134,000
Total		7,342		267,680***

\*The lowest of the numbers reflected in the revised plans.

\*\*Not accounting for slope. The 33.5' height in back is the least height (height ranges from the 33.5' to about 39')

\*\*\*Not including the underground parking.

## CONDITIONAL USE:

**A mixed-use or multi-tenant building exceeding 25,000 sq. ft. in floor area**

### Standard #9

#### **Aesthetic desirability compatible with the existing character**

When applying the above standards to any new construction of a building or an addition to an existing building the Plan Commission shall find that the project creates an environment of sustained aesthetic desirability compatible with the existing or intended character of the area and the statement of purpose for the zoning district.

#### Proposed "Findings of Fact"

Before getting into details of how the project violates Standard #9, it may be useful to review these proposed "findings of fact." These "facts" provide a summary of the main points

discussed under Standard #9. They also, at the discretion of the Plan Commission, may be useful in formulating/defining the reason(s) to deny/approve the project with respect to Standard #9.

The project does not create an environment of sustained aesthetic desirability compatible with the existing or intended character of the area and the statement of purpose for the zoning district for the following reasons.

1. The project would detract from the historic appearance of Williamson Street, which is both the existing and intended character of the street.
  - The project is too high to sit within several feet of the sidewalk. The project is at least one-third higher than existing buildings sited near the sidewalk.
  - There are no other midblock buildings that have the form of a commercial block building.
  - The bulk of the building is too great to be comparable with the existing and intended character. The front portion (the portion between the sidewalk and the garage entry) is more than double the bulk of the largest building, a City and federal landmarked former grocery at the corner at the corner of Williamson/S. Paterson. The entire bulk of the project is more than 4 times greater than that largest corner building, and almost 8 times more mass than the next largest building (at 831).
  - The 5-6 foot wide and 6 foot deep gap between the front segments, apparently designed to create a sense of space, does not create a sense of space for a building sited close to the sidewalk.
2. The project is not consistent with the adopted goals, objectives, policies, and recommendations of the Comprehensive Plan.
  - The project does not integrate well with its surroundings through context-sensitive scale.
  - Context-sensitive design/scale is particularly important in neighborhoods with an established character and where redevelopment or infill is occurring in close proximity to buildings of historic or architectural value.
3. The project is not consistent with the adopted neighborhood plan, as supplemented by BUILD II.
  - BUILD II explicitly states that no building shall be wider than 60 feet. The project is approximately 80 feet in width.
  - The 5-6 foot gap between building segments is not significant enough when a building is sited close to the sidewalk.
  - The stepback of the third story at the western end is not enough to reduce the mass of the building. Less than one-sixth of the portion sited near the sidewalk is stepped back about 5.5'.
  - The Landmarks Commission may have found that this building looked visually like two buildings – the front portion and a garage area set back from the structure. The Zoning Code does not provide a way to break this mass into two parts for review purposes. And, even if it did, BUILD II provides accessory buildings (e.g., a setback garage) cannot exceed 15 feet in height, while the height of the garage area is approximately 38' at the entry point.

Compatible with the existing character

The Comprehensive Plan recognizes the importance of ensuring infill/redevelopment “can integrate well with its surroundings through context-sensitive design and scale.” (Page 50) “Context-sensitive design is particularly important in neighborhoods with an established character and *where redevelopment or infill is occurring in close proximity to buildings of historic or architectural value.*” (Page 75, emphasis added) Some of the considerations of context-sensitive design include height, form, bulk, placement of entrances, setback from the street, distance between buildings of different scales width along the street frontage, and site infrastructure. (Pages 51 and 176) To compare those context-sensitive design considerations:

- Height

The project would be sited two feet from the sidewalk (4 feet from the property line, but due to the 2 foot City easement the project will sit 2 feet from the sidewalk) and be approximately 40 feet in height.

Neighboring properties on the 800 south block that sit at the sidewalk have a height of 20-24 feet, with gabled roofs taking the overall height to about 29-30 feet. In general, the project will be 10', or 33% higher, than the top of the gabled roofs, and 67%-100% higher than the body of these buildings. It would be 21% higher than the developer's project at 803 (which Landmarks capped at a height of 33 feet).

The immediate house to the east is set back from the street by 24' (setback of 17' for the open-air front porch), has a gabled roof and is 30.8' high\* at the roof peak. The immediate house to the west is set back from the street by 24' (the small enclosed entryway to the far west juts out about 6'), has a gabled roof and is 35.7'\* at the roof peak. Thus, the project will be 5-10' higher than the gabled roofs of its immediate neighbors. (Heights are from the sidewalk, not the actual building height, and are the heights reflected on page 15 of the revised submission.)

- Form

The building form of the project is a commercial block building. (MGO 28.173.) Of the other 11 properties on the 800 south block, 6 are residential, 2 are residential/commercial conversion (where the building form remains residential in character), 2 are commercial block buildings, and 1 is a live-work building. The commercial block buildings are at the corners: 803, constructed by the applicant, replaced a home; 853 is the Biederstaedt Grocery, a City landmark which is also listed on the National Register.

- Bulk

The mass of the project is over 265,000 cubic feet (excluding the garage space). Even just including the front half of the project, going back only as far as the garage entry, is over 133,000 cubic feet.

