

October 12, 2020

1937_47 Winnebago Street and 316 Russell Street project

I live at 1933 Winnebago Street Apt 2--right next to the proposed project.

We (Fritz Hastreiter and I) have talked to a lawyer about whether or not one party in a shared driveway agreement can unilaterally make changes to said shared driveway such that those changes transform the intensity of use in such a dramatic manner as what is being proposed for 1937_47 Winnebago Street. Based on existing case law, we don't believe they can.

The developer is proposing that the entry/exit to the parking garage be from the shared driveway rather than off an actual street, plus 6 surface stalls will be added directly off the driveway. This adds 25 additional vehicles to the 6 who currently use the driveway. There would also be a significant change as garbage trucks and other service vehicles would use the driveway to access trash, recycling, and any other needs the commercial tenants might have.

We have notified the developer of our feelings and have had no response in the last few weeks since our lawyer sent the letter on September 14. I ask that you not let this project go forward with this plan as it currently exists.

Sincerely,

Lynn Wimer
1933 Winnebago Street #2
Madison WI

Attorney Christa O. Westerberg
cwesterberg@pinesbach.com

September 14, 2020

VIA E-MAIL

mark@mandmre.com

Mark Jorgensen
M & M Real Estate Investment
1947 Winnebago St.
Madison, WI 53704

Re: 1937-1949 Winnebago Street and 316 Russell Street

Dear Mr. Jorgensen:

This firm represents Lynn Wimer and Fritz Hastreiter, who reside at 1933 Winnebago Street. They are close neighbors of your proposed demolition and mixed-use retail, office, and apartment building at the above-referenced addresses ("the Project").

This letter concerns the private driveway/alley ("driveway") that you intend to serve as ingress/egress for the Project and its 25 parking spaces: 19 underground, and 6 surface stalls. The driveway is accessed from Russell Street and is a dead-end, currently serving Lots 1-6 of Block 2 in the Hagan-Hiestand Replat of Farwell's Addition. The Project would be located on Lots 3-4 and a portion of Lot 2. Ms. Wimer and Mr. Hastreiter own Lot 1 and part of Lot 2.

The driveway is a shared right-of-way serving Lots 1-6, created by deed in 1901, *see* Doc. # 238754. The stated purpose of the driveway, created from the six feet of the western portions of Lots 5 and 6 and six feet of the eastern portions of Lots 1-4, is "for the mutual use and benefit of the parties of this contract," as well as their heirs, administrators and designees." Perhaps reflecting its creation in the days before automobiles, the driveway is narrow, only 12 feet wide.

Currently, only one or two parking spaces are associated with the portions of Lots 2-4 that would be associated with the Project. The properties at 1937-1949 Winnebago Street do not use the driveway, while 316 Russell Street only does for residential purposes. In other words, the driveway is only used by 3 houses containing 5 residential units.

The Project would dramatically intensify use of the shared driveway, both based on the easement's stated intent and historic use. The driveway is for the "mutual use and benefit of the parties," but the Project would significantly increase the use associated with Lots 3-4 and part of Lot 2 by increasing density within these lots. It would increase traffic in the driveway by providing ingress and egress for 25 parking spots, some used by apartment-dwellers and some used by customers or employees of businesses within the Project. Project plans also call for trash access via the driveway and repaving portions of the driveway, and possibly using the driveway for deliveries. Far from "mutual use and benefit," the driveway would largely be for the use of the Project, and only incidentally for the remaining lots.

The Project's intensive use will also create congestion, increase traffic, and impair the other parties' use and enjoyment of their property. Additionally, the Project's use of the driveway raises safety issues. For example, within five feet of the driveway, 320 Russell Street (Lot 5) has a door used by three adults and one child. The new proposed entrance to the underground parking would have vehicles enter and exit perilously close to this door. The driveway is also used for pedestrian traffic. Additional car traffic will likely endanger these pedestrians.

Because it goes far beyond "mutual use and benefit" of the driveway, your Project's planned use of the driveway exceeds the terms of the easement. *Grygiel v. Monches Fish & Game Club, Inc.*, 2010 WI 93, ¶¶ 29-30, 328 Wis. 2d 436, 787 N.W.2d 6. Even if the terms were not clear, the Project dramatically intensifies the driveway's use and places an unreasonable and undue burden on the other parties. *Gojmerac v. Mahn*, 2002 WI App 22, ¶¶ 24-25, 250 Wis. 2d 1, 640 N.W.2d 178 ("Where an easement is appurtenant to an estate, it follows every part of the estate into the hands of those who purchase or inherit the estate, as long as the burden on the servient estate is not increased."); *Vieth v. Dorsch*, 274 Wis. 17, 20, 79 N.W.2d 96 (1956) (recognizing that "drastic increase in use beyond that contemplated when the easement was granted," such as "where an ordinary private driveway has been turned into a heavy-traffic thoroughfare," may work a forfeiture of the easement). Any economic benefit associated with the Project does not justify its burden to the other parties to the easement. See *AKG Real Estate, LLC v. Kosterman*, 2006 WI 106, 296 Wis. 2d 1, 717 N.W.2d 835 (rejecting rule that courts can modify an express easement where doing so would produce economic benefits to the

dominant and servient estate) (“Nothing in the host of cases AKG cites convinces us that we should sacrifice property rights in this case in favor of economic efficiency”).

