

# Appeal of Zoning Administrator's Determination Regarding Timeliness of an Appeal Application

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ZONING BOARD OF APPEALS – FEBRUARY 15, 2024

# Appeal Application

Application Received:  
11/20/23

Application for ZBA appeal - Message (HTML)

File Message Help ESET Acrobat Tell me what you want to do

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Application for ZBA appeal

Rummel, Marsha  
To: Bannon, Katherine J  
Mon 11/20/2023 5:10 PM

You forwarded this message on 12/21/2023 10:02 AM.

ZBA appeal Nov 2023.pdf  
890 KB

Reply Reply All Forward

Reply all with PDF shared as Adobe link Yes

Hi Katie -

Alder Knox and I are jointly appealing Zoning interpretations/decisions made in connection with the project proposed for 1609 S Park. Although the form has a \$200 filing fee, the ordinance only applies to the property owner or representative ("Application for an appeal filed by, or on behalf of, the owner or owners of the property affected"). Since the ordinance does not apply to us, I am filing this appeal electronically. If you need the original signatures, please let me know and I will have those delivered.

Please let me know when this will be scheduled.

Thank you-

Marsha

# Appeal Application

Fee Received:  
12/20/23



## CITY OF MADISON ZONING BOARD OF APPEALS APPEAL APPLICATION

**\$200 Filing Fee**

Ensure all information is **typed** or legibly **printed** using blue or black ink.

Notices are sent to the District Alderperson and to owners of record as listed in the Office of the City Assessor. Maximum size for all drawings is 11" x 17".

Name of Applicant: Marsha Rummel  
Address: 1029 Spaight St #6C  
Madison WI 53703  
Daytime Phone: 608-772-4555 Evening Phone: SAME  
Email: district6@cityofmadison.com

1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to  
Madison General Ordinance Section No. M60 28.104, 28.006, 28.008, 28.211, 28.191

2. When relevant to a specific property, fill out below:  
Street Address: 1609 S Park St  
Madison WI

3.  List of grounds for the appeal, statements, evidence of fact, and any additional information associated with the appeal are provided on a separate attachment.

Applicant Signature: Marsha Rummel

### FOR OFFICE USE ONLY

Amount Paid:	\$200.00	Zoning District:	CC-T
Receipt:	135794-0001	Hearing Date:	01-18-2024
Filing Date:	12-20-2023	Published Date:	01-11-2024
Received By:	NJK	Appeal Number:	LNDAPP- 2024-00001
Parcel Number:	070926408034	GQ:	
Alder District:	13- Evers		

# Madison General Ordinance

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An appeal shall be taken within a reasonable time, as provided by the rules of the Zoning Board of Appeals.

(MGO 28.205 (5)(a))

# ZBA Rules of Procedure

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**Time of Appeal.** Every appeal shall be taken within fifteen (15) days from the date of notice of refusal of a permit or from the date of the making of any order, ruling, decision or determination from which an appeal is taken. Where official notice is mailed, the time to appeal shall begin running from the postmark date. A written appeal, specifying the grounds therefore, must be filed within fifteen (15) days with the Zoning Administrator. The date of the decision of the Zoning Administrator or other such officer shall not be counted, but the date of filing the appeal and Sundays and holidays shall be counted, except that if the last day falls on a Sunday or legal holiday, the time for filing shall be extended to the next secular day.

# Summary of Appeal

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Canopy addition over drive-through ≠ “under the building”

Menu board should also be under the building

Drive should not be allowed to be continued between building and Park St

Entire site should be brought up to compliance with zoning code when there is a conditional use approval

**All these decisions were made prior to the UDC staff report for 7/26/23 meeting**

**No major changes were made to the site plan or canopy after initial plans were submitted with the UDC application**

# Urban Design Commission Staff Report 7/26/23

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“The Zoning Code also includes requirements for vehicle sales and service window uses (aka drive-thru uses) within the TOD Overlay (Sec. 28.104(8)(c)), as well as Supplemental Regulations (Sec. 28.151) for new drive-thru windows. The TOD Overlay requires the new vehicle sales and service windows “...shall be located under the building in which they are located.” The Supplemental Regulations require that the use not be located between the building and the street. 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, and the Supplemental Regulations because the vehicle sales and service window is screened from view by a wall.”

