

These proposed amendments to Chapter 28 could have benefited from a Plan Commission special meeting. When the zoning code rewrite was adopted in 2013, underground parking was only addressed for downtown zoning districts. The way in which Madison is developing has changed a lot since 2013, not only by having underground parking in many districts, but also having bigger buildings (both in height and street frontage). It is not enough to just essentially allow underground/under-the-building parking.

### **Policy Issues**

#### Residential versus mixed-use surface parking

- Parking for residential building forms (other than 3 units or less): "surface parking shall not be located between any street and the plane of the principal building's corresponding street-facing facade."
- Parking for mixed-use and commercial building forms (other than NMX): "surface parking shall not be located between the primary street and the plane of the principal building's primary street-facing facade."

Why should residential buildings be prohibited from having parking between the building and *any* street while mixed-use/commercial buildings only are limited with respect to the primary street?

Purely residential buildings are already at a disadvantage. For example, in NMX, the maximum number of units in a multi-family dwelling is 12 (up to 24 with conditional use). The maximum number of units in a mixed-use building is 24, or 48 in the TOD (and there is no limit with conditional use approval). Prohibiting parking between the building and *any* street is a further disincentive to build residential buildings.

Discouraging purely residential buildings in, for example, NMX might make sense since the NMX district's purpose is "to encourage and sustain the viability of commercial nodes that serve the shopping needs of residents in adjacent neighborhoods." However, when there is not any minimum amount of commercial space that is required, a tiny commercial space is enough to qualify as a mixed-use building even though that space may not even serve local shopping needs.

Residential building forms located in mixed-use/commercial zoning districts should be treated the same as the non-residential building forms.

#### Under the building parking versus underground parking

Underground parking has been built for years even though the ordinances have not allowed that. (The court, in its decision on the Speedway project, said that: "The ordinance plainly does not provide for parking to be located below the building." Ordinances for zoning districts other than NMX also use the same language.)

The ordinance changes would allow for underground parking as well as parking under the building (whether just at the ground floor or higher floors). The amount of the ground floor that could be devoted to parking appears to be unlimited.

- MGO 28.151: "In the LMX, NMX, TSS and CC-T Districts, at least fifty percent (50%) of the ground-floor frontage facing the primary street, including all frontage at a street corner, *shall be non-residential*. Less non-residential frontage requires conditional use approval."
- The question is the meaning of "non-residential." In Legistar 67276 the commercial space was deemed non-residential while the lobby and exercise room were deemed residential when analyzing whether 50% was met. In Legistar 69786, the Speedway project, the commercial area covered about 27% of the frontage, while the rest of the frontage was the parking garage and the lobby space. No conditional use approval was required for this project with respect to the 50% requirement, so either the lobby and/or the ground floor parking must have been deemed non-residential.

The policy questions of how much ground floor parking is allowed, how visible it may be, and whether active uses need to front the street, need to be addressed for nonresidential buildings.

- The issue is addressed for residential buildings in NMX, TSS, CC-T, CC, RMX, TE and SE: "For Large Multi-Family Buildings, structured parking at ground level shall not be visible on the front facade of the building." (Per MGO 28.172, a small apartment building is one with 4-8 units, so a large apartment building must be any residential building with over 8 units.)
- In TSS, MXC, and RMX: Parking Buildings abutting any public or private street shall be designed with ground-floor retail or office uses fronting the primary street. (Should this be expanded to other zoning districts?)
- Parking for Downtown and Urban Districts is not being changed. MGO 28.071(3)(a)1. provides: "Parking shall be located in parking structures, underground, or in surface parking lots behind principal buildings." (Ground level parking is not allowed.)

Garage doors are not addressed in the proposed ordinance but it fits with this policy issue in terms of creating dead space. In mixed-use districts: "For nonresidential uses at ground floor level, windows and doors or other openings shall comprise at least sixty percent (60%) of the length and at least forty percent (40%) of the area of the ground floor of the primary street facade." Should a wide garage door, one that is likely to always be closed unless a resident is entering/departing, count as an "other opening?"

#### Width of side parking (surface or structured)

The following are the side lot parking standards for residential building forms. Several things are worth noting (and perhaps worth changing):

- NMX: If located on the side of the building, parking facilities shall occupy no more than twenty-five percent (25%) of the frontage along the primary abutting street.
- TSS, MXC, CC-T, CC, RMX, DR2, SE: If located on the side of the building, surface or structured parking shall occupy no more than twenty-five percent (25%) of the frontage along the primary abutting street.

Only NMX was switched to “parking facilities” while the others retain “surface or structured parking.” Should all use “parking facilities?”

These limits have been in effect since adoption of the zoning code in 2013. But times have changed, and buildings are bigger and size limits (except for LMX) were removed several years ago, and lots are frequently combined. Is 25% still a good number?

The following are the side lot parking standards for non-residential building forms. Several things are worth noting (and perhaps worth changing):

- LMX: Surface parking abutting the primary street frontage is limited to seventy (70) feet in width or fifty percent (50%) of lot frontage, whichever is less.
- NMX: Parking abutting the primary street frontage is limited to seventy (70) feet in width or fifty percent (50%) of lot frontage, whichever is less.
- TSS: Surface parking abutting primary street frontage is limited to forty percent (40%) of lot frontage.
- MXC: Surface parking abutting the primary street frontage shall be limited to forty percent (40%) of the total lot width
- CC-T: Except as allowed in Section (3)(a)2. and 3. above, surface parking abutting the primary street frontage shall be limited to fifty percent (50%) of the total lot frontage ...
- CC: not addressed
- RMX: Parking abutting primary street frontage is limited to forty percent (40%) of lot frontage.
- TE: ... surface parking shall be located to the rear or side of the principal building. (There is not a limit to how much of a side lot can be devoted to parking.)

