Plan Commission
Meeting of March 11, 2024
Agenda #10, Legistar #81965
Supplemental Comment Letter

In my comment letter, I mentioned I had asked the Zoning Administrator what was meant by "the driveway immediately adjacent to it." I included examples of six drive-thrus, and also outlined in red the area that would be deemed the driveway under the current ordinance.

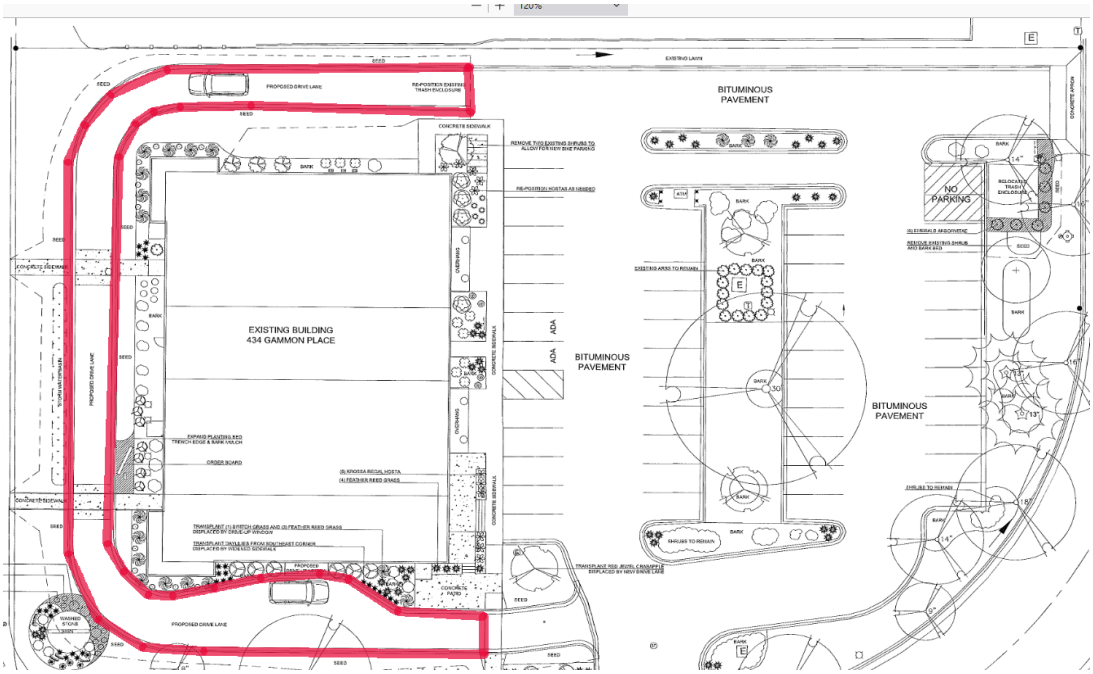
The Zoning Administrator replied today, saying: "It's the space next to the window, door, or opening where a vehicle or bicycle is being served. It does not include queuing areas where vehicles and bicycles are waiting to be served."

This is **not** how the definition of a vehicle access sales and service window has been interpreted in the past. ("A facility consisting of *a driveway* and window, opening, canopy or other facility used for serving patrons in automobiles or on bicycles and which may be associated with principal uses such as restaurants, banks, drugstores or coffee shops.")

As stated in a 2015 staff report:

> "By definition, a vehicle access sales and service window includes the service window(s), ordering position(s), and the lane providing ingress and egress."
> https://madison.legistar.com/View.ashx?M=F&ID=3747052&GUID=77000E4B-2670-4FBF-AF30-E526D52A3D73

That staff report then described that particular driveway: "The access lane will be 13 feet wide and enter at the northeastern corner of the building to navigate counterclockwise around the building, with an exit into the parking lot at the southeastern corner near one of the site's two driveways from Gammon Place." Below is a visual representation of that description. It clearly includes the asphalt devoted to the drive-thru lane.



At the UDC meeting for 1609 S Park on 8/16/2023, staff said:

> If we are talking about the TOD overlay requirements, I think that is exactly it, to have the drive-thru be as miniscule as possible in terms of its visibility and presence. And I think the intent was to make them as integrated as possible with the architecture of the building. A really good example of a really well integrated drive-thru use is on East Washington, there is a - I can't remember what the name of the coffee shop is - but you go under the building to go thru the drive-thru. And you don't even know it's there and that is the idea. [Identified a moment later as Cargo Coffee]

Cargo Coffee was provided as an example for the 1/23/2017 Plan Commission meeting when the zoning ordinance was changed to allow under the building drive-thrus in TSS districts. The Zoning Administrator was asked for an example that might be out there right now that would illustrate what this will allow. The Zoning Administrator provided two examples, one of which was Cargo Coffee. With respect to Cargo Coffee he said: "It's a facility that is entirely located underneath the building and you drive through the parking facility one side, exit out East Washington."

If the entire drive-thru facility does not need to be under the building (or under an occupiable conditioned story), then why bother with the under the building requirement for just the space where the patron is being served? If one is going to see the long lane(s) of queued vehicles, there does not seem to be any point in hiding just the window - it is not as though something shameful is going on that needs to be hidden.

Respectfully Submitted,
Linda Lehnertz

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The proposed changes arose out of the approval of 1609 S Park. Although 1609 S Park was approved, there was some dissatisfaction with the Zoning Administrator's interpretation that "under the building" included a canopy addition. This proposed ordinance does not improve upon "under the building" and other changes make the overall situation worse.

**Applicability of auto infrastructure requirements MGO 28.104(8)(a)** (section 16, page 9)
Currently, MGO 28.104(8), Site Standards for Automobile Infrastructure, is applicable to "non-residential uses and buildings with over three residential units." In testimony at the 8/28 Plan Commission meeting on 1609 S Park, Zoning told the Plan Commission: "The TOD overlay applies to new auto infrastructure."

The proposed section would read:

> Applicability. The following standards are applicable to non-residential uses, and buildings with over three (3) residential units when there is a new principal building or when there is a major expansion [fifty percent (50%) or more of building floor area] of a principal building. Additionally, new automobile infrastructure must comply and no increase in the nonconformity of existing automobile infrastructure is permissible.

The start of the second sentence ("Additionally, new automobile infrastructure must comply …") is confusing. First, since the word "additionally" is used, does that mean new auto infrastructure must comply only when there is a new building or a major expansion? Second, what must new auto infrastructure comply with? A clearer way of writing this section would be:

(a) Applicability. The following standards are applicable to:
1. Non-residential uses, and buildings with over three (3) residential units when there is a new principal building or when there is a major expansion [fifty percent (50%) or more of building floor area] of a principal building, and
2. New automobile infrastructure.

The end of the second sentence ("no increase in the nonconformity of existing automobile infrastructure is permissible") does not belong under a section titled "applicability."

The meaning of new auto infrastructure is not clear. Does changing existing asphalt from a drive aisle (that sees a handful of cars per day) into a drive-thru lane (which will see a much higher traffic count and stacking) count as new auto infrastructure? Or is the fact that asphalt exists enough to deem that asphalt existing auto infrastructure no matter how it will be used?

**Applicability of auto infrastructure requirements MGO 28.104(8)(c)** (section 16, page 9)

Current: 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.

Proposed: "Drive-through windows shall be *located fully* under an occupiable conditioned story."
See also:

- Proposed 28.151(a): "In CC-T, RMX, TE, DC, and UMX Districts drive-through windows shall be *located* to the side of, or rear of, buildings or *fully* under an occupiable conditioned story, and shall not be located between the principal structure and a public street."
- Proposed 28.151(b): "In the TSS District, drive-through windows shall be *fully located* under an occupiable conditioned story, and the building shall have commercial or residential uses along the primary street frontage."

Is there a difference between "located fully" and "fully located"? If not, why the change?

What is "an occupiable conditioned story"? It would be better to either define the meaning or to use an already defined term. For example, "Completely Enclosed Building" is defined as: "A building separated on all sides from the adjacent open space, or from other buildings or structures by a permanent roof and by exterior walls or party walls, pierced only by windows and normal entrance or exit doors."

All 4 lanes of this Atlanta Chick-fil-A, including the outside lanes, are under "an occupiable conditioned story." But the drive-thru is not within a "completely enclosed building."

USA Today

One might think this Chick-fil-A would not be allowed because MGO 28.104(d) would require, as does existing language, that "the building shall have commercial or residential uses as allowed in the base district along the primary street frontage." However, as happened with 1609 S Park, the drive-thru is not required to be screened from the primary street by commercial/residential uses. As long as a building has commercial/residential uses somewhere along the primary street frontage, then the requirement is met. This Chick-fil-A has commercial use along the primary street frontage on the second floor.

Heartland Credit Union on Williamson was approved as being "located under the building in which it is located." Under the proposed definition, this drive-thru would not be allowed.

**Applicability of auto infrastructure requirements MGO 28.104(8)(d)** (section 16, page 10)

Currently part of (c): 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.

