

## **BOARD OF ZONING APPEALS MINUTES**

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, July 11, 2018 in Council Chambers, 23600 Liberty, Farmington, Michigan. Notice of the meeting was posted in compliance with Public Act 1976.

Chairperson Bertin called the meeting to order at 7:00 p.m.

### **ROLL CALL**

**PRESENT:** Aren, Bertin, Crutcher, Perrot, Schiffman

**ABSENT:** Craft

A quorum of Commissioners were present.

**CITY OFFICIALS PRESENT:** Director Koncsol, Recording Secretary Murphy, Director Christiansen, City Attorney Matt Zalewski

### **APPROVAL OF PREVIOUS MINUTES OF JUNE 6, 2018**

MOTION by Crutcher, supported by Perrot, to approve the minutes of June 6, 2018  
Motion carried, all ayes

### **MINUTES OF PREVIOUS PLANNING COMMISSION MEETING OF MAY 14, 2018**

MOTION by Aren, supported by Perrot, to receive and file the May 14, 2018  
Planning Commission minutes.  
Motion carried, all ayes.

### **ELECTION OF OFFICERS**

A. Secretary

Chairperson Bertin stated that there is a vacancy for the Secretary position on the Zoning Board of Appeals and asked if there were any nominations to fill the vacancy.

Crutcher nominated Matt Schiffman for the position of Secretary.

Schiffman accepted the nomination.

Aren supported the nomination of Schiffman and a roll call vote was taken.

Motion carried, all ayes.

**APPEAL OF:** **Travus Brummette**  
**Sarah Abbott**  
**35253 Drake Heights**  
**Farmington, MI 48335**

Request for variance to Sec 35-49-(H), Corner Lots (#2) to allow the installation of a 6' privacy fence to replace existing 4' chain link fence that fronts on sidewalk along Drake Road. This is in order to assist a visual physical barrier to the road and public sidewalk to discourage their dogs from interacting with the public.

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Building Official Koncsol stated he had the opportunity to meet with the Petitioners about this people and that they are located on the corner lot on Drake Heights and Gill Road and the circumstances are as the letter outlines there looking to increase the height of a privacy fence and remove the existing chain link along there for purposes of a visual as well as a physical barrier along the sidewalk that parallels Drake Road. He stated that Ms. Abbott, the Petitioner is present, and asked her to come to the podium to answer any questions the Board may have.

Chairperson Bertin stated that he can see from pictures provided of the area there that there is a 6' high privacy fence on the north side of Drake Heights on Drake Road and that there is also one on the opposite side up a little bit further, there's a 6' fence.

Koncsol stated the one closer to Grand River is a long existing one prior to his thirty years and he doesn't have a lot of information on that particular circumstance but prior to this one, Oakland is the next street up from Drake Heights in a similarly situated property to this one and information was attached for that variance that was granted in 2001 to the owners at the time for very similar reasons for privacy to allow that 6' privacy fence.

Sarah Abbott, Petitioner, 35253 Drake Heights came to the podium. She stated that she has two young children and two large dogs and they just moved in a couple weeks ago, they were not aware of how much foot traffic there was so they are asking for this variance for the benefit of themselves and their neighbors to keep their dogs away from everyone and create a calm environment. Their big dog is 95 pounds and he can jump over a 4' fence very easily and that is why they are asking for the 6' fence.

Crutcher stated as people drive by the property, you can only see the property through the fence and the Petitioner replied yes. He then asked if the possibility of putting in more landscaping could provide the buffer and Abbott responded that is a possibility but their smaller dog can get under the chain link fence. She stated they want something a little more rigid and taller.

Crutcher stated that a number of pictures of types of fences were included in the Petitioner's packet and the Abbott said ideally they would like to do a natural wood fence but she understands the need to have something esthetic for the community and they are willing to look into a vinyl or a composite as well.

Further discussion was held regarding the requirements of the Petitioner needing something that goes all the way down to the ground so the dogs are not distracted.

Bertin then asked if the Petitioner's property abuts to school property and she replied that it backs up to the property where the ball parks area and that they don't need to modify the back fence, just along the sidewalk and the front and further discussion was held concerning the esthetics of the fence

Aren asked if she had spoken to her neighbors about the fence and the Petitioner replied they had just moved in and that he has met the neighbor on the east side and she has no objection.

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Bertin stated there was one approval letter received from John and Julie Clark.

