

The Board of Zoning Appeals of the City of North Royalton met on **June 22, 2009**, to hold a Public Hearing, in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price at 7:30 pm

Present: Chairman Neil Price, John Ranucci, Paula Recker, Councilman Dan Kasaris, Tony Caraballo, Prosecutor Donna Vozar, City Engineer Mark Schmitzer, Joe Hartman, Secretary Julie Broestl

**(BZ09-06) James and Catherine Snyder** request a variance to Chapter 1270 “Residential Districts, Section 1270.05 “Schedule Area, Yard and Height Regulations”, of the City of North Royalton Codified Code, for relief from the rear yards setback requirement for a deck that they wish to construct on their property which is located at 15042 Bennett Road, PPN: 487-03-005.

Chairman Price: Anyone wishing to be heard? Come up to the microphone.

Mr. Frank Dudas approached the microphone.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Dudas: Yes I do sir.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Dudas: Frank Dudas. I’m the neighbor behind him and where they want to put their deck I would see from my yard and I have no problem with it. It would make the yard look better. I would be the only one effected sir.

Chairman Price: Thank you. Would you like to speak about what you are asking for?

Mr. James Snyder and Mrs. Catherine Snyder approached the microphone.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Snyder: I do.

Chairman Price: Name and address?

Mr. Snyder: 15042 Bennett Road, and my name is Jim Snider and this is my wife Cathy Snyder.

Chairman Price: Go ahead.

Mr. Snyder: Right now there is already a little step there but they are like bricks just stacked up and very unsecure and we don’t really use them because they are wobbly and everything. So, we would just like to put a deck by the sliding door so that we could enjoy our backyard, that is what she always wanted so.

Laughter from the Board.

Mr. Snyder: That’s her dream you know.

Mrs. Snyder: Also it is an exit but we really can’t use it because the pavers are so uneven. For safety issues, encase there was a fire we could use it as an exit. Otherwise, I am sure I would break my leg. I do have a picture if you would like.

Dan Kasaris: Exhibit A.

Chairman Price: Can we keep?

Mrs. Snyder: No.

Paula Recker: Then we can't keep it as Exhibit A. I physically saw it.

Mrs. Snyder: Yes, you did.

Chairman Price: Anything else?

Mrs. Snyder: No.

Chairman Price: Thank you. Do I have a motion to adjourn the Public Hearing.

Moved by Paula Recker, seconded by Dan Kasaris to move BZ09-06 to the regular order of business.

Chairman Price: I have a motion and a second, call the roll.

Tony Caraballo: Yes.

Paula Recker: Yes.

Dan Kasaris: Yes.

John Ranucci: Yes.

Chairman Price: Yes.

Ayes – all. Nays – none.

Motion carried. (5-0)

Chairman Price: Public Hearing adjourned.

The Board of Zoning Appeals of the City of North Royalton met on **June 22, 2009**, to hold an Open Meeting, in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price at 7:30 pm

Present: Chairman Neil Price, John Ranucci, Paula Recker, Councilman Dan Kasaris, Tony Caraballo, Prosecutor Donna Vozar, City Engineer Mark Schmitzer, Joe Hartman, Secretary Julie Broestl

Chairman Price: Can I get a motion to excuse Tony Caraballo the approval of the minutes of May 18, 2009.

Moved by Paula Recker, seconded by Dan Kasaris to excuse Tony Caraballo from the approval of the minutes of May 18, 2009.

Chairman Price: I have a motion and a second.

Dan Kasaris: Yes.  
Paula Recker: Yes.  
John Ranucci: Yes.  
Chairman Price: Yes.

Ayes – all. Nays – none.  
Motion carried. (4-0)

Chairman Price: I need a motion for approval of the minutes for May 18, 2009.

Moved by Paula Recker, seconded by John Ranucci to approve the minutes of May 18, 2009.

Chairman Price: I have a motion and a second. Call the roll.

Paula Recker: Yes.  
Dan Kasaris: Yes.  
John Ranucci: Yes.  
Chairman Price: Yes.

Ayes – all. Nays – none.  
Minutes approved. (4-0)

Moved by Paula Recker, seconded by Dan Kasaris to change the order of business and move new business to the front of the agenda and then move to the old business.

Chairman Price: Discussion? Call the roll.

John Ranucci: Yes.  
Tony Caraballo: Yes.  
Paula Recker: Yes.  
Chairman Price: Yes.  
Dan Kasaris: Yes.

Ayes – all. Nays – none.  
Motion carried. (5-0)

**(BZ09-06) James and Catherine Snyder** request a variance to Chapter 1270 “Residential Districts, Section 1270.05 “Schedule Area, Yard and Height Regulations”, for relief from the rear yards setback requirement for a deck that they wish to construct on their property which is located at 15042 Bennett Road, PPN: 487-03-005.

