

**From:** [Jan Karst](#)  
**To:** [Plan Commission Comments](#)  
**Subject:** Proposed drive thru Starbucks on S Park St  
**Date:** Friday, August 25, 2023 3:43:46 PM

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As a long time resident of the Capital View neighborhood, I would like to register my objection to putting a drive thru Starbucks or any other drive thru in the old Arby's property for the same reasons many many neighbors in this residential area have stated. It is totally not in line with what the South Madison development plan is proposing. This is a residential neighborhood that wants and needs more pedestrian friendly businesses and not bring more car traffic here. We do not want any more chain establishments here! We would support a locally owned independent restaurant or coffee shop without drive thru access!!

Thank you!

Jan Karst  
2049 Sundstrom St

Sent from my iPhone

TO: Plan Commission

FROM: Carrie Rothburd

RE: Item 18, 1609 S. Park Street

DATE: August 28, 2023

I write from my perspective as a resident of Bay Creek, where the overwhelming sentiment expressed at the meetings that a small group of neighbors initiated with Steve Doran has been that a drive-through-only Starbucks represents a burden without benefit to the surrounding community. To quote another neighbor, this development is of the sort that turns its back on us. It won't even serve us coffee unless we drive to it. Yet it plans to route a steady, sometimes heavy flow of traffic through our neighborhood. I am certain that, had Galway posted a sign as required at 1609 S Park to give 21-day public notice of their intent to submit a land use application for the site, you would be hearing from far more people today.

### 1) Contrary to the South Madison Plan

The objections the community voiced to this plan are backed by both the South Madison Plan (SMP), which includes the following on page 14: "The City will use this Plan to evaluate development proposals, inform budget decisions, make public improvements, including streets, parks, pedestrian and bicycle improvements, and other programs and policies to improve South Madison." On page 9, in summarizing SMP recommendations for development of the South Park corridor, the SMP advises:

- Clustering businesses in key locations along South Park Street to create retail nodes for the neighborhood.
- Improving pedestrian facilities along South Park Street.
- Improving safety for pedestrians and vehicles along South Park Street.

The clear intent of the SMP reinforces the city's explicit aim to reduce its reliance on auto culture via sustainable development and transit. The SMP focuses on rebuilding S Park as a vital, pedestrian-focused corridor that unites the neighborhoods of the South Side. Drive-throughs do not further the goals of this plan.

### 2) Contrary to standards of conditional use

Standard 1. The establishment, maintenance or operation of the conditional use **will be detrimental to and will endanger the public health, safety, or general welfare.** Studies show that idling vehicles in queue lines produce carbon dioxide at rates higher than vehicles in motion. They also produce volatile organic compounds (VOCs) and nitrogen oxides as byproducts of combustion that promote ground-level ozone and are toxic to humans.

To the extent that a Starbucks on S Park contributes to the ongoing gentrification of the street and surrounding area, this proposal contradicts the following recommendations cited above for the South Park corridor and in addition those of the SMP for:

#### Economic Development

- Build the local economy and small businesses to improve community wealth and self-sufficiency.
- Raise awareness, participation, and support and

#### Land Use

- Concentrate the community-benefiting development along transit corridors and within/near Focus Areas South Park Corridor

It runs afoul of Strategy 6 of the SMP, which, to paraphrase, aims to: Concentrate the *community-benefiting* development along transit corridors [via the TOD overlay] by implementing recommendations for such things as building heights, **land use**, etc.) to avoid displacement and gentrification.

Standard 4. The establishment of the conditional use **could impede the normal and orderly development and improvement of the surrounding property** for uses permitted in the district. While the TOD OD supports reliance on shared easements with adjacent properties as a part of development on S Park, Galway's site plan's reliance on them in this case could interfere with establishing future residential and other permitted uses on adjacent

properties, limiting the footprint of new buildings or routes for access. Most important of all, to refer back to the SMP intent of minimizes gentrification along S Park and in the surrounding area, the addition of a drive-through-only coffee kiosk whose prices are out of reach for the South Side's low-income community sets a course for development that is neither normal nor orderly for a large portion of area residents and could contribute to their dislocation.

Standard 5. **Adequate...internal circulation improvements**, including but not limited to vehicular, pedestrian, bicycle, public transit and other necessary site improvements **have not been provided**. There is no access of this site by pedestrians, cyclists, or bus patrons who wish to patronize Starbucks. In fact, on 7/26/23 several of the Urban Design commissioners has this to say about site circulation:

*You have a lot of pedestrian vehicular merging/crossings...I can't see the site plan working. If you're increasing traffic on Beld Street, there's going to be a wayfinding problem with all of that circulation and long distances of where you come in and where you want to end up.*

*For a business that is primarily a drive-thru coffee shop, the site plan stinks. The site plan for cars and circulation is really pretty bad.*

*Such a large queuing that forces a lot of that turning and confusion in the back of the site versus being able to come in and maybe place your order in a different spot and queue around the back of the building [does not work well].*

Supplemental regulations MGO 28.151, Vehicle Access Sales and Service Windows, require that "site design...accommodate a logical and safe vehicle and, pedestrian circulation pattern."

