

M E M O R A N D U M

Date: November 17, 2025

To: Plan Commission, City of Madison

From: Alex Saloutos

Re: **Applicant Fails to Provide Substantial Evidence That Standard 5 Is Met
West Wilson Street, Conditional Use Permit, Legistar ID No. [89236](#)**

I write to urge the Plan Commission to deny the conditional use application for 139 West Wilson Street (Legistar ID No. 89236, Agenda Item 10, November 17, 2025). The applicant has not provided substantial evidence that Standard 5 is met.

Summary

The staff report acknowledges inadequate loading, unprecedented density, and documented off-site impacts, then recommends approval because “loading zones are not required by the Zoning Code.” This substitutes what is legally permissible by right in the UMX district for substantial evidence that a conditional use meets approval standards. Conditional uses are special uses requiring heightened scrutiny precisely because they are not permitted by right. Staff treats the applicant’s permitted use entitlements (zero parking allowed, no loading required) as if they constitute evidence that the conditional use standards are met. The statutory requirement is that the applicant provide substantial evidence that all standards are or will be met before Plan Commission approval. Staff’s equivocal language (“could find,” “it is possible”) and reliance on post-approval conditions reveal the absence of substantial evidence. Without substantial evidence that this site design adequately serves 320 units on 66 feet of frontage with zero parking, Standard 5 is not met.

The Statutory Requirement

Wisconsin Statutes and MGO 28.183(6) requires that:

The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.

The Plan Commission’s role is to evaluate whether that evidence exists—not to manufacture it. The law does not ask: “Can the Commission find a way to approve this?” The law requires: “Has the applicant provided substantial evidence that all of the standards are met?” Staff’s report inverts this burden.

Conditional Uses vs. Permitted Uses: A Critical Distinction

Conditional uses are not permitted by right. They require Plan Commission approval precisely because they demand heightened scrutiny of site-specific impacts. The zoning code permits many things by right in the UMX district—including buildings with zero parking and no loading zones. But when an applicant seeks a conditional use—here, a building exceeding six stories and exceeding the Capitol View height limit—the inquiry changes. The question is no longer “what does the code allow by right?” The question becomes: “Has the applicant provided substantial evidence that this specific proposal, at this specific site, meets all conditional use standards?”

Staff appears to conflate these two distinct inquiries. Throughout the report, staff invoke what the code permits by right as if it were sufficient to determine whether the conditional use standards are met. It does not.

Standard 5 and the Applicant's Burden

Standard 5 requires: "Adequate utilities, access roads, drainage, internal circulation improvements for pedestrians, bicyclists, public transit and vehicles, parking supply and other necessary site improvements have been or are being provided." The question before you: Has the applicant provided substantial evidence that the site improvements are adequate for 320 units on a 66-foot frontage with zero parking?

Staff's Sophistry: Permitted Use Entitlements Are Not Substantial Evidence

Staff's logical framework goes like this: (1) Loading zones are "not required by the Zoning Code" (p.5); (2) Similar arrangements are "common" in other buildings (p.5); (3) Spaces "could nonetheless be used" even though they don't meet code definitions (p.5); (4) Therefore: Commission "could find" Standard 5 met.

This reasoning substitutes what is legally permissible by right for substantial evidence of adequacy. That zero parking is permitted by right in the UMX district does not equal evidence that it's adequate for this conditional use. That loading zones aren't required by right does not equal evidence that what's provided is sufficient for 320 units on 66 feet of frontage. That violations are common elsewhere does not mean that this site won't create problems.

Staff treats permitted use entitlements—what any property owner can build by right—as if they constitute substantial evidence that conditional use standards are met. But conditional uses require heightened scrutiny precisely because they are not permitted by right. The applicant must prove all standards are or will be met with substantial evidence. Staff excuses the lack of proof by invoking code minimums.

Where Is the Applicant's Evidence?

What substantial evidence has the applicant submitted that this site design is adequate? The application materials show site plans with loading area dimensions, turning templates for vehicle access, and bicycle parking quantities. What's missing: traffic impact analysis for 300+ residents on 66-foot frontage; loading demand study for building of this density; operations plan for move-ins/outs, deliveries, rideshare, refuse; evidence that parking spaces which don't meet code requirements for loading zones adequately serve 320 units; mitigation strategy for documented cycle track problems. The applicant has provided drawings. They have not provided substantial evidence that standard 5 is or will be met.

Staff's Own Analysis Documents Inadequacy

The staff's findings clearly reveal the problem. The density analysis shows 800+ dwelling units/acre—over 2x any comparable project—with 60% more bedrooms/acre than the next densest project, on 66 feet of frontage (half to one-sixth of similar projects), with all access on one street frontage and no secondary access (p.4-5).

Site constraints are severe. A maximum of three vehicles can use the loading area simultaneously; other vehicles are blocked from entering/exiting; vehicles must back out into Wilson Street traffic; and no parking means increased delivery/rideshare demand is expected (p.5).

The project's off-site impacts include Traffic Engineering's warning of "high usage of delivery and rideshare in the area," the finding that the site "will contribute to delivery and rideshare vehicles using the Wilson Street cycle track as a loading zone," Traffic Engineering's admission it has "few solutions," and the neighborhood's expressed concerns with current delivery usage of the Wilson cycle track (p.5-6).

Staff's own conclusion: "staff have some concerns and questions regarding the adequacy of loading" (p.5). Then, the staff says: "loading zones are not required by the Zoning Code for this use at this location" (p.5). This is the sophistry. Staff acknowledge inadequacy, then invoke what the code permits by right to excuse it. But the applicant is not seeking approval of a permitted use. They are seeking approval of a conditional use, which requires significant evidence that the conditional use standards are met.

