



MINUTES OF THE ZONING & PLANNING BOARD OF APPEALS

MONDAY, DECEMBER 19, 2022, 4:30 PM

**In person at City Hall, Room 604 - The Harry Maier Room.
Virtual attendance is also available via Zoom.**

A. ZOOM MEETING INFORMATION.

I. This item contains Zoom information, instructions, and a link to the Virtual Comment Form.

B. ROLL CALL.

I. Members: Tommy Everman - Chair, Noel Halvorsen - Vice Chair, Barb Dorff, Steven Schuchart, Joshua Koch
Alternate: Corey Bogenschutz

Present: Tommy Everman, Steven Schuchart, Barbara Dorff, Corey Bogenschutz
Alternate Corey Bogenschutz will be an active voting member.
Excused: Noel Halvorsen, Joshua Koch

C. APPROVAL OF THE AGENDA.

I. Approval of the Agenda for the December 19, 2022, meeting of the Zoning & Planning Board of Appeals.

Moved by Barbara Dorff, seconded by Corey Bogenschutz to approve the agenda. Motion Passed.
Yes- Tommy Everman, Steven Schuchart, Barbara Dorff, Corey Bogenschutz , No- None, Abstain- None.

D. APPROVAL OF MINUTES.

I. Approval of the minutes from the November 21, 2022, meeting of the Zoning & Planning Board of Appeals.

Moved by Steven Schuchart, seconded by Barbara Dorff to approve the minutes. Motion Passed.
Yes- Tommy Everman, Steven Schuchart, Barbara Dorff, Corey Bogenschutz , No- None, Abstain-

None.

E. REGULAR BUSINESS.

I. (Appeal 22-39) Richard Dolezal of Destree Architects, applicant, requests relief from minimum FAR standards to build a building with the overall floor area under 10 percent of the square footage of the parcel. The applicant requests to deviate from the following requirements in Chapter 44, Green Bay Zoning Code: Section 44-720, Table 44-9 Floor Area Ratio minimum standards (Ald. C. Stevens, District 5).

Chair Tommy Everman then confirmed with all Board members that there is no interest, conflict of interest, nor received any communication from any person or party regarding this application. Jon LeRoy and Richard Dolezal were sworn in by Tommy Everman.

Speakers:

Jon LeRoy - Green Bay City Hall

Richard Dolezal - 222 West Washington Ave, Madison, WI

Moved by Barbara Dorff, seconded by Corey Bogenschutz to grant the variance to allow the minimum FAR requirement of 0.10 reduced to 0.055 as requested as the applicant has satisfied the required variance findings by the Board of Appeals: Preservation of Intent, Exceptional Circumstance, Preservation of property rights, Absence of Detriment, and Hardship. Motion Passed.

Yes- Tommy Everman, Steven Schuchart, Barbara Dorff, Corey Bogenschutz , No- None, Abstain- None.

F. INFORMATIONAL.

I. Next meeting date: January 16, 2023.

G. ADJOURNMENT.

Moved by Barbara Dorff, seconded by Steven Schuchart to adjourn. Motion Passed.

Yes- Tommy Everman, Steven Schuchart, Barbara Dorff, Corey Bogenschutz , No- None, Abstain- None.

VERBATIM MINUTES

- Okay, so we'll call the Board of Appeals meeting to order. Welcome everybody. We do have a quorum, which is great. So little roll call real quick. We have Steven here, and we have Barb Dorff, as well as our three voting members tonight, which gives us a quorum. We will see if Corey joins us, but if not, we all feel comfortable. Hey. There's Cory.

- I'm here.

- Cory's here.

- I'm here.
- What's up buddy? How you doing?
- Hi.
- So we just called the meeting to order, so thanks for being here. Even though you're an alternate, we are missing Noel tonight. So are you cool jumping in and being a voting member tonight?
- Yes.
- It's not needed, but if you feel comfortable, we'd love to have you, we have one agenda item tonight, so we'll have you in. Our newest member, Josh is not here tonight, but he will be here, right John, eventually?
- Right.
- And we can take care of the housekeeping tips at the end, Cory, in terms of kind of what you would like your role to be, whether staying alternate or taking a full slot. So we'll talk about that at the end, if that's okay with you?
- Absolutely.
- You will be voting with us. We will jump into some of the business items things, and then we'll get into the agenda items, and the more formal side of things, if that's okay? For right now, we do need to get to the approval of the agenda for tonight. There's one item on the regular business, and then obviously information at the end.
- I move to approve the agenda.
- Thank you, Barb. Start second.
- I'll second.
- Cory got you, Steven, sorry. So we'll start.
- No worries.
- First and the second by Barb and Cory for the approval of the agenda. All those in favor say aye.
- [Team] Aye.
- Aye.
- Any opposed, no? Okay, great. And then we have the minutes from last month's meeting. Any objections, changes, anything people need to make note of a record there? If not, a motion to approve will be great.
- Motion to approve.
- Thank you, Steven.
- Second.

