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Madison Alders:

I am writing in regard to File #63902 regarding conditional use thresholds on your Tuesday, March 30th 2021 meeting.

Because of my general interest in and research on the relationship between zoning and housing affordability, I attended (virtually) the Plan Commission hearing on this matter on March 22. I have been following similar debates and zoning reforms across the country.

At that meeting, I was asked to respond to a few questions by Alder Evers based on my research and experience. I want to use this letter as an opportunity to provide a fuller response to some of the issues raised and to provide a little more context for the proposal before you.

I'll begin, however, with a standard disclaimer: For informational purposes, I am a professor of urban planning at UW-Madison and my main areas of teaching, research and outreach are in the areas of housing planning, land use planning and municipal finance. I am the author of the two Dane County housing needs assessments (2015, and 2019) and the author of a state workforce housing report (2019). I was also one of the outside community members of the RESJI review of the "Analysis of Impediments to Fair Housing" report.

Because I am a state government employee and have worked with communities across Dane County on issues of housing, I want to make clear that my comments are for informational purposes only and that I do not (and cannot) advocate for or against any particular piece of legislation. My comments are my own and do not necessarily reflect the view of any city, county, or state agency.

At the plan commission hearing, we heard three major issues raised regarding the proposal 1) neighborhood input; 2) displacement; and 3) residential-only buildings in mixed-use districts. I will try to provide some information on each of these issues, based on some simple analysis I did in reading the proposed ordinance.

As I mentioned in response to Alder Evers questions, similar debates and zoning reforms are taking place in cities as diverse as Minneapolis, Sacramento, Berkeley, Austin, and Cambridge as well as state-level zoning reforms approved in Oregon and proposed in states like Connecticut. In each of the examples cited, land development codes (including zoning) have been updated to permit a greater density and variety of housing to be built as a necessary (but not sufficient) approach to reduce housing cost growth, improve affordability and expand housing options, especially in proximity to jobs or transit.

First, the context of the proposed ordinance is to implement the land use and housing policies identified in the Comprehensive Plan, as staff have detailed in their memos and presentations. The proposal does not significantly change land uses in the city and does not alter the boundaries of any zoning district. What the proposal does is takes some subset of multifamily uses that are currently

allowable uses through a "conditional use" permit (CUP) and makes them permitted (by right) uses. As the staff memo outlines, the height, setbacks, step-back and parking (etc.) provisions of the zoning ordinance still apply. The ordinance also modestly lowers the amount of lot area per dwelling unit in some zoning districts.

I think it's important to remember that a conditional use is a use of land the City does intend to be an allowable use in that zoning district, just a use subject to additional standards and conditions described in the ordinance. A conditional use is not a prohibited use, it is a use that City Plans have determined is appropriate for a particular zoning district subject to conditions. In each of the proposed conditional use threshold changes in the ordinance amendment before you, staff have documented that the heights and densities are within the ranges indicated on the comprehensive plan.

State statutes govern (Wis. Stat. 62.23(7)(de)) govern the conditional use process which direct that conditions attached to a conditional use permit must be related to the purpose of the zoning ordinance, specified in the ordinance, and based on substantial evidence.

Because the conditional use process can introduce time delays and uncertainty in the development process, many developers will avoid projects that require a conditional use. This is particularly the case for smaller developers who are more thinly capitalized, as well as non-profit developers looking to acquire sites to build affordable housing.

Before any developer (market rate, affordable, non-profit) can submit a conditional use permit application on a site, they must secure some form of site control, usually through a signed contract or option to purchase. In addition, the preparation of a site plan and building plans as part of the conditional use process, when combined with potential revisions to those plans, can impose significant costs to developers with no guarantee of success. Design and architect fees, in addition to holding costs can range from $30,000 to well over $100,000 for complex projects. Small developers and/or non-profits don't usually have the capital or cash flow from existing projects to be able to take this risk. Even if they are successful in securing conditional use approval, time delays and holding costs have to be recovered somehow in rent from tenants. If a building doesn't pencil out financially, it won't be built.