# Urban Design Commission - 7/26/23

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NW Corner



SW Corner



SE Corner



NE Corner



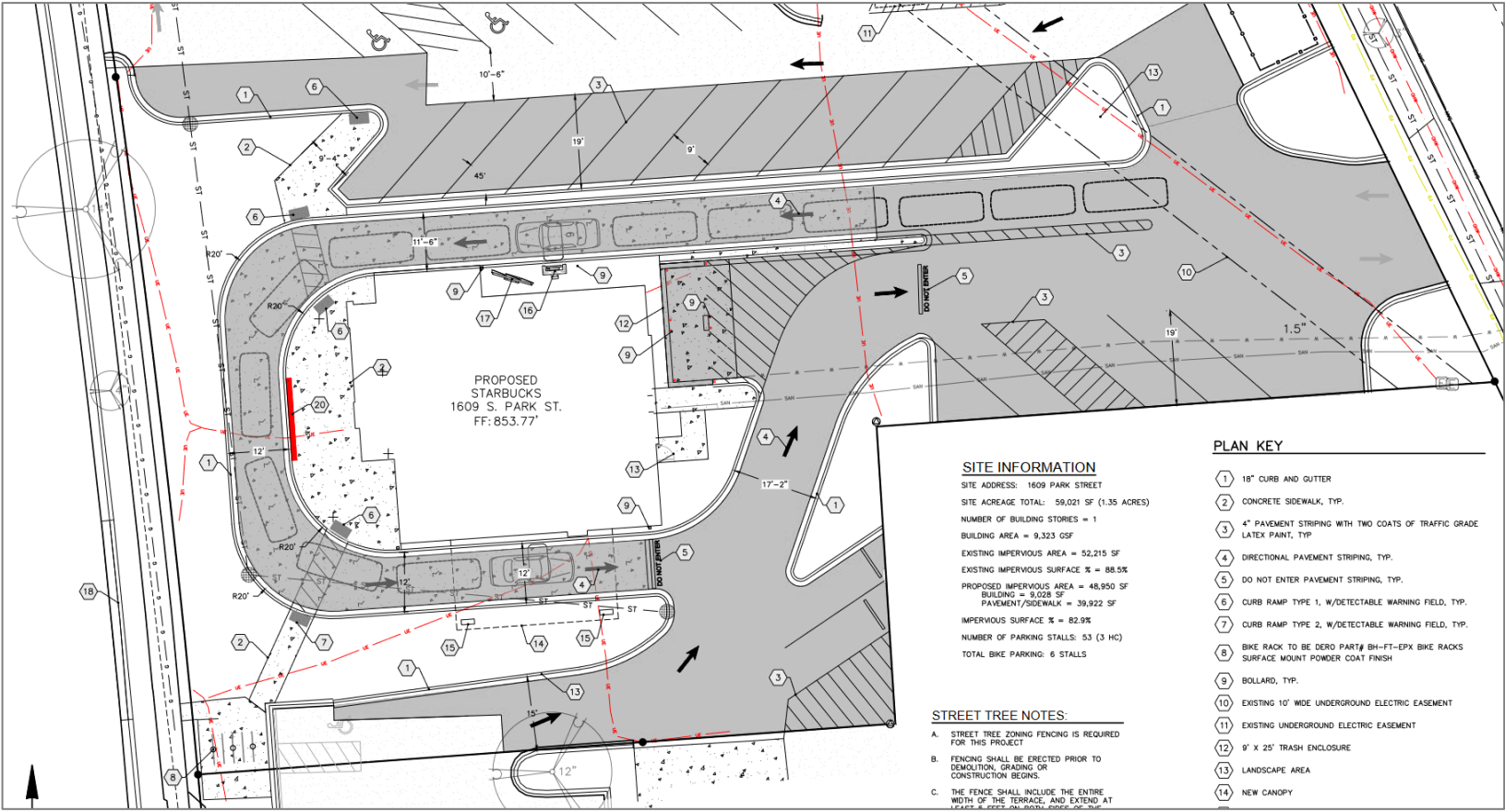


# Urban Design Commission – 7/26/23



West Elevation

# Urban Design Commission – 7/26/23



# Urban Design Commission Meeting – 7/26/23

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Alder Rummel is an appointed Council member of the Urban Design Commission

Alder Rummel attended the July 26, 2023 UDC meeting and made the motion for referral of 1609 S. Park St.