- And Barb coming in second, there we go. So a motion to approve by Steven, and second by Barb to approve the agenda. I'm sorry, the minutes. All those in favor say aye.

- [Team] Aye.

- Any opposed? Okay. So we have the housekeeping stuff out of the way. We will get into regular business. Before we start, just kind of a little overview. I see we have our applicant on the call. Thank you for being here. But to give you an idea of kind of what our goal here is, we are a quasi-judicial board that is set up by the mayor. So we are not elected officials, but we are here to act as a judicial body in terms of hearing a case, an appeal for the individuals that are applying their case to have a variance granted that does not fit within the current code of the city. Our job is to hear the applicant's evidence as it is in almost like a trial in the sense that produce evidence or witnesses to basically say, Hey, this is why I don't believe that it is fair for me to follow the code. Following basically the steps of being able to prove, oh my gosh, I'm blanking.

- All good.

- Basically these five things we're going to continue to work on making it maybe three, but ultimately use of the property as it's intended. The physical characteristics of the property do not allow me to use the property as intended. The circumstances of the property create an exceptional situation and therefore I'm not able to do this based on this situation and we should therefore grant the variance. That's the goal of the application. John will be presenting from the city in terms of giving us an idea of what the actual situation is, get our bearings around the application. He will then go over alternate versions or ideas of what the city has proposed. And again, then we will hear from the applicant to hear their evidence as to again, why they don't feel the variations or the code works for them. Because it is a quasi judicial board, I will swear in John and I will swear in Rich as we get to you. Basically, just to make sure that on the record we are asking that all the evidence that you're producing is accurate and fair. And then I think that's it. Is that a fair overview? Okay. Thank you Steven. Thumbs up? I see it. All right, so Rich is saying good, which is great 'cause he's up to bat right under the gate. So we're going to jump right into regular business E. Steven, did you have a question? I saw a hand jump up.

- No, I'm sorry. I'm messing around with civic clerk, and I can't find the packet, so.

- You want me to give you a moment so you can catch up?

- No, no, no. I get plenty of information on here. Please continue.

- Okay. We've got this script so I'm making sure that I go through it. Oh, procedure. Gosh, this is really thick. I love it. Yeah, no, I love it. I was just making sure I didn't see anything. All right, so I have a new script. I'm going to go through this script again 'cause we're working Rich to formalize our process a bit more. So bear with us here. We have item number one appeal 22-39, Richard Dolezal, of Destree Architects, applicant request relief for minimum FAR standards to build a building with the overall floor area under 10% of the square footage of the parcel. The applicant requests to deviate from the following requirements of chapter 44, Green Bay Zoning Code section 44-720, table 44-9 floor area ratio minimum standards in Alderman Stevens District five. So we've covered that. Before we continue on this one, it is the goal of the Board of Appeals to provide, and conduct a hearing that is both fair, informed appearance and substance. To ensure that this hearing satisfies these goals, each member of the zoning board of appeals, please confirm the following by stating I confirm. One, I do not have any interest or conflict of interest in this matter, and two, I have not received any communication from any person or party of this matter. I'll start with you, Barb.

- I confirm.

- Thank you. Corey.

- I confirm.

- Steven.

- I confirm.

- And Tommy, I confirm as well. Okay. Great. Next step. So the board will hear from staff, as I said, Rich, we'll call upon you second. The applicant will then have their opportunity to present evidence and testimony. I kind of went over this already. In its discretion, the board may also choose to hear input from the public, but that is on our discretion. So board members, as you can notice, I will not open the floor unless we choose to because we've discussed with legal that we feel that the applicant is already part of the forum. We only need to open the floor if we choose to hear from people outside of the witness testimony of the applicant and people they have brought for their application. But other than that, we won't need to open and close the floor anymore unless we decide to hear from the public. Make sense?

- Yes.

- Yes.

- If you may.

- Okay, so staff, go ahead, it's your presentation.

- I swear to tell the truth on this matter of coming here.

- Thank you John.

