



PREPARED FOR THE PLAN COMMISSION

**Project Address:** 425 West Washington Avenue (District 4 - Ald. Verveer)

**Application Type:** Conditional Use Alteration

**Legistar File ID #** [38151](#)

**Prepared By:** Kevin Firchow, AICP, Planning Division  
Jay Wendt, Principal Planner  
Katherine Cornwell, Planning Division Director

Report includes comments from other City agencies, as noted

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The completed mixed-use building at 425 West Washington Avenue includes several modifications that are not consistent with the approved plans. The applicant, John Sutton (on behalf of owner, Eric Minton), requests approval of a conditional use alteration to approve these “as-built” improvements. This request is subject to the approval standards for Conditional Uses [MGO Section 28.183] and the Downtown Design Standards of 28.07(3) and should also be reviewed against the advisory Downtown Urban Design Guidelines which apply to UMX (Urban Mixed Use) zoned properties.

### **Background and Project History**

The project, “Washington Plaza,” was approved as a demolition permit, conditional use and zoning map amendment in September 2013. (Legistar Files [30899](#), [30974](#) and [29495](#)). The project is a five-story mixed-use building with 50 apartment units and approximately 7,700 square feet of commercial space. Commercial space includes a vision clinic and a fitness center. The project was originally reviewed by the Urban Design Commission, Plan Commission, and Common Council. The approved conditional use allowed for the development of an additional story beyond the “base height maximums” established in the Zoning Code [M.G.O. Section 28.071(2)]. One required finding for such an approval is that “The excess height allows for a demonstrated higher quality building than could be achieved without the additional stories.” Please see the attached original staff report for further information.

After the Common Council approval, staff worked closely with the applicant and is of the opinion that extensive coordinating efforts were provided to complete the sign-off process. Among the challenges with this project’s sign-off were many proposed alterations from the previously approved plans. Several modifications were discussed and approved as minor alterations, not including those requested with this application. Coordinating efforts also included multiple applicant meetings and other discussions with the District Alder and Neighborhood Association representatives. Among those that worked closely with the applicant was the Zoning Administrator who believes that it was clearly communicated to the applicant that plans be constructed in accordance to approved plans.

Shortly after Certificates of Occupancy were issued, the applicant stated to the Planning Division Director that changes were made to the location of several HVAC vents without City approval. At no point during the sign-off discussions did the applicant mention changing the number and location of HVAC vents, even though several other alterations were discussed. As described below and in the attached materials, several more vents are now located on the outward-facing walls along the side and rear building facades. Upon being notified of this issue, the Planning Division Director did not believe these changes should be approved as an administrative minor alteration. Formal enforcement actions have been taken by the Zoning Administrator to bring the project in conformance with approved plans. In an effort to address these issues, the applicant has made this application to the Plan Commission to have the “as-built” condition approved.

## Proposed Alterations

In addition to the HVAC vent alterations, the letter of intent lists several other requested modifications. These include the following and the below numbers correspond to those identified in the applicant's [Letter of Intent](#).

- |  |   |
|--|---|
| 1A. Rooftop Railing  | 2E. Security cameras  |
| 1B. Additional Equipment for back-up generator required by building code | 2F. Relocated MG&E required transformer                             |
| 1C. Building code limitation on openings allowed per floor               | 3A. 6-foot wooden fence to screen headlights                        |
| 1D. Fire Department required hose connection                             | 3B. Replace ground cover plantings with paver terrace patio         |
| 2A. Relocated HVAC Vents   | 3C. Add metal angles to project masonry at garage entrance          |
| 2B. Additional HVAC Vent for Commercial Space                            | 3D. Replace and add masonry retaining wall                          |
| 2C. Intake and exhaust required for design                               | 4A. Window could not be installed due to structural column conflict |
| 2D. Dryer vents located where structure allowed access.                  |   |

While the Planning Division is very concerned that multiple items were not constructed in accordance to approved plans, some of the proposed alterations (including revised retaining walls, front landscaping changes, and other code-required improvements) could have likely been approved administratively as design-progression modifications or minor alterations, should they have been previously identified and submitted as such.

Staff has identified the following modifications as benefiting from additional discussion.