Commercial neighbors on the south 800 block commercial buildings (not including the non-historic separate structures at the rear of 805 and 831), including attic space, range from about 20,000-34,000 cubic feet.

The largest, at about 57,000 cubic feet, is the landmarked Biederstaedt Grocery (corner buildings were, historically, often larger than midblock buildings), which is less than half the size of the front portion of the proposed project (about 43% of the volume of 817's front volume and about 21% of 817's total volume).

The footprint of the project is about 7,300 square feet, with the front half of the building being about 3,300 square feet. The footprint of 800 south Williamson buildings range from about 800-1,300 square feet, with the Biederstaedt Grocery at about 2,160. Even the front half of the proposal is about 50% larger than the footprint of the largest corner building.

The project frontage along Williamson is 60' per page 25 of the materials, and 61.5' per page 15 (the width is not provided, but is easily calculated). Of the other 800 south neighbors, 6 buildings have frontages ranging from 20-30 feet, 2 have frontages ranging from 30-35 feet, 2 are at 44-45 feet (the two houses that are joined with a one-story breezeway, and the Biederstaedt Grocery). This project is about 35% wider than the Biederstaedt Grocery, and 100% wider than the average building with.

- Setback from the street  
The setback from the street is not an issue in itself. Other commercial or mixed-use buildings are similarly sited.
- Distance between buildings of different scales width along the street frontage  
The gap between the Biederstaedt Grocery and the neighboring house is about 26 feet. The gap between the houses joined by a breezeway is 19-20 feet on each side.

The gap between the 817 project and 813 would be 13 feet. The setback area in the center of the 817 project (intended to make the project read as two buildings) is 5-6 feet. The only other gap of this minimal distance is between the applicant's 801/803 project and 805. Gaps between the historic resources range from about 9-45 feet, with the median being about 25 feet.

The applicant's revised letter of intent to the Landmarks Commission used the 803-805 gap as justification: "The façade has been designed with a recessed area in the middle to break this into two elements as would be similar to two buildings located next to each other with just a walkway in between. This condition exists on this same block on this same side of the street between 803 and 805 Williamson."

- Site Infrastructure  
Site infrastructure is not fully defined for the project.  
The applicant has not shared where the garage exhaust would be placed, but has suggested it might be behind the 4 bike racks.  
There will be 10-12 units on the roof (or that is what the architect said two months ago).  
The elevator overrun has a footprint of 10'x10', but the height is not indicated. The overrun will sit about 8 feet from the eastern edge, and about 4' back from the front eastern setback. It will be visible depending upon its height, and be especially so if this elevator also provides access to the roof. In these days where an overrun is not needed

if interior mechanicals are used, the presence of an overrun in a historic district is not desirable.

There is a retaining wall between the eastern sidewalk and the driveway. The height of this structure is not defined, but the renderings show it as maybe 1½ -2" high. However, to keep people from tripping and falling 10 feet or more down to the garage entry, it will need more height or a railing will be needed.

Compatible with the intended character

The intended character of Williamson is that the existing character be retained.

The 800 block, both south and north, had been proposed as Community Mixed Use on the initial Imagine Madison GFLU map. The 800 block was changed to Neighborhood Mixed Use. Going further east, the 900 north block went from a proposed CMU to NMU, and the 900 south block, the 1000 and 1100 blocks were changed from a proposed Medium Residential to Low-Medium Residential.

The Comprehensive Plans lists corridors that are prioritized for mixed-use infill development and redevelopment. Williamson Street is a Community Corridor. Williamson Street was specifically removed from the list of corridors named "Growth Priority Areas." The Plan Commission, and ultimately the Common Council, decided that Williamson Street was not a street on which to focus for future housing needs, in part (perhaps in whole?) because of its historic designation. Of course, that does not mean redevelopment is prohibited. But this downgrading of the intensity of development on Williamson should be considered when determining whether a large development is appropriate, especially when the density exceeds the general density for NMU (81 du/acre, while NMU is generally less than or equal to 70 du/acre), when the mass for just the front portion is more than double the mass of its largest neighbor, when the footprint of just the front portion of the building is 50% greater than the largest building, and when the street frontage of the portion abutting the sidewalk is about 35% wider than the widest building.

Compatible with Traditional Shopping Street statement of purpose

TSS is established to encourage and sustain the viability of Madison's mixed-use corridors, which sustain many of the City's traditional neighborhoods. TSS is also intended to facilitate preservation, development or redevelopment consistent with the adopted goals, objectives, policies, and recommendations of the Comprehensive Plan and of adopted neighborhood, corridor or special area plans.

- Consistent with the Comprehensive Plan  
As discussed above, the project is not consistent with the Plan's Neighborhoods & Housing strategy #3, which discusses "the importance of ensuring redevelopment can integrate well with its surroundings through context-sensitive design and scale."

As discussed above, the project is not consistent with the Plan's Culture & Character strategy #1, which states that context-sensitive design "is particularly important in neighborhoods with an established character and where redevelopment or infill is occurring in close proximity to buildings of historic or architectural value." Nor with strategy #2, which states: "Madison will need to balance encouraging redevelopment

and infill with protecting the qualities that made existing neighborhoods appealing to begin with.”