- So the property in question is at 2182 University Avenue. You'll see the North University off to the east is Dans to the south is Van Deuren Street. Right here, you're seeing a pretty big street view of the parcel itself. Grass space right now for the majority of the property, you'll note off to the west a transmission tower and electric lines. There are easements that run through the western part of the property. So the following is a site plan that was submitted by the applicants. I want to note there have been changes that have made to have less variances requests and it's frigid. So this has been a revised site plan to get down to we're just having this one request here for FAR standards. You'll note on the site, the drive-in comes in off of University Avenue, and that the building drive through itself for this Pizza Hut goes off on the eastern part of the property. To south there, going back to what we had here before, you'll note the St. Vinny's off of around Van Deuren. This site when shows drive access to reach St. Vinny's through this property. I also have the property as itself, Van Deuren itself. Other observations about the property, it needs standard for everything here. We didn't have any questions about anything beyond the FAR parking as well beyond in the requirements, green space is fine on the property. Next up, you're going to go ahead and see the elevation provided by the applicants for the new Pizza Hut itself. Upper left would be your view on the front from University. Upper right would be your view going to the drive through itself on the eastern part of the property. Lower left would be your rear view going back behind the property and then what you would see from University going eastbound, that would be your elevation right there. I want to draw attention to the western part of the property. This is a detail of from the site plan of the transition tower and the variety of easements that are occurring on the western part of the property. Overall, the largest easement itself is a even for an hunter transition, and that is approximately 118 feet. That's the depth of the property by about 28 feet or so. So there are a number of easement that do occur for gas, and egress on the western part of the property. So this comes to the question we have right now for the variance in question. So this is a C2 property, the floor area ratio is 0.1. What does that entail? 10% of the parcel itself must have floor area that can come through a single, let's just go ahead and hit a 10,000 foot property. 1000 square feet because of one story building, 500 square feet because a two story building to go ahead and reach the minimums for this. And why is that done as far as in districts, it's to go ahead and preserve formal function of the area to try to go ahead and build up the space as far as business and commerce in an area, and to avoid just large open spaces that aren't being used, which then goes into play with our tax

base and trying to go ahead and find more maximization out of its, as you'll know from other minimum setbacks here, that at 0.1 you're going to go ahead and reach a lot of the billing setbacks, and parking requirements that wouldn't leave you many issues with that. To give a general picture of this property itself, it's 23,214 square feet in total. Applicant is requesting the floor area to be 1,286 square feet. In general that goes ahead and makes the FAR 0.055. The minimum required square footage would be 2321 for this parcel. Going back to what we have here, as to alternatives, you'll note what our minimum line is, what we have for in city here for our standards as far as impervious surfacing. So this parcel is 23,000 square feet, street frontage is 199 square feet. One of the noted is the minimum of frontage required for a C2 lot is 75 feet. And the approximate area of the easements end up totaling about 3304 as far as square feet. Where does that come into play? Add alternatives to the site. See two different options. One, expand the building that's there, that is an option to go ahead and make it a larger building that can go ahead and conform with 0.1. Secondly, another option could be to split the parcels. There is enough space with 23,000 square feet to go ahead and make additional parcel. Part of the problem that we would have there though, or the applicant would have is the area where the easements that ends up being 3304. 23,214 minus 3304 ends up being less than 20,000 square feet. And the minimum requirement for a lot is 10,000 square feet. Now you can still have areas where there are easements in your parcel and still meet that requirement, but it would play into a factor as far as what you can actually develop for your floor area in that area.

- Question I have of you, to make sure I understand all the map you just walked us through. To comply, what you're saying on this slide here is 10% of 23,000. So that's that 2300 number you have there?

- Correct.

- The approximate area of the total platform that is taken up by easement, the total parcel, sorry, not platform is 3,300. So that would mean that it would take you slightly under well, right around 23,000, 20,000.

- Just under 20,000.

- 20,000 to comply. If you chose to include the easements as a subtraction, it would need to be 2000 square feet to meet the minimum square footage. If we were to take the easements out, am I following the math correctly?

- So what I'm saying is your options as far as being, A, make building larger. B, or could go ahead and potentially split the parcels up. If you did this, your minimum required size is 10,000 square feet per parcel. But to note there are easements here, which would be difficult to remove because they're electrical easements or towers that ends up equaling both 3,300 square feet. With that in mind, the 23,200 square feet, the parcels right now would be less than 20,000 square feet.

- But as a singular lot, what I'm saying, if we took all the easements out that would make the overall thing 20,000.

