

**From:** [Evers, Tag](#)  
**To:** [Ledell Zellers](#); [nicole.solheim@gmail.com](mailto:nicole.solheim@gmail.com); [Duncan, John](#); [Field, Derek](#); [Figueroa Cole, Yannette](#); [mcsheppard@madisoncollege.edu](mailto:mcsheppard@madisoncollege.edu); [klanespencer@gmail.com](mailto:klanespencer@gmail.com); [sundevels98@yahoo.com](mailto:sundevels98@yahoo.com)  
**Cc:** [Plan Commission Comments](#)  
**Subject:** Addendum - Re: 1609 S. Park St (Legistar 78428)  
**Date:** Monday, August 28, 2023 1:18:08 PM

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Dear Plan Commission Members,

Please accept this addendum to my comments:

In addition to PC Approval Standards #4 and #7, there are two others that should be considered.

*Standard #5: Adequate utilities, access roads, drainage, parking supply, internal circulation improvements, including but not limited to vehicular, pedestrian, bicycle, public transit and other necessary site improvements have been or are being provided.*

The proposed drive-thru facility in the project plans does not represent an "improvement" of internal circulation. I realize Traffic Engineering staff approved the plan. Traffic Engineer Yang Tao indicated staff are pleased the curb cut at 1609 S. Park has been removed and that the pedestrian walk up included in the original plans has been dropped. However, the current plan privileges auto access at the expense of pedestrian safety, a factor which would come into play should Starbucks add pedestrian access to their operation in the future.

*#1. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.*

Cities across the country are beginning to regulate drive-thru facilities on the basis of public health and safety. Please note this [article](#) about current efforts to ban new drive-thru facilities in an area of Salt Lake City. In 2019, [Minneapolis amended](#) their code to ban new drive-thru facilities throughout their entire city. This increasingly restrictive approach is due in part to [scientific evidence](#) regarding [the harm to human health](#) from [vehicle emissions and air pollution](#) resulting from [trip generation and idling vehicles](#).

Consequently, with four of the approval standards, 1, 4, 5 and 7, not being met, I humbly request that you place this application on file. Not on file without prejudice, but on file, period.

Sincerely,

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Tag Evers

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**Cc:** [Plan Commission Comments](#)  
**Subject:** 1609 S. Park St (Legistar 78428)

Dear Plan Commissioners,

Thank you for the opportunity to comment on item 18 on your agenda for Monday's August 28 meeting.

**1609 S. Park St – Conditional use for a vehicle access sales and service window to allow a restaurant to be converted into a drive-thru only coffee shop.**

In contrast to the other Items I've commented on, this proposal is far more complicated. Whereas the proposed mixed-income, mixed-use building at 1233 Regent St has been widely embraced by nearby residents, I'm not aware of a single resident in the neighborhoods adjoining 1609 S. Park who is welcoming a drive-thru only coffee shop at this location.

Granted, a portion of this opposition is due to the fact some folks don't like Starbucks, the proposed coffee shop in question, specifically objecting to their [troublesome labor practices](#) and the irony that they'd be operating across the street from the Labor Temple.

Others have opposed Starbucks by referring to the recently adopted [South Madison Plan](#), particularly the guiding principles that speak to A) anti-displacement and gentrification, B) community wealth building. In brief, Starbucks has long been regarded as a [harbinger of gentrification](#). Instead of a national chain with spotty labor practices, many residents in South Madison neighborhoods like Bay Creek and Capitol View prefer to see the South Park Corridor be a place where local businesses could thrive and thereby function as bases for community wealth building.

I'm aware that Starbucks's offensive labor practices are not germane to the Galway CUP application. However, resident concerns rooted in the South Madison Plan are worth noting given the Intro to CU approval requires the Plan Commission give "due consideration" to the Comp Plan and applicable neighborhood plans.

But my concerns run deeper and speak to the approval standards themselves. First of all, there is basis for finding that this application fails Standard #7. The applicant is seeking a conditional use to revive an expired conditional use. Contrary to staff interpretation, the applicant currently has no CU in standing. When a CU expires, the applicant seeking to restore that use is subject to the ordinance in play at the time of application, not to the ordinance that was in play when the use was previously permitted.

Common Council adopted the TOD Overlay District on January 17, 2023. Had the applicant applied for a conditional use permit to reauthorize the expired use (i.e., the drive-thru window and drive lane that runs in front of their building) prior to January 17, 2023, Plan Commission could rightly determine that Approval Standard #7 -- *The conditional use conforms to all applicable regulations of the district in which it is located* was met.

Staff is correct in stating the building hasn't changed sufficiently to trigger TOD site standards for buildings. The standards subject to review in instances of new buildings or major expansion are explicitly stated in MGO [28.104\(7\)](#):

- a) *Maximum Principal Building Setbacks*
- b) *Entrance Orientation*
- c) *Maximum Number of Stories and Height.*

The ordinance makes it clear that this applies only to new buildings or the portion of the building that is expanded. The language in 28.104(7), in other words, is all about buildings. It does not speak to uses. And it certainly would not be the basis for determining that other portions of the revised ordinance are null and void when it comes to a conditional use application to reauthorize an expired conditional use.

