

Plan Commission Meeting of October 30, 2023

Agenda Item 2, Legistar # 78428

1609 S. Park Street

Submitted By: Dave Davis, 10/30/23

I am writing to oppose the current plans for the proposed Starbucks at 1609 S. Park Street. I have included excerpts contained in correspondence from various city staff which I am hoping you will take into consideration as you consider my objections, listed below the four excerpts, to this project as currently designed.

The first excerpt, **1)**, was contained in an e-mail to Alder Evers from City Attorney Michael Haas dated August 16, 2023; **2)** and **3)** were contained in e-mail responses from Assistant Zoning Administrator Jacob Moskowitz dated July 19 and 20, 2023; and **4)** was contained in a Planning Division Staff Report dated August 28, 2023.

**1)** "Unless a full site redevelopment is proposed or a specific trigger in the code is met, the Zoning Administrator does not have the authority to require that an entire site be brought into compliance with the current zoning code. **Nonconforming site conditions cannot be expanded or be made more noncompliant** but these sites can continue to reuse existing site conditions or they can change site conditions so that they are closer to compliance with current code."

**2)** "Everything in Sec. 28.104 is new with the TOD ordinance, so the language about auto infrastructure did not appear prior to that. The section on nonconformities that your site is for nonconforming uses, and **this is not a nonconforming use, it is allowed as a conditional use, even though the previous conditional use is expired. To be clear, the auto infrastructure section does apply to the relocated drive thru window, but the drive aisle accessing it is existing and so it can remain.** The window itself is not located between the building and the street because it is enclosed by the building addition."

**3)** "The 'Site Standards for Automobile Infrastructure' found in 28.104(8) would still apply, but only to new auto infrastructure where none is present today."

**4)** "Per §28.104(8) M.G.O. the site standards for automobile infrastructure do apply. Vehicle access sales and service windows and drives shall not be allowed between the primary street-facing façades and the primary public or private street, shall be setback from the primary and secondary street equal to or greater than the principal building setback, 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. Per zoning staff, the proposed enclosure for the drive-thru complies with the TOD Overlay District. **Staff note that existing drive-thru infrastructure is not subject to the site standards for automobile infrastructure on the TOD Overlay District.**

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The existing drive thru window and associated drive aisle, both located on the north side of the building and previously used by Arby's, was granted a conditional use in 1984. That conditional use expired a year after Arby's closed in late 2021. Conditional uses and nonconforming uses both expire after 12 consecutive months of disuse. The city is not obligated to grant a new conditional use that would be in direct conflict with the conditions of the current TOD OD or other applicable zoning. In fact, it appears the city is prohibited from granting a conditional use that does not conform to all applicable regulations of the district in which it is located. This would also have been the case under the 2018 version of 28.104, see below.

My object is not to the still existing drive aisle that was used by Arby's to provide access to their drive thru window. The drive aisle proposed for Starbucks is out of compliance with the TOD OD zoning since the portion of the proposed drive aisle between the subject building and S. Park Street is specifically prohibited by the current TOD

OD zoning. The proposed new, relocated drive aisle would be a significant extension of the drive aisle formerly used by Arby's, and would wrap around three sides of the building while Arby's drive aisle only ran along the north side of the building. Attorney Haas's letter states that "... **Nonconforming site conditions cannot be expanded or made more noncompliant** ..." The proposed new, extended drive aisle would do both.

While much of 28.104 was rewritten earlier this year, the 2018 version of 28.104 entirely prohibited "vehicle sales and service windows" in TOD districts. See below for an excerpt of the 2018 version of 28.104 from Legistar. While it is my understanding that the 2018 version of 28.104 was never fully implemented, it would seem to have foreshadowed and provided notice of the city's intent to strictly regulate vehicle access sales and service windows in TOD Overlay Districts.

The Asst. Zoning Administrator's correspondence appears to say that the city is required to grant any conditional use request that is allowed by the zoning ordinance. The Approval Standards found in Section 28.183 of the City Ordinances would appear dispute that. In particular, this proposed project clearly does not conform to standards 5. and 7., and perhaps others.