- About 20,000.

- Which then make the requested floor area to fit 2000.

- Correct.

- Which is 10% of that number.

- Around that. Yes.

- Right around that. Okay. And so we're still gaping even if we include the easements.

- Correct. We're still. Yeah. Under the new requirements, yes.

- I got my bearings. Barb, you have a question to get your bearings?

- I do to get my bearings. So the requirement of having the building be larger, was I understanding that it's to protect the ability of the city to get appropriate property taxes? Is that why we want bigger buildings on or at least 10% than we would get more taxes for the city? Is that what it comes down to?

- That is an idea right here. So we have both minimum and maximum FAR standards throughout the city. Because going back to this slide based off of maximum height and feet and impervious surface, we have issues here to go ahead and go much further beyond, say 2.5 for an FAR, and we just don't have those existing. So we have minimum floor area ratios that exist here in the city. Think of it this way, we have two different big things that go ahead and pop up with this. One would be your overall form of the corridor, and the district that this in with having, what does it mean to have buildings built up in a parcel to where they get smaller and smaller? What does it mean to the overall districts by having less buildings and more open or parking space? What does that mean to the functionality of University Avenue itself? Secondly, we'll go down to tax space. If you have more of these areas which are having lower FAR, it's less taxable area to go ahead for the value of the property or the base overall.

- That's what I was asking. Right. So that's kind of one of the purposes behind it. Is that and okay. Well, thank you.

- Steven, go ahead. You have a question before we get.

- Yeah, so the building in question we're talking about, this is another one of those walk up and drive up only food establishments like Scooter's Coffee or just a minimum size building in order to, there's no internal seating I take it?

- Correct.

- Sign in as it were.

- Yes. You can go inside, pick up your order, but there's no needing to meet your order.

- Okay. All right. Yeah, that's, I mean, hmm.

- Let's hear from the before. Let's just hear. And then we'll hear from the applicant first. Corey, any questions for the staff in terms of understanding what we're looking at before we hear from the applicant?

- No, I'm good from the standpoint of what we're looking at.

- Okay, great. All right Rich, it's your time, so go ahead and unmute, and then I'm going to basically swear you in. So do you swear that the evidence you're about to present is the truth, factual and yeah, I guess that's it. I got to work on that statement.

- Yes, I agree.

- I want it to sound like a crime novel but at the same time it's the same idea. Okay, thanks Richard. Appreciate it. Go ahead and take us through your application for us. Thank you.

- Yes. So obviously the local Pizza Hut franchise is working through with Pizza Hut corporate or Pizza Hut National to redevelop restaurants throughout Wisconsin and to make a more viable to keep them modernized, and especially keep them financially viable in today's competitive marketplace. They go and they

ask for Pizza Hut National to give them comp checks on what type of restaurants they should be putting per geographical areas with the population and everything. And what they're finding is in densely populated areas the carrier drive through and pick up are the ones that weren't there. The sit down restaurants don't work there anymore. So that's where Pizza Hut National came up with the smaller design that's basically just geared around obviously making pizza and getting it out, either delivery, drive-through or pickup and, we're working through this site and obviously there were some concerns that they had about trying to make the building bigger first. They don't have a prototype at the Pizza Hut National for carryout drive-through to make it bigger. To keep financially viable, they can't just, make it larger otherwise it just doesn't work with their number comps with running a restaurant. We did explore splitting up the building or splitting up the lot and making a smaller lot. But there were some factors that we didn't, they didn't really like. One of them was doing just an in and out onto University Ave. There is a stoplight not very far to the left or to the right side of this property. And the Pizza Hut owner went up there, and kind of observed traffic during rush hour, and stuff like that. And it does get back quite a ways all the way to the site. So having, the entry and the exit farther on the right side was not something they were looking for. That's why they were in communications with the grocery store off to the left side here, and St. Vinny's to try to come up with an alternative that they liked that one point they were in negotiations to do also a shared access to the grocery store, but it was ultimately decided to just pursue that with St. Vinny's right there. 'Cause again they really don't want to be pushing a lot of traffic out onto University Ave, and making it harder for people to get in and out to address that area. And then trying to do some type of mixed use, multi-tenant building that's not really in their wheelhouse at all. They run restaurants and they didn't want to get into that type of thing. And even with that, the lot itself is not overly deep when you look at our building and having a drive through go around it. And that's kind of why we've kind of decided on this one, and we ended up having to rework the cooler that's that double hatch that you see in the back area there. Rework the cooler because one of the variances or one of the issues that came up during our site plan review was the, I believe it was a newer ordinance, the 15 foot minimum set back to the pavement in the front. 'Cause when we were looking at it, it was to the building and then it changed to the pavement. So we pushed everything back to, as John said, we didn't want to try to, go for two variances when we could easily make that 15 foot one work with our plan. And the whole idea is, if St Vinny's needs additional parking, they're going to obviously park on this side as well. So that's pretty much what we're asking for is and obvious. And then, the ending is if they can't get the variance, I mean they've been in this neighborhood just down on University Ave, if they're going to have to abandon this property this week 'cause they have actually closing scheduled for later this week.