Proposed: When there is a drive-through window as part of the building, the building shall have commercial or residential uses as allowed in the base district along the primary street frontage.

Since, in the TOD, a drive-thru would be required to be "located fully under an occupiable conditioned story", all drive-thrus would be a part of the building. It would make more sense to leave this as it currently is, which is part of (c).

Also of interest is what is meant by "the building shall have commercial or residential uses as allowed in the base district along the primary street frontage." When this was adopted for TSS, it was part of the idea that drive-thrus should be hidden. Presumably, this phrase meant the location of the drive-thru should be screened by residential/commercial uses. However, that was not how it was interpreted for 1609 S Park.

**Supplemental Regulations MGO 28.151** (section 17, page 10)

Proposed (d) would remove the requirements that vehicular ingress and egress be located at least sixty (60) feet from the intersection of two streets and at least sixty (60) feet from abutting residentially zoned property. Instead, it would be up to traffic engineering to determine the distance.

The minimum distance from residential property should remain. It is possible that what was once merely ingress/egress can be transformed into a vehicle stacking area. In the Chick-fil-A site plan below, the red was what was approved. But the drive-thru must have exceeded expectations because the area in green, formerly just an ingress/egress drive, was transformed into a stacking

area. This new stacking area is about 45' from residential property. I have seen vehicles backed up to the sidewalk, which is about 32 vehicles in line, which can have detrimental effects on residential property including both noise and pollution from idling vehicles.

Currently, (f) requires: "a six- (6) foot buffer area with screen planting and an obscuring wall or fence shall be required along any property line adjoining an existing residence or residentially zoned property." This would be deleted. Under MGO 28.142, Landscaping and Screening Requirements, paragraph (8) requires a screening between commercial/mixed-use/industrial districts and residential districts. That screening only consists of "a solid wall, solid fence, or hedge with year-round foliage, between six (6) and eight (8) feet in height, except that within the front yard setback area, screening shall not exceed four (4) feet in height." Though the staff report claims (f) is a duplication, it is not - what would be lost with this change is the six-foot buffer area with screen planting.

Paragraph (i) would read: "Pedestrian access to the establishment must also be provided." To be consistent with the rest of the provision, this should read: "Pedestrian access to the establishment shall be provided."

**Nonconforming Site Conditions MGO 28.196** (section 18, page 10)

A new section would be created under Subchapter 28M, Nonconformities: "A lawful nonconforming site condition existing prior to the effective date of this ordinance may continue in its existing condition and may be maintained. However, no increase in the nonconformity of the site condition is permissible, unless otherwise allowed within Chapter 28."

Three things are wrong with this proposed language.

First, it is not needed. MGO 28.191(1) already addresses lawful nonconforming use of the land (site condition):

> "The lawful nonconforming use of a building, structure, *or land* existing on the effective date of this ordinance may be continued although it does not conform to the provisions of this ordinance, provided that:
> …
> (b) The nonconforming use shall not be extended or expanded.
> …
> (d) The nonconforming use of the land does not cease for a continuous period of twelve (12) months.

Second, it says "no increase in the nonconformity of the site condition is permissible." How that is addressed in MGO 28.191(1)(b) is that the nonconformity cannot be extended or expanded. The existing language tracks state statutes which say: "The nonconforming use may not be extended." There is a long legal history of what it means to extend a nonconforming use. There is not history with respect to the meaning of "no increase in the nonconformity."

Third, the nonconforming use could continue into perpetuity. Unlike MGO 28.191(1), proposed MGO 28.196 does not provide any termination date for the nonconforming site if the nonconforming use ceases for 12 months.

As mentioned above, nonconformities are added to proposed MGO 28.104(8)(a): "…and no increase in the nonconformity of existing automobile infrastructure is permissible." This should not be addressed in a paragraph addressing applicability. It also is not needed. Subchapter 28M applies across the Zoning Code and contains standard provisions.

**Defintions MGO 28.211** (section 19, page 11)

Legistar 81963 was just adopted at Council, ORD-24-00018, which added a definition for "automobile infrastructure." This definition would change that definition, even though the proposed definition is presented as new language. Below is how that recently adopted version is being modified.

> Automobile Infrastructure. An area on a lot used for the storage, parking, circulation, maneuvering or outdoor servicing of motor ~~or movement of~~ vehicles including, but not limited to, motor vehicle ~~automobile~~ parking, loading, drives, drive aisles, driveways, backing areas, drive-through [~~vehicle access sales and service~~] windows and drives, gas pumps, gas station canopies, car wash vacuum stalls and electric vehicle charging facilities."

The other definition being changed is for Drive-Through Window: A facility consisting of a driveway and window, opening, canopy or other facility used for serving patrons in automobiles or on bicycles and the driveway immediately adjacent to it and which may be associated with principal uses such as restaurants, banks, drugstores or coffee shops. Car washes are not drive-through windows."

"Car washes are not drive-through windows." Once one thing is specifically excluded, then things not excluded are included. For example, would a Jiffy Lube where one drives their vehicle into a

bay be able to be deemed a drive-thru? Or, in Sun Prairie there is a veterinary clinic where one drives into a garage bay to get their pet treated. For both of these businesses, a person drives in on one side and out on the other side.

Driveway is used twice in the definition: "a driveway and window, opening, canopy or other facility" and the "driveway immediately adjacent to it." Are there two different driveways that come within the definition of a Drive-Through Window?

What is meant by "the driveway immediately adjacent to it?" I asked that of the Zoning Administrator last Thursday.

> I do not understand the meaning of "the driveway immediately adjacent to it" and am hoping you could explain the meaning.
>
> Sometimes pictures are better than words. Attached please find a document with 6 different types of drive-thrus. For each type of drive-thru I have included: (1) a site map or satellite image; and (2) that same image with the area devoted to the drive-thru outlined in red (the area that no other traffic can use). For one example, Chick-fil-A on E Washington, there are two sets of images since the drive-thru was expanded at some point in time.
>
> I would appreciate it if you could explain exactly what constitutes "the driveway immediately adjacent to it" for each of these drive-thrus – whether in words or just highlighting the portion of the site which would be deemed the "the driveway immediately adjacent to it." (Or, perhaps you may just agree with what I have outlined in red.)

Attachment A is the document I sent to the Zoning Administrator.

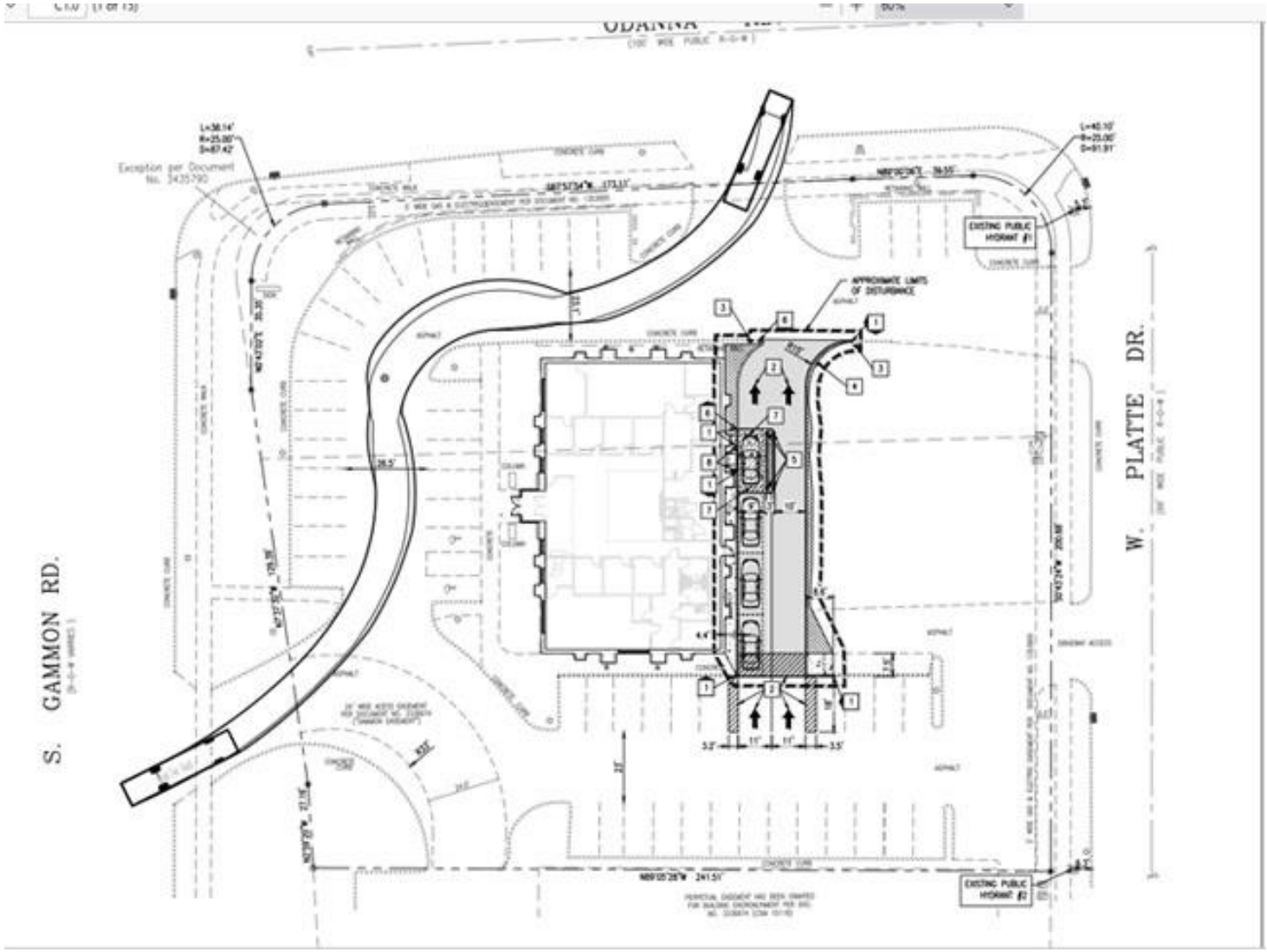
A clear definition of the driveway is needed. Otherwise, like with "under the building," the definition will be open to interpretation.