- Consistent with the adopted goals, objectives, policies, and recommendations of adopted neighborhood plans: BUILD II  
BUILD II, officially known as *Design Guidelines and Criteria for Preservation: Williamson Street 600-1100 Blocks*, was adopted as a supplement to the Marquette-Schenk-Atwood Neighborhood Plan. (Legistar 00296, January 18, 2005). This land use plan was created, in part, by a Dane County Better Urban Infill Development (“BUILD”) grant (matched by funds from the City of Madison, the Marquette Neighborhood Association and Greater Williamson Street Business Association). The BUILD program’s purpose is: “... to **plan and implement infill development** through planning grants. Infill development is defined as the economic use of vacant land, or restoration or rehabilitation of existing structures or infrastructure, in already urbanized areas where water, sewer, and other public services are in place, **that maintains the continuity of the original community fabric**. BUILD grants help pay for planning consultants who assist communities with preparation of infill plans.” (emphasis added)

The Common Council’s resolution adopting BUILD II stated, in part:

- WHEREAS this plan has specific design criteria for demolitions, preservation, alterations and new construction in the 600-1100 Blocks of Williamson Street written in ordinance language to be incorporated into the Third Lake Ridge District ordinance;
- BE IT FURTHER BE RESOLVED that Planning Unit staff is hereby directed to prepare the necessary ordinance amendments to update the Third Lake Ridge Historic District Ordinance. [Note: The Third Lake Ridge Historic District Ordinance has not been updated.]

BUILD II has guidelines to “guide all new residential and commercial development projects within the Third Lake Ridge Historic District” which consist of 11 “general reference do’s and don’ts.” These guidelines may or may not be deemed recommendations.

BUILD II also has criteria for review of new construction: “All new construction must be compatible with the historic character of the Third Lake Ridge Historic District. The criteria listed below are intended to promote construction that does not detract from the historic appearance of the neighborhood.” These criteria are clearly neighborhood plan recommendations. The criteria applicable to 817 are included in [Attachment B](#).

The project is not consistent with BUILD II criteria for new construction at this location (BUILD II has 5 different zones with criteria that vary by block and by the side of the street). The project is not consistent in the following ways.

1. “New buildings shall be no higher than 2-1/2 stories.” (Flat-roofed three story structures are specifically permitted on the north side of the 800 and 900 blocks.)



- The project is a three-story flat roofed building, 39'8" in height. Though this is permitted under the Zoning Code, the height would make it the tallest building on the block and at a midblock location.
  - The letter of intent claims: "The overall height of this building with a flat roof is in context with the tall 2-3 story gabled roof structures that are on this block which are set higher above the sidewalk given the increasing grades of this 800 block of Williamson St." The building remains taller than the neighboring homes. Also, since the building would sit at the sidewalk, the appropriate comparison is the other mixed-use buildings that sit at the sidewalk.
  - The letter of intent claims: "The use of a flat roof is also compatible with several other commercial and multifamily buildings located on Williamson Street and especially with those located directly across the street." As discussed, the north side and the south side differ. There are not any flat roofed structures on the 800 south block of Williamson (or the 800 north block of Jenifer), but two mixed-use properties do have false fronts.
  - The Staff report mentions that BUILD II calls for flat roofs on new mixed-use buildings. True, but it also calls for a maximum height of 2½ stories (perhaps contemplating gabled roofs), and specifically allows for 3-story flat roofed mixed-use buildings on the north side of the 800 and 900 blocks. Reading all parts as an integrated whole results in a 2-story flat roofed building being permitted at this location.
  - It is possible to construct a large 2½ story building. See, for example, the Third Lake Ridge Condominiums, 1037 Williamson.
2. "The total mass of a new building shall be compatible with that of surrounding buildings. A building of larger than typical mass may be appropriate if it is broken into elements that are visually compatible with the mass of surrounding buildings."
- The bulk, footprint and street frontage, as discussed above, of just the project's front portion substantially exceed that of the existing buildings.
  - The project has three elements that the architect told Landmarks were done to make the project more visually compatible: the gap (5' wide and 6' deep) is to mimic space; the third floor is stepped back on the western side (stepback is about 5½ feet); and, a cornice was added at the second floor.
  - The question is, on a building of this size, whether these items bring the mass down enough to make the project compatible. One could take the position that Landmarks has already deemed the project "visually compatible." On the other hand, Landmark Commission review is only advisory to the Plan Commission. See, MGO 28.144 (advisory for whether a development next to a landmark is too large or visually intrusive), MGO 28.185 (Plan Commission may seek Landmarks Commission comments and recommendation regarding a proposed demolition), MGO 28.185 (Landmarks Commission approval is required for demolition of a historic resource before the Plan Commission can decide whether to approve demolition).
- Does a 5 foot wide gap that is 6 feet deep create a sense of space?
- As discussed above, the only other gap of this minimal distance is between the applicant's 801/803 project and 805. Gaps between the historic resources range from about 9-45 feet, with the median being about 25 feet.