- So this would replace the one on the corner of Henry, and University?

- Correct.

- I think that building might be older than I am.

- Used to be a regular there when I lived over in this side of town.

- I remember it used to be a Kentucky Fried Chicken in the 70s and 80s.

- Okay. All right. Well we've got a good layout. I feel like we've got the kind of overall idea of the use of the property. So how are we feeling about getting to either a approval of the variance? Are we feeling like we've been presented enough evidence to kind of cover? We don't have our great Noel here to create the perfect situation. If we aren't so inclined to approve, remember if we deny we don't necessarily need to cover a lot of this why. However, I think it would be beneficial to the applicant to explain but we are not required to. But if we are approving, I do think we need to kind of cover in general whether we're using the five things here or generally talking about the three things that we have on the application, which is, can they use the property as it intended? Is there a hardship or uniqueness to the property that's preventing to them to be able to do that? And is there hardship with this that is not self-imposed?

- I've been working on it a little bit.

- I do have a quick question if, I mean. I just want to understand one thing. So with St Vinny's having the easement there, there was a mention of using the overflow parking lot. Is it common for them to have that type of a situation? Like as in is their parking lot not adequate to support their actual building as it is? So is by expanding and allowing such a variance actually helping out the situation that St. Vinny's might be in from a parking circumstance.

- Per se I can't speak completely to that. All I know is when they approached St. Vinny's, they were really intrigued with the, especially for their driver, because they have their customers, and their drivers with that type of stuff, they were really looking very favorable to getting access from University Ave to their property as well.

- So can you go back for me the layout. is that okay John? Sometimes I'm slow on the uptick on these things. So we have University at the top here. People would enter the property at the top here, and then they would come engage with Pizza Hut, and then they would go back out on university, and then bottom driveway that's on the bottom side of the thing right there. Is that just another area for people to exit and that takes them into the St. Vincent's parking lot. And it goes into the parking lot of, the grocery store on the left. Is that correct?

- There's no connection between the grocery store and the Pizza Hut. And I don't believe there's connection to St. Vinny's either.

- There is not.

- Right now there is none as far as it.

- They're going to build one that connects. In this graph lot on this map here. They would go in here and then they would enter from here and then they would be able to exit down here and access all of this.

- I don't believe right now there's any sort of barrier that would get you to the grocery store. I don't know if there's egress there right now or so legally speaking. But there's pavement there to go over practically speaking.

- And right now what we're saying with the St Vincent thing and why they're excited is currently people enter their property from Van Deuren? Is that correct? Okay. So we have Pizza Hut going in and then people can come in as well pass through and get to St Vincent. But also people can feed through the Pizza Hut as well from St. Vincent.

- If there's Yes.

- I know. So it is a pass through for both businesses.

- Correct.

- It would be, yes.

- Sorry again trying to get all pairing.

- I mean that was what you were describing is how I was kind of understanding what I was seeing. So just to kind of get the clarification work. So it's essentially creating better access for the Vinny's place as well as, I mean, the only thing that I'm there is like, it's green space now and now you're putting in more parking lot even though it meets the qualifications for the acceptable green phase, but.

- Yeah.
- Not going to cross streets in that.
- That lot's been empty for a long time.
- Yeah. And then between St Vincent's and the grocery store, there are concrete wheel stops from the beginning of their property to, is it Van Buren? So there is no access across from St. Vincent's to the grocery store, unless you were to go over the curb stops.
- No.
- Okay. That's what I've been trying through that truck is what's that lot for? That's next to that truck right there.
- That's the side of the grocery store.
- It's the side of the grocery store. They do their loading and unloading there. My grandmother used to live on Van Deuren, almost across the road.
- Only they access that lot, it's on the right of that truck is off of Van Deuren as well as the one on the right.
- The truck can't go into that property 'cause it's blocked is what I'm saying.
- Yep. Correct.
- Okay, great. Okay.
- What's this, anybody know?
- It used to be Lindy's, it was a university's Super Value.
- I think it's a Super Value now. It used to be Country market or something.
- Then I know what we're talking about. Thank you.
- Google has it listed as university.
- Okay.
- Do we know what that side of St. Vincent, the one that now has access to university. Do we know what that parking lot on the left is currently used for? Is that customer parking or is that, I don't know what.
- That's customer parking. That's where you access the business.
- On the left side. On the right side.
- On the left side. Closer to the grocery store. Technically on the west side of the building.
- Thank you. Sorry, my north, south, east, west. It's always.
- No, no worries, no worries at all.