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## **28.183 - CONDITIONAL USES.**

### **(6) Approval Standards.**

**(a)** The City Plan Commission shall not approve a conditional use without due consideration of the recommendations in the City of Madison Comprehensive Plan and any applicable, neighborhood, neighborhood development, or special area plan, including design guidelines adopted as supplements to these plans. **No application for a conditional use shall be granted by the Plan Commission unless it finds that all of the following conditions are present:**

5. Adequate utilities, access roads, drainage, **internal circulation improvements for pedestrians, bicyclists, public transit and vehicles, parking supply** (in cases with minimum parking requirements) and other necessary site improvements have been or are being provided.

**7. The conditional use conforms to all applicable regulations of the district in which it is located.**

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Extracted from the 2018 version of 28.104 in Legistar:

## **28.104 - TRANSIT ORIENTED DEVELOPMENT OVERLAY DISTRICT.**

### **(3) Relationship to Other Regulations.**

Properties located within a TOD overlay district are subject to the provisions of the primary zoning district and the TOD overlay district. **Where the provisions of the overlay district conflict with the primary zoning district, the provisions of the overlay district shall apply.**

### **(4) Prohibited Uses.**

**The following uses are prohibited in the TOD district:**

- (a) Auto body shop.
- (b) Auto service station, convenience market.
- (c) Auto repair station.
- (d) Auto sales or rental.
- (e) Car wash.
- (f) Storage facility, personal indoor storage.
- (g) Vehicle access sales and service windows.**

**From:** [Gillian, Barb](#)  
**To:** [Plan Commission Comments](#); [Plan Commission Comments](#)  
**Subject:** Agenda Item 78428: Starbucks at 1609 S Park St.  
**Date:** Monday, October 30, 2023 1:00:08 PM

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Caution: This email was sent from an external source. Avoid unknown links and attachments.

To Plan Commission,

I am writing again in opposition to the proposed Starbucks on S Park St. I believe this proposal does not comply with either the letter or the spirit of the zoning requirements. Others will speak more knowledgeably about those issues. Although this property is in district 13, it will have most impact to those of us living in Brams and Capitol View neighborhoods in district 14. Therefore I would ask that greater consideration should be given to Alder Knox than the 'all development is good development' attitude of the alder from district 13.

The main thing I object to is the diversion of traffic off the putative address on Park St, to the smaller residential streets of Beld and Wingra. I strongly disagree with Traffic Engineering that shifting the problem of queuing for this drive-thru business should be foisted onto secondary streets. These plans *remove* the immediate access from Park St and clearly push the majority of traffic to Beld St for the drive-thru lanes, and Park/Wingra or Beld for parking. This proposal is NOT pedestrian, bicycle or transit friendly! There is still no safe access for pedestrians as all must cross the drive-thru lanes. There is *no* designated pedestrian access from Beld St so it is not benefiting the surrounding neighborhoods. Bicycles will need to either come in from Wingra through the Bob's Copy Shop parking lot to get to the bike racks, or ride on the sidewalk along Park St. With the main ingress and egress on Beld St, there will be traffic consequences for the entire length of Beld St. It will create conflicts at Bram&Beld, Beld&Wingra, the bicycle crossing on the Wingra Creek bike path at both Beld and the corner of Park & Wingra, congestion at Beld/Cedar/Park intersections and problems at Park&Wingra with cars turning right then immediately left into the parking lot.

Beld is a major street for the Capitol View and Brams neighborhoods. Capitol View has only two main routes to get in & out of the neighborhood, and Beld is a critical component to that access. This is why the neighborhoods *fought* Traffic Engineering from making Beld a dead end as they preferred. The Capitol View *neighbors* had to come up with the proposed design that was eventually implemented at Beld/Cedar/Park.