The proposal to change some categories of multifamily buildings from conditional uses to permitted uses does not rezone these parcels to allow uses previously prohibited. The proposal does not create land uses that are inconsistent with the comprehensive plan. The proposed changes aim to implement the comprehensive plan by making some smaller multifamily housing more predictable and certain (by right), while still being subject to the density, height, and other requirements in the zoning ordinance.

Second, the proposed ordinance changes some of the density limitations on multifamily buildings in some zoning districts. It does this by reducing the amount of lot area required per dwelling unit. To take an example, the SR-V2 district, the proposed ordinance makes a modest change to densities, decreasing the required lot area per dwelling unit from 2,000 ft^2 to 1,500 ft^2. If we consider a 10,000 ft^2 lot in the SR-V2 district, under the current ordinance 5 dwelling units are permitted, but under the change 6.7 units would be permitted.

Even though the conditional use threshold in the SR-V2 is proposed to increase from the present 8-unit to 24-units, density controls would still restrict what is possible to build. To build a 24-unit building by right in the SR-V2 (under the proposal), a developer would still need to assemble a lot of 36,000 ft^2 because the ordinance requires 1,500 ft^2 of lot area per dwelling unit. The height limit of 3 stories/40 feet would also continue for this district from the existing ordinance. Any building that contained more than 24 units would remain a conditional use in this district, but the lot area per dwelling unit and the height limits are not waivable under the conditional use process.

For these reasons, I consider most of these proposed density changes and conditional use thresholds changes in residential districts to be modest at best. The density changes and the conditional use thresholds work together to create some additional opportunities for smaller-scale housing in residential districts. But large re-development projects in these districts would require rezoning of the parcel.

The second issue regards the potential for displacement under this proposal, with increased lands open to potential development or redevelopment. Although I could talk forever about what recent research tells us about the relationship between housing construction, affordability, and gentrification at the regional and neighborhood level, it would be more helpful to focus comments specifically to the potential for displacement because of these specific zoning changes.

Here, we want to split out two categories of proposed changes: those dealing with residential districts (SR-V1, SR-V2, TR-V2, TR-U1 and TR-U2) and those dealing with mixed-use/commercial districts. As the staff report indicates, the residential districts under consideration in this proposed ordinance change comprise only 5.3 percent of the city's land area. Many multifamily residential properties already exist on existing developed parcels. The concern is that developers might purchase existing Class-C (lower than market average rent per square foot) 4-unit and 8-unit buildings (for example) in some residential neighborhoods and redevelop the properties to market rate units, which would displace existing tenants.

The concern about displacement of existing residents in lower-rent older housing stock is a valid concern that requires careful thought. However, I will argue that careful analysis of these proposed zoning changes in residential districts suggests there will likely be little displacement potential of existing housing.

To demonstrate this, I took as an exercise what I would undertake if I were a market-rate developer looking to acquire enough land in the SR-V2 district (the math works pretty similarly in the other residential districts in this proposal) to build the 24-unit by-right that the proposed ordinance would permit. Again, recall that this would require acquiring a minimum 36,000 ft^2 parcel.

I selected for this exercise two areas of the city I am more familiar with where existing lower-cost housing exists in neighborhoods currently zoned SR-V2: Brentwood Parkway and Badger Road. Each of those streets has multiple existing 4-unit buildings that generally contain 2-bedroom units that can rent between $800-$950 per month. These buildings are older and have fewer in-unit and in-building amenities. This unsubsidized but less-unaffordable stock in older buildings raisese the concern of displacement due to potential redevelopment.

If I were a developer and wanted to acquire enough land to build a 24-unit by right in the SR-V2 district on either of those two streets, I would need to acquire 4 contiguous parcels on Badger Road,

or 3 contiguous parcels on Brentwood Avenue, given existing parcel sizes. I would need to buy out the existing owner(s), and the price per parcel would reflect the existing rent levels on the properties. Land acquisition costs (of existing buildings) to acquire enough parcels to get a 36,000 ft^2 parcel would be from $900,000 to $1.2 million if I use current assessed valuations. However, given the rent that these units currently generate, at current market cap rates, the acquisition costs might be closer to $1.5 million.