- Okay, thanks.
- Whoops.
- No, we're good. I'm just trying to get some here for.
- Do we have any questions for the applicant to kind of help us gain more evidence towards the case here?
- I'm satisfied.
- Anybody else? If we are satisfied then we need to kind of start working towards crafting a motion.
- I'm kind of working on one. Do you want me to start?
- Well let's get a sense of where we're at. 'Cause we might be like crafting something to deny, and then we're wasting our time. But are we in agreement that whether we have the variance that there is, like we're moving towards potential approval? It sounds like Barb.
- I am moving towards potential approval.
- I am as well.
- Okay. All right. Good. So that's what make sure that we're all working together then on this portion that we're trying to develop good muscles on. Go ahead Barb. Do your best throw here.
- No imitation. I'm going to need help when I get to number five, I think the first four I did pretty good, but I don't know about number five. So I move to approve this variance as it is not inconsistent with the spirit purpose and intent of regulations in the district in which it is requested in that there are exceptional circumstances. The lot has a number of easements that would make it difficult to split. And it's a fairly narrow lot. I believe that the variance is necessary for preservation of property rights so that the same rights which are possessed by other properties in the same district and vicinity could also be possessed by the Pizza Hut. I believe there is an absent or there is not a detriment to adjacent property. In fact it helps St. Vincent with, I didn't know what's the parking issues with.
- Access.
- Parking access.
- Parking issues. Yep, absolutely.
- Parking. And then the only one I couldn't come up with definitively was the hardship was self imposed or based sole. I don't believe it's based solely on economic grounds. 'Cause it's based on the national. Whatever they call it.
- The available building schematics and hits the business.
- So I can say it's not based on the economic ground.
- It's also, in the hardship category, I think we also have to recognize that this kind of, this kind of food service building where there's no internal seating and there's walkup and drive up access is becoming a more viable business model than maybe when our ordinances were created. We've approved a number of similar lots like this for companies like Scooters' Coffee, those come to mind. And I think it was also done for Caribou coffee, although don't quote me on that. They had variances approved for, I was here for Scooters, at least the one on

West Mason, that they had the variance approved because of a small size of their building. Because that's all the business needs. We talked a lot at that point about how when we were talking about how a restaurant was, back in the day versus what we're talking about a restaurant is today, we had to give a variance for that and for the Arby's next door because the Arby's went into double drive through lanes. That's all the new ones have those two lanes. And a lot of times those buildings also don't fall into the acceptable use either for the same reason we're finding for this company. But I think you're absolutely right. There's no detriment and I don't think hardship, I think the hardship here is that our code isn't, at least in this case, updated to take into account a newer business model.

- But I don't know if that's where. I mean I agree with that and I think that's something that hopefully John will take back to city council or whoever. But I'm not sure that. I always have these things in front of me of what we're supposed to be looking at. And it's the alleged difficulty in complying with the municipal code is not self-imposed, nor is it based solely on economic grounds. So that is what we're supposed to judge on. I think John am I right or not.

- Just keep in mind with what your, it's not a matter of if the code necessarily works or not, it's the code itself. And just apply to this particular parcel in question. And remember the hardship is, I always look at as I continue to struggle with like, okay, what is hardship? It feels to me that that's kind of the all-encompassing kind of bucket of like, okay, because of all the checks these boxes. So it is hard, right. To comply with the code based on these factors. And so to me the idea here is, okay cool, it's a lot that's got some constraining pieces to it. The cars are growing, buildings are shrinking. If you're having a drive-through pickup area, drivers, delivery drivers carry out takeout business model itself is dictating come and go traffic, the footprint of it. You have employees that are still servicing all of that different stuff. So to me you need parking to service the business. You need cars to come and go with ease. Whether they're picking up or driving somewhere. You have a drive through as well, which takes up a certain amount of property as well. So for me to comply with the code under this specific thing. We're not having a impervious service problem. So they're complying with every other portion of it. It's just the building itself cannot. And if they were going to design that in here, can they still use the property as it's intended at a 2000 square foot? Because that would be 2300 square foot, which would almost kind of 40% increase the building size. And if they do that, how much parking do they lose? How does that impact their business model? All of those different things. And to me, that all encompassing for me says that is a hardship to comply to use it with the intended goals, and all of that stuff. Now we can all disagree or agree.