Moved by Paula Recker seconded by Dan Kasaris to approve a variance of 11-feet less than the minimum rear yard setback requirement as prescribed in Section 1270.05 of the Zoning Code with regards to this proposed deck.

Chairman Price: Discussion?

Paula Recker: Mr. Chairman.

Chairman Price: Mrs. Recker.

Paula Recker: After physically visiting this property and reviewing the application, which I would like to thank the applicant for, a well done application, I will be approving this. I see many reasons to give this including that they have proven in their application that the practical difficulty requirements have been met. Especially I feel that this deck should be passed so that they can have beneficial use of their property.

Chairman Price: I am in agreement also Mrs. Recker. The beneficial aspects is within the spirit and intent of the Zoning Code and it is much better then the cinder blocks outside the door. No objection from the neighbors. The essential character of the neighborhood. It's not going to be altered. There is a partial barrier in the backyard right now, which would tend to help screen from the neighbor. It will not cause adverse effects on governmental services provided by the City. I will be voting for it.

John Ranucci: Mr. Chairman.

Chairman Price: John.

John Ranucci: After I reviewed the property today also, I think that the application was not excessive with the minimum requirements to get the deck put in. It will not alter the character of the neighborhood. It won't effect services. The steps going out that back door, you definitely need to do something. I do have a question, how long did you make her wait until you decided to do something?

Laughter from the audience.

John Ranucci: I do think that they have met the intent of the Code. I will be voting for this also.

Tony Caraballo: Mr. Chairman.

Chairman Price: Tony.

Tony Caraballo: Also seeing that the neighbor, James Dudas, has no objection to it. He thinks that it will enhance the view for his lot. Also, removing the uneven pavers and things like that for the safety issues in the back will be an improvement. I don't see any undo hardship to anyone here, so I will be approving this also.

Chairman Price: Dan?

Dan Kasaris: Mr. Chairman. For reasons previously stated by my fellow Board Members and for the safety concerns that were raised by the applicant, I fully support the application for the variance. Thank you.

Chairman Price: Donna, consensus.

Donna Vozar: Mr. Chairman. Submitted for the Board's approval the following findings of fact are found; The applicant came and testified and has established practical difficulties. It has been established that this is the minimum variance required that the property requires this variance in order to have beneficial use of the property. The character of the neighborhood will not be altered, and as far as governmental services it is actually an improvement because it's a safety feature. No special circumstances. The variance is

keeping in the spirit of the Code. A photo was shown to the Board based on the Board's inspection of the property practical difficulty has been established. Anything else the Board wishes to add feel free to do so at this time.

Chairman Price: Anything else? Call the roll.

Chairman Price: Yes.  
Tony Caraballo: Yes.  
Paula Recker: Yes.  
John Ranucci: Yes.  
Dan Kasaris: Yes.

Ayes – all. Nays – none.  
Variance granted. (5-0)

Chairman Price: You have your deck.

Mrs. Snyder: Thank you.

Paula Recker: Have fun building!

Julie Broestl: Now, you do know that you have to go to the Building Department and turn everything in, okay?

Moved by Paula Recker, seconded by Dan Kasaris to remove BZ09-02 from the table to the regular order of business.

Chairman Price: I have a motion and a second, call the roll.

John Ranucci: Yes.  
Tony Caraballo: Yes.  
Paula Recker: Yes.  
Chairman Price: Yes.  
Dan Kasaris: Yes.

**Ayes – all. Nays – none.  
Motion carried. (5-0)**

**(BZ09-03) GPD Associates / Todd Huntington and Taco Bell** request a variance to Chapter 1281 "Traditional Town Center Main Street District, TCD", Section 1281.06 "Building Widths", paragraph (a), Section 1281.07 "Schedule Yards and Setbacks", paragraph (a), Section 1281.14 "Design Guidelines", paragraph (c)(1) and (2) and Chapter 1284 "Signs", Section 1284.17 "Prohibited Signs", paragraph (s), Section 1284.09 "Signs In Business Districts Generally", paragraph (b)(1), and Section 1284.10 "Location and Supplementary Area Regulations for Signs in Business Districts", paragraph (b), for relief from the building width, side yard setback, display type windows, length of wall space, and allowable signage for this proposed **Taco Bell** that they wish to locate at this location at **6447 Royalton Road, PPN: 487-05-009.**

Chairman Price: A representative from Taco Bell? Anything new?

Dan Kasaris: Mr. President, my I inquire?

Chairman Price: Yes, as soon as they get up.

Mr. Todd Huntington approached the microphone.