Crutcher asked if the Petitioner was planning on adding more landscaping and Abbott replied that they have budgeted for the fence this year so the landscaping will be put in next year.

Bertin stated that the sidewalk is not parallel there so landscaping would be restricted.

Aren asked if the foot traffic was from runners and the Petitioner replied there is a lot of foot traffic, and strollers and dogs.

MOTION by Schiffman, supported by Crutcher, to approve the variance with no conditions.

Aren suggested a friendly amendment be made to the motion to include that the fence be a natural color.

Schiffman stated that the only other fence visible is on Oakland and it is vinyl.

Crutcher stated he would like to see the fence be more natural and match with the neighborhood and that the color was more important than the material.

Aren asked if the vegetation that is depicted in the picture, is it going to be behind the fence and Crutcher replied it is adjacent to it.

MOTION by Schiffman, supported by Crutcher, to grant the variance request of Travus Brummette and Sarah Abbott, 35253 Drake Heights, Farmington, MI 48335, to allow the installation of a 6" privacy fence to replace existing 4' chain link fence that fronts on the sidewalk along Drake Road, with the condition that the fence be a natural color.

Motion carried, all ayes.

**APPEAL OF:** **World Wide Center, LLC**  
**Joseph Barbat**  
**34701-801 Grand River Avenue**  
**Farmington, MI 48335**

- 1. Request for variance to Sec. 35-206(D), Non-Conforming Buildings/Structures to allow for a reduction in parking spaces by an additional 37 spaces.**
- 2. Request for variance to Sec. 35-172, Off Street Parking Requirements by Use to allow for a reduction in stacking spaces from ten (10) to seven (7).**

Chairperson Bertin stated that this is a request for a variance to Sec. 35-206(D), Non-Conforming Buildings/Structures to allow for a reduction in parking spaces by an additional 37 spaces. The Applicant is proposing to construct a 1,700 square foot out lot building with a vehicle drive-thru on the east end of the property. In front

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of the China Merchandise. The World Wide Center is currently deficient eight parking spaces and the total amount of deficiency would be 45 spaces.

The variance to Sec. 35-172(l), Off Street Parking Requirements for a new drive-thru restaurant, to allow the waiver of three out lot stacking spaces, ten (10) spaces are required and seven (7) are being provided.

Building Official Koncsol added that the proposal for the World Wide Center which has drawn a lot of people who have lived in the City awhile and are aware that this center has been in need of a lot of attention over the years and hasn't gotten band aids basically over a long period of time. With that being said there have been a number of approaches to the City to do different things from a façade upgrade, parking lot, landscaping, some of that occurred three or four years ago but never came to fruition. It was presented as a great idea but never materialized. That proposal didn't include any expansions relative to adding square footage to the building, it was a façade, site improvement that we were hoping it would come but it never materialized as everybody knows.

At this time the proposal seems to involve an increase now with the construction of what is called an outbuilding, a 1,700 square foot new building in front of the China Merchandise portion of the center next to the Panera Bread and in doing so looking at some of the numbers that were presented to the architects and design people, they were eight spaces deficient as they exist without doing anything. And to do this, if we add the square footage in and the stacking spaces, there is a two-fold issue here.

Initially the first one is dealing with the square footage of the building, and with that increase they are deficient another 37, so 8 plus 37 makes it 45. So, theoretically that is what the issue is and there are a lot of opportunities here depending on how this swing goes one way or another is ultimately to try at this point to get a much needed overall site improvement in conjunction with what is being proposed with this out building which will take care of some roof problems that have been leaking on tenants for years and then to do some façade remodel, landscaping, remove some of the unsightly lighting that's currently there to light the parking lot, so it's felt that we hope this does it, cross my fingers on that but if that's the way it materializes at the end of the day when it's all said and done. So at this point the Zoning Board is being asked to look at the numbers and waive the parking requirements to allow this to move forward which would then go to the Planning Commission for site plan approval to which they would then look at the overall site plans and what that allows for and hopefully present that as a cohesive development project one with the other.

Chairperson Bertin asked if this was the first step to getting it done and Koncsol replied in the affirmative.

He then asked if the Applicant was present and Dan Blugerman, with the Thomas Duke Company and Scott Monchnik, architect came to the podium.