- Yeah, I mean I think that's good logic. So just a clarifying question. Do we have to comply with all five of these each time? Or is it good to have three out of five or.

- Where we're currently at, it is all five. 'Cause that's how our variance, our code is written. There is case that we discussed last week we should get to a little bit about other municipalities have three which are in more in alignment with our application. We're just not there yet right now. We need to speak to those five.

- Yep, no problem. I think with your logic, we can speak to number five. I think what Barb outlined works in all of these.

- I agree.

- And then with your logic on number five, to me this is, in my mind it is preserving the intent of a lot what the city would want it used for a retail establishment or a fast food establishment. The circumstances considering the size of a lot, and then the easements that make it difficult to split the property in any reasonable way to put a substantial burden on. We would just end up issuing a lot more variances for the person who took the smaller lot. Preservation of property rights. I mean all of this I think we've covered pretty thoroughly. And even the absence of detriment, it's actually the, in this case I think it's an improvement for that neighborhood. And for the businesses around it.

- I'll second the motion if that's needed.

- There you go. So I think what we need to do is get to some sort of on record, hey, here are our findings. One, two, three, four, five. And so therefore based on our findings, I have a motion to approve. So now Barb say I have a motion to approve. Say it again just so we have it on the record appropriately.

- Do you have something down for number five you're comfortable with Barb?

- I don't. Because it went all over the place. So I just need a sentence for number five. Somebody give me a sentence.

- Tommy, can you do that?

- Hold on. It doesn't need to be in the motion all five. We just need a body. So think about, we're about to rule, hey, if we found enough evidence or understanding of these five things that we are now in a position to move to vote for approval. So we've covered that discussion. Those that are potentially voting in favor feel that they've covered those and they've established those on the record. So now all we need to do is motion to approve.

- Oh that's it. So I don't have to repeat all those things again. Great. I move to approve the variance.

- I'll second.

- Based on what we discussed.

- There we go. Perfect. Good. So I have a motion on the forward to approve based on our findings that we've put on the record. Those that have heard those findings agree to those findings, they can vote in favor based on this. So all those in favor of voting to approve based on the findings say aye.

- Aye.

- Aye.

- Any oppose? Nay. Okay, so that's four zero in vote to approve the variance as requested. So Rich, please circle back to those that you're working with. Let them know they have approval to move forward with the current designs and they can close on the property this week, please. And it sounds like you are continue to work with John, and the city staff. A lot of times from these variances, people feel like that's a green light just go do whatever they want. Please don't do that. Continue to work with them on the building process. All stuff is done in partnership with the city.

- That sounds great John. You'll be getting obviously new site plan slowly developed from us and there's also the building plans that are in there for building approval. We'll have to do an update for those as well to meet what the new design of the building was for the layout of the cooler.

- Just a quick question that has nothing to do with the variance, but I saw it. There's a proposed sign going on, what would be the west side of the driveway, is that correct? A Pizza Hut sign off of University.

- Like a pylon sign? Yes.

- Pretty dense. Like I didn't see it in the drawings. Is it like a pretty big sign. Like it's not a part of the site plan right now. Those are good different sign plan. Did they move it to the east side of the lot, and just because again, you're entering and you're seeing as you're exiting. It would create a better view of people exiting a very busy street if it went to the right. Because then you have a bigger angle of seeing. Nothing to do with the

Board of Appeals. Just a citizen who is. But in all honesty, we've had a lot of public input from other properties that have come for appeals on university, and it all comes down to people turning in and out of those things and concerned about traffic. 'Cause it gets more and more trafficking, that's all. So creating great sidelines for people to be safe as they exit would be a great thing to think about.

- Yeah, just so you know, that is just a pylon sign, so it's going to be clear till like at least 15 feet. That was the main reason why we went for that egress is because we don't want to be putting people out on university if we don't have to.

- All right, great. Just ignore that for the chair of the board of appeals. Thanks buddy. All right.

- All right. Thank you.

- Any other questions for us or are you in a good spot?