# Urban Design Commission Staff Report 8/16/23

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The Zoning Code also includes requirements for vehicle sales and service window uses (aka drive-thru uses) within the TOD Overlay (Sec. 28.104(8)(c)), as well as Supplemental Regulations (Sec. 28.151) for new drive-thru windows. The TOD Overlay requires the new vehicle sales and service windows “...shall be located under the building in which they are located.” The Supplemental Regulations require that the use not be located between the building and the street. 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, and the Supplemental Regulations because the vehicle sales and service window is screened from view by a wall.

# Urban Design Commission Meeting Report

## 8/16/23

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### Summary of 7/26/23 UDC Meeting:

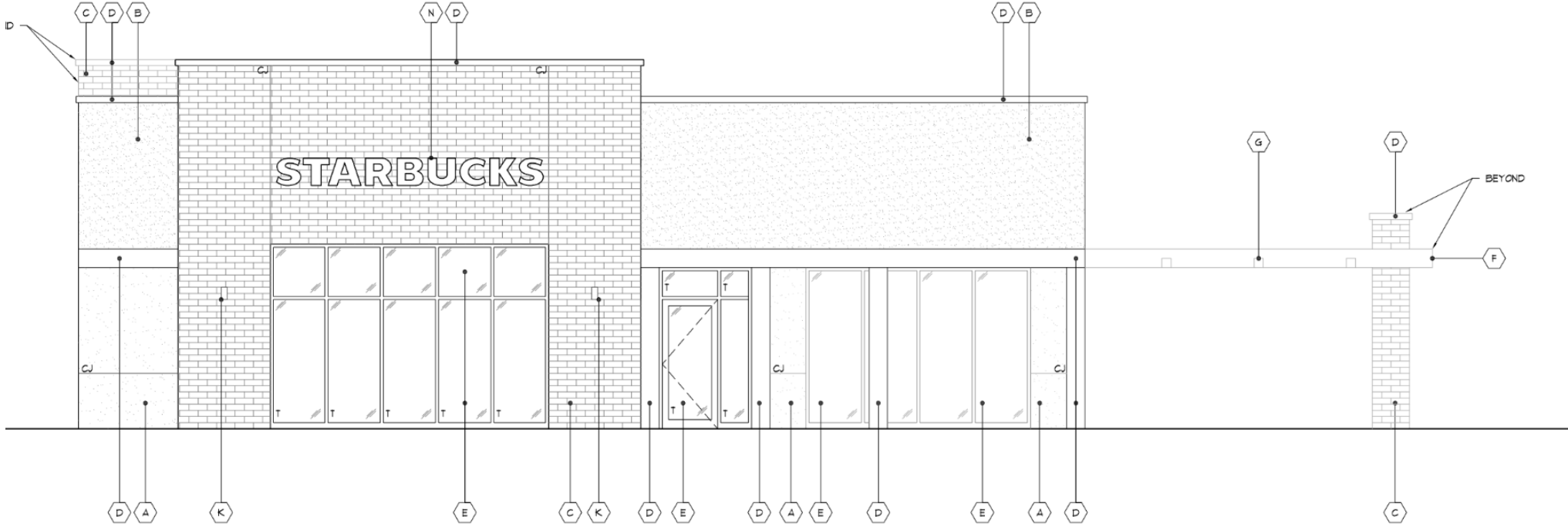
- Staff or Traffic Engineering does not have significant problems with circulation for automobiles?
- (Secretary) That's correct, not that I am aware of. I would add that when we're looking at the site from a zoning perspective, we're reusing an existing site and much of its infrastructure is already there. The ability to push for full compliance with the TOD, the zoning code does not require them to meet all those requirements because it is reusing an existing site.