The Project’s planned use of the driveway will also interfere with Ms. Wimer and Mr. Hastreiter’s use of the driveway and the enjoyment of their property, also working an undue burden. This is true regardless of whether their property is construed as the servient or dominant estate. See *In re Garza*, 2017 WI 35, ¶ 31, 374 Wis. 2d 555, 893 N.W.2d 1 (“any changes in the dominant estate’s use may not place an undue burden on the servient estate”); *Garrett v. O’Dowd*, 2009 WI App 146, ¶ 7, 321 Wis. 2d 535, 775 N.W.2d 549 (holding the owner of the servient estate may make all proper use of his land including changes in or upon it as long as he does not unreasonably interfere with the easement holder’s use of the land). Moreover, you have not discussed your plans to pave portions of the driveway with Ms. Wimer and Mr. Hastreiter, even though this work will undoubtedly disrupt or preclude their use of the driveway while construction is ongoing.

Please let us know if you or your legal counsel would like to discuss any of the foregoing. Ms. Wimer and Mr. Hastreiter would, for example, have far fewer objections to the Project if the access were located elsewhere, such as off Winnebago Street. Otherwise, please understand that Ms. Wimer and Mr. Hastreiter will take all action necessary to protect their rights to use the driveway in accordance with the easement and without undue interference.

Thank you.

Sincerely,

PINES BACH LLP

Christa O. Westerberg

COW:hmm

Jim Rogers

Russell St. • Madison, Wisconsin 53704 • JimRogers111@gmail.com

October 11, 2020

City of Madison Planning Division and Plan Commission Members
215 Martin Luther King, Jr. Blvd, Suite 017
Madison, WI 53703
(c/o Colin Punt, CPunt@cityofmadison.com)

RE: Proposed Development 1937-1949 Winnebago St and 316 Russell Street

CC: Marsha Rummel <district6@cityofmadison.com>

As a 300 block Russell Street resident and across the street from the proposal, this is to note a desire for improvement in this resubmitted proposal to the City of Madison. If changes cannot be made, I recommend this proposal *not* be approved.

Although a variation of this proposal was previously submitted, **I encourage the Plan Commission to see that the proposal fully takes care of concerns of neighbors.** (If this is more rapidly approved simply because it was previously submitted as a larger development, it would suggest to developers that on their first try they simply submit a larger design, and then can ask for fast-track approval for whatever smaller project is submitted subsequently.)

I believe **this proposal has not resolved the primary concern of safety risk due to moving the commercial parking entrance/exit to be on the residential Russell St.**

- Zoning Code Sec. 28.183 for Conditional Use
 - (6)(a) Approval Standards
 - 1. *The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.*

With creating *significantly* increased traffic flow by **moving the commercial parking entrance/exit to be on the residential Russell St**, this proposal will absolutely decrease safety as cars must attempt, even more aggressively, to dart out from Russell St. to make a west/left turn onto Winnebago dodging a stream of cars from Atwood on the right, and cars on Winnebago which stop at a red light and then turn right onto Winnebago.

*If this **moving of the commercial parking entrance/exit to be on the residential Russell St** proposal goes forward, it is anticipated that the City will be forced to ameliorate the increased resulting accidents and potential personal injury at some point in the future.*

- 2. *The uses, values and enjoyment of other property in the neighborhood for purpose already established will not be substantially impaired or diminished in any foreseeable manner.*

This proposal eliminates a neighborhood house directly on Russell St, and replaces the view from Russell St to be of a fully visible commercial building, and moves the commercial parking entrance/exit to be on the residential Russell St. This reduces the enjoyable feeling of this being a lower risk residential street where many people know faces and greet each other and switches it to more of a feeling of a diminishing residential street, adjacent to a commercial building with traffic flow.

- *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*

With the **move of the commercial building parking entrance/exit to the residential Russell St.**, it is clear that trucks entering this **newly placed entrance must have a radius to turn that eliminates one (and possibly two) street parking spots across from the new entrance**. Although this proposal does *not request to specifically* eliminate off-street parking spaces **currently**, this change is common sense and will need to be done for safety.

It is anticipated that multiple resident units will often have more than the one vehicle per unit currently provided, plus there will be additional building user parking. This **proposal** *will* further increase parking demand in the neighborhood.

It is recommended this increased traffic safety hazard be handled at this time. **It is specifically recommended that the developer's initial request to have the entrance be on Winnebago St be honored.**

The move of the commercial building parking entrance/exit to the residential Russell St. can be corrected by honoring the developer's initial request to have the entrance on Winnebago St.