- I am good, thank you.

- Okay. Have a great night. Thank you.

- Thanks, you too. Enjoy the holidays.

- All right, good job everybody. We're getting better at this. We don't need to move to close the floor because we're not doing that anymore unless we need to. So we're in a good spot. Informational. Let's ask John and the staff, do you have anything for us? Updates, where we're at with anything?

- So expect next month that we'll once again see attorneys to go ahead and give some information. We'll do that. Just speed up being the holidays, and having the newer board member on at that point. We're looking to go ahead and show up the changes here to the application form to actually go ahead, and make that permanent feature. And that's what we have right now.

- Any questions for John before we get to Cory? Any questions? Okay. Cory question. We left this, we were discussing this last time about roles, and how an alternate plays into that. And technically, technically the way it works is when someone spot vacates, a member of the board, then someone else comes in and places them in the slot of a member of the board and the alternate stays the alternate. However, we did discuss the idea of making since the alternate is there, and it's up to speed an option where the alternate can say, hey, I'd like to slot into being a permanent member of the board. And it was encouraged at that time. If that was something you wanted to do to reach out to the mayor's office. 'Cause they're the ones that do the appointments, and that's how the formal process would be. And then the person they were bringing would then be offered the alternate slot. Did you consider that or are you still staying as an alternate? Where are you at?

- I did consider it, but I'm going to stay as the alternate just based on things that are going on with my kids' school and sports, and all those other little things. My schedule is still kind of jumbled up for the next year.

- Okay, thank you. And again, not trying to force you into something that doesn't, 'cause you didn't sign up to be a full member you're just an alternate. So we appreciate your willingness to show up, and step in when needed and vote and stuff. So, great. So then, we do we have again?

- Joshua Cook.

- He'll be here for next meeting?

- He will.

- And then he'll be a full member of the board. So he'll take a term for Tom Hoy. And then we'll have a four or five person board with an alternate at that point.

- A five person.

- Great. Okay. That's good. Awesome. So this is good for almost two years we've had a full board. It's great. Last quick thing and then we'll go. Since there's a Packer game. Where do we stand on potentially with the variance. So the current thing is the five we discussed potentially getting it down to three like some other civics areas have. Is that something that will have to take time, and that has to go through like city council and stuff.

- We'll require a code change with that in its own right. Ordinance change.

- And is that something that'll take? Like we should refer that or let you do your work on it?

- We'll refer back to legal as far as saying what they think to, I hear five year rule for other places. And we want to go ahead, since we are actually now forming legitimates. Reasoning is not just getting a yes and saying we're done. To go ahead and make this as straightforward as possible, and keeping the intent of what we're trying to go under here with the variance. We'll discuss it some more. I don't have an answer for that right now.

- Let us know what you come up with. Yes, Barb?

- I just want to say from my experience in council, knowing how backup legal is, ordinances were taking two to three years to get on the list and they were redoing all of the ordinances. So they were doing sections at a time. I'm not sure what section they're on right now. I'm not sure if they've done this section already. We just had a very big shortage of legal staff because of all of the things that happened with elections and the various lawsuits and such that were coming up. So it does take a while. Just so you know. And then it has to have two readings and two readings, and it goes to any two readings. So it takes a bit, it takes a while.

- Can we make a note to just maybe touch base with legal about that? 'Cause I'd like to stay on that and just see where we're at.

- And anything we can do to help.

- What's that?

- And anything we can do to help, just say the word, I'm happy to give devote time outside of this meeting if it would be helpful.

- Okay. And then again just repeating, kind of going back. Great job Barb, with going through all that stuff again, the idea is we have a case, we hear the evidence, we discuss here are the findings we have, and based on those findings, I motion to approve. Or I'm not able to get to enough findings to say this. I'm in a motion to deny. And so the motion is real simple. Approve or deny. It's the.

- I like that. I really like that.

- We're doing like a detective or a judicial body. We agree and we've heard the evidence and therefore here. So it doesn't need to be included in the motion.

- Great.

- Perfect.

- In that case I'll take another motion if there's nothing else.
- How about Merry Christmas then. Happy New Year and happy holidays. And hope the Packers win.
- Happy Holidays. That would be nice.
- I'll move to approve. I'll move to adjourn. I'm sorry.
- Thank you Barb.
- Second.
- So, a motion to adjourn by Barb and a second by Stephen. All those in favor say aye.
- [Team] Aye.
- Any opposed? Great. Happy holidays everybody.
- Happy holidays.
- Take care everybody.