Mr. Huntington: My name is Todd Huntington and I am with GPD Associates. Address is 520 South Main Street, Akron, Ohio 44311.

Chairman Price: And you have been previously sworn.

Mr. Huntington: Yes.

Miss. Kira Cabo approached the microphone.

Miss Cabo: My name is Miss. Kira Cabo and I am with GPD Group. Business address is 520 South Main Street, Akron, Ohio 44311. I have not been sworn in before.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Miss Cabo: I do.

Julie Broestl: Excuse me, could you spell your last name?

Miss. Cabo: I will give you my business card.

Julie Broestl: Thank you.

Paula Recker: We have an easel.

Chairman Price: Larry will even help you.

Mr. Huntington: We are here requesting variances and I think the most important one to talk about is the building width requirement. The building width in relation to the parcel width, as you know the requirement is 70%. We have added the arch to the left elevation. The arch added approximately 27-feet from the left façade. Then also on the right side of the building we added a bump out in the dinning area. Whereas before the vestibule, the entryway to the building sat back from the building approximately 23-feet. Essentially we bumped out the dinning room even with where the vestibule is taking out to so that is enclosed a building area. You can see it on the site plan as well. The width of the building has increased. Initially we were requesting a variance of 47% and based on hearing your comments and previous meetings and working with staff, Rito Alvarez and Tom Jordan, as far as trying to lower that variance as much as possible. We added the arch and bumped out the dinning area whereas now the building width is 69.1 feet, which extends from the west edge of the building all the way to the east column of the arch. Which is a request of 17.5 percent variance.

Paula Recker: Excuse me a minute. Do I remember if we have we done the amendment down to 17.5%.

Chairman Price: Yes. Does anyone else have any questions?

Dan Kasaris: Yes, Mr. Chairman.

Chairman Price: Dan.

Dan Kasaris: Todd, what will the archway be constructed of, how will it be constructed?

Mr. Huntington: More than likely its masonry. It is going to be pretty much the same as the building. As far as the foundation goes it will be a concrete foundation with the brick work up with stone and as you can see on the bottom the Coronado stone and the efface material to the top of the arch.

Dan Kasaris: If you are facing the building what is the width of the left wall, on the archway? What supports the archway?

Mr. Huntington: The column itself will more than likely, I can't saw exactly because it hasn't been designed, but minimum probably 2 x 2 column and the way itself will probably be similar to that. Maybe 18-inches.

Dan Kasaris: And what supports the column?

Mr. Huntington: The foundation that would be underground. Essentially 4-foot deep minimum footer down the frost line.

Dan Kasaris: Would that be the same type of footer that the edifice has?

Mr. Huntington: Yes. The building itself is supported on a strip footing, underground concrete continuous strip footer.

Dan Kasaris: And how is the arch attached to the main portion of the facility?

Mr. Huntington: As far as bracing to hold it in, the arch is designed to handle certain wind loads, same as the building. There is certain stresses as far as overturning on the building. The wall itself does have edifice, there is certain wind loads. It will be designed per the Ohio Building Code requirements.

Miss Cabo: It is going to be part of the structural system, the framing system.

Dan Kasaris: When you look at the roof line, if you are looking at it as I am looking at your picture, how is it attached to the portion of the building that is above the last window?

Miss Cabo: It's going to be part of the parapet. Basically, the parapet would continue that way then over to this system and

Dan Kasaris: I'm not a builder or anything but is that one long strip of wood that is going to be underneath it?

Miss Cabo: We don't know if it is going to be wood or partial wood and metal.

Dan Kasaris: Would it be one strip?

Miss Cabo: Oh yes. Our structural Engineer will do structural calculations for the building itself and for the arch as one structure.

Dan Kasaris: So that will be connected to the area where the bell is?

Miss Cabo: Absolutely.

Dan Kasaris: Just like on the other side to the right where you have the roof line or whatever you engineers call it.

Miss Cabo: Our site is different because it is actually the building of Pacific Bells. They own a couple of buildings and they decide to instead of just bump out the vestibule, they decided to add fourteen addition seats in the dining area.

Dan Kasaris: If the variance was granted when would our Building Department have to approve the archway area of the edifice?

Miss Cabo: All at the same time.

Dan Kasaris: Thank you. No further questions.

Miss Cabo: It will be many structural calculations.

Chairman Price: Is it safe to say that it would be a cantilever type effect?

Mr. Huntington: Yes. Something that would tie into the framing system. There is essentially columns along the long end of the building and in certain locations and beams that span those columns, so as far as placing a column, I guess it would be the northeast corner of the building might have a column support and the beam would stretch

across the archway and the framing would go off the beaming so it would provide the support. The foundation for the column itself for the opposite side of the driveway, that is all designed as far as the wind loads, snow loads, things of that nature.