Thank you for the consideration of these safety concerns by direct neighbors, including me.

Sincerely,

Jim Rogers



Schenk-Atwood-Starkweather-Yahara Neighborhood Association

Wednesday, August 26, 2020

City of Madison, Plan Commission

Sent via email (planning@cityofmadison.com)

Members of the City of Madison, Plan Commission

I send this letter of support on behalf of the Schenk-Atwood-Starkweather-Yahara (SASY) Neighborhood Association in support the M&M development to be built at the corner of Russell Street and Winnebago Street. The SASY board considered this request at its August 13th meeting and voted in support of the development with the stipulation that the builder commits to carrying 50% of the common area energy load with solar generation.

It should also be noted there were concerns expressed by immediate neighbors including increased traffic and the lack of parking. The developer has made certain concessions, which have largely met their concerns.

We encourage you to support M&M's request as described above.

Thank you for your time and consideration.

Ginny Jenkins
President – SASY, Inc.

Cc: SASY Board, Alder Rummel

From: [Fritz Hastreiter](#)
To: [Plan Commission Comments](#); [Rummel, Marsha](#); [Punt, Colin](#)
Subject: 1937_47 Winnebago Street and 316 Russell St. development.
Date: Monday, October 12, 2020 10:36:51 PM

Caution: This email was sent from an external source. Avoid unknown links and attachments.

10-12-2020

In it's current version, I am against the M&M project on Winnebago St.

We have hired lawyers to give the legal reason for not going forward with the project, as-is. Here is my version.

The main problem we have with the project is the use of the joint driveway. I have a hard time understanding why the city of Madison does not want the parking entrance on Winnebago Street. There already are much larger projects, within a block or two, that have parking entrances on Winnebago or Atwood Ave. The Atwood/Winnebago/Russell intersection is already a problem and needs to be dealt with. I can remember, in the recent past, a car crashed into the Monona Bank building, damaging the pillars out front. Restaurants regularly have delivery trucks double parked, but this is Covid days and there is less of that. Even with Covid, this morning about 7am I had to tell a van and car, cleaning the adjacent restaurant's grill vent to the roof, they could not park on my property and/or the private driveway.

A good improvement would be to extend the stop light control to include the Russell//Winnebago intersection. Because the intersection is greater than 90 degrees, cars tend to speed through the intersection heading SW on Winnebago Street from Atwood.

Currently Marsha Rummel is sending emails stating that portions of Milwaukee St and E. Washington are having portions of them with the speed limit reduced to 25 mph. Other streets are having speed bumps installed or traffic circles. This is a good time to calm the traffic at Winnebago/Atwood and keep traffic off mostly residential, Russell Street, which also happens to be a dead end(no outlet). Help keep cars and trucks separate from pedestrians and bicyclists.

Thanks for considering these ideas.
Fritz Hastreiter

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"If reality comes into conflict with your beliefs the only rational choice is to modify your beliefs more in keeping with reality" -James Elliot Farrell, 12/22/60 -8/19/2010

Communication to City of Madison Plan Commission Re: M&M Demolition and Development project 2020

October 15, 2020

To City of Madison Plan Commission:

My name is Donna Peckett. I have lived and worked in the Schenk-Atwood neighborhood, since purchasing the property at 1957 Winnebago in 1985, i.e. 35 years ago. My business is a non-profit professional arts organization founded by me and my partner, Danielle Dresden. It is zoned commercial on the bottom and residential on the top, where the two of us reside and work.

I continue to oppose the M&M development at 1937-1949 Winnebago, including 316 Russell Street. While M&M's agreement to lower the project from 4-stories to 3 stories is commendable and appreciated, the project continues to have significant negative impact on Russell Street and Winnebago. The traffic pattern promises to be unsolvable, with yet, another apartment building, with commercial on the bottom in this neighborhood. The impact of even more cars and trucks on this tiny street, Russell, with a cul-de-sac is disturbing. Parking is so limited everywhere in this neighborhood, especially since the explosion of the large-scale, soul-killing developments of the Krupp corporation.

As a resident and neighbor, I personally feel more and more powerless in opposing these thoughtless, profit-driven, monotonous, exclusive large apartment buildings with the elusive "set-back" feature. Little thought is given to the overwhelming challenges of climate change and the racial divides these developments illuminate and foster. They are steps backward in a changing world, which seeks equity and diversity.

The neighbors are very disturbed and unhappy about the M&M development. The character of the entire street will change. There must be more creative, equitable solutions to the growing population in this city.

While this proposed building up puts less stress on development outside the city, there is little mention or concern to develop affordable housing here. The M&M project will unfortunately continue this disturbing reality.

I do not support this project, and I urge you to deny the conditional use requests from M&M Real Estate.

Sincerely,

Donna Peckett
Co-producing Artistic Director
TNW Ensemble Theater (formerly TAPIT/new works)
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Madison, Wisconsin 53704
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608.244.2938