Perhaps the differences in intensity of types of drive-thrus should also be considered, with potentially different standards. A Chick-fil-A with stacking of 30 vehicles has a different impact than an ATM with scattered vehicle use.

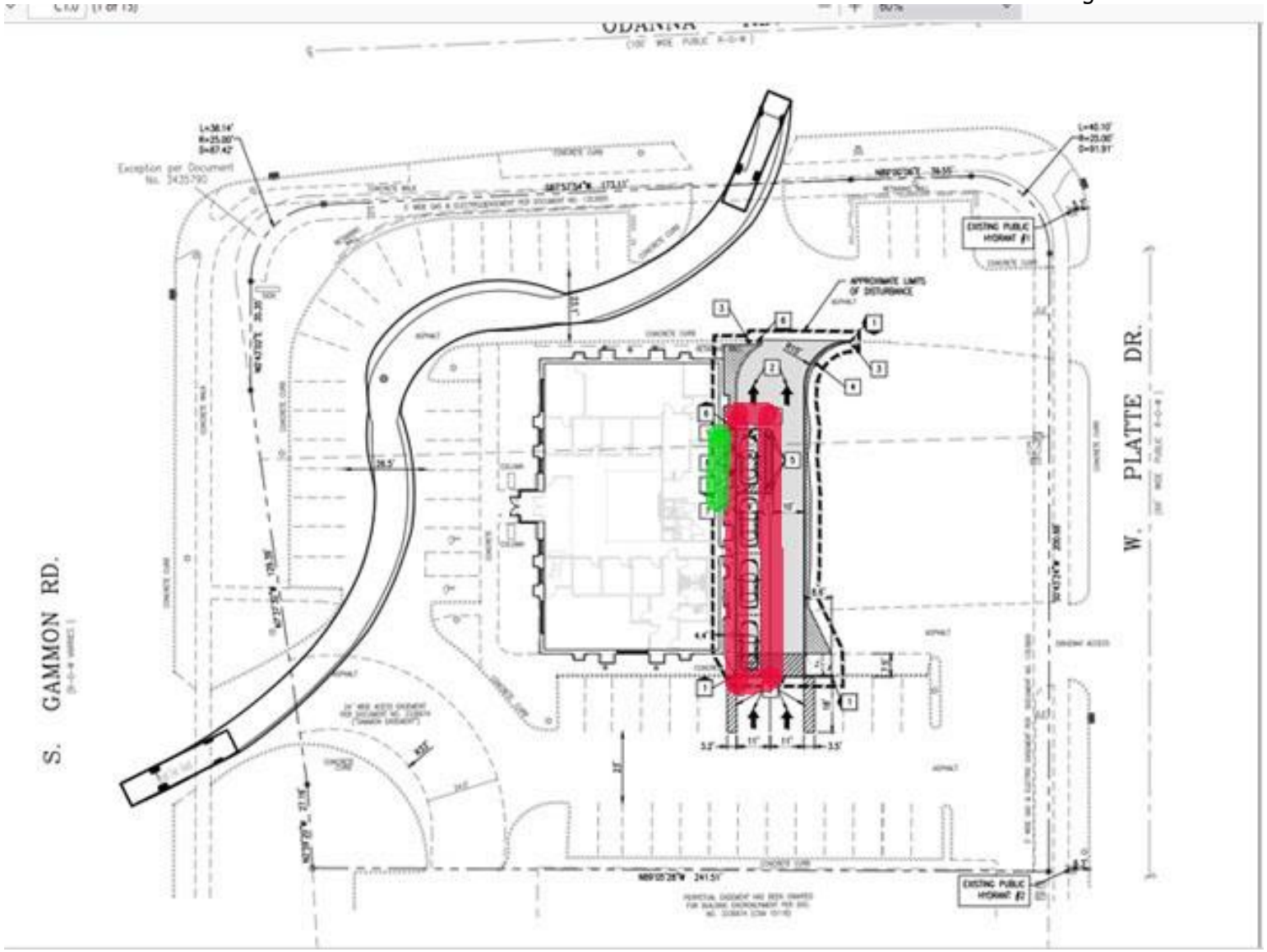
Respectfully Submitted,
Linda Lehnertz

**ATTACHMENT A**

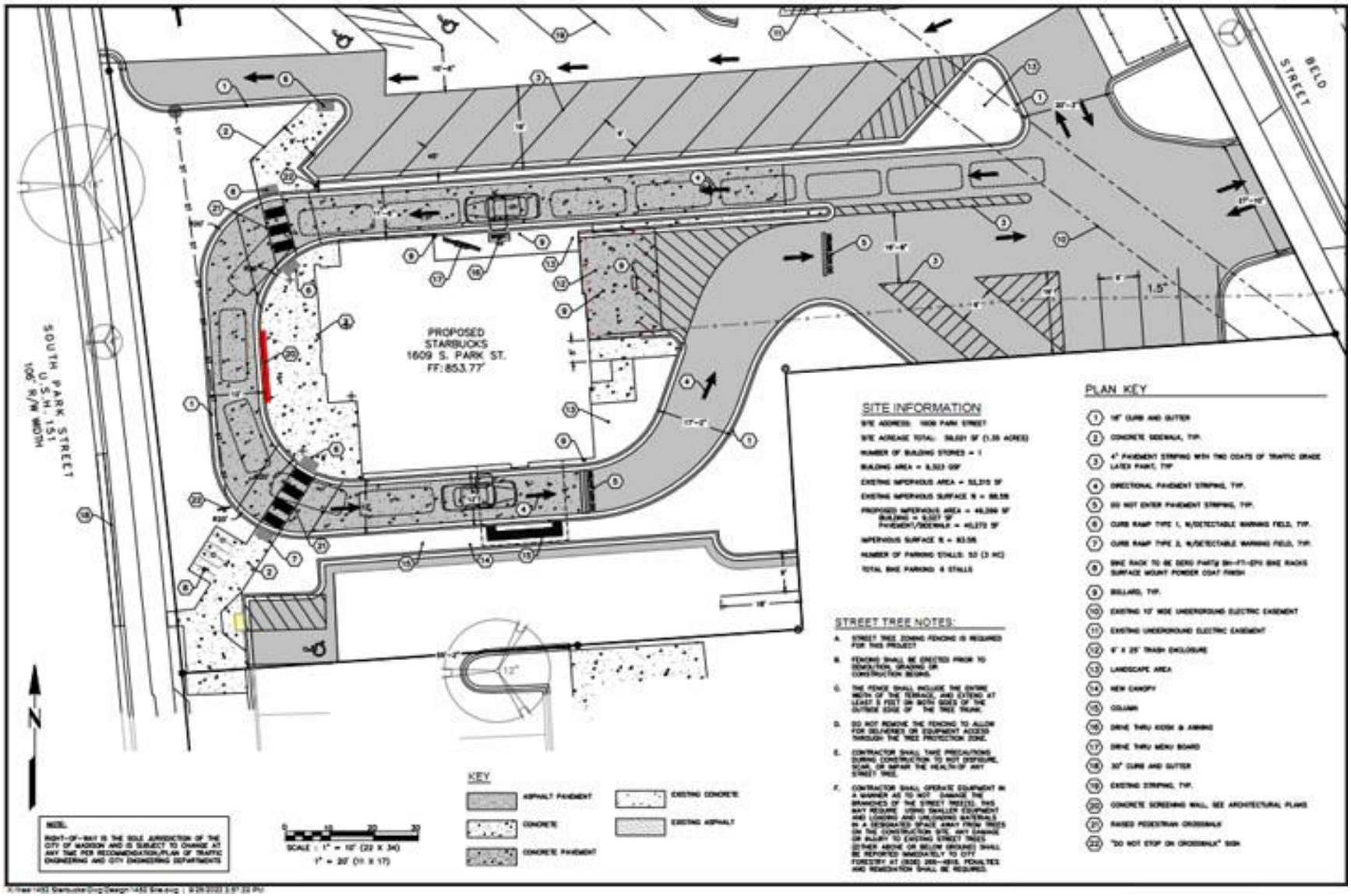
1. 505 S Gammon, bank ATM. Within TOD and application submitted after TOD was adopted.