# Urban Design Commission – 8/16/23

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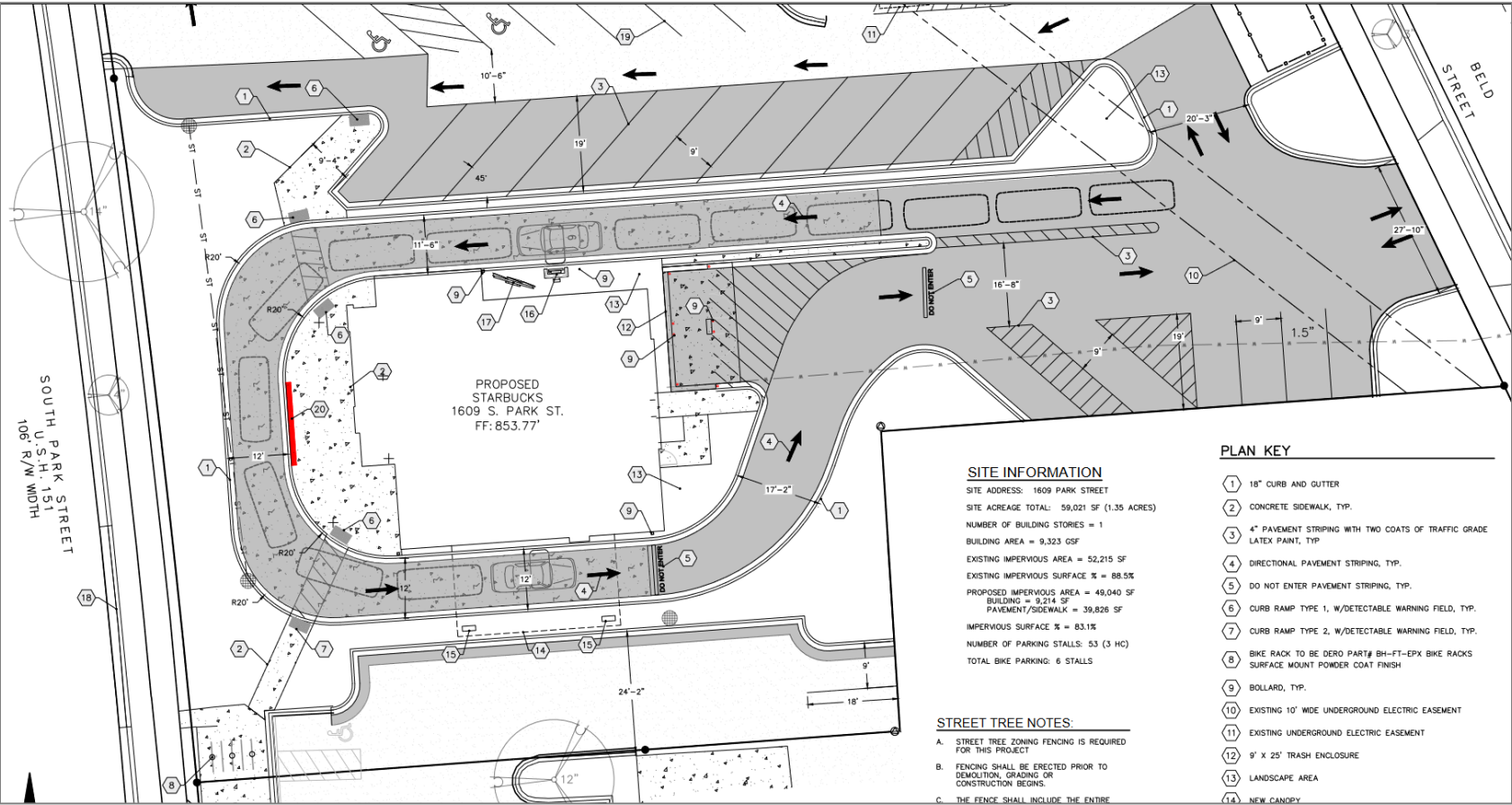


# Urban Design Commission – 8/16/23



West Elevation

# Urban Design Commission – 7/26/23





# Alder Evers Comments to UDC – 8/16/23

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“While the TOD guidelines are not triggered because this is neither a new building nor is it a major (>50%) expansion, there are structural elements that seem to be contrary to UDD-7 guidelines. Specifically, the street-facing windows surfaces are still significantly short of the required 40%.”

# Alder Knox Comments to UDC – 8/16/23

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“I am opposed to the revised access plan for the proposed Starbucks on South Park Street for the following reasons.”