**7. The conditional use does not conform to all applicable regulations of the district in which it is located.**

Subchapter 28.101 of the Zoning Code, which deals with Transit Oriented Development Overlay District Zoning, states that the "requirements of the overlay districts shall apply to all zoning lots located in such districts in addition to all requirements in the Madison General Ordinances that apply to the base zoning district classification of those zoning lots." The OD modifies the underlying zoning regulations of the base district, and "in the event of a conflict between the provisions of any overlay district and the underlying base zoning district," the provisions of the overlay district shall apply, except where otherwise specified. This site is in a TOD OD which makes no exception for existing buildings in forbidding drive aisles for vehicle access sales and service windows that run parallel to primary streets, and further require vehicle sales window to be underground. To make an exception for this building would set a precedent for all of Madison that would undermine the stated purpose of the creation of TOD overlay districts from their inception.

**9. The project does not create an environment of sustained aesthetic desirability compatible with the existing or intended character of the area and the statement of purpose for the zoning district. There is no congruency between the auto-friendly environment created by this design and SMP recommendations or the TOD OD limitations that focus on discouraging auto use on Madison TOD arteries. The intended character of the area as cultivated by both the SMP and TOD OD is pedestrian friendly with activated store fronts, and a sustainability grounded in reliance by the community on public transit. See 3) below for stated purpose of TOD.**

**3) Contrary to the letter of the law and the intent of TOD OD zoning regulations for the South Park corridor**

The purpose of recent TOD OD rezoning is to "promote transit over automobile use." To do so, it "implements more stringent building form and site layout regulations for auto-oriented uses..."

(<https://mcclibraryfunctions.azurewebsites.us/api/ordinanceDownload/50000/1196099/pdf>) OD rezoning expressly forbids Galway's site plan inclusion of a line of waiting cars running parallel to Park Street. Rezoning further requires that vehicle sales and service windows be placed under the building. It is questionable whether the canopy over the drive through aisle qualifies as planning this aisle under the building.

**4) Contrary to established use in CC-T districts**

Taking at face value Galway's addendum, submitted 9/24/23, to their letter of intent, to exclude foot traffic from their "remodel of the existing building to a café" results in their proposed building no longer fitting the definition of

a café. According to Merriam Webster, a café is a "small restaurant selling light meals and drinks." And although the proposal's hardscape will "remain in design to provide flexibility for Starbucks to potentially include walkups in the future," this Starbucks will be no more than an embellished kiosk with a few outdoor tables that will see not see use for months throughout the year.

Table 28D-2 in 28.061 lists "Coffee shops/tea houses" as a permitted use in CC-T, but "Walk-up service windows" are listed only among CC-T Accessory Uses and Structures, where they are permitted or conditional. With no walk-up or sit-down use proposed for the building at 1609 S Park, there is no primary use to which the vehicle sales and service window would be an accessory. It would seem, therefore, that a drive-through-only coffee-serving kiosk should not be permitted.

## **Conclusion**

This proposal was submitted after the TOD OD rezoning went into effect. By rights, then, it should be subject to OD requirements. To this end, Subchapter 28.101 of the Zoning Code, which deals with OD, states that the "requirements of the overlay districts shall apply to all zoning lots located in such districts in addition to all requirements in the Madison General Ordinances that apply to the base zoning district classification of those zoning lots." The OD thus modifies the underlying zoning regulations of the base district and prioritizes the provisions of the overlay district in most cases "in the event of a conflict between the provisions of any overlay district and the underlying base zoning district."

In order to thoroughly consider all of questions that must be weighed and answered to assess whether this proposal meets the standards of the OD and of conditional use, I urge the Plan Commission to take time it needs to consider what policy and precedents it will set in deciding what is and is not permissible in a TOD OD. The staff report for this proposal reads in places as if the requirements of the TOD OD do not govern this site despite the fact the 1609 S Park is clearly within an OD. It does so, I believe, precisely because there is as yet no clear policy for staff to refer to. It thus seems to me that the right course of action is for the Commission to refer this proposal without prejudice.

**From:** [Lindsey Lee-CC](#)  
**To:** [Plan Commission Comments](#)  
**Subject:** 1609 S. Park Street Additional Comment  
**Date:** Friday, August 25, 2023 1:55:11 PM  
**Attachments:** [ATT00001.txt](#)

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Dear members of the Plan Commission,

I believe it is also important to know the current state of the fast food industry. I get many (free) restaurant trade publications and there is no doubt that drive-thru-only concepts are the new hot thing. It is viewed as the solution to cutting labor costs and increasing operational efficiencies. I am including two photos from pages of Nation's Restaurant News which I just received this week. The second photo shows a drive-thru-only with four service auto lanes.