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: Why did you add this arch, that I'm not considering myself per the definition that we have in our Code book of what is a building, cause I don't find that it encloses or houses anything, why did you decide to do an arch to bring this variance down? The left side of that building, why could you not have brought that out a little further on the left side, which on the property would be the east side of the building? Did you try that?

Mr. Huntington: You mean bump the building out itself?

Paula Recker: Where you presently have the arch, why didn't you just

Miss Cabo: With the Code you have to have a drive-thru lane as well as an escape lane, and 5-feet of landscaping. So, the edge of the building as east as possible.

Paula Recker: So why did you do an arch then?

Miss Cabo: Because it was ideal way to increase visual frontage of the building, so that customers could come to the side would see a continuous swoop which is much longer than the actual building.

Paula Recker: So, why you put it on there was to meet or get as close to the 70% as possible?

Miss Cabo: Right, because if you just take the basic calculations, there is no way to be at 17% because you take 17% of the width plus 5-feet landscaping on each side plus the sidewalk which is required, we wouldn't have enough have enough width for one.

Paula Recker: Okay.

Tony Caraballo: Mr. Chairman.

Chairman Price: Tony.

Tony Caraballo: The arch that you proposing, how will it be illuminated, is that going to be illuminated from the arch or from the ground onto the arch, how?

Miss Cabo: Illuminate what?

Tony Caraballo: Is that going to be illuminated at all in front of the building?

Miss Cabo: No.

Tony Caraballo: How about the back of the arch or is it going to be an open cavity or all enclosed, both sides and front as I see it here, and driving out it?

Miss Cabo: Yes. You will see edifice.

Tony Caraballo: The structure will be the same surface as the outside of Taco Bell?

Miss Cabo: The only difference will be up front you will see the band the Taco Bell Band.

Tony Caraballo: But it is going to match the other side.

Miss Cabo: Right. But the other side its going to be this color efface.

Paula Recker: But it is not going to be illuminated.

Miss Cabo: No. There are parking lot lights.

Chairman Price: The only reason that that overhang or that cantilever effect in the post to the left or to the west, is this to give the appear or the impression that it's a wider building than what is called for?

Miss Cabo: Yes.

Mr. Huntington: Yes.

Chairman Price: Otherwise without it we are back to the 47% variance.

Mr. Huntington: Yes.

Paula Recker: So it is basically, just as I said last month, its just an architectural detail, it's somewhat more of an illusion.

Miss Cabo: It is an architectural element which gives drivers in the street look of being longer.

Paula Recker: An illusion. A little magic.

Miss Cabo: Basically, people see a longer building and when people are driving down the street they see a nice long building. We started with just the Taco Bell which was maybe

Dan Kasaris: Actually, didn't one of your original drawings, if I recall correctly, from what Mr. Jordan said, one of the original drawings actually suggested this type of design and you backed off from that and then after the first meeting/hearing before this Board this was then added back onto it at the suggestion of Mr. Jordan and possible Mr. Alvarez?

Miss Cabo: Well, the whole story is originally to extend our building was presented and when Tom Jordan came back and said that he would like to see some type of façade the client unofficially well we just did another project, so what we did and for your information, and it took some time for the client to work up the financials because it is additional funds for the project but he is willing to do it now.

Chairman Price: A question for the representative from the Building Department. This may be a little off topic at this point but I think it will come up a little later I think, as far as frontage is the arch included in the calculations for the dimensions as they relate to signage?

Joe Hartman: According to the OBC, which is the Ohio Building Code, the arch is not part of the square footage of the building itself. However, for visual or aesthetic purposes it was added at the request of Tom Jordan, did you say, to give the appearance of the building being longer.

Chairman Price: But from the calculations stand point the signage remains the same, the requirement?

Joe Hartman: In my opinion, yes.

Chairman Price: Okay.

Dan Kasaris: Mr. Chairman.

Chairman Price: Yes, go ahead.

Dan Kasaris: In my view point after hearing the testimony and looking at the pictures, the drawings we have in front of us, I view the archway as part of the building, it's not a separate building. It's not detached. It is made part of the dining area and the eating area, the

cooking area of the Taco Bell. It is not a separate structure. It's not a separate building. It doesn't stand on its own. It is part of the entire Taco Bell restaurant. In my view in considering that, I see the variance of 17%. I do not see that as a substantial variance. Furthermore, when you look at all of the Code provisions, the Code provisions simply don't end with one particular part of it. There is ten actual factors that we can consider. The second factor is, or actually the third factor is would the character of the neighborhood be substantially altered. I think that the answer to that is no. The character would not be substantially altered. We have past testimony that there are drive-thrus at Burger King, which by the way looks a lot worse than this. There is also a drive-thru at McDonalds, and at Arby's, which I think is right next store. Another is would this variance effect Governmental services? The variance would not. Thirdly, these special circumstances, in my view, did not exist as a result of the action of the land owner. The land owner is taking the land as it is. Buying the land that is available and wants to develop the land, something that this City sorely needs. In my view, Mr. President, I am supporting the first variance. When you consider the totality of the facts, when you consider all the factors listed in 1264.08(e)(1), I think it would be appropriate to grant this variance. Thank you.