# Urban Design Commission Meeting – 8/16/23

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Alder Rummel is an appointed Council member of the Urban Design Commission

Alder Rummel attended the August 16, 2023 UDC meeting and voted 'no' on final approval for 1609 S. Park St.

# Plan Commission Meetings

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Referral 8/7/23

Re-Referral 8/28/23

Final Action (Approval) 10/30/23

# Alder Rummel Comments to Plan Commission— 8/28/23

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“First, when UDC staff explained they believed the proposed drive through window met the TOD overlay standards, I was confused. The TOD overlay ordinance states vehicle access sales and service windows are to be “located under the building in which they are located.” The proposed service window is not under the building. The UDC and PC staff report indicates the TOD overlay standards do not apply to this proposal. Ok, but staff argues the proposal is consistent anyway: “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, and the Supplemental Regulations because the vehicle sales and service window is screened from view by a wall.”

I strongly disagree. Allowing a drive through sales window under a canopy structure does not meet the spirit of the ordinance and would set a precedent in other TOD overlay districts. Under the building is not the same as under a canopy addition. If you and policymakers think having a service window under a canopy with screening is okay then the ordinance should be amended, it does not say that and it was not the legislative intent.”

# Alder Knox Comments to Plan Commission— 8/28/23

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“I am opposed to the Starbucks on South Park Street as currently proposed for several reasons. Several of my constituents, other neighbors living in and around the proposed facility, as well as other interested parties, including fellow Alders have expressed concerns relative to this proposed project meeting the intent of Madison ordinances as it related to zoning standards. These concerns have been articulated and communicated to you by much more knowledgeable expertise than me. I request that you respectfully respond to and resolve these concerns before any consideration of approval of this project.”

# Plan Commission Staff Report – 8/28/23

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“Staff notes that Zoning has determined that this development would comply with this recently adopted ordinance and staff note that the use is an allowable conditional use within this Zoning District.”

“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. Staff also believe the Supplemental Regulations for vehicle access sales and service windows are met”

# Alder Rummel Blog Post – 10/28/23

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“I’ve been following this proposal for a new Starbucks drive-thru coffee shop since it came to the Urban Design Commission (on which I serve) and because the location is subject to the new Transit Oriented Development Overlay zoning district (MGO 28.104). All of District 6 is in the TOD Overlay. Related to this proposal, the TOD Overlay ordinance explicitly disallows a drive aisle between the building and the sidewalk. The TOD Overlay ordinance also states vehicle access sales and service windows are to be “located under the building in which they are located.” (Think Cargo Coffee’s drive through on E Washington, it is literally under the building).

The bottom line is that according to zoning and legal staff, since the applicant proposes to re-use an existing building (the old Arby’s) and will not modify more than 50% of the floor area of the building, the new TOD Overlay ordinance will not be triggered.

The PC staff report of August 28 indicated the TOD overlay standards do not apply to this proposal but “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, and the Supplemental Regulations because the vehicle sales and service window is screened from view by a wall.”

<https://www.cityofmadison.com/council/district6/blog/2023-10-28/d6-items-of-interest-week-of-october-30-2023>



# Alder Rummel Comments to Plan Commission— 10/30/23

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“I’ve been following this proposal for a new Starbucks drivethru coffee shop since it came to the Urban Design Commission (on which I serve) and because the location is subject to the new Transit Oriented Development Overlay zoning district (MGO 28.104). All of District 6 is in the TOD Zoning Overlay so I am paying attention. Related to this proposal, the TOD Overlay ordinance explicitly disallows a drive aisle between the building and the sidewalk. The TOD Overlay ordinance also states vehicle access sales and service windows are to be “located under the building in which they are located.” (Think Cargo Coffee’s drive through on E Washington, it is literally under the building).