# Chick-fil-A tests two new restaurant designs

The new prototypes, being tested in 2024, will meet digital demand.

by Alicia Kelso

**C**hick-fil-A is testing two new restaurant designs — an elevated drive-thru concept and a walk-up concept — aimed at meeting consumers' changing needs, including and especially their digital needs. Both concepts are set to open in 2024 and are run by local owner/operators. The goal of the tests is to ensure the company is future proofed as it continues to grow.

"As we think about expanding, we're looking at a more targeted format strategy," Khalilah Cooper, Chick-fil-A's executive director of restaurant design, said during a July interview. "We want to show up uniquely in different markets to help meet the needs of different customers, and we want to have more flexibility. In some markets, we might have access to different parcels, and that's OK because we just have to be innovative. We are thinking about the types of ways customers want to engage with us and making sure our designs meet those expectations."

Chick-fil-A counts over 2,800 domestic locations and is on track to open over 100 restaurants this year. It has maintained that steady pace for the past three years, while digital sales have simultaneously ramped up to around 40%, and even 50% in some markets. Those digital sales have become the focal point of

Chick-fil-A's two tests.

"We all saw this during the pandemic, this high dependence on digital and consumers' growth in leveraging tech to navigate their lives, and their interactions with restaurants is no exception," Cooper said, adding that the new designs are "digital-focused and digital-forward, but not digital only."

"We want to be welcoming for all guests and how they choose to engage with us. We want to be on their terms, giving them control and creating pathways for multiple experiences," she said.

Here's a closer look at what that means:

## Drive-thru concept

The first test model is a drive-thru-only concept in the Atlanta metro market featuring four lanes split into mobile-order-ahead customers and traditional-order customers.

What's notable about this design is the kitchen is built above those drive-thru lanes — kind of like Taco Bell's Defy model in Brooklyn Park, Minn. The model includes wayfinding, so customers who order through the app don't conflict with traditional customers who place their order with an employee. Cooper said the parcel size is consistent with traditional, freestanding Chick-fil-A restaurants, but "we get space back by elevating the kitchen."

Orders in this restaurant will be expedited to employees via a "meal transport system," which then delivers the food directly to customers. Cooper said the kitchen above the drive-thru lanes includes chutes on each side, allowing for flexibility to ramp up and down as needed depending on volume, daypart and other business ebbs and flows.

"Our focus is to make sure the process works seamlessly so our guests can get back their time," she said.

Notably, Chick-fil-A has dozens of already existing drive-thru-only locations, but this is the first of its kind with four lanes and an elevated kitchen. Chick-fil-A first introduced mobile ordering in its app in 2013 and began testing mobile-thru drive-thru lanes in some restaurants last year.

## Walk-up concept

Chick-fil-A will also test a walk-up concept in New York City, as the concept is designed to fit seamlessly in urban areas with heavy foot traffic. The format enables customers to order digitally ahead of time via the Chick-fil-A app and have it ready once they arrive. There is also an opportunity for walk-in orders, though Cooper expects those will be nominal given the market.

"The goal is to be digital-forward. We are clearly communicating to guests that the primary pathway is ordering ahead of time," Cooper said. "But there is also a pathway for the guest who just walks in. It's not front and center, but there will be an option to come in and place an order at the walk-up window."

As part of the test, Chick-fil-A is also looking at bike parking to help delivery workers in the market get on and off site as quickly as possible.

## Objectives and benchmarks

What else is Chick-fil-A looking for in these tests? That answer is multifaceted. For instance, the company's voluminous drive-thru lines have been well documented and have even led to permit denials in some markets. Against this backdrop, Cooper said, "we want to be mindful and develop solutions to help if we can alleviate some of those pressures. We want to be good neighbors and make sure guests can get on and off site as efficiently as possible and we want to support our operators in restaurants navigating high drive-thru volumes."



The new drive-thru-only concept features four lanes.

Chick-fil-A





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**To:** Madison Plan Commission

**From:** Sheri Carter and Jeff Richter, Co-Chairs, South Metropolitan Planning Commission (SMPC)

**Date:** August 25, 2023

**Re:** Legistar #78428, 1609 S. Park St.  
Meeting of August 28, 2023, Agenda Item 18

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We write to inform the Plan Commission members that SMPC held a public meeting on May 15, 2023 via Zoom at which the property owner and developer presented their proposal for a drive-through only Starbucks at the location of the long-vacant Arby's restaurant. In the proposal the current access from Park Street to the building was removed and access was only offered from Wingra Drive or Beld Street. Since then, the proposal was further modified to only offer access from Beld Street. Residents of Bay Creek, Bram's Addition and Capitol View neighborhoods were present at this virtual meeting. The residents were uniformly opposed to a drive-through only business and opposed the cueing or ingress and egress of vehicles from Beld or Wingra.