Chairman Price: Anyone else?

Paula Recker: Mr. Chairman.

Chairman Price: Paula,

Paula Recker: First of all I would like to thank GPD Group for all of your cooperation, basically caused by myself, and I am glad that you have done as well as you have. Now, as to this width variance, as I stated previously last month, I don't necessarily agree that the arch is a building. That it is strictly an architectural detail. But, now that you have explained it that you have used this detail to bring this variance down to reasonability rather than 47%. I understand the illusion effect. It does work, I will say that, but I wished somebody just said its an architectural detail and we were going to use it to make this. You have come along way. You have brought it down to 17.5%. I think personally if it was just the arch, and you had not done anything on the west side of the building, then I think that my vote would be different. I feel that, I agree with Mr. Kasaris, that you have met the reasons for practical difficulty and I think at this point I will be voting for this, I think.

John Ranucci: Mr. Chairman.

Chairman Price: Yes John.

John Ranucci: After reviewing these plans here a little further, and realizing that some of the practical difficulty with the lot and the zoning issues, the dual driveway and required in and out, that it would make it hard to come up with a 70% right off the bat as it is. Adding the archway tries to get with the intent of the Code. I am not a big fan of the archway, I think it might cause us problems down the road as far as any other creative ideas that people might have, but I think in this situation based on the character in the current neighborhood it will fit in. I will be voting for this also.

Tony Caraballo: Mr. Chairman.

Chairman Price: Tony.

Tony Caraballo: First of all GPD has done a nice job in trying to concur with our request here. I do like that you brought this down from your 47%, which we originally started with, and it is an architectural illusion, but the way you have tied it into the building, and it is going to be the same front façade that is consistent with Taco Bell, it is nice. I don't see that you are going to change the character of the area at all, it won't be altered. Given, again, some of the difficulty that you had, you had mentioned, which I am not sure of this escape lane, and your 5-foot landscape, I think you have done quite well. We are trying to meet everybody more than half way with these options. You started with the 47% and came to 17%, which is nice. What is it 69-feet now, the total of?

Mr. Huntington: 69-feet.

Tony Caraballo: Given all of this, I will be voting for this.

Chairman Price: I will have to agree with the other members. You have made an effort at coming up and illusion to somewhat meet the Code. Being as how the business is what it is a lot size, and there are some difficulties with a lot that size. The character of the neighborhood is not going to change. There are other fast food restaurants. I will be voting for it. Donna?

Donna Vozar: Mr. Chairman. The findings of fact and conclusions of law are as follows: regarding variance number one, the building width compared to the lot size. The applicant has presented evidence during numerous hearings and meetings and initially was seeking a larger variance based on the proposed and modified plans, which is before this Board. They have reduced the variance significantly to the 17.5% variance. The testimony has been before this Board that the modified plan and extension will greatly reduce the variance and so it is the minimum variance that could be applied to this parcel. The character of the neighborhood will not be altered. There will be no effect on governmental services. The Board did find that there were special conditions that existed that are peculiar to this lot like the position of the building, the dual driveway requirements, and other items that were brought before this Board through testimony. There is no other way to avoid granting the variance. No special circumstances or conditions that resulted of the owner. There were no property owners or residents here objecting to the granting of the variance. The Board has found in the evidence that has been presented that the variance is keeping in the spirit of the Code. The applicant has made significant effort to try and reduce the variance and to meet all the requirements under TCD as far as it relates to variance one. As such the Board finds that the applicant has established practical difficulty as to variance one. Is there anything else the Board wants to add?

Chairman Price: Yes. If there are no objections I would like to submit for the record memo from Tom Jordan to the Board of Zoning Appeals, dated June 18<sup>th</sup> titled Taco Bell restaurant, and a memo from Rito Alvarez, the Building Commissioner, dated June 22<sup>nd</sup> 2009, any objects?

Board Members: No.

Chairman Price: Any other comments? Call the roll.

John Ranucci: Yes.  
Tony Caraballo: Yes.  
Chairman Price: Yes.  
Paula Recker: Yes.  
Dan Kasaris: Yes.