Demolition cost, site preparation, and the costs of new construction, combine to suggest that the all-in costs of land and construction for this project would range from about $5.5 million to $5.8 million for a 24-unit building. I honestly think that the lower end of the range: all-in costs could go for about $6 million.

The result of this simple pro forma analysis is that I would need to get somewhere around $1700-$1900 in rent per month on each 2-bedroom unit in the new building just to cover the debt service I would need to take on to build the building. As anyone who has done a market rent study knows, there really isn't any reasonable way that a market-rate developer could ever expect to get $1700 for a 2-bedroom in rent when all of the surrounding properties in the neighborhood charge significantly less.

Because of Madison's housing shortage, the rent commanded in the market for these existing older 4-unit and 8-unit buildings is high enough that redevelopment (given the density limits in these residential zoning districts even under the new proposal) would not generally be economically viable. To even approach economic viability, a developer needs to acquire a much larger lot and seek a rezoning request to much higher densities. In that case, a rezoning request is a discretionary review by Council or the Plan Commission, where concerns about affordability and displacement can be part of the discussion.

In the SR-V2 district under the proposed ordinance change, a developer who wanted to build a building with more than 24-units would still be required to seek a conditional use permit. But they would still be required to buy an even larger lot area because the 1,500 square feet of lot area per dwelling unit still is a binding requirement and the height limit is still 3 stories.

In my opinion, these modest changes to density limits and conditional use thresholds will not significantly lead to market development pressures that result in displacing existing rental housing units, given the height and lot area requirements that remain and the existing rent levels for existing housing. Large-scale market rate redevelopment projects are extremely unlikely in existing residential districts without rezoning to much higher densities.

Likewise, the proposed changes for the mixed use and commercial districts will unlikely lead to significant displacement of existing housing. As the staff report points out, many of the parcels in these districts that have seen significant redevelopment (including housing) in the past years. But these auto-oriented commercial uses that have redeveloped don't usually have existing housing.

Third, the issue was raised regarding residential-only buildings in mixed use and commercial zoning districts, specifically the NMX, TSS and CC-T districts. Here, the proposed ordinance would allow small-scale residential-only buildings (i.e., without ground-level commercial uses) as a permitted right rather than as a conditional use. Again, the overall height and density of mixed-use buildings (housing + commercial) is not significantly changed.

In the Neighborhood Mixed Use district, the proposed change (substitute amendment) would allow a 12-unit residential-only building by right. Anything with more units would still be a conditional use. The lot area per dwelling unit is reduced to 500 square feet per unit. This would mean that, to build a 12-unit residential-only building by-right, a developer would need to acquire a parcel at least 6,000 square feet in size.

The concern is that, by allowing residential-only buildings by right which are not required to include retail uses, neighborhoods might lose existing retail and/or be unable to acquire new retail uses in NMX districts.

But, to completely thwart the non-residential requirements of the ordinance, a developer would have to acquire enough land to stack multiple 12-unit buildings (each as separate building) next to each other, all on separate parcels. Because zoning regulates parcel by parcel, each separate parcel could only do a 12-unit building by right, anything more would still trigger a conditional use process. These couldn't be one building, because each parcel can contain only one principal use.

If a developer acquired enough land to build something more than a 12-unit residential-only building, they would still need to get conditional use approval.

To illustrate how this would play out, I examined some of the NMX parcels south of Northport drive, north of Troy Drive and east of the Culvers. (I may or may not be a frequent customer of this Culvers.) Combined, these non-Culvers parcels are about 55,000 square feet. A developer could conceivably buy all 3 parcels, subdivide into 9 separate parcels, and build 9 individually separate 12-unit buildings, one on each parcel under this proposed ordinance to eliminate all retail requirements. But this is not anywhere close to economically viable as a development activity. Given the conditional use threshold in the substitute amendment of 12-units for residential-only projects, displacement of viable neighborhood retail use is unlikely.

My analysis would produce similar results for the 24-unit thresholds in the TSS district and the 36-unit threshold in the CC-T districts. For any redevelopment project to be economically viable without subsidy (such as TIF), a developer needs to amortize fixed costs of a project over more units. A 36-unit residential-only-by-right building in the CC-T district would still require an 18,000 square foot parcel.