### **Privacy Fence and Upper Story Railing (Items 1A and 3A)**

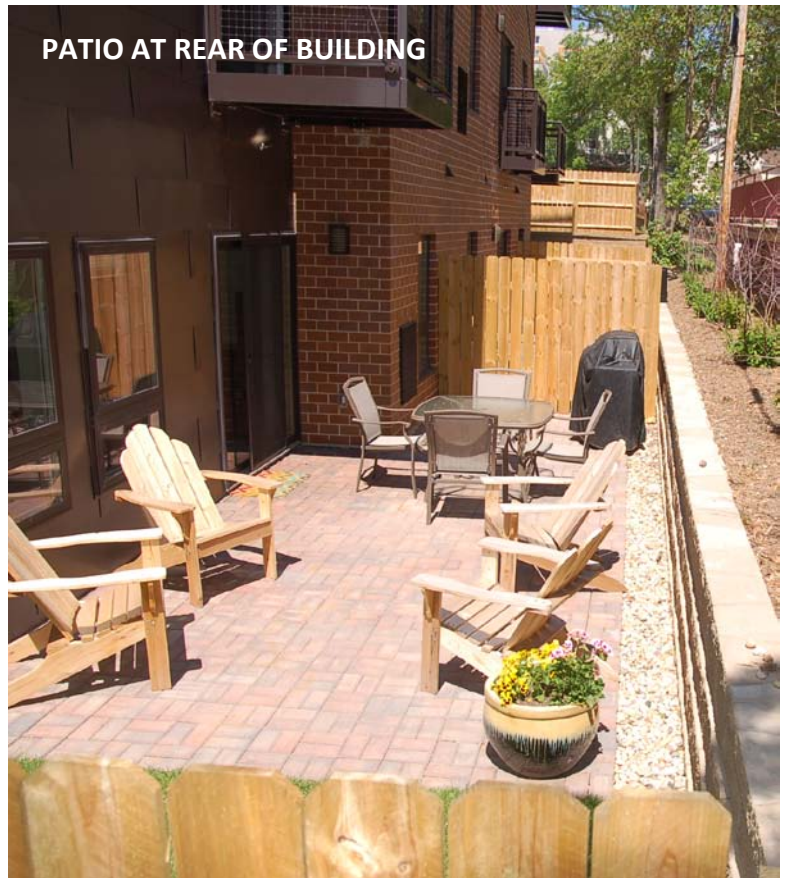
The installation of the wooden privacy fence is believed to be more of a suburban residential character and less appropriate in character for this site. Similarly, the Planning Division has concerns on the appearance of the wooden roof-top railing, which is relatively visible from the street. While having this railing is a building code requirement, it is not required to be designed in its current form that was never reviewed by staff. The existing railing is also believed to be too residential and suburban in character. Should these have been submitted for staff review, staff would have recommended alternative designs be pursued.



**Rear Patio Modifications**

At the rear of the property (see right photo), a previously approved landscaped area has been constructed as a hard-scaped patio area for tenants. The area is covered with brick pavers. While this provides a nice tenant amenity, the Zoning Administrator has requested confirmation statistics that the project still can meet the required lot coverage requirements. The zoning code requires that lot coverage not exceed 90%. That includes buildings, accessory structures and all paved areas (with the exception of sidewalks no wider than five feet). The lot coverage requirement cannot be waived by the Plan Commission. A condition of approval is recommended that the applicant provides calculations showing code compliance.

Staff notes that most of this area sits above the subterranean parking garage. Provided this change can meet the applicable zoning requirements, the Planning Division would have supported this improvement should it have been submitted as a minor alteration.



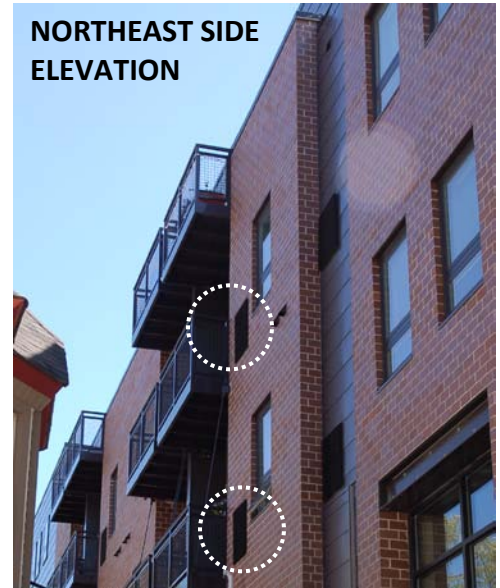
**HVAC Wall Vents**

The Planning Division believes the most significant alteration relates to the revised HVAC vent locations. Plans originally had most of these vents located within balcony recesses. As noted in the below table, a majority of these have been relocated to outward-facing walls. In addition, the applicant notes that an additional HVAC vent was required to serve the commercial space. A summary of relocated vents is below:

	<b>Approved</b>	<b>As-Built</b>
Front (Northwest Elevation)	None	None
Rear (Southeast Elevation)	5 HVAC Vents	15 HVAC Vents
Side (Southwest Elevation)	3 HVAC Vents	19 HVAC Vents
Side (Northeast Elevation)	2 HVAC Vents	18 HVAC Vents

The new and relocated vents are labeled as “2A” and “2B” on the applicant’s attached plans. The applicant states that these vents did not fit within the allowed balcony space and had to be relocated. At the time of report writing, the applicant has not shared what the cost implication would be to reconstruct these features in accordance with approved plans. Staff is also providing copies of the approved elevation drawings in the Commission’s materials. Unless specifically depicted, the HVAC vents were previously represented to be located within balcony recesses. In the below photos, examples of the non-approved, outward-facing vents are circled.





Staff notes that while there are multiple relocated vents on the building’s sides and rear, none have been added to the front façade. The front façade is clearly the most visible façade. In staff’s opinion, the northeast side of the building has limited visibility from the street. The southwest side, adjacent to the five-story office building is currently more visible due to orientation of that site. The Downtown Plan identifies this site as a “Potential Redevelopment/Infill Site” though there are no known plans to redevelop that property at this time.

This project was approved with an additional “bonus” story. As such, the “excess height” standard applied to this project and required a finding that the excess height allows for a demonstrated higher quality building than could be achieved without the additional stories. The Planning Division believes that aesthetically, the project better aligns with that standard as previously approved. Similarly, the Downtown Plan recommends that additional stories are to be used as a tool to encourage and reward buildings of truly exceptional design that respond to the specific context of their location and accomplish specific objectives defined for the area. The Planning Division would have recommended these vents be relocated should they have been presented like this in original plans.

***Approval Standards***

This project is subject to the Conditional Use Approval Standards of Section 28.183(6) which states the Plan Commission shall not grant a condition use unless it finds that all of the approval standards are met.

As previously stated, the requested alterations were previously constructed without prior discussions with staff or formal approvals and are being requested after the fact. For that reason, the Planning Division is very concerned about establishing a precedent for similar situations in the future in which projects are not developed in accordance to approved plans. This is especially concerning for issues, such as the relocated HVAC vents, that the Planning Division believes result in less desirable outcomes. Staff believes that this relates to Conditional Use Standard 4 which states that “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.”

Other concerns relate to the revised design, which in many ways is less desirable than what was approved. This raised questions on Conditional Use Standard 9 related to “creating an environment of sustained aesthetic desirability.” Staff notes that this standard allows the Plan Commission to refer aesthetic considerations to the Urban Design Commission for comment and recommendation in order to find the standard is met. This relates to not only the HVAC vent issue, but also the character of the wooden screen fence and upper story railing. Staff also question whether conditional use standard 14 regarding additional height would be met.

This project is also subject to the Downtown Design Standards of 28.07(3) and should also be reviewed against the advisory Downtown Urban Design Guidelines which apply to UMX (Urban Mixed Use) zoned properties. Neither these standards nor the guidelines provide specific guidance on HVAC penetrations.

### ***Conclusion***

The applicant seeks approval of a conditional use alteration to approve modifications that were not constructed in accordance with approved plans. While many other alterations were worked through with staff during the sign-off process, the alterations requested here were not ever discussed with the Planning Division or presented as formal alterations until after construction was complete.