There was no support expressed for this business proposal. Comments expressed included these ideas:

1. Beld Street is a neighborhood street that provides the Bay Creek, Bram's Addition and Capitol View neighborhoods with access to and from Park Street.
2. Beld remains a through street to Cedar and Park because residents demanded it not be dead-ended and proposed a way to do it. It was not intended that the new connection through Cedar Street be an impetus to invite more traffic onto Beld and into the three neighborhoods.



3. This proposal is for a Park Street business and, as a drive-through only service, it should have its ingress and egress from that street—not a neighborhood street.
4. Beld at Wingra is already a busy crossing for the Wingra Bike Path and is heavily used by pedestrians and cyclists, including grade and middle school students. In its standard business model for a drive-through Starbucks this proposal could bring 500 to 700 additional cars per day onto Beld. No consideration has been given to the impact of the increased volume of traffic on Beld this proposal will cause.
5. This proposal is detrimental to the health, safety and wellbeing of the surrounding neighborhoods so it is the wrong type of proposal for this property.
6. This proposal is car-centric and not inviting to the neighborhoods as such it was not envisioned or invited in either the 2004 South Madison Plan or its recent update. Nor does it support community wealth building.
7. The Starbucks proposal in its current form meets neither the intent nor the spirit of the South Madison Plan and is, again, the wrong type of development project for this location.

Plan Commission  
Meeting of August 28, 2023  
Legistar #78428, 1609 S Park

Coming soon, perhaps, to Park Street, in the Transit Oriented Development Overlay District.



Google Maps, Starbucks, 434 Gammon Place, with 13 vehicles in the drive-thru. The blue box to the left is the ordering kiosk and awning, the blue box to the right is the pick-up window.

There are five reasons to place this conditional use request on file.

1. MGO 28.104(8) prohibits drives, drive aisles, and vehicle access sales and service drives between the primary street-facing façades and the primary street. Currently, there is a drive in front of the former Arby's. This drive would change into a vehicle access sales and service drive, thus creating a new, and prohibited, use.
2. Vehicle access sales and service windows are to be "located under the building in which they are located." The Zoning Administrator has determined that the window is within the existing building structure as a result of the canopy roof addition. However: (1) ordinances distinguish a canopy from the primary building; and, (2) this is not the intent of the TOD requirement as expressed at Plan Commission.
3. MGO 28.104(8) requires that the building have commercial or residential uses along the primary street frontage. Should the canopy structure be deemed part of the building, there is not any commercial use between the drive-thru and the primary street.
4. A "vehicle access sales and service window" is not just a window, but also any "other facility used for serving patrons." There is such a facility on the north side of the building, a facility than cannot claim any pretense to being under the building.

5. MGO 28.151 requires a site design that accommodates a logical and safe vehicle and pedestrian circulation pattern. Pedestrians will not be able to reach the building without crossing the vehicle access sales and service drive.

All of above support placing this request on file based on CU standard #7 (the conditional use conforms to all applicable regulations of the district in which it is located). CU standard #1 (detrimental to the public welfare) could also form a basis since pedestrian access to the business is hazardous, and this TOD area anticipates high use of non-vehicle transportation methods. Standard #4 could form a basis (impeding normal and orderly development): if this conditional use is allowed it will be much more difficult to limit vehicle uses on other TOD sites.

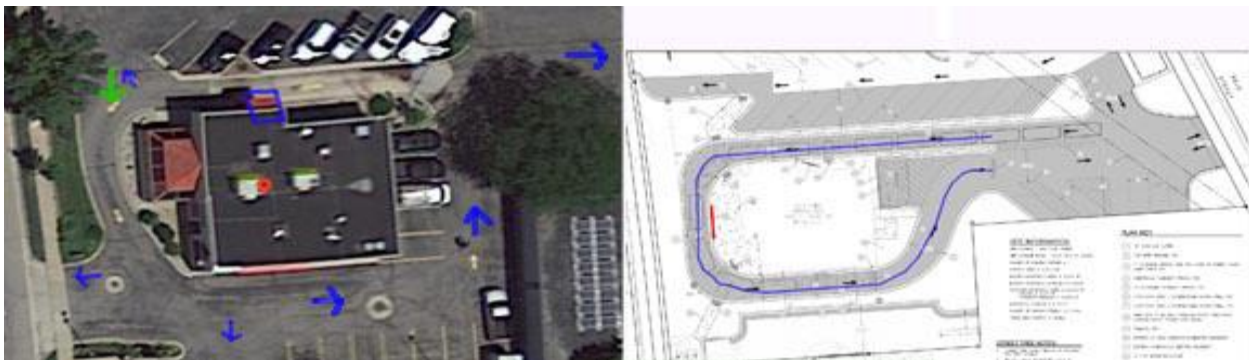
### **Vehicle Access Sales and Service Drive**

MGO 28.104(8) provides, in relevant part:

(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. (emphasis added)

Staff has said the existing "drive" can remain. However, the proposal changes the existing "drive" into a "vehicle access sales and service ... drive." The Starbucks proposal has the drive-thru drive wrapping around three sides of the building, including the S Park (primary street) side of the building. Not only are drive-thru windows prohibited between the primary street-facing façades and the primary street, but the vehicle access sales and service drive is also prohibited between the primary façade and primary street.