Blugerman stated that he had received a phone call from Rob Kull on Monday morning stating that Kull called him as a courtesy to let him know that there were going to be a group of people in attendance at tonight's ZBA meeting to voice their

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concerns about the Center. Blugerman then stated he then called Joe Barbat, whom Blugerman had represented for the prior year to do the leasing for the center. Blugerman told Barbat that if he fixed up the Center then they could get new tenants in there instead of the long term month to month tenants that had been there. He stated he then asked Barbat to write a letter that says if there's an approval of the plan with the improvements, that he will move forward with them. Barbat also stated to Blugerman that several years ago he had gotten the façade plans approved but the bank would not provide the capital because he couldn't get the additional rent to pay for it because he wants this property to pay for itself.

Blugerman went on to stated he sees this as an opportunity for the City to apply a judo move to him, to pin him down, to either fix it or not fix it, and Barbat stated he has a commitment from a private bank in Michigan, an elite private bank in Michigan who will provide him the money to do all the work that's included. Blugerman then said he talked to City staff who stated that the Zoning Board's approval could be conditioned on the improvements and then backed up when he goes to the Planning Commission to get the final and that also can have the conditions of all the work being done as well as having an appropriate amount of bond or guaranty or whatever economics are held so that he can't come back later and say no, so the money will be there to finish the job, whether it's a bond or some other form.

He then stated he talked to Economic Development Director, Kevin Christiansen, he stated these standards were from twenty, thirty years ago, maybe longer, he wasn't certain when the ordinance was written for the amount of parking. He indicated today if this was being done with the modern parking counts and understanding how businesses have different peak times, under modern standards there probably wouldn't be a deficiency.

As far as the stacking spaces, seven, if there's five cars in the line, four cars, you're moving on. How many people have the patience to wait for more than two cars ahead of you. He stated as a practical matter the deficiency in the stacked parking is not going to create a problem. He said he goes by that Center every day as he works at Grand River and Halstead and he welcomes the chance to see the Center get some needed attention. He indicated Barbat agreed to building façade work, parking lot improvement, the landscaping.

Monchnik, architect for the project stated they are requesting that the trees in the front be removed because of their maturity and the blockage they create along Grand River and they're heavily grown over all of the power lines that are going right through all those trees so it would be an improvement to the power system to remove those trees to let the power flow freely and not have branches moving, flailing, breaking and bringing down lines.

Blugerman went on to talk about the lighting changes and the signage. The one item he heard discussed and he saw in past notes was about a bigger, higher screen in the rear and asked Monchnik to address that item.

Monchnik replied that the brick wall on the back more on the west side of the property, about five feet off the drive then it tapers down to four feet along Whitaker, coming in off of Whitaker about a quarter of the way someone has installed an 8'

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high privacy fence that is thirty some odd feet, so that is screening the center already. And the vegetation that is there now is way overgrown but it provides substantial screening between the residents and the building itself just due to the nature of its density.

Blugerman stated that Barbat said the lighting that was installed by DTE that are not shielded, so he is going to eliminate those and put in conventional improved lumens that shine down and don't spill onto the neighbors.

Blugerman stated that a practical difficulty exists because of the configuration of the lot is really wide but shallow. We said when they sold Dunleavy's to Smile Dental, they had to find a way to squeeze it around, they actually put the building in front and the parking in back because those narrow lots are a challenge to develop.

He stated that World Wide Center has three access points, you can move around, you can find a space which might be six or seven spaces down but if you drive along there is always parking in the Center, not like the other centers that don't have enough parking.

If you grant the variance it would add interest and good economic turn to an aging retail structure so it would be a benefit to the community. He doesn't believe the public safety and welfare would be diminished because it's not going to create back-ups onto Grand River or other problems, so there's not a safety hazard or a nuisance to deny it.

He went onto state he doesn't believe it will have an adverse effect on the character of the neighborhood, but rather it would be a long overdue improvement that they can require be made. He said Barbat is asking for the minimum necessary to get the out lot, to get the financing so the property itself can support the additional financing to do the work and otherwise he'll collect cheap rents and not do the right thing.

Chairperson Bertin then called up one by one the people who signed up for public participation at the meeting.

The following people spoke against the granting of the variance:

Steve Amani, tenant of the World Wide Center, 34773 Grand River, spoke on behalf of several tenants of the Center and the disrepair of their spaces, with water dripping from the roof onto power circuits and stated his concerns with parking and the alley in back of the center and egress and ingress to that alley for the big truck deliveries.