TE does not limit surface parking abutting the primary street frontage. Should there be a limit?

For NMX and RMX, any parking (structured or surface) appears to be limited. For TSS, MXC, CC-T and TE, only surface parking is limited. Should all districts limit both structured and surface parking?

LMX and NMX limits are based on the width in feet (and %). Other districts only address the percentage. Should a maximum in terms of feet be established?

The percentage varies from 40-50% (and 100% for TE). Should they all be treated the same, like residential buildings forms are treated?

Should mixed-use buildings be able to use a greater portion of the side lot frontage for parking as compared to the maximum 25% for residential buildings?

#### Use of “parking facility”

A non-accessory parking facility requires conditional use approval in all residential districts.

In NMX, TSS, MXC, CC-T, CC, RMX, UMX, TE, SE, EC, IL, IG a private parking facility requires conditional use approval, in DC it is a permitted use, and is not allowed in LMX, THV, UOR, DR1, DR2, SEC.

Since a “parking facility” will be defined as “an area used for parking vehicles and includes surface parking lots and parking structures,” it would appear that even a 5-vehicle surface lot for customers would require conditional use approval.

### **Drafting Inconsistencies**

These are just three examples of drafting errors, or at least potential drafting errors. (Other than the policy issues, I only made it through page 6.)

Change #6 and #7: For NMX: surface parking shall not be located between the principal building and primary street. For TSS: “surface parking shall not be located between primary street and the plane of the principal building’s primary street-facing facade.”

- Why is there a difference and what is the effect of this difference? If there is no difference, the NMX language is more easily understood.

Change #7, Paragraph (4): needs to add “between.” “... surface parking shall not be located [between] any street and the plane of the principal building’s corresponding street-facing facade.”

Change #13: Refers to the setback of a “street-facing building wall” to allow parking between the building and the street. Presumably this is the same thing as the “plane of the principal building’s primary street-facing facade” but it is not clear.

### **Problems with the Definitions**

MGO 28.211: “Automobile infrastructure” is defined.

- Usually the definition section is limited to terms that are used more than once in the zoning code. The only use of “automobile infrastructure” is in the TOD. Does it really make sense for a reader to have to search the definition section rather than just reading the definition in the context of the TOD ordinance?

MGO 28.211: Automobile infrastructure includes “drive-through windows and drives.”

- There is no such thing. These are called “vehicle access sales and service windows.”
- Legistar 81965, if adopted, would change “vehicle access sales and service windows” to “drive-through windows,” but that has not yet occurred.

MGO 28.211: “Outdoor Eating Area, Temporary, Associated with Food and Beverage Establishment. An extension of a premise, in parking facilities or other on-site areas, temporarily repurposed for the public service and consumption of food and beverages.”

- A parking facility would include a parking structure. Is it really the intent to allow outdoor patios in parking structures?

MGO 28.211: Purports to create a definition for "primary street."

- A definition is not being created. Rather, the process by which a primary street will be determined is being explained. The place for this provision does not belong under definitions.
- "Street classification" is listed as one criteria. The City arcgis map still uses "functional classifications" (with 5 classifications - local, collector, minor arterial, etc.). But now there also is the Complete Green Streets classifications (with 11 classifications - neighborhood shared street, neighborhood street, urban avenue, etc.). Which classification system is used?
- The process should be more transparent. What counts as the primary street is relevant for many zoning provisions, including parking, the amount of non-residential frontage use in the LMX, NMX, TSS and CC-T districts, the amount of windows in mixed-use and commercial districts, and residential stoops/porches. It is not clear, at least to residents, how the primary street is determined. To residents it often seems that the primary street is picked dependent upon the developer's wants (e.g., defining what is the back yard for set-back purposes). Perhaps the Alder should also have to approve what street is designated as the primary street.
- Will it be possible for a "front façade" to be different than the "the plane of the principal building's primary street-facing façade?"
  - Front Façade. The wall of building closest to the street that separates interior living spaces from exterior. An open porch without living space above it shall not be considered a front façade. For buildings on corner or through lots, the front façade is *usually that façade that fronts the street of higher classification.*
  - Frontage. The relationship between the front facade of a building and the abutting street, encompassing the placement of the building and its entrances, and the treatment of front setback areas.
  - "Front façade" does not necessarily bear any relationship to the primary street.

When an ordinance undergoes a scope of review this extensive, it is unlikely to receive another extensive review for many years. It is important to make considered policy decisions. The extent to which a ground floor can be used for parking, and the extent to which parking can be placed on the side of the lot abutting the primary street, could shape the look of Madison for decades to come. A majority of the non-residential buildings are located in the TOD, an area that is intended to make development more pedestrian, bicycle, and transit friendly. Having dead space at the ground level of a building, or a large dead parking area on the side of a building, does not make for friendlier development.

Respectfully Submitted,  
Linda Lehnertz