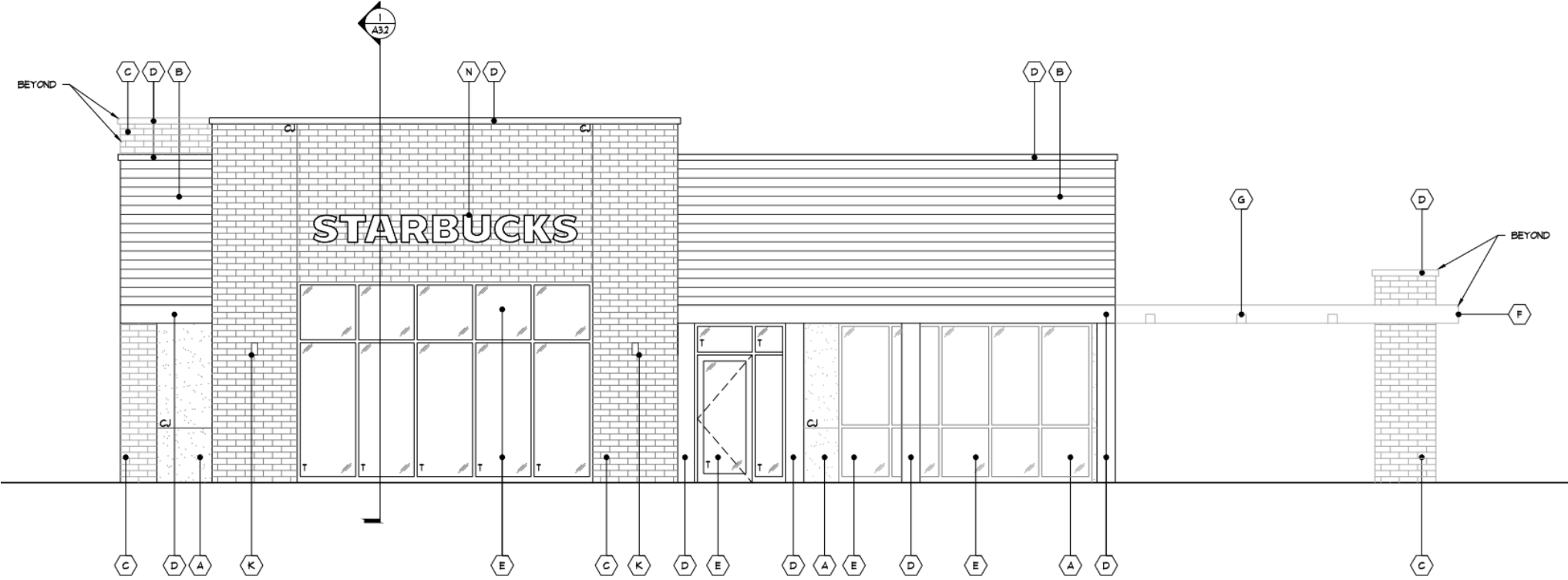
The bottom line is that according to zoning and legal staff, since the applicant proposes to reuse an existing building (the old Arby’s) and will not modify more than 50% of the floor area of the building, the new TOD Overlay ordinance will not be triggered. I am concerned that there will be different rules when a building retrofit doesn't meet the threshold for TOD Overlay.”