Susan Hanley, 23871 Longacre, stated that she has lived on the corner of Longacre and Whitaker for over twenty years, and spoke about her concerns with Whitaker being a main thoroughfare to get kids to school, that she would like to see a traffic study done before anything happens and that there is a bus stop there and that the current lighting is very intrusive as she is the first two-story house on Longacre.

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Matthew Muscat, 34771 Whitaker, stated his concerns with cars going in and out of the drive-thru, and that he drove through the parking lot on his way to the meeting and it was three quarters full so the parking is going to be an issue by taking away more spaces, the parking lot is in need of repair, as well as the landscaping and the alley itself. He stated the dumpsters smell from the food from all of the restaurants and suggested that the new tenant move to an out lot at the Drakeshire Center.

Robert Kull, 23917 Whittaker, stated he and his wife have lived there for twenty years and that they have seen many changes. He stated Panera was a welcome addition but that the World Wide Center is unsightly and everyone would like to see improvements made to the center. He said that Mr. Barbat was not the original owner, there was a prior owner, and the concept was that Mr. Barbat was going to come in and fix up the center and it never happened. He stated there was the removal of the sign and the installation of the auto parts store, but that was never finished, they blocked off glass with darkening material, that was never finished. He talked about the lights at the liquor store, and the lights in the parking lot that have no shields that shine into his home. He said there is a bad relationship between the owner and the community. And that the real problem is the parking which is what this variance is about. He stated he feels that basically that Mr. Barbat, with this proposal, is holding the community hostage by him promising to do these repairs if the variance for the nonconforming use is granted, that Barbat has a history of not following through on promises. He also stated his concerns about reducing the stacking space which will only increase the problems with traffic which is an enormous problem. He expressed concerns with delivery trucks backing up into the alley, trucks hitting the building, getting stuck. He talked about the rules for granting a variance, that the Applicant has to show a practical difficulty, that there is nothing about this site that would make it a practical difficulty and stated that adding a 1,700 square foot building with a drive-thru would be a nuisance, cause traffic jams, and is not consistent with the Zoning Act and that the ordinance is intended to eliminate uses, buildings and structures that do not conform and is not intended to allow expansion. He stated they are asking that the variance request be denied on the basis that the owner has not demonstrated a practical difficulty, that it is a self-created situation by the fact that the items that Mr. Barbat wants the City to give as conditions, that he has created them by not maintaining the site, and to ask for a variance violates the Zoning Ordinance and the standards in asking for a variance, that the expansion itself is a self-created issue and would be harmful to the public and a danger to public safety due to the pattern created on Grand River.

Bob Doyle, 34740 Whitaker, stated that he backs up to the alley and the vegetation is good for screening for six months but when the leaves fall that he can see the back of the building which is an eyesore. He stated he has lived there for seven years and loves Farmington and his home and neighborhood and had been hopeful for improvements to the center but does not believe the variance should be granted to the owner of the center without improvements happening first and that he would like a traffic study done also.

Mary Anne Holloway, 34801 Whitaker Court, said she represented both her and her husband and stated that their neighborhood is one of the best kept secrets in Farmington. She had concerns with the statement that if the variance isn't granted, the owner won't do any work on the center. She indicated there are existing

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violations, the lights, garbage, rat problems in the neighborhood and back-up of sewage and that the actual location of the out lot that there is flooding problems on the site and that the Great Lakes Water Authority is a regular visitor to the area. She expressed her concerns about the traffic, whether there would be a new dumpster at the proposed site, and the deliveries made to the center through the alley and that she is not looking forward to additional noise and traffic and the negative impact this would have on the value of her property and is against the approval of the variance.

Al Attee, 23965 Whittaker, indicated he is the first house when you turn on Whittaker and he has seen semi-trucks back into the alley which is bad, and that the trash collectors bang the dumpsters so hard and loud because they are packed so full that is the only way to empty them and that he strongly opposes the granting of the variance. He said you never cut trees down, they add to the center and that there are lighting problems on the site and he would like to see the wall in the back of the building built higher.

After public participation comments ended, Scott Monchnik came to the podium and told the audience that he appreciated all of their comments and the intent all along is to improve the center, that the issues that were brought up are all of the issues they are looking to repair, replace, the lighting issue, and the design of the out lot is not to increase traffic.