- Had the applicant elected to build a residential building rather than a mixed-use building, BUILD II would permit a 5-foot gap – but that comes with a building setback of 15 feet from the sidewalk, which reduces the feeling of mass.
- A 6 foot deep gap is not enough to create the impression of two separate buildings. (The 126 Langdon proposal had a 9 foot setback about 35 feet in width.) For 739 Williamson, a planned development, the Plan Commission required the applicant to provide a maintenance plan for the living wall. This 9 foot wide living wall of a climbing hydrangea was required by the Landmarks Commission to break up a 46 foot wide project into two segments, one 17' and one 20', by creating the impression of a green space.

Does the cornice bring down the sense of height and mass? The cornice at the eastern side is at 27.3' and the western side cornice is at about 29'.

- The cornice height is comparable to the top of the gabled roofs of the midblock commercial properties.
- The height of the mass of these commercial properties, not including attic space, is 20-22 feet. (An attic only has about half the mass.)
- The cornice overhangs about 1½' and in about 2' in height. This architectural detail, particularly on the eastern side where it is a mere addition rather than a termination point, could be viewed as creating more a sense of mass rather than as breaking up the mass.

Does the stepback at the western side bring down the sense of height and mass? The stepback of the approximate 24' wide western portion is about 5½' and the patio railing is about 1' back from the front façade. It continues the same architectural details.

- Under BUILD II, when excess height is allowed, the excess height "must be stepped back from the street such that it cannot be seen at sidewalk level from the opposite side of the street" and the setback, at a minimum, is "30 feet for mixed use, flat roofed structures."

3. **"No building shall be wider than 60 feet"** - and that sentence is in bold lettering in BUILD II. The project is 80.67', or 80'8", wide. BUILD II does not distinguish between frontage width and total building width. The Zoning code does not distinguish between sidewalk frontage and total building width – the garage setback area would be a significant articulation.

Even if one were to look at just the front portion abutting the sidewalk, that portion is 61'2" feet wide. Yes, the floor plans of pages 29-31 of the revised plans reflect a building width of 60' at the front and 80' at the back. However, the dimensions of the actual *site plans* for the revised submission (page 15) and the original submission (page 2) remain the same.

- The back of the building, per the site plan is 80.67', or 80'8". (Lot width of 97.5' less the side setbacks of 10' and 6.71'.) The garage area is 19'6". (Driveway width of 18' plus 1.5' of the retaining wall.) 80.67' less 19.5' equals 61.17', or 61'2".

4. Accessory buildings. The Preservation Planner believed that the back garage portion, set back from Williamson (then by 59'8", now 57') reads as a separate building: "The entrance to the garage in the back can read like a separate garage in the back of the lot, which is a feature of other historic resources in the vicinity."  
<https://madison.legistar.com/View.ashx?M=F&ID=8567155&GUID=D1079A21-6F8A-4F8F-ABAF-0B8BE5B0B099>

There is only one building. But, if for some reason this can be deemed two portions to this integrated building, BUILD II provides that accessory buildings cannot "exceed fifteen (15) feet in height and shall be as unobtrusive as possible." This "accessory building" is about 38' in height at its entry point.

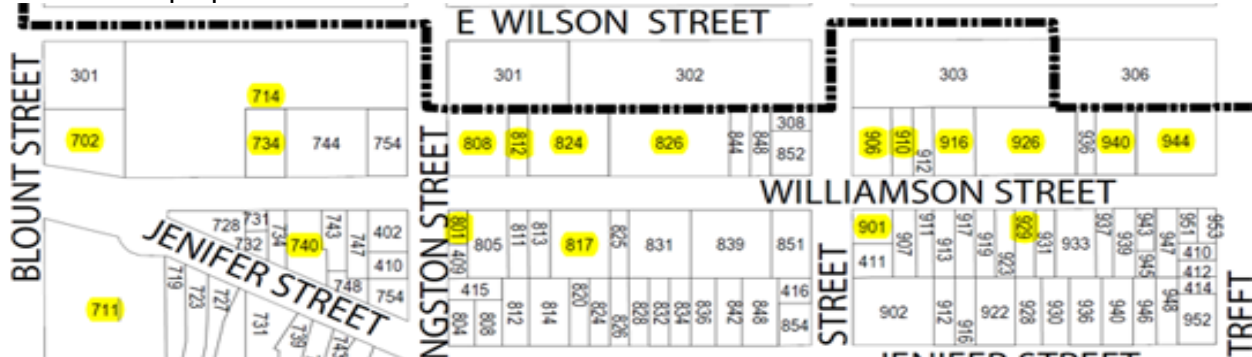
5. Other violations of BUILD II criteria are highlighted on Attachment B, as well as the above violations. However, I question whether the Plan Commission would base its determination on these items, so I will not discuss them. (For example, BUILD II requires the first floor window sill height to be 18" to 36" above grade, and the project is at about 6" above grade.)
- Past application of BUILD II  
In 2014, the Plan Commission approved construction of a six-story mixed-use building at 706 Williamson Street in the TSS district. That building, as compared to this proposal, is higher and has a larger footprint and it, as pointed out in the Staff report, exceeded BUILD II standards. So, the question might be: that building was approved, so why shouldn't this proposal, a mere 1½ blocks away, be approved?