Approved conditional uses are required to be constructed in accordance with approved plans. This is not just the expectation of staff, but also is a requirement of the Zoning Code. In this case, staff worked very closely with the applicant prior to the issuance of permits to help ensure building plans were consistent with Plans reviewed by the Urban Design Commission, Plan Commission, and Common Council. It is of significant concern that the project was not constructed in accordance with these plans. Further, as this project was granted conditional use approval for an additional story, close design consideration was given to this project to ensure it could meet the applicable standards.

There are several alterations requested for Plan Commission approval, as listed in the applicant’s letter of intent. The most concerning to staff is the revised HVAC vent locations. In recent years, the Planning Division has worked closely with many developers to utilize alternative systems with fewer wall penetrations or to minimize their appearance on the facades. Throughout this process, it was communicated to staff and reviewing bodies that a majority of these penetrations would be located within building recesses and not outward-facing. The applicant indicates that during construction it was determined that the vents did not fit within the allowed width and had to be relocated, but did so without any approvals or communication with staff. Staff does not believe that the approval standards related to “Normal and Orderly Development,” are met and have significant concerns that standards related to “Sustained Aesthetic Desirability” and “Additional Height” would still found to be met with the relocated HVAC vents. To a lesser degree, staff has some concerns about the appearance of the screening fence and roof-top railing as noted in this report.

If the vents, as constructed, had been proposed in the original plans, the Planning Division would have concluded that the conditional use standards for excess height had not been met. The Planning Department would have suggested that to meet the standard the applicant would have to submit new plans reducing the number of vent penetrations and locating them in less conspicuous places. Unfortunately, just the opposite has happened here. The applicant submitted plans to satisfy the standards and then, without any input from the Planning Department, built the building in a way that the Planning Department believes no longer satisfies the standards, despite being told very clearly to build the plans as they were approved.

The Planning Division Director has indicated she would not approve this as an administrative minor alteration and remains very concerned about the modifications and the project not being constructed in accordance with approved plans.

## **Recommendation**

### **Planning Division Recommendation** (Contact Jay Wendt, 267-8741)

The Planning Division does not believe that the standards for conditional uses are met and recommends that the Plan Commission **Place on File** the requested alteration for the relocated HVAC vents (identified in the applicant's materials as alteration "2A.") The Plan Commission is required to state the findings of fact listing the standards that have not been met and the reasons such standards(s) were not met. The Planning Division does not believe Conditional Use Standards 4, 9, 14 are met with this requested alteration. Alterations regarding the roof-top guard rail and wooden privacy fence (1A and 3A in the applicant's materials, respectively) should be carefully considered carefully against the standards.)

While the Planning Division has significant concerns over the applicant installing the other improvements prior to receiving approvals, staff believes such alterations could be found to meet the applicable standards and are recommended to be **Approved**.

**Recommended Conditions of Approval:** Major/Non-Standard Conditions are Shaded

### **City Engineering Division** (Contact Janet Schmidt, 261-9688)

1. The applicant shall submit, prior to plan sign-off, digital PDF files to the Engineering Division (Jeff Benedict or Tim Troester). The digital copies shall be to scale, and shall have a scale bar on the plan set. (POLICY and MGO 37.09(2))

PDF submittals shall contain the following information:

- a) Building footprints.
- b) Internal walkway areas.
- c) Internal site parking areas.
- d) Lot lines and right-of-way lines.
- e) Street names.
- f) Stormwater Management Facilities.
- g) Detail drawings associated with Stormwater Management Facilities (including if applicable planting plans).

### **Traffic Engineering Division** (Contact Eric Halvorson, 266-6527)

This agency did not submit a response to this request.

### **Zoning Administrator** (Contact Matt Tucker, 266-4569)

2. That the applicant demonstrate compliance with the 90% maximum lot coverage requirement in the UMX district 28.06(3).

**Fire Department** (Contact Bill Sullivan, 261-9658)

3. Item 1A, the railing is required by the building code due to proximity to roof edge.

**Water Utility** (Contact Dennis Cawley, 261-9243)

4. This property is not located in a wellhead protection district. All wells located on this property shall be abandoned if no valid well operation permit has been obtained from the Madison Water Utility. The Water Utility will not need to sign off the final plans, and will not need a copy of the approved plans.

**Parks Division** (Contact Kay Rutledge, 266-4714)

This agency did not provide comments for this request.

**Metro Transit** (Contact Tim Sobota, 261-4289)

This agency did not provide comments for this request.