This is important because the next clause, MGO 28.104(8) is about Site Standards for Automobile Infrastructure. The TOD Overlay District language in this section is quite clear and is not conditioned by the previous clause:

*28.104(8)(b) Automobile parking, loading, drives, drive aisles, driveways, vehicle access sales and service windows and drives, gas pumps, gas station canopies, car wash vacuum stalls and electric vehicle charging facilities:*

1) *Shall not be allowed between the primary street-facing façades and the primary public or private street.*

This is currently the law, firmly established earlier this year. Had the applicant sought a conditional use to revive their expired use, i.e., their vehicle access sales and service window and drive, prior to January 17, 2023, there'd be no question that Standard 7 was met. But the ordinance was changed and approving this conditional use now clearly does not "conform to all applicable regulations" within the TOD Overlay district where it is found.

There is another Approval Standard that is in question, and that's No. 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 drive-thru access as noted in the application involves multiple parcels along the critically important South Park Corridor. The staff report recognizes this concern and suggests a condition of approval would be sufficient, one that "required reciprocal easements and agreements including, but not limited to, access and parking" such that these "not preclude future development on 1605 S. Park from complying with the maximum setback in the TOD District." The staff report suggests that staff be allowed to determine if these agreements would negatively impact future development, removing the approval decision from Plan Commission.

I encourage you to retain the approval authority and not delegate this to staff. Staff has stated they do not believe the easement would "substantially impact future development of 710 West Wingra and 1605 South Park Street." However, the issue is left open as to what would in fact "substantially impact future development" and what would merely "impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district."

This is too important of a matter to bypass a rigorous review process. The City is directing nearly \$100 million for development in South Madison. The South Madison Plan, adopted as part of the Comprehensive Plan, makes clear that much of that development is targeted for the South Park Corridor.

The South Madison Plan and the Comp Plan recognize the need for more housing. As I indicated at the beginning of my comment, residents have stood on the guiding principles articulated in the South Madison Plan as a basis of opposing this project. I therefore urge you to be cautious in reauthorizing a CU that runs counter to clearly articulated principles in the applicable neighborhood plan.

It would a tragic waste if future development of the parcels in the 1600 block of South Park St. and around the corner on West Wingra Dr. were thwarted by a drive-thru only business that is contrary to the letter and spirit of the TOD Overlay District ordinance. Reauthorizing a CU that no longer complies with all the regulations in the district would set a bad precedent, one that is backward-leaning in effect, ignoring the forward-facing policy approach embodied in the TOD Overlay District ordinance.

Allow me, please, to refer to Linda Lehnertz's second letter to you:

"Per the revised letter of intent dated August 23, 2023 the coffee shop would be a drive-thru only location with no walk-up service. In discussing the change with the applicant they noted that the walk-up service was removed due to potential pedestrian-vehicle conflicts." (Page 3 of the Staff report.)

- "Plan Commission is being asked to approve a drive-thru coffee shop, not a coffee shop with a drive-thru. - A coffee shop is a permitted use, a drive-thru is an accessory use which requires conditional use approval. An accessory use is a "use on the same lot with, and of a nature customarily subordinate to, the principal use or structure, and serving the occupants of the principal use or structure." MGO 28.211 (emphasis added) - The drive-thru will not be subordinate to the principal use. Rather, the drive-thru will be the principal, and only, use.

- "Even though Starbucks will not have walk-up service, the provisions of MGO 28.151 still apply. In particular: "Site design shall accommodate a logical and safe vehicle and pedestrian circulation pattern." - Unless Plan Commission restricts the use to drive-thru only, Starbucks would be free to add walkups in the future on a site where even the applicant recognizes potential conflicts. (The letter of intent addendum

says: "Crosswalks, and enlarged hardscape remain in design to provide flexibility for Starbucks to potentially include walkups in the future.") - Starbucks could close and a new drive-thru, such as McDonalds, open. Assuming that the drive-thru use did not cease for more than a year, Plan Commission would have no say in the drive-thru use, including whether pedestrians had safe access."

I cite these paragraphs to note that the "vehicle access sales and sales service drives" included in the conditional use application have changed substantially from what once had legal standing in the expired conditional use. You are being asked to approve a "drive-thru only" coffee shop, not a coffee shop with a drive-thru. When Steve Doran met with the Bay Creek neighborhood association and the South Madison Planning Council, he assured residents, who were asserting their preference for projects that favored walkability in their neighborhoods. that pedestrian walk-up business would be allowed. That was changed just recently in the Letter of Intent Addendum dated August 23. Now, no pedestrian access or walk-up business will be allowed, which is probably a good thing, given the possibility for pedestrian/vehicle conflicts. But that change arguably changes the use, one that is barely recognizable from its accessory function in the old Arbys to the new principal and sole function supporting Starbucks drive-thru only operation.

There are other issues of concern, namely this notion that the proposed canopy is sufficient to meet the requirement that the drive-thru be under the building. (See Ms. Lehnertz's original comment for evidence this was not understood to be the case at the time of drafting.) Your decision on this application could have a major impact on TOD auto uses throughout the entire TOD district. This is the first application for a drive-thru in the TOD district. If drive-thrus do not need to meet the TOD auto standards despite making substantial changes to a site, if a canopy counts as meeting the requirement that a drive thru be under the building, if a drive in front of the building can be changed to a drive-thru drive with idling vehicles, then the TOD ordinance's aspirations to have an environment that is less focused on vehicles but instead is focused on transit/walking/biking will be much more difficult to achieve.

In closing, approving this dramatically altered CU in light of the advances the city made with the adoption of the TOD Overlay District ordinance would be a regrettable instance of self-defeating and backward-leaning policy.

In contrast, we as policymakers need to be forward-leaning and make policy decisions regarding the important South Park Corridor consistent with the development goals articulated in the South Madison Plan and the TOD Overlay District Ordinance.

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Given the evidence that #4 and #7 are not present, I ask that you place this application on file without prejudice.

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