Google Maps; page C201 of the plans.

With Arby's, customers had a number of means of egress, as reflected above. *After* using the single drive-thru window (blue box), customers could go north to reach the driveway apron on the northern part of the lot, drive around the front of the building to use the S Park exit, drive around the front to use the W Wingra exit, or, drive all the way around the building and use the Beld exit (blue arrows). Vehicles could also access the front drive from the north side of the lot (green arrow).

The Starbucks's site plan reflects a vehicle access sales and service drive that is about 440 feet in length (blue line, image on the right). That vehicle access sales and service drive starts where a vehicle becomes sandwiched between two curbs, continues around the front of the

building and extends to the “do not enter” pavement striping. There are no entrances or exits on this 440 stretch of pavement. Clearly, the use of this pavement is limited to a vehicle access sales and service drive. The existing nonconforming use (a drive in front of the building) would be expanded to a vehicle access sales and service drive, a prohibited use, one that could very well have a line of idling vehicles.

**Vehicle access sales and service windows shall be located under the building**

MGO 28.104(8)(c) provides: “Vehicle access sales and service windows shall be located under the building in which they are located, and the building shall have commercial or residential uses as allowed in the base district along the primary street frontage.”

The UDC staff report states: “As determined by the Zoning Administrator, the proposed vehicle sales and service window, as designed, is consistent with both the TOD Overlay requirements in that it is within the existing building structure as a result of the canopy roof addition.”

To determine whether the addition of a canopy qualifies the vehicle access sales and service window as being “located under the building in which they are located,” it is useful to look at legislative history for the TSS change, legislative history for the TOD, and other ordinances. Unintended consequences of calling a canopy structure a part of the building should also be considered.

TSS legislative history

The TSS legislative history is relevant because the staff presentation at the 3.24.22 Plan Commission special meeting made clear that TSS drive-thru requirements were being applied to the TOD. (See the slide at minute 28 of the video which says: “Staff proposes implementing current TSS drive-thru regulations for all TOD areas.”)

In 2017 when the TSS ordinance was amended (Legistar 45556), staff urged Plan Commission to carefully discuss whether the amendment allowing vehicle access sales and service windows underneath buildings as a conditional use was TSS was in the public interest.

“On the one hand, it would open up possibilities to fill first floor commercial spaces with businesses such as banks and certain restaurants that are heavily reliant on drive-through service for their customers, and *it limits the possibilities for VASSW's to areas under buildings and hidden from the street* in the TSS District. On the other hand, when the TSS district was created, the Plan Commission at the time determined that such facilities should not be allowed at all in this district, where the intent was to strongly support walking, biking, and transit as means of access and movement through these areas. ... Usage of under-building area for VASSW's tends to consume large portions of the available floor plate for vehicle maneuvering, staging and queuing, which could result in significant reduction of available floor area for the more desirable commercial/retail/service uses and apartment lobby space.” (emphasis added)

At the 1.23.17 Plan Commission meeting, staff was asked for an example of what the change would allow. The Zoning Administrator provided the following two examples.



Google maps, Monona State Bank (blue arrow is the drive-thru)



Google maps, Cargo Coffee (blue arrow is the drive-thru)

Later, in answering a question, the ZA said "because it has to be entirely under the building." (Minute 49:50) A question was asked: "On the primary street the intent is that you're not really be able to see it, am I understanding that correctly?" The ZA responded "You are." (Minute 53:30)

Staff explained that staff had laid out pros and cons, and that it was up to the Plan Commission to weigh the public policy considerations. The Commission approved the ordinance change based on what it was told: that vehicle access sales and service windows would be hidden from the primary street by being entirely under the building.

Implementation of TSS "under the building"

This "under the building" provision has only be used two times: Associated Bank, 1603 Monroe, has a drive-thru window in the parking area (basement) under the building; and, Heartland Credit Union, 944 Williamson Street, has a drive-thru which is located under the building roof.



Google maps, Heartland Credit Union

In contrast to Heartland, this is the proposed pick-up window.



Two major differences are worth noting. (1) Heartland took an existing building and remodeled the building to include the drive-thru. As noted in the staff report: "The applicant intends to occupy the entire building and build two drive through lanes within the footprint of the existing building. The most westerly tenant spaces will be converted to an under-building drive-through." (2) Heartland's drive-thru faces the secondary street, not the primary street (Williamson).