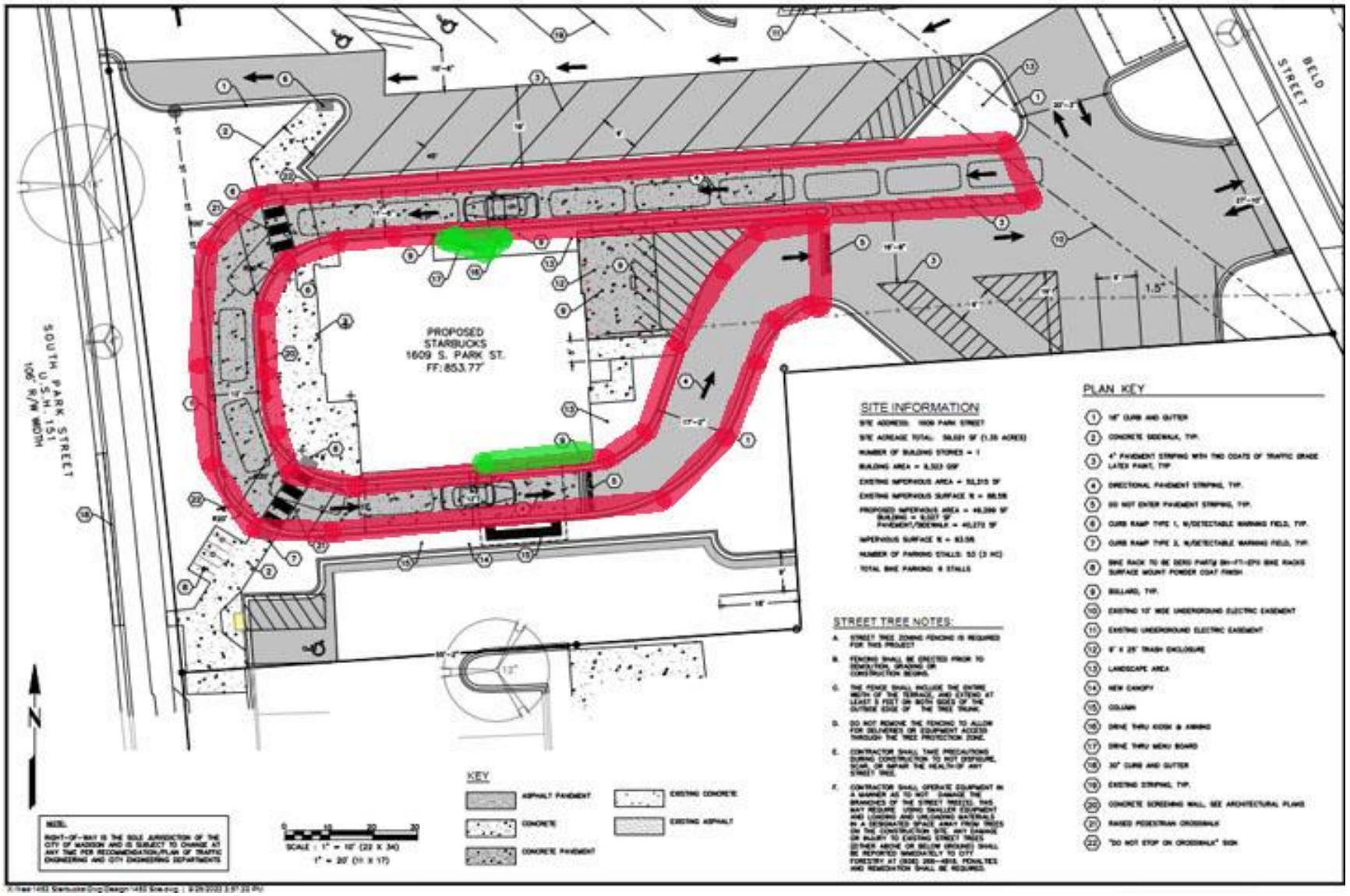
1a. 505 S Gammon with the area devoted to the drive-thru in red and the window location in green.



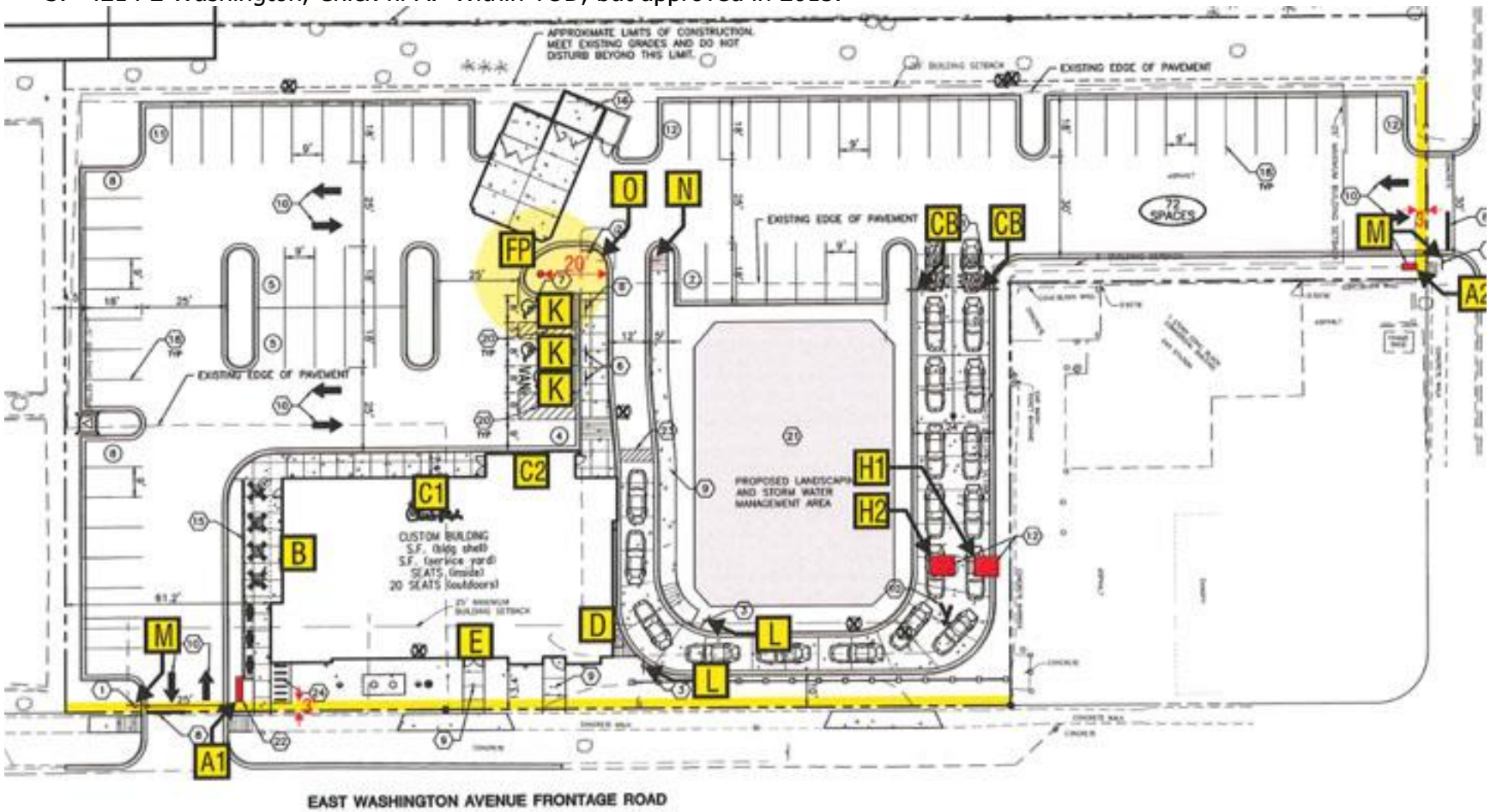
2. 1609 S Park, Starbucks. Within TOD and application submitted after TOD was adopted.