Ayes – all. Nays – none.  
Variance #1 granted. (5-0)

Moved by Paula Recker, seconded by Dan Kasaris to approve a variance of 10-feet more than the maximum setback allowed as prescribed in Section 1281.07(a) of the Zoning Code with regards to the location of this proposed Taco Bell building.

Chairman Price: I have a motion and a second. Discussion?

Dan Kasaris: Yes. Mr. Chairman.

Chairman Price: Yes.

Dan Kasaris: I believe this variance has been actually requested by the City due to the fact that the Mayor plans on widening Rt. 82. I think its good planning on the City to ask this, therefore, again when I consider the factors set forth in the Code, it seems to me this variance makes sense. Again, it doesn't alter the neighborhood. It is actually going to help

governmental services. I don't think that it violates the spirit of the Zoning Code. For those reasons I will be voting in favor of setback variance.

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: I feel that this variance meets the criteria for practical difficulty and I will be voting yes.

Chairman Price: I will have to agree with what Dan said. I think that an example of the City looking ahead a little bit, then they are the ones that probably requested this variance. I will be voting for it.

John Ranucci: Mr. Chairman.

Chairman Price: Yes John.

John Ranucci: I will also be voting for this. I have to agree with everything that has been said. It looks like that road will be widened sometime soon, so by moving it back will eliminate a lot of problems down the road.

Tony Caraballo: Mr. Chairman. Also, with the future plans of North Royalton and the widening of Rt. 82 this is quite necessary. I concur with everyone else and will be voting yes for this.

Chairman Price: Donna?

Donna Vojar: Based on findings of fact and conclusions of law regarding variance number two, the applicant has established practical difficulties to the Boards satisfaction, due to the fact of widening of Rt. 82. The applicant has requested this variance and all the conditions as stated in 1264.08(e) has been established at the hearing.

Chairman Price: Anything else? Call the roll.

Chairman Price: Yes.  
Tony Caraballo: Yes.  
Paula Recker: Yes.  
Dan Kasaris: Yes.  
John Ranucci: Yes.

Ayes – all. Nays – none.  
Variance #2 granted. (5-0)

Moved by Paula Recker, seconded by Dan Kasaris to approve variance three which is a variance of 13% less than the required display type windows as prescribed in Section 1281.14(c)(1) of the Zoning Code with regards to the west wall elevation on this proposed Taco Bell building.

Chairman Price: We have a motion and a second. Todd, could you point out the west wall?

Mr. Huntington: This is the west wall.

Chairman Price: Thank you.

Paula Recker: Mr. Chairman.

Chairman Price: Go ahead.

Paula Recker: In this particular case with the drive-thru window the order window and the pick up window, I think that is more than sufficient glass for this building. I will be voting yes for this. It meets all the practical difficulties the requirements.

Chairman Price: On the west side elevation, what is that blank space you have there?

Mr. Huntington: This is the west side elevation, right here, which represents this side adjacent to the parking lot. This would be the entry way in the back. This is the dining room bump out. This is the restrooms.

Chairman Price: That wall area is?

Mr. Huntington: The wall area back here in the rear of the building is a freezer cooler area. Then mechanical equipment in the back and storage and mainly the kitchen area in the back. For those reasons that is why there are no windows in the back. That is why we are requesting the addition variance.

Chairman Price: You don't want anybody watching the cook?

Laughter from the audience.

Miss Cabo: To be honest with you this is the vestibule and normally you won't see windows behind it, because this is where the restrooms are. But we are special glass to have a window look and not be able to see it as much as possible. Same with the height of windows. We started at 3-feet as Code requires, when normally it starts at 4.5-feet. We expanded height of the windows as much as possible to the bottom and to the top and added glass to the vestibule.

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: One of my major things on practical difficulty in this particular case, government services, meaning the police during security checks, I mean there is enough glass in this entire building that we don't need more little windows anywhere. Any drive-thru pick up window or order window you can see right through the business. So, I would definitely be voting for this just on the safety basis. I think the police will just love all this glass.

Dan Kasaris: Mr. President.

Chairman Price: Dan.

Dan Kasaris: I think the variance is minimal, 13%. I concur with the architects that you don't put windows in the food preparation area, or where the cooler is. I will be supporting the variance request.

Chairman Price: So will I. The window space would be an effort to enlarge it. I see no reason for windows in the cooler area and kitchen. It is a minimal variance and I will be voting for it.

Tony Caraballo: Mr. Chairman.

Chairman Price: Tony.

Tony Caraballo: I also concur. Seeing the site plan here. It sounds like you added glass as opposed to your existing units. I believe it is a minimal variance request. I will be voting also for this.