TOD legislative history

Five years later, the need for the drive-thru to be hidden from the primary street was discussed at the Plan Commission's 3.24.22 special meeting which addressed the TOD overlay.

- Minute 48:50, staff: "The one thing we landed on that directly pertains to them [auto uses] is to require, or to suggest a requirement, for drive-thru facilities to be covered by the building. I want to draw attention to one recent reconstructed building, right on Willy Street. The Heartland Credit Union is a one-story building. They've reconstructed

after an interior remodel and **gaining more interior space, to basically to have their drive-thru go under that building.** That was a way to meet a requirement like this. It's a requirement that already exists within our Traditional Shopping Street district, and we would just kind of be broadening that out to all of the districts where drive-thrus are allowable, they need to be designed at that higher level." (emphasis added)

- Minute 50: A Commissioner then asked whether the Heartland example would be allowed in the TOD overlay (the Commissioner thought Heartland was more in the building, not under the building). Staff response: "That would be the intent, yes. **If that drive-thru can be hidden, and not obviously seen from the street or sides of the building, that is the intent.** We might need to make some clarifications in the code, and would certainly take your guidance on that, but I think from a staff perspective, a building like that would indeed comply with what we are considering." (emphasis added)

#### Other ordinances

City ordinances distinguish between a canopy and the "primary building." MGO 28.151, Vehicle Access Sales and Service Windows paragraph (e) provides: "Drive-through **canopies** and other structures, where present, **shall be constructed from the same materials as the primary building** and with a similar level of architectural quality and detailing."

- The ordinances have long recognized that a drive-thru could have a canopy and that the canopy needs to be well constructed. The TOD requirement of "under the building" needs to mean something more than a nice looking canopy structure otherwise the TOD language is superfluous. Reading MGO 28.151 along with MGO 28.104 (auto infrastructure in the TOD) and giving meaning to both provisions, leaves one possible interpretation: that "under the building" is synonymous with "under the primary building" and that canopies are attachments, not buildings.

Similarly, a porch is not part of the building, it is an attachment to the building (even if fully enclosed). MGO 28.211 defines a porch as: "a floor-like platform structure with a roof-like covering, attached to the exterior walls of the building and extending from the structure, and which may be enclosed by screen, latticework, windows or other similar materials."

- If a porch, a more substantial structure than a canopy, is not part of the building, it does not make sense for a canopy structure to be part of the building.
- A building is defined as "a structure with a permanent location on the land, having a roof that may provide shelter, support, protection or enclosure of persons, animals or property of any kind." If a porch is not deemed a building, it does not make sense for a canopy structure to be deemed a building – the porch provides more shelter/support/protection/enclosure than does a canopy.

#### Unintended consequences

If Plan Commission were to approve this canopy structure as being located under the building, then the intent to minimize visibility of drive-thru windows in the TOD district would be undermined. The bulk of a canopy draws more attention to the drive-thru use than a simple window awning. There would be nothing wrong with a new drive-thru having a drive-thru such as the one below (as long as the materials matched the primary building and, perhaps if the end of the canopy had a solid structure rather than two columns).



Chase East Towne branch

As a side note, the renderings of the drive-thru in the plans show a “wall” with a “window.” The actual plans call for two columns (pdf page 5 of the revised plans, sheet C201). Thus, it is a bit unclear what Plan Commission is being asked to approve.

**Commercial/residential uses need to along the primary street frontage**

MGO 28.104(8)(c) provides: “Vehicle access sales and service windows shall be located under *the building* in which they are located, and *the building* shall have commercial or residential uses as allowed in the base district along the primary street frontage.” (emphasis added)

“The building” is used for both requirements, thus meaning the same building. Even if the canopy were to make the drive-thru part of the building, that end of the building would need to have commercial or residential uses along the primary street frontage.

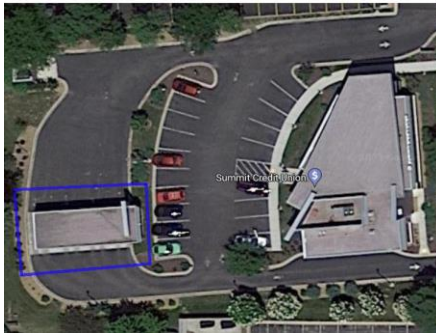
**Second drive-thru “facility”**

What is not readily visible in the plans is the ordering facility on the north side of the building. It is not reflected in the renderings on pdf page 13 of the revised plans, perhaps because it is not part of the building. However, pdf pages 5-8 (sheets C201, C300, C400, and L100) all show a “Drive Thru Menu Board” and a “Drive Thru Kiosk and Awning” on the north side of the building (see pdf page 5, sheet C201 for the key that explains numbers “16” and “17” on the plans). This ordering facility on the north side of the building does not even have any pretense of being located under the building.