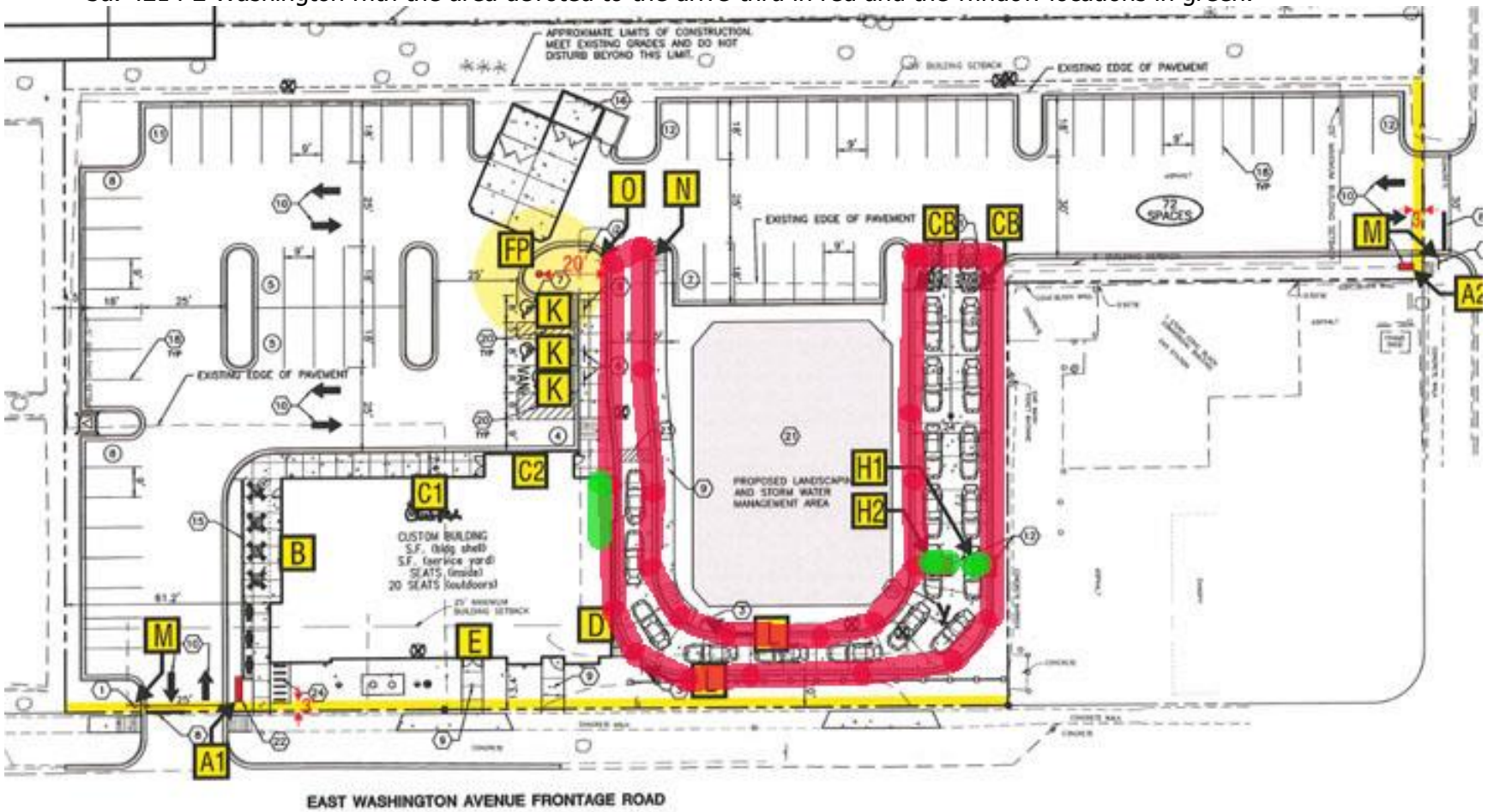
2a. 1609 S Park with the area devoted to the drive-thru in red and the window locations in green.



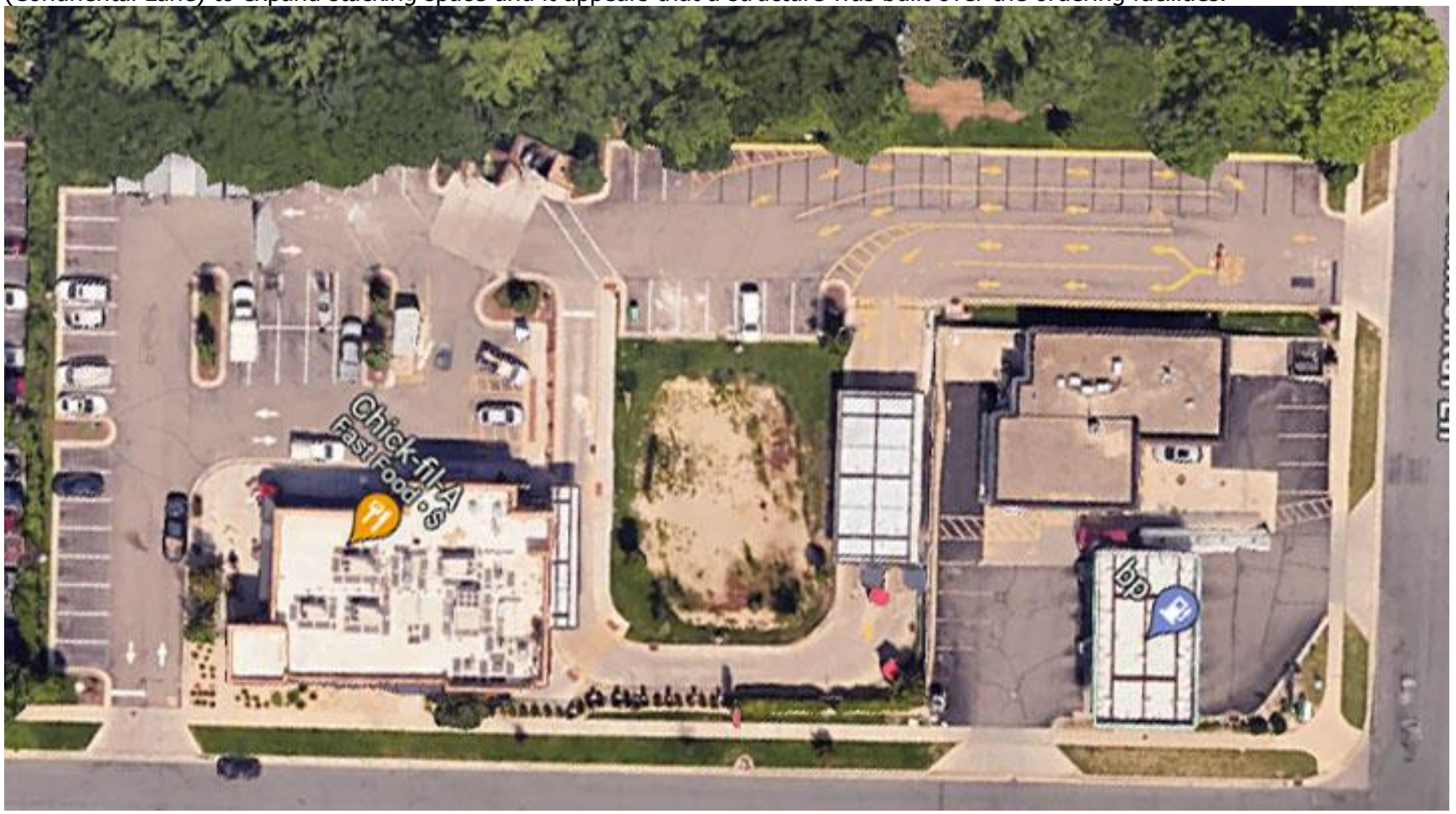
3. 4214 E Washington, Chick-fil-A. Within TOD, but approved in 2015.