At the time of 706 approval, Staff told the Plan Commission that BUILD II standards were guidelines. The Comprehensive Plan adopted in 2018 clarified the role of sub-area plans, including BUILD II. The Comprehensive Plan (page 124) recognized that the Plan provides a "broad, generalized policy framework" that "can sometimes be too general to provide fine-grained levels of guidance on design considerations that tend to be site-specific" while sub-area plans provide "more detailed recommendations for a specific geographic area." In fact, if an inconsistency is identified between the Comprehensive Plan and a reasonably contemporary sub-area plan, substantial weight should be given to the sub-area plan, and one of the plans should be amended to eliminate the inconsistency (page 125).

The project context also differs. 706 is designated community mixed-use on the Generalized Future Land Use map, this project is neighborhood mixed-use. 706 is on a corner, this project is midblock. 706 neighbors include the Gateway Mall and the Olds Building, this project's neighbors are 2 story homes (plus attics), and four 2-story properties with commercial on the first floor and residences above. 706 is on the north side of the street, where much of the historical fabric is fragmented, the project is on the south side of the street where the historic fabric is relatively intact. Historically, the north 700 and 800 blocks had larger, more commercial, buildings such as warehouses because of the railroad. Commercial on the south side of the 700 and 800 blocks consisted of dwelling units with first floor businesses, and various merchants.

To provide some sense of these differences, below is a portion of the Third Lake Ridge Historic District map for the 700-900 blocks of Williamson. Non-historic properties (those build after 1929 that are not deemed historic resources under Chapter 41) are highlighted.

Non-historic properties



Notes:

- 714 has the Olds Building at the front of the lot.
- 734 is a parking lot.
- 740 was divided into two lots, the Jenifer side has a historic home
- 808 has a 2-story corner building, once part of Schlitz Brewing.
- The 800 south block is intact, other than this applicant's development at 801, and 817.

- Consistent with the adopted goals, objectives, policies, and recommendations of adopted neighborhood plans: Marquette-Schenk-Atwood Neighborhood Plan
- The M-S-A Plan does discuss the 800 block as an area "less intimate and more public, thus serving downtown workers first and neighborhood consumers second." But in 1994 what was deemed "less intimate" differs from today's standards. Map #8 of the M-S-A Plan shows the 1100-1300 blocks, an area deemed to exhibit "the charm of a neighborhood shopping district." Businesses on the north side were the Willy Street Coop (a small building at the corner of Few/Willy), a cleaners, an appliance service and parts, a gas station, a neighborhood bar, a pawn shop, a printing company, a candy shop, a hardware store, and two restaurants. In short, that area could be described today's terms as a LMX area with "less intimate" being NMX.
- The M-S-A Plan also speaks to business: "The first priority is to recruit those businesses that serve the downtown worker, outside patrons, and commuters, but also contribute to the vitality of the neighborhood."
- The M-S-A Plan also requires new buildings to "to reflect the character, aesthetics and scale of the surrounding historic buildings."
- The M-S-A Plan was modified by BUILD II, which in 2004 was adopted as a supplement to the Plan.

**Standard #4:**

**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.**

The letter of intent states: "The size of this lot will not be out of place with the irregularly sized lots in this block and also within the nearby blocks in Third Lake Ridge. Given that the existing building was built across the lot lines and has existed as such for many years, this has been functioning as a single lot already."

The proposed lot is outsized as compared to the platted lots. On the 800 south block of Williamson, the platted lines are all 66' in width, and the entire block still reflects the original platted lines. There are properties that are broken into 33-wide lots for tax parcel purposes, and 831 is sited on 1½ platted lots. The existing former MTI building is about 40 feet wide and about 8' of that width is sits over the underlying platted lot line.

The tax parcels may be irregularly sized, but only two are equal or larger than the proposed 817 lot: (1) 831, an approximately 24' wide building, sitting in the middle of a 99-foot wide tax parcel; and, (2) Ridge Side Coop, a 130-foot wide tax parcel that contains four homes (two of which are joined by a breezeway).

If a 40' high building that is 3.5-8 times greater in mass than the existing historic buildings is allowed at this location, it can be cited as precedent by developers seeking similar approval going down Williamson. As can be seen from the map above, the 900 north block is particularly susceptible, the lots labeled 916 and 926 (Madison Sourdough and the former Plan B) are owned by the same person/entity. Separating them from the next non-historic property is merely one historic house. And, it is not unheard of to have houses on Williamson demolished.

The idea that this project could serve as precedent for future large redevelop is not merely "speculation." For example, the Staff report on this project sites 706 Williamson as precedent.

**CONDITIONAL USE:**

**A mixed-use building with less than 75% non-residential ground floor frontage facing the primary street requires conditional use approval.**

**A mixed-use building with less than 75% non-residential ground floor area requires conditional use approval.**

The revised floor plans show that somewhat over 50% of the portion of the building abutting Williamson will be commercial use (about 35' of the 60-61'2"), and about 44% of the entire frontage facing Williamson.

The letter of intent states that the commercial space will be 802 square feet. The building footprint is approximately 7,342 square feet. The non-residential ground floor area will be just 11% of the total ground floor area.