MGO 28.211 defines a “vehicle access sales and service window” as “a facility consisting of a driveway and window, opening, canopy *or other facility used for serving patrons ...*” (emphasis added) Clearly a kiosk, awning and menu sign come within the meaning of “other facility.”

There are a growing number of types of facilities used for serving patrons. The example below is Summit Credit Union’s interactive teller machines (customers speak face-to-face with a live teller/banker through video chat). These types of facilities also need to come with the definition of a “vehicle access sales and service window.” If they do not, then the TOD ordinance would not apply and such facilities could possibly be located between the primary façade and primary street.





Google Maps, Summit Credit Union, 5809 Monona Drive (the blue outline on the left image is the location of the interactive teller machines)

### **Pedestrian Safety**

Supplemental regulations, MGO 28.151, Vehicle Access Sales and Service Windows, provides: "Plans for onsite circulation and driveway locations shall be reviewed where conditional use approval is required. Site design shall accommodate a logical and safe vehicle and pedestrian circulation pattern."

- Pedestrians entering from Beld Street will have to go around to the front of the building, walking through drive lanes, to enter the building.
- Bicyclists (who are lucky enough to snag one of the 6 bike stalls) will need to cross the vehicle access sales and service drive to enter the building.
- Park Street pedestrians who wish to patronize Starbucks will need to cross the vehicle access sales and service drive. (Including bus riders since the BRT stop is only about 260 feet south of the site.)
- The two walkways are marked (pdf page 5 of the plans), yet pedestrians will need to be on the alert for inattentive drivers.

The single disabled parking space is next to the bike racks. The curb appears to be continuous, so it is not clear how the individual would make it over the curb to the concrete sidewalk that crosses over the vehicle access sales and service drive.

### **Additional concerns/questions:**

1. Is demolition approval required?
2. Does the landscape plan need to be approved by a registered landscape architect?
3. Is there any indoor seating?
4. Does the entire site need to be brought into compliance?

### **Is demolition approval required?**

MGO 28.185 defines demolition as "An act or process that removes, pulls down, tears down, razes, deconstructs, or destroys an existing building wall facing a public street..." This section has been applied in the past, see, e.g., Legistar 29724, where an auto dealer remodeled and the front façade was removed and replaced.

- The sunroom-like structure to the left is being demolished.
- The building wall to the right is being demolished. This wall, with its window, is under the main building roof. There is a visible opening at the front and another to the south, making this area into a sort of covered breezeway.

- See pdf page 14, sheet D1.2, "Demo Floor Plan" which refers to "wall" and "screen wall."



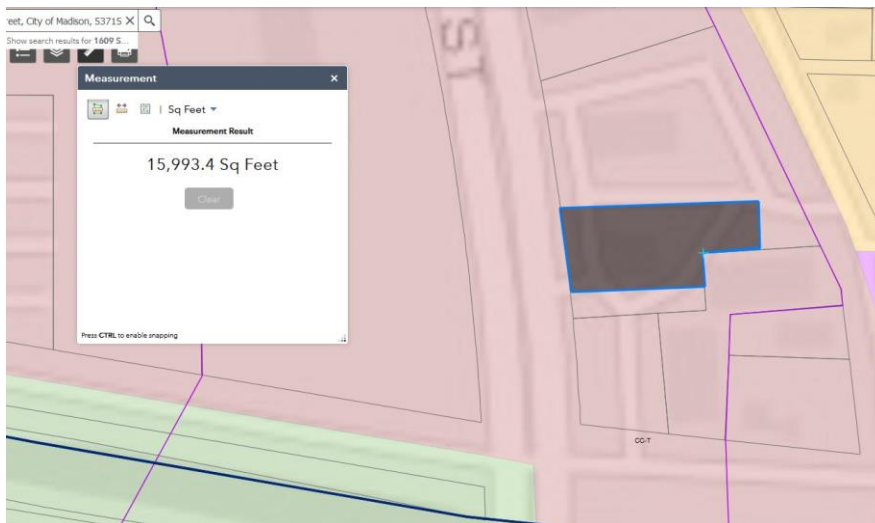
Google Street View, July 2022

*Does the landscape plan need to be prepared by a registered landscape architect?*

"Landscape plans for zoning lots greater than ten thousand (10,000) square feet in size must be prepared by a registered landscape architect." MGO 28.142(3)

The landscape plan, sheet L100, pdf page 8, was not prepared by a registered landscape architect. That sheet claims 7,275 sq.ft of developed area this project. The site is larger than that.

- The zoning lot, 1605 S Park, is 1.36 acres.
- The portion of the site subject to this proposal, even using the parameters close to those on sheet L100, is about 16,000 sq.ft. Subtract from that the building footprint of 2,938 sq ft (sheet D1.2, pdf page 14) and the site is about 13,000 sq.ft.