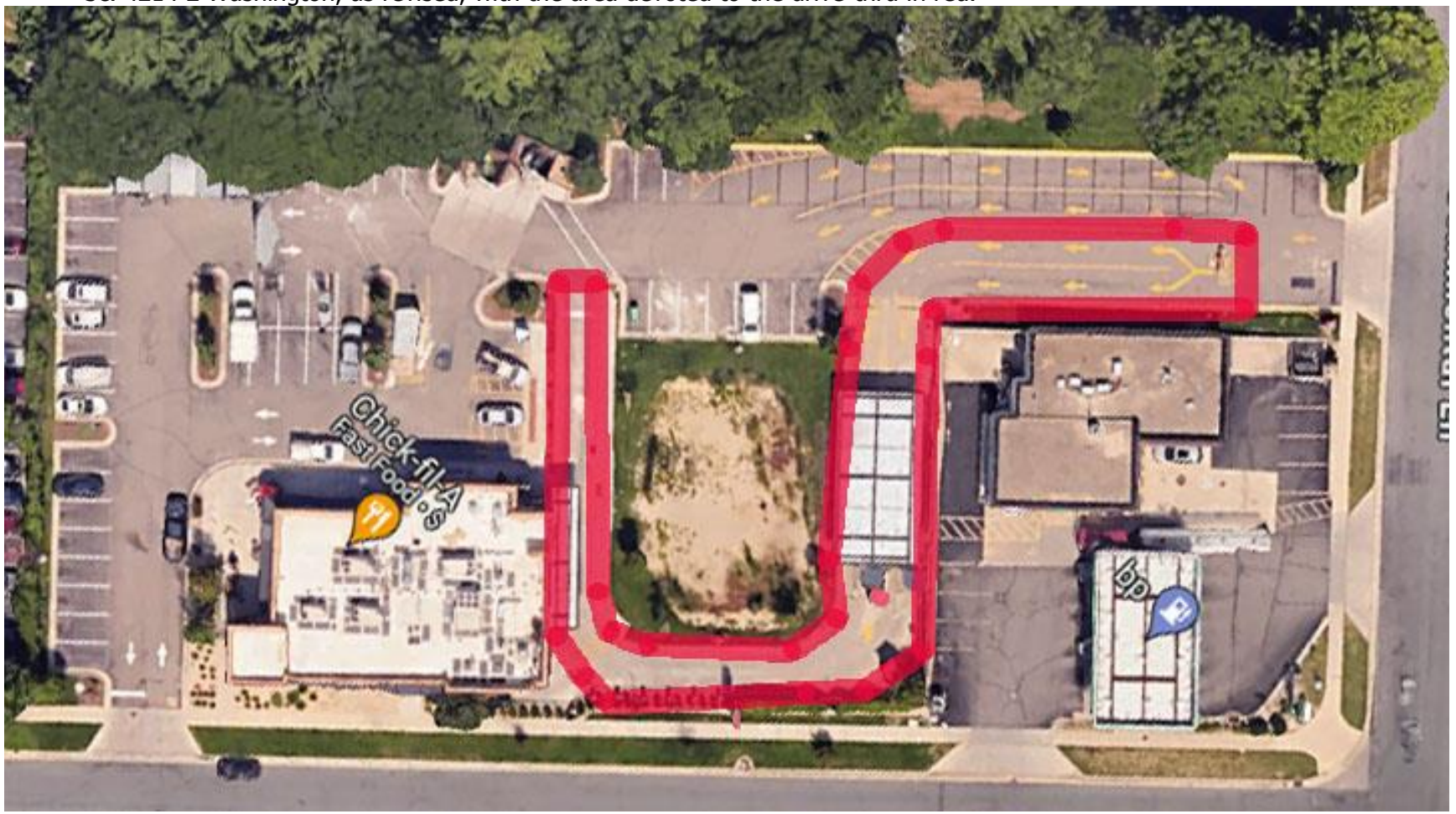
3a. 4214 E Washington with the area devoted to the drive-thru in red and the window locations in green.



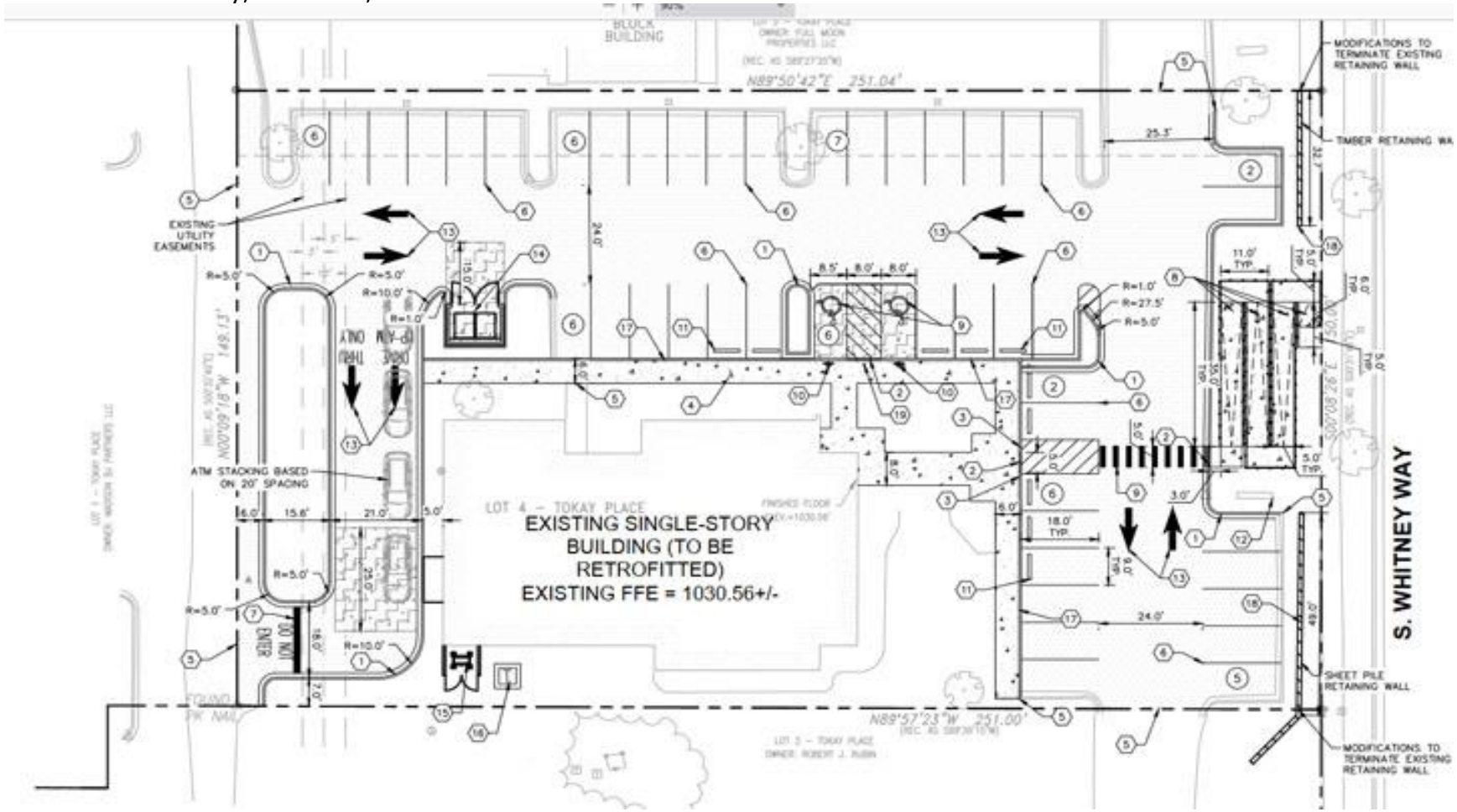
3b. 4214 E Washington. Satellite view of 4214 E Washington. At some point the site was modified at the east entry (Continental Lane) to expand stacking space and it appears that a structure was built over the ordering facilities.



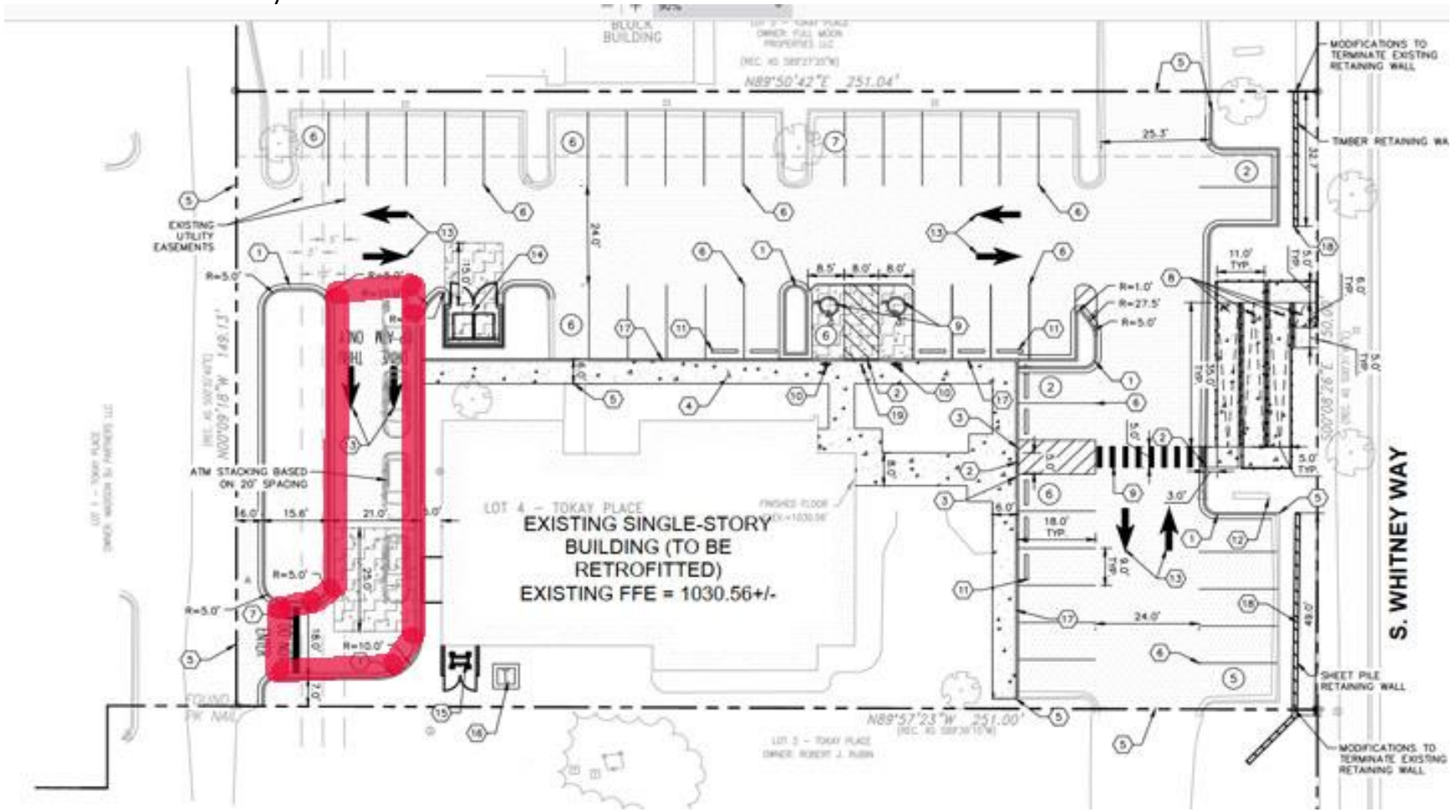
3c. 4214 E Washington, as revised, with the area devoted to the drive-thru in red.