Of course it makes sense to allow for less than 75% as a conditional use. There could, for example, be building configurations not conducive to 75% (e.g., a deep, narrow building). And a number of other issues could arise that necessitate less than 75%. But 11%?

If even just the front portion of the project was non-residential, that would be about 45% of the ground floor, and it might make sense to grant a conditional use. But 11%?

TSS zoning permits an entirely residential building. A TSS residential multi-family building could, as a permitted accessory use, have a “[m]anagement office, restaurant, limited retail, recreation facilities” within the multi-family building. When 11% is non-residential, it seems to be an accessory use – it does not seem to create a mixed-use building. I am not suggesting that a bright line be drawn, rather that this particular case has such a teensy proportion as non-residential that the building does not qualify as mixed-use.

The 817 lot, as proposed, is large enough to accommodate 25 residential units (exclusive residential use requires 500 sq ft/unit). Perhaps the applicant opted to not pursue a residential building because of the BUILD II requirements, including:

- residential buildings shall be articulated with dormers, bays, porches, and other architectural details to visually reduce the apparent mass of the new building and to blend with the details of older existing residential buildings ... [and] shall have one or more porches ...; and
- the front yard setback shall be no less than fifteen (15) feet, except that one-story unenclosed front porches may encroach up to six feet into the minimum setback.

Yet those are the type of details that would make this project a context-sensitive design. A 40-foot high building with a 15-foot setback from the sidewalk would not convey as much of a sense of mass as a 40-foot high building that sits at the sidewalk. Bays/ porches/dormers would help to further break up the mass.

### **Conditional Use approval/denial and “substantial evidence”**

The staff report states: “Please note, recent changes to state law requires that conditional use findings must be based on “substantial evidence” that directly pertains to each standard and not based on personal preference or speculation.”

That sounded rather fearsome – that there needs to be proof to deny a conditional use – so I decided to look it up. In short, it is not all that fearsome: (1) the Plan Commission cannot *solely* rely on uncorroborated hearsay in reaching a decision; (2) “substantial evidence” includes specific and substantial representations of people describing their first-hand experiences with the subject of the conditional use request and their opinions; and, (3) substantial evidence is required for approval of a conditional use permit as well as for a denial.

Wisconsin statutes:

“Substantial evidence” means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.” Wis. Stats. 62.23(7)(de)1.b.

The city's decision to approve or deny the [conditional use] permit must be supported by substantial evidence. Wis. Stats. 62.23(7)(de)2.b.

The Plan Commission's approval OR denial must be based on substantial evidence. Substantial evidence includes "specific and substantial representations of people describing their first-hand experiences with [the subject of the conditional use request] and their opinions." *AllEnergy v. Trempealeau County Environment & Land Use Committee*, 2017 WI 52, ¶86. Substantial evidence does not include relying *solely* on uncorroborated hearsay in reaching a decision. *Id.*, at ¶56, citing *Folding Furniture Works, Inc. v. Wisconsin Labor Relations Board*, 232 Wis. 170, 189, 285 N.W. 851 (1939).

*AllEnergy* was an appeal of a denial for a fracking permit by the Trempealeau County Environment & Land Use Committee. The court held that the Committee "did not base its denial of AllEnergy's application for a conditional use permit solely on uncorroborated hearsay. Indeed, as we illustrate below, the record is replete with specific and substantial representations of people describing their first-hand experiences with frac sand mines and their opinions." *Id.*, at ¶86.

"The Committee and the courts would be remiss to ignore the words of concerned persons familiar with frac sand mining and the environs. Zoning is a matter of local concern, and many of the people commenting at the hearing on AllEnergy's proposal have either lived near a frac sand mine or will be living, working, and recreating alongside the proposed mine. The language of the Trempealeau County Zoning Ordinance clearly anticipates and invites public opinion. **Thus, public expressions of support or opposition establish a valid basis— that is, substantial evidence—for a decision** on AllEnergy's application for a conditional use permit." *Id.*, at ¶87, emphasis added.

This was more recently reiterated in an unpublished Court of Appeals opinion, *Stop the Ongoing Mine Permit v. Town of Ashford Board of Appeals*, Appeal No. 2018AP1843 (District 2).

[The plaintiff-appellant] points to the amendments to WIS. STAT. § 60.61(4e)(a)2., which define substantial evidence as "facts and information, other than merely personal preferences or speculation." The term "merely" is defined in the dictionary as "only as specified and nothing more" or "simply." Merely, THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (2d ed. 1987). Based on the legislature's use of that term in conjunction with the phrase "other than," we believe it did not intend to prohibit the use of personal preference, speculation, or personal knowledge completely; it meant to curb the use of that information as the only support for the conditional use permit. Because there was testimony in support of the board's decision based on more than just personal knowledge, we find no error.

## Summary

In closing, I would like to reiterate three main points.

1. The project is not compatible with the existing and intended character Of Williamson Street, for the reasons listed under the "proposed findings of fact," for Standard #9 including the enormous mass and that the 80' or so width of the project violates BUILD II criteria for new construction.