# Plan Commission 10/30/23

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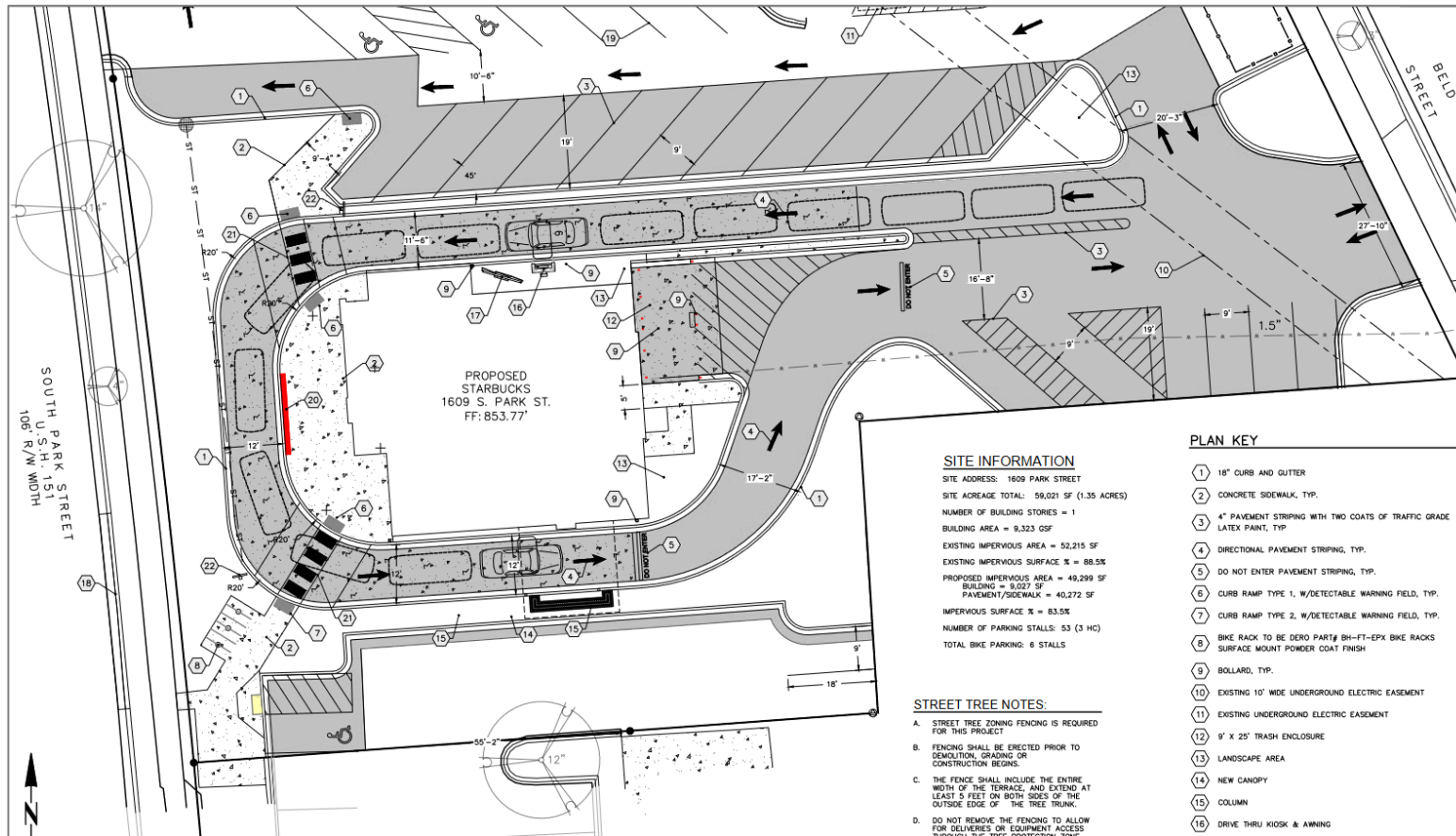


# Plan Commission 10/30/23



West Elevation

# Plan Commission 10/30/23



# ZBA Rules of Procedure

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# Timeline

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## Urban Design Meetings:

- 7/26/23
- 8/16/23

## Alder Rummel Public Comments Begin:

- 7/26/23 (UDC Hearing)

## Alder Knox Public Comments Begin:

- 8/16/23

## Plan Commission Meetings:

- 8/7/23
- 8/28/23
- 10/30/23

## **No Change in Zoning Administrator Determination Throughout Entire Public Hearing Process**

Date Appeal Application Received– 11/20/23

Date Appeal Filing Fee Received– 12/20/23

# Plan Commission Decision to Appeal Application

OCTOBER 2023						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4
	<b>0</b>	<b>1</b>				

Printable Calendars From [123Calendars.Com](https://www.123calendars.com)

NOVEMBER 2023						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
29	30	31	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	1	2
	<b>21</b>					

Printable Calendars From [123Calendars.Com](https://www.123calendars.com)

# Zoning Administrator Determination to Appeal Filing Fee

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<b>JULY 2023</b>						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
25	26	27	28	29	30	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31	1	2	3	4	5

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<b>DECEMBER 2023</b>						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
26	27	28	29	30	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

Printable Calendars From [123Calendars.Com](https://www.123calendars.com)

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# Zoning Administrator Decision to Appeal Application Received

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JULY 2023						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
25	26	27	28	29	30	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	0 26	1 27	28	29
30	31	1	2	3	4	5

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NOVEMBER 2023						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
29	30	31	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20 117	21	22	23	24	25
26	27	28	29	30	1	2

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