The new plans claim to have indoor seating, but no mention of how much. The floor plans are blank. There will necessarily be less seating than Arby's as the sunroom is being removed. The drawings show the only public doorways near the southwest corner, minimizes the windows on the south side, no windows on the north or east. With the order and pickup on the north and south faces will there be seating along those walls? Does adding 3 tables indoors count? Please require the developer to provide more information about the indoor seating. Is this real or simply a tactic to get approval of a 98% drive-thru business? The outdoor seating is also displayed in a very unrealistic drawing. Please make them show the wall of idling cars polluting the air with exhaust and noise next to this seating, as well as the continuous traffic on Park St just a few steps away. All the artistic drawings show very few cars, rather than the 15 cars in the traffic patterns. Two of the 15 cars are shown on top of the pedestrian sidewalks which is probably what will happen! If there was really so little traffic - there would be no problem with queuing on Park St.

This proposal is still primarily a drive-thru business, not beneficial to but rather disadvantageous to the south side residents.

I do not believe that this proposal would ever be considered if it wasn't on the South Side. We are so used to being the dumping ground, the ignored and neglected - that is until someone

wants to displace us. We don't want development for development sake, we want development that enhances our lives. The South Madison Plan clearly states that we do not want gentrification and displacement. This proposal for a multi-national corporation to serve those who just drive through, not live, on the south side should be rejected.

Sincerely,  
Barbara Gilligan  
2009 Sundstrom St.

To: Plan Commission  
From: Carrie Rothburd  
Re: 1609 S. Park  
Date: October 30, 2023

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I have been part of an informal group of neighbors from districts 6, 13, and 14, who have met several times with Alders Rummel, Knox, and Evers to share concerns about what we perceive to be some serious issues with the development before you. We have also met with Steve Doran of Galway Companies.

**Our purpose has been to support transit-oriented development's push for sustainable development along Park Street and other transit corridors and to move Madison away from auto-centric establishments and toward development that is accessible to residents and commuters by bus, bike, and on foot.**

We have followed Plan Commission's recent discussions about the proposed carwash along another TOD corridor, eager to hear what these contribute to an understanding of the spirit and rule of Madison's new OD zoning. To the best of our knowledge, the Starbucks proposed by Galway is only the second controversial development proposal for a site within an OD. For this reason, what you decide about how it conforms or fails to conform with TOD zoning will shape development within all of Madison's ODs.

We commend this commission for giving due consideration to whether the carwash was appropriate for an OD. We urge you to take the same thoughtful approach today to the proposal for 1609 South Park.

**Those of us who met again with Alder Knox last night believe that this proposal needs more time.** Significantly the plans before you do not include the input of that community since they did not arrive in our inboxes until last Wednesday. We have not had a chance to discuss them with our alder. In fact, **most community residents remain unaware of these plans.**

**We also believe aspects of Galway's proposed site plan to be out of compliance with zoning for ODs and with the standards of development for CU.B** The reasons for this are detailed in letters from other residents. Many of these reasons remain the same as those covered the last time this proposal came before plan.

**We thus ask you to place this development on file to afford Planning staff and Galway time to come up with solutions better suited to the spirit and the law of the new TOD zoning.** This conversation should include residents from the community within which this Starbucks will reside to ensure that it becomes a good neighbor. Community input is critical to understanding the impact of Galway's site plan which runs large numbers of cars along Beld Street and keeps them idling in our midst, while remaining inaccessible to neighbors who might otherwise visit on foot or by bike.

**Now that TE has reversed its initial refusal to allow access to this site from South Park, we believe that it is possible and worthwhile to consider keeping Starbucks' traffic on Park Street. This would be more respectful of the TOD zoning's emphasis on traffic corridors and more conducive to the safety and health and of the nearby community, a critical requirement in granting CU to a development.**

**What you decide at this time will set policy and, as such, is a decision that should not be relegated to staff. Please slow things down long enough to critically assess these plans and thoroughly consider whether or not you agree with staff about what our new zoning has to say with respect to this development** about resurrecting a prior land use, about the placement of drive aisles and vehicle sales and service windows, about impact on subsequent adjacent development, and about addressing our car culture. Let the precedent you set here be equal to the aspirational goals of TOD.