Chairperson Bertin stated he appreciated all of the comments but indicated there are things that the Planning Commission will take care of when they have the opportunity to review the site plan and how they are going to implement everything and that the Zoning Board is not responsible for taking care of all of those issues, but only to see if there is a reason for granting the variance and that the Planning Commission would act on what's appropriate at the site taking into consideration the concerns of the neighbors.

Chairperson Bertin opened the floor for questions from the Commissioners.

Aren inquired who would be responsible for inspecting the site if a variance was granted and permits issued and Koncsol responded when it moves forward to the Planning Commission that that is the Board responsible for making sure all the I's are dotted and T's are crossed and if there is a timing issue from a legal realm that that can take place and Planning can dictate one.

Chairperson Bertin asked Attorney Zalewski what authority ZBA has the ability to set conditions at a level of specificity that they feel are necessary to address any impact on the neighborhood and then ultimately before any occupancy occurs, those conditions would have to be met. As far as timing in terms of if there is a variance granted, if there isn't proper progress made, it is possible that the variance could lapse and the Planning Commission could also set conditions as well as the Zoning Board and if the Board needs more time to study what conditions should be set, this matter could also be tabled to enable the Board more time to study the issue.

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Perrot questioned on the site plan, the detail that shows the traffic pattern along the drive-thru on the south side of the building, is that an actual barrier that will be installed and Monchnik stated that would be a raised curb. Perrot then asked if that would pose a concern to people backing up onto Whitaker and Monchnik responded that it would be impossible to get into that lane from Whittaker.

Perrot then stated he is concerned that the owner of the center is not present at the meeting and Monchnik responded that he is out of the country.

Chairperson Bertin asked how long he will be out of the country and Monchnik responded until the end of the month. Bertin then asked why this variance request couldn't be tabled until his return and Blugerman responded that he is up against a performance deadline with Tropical Smoothie and that he needs to have a decision on this matter in order to get financing.

Chairperson Bertin asked if any consideration had been given to putting this out lot at the other end and Perrot responded that there is a restraint from O'Reilly that no out lot can be put on their end of the center.

Crutcher stated that there are issues that have come up in the comments from the public that should be addressed as conditions in any approval that may be made.

Further discussion was held concerning the conditions that could be placed on the variance and the timetable in which they would have to be accomplished.

Chairperson Bertin stated he was uncomfortable in feeling under the gun and that there are a lot of issues that need to be addressed and asked if there had been a traffic study done.

Building Official Koncsol stated he doesn't know if there had been a traffic study or not.

Chairperson Bertin asked if the matter was tabled, would there be a Planning Commission meeting held between tonight's date and the next scheduled Zoning Board meeting.

Kevin Christiansen, Director of Economic Development and Planning, came to the podium to respond to Bertin's question.. He introduced himself to the audience and stated what his responsibilities were in his position. He stated that the Zoning Board of Appeals has before them a request for two variances, one for a parking deficiency and one for a deficiency in the number of stacking spaces. He stated this particular proposal was presented to the City in the fall of 2017 and the Applicant has been working with the Administration and the Planning Commission over that period of time and that the preliminary site plan was reviewed by the Commission and it was duly noted that variances would be required before any steps going forward.

Rob Kull, who had previously spoken during audience participation, stood up and stated that he objected to Christiansen interjecting comments in that the Board was in the process of their own discussion.

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Christiansen stated he was responding to the question of the Chairperson as to if the Planning Commission had considered this matter before it came before the ZBA and that he stated they are waiting until the Zoning Board acts on the variance before but that they are very familiar with this project and a lot of work has been done on it already.

Kull stated he objects to bartering with the Applicant.

Attorney Zalewski responded that as a member of the Administration, the Chair recognized Christiansen and allowed him to speak.

Aren asked Christiansen if there was a precedent of success in these two step processes.

Christiansen stated that the City is under a period of redevelopment and that it has planned this redevelopment for a number of years. The site is old and has existing construction that needs to be maintained and is nonconforming and has certain deficiencies and has had to go through a lot of Code Enforcement. He stated if nothing happened today or tomorrow the City would still be looking at these issues and before they push forward on this, that there is an opportunity to do those things as part of this process, that no one is bartering or negotiating. If this doesn't happen, the existing conditions still exist and they will be dealt with. He stated the Zoning Board can either accept his application and move him through due process, knowing there are two steps necessary and in the work sessions with the Planning Commission, the Applicant was told to go to the ZBA first. If the variances are not granted, the site plan is moot. This is a building addition in a parking lot and if the variances aren't granted this will not go forward and if they are, they will come back before the Planning Commission.