John Ranucci: Mr. Chairman. For all the reasons just stated, I will be voting for this also.

Chairman Price: Donna, findings of facts?

Donna Vojar: Yes Mr. Chairman. The findings of fact and conclusions of law based on the proposed consensus are as follows; the applicant on variance three has established practical

difficulty. It is the minimum variance requesting it is 13% less than the required display type windows on the west wall. The applicant has established that special conditions exist to justify the variance specifically the location of the cooler, the kitchen, and other items that would not be best if view through windows. Based on that if there is anything else the Board wants to add.

Chairman Price: Board anything? Call the roll.

Chairman Price: Yes.  
Tony Caraballo: Yes.  
Paula Recker: Yes.  
Dan Kasaris: Yes.  
John Ranucci: Yes.

Ayes – all. Nays – none.  
Variance #3 granted. (5-0)

Moved by Paula Recker, seconded by Dan Kasaris to approve variance four which is a variance 22% less than the required display type windows as prescribed in Section 1281.14(c)(1) of the Zoning Code with regards to the east wall elevation for this proposed Taco Bell.

Chairman Price: We have a motion and a second. Discussion?

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: With all the same reasoning as for variance number three, I will be voting yes on variance four.

Dan Kasaris: Mr. Chairman. Likewise. I just have one comment, just for the record the east side is where the drive-thru is, right. The same reasons I will also be voting for the variance.

Chairman Price: Likewise. I see no need to have windows back in the area where the work is going on and walk-in freezers and things like that are.

Tony Caraballo: Mr. Chairman.

Chairman Price: Tony.

Tony Caraballo: Also, for all the reasons stated before I concur with everyone and I will be voting yes for this.

John Ranucci: Mr. Chairman. I will be voting for the reason already stated.

Chairman Price: Donna, findings of facts.

Donna Vojar: Yes, Mr. Chairman. Variance number four, the findings of facts and conclusions of law are as follows; requesting a variance of 22% less than the required display type windows on the east wall. The Board finds that it is the minimum variance required based on the testimony of the applicant. Special conditions do exist to justify granting the variance and practical difficulties has been established due to the drive-thru location and the various personal and items that would be back in that area. Anything else?

Chairman Price: Anything else? Call the roll.

Paula Recker: Yes.  
Dan Kasaris: Yes.  
John Ranucci: Yes.  
Chairman Price: Yes.  
Tony Caraballo: Yes.

Ayes – all. Nays – none.  
Variance #4 granted. (5-0)

Moved by Paula Recker, seconded by Dan Kasaris to approve a variance number five which is a variance for relief from Section 1281.14(c)(2) of the Zoning Code with regards to the required windows which should be installed on the south rear wall.

Chairman Price: A motion and a second.

Dan Kasaris: Mr. President.

Chairman Price: Dan.

Dan Kasaris: May I ask the applicant for the record. What is on the south rear wall or what is behind the south rear wall.

Mr. Huntington: You can see on the site plan there is a bump out in the back that is the freezer and the cooler in the back. You can see the windows here is the back of the vestibule and the window here is the pre-pay window.

Dan Kasaris: Thank you.

Paula Recker: Mr. Chairman.

Chairman Price: Were you done Dan?

Dan Kasaris: Yes.

Chairman Price: Paula.

Paula Recker: To the applicant, where are your dumpsters going to be?

Mr. Huntington: The dumpsters are located way in the back.

Paula Recker: There was some confusion earlier on.

Mr. Huntington: There is a required loading zone per Code requirements and this is a menu board. The menu board is highly landscaped of low lying bushes but also a four foot screening wall. It is an architectural feature. It is part of Taco Bell's future element. It is a four foot screen wall. That will be implemented.

Chairman Price: Again, because special conditions exist I will go along with this variance. The rear of the building has equipment and hardware and facilities that don't need windows.

Paula Recker: With any of these variances I think this one is really needed. Who wants to look at the freezer. So, I really think it meets the practical difficulty requirement.

Dan Kasaris: Mr. Chairman.

Chairman Price: Dan.

Dan Kasaris: In addition it is actually common sense. I will be voting for the variance.

Tony Caraballo: Mr. Chairman.

Chairman Price: Tony.

Tony Caraballo: Also I think that this is quite typical, the back of the building of a fast food restaurant they have no windows in the back. I will be voting yes for this.

Chairman Price: Donna.

Donna Vozar: Yes Mr. Chairman. In regarding variance number five, the following findings of facts and conclusions of law is a variance for relief from the required windows installed on the south rear wall. The applicant has established practical difficulty. The evidence presented indicated that a freezer and a cooler would be located there and impractical to have windows in that location. Based on the evidence the Board has found that they have established practical difficulty as stated under 1264.08(e).