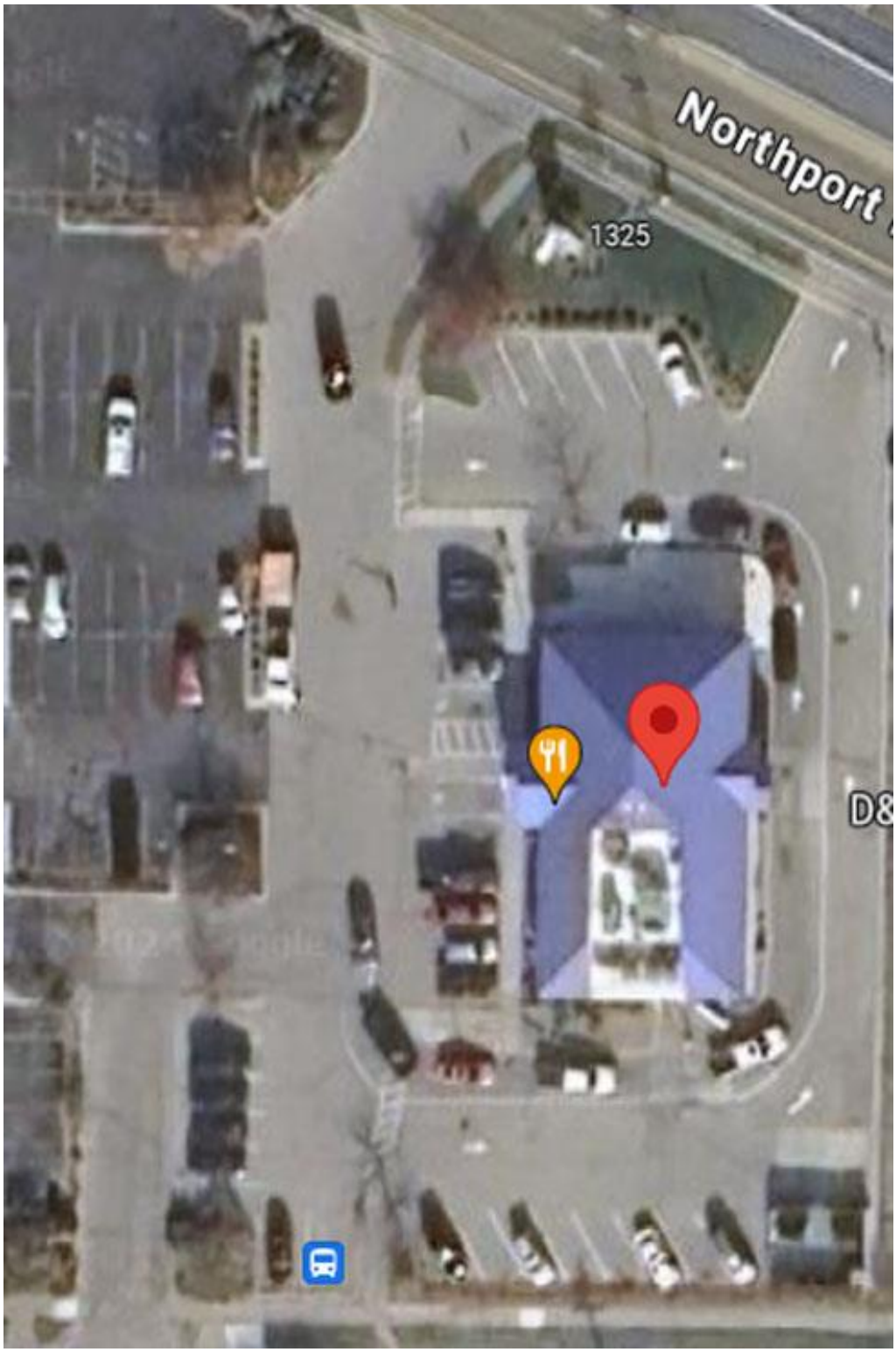


4. 660 S Whitney, bank ATM, Planned Multi-Use Site. About 350 feet outside TOD.



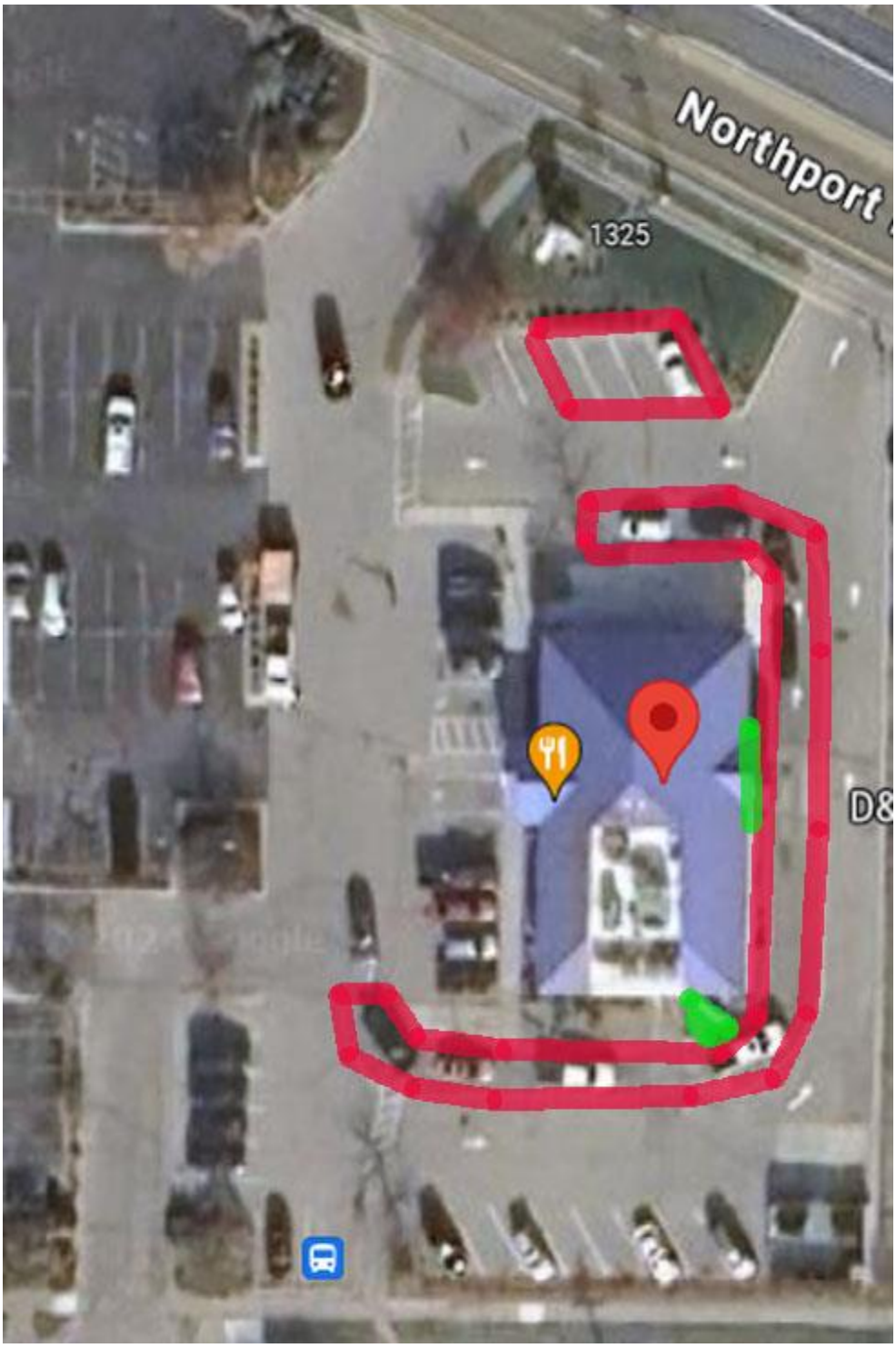
4a. 660 S Whitney with the area devoted to the drive-thru in red.