Is there any indoor seating?

Coffee shops and restaurants are a permitted use in CC-T. Vehicle access sales and service windows are an *accessory* use in CC-T. If there will not be seating inside, then the primary use is as a drive-thru coffee shop. (I am aware of one drive-thru only coffee/donut shop, 801 S Park, but that is in PD and the application was filed prior to the new zoning code. Plus, it is not clear from the Legistar record whether 801 S Park was approved as drive-thru only or whether, over the years, it has morphed into solely a drive-thru use.)

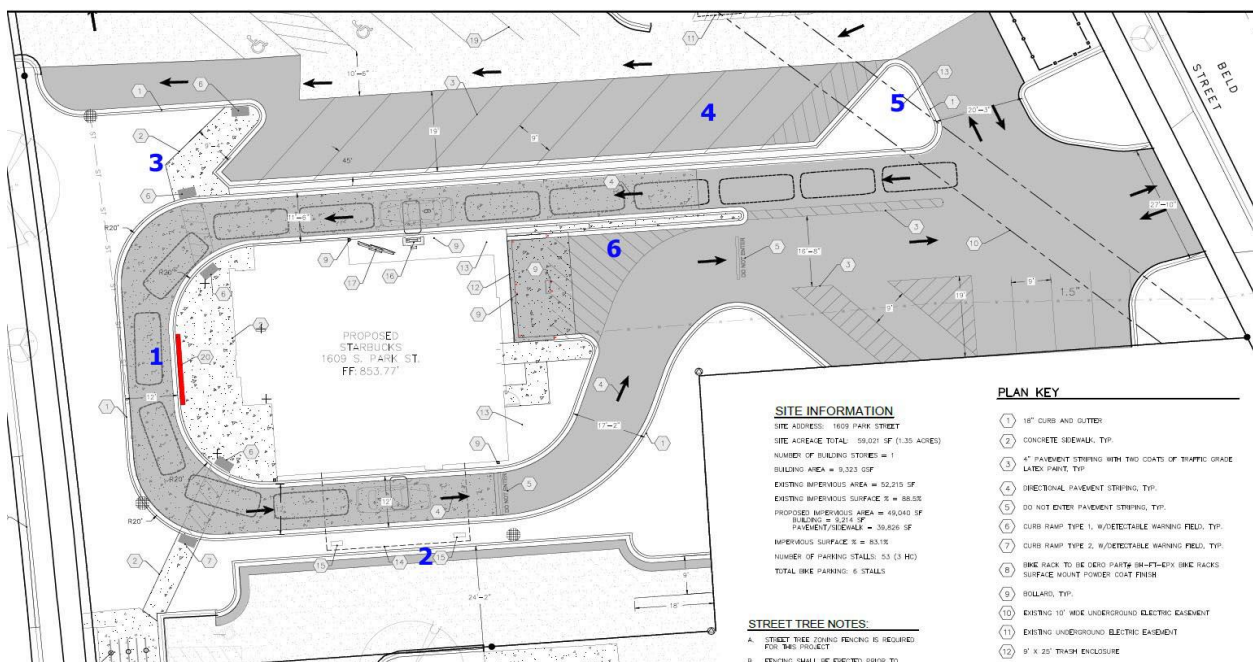
Does the site need to be brought into compliance with the ordinances?

MGO 28.006, Scope of Regulations provides: "All buildings erected hereafter, all uses of land or buildings established hereafter, all structural alteration or relocation of existing buildings occurring hereafter, and all enlargements of or additions to existing uses occurring hereafter shall be subject to all regulations of this ordinance which are applicable to the zoning districts in which such buildings, uses or land shall be located."

In short, generally a change to an existing use requires the entire site to be brought into compliance. MGO 28.006(3) lists changes to an existing use that do not require the entire site to be brought into compliance. The following changes under subsection (3) may be applicable to this proposal:

- Adding pedestrian and/or accessibility accommodations required by building code provisions.
- Providing new/additional bicycle parking.
- Providing new/additional refuse enclosure areas.
- Resurfacing/reconstruction, maintenance of parking facilities where there is no change to layout, circulation or entrances.
- Elimination of parking stall to add landscaping, when administratively approved.

The changes being made to the southern half of the site go beyond these exceptions.



1. The front drive aisle/vehicle access sales and service drive is being flattened and moved closer to the building. The existing drive will overlap with the new drive for only a short stretch – most of the drive is pulled closer, though at the southern end the drive is pushed a bit further from the building.
2. The access through the parking lot to the south is being closed off.
3. The existing drive from the north side of the property is being closed off and replaced with lawn.
4. Three or four new parking spaces are being created.
5. The new grass area will be in an area currently a drive.
6. The lot is being marked with yellow stripes to show it is no longer a drive area.

Respectfully Submitted,  
Linda Lehnertz