Chairman Price: Call the roll.

Dan Kasaris: Yes.  
John Ranucci: Yes.  
Chairman Price: Yes.  
Tony Caraballo: Yes.  
Paula Recker: Yes.

Ayes – all. Nays – none.  
Variance #5 granted. (5-0)

Moved by Paula Recker, seconded by Dan Kasaris to approve a variance of 31.6-square feet more than the maximum square footage allowed as prescribed in Section 1284.09(b)(1) of the Zoning Code with regards to the allowed signage for this proposed Taco Bell.

Chairman Price: A motion and a second. Discussion?

Paula Recker: Mr. Chairman. We haven't had the applicant address this. Personally, I think this is minimal. There are not over signed. I will be voting for this. Just looking at the other buildings in the area this is minimal. They do reach any and all practical difficulty.

Chairman Price: Question for the applicant. On the west side, the signage, which I assume is included in the total, that is the drive-thru side. East side, what are your thoughts as far as who is going to see that, because you have a neighbor that is a driveway and five feet off of this driveway, who is going to see that signage.

Miss Cabo: People driving by on the street.

Chairman Price: There is a driveway and building.

Miss Cabo: The building starts right here. Basically

Chairman Price: Driving by at 35 mph you are going to see that sign?

Paula Recker: With the arch blocking it?

Miss Cabo: Honestly, some people will and some won't. Cars will be lower so they will see it through the opening. Maybe yes, maybe no. Some people will, some people won't.

Chairman Price: Will you consider eliminating that signage to come down to meet the requirement based on the square footage of the front of the building, which doesn't include the archway, am I correct Mr. Hartman. The signage for the building is based on the size of the front of the building, which does not include the archway?

Joe Hartman: No, does not.

Mr. Huntington: You are correct. 31-linear feet is what was used for the building frontage calculations.

Chairman Price: Was that before the ten feet was added for the dining area?

Mr. Huntington: Yes, that was before that was added.

Miss Cabo: I believe more is allowed right?

Chairman Price: How much more? Who has a calculator?

Miss Cabo: 67-square feet is allowed.

Paula Recker: So, what will the variance be?

Mr. Huntington: We are proposing 87.6 and 67 would be allowed, so we will be requesting a variance for 20.6 feet with signage on east, west and front façade.

Miss Cabo: Honestly, I do agree with you that there is no way to see the bell from the street. But I would still ask the Board to consider small Taco Bell verbiage, it's only 2-square feet. But eliminate the bell because people will not see it.

Chairman Price: You are pointing to the west side at the bottom.

Miss Cabo: Yes this is the drive. We are looking at these right?

Paula Recker: The east side is in question.

Mr. Huntington: Without the bell on the east elevation the total proposed signage would be 65.4 square feet, which is under Code requirement. The Code allows 67-square feet and we would be proposing less than that.

Donna Vozar: Mr. Chairman if I could. Are you able to speak on behalf of the Taco Bell company? You are the applicant correct?

Miss Cabo: We did discuss it with the owner before the meeting and they said if needed this bell could be removed because not many people will see it.

Donna Vozar: Are you willing to withdraw from your application for variance number six?

Miss Cabo: There is no need for a variance.

Donna Vozar: Just state for the record that you are withdrawing variance number six.

Mr. Huntington: Yes.

Paula Recker: Mrs. Vozar do I have to withdraw my motion?

Donna Vozar: Yes.

Moved by Paula Recker, seconded by Dan Kasaris to withdraw the motion for variance number six.

Chairman Price: Variance is withdrawn.

Moved by Paula Recker, seconded by John Ranucci to approve a variance to allow a monument sign which is contrary to Section 1284.17(s) of the Zoning Code with regard to this propose Taco Bell sign.

Chairman Price: I have a motion and a second. Discussion?

Paula Recker: I will definitely be voting no on against this variance. It is totally against the intent and spirit of this Code. After sitting on the Master Plan and also listening to the discussions regarding the TCD Codes, and I also so no practical difficulty. That is too close to the road and the amount of signage on the building, in my opinion you don't need a monument sign. I will be voting no for this.

John Ranucci: Mr. Chairman.

Chairman Price: John.

John Ranucci: I have to agree with Paula on this one here. This is the first building that is going into TCD and the Code clearly states that it is prohibited. And the signage on the building as close to the street as it is going to be. I don't see practical difficulty in having this sign. I will be voting no also.

Chairman Price: I have to go along with John. The practical difficulty aspect this building has been situated such that it is going to be close to the road when the road is expanded, and having a monument sign plus signs on the building is sort of redundant, I think. I will be voting no.

Dan Kasaris: Mr. Chairman. For reasons already stated I will be