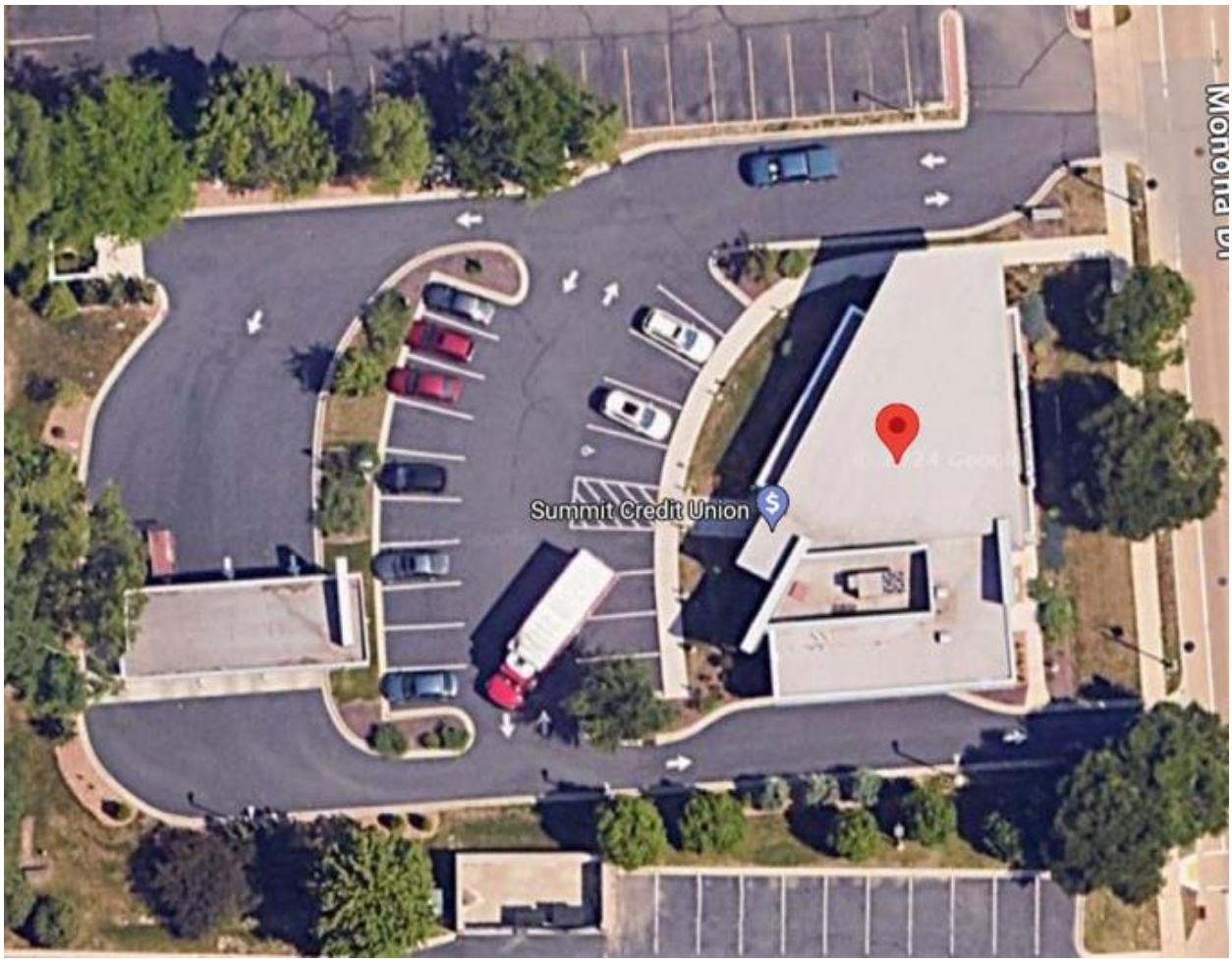
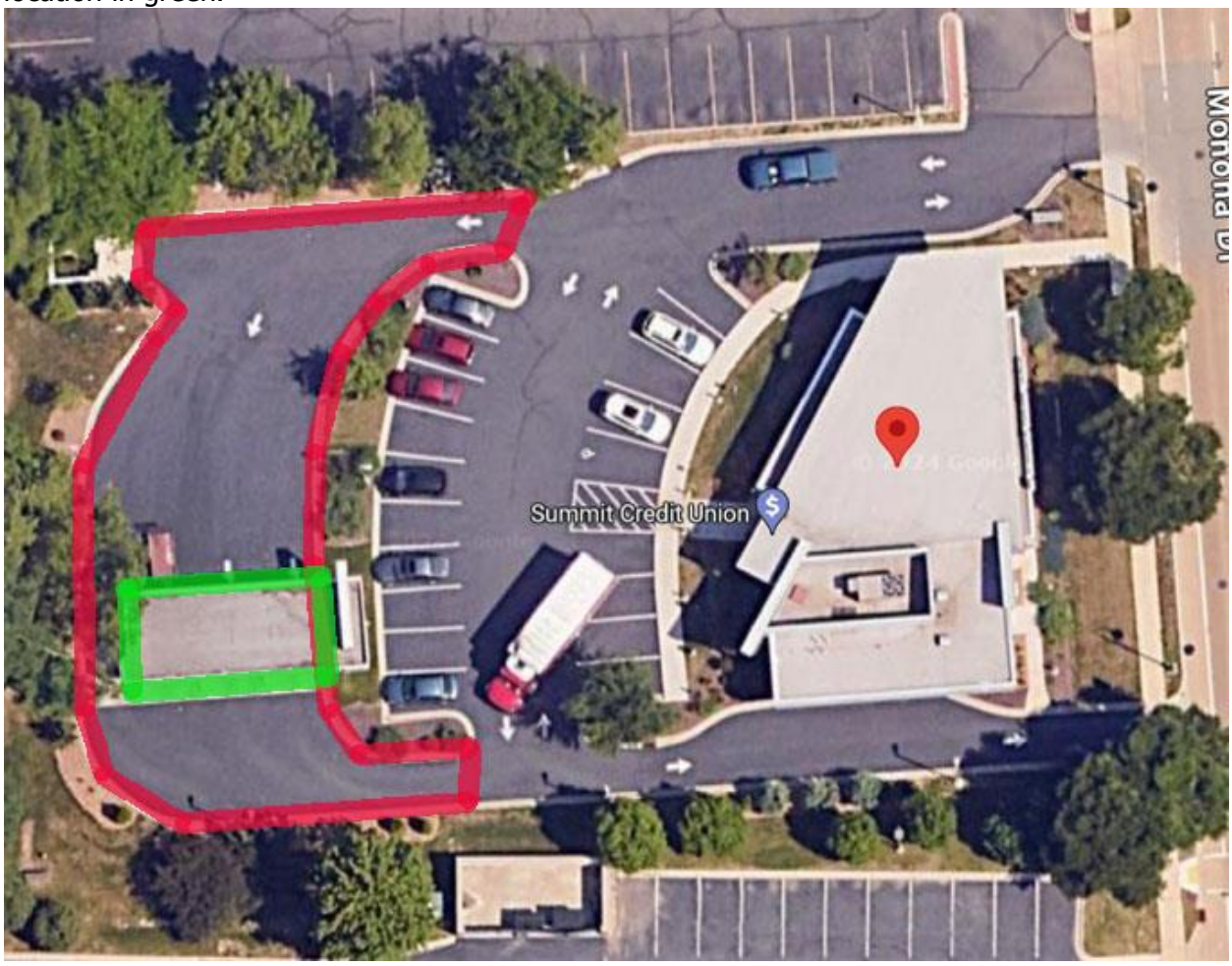



5. 1325 Northport Drive, Culvers. In TOD, approved circa 1995.

5a. 1325 Northport Dr., Culvers, with the area devoted to the drive-thru in red and the window locations in green. As can be seen from this view: stacking can extend to where cars are parked; vehicles wait in the front of the building for orders to be brought out to the vehicle; and, parking spaces between the building and Northport are labeled for drive–thru use (for when the delivery line gets too long).



6. Summit Credit Union, 5809 Monona Dr., located in Monona. This drive-thru is rather unique in that the drive-thru (ATM and video teller) is located apart from the primary building. The drive-thru is the structure to the left, located at the back of the lot. (Though this is in Monona, it does not seem that Madison ordinances would prohibit this type of site plan.)



6a. Summit CU, 5809 Monona Dr., with the area devoted to the drive-thru in red and the window location in green.