**From:** [Jeffrey Richter](#)  
**To:** [Plan Commission Comments](#)  
**Subject:** Objection to 10/30/23 Agenda Item #2 (File #78428)  
**Date:** Monday, October 30, 2023 11:19:13 AM

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Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Plan Commission Members,

I am writing in opposition to the proposed traffic circulation proposal for Starbucks on S. Park St. on the site of the former Arby's because I can't attend the October 30, 2023 meeting. This is item #2 on your Agenda (File #78428). I believe this proposal is a perversion of traffic engineering principles that should not be allowed in any neighborhood in Madison. Others may argue that the proposal does not comply with either the letter or the spirit of current zoning requirements, and I do not disagree. But I am alleging that the action of cutting off the existing ingress and egress from Park St. and diverting all that traffic to a neighborhood street (Beld St.) for a business whose address is on Park St. and serves traffic on Park Street, is WRONG. You may want to dismiss me as a NIMBY, but I am raising these concerns because this type of traffic diversion to neighborhood streets SHOULD NOT BE DONE ANYWHERE IN MADISON.

Although this property is in district 13, the traffic diversion it will create will most severely impact those living in the Brams Addition and Capitol View neighborhoods in district 14. Therefore, I would ask that greater consideration should be given to the concerns raised by Alder Knox regarding this proposal.

The aspect of this proposal I object to most is the diversion of traffic for a drive-thru business whose address is on a major thoroughfare, S. Park St, to the smaller residential streets of Beld, Wingra and Cedar. All the artistic drawings show very few cars, rather than the 15 car queues in the traffic patterns on the property. If there was really so little traffic - there would be no problem with a design that accommodates the access to queuing coming directly from S. Park St. I strongly disagree with Traffic Engineering that diverting the problem of queuing for this drive-thru business should be foisted onto our neighborhood streets. These plans REMOVE THE EXISTING immediate access from Park St. to the former Arby's property and clearly push the majority of traffic to Beld St. for the drive-thru lanes, and Wingra or Beld Streets for parking. This is WRONG and DANGEROUS.

This proposal is dangerous for the pedestrians (including students going to school), bicyclists, and other existing neighborhood traffic for which Beld Street is designed. While Starbucks most recent design was focused on the safety of access for pedestrians who must cross its drive-thru lanes from the parking to enter the building, ABSOLUTELY NO CONSIDERATION WAS GIVEN TO THE SAFETY ISSUES CREATED BY DIVERTING POTENTIALLY 500 CARS A DAY DOWN BELD ST.

With the main ingress and egress on Beld St, there will be traffic consequences for the entire length of Beld St. It will create conflicts at Bram & Beld, Kenward & Beld, Gilson and Beld, Pine and Beld, Cedar and Beld and Wingra & Beld. Plus, the

addition of Starbucks traffic is a really dangerous escalation to the hazards posed for the already busy use of the pedestrian and bicycle crossing of the Wingra Creek ped/bike path on Beld. The same is probably true for this path at the corner of S. Park & Wingra.

Traffic Engineering should be focused on assuring the circulation design for the former Arby's property has the capacity to accommodate the maximum queuing for Starbucks traffic ON THAT PROPERTY so as not to spill out onto S. Park Street. Instead, they focused on diverting that same traffic onto Beld Street without any concern for that same maximum queuing spilling onto Beld Street. That is a gross oversight on the part of Traffic Engineering! And the Plan Commission should demand revision that takes into account ALL safety concerns—not just those for S. Park Street!

Beld is a major ingress and egress access street for the Capitol View and Brams Addition neighborhoods and portions of the Bay Creek neighborhood. Capitol View has only two main routes to get in & out of the neighborhood, and Beld is a critical component to that access. This is why the neighborhoods fought Traffic Engineering's proposal to make Beld St. dead end before intersecting Cedar, as they preferred. The Capitol View neighbors had to come up with the proposed design that was eventually implemented at Beld/Cedar/Park. Now Traffic Engineering seeks to commandeer Beld Street and that redesigned intersection for the corporate interests of Starbucks and their commuter patrons—ignoring the common-sense principle of first do no harm. SHAMEFUL!!!!

I do not believe that this proposal would ever be considered in this form if it wasn't on the South Side. My point is it shouldn't be acceptable or approved anywhere in Madison, including the South Side. And I believe it is incumbent on the Plan Commission members to send that strong message to Starbucks AND to Planning and Traffic Engineering staff.