The Comparison Table Tells the Story

Staff's own data (p.4) demonstrates this project is an extreme outlier:

Project	Units	Frontage	Units/ft	Parking	Loading Zones
139 W Wilson	320	66 ft	4.8	0	0
131 W Wilson	263	132 ft	2.0	257	2
121 E Wilson	337	264 ft	1.3	345	1
145-151 W Wilson	206	396 ft	0.5	237	1
149 E Wilson	127	99 ft	1.3	127	0

*Applicant provides 3 parking spaces that don't meet code requirements for loading zones

The applicant wants to concentrate 2-4x more units per foot of frontage than any comparable project, with zero parking and zero code-compliant loading zones. Staff's table lists '3' in the loading column for 139 W Wilson, but staff's own report admits that these spaces "do not meet the dimensional requirements to be considered loading zones per the Zoning Code" (p. 5). Only one other project—149 E Wilson with 127 units—has zero loading zones. This project proposes 320 units with no actual loading zones. Where is the evidence that this is adequate?

Conditions Cannot Cure Missing Evidence

Staff recommends approval "subject to conditions" including Condition #2 (Submit management plan for move-ins, deliveries, refuse, p.8); Condition #37 (Work with Traffic Engineering on curb management, p.12); Condition #63 (Submit TDM Plan, p.16). These conditions require the applicant to provide, after approval, the evidence that should have preceded it. This inverts the statutory framework.

The statutory requirement is that the applicant provide substantial evidence that all standards are or will be met for Plan Commission approval. Conditions can impose requirements on an adequate project. They cannot make an inadequate project adequate retroactively. Moreover, these conditions require the applicant to submit, after approval, the very studies and plans that should have been submitted before approval to demonstrate adequacy for Plan Commission approval in the first place.

Staff's Burden-Shifting Language

Throughout the report, staff uses conditional language that shifts the burden to the Commission: "staff believes the Plan Commission could find standards...met" (p.6); "staff believes it is possible that the Plan Commission find" (p.8); "staff believes the Plan Commission can find" (p.7). This is not the legal standard. The question is not: Can the Commission strain to find a basis for approval? The question is: Has the applicant provided substantial evidence that all of the standards are met? The staff's equivocal language ("could," "possible," "can") indicates the absence of substantial evidence.

The Student Housing Comparison

Staff compared this to 10 student-oriented projects (p.5). Of those 10 projects with similar low parking, 7 of 10 included dedicated loading areas with pull-offs, loops, or turn-arounds; only 1 of 10 required backing into traffic like this site; only 1 of 10 had no on-site loading. Even among low-parking student buildings, this proposal is substandard. Where is the applicant's evidence that their outlier design is adequate?

What "Substantial Evidence" Requires

The Wisconsin Supreme Court requires conditional use findings to be based on "substantial evidence"—not speculation, not assumptions, not "it might work." Substantial evidence means studies, analyses, expert testimony, operational data from comparable projects, traffic impact assessments; demonstrated adequacy, not theoretical possibility. "Common elsewhere" is not substantial evidence. "Code doesn't prohibit it" is not substantial evidence. "The code permits zero parking by right" is not substantial evidence. "Conditions might help" is not substantial evidence. What specific evidence has the applicant submitted proving that 320 units can be adequately served by this site design?

Conclusion

Staff's analysis reveals: (1) extreme density unprecedented in comparable projects; (2) constrained frontage half to one-sixth of similar developments; (3) no parking increasing delivery/service demand; (4) inadequate loading by staff's own admission; (5) documented off-site impacts to Wilson cycle track; (6) Traffic Engineering confirmation of problems with "few solutions." Staff then concludes: "Plan Commission could find Standard 5 met."

This conclusion rests entirely on what the code permits by right (zero parking allowed, no loading zones required), the hope that conditions might work, and burden-shifting to the Commission. But conditional uses are not permitted by right. They require substantial evidence that all standards are or will be met to be approved. The applicant has provided site plans showing dimensions. They have not provided a traffic analysis, a loading demand study, operational evidence, or substantial evidence of adequacy.

Recommended Motion

If the Plan Commission finds the applicant has not met their burden, the following motion would appropriately deny the application based on the failure to provide substantial evidence for Standard 5:

I move to deny the conditional use application for 139 West Wilson Street. We find the applicant has not provided substantial evidence that Standard 5 is met. The applicant has not provided substantial evidence that adequate site improvements and internal circulation will be provided to serve 320 dwelling units on a 66-foot frontage, with no on-site parking.

Staff's own analysis documents unprecedented density, extreme constraints on vehicle access and loading operations, admitted concerns regarding adequacy of loading facilities, documented off-site impacts to the Wilson Street cycle track, and confirmation from Traffic Engineering that problems exist with few solutions.

The applicant's entitlement to build at this density with zero parking under the zoning code does not constitute substantial evidence that the site design is adequate. Without substantial evidence provided by the applicant, we cannot make the required finding under MGO 28.183(6)(5).

Conversely, if the Plan Commission finds substantial evidence that Standard 5 is met, they should identify what that evidence is—specifically, what studies, analyses, or operational data the applicant has submitted demonstrating that 320 units on 66 feet of frontage with zero parking and zero code-compliant loading zones can be adequately served by this site design.

The applicant must provide substantial evidence that all standards for a conditional use permit are met. That burden has not been met.