2. An 11% of ground floor area as commercial space does not a mixed-use building make. Rather, that 11% is an accessory use in a residential building. BUILD II has criteria for construction of new residential buildings, including a minimum 15' setback from the sidewalk – criteria that the existing proposal would violate, criteria that would make the proposal more context sensitive.
3. The Staff report states that Standard #9 can be found to be met because staff believes the project is compatible and because the Landmarks Commission found the project to be “visually compatible with the historic resources within 200 feet.” The Landmarks Commission uses an entirely different set of review standards than the standards used by the Plan Commission. (The Landmarks Commission does not, for example, look at BUILD II.) The Landmarks Commission has been told by staff that “visually compatible” is not an issue of math – a project could have 8 times more mass than its neighbors, or be 60% taller than the neighboring historic resource, and still be found to be “visually compatible.” The Landmarks Commission held three meetings on this project and did, to some extent, make the project more “visually compatible.” But a finding of “visually compatible” does not equate to a Plan Commission finding that that the project creates an environment of sustained aesthetic desirability.

Respectfully Submitted,  
Linda Lehnertz



**Attachment A**

Williamson Street, 800 block , south side  
May 15, 2002



853

847

843 841

839



839

831

825

821



817

813

811

805

801

Other than 801 Williamson, now 803 (the applicant's project), the block face remains unchanged other than for façade upgrades. All buildings, except for 803 and 817, are historic resources.

All of the buildings are of a comparable height, approximately 28-33 feet. (The perspectives are somewhat skewed, but all photos have the sidewalk in approximately the same location, which shows the relative sizes of the buildings are comparably represented.)

The added blue outline reflects the size of the proposed project (though the streetscape does not allow for the full height to be reflected).

Highlighted street #s are the mixed-use buildings (all are sited within a few feet of the sidewalk)

## Attachment B

### BUILD II CRITERIA FOR REVIEW OF NEW CONSTRUCTION

[Note: Only criteria applicable to commercial buildings in Zone 1, the location of 817 Williamson are included.]

All new construction must be compatible with the historic character of the Third Lake Ridge Historic District. The criteria listed below are intended to promote construction that does not detract from the historic appearance of the neighborhood. It is not the intent of these criteria to create fake historic buildings, but to allow modern buildings to have their own style while still blending with the appearance of the historic buildings in the district. Modern materials that do not meet the exact requirements of the criteria but which are in harmony with the historic appearance may be considered on an individual basis under the variance procedure listed below.

**1. Maximum height.** The BUILD area has been divided into five zones with different height criteria (see map).

The maximum heights permitted are as follows:

**a. Zone I.** New buildings shall be no higher than 2-1/2 stories, except for the following:

- On the north side of the 800 and 900 block of Williamson Street, flat-roofed three story structures shall be permitted.

**4. Massing all zones.** New buildings shall be designed to reflect the patterns and rhythm of masses and spaces within the visually related area. The total mass of a new building shall be compatible with that of surrounding buildings. A building of larger than typical mass may be appropriate if it is broken into elements that are visually compatible with the mass of surrounding buildings.

**b. Massing of commercial, and mixed-use buildings in Zones 1 and 1a.**

Articulation and breaks in the facade of commercial and mixed-use buildings must be sufficient to maintain the rhythm of masses and spaces of existing commercial and mixed-use buildings in the visually related area.

**No building shall be wider than 60 feet.**

**5. Front yard setbacks in Zone 1 and 1a.**

**a. Commercial and mixed use buildings in the 600 through 1100 blocks:** The setback of street facades for such buildings shall be two (2) feet from the property line. Setbacks up to eight (8) feet may be allowed to accommodate design for businesses that require outdoor retail space.

**6. Side yard setbacks in all zones.** Side yards on noncorner lots less than forty-four (44) feet in width shall be a minimum of four (4) feet in width, with the total of both side yards being no less than ten (10) feet in width. On non-corner lots over forty-four (44) feet in width, side yards shall be no less than six (6) feet in width with the total of both sides yards being no less than sixteen (16) feet in width. For residential side yards on a street face the minimum width shall be eight (8) feet for residential properties and or commercial and mixed use side yards on a street face the width shall be two (2) feet.

**7. Rear yard setbacks.**

**a. Zones I, Ia and II.** The minimum rear yard setback is thirty-five (35) feet or sixteen (16) feet if the building has underground or structured parking

**8. Open space requirements—all zones.** Seventy (70) square feet of open space is required for each bedroom in the new development. Balconies built to a minimum size of four (4) feet by eight (8) feet, common outdoor roof top space and half of any interior community space can be included as part of the open space requirement. Configuration of such are recommended to take on traditional urban forms such as courtyards, gardens, and interior-block passageways.

**9. Parking requirements—all zones.**

**a. Underground or structured parking.** Parking shall be located underground or be placed in structures wherever practical. Structured parking shall not detract from the historic character of the district. Generally, structured parking should be located away from the street-front and be accessed from side streets or alleys. Parking structures facing Williamson Street should be set back from the street and be lined with first floor retail spaces. The architecture of these structures should meet all other design criteria for new construction. Landscaping for parking structures shall include shade trees and three-season vegetation at a minimum. Fencing and/or vegetation shall block the parking structure from view as completely as possible.