Thank You for Your Consideration,  
Jeff Richter  
2239 Cliff Ct.

Sent from [Mail](#) for Windows

Plan Commission  
Meeting of October 30, 2023  
Agenda #2, Legistar 78428

This is the first application involving the TOD overlay requirement which requires vehicle access sales and service windows to be located under the building in which they are located. This project sets a precedent for the meaning of "under the building in which they are located."

The original staff report states: "Per zoning staff, the proposed enclosure for the drive-thru complies with the TOD Overlay District." Plan Commission is free to disagree with that conclusion. As the Planning Division Director told the Common Council during its October 3, 2023 meeting:

"The Plan Commission found that it [the proposed car wash on Lien Road] did not meet two of those conditional use standards, and this was a rare case where staff had recommended approval finding that the standards had been met, and the Plan Commission ultimately voted to place it on file. That's fine, that happens sometimes."

"But, as I said earlier, this is one of the cases where the Plan Commission made a different decision than what was recommended by staff. That does happen on occasion and it's completely within the realm of the Plan Commission to make a judgment and come to a vote on whether or not they believe those conditional use standards were met."

I urge the Plan Commission to find that conditional use standard #7 is not met, that the conditional use fails to conform to all applicable regulations of the district in which it is located.

The southerly drive-up window on the south side of the building

This pay/pick-up window is an addition with a roof and a wall (or a canopy and a canopy support structure). However, that does not qualify as being "under the building in which it is located." From the history of when the original "under the building" language was added for TSS, from the fact that the TOD language copied the TSS language, and from the examples provided to Plan Commission in approving the "under the building" language, it is clear the *drive-thru facilities were to be hidden* from the primary street. The Starbucks window cannot be deemed to be hidden.

In 2017, Plan Commission approved the "under the building" language with respect to properties zoned TSS in order for a bank to have a drive-thru window in the underground parking.

- At that time, staff said: "However, the Plan Commission should carefully discuss whether it is in the public interest to add this as a conditional use in the TSS District (parts of Williamson Street, Atwood avenue, Old University Avenue, South Park Street, Monroe Street, etc.) 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-thru service for their customers, and it limits the possibilities for VASSW's to **areas under the buildings and hidden from the street in the TSS District.**" (emphasis added)
- When Plan Commission asked for examples of what "under the building would allow, two examples were provided. One was the bank at 1965 Atwood (now Lake Ridge

Bank, built in 1925), the other was Cargo Coffee window in the Constellation parking area (in the parking exit area, set back about 20 feet from the building wall).

- Later, in answering a question, the Zoning Administrator 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)

In 2022, it was proposed that the TSS "under the building" language be used in the TOD overlay. Staff told the Plan Commission:

- "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." (minute 48:50 of 3/24/22 meeting)
- 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, minute 50 of 3/24/22 meeting)

MGO 28.151 requires that vehicle access sales and service windows must be located to (1) the side of, (2) the rear of, or (3) under buildings in the CC-T, RMX, TE, DC, and UMX districts. The ordinance provides three different locations for a drive-thru, essentially excluding the front of the building. The most reasonable conclusion is that the Starbucks window is on the side of the building. Certainly "under the building" has a meaning that requires more than adding some infrastructure. If the Starbucks window were to count as "under the building" there would not be any obstacle to locating this structure on the front of the building, a location clearly not deemed permissible under the ordinance.

#### The ordering facility on the north side of the building

On the north side of the building is the ordering facility, a menu board and a drive-thru kiosk and awning. The ordinance 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 in automobiles or on bicycles ..." This menu board/kiosk/awning is an "other facility" used to serve patrons. This facility is not discussed in the staff report. This facility is required to be under the building, which it is not.

The updated staff report states that adding the full service café makes the plans more consistent with adopted plan recommendations. The updated plans, with the additional parking, the removal of the painted crosswalk, and the lack of any increase in the minimal bike parking, make the site even more car-centric.

Respectfully Submitted,  
Linda Lehnertz