Chairperson Bertin thanked Christiansen for his input and the input given by the neighbors, and stated he realizes that this sounds like this may be a way to get things repaired and fixed so they can either have this condition continued to exist or grant the variances, and that is where the Board stands. He stated there can be a motion to deny, approve or table the matter. He then opened the floor for a motion from the Board.

MOTION by Aren, supported by Crutcher, to approve the variance as stated, with the condition that the alley lighting and wall for the residents be added as conditions.

Zalewski stated that the motion must be read in full into the record.

MOTION by Aren, supported by Crutcher, to approve a variance from Section 35-206, Nonconforming Buildings/Structures, to allow an additional 37 parking space deficiency in an existing retail center that is currently deficient 8 parking spaces, for a total parking space deficiency of 45 spaces, in order to permit the construction of a stand-alone retail building and drive-thru on the basis of the following findings and conditions, without which conditions the Board would not grant the variance:

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- A. A practical difficulty exists by virtue of the configuration of the lot, which is wide but shallow, which limits the potential configuration of an addition to the existing building and precludes the establishment of additional spaces elsewhere on the property.
- B. The granting of the variance would do substantial just to the applicant, who is attempting to add interest and increased economic return to an aging retail structure, and also to other property owners in the district, who will not be adversely affected by the proposed relief, as there appears to be sufficient parking elsewhere on the applicant's property to accommodate all uses on the property.
- C. The requested variance will continue to observe the spirit of the ordinance because sufficient parking still exists from the uses on the property even after construction of the new building, and public safety and welfare will not be diminished.
- D. The need for the variance does not appear to be self-created – we will strike that.
- E. No safety hazard or nuisance appears to exist because the availability of other parking on the property appears to be sufficient for all uses located on the property.
- F. The proposed new building and related façade and landscaping improvements will relate well to the adjacent properties, and will not adversely affect the essential character of the neighborhood, but will improve it.
- G. The variance requested is the minimum necessary to permit the proposed additional building on the property.

The foregoing findings and conclusions are dependent upon the following conditions being observed as the new building is added to the property and are only true and accurate if such conditions are implemented:

1. All of the other improvements shown on the site plan submitted to the City and reviewed by the Zoning Board of Appeals, being Job No. 16036, dated June 15, 2018, prepared by Scott Monchnik & Associates, Inc., and consisting of Sheets SP1.00 and SP1.01-SP1.05, including but not limited to new proposed landscaping, new proposed lighting, a new proposed sign, new façade on the existing building and a new roof on the existing building. Without these improvements to the remainder of the center, including the existing building, the Zoning Board of Appeals would not grant the relief requested, and would not make the findings set forth above.
2. The improvements to the existing building (including the new façade and new roof shall be completed, and certificate of occupancy for such improvements shall be issued for such existing building before any building permits for the new structure may be issued.

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3. The landscaping improvements, lighting improvements, and sign improvements shall be installed and completed before any temporary or final certificate of occupancy for the new building are issued.
4. The City Administration may, at its sole discretion, accept performance guarantees in the form of cash or letter of credit in an amount sufficient to secure the completion of the improvements to the existing building if the applicant requests buildings permits for the new building before completing improvements to the existing building and that the service area in the rear is updated and repaired with sufficient lighting and drainage improvement.

Attorney Zalewski stated that if the motion maker was striking Item D, then the variance could not be granted because the applicant needs to demonstrate all of the elements unless there's an amendment that can gain sufficient support.

Aren then restated her motion, with support from Crutcher, as follows:

MOTION by Aren, supported by Crutcher, to approve a variance from Section 35-206, Nonconforming Buildings/Structures, to allow an additional 37 parking space deficiency in an existing retail center that is currently deficient 8 parking spaces, for a total parking space deficiency of 45 spaces, in order to permit the construction of a stand-alone retail building and drive-thru on the basis of the following findings and conditions, without which conditions the Board would not grant the variance:

- A. A practical difficulty exists by virtue of the configuration of the lot, which is wide but shallow, which limits the potential configuration of an addition to the existing building and precludes the establishment of additional spaces elsewhere on the property.
- B. The granting of the variance would do substantial just to the applicant, who is attempting to add interest and increased economic return to an aging retail structure, and also to other property owners in the district, who will not be adversely affected by the proposed relief, as there appears to be sufficient parking elsewhere on the applicant's property to accommodate all uses on the property.
- C. The requested variance will continue to observe the spirit of the ordinance because sufficient parking still exists from the uses on the property even after construction of the new building, and public safety and welfare will not be diminished.
- D. The need for the variance does not appear to be self-created, since the property already houses an existing structure that will need to be upgraded, and those upgrades are being proposed in connection with the development at issue, and the inclusion of the additional building will assist in overall rehabilitation of the center.
- E. No safety hazard or nuisance appears to exist, because the availability of other parking on the property appears to be sufficient for all uses located on the property.