**c. Number of stalls required.** For residential developments, there shall be a minimum of .75 vehicle parking stalls per dwelling unit. For commercial use less than 800 square feet there is no minimum parking requirement. For office use over 800 square feet there shall be one stall for each 1000 square feet. Parking reductions may be considered under the City's current "Parking Stall Reduction Request" procedures.

**d. Bike parking requirement.** Bike parking will conform to the City Zoning Ordinance and will meet or exceed the underlying zoning for bike parking. In addition, **heated space for bicycle maintenance and cleaning must be provided.** The quality of landscaping around outdoor bike parking areas shall be at least equal to the other landscaping on the site. Bike parking racks must be attractive and securely placed; innovative designer bike racks are encouraged. **A one-stall minimum of visitor bike parking per unit shall be provided.**

**10. First floor elevation in Zone 1 and 1a.** For residential buildings, the finished first floor elevation at the front facade shall be between 18 inches to 48 inches above grade. For mixed use buildings, the first floor commercial level shall be at grade and/or shall meet ADA requirements for entrances. The intent is to have first floor entrances as close to the sidewalk grade as possible.

**11. First floor storefronts on commercial and mixed use buildings in Zone 1, 1a.** First floor storefronts shall be broken up into bays of a similar width to those on existing pre-1945 commercial buildings. The general historic pattern of large storefront windows, low kick panels, transom windows, side pilasters and a cornice shall be used in new construction. For corner buildings, angled corner entrances are encouraged. For buildings with multiple commercial tenants, a sign band should be included in the design to maintain consistency in the building design.

**12. Façades on Mixed-Use Buildings.** Facades on mixed-use buildings should incorporate traditional design elements in new structures to help reflect historic patterns and relationships to existing structures in the district. Contemporary interpretations of traditional building elements will be considered. First floor storefronts shall be broken into bays of a similar width to those on existing pre-1945 commercial buildings. The general historic pattern of large storefront windows, low kick panels, transom windows, side pilasters and a cornice shall be used on new construction. For corner buildings, angled corner entrances are encouraged. For buildings with multiple commercial tenants, a sign band should be included in the design to maintain consistency in the building design.

**a. Parapet caps or cornices** should be incorporated to terminate the top of façade.

Special corner features for such structures at the corner of the block which exceed height limits for the district along Williamson Street may be approved.

**b. Window patterns.** Upper floor window openings should be vertically oriented and regularly spaced. First floor window patterns should reflect the typical proportions in the district. Glass should be transparent; reflective or non-transparent glass is prohibited. (Decorative spandrel glass or other nontransparent glass for screening purposes may be approved upon special request).

**c. Kick panels** High quality materials and special focus on design details is encouraged. It is recommended that this area utilize higher quality materials and design. The first floor window sill height shall be 18" to 36" above grade.

**d. Sign band or awning placement.** Sign bands are required for multiple tenant structures and suggested for any mixed-use building. Externally illuminated signs are preferred, internally illuminated signs with only the individual letters illuminated are permitted with light levels appropriately subdued. Awnings are encouraged to be traditional angle shaped with valance. Colors for signage and awnings should complement the building and each other.

**e. Façade rhythm and entrances.** Primary entranceways should be easily identifiable as a focal point of the building. Recessed entrances are encouraged.

**13. Siding materials in Zones 1 and 1a.** All new buildings shall be sided with masonry, such as stone or brick, in sizes and textures to reflect the masonry on existing buildings in the district. Stucco or stucco-like materials, such as EIFS, may also be permitted on new buildings only. Residential buildings may also be sided with wood clapboards of a narrow gauge (5" or less), or artificial materials that closely duplicate the appearance of wood clapboards. Wood shingles or modern materials that duplicate the appearance of original wood shingles may be used on the upper half of residential buildings. Combinations of the above materials may be permitted.

**14. Roof pitch and type in Zones 1 and 1a.**

Residential buildings shall have a moderate to steep pitch, to reflect the pitches of existing residential buildings in the district, or a flat roof. Pitched roofs may be either gabled or hipped. Commercial/mixed use buildings shall have a flat roof. Other roof pitches and types may be approved provided that the design is compatible with the older buildings in the visually related area (the visually related area is defined in the Landmarks ordinance as within 200 feet).

**15. Roof materials in Zones 1 and 1a.** Roofing materials shall be asphalt shingles, fiberglass or other composition shingles similar in appearance to multilayered architectural shingles or 3-in-1 tab or Dutch lap, French method or interlock shingles. Sawn wood shingles may also be

approved. Vents shall be located as inconspicuously as possible and shall be similar in color to the color of the roof. Rolled roofing, tar-and-gravel, rubberized membranes and other similar roofing materials are prohibited except that such materials may be used on flat or slightly sloped roofs that are not visible from the ground.

**16. Accessory buildings in all zones.** Accessory buildings, as defined in Section 28.03(2) of these ordinances, shall be compatible with the design of the existing building on the zoning lot, shall not exceed fifteen (15) feet in height and shall be as unobtrusive as possible. Accessory buildings shall be located in the rear yard wherever possible. Siding may either match the siding on the building or be narrow-gauge clapboard, vertical board-and batten or a high quality smooth stucco or stucco-like applied material. The roof shape shall have a pitch and style similar to the roof shape on the building. The roof material shall match as closely as possible or compliment the material on the main building.