

Plan Commission  
Meeting of December 12, 2016  
Agenda Items #14 and #15 (Legistar 44825 and 44826)

28.183(6) MGO sets forth the conditional use approval standards. No application for a conditional use shall be granted by the Plan Commission unless it finds that all of the applicable conditions are present.

Condition #7, 28.183(6)(a)7. provides:

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

Condition #4, 28.183(6)(a)4. provides:

The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

1. **Condition #7: Maximum lot coverage is 85%.** MGO 28.084(3); also see the Zoning Summary chart in the Staff Report.

Cosmos has lot coverage of 96%.

Spark has lot coverage of 89%.

The "zoning lot" has coverage of 92.69%.

It is difficult to adequately analyze the actual size of Lot 1 and Lot 2. On November 1, 2016, the Common Council approved a Certified Survey Map, creating Lot 1 (51,123 square feet for the Cosmos) and Lot 2 (36,348 square feet for the Spark). However, the Cosmos plans (see pages 9 and 10) reflect a different property line on the East Washington end of the property. At about the front 1/3 of the property, the Spark property line encroaches into Lot 1, giving the Spark about another 3,000 square feet. Yet the Zoning Summary table in the Staff Report continues uses the lot dimensions reflected in the approved CSM.

The zoning lot is 87,471 square feet. 85% maximum lot coverage is 74,350 square feet, but actual lot coverage is 81,077 square feet. This means that 6,727 square feet is covered by the building/impermeable surfaces than what should be covered.

The recommended conditions of approval for both the Spark (condition #45) and the Cosmos (condition #44) require the applicants to "[p]rovide a calculation and plan detail for lot coverage with the final site plan submittal" and also remind the applicants of MGO requirements.

In the past, the Commission has been told that lack of compliance with ordinance requirements would be addressed in the zoning review (e.g., lack of enough doors at 706 Williamson). However, that is not what the ordinance provides.

And how should the Commission be looking at these projects? Should the maximum lot coverage be applied to each project separately, or is this a "zoning lot" (a planned multi-use site or a lot or lots that comprise a single tract of land located within a single block which, at the time of filing for a building permit, is to be used, developed or built upon as a unit)?

The Spark Staff Report states: However, the projects and required approvals are distinct and will be reviewed separately.

The Cosmos Staff report states: However, the projects are distinct and will be reviewed separately.

Whether the lots are individual lots, or a single zoning lot, the maximum lot coverage is exceeded. Thus, Condition #7 is not met.

## **2. Condition #4: Undefined amount of retail use.**

How much retail use is being requested? The plans submitted to the Plan Commission do not disclose the amount of retail. The Spark Staff report does not have any information on the amount of retail space. The Cosmos' retail space is defined in the Staff Report as:

"Moving from north to south, the first floor of the proposed building will be developed with an undisclosed amount of retail space that will extend along the E. Washington Avenue frontage, which may be subdivided into at least two spaces based on the entry vestibules shown."

Should the Commission be granting a conditional use allowing retail space in a TE district when it does not know the amount of space that will be devoted to retail? With blanket approval for retail, either building could turn substantially into a retail building (which is more of a risk for the Cosmos since it has no plans other than the concert venue).

## **3. Condition #7: Bicycle parking**

The Cosmos Zoning Summary reflects that 151 stalls are required for bicycle parking: 125 (concert hall), plus 26 (52,900 general retail/service business/office). Plus, if a restaurant/restaurant-tavern is a tenant, the required number will increase. The Zoning Summary in the Staff Report reflects that 83 are provided. Yet, most of these 83 places appear to be on the public terrace. The plans, page 9, appear to show 14 spaces. Spaces on the terrace do not count – see recommended condition #46. The Staff Report states that 125 spots within 200 walking feet of the concert venue doors would be "ideal."

The Spark Zoning Summary appears to exceed the minimum requirement of 79 – 30 inside and 50 outside. Yet the Spark plans, page 7, do not seem to reflect 50 outside spaces.

Bike parking can be reduced by the Plan Administrator under specified conditions. MGO 28.145(5). The first step is the owner needs to request a reduction and provide information to support a reduction. The Staff Report makes no mention that the owners have provided information to support a reduction. Thus, at this time, the bicycle parking requirements appear to remain in effect.

Further, the Commission may wish to inquire about the terrace depth. Recommended condition #41 (Cosmos) and #43 (Spark) require that bicycle parking "adjacent pedestrian walkways shall have a two-foot buffer zone to accommodate irregularly parked bicycles and/or bicycle trailers." A bicycle space must be 6 feet (recommended condition #51, Cosmos), so that seems to mean bike parking could only occur on the terrace if the terrace had an 8 foot depth. The terraces on E. Main and S. Livingston appear to be about 6 feet in depth.

## **4. Shape of the Cosmos and Spark lots**

By way of background, on the agenda for this meeting is a Certified Survey Map for the Elks Club on Jenifer Street. That Staff report states:

" ... Section 16.23(8)(d)4. of the Subdivision Regulations require that side lot lines be 'as near as possible to straight street lines.'"

and

"Section 16.23 (10) of the Subdivision Regulations, entitled Variances, states the following: 'When in the judgment of the Plan Commission it would be inappropriate to apply literally provisions of Subsection (8) of this ordinance...because extraordinary hardship would result, it may waive or vary such provisions so that substantial justice may be done and the public interest secured.'"

Please see pages 9 and 10 of the Cosmos plans. The line between the Cosmos and the Spark is far from a straight line. Would unnecessary hardship result if the line was a straight line? This is not a question before the Commission at this time, but it will be in the near future. And if the Commission would be reluctant to approve the lot line with the various jogs, and since the lot line affects each property's maximum lot coverage, it may be an issue of interest to the Commission at this time.

#### **5. Condition #7: Parking Reduction**

The Commission is being asked to approve a parking reduction based on construction of a City parking garage.

This garage has not yet received all approvals. But even if it were to be approved, the Spark requires 475 parking spaces and the Cosmos 132 (not including concert parking or any additional requirements due to restaurant/tavern use) for a total of 607. The garage will be 550 spaces. The Cosmos and the Spark will each have 275 spaces. Thus the Spark is asking for a 42% parking reduction since it will only have 275 guaranteed parking spaces. The Staff Report suggest that a Transportation Demand Management Plan discuss "additional strategies to close the gap between the minimum parking required and the parking provided."

MGO 28.141(5) provides "A parking reduction request must be initiated by the owner, who must submit information to support the argument for reducing the required number of spaces." The ordinance also provides a list of factors to be considered in reviewing a parking reduction request. The Staff Report makes no mention of any information being submitted to support a parking reduction. Thus, it seems the Commission is being asked to support a parking reduction that is not in accordance with ordinance procedures and standards.

Respectfully Submitted,  
Linda Lehnertz