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- F. The proposed new building and related façade and landscaping improvements will relate well to the adjacent properties, and will not adversely affect the essential character of the neighborhood, but will improve it.
- G. The variance requested is the minimum necessary to permit the proposed additional building on the property.

The foregoing findings and conclusions are dependent upon the following conditions being observed as the new building is added to the property and are only true and accurate if such conditions are implemented:

1. All of the other improvements shown on the site plan submitted to the City and reviewed by the Zoning Board of Appeals, being Job No. 16036, dated June 15, 2018, prepared by Scott Monchnik & Associates, Inc., and consisting of Sheets SP1.00 and SP1.01-SP1.05, including but not limited to new proposed landscaping, new proposed lighting, a new proposed sign, new façade on the existing building and a new roof on the existing building. Without these improvements to the remainder of the center, including the existing building, the Zoning Board of Appeals would not grant the relief requested, and would not make the findings set forth above.
2. The improvements to the existing building (including the new façade and new roof shall be completed, and certificate of occupancy for such improvements shall be issued for such existing building before any building permits for the new structure may be issued.
3. The landscaping improvements, lighting improvements, and sign improvements shall be installed and completed before any temporary or final certificate of occupancy for the new building are issued.
4. The City Administration may, at its sole discretion, accept performance guarantees in the form of cash or letter of credit in an amount sufficient to secure the completion of the improvements to the existing building if the applicant requests buildings permits for the new building before completing improvements to the existing building and that the service area in the rear is updated and repaired with sufficient lighting and drainage improvement.

The above findings and conclusions are subject to and would not be made in the absence of the conditions being set forth in 1-4 for the conditions in Motion No. 1 above.

A roll call vote was taken on the foregoing motion with the following result:

AYES: Aren, Bertin, Crutcher, Perrot

NAYS: Schiffman

Motion carried, four to one.

MOTION by Aren, supported by Perrot, to approve a variance to Section 35-172(I), Off-Street Parking Requirements by Use, Drive-In Restaurants, Drive-Thru and Fast

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Food Restaurants, to waive three (3) lot stacking spaces, which would allow the establishment of a drive-thru window with seven (7) stacking spaces instead of ten (10) as is required.

- A. Practical difficulty exists by virtue of the shallowness of the site.
- B. Granting the variance would do substantial justice to the applicant, because it appears that the proposed use would likely not regularly require stacking of more than seven cars, and because there is sufficient room elsewhere on the site to allow cars to wait until spaces are available. The variance will also do substantial justice to other property owners in the district.
- C. The requested variance will observe the spirit of the regulation, as seven spaces appear to be sufficient for the proposed use.
- D. The variance is not self-created, given the shape and shallowness of the parcel in question.
- E. The requested variance will not pose a safety hazard or nuisance.
- F. The requested variance will assist in the redevelopment and upgrading of an existing shopping center and will result in a use compatible with adjacent properties.
- G. The requested variance is the minimum variance necessary.

The above findings and conclusions are subject to and would not be made in the absence of the conditions of approval being set forth in 1-4 for the conditions in Motion No. 1 above.

A roll call vote was taken on the foregoing resolution with the following result:

AYES: Aren, Bertin, Crutcher, Perrot

NAYS: Schiffman

Motion carried, four to one.

### **PUBLIC COMMENT**

The height of the alley wall was further discussed.

Nathan Pitluk, Zoning Board alternate, came to the podium to clarify for the audience that there was also included in the Board's packets a prepared denying motion for the variances and Zalewski responded yes, and that it is not uncommon for communities to have prepared findings of facts and prepared approving and denying resolutions.

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**ADJOURNMENT**

MOTION by Crutcher, supported by Perrot, to adjourn the meeting.  
Motion carried, all ayes.  
The meeting adjourned at 9:10 p.m.

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John D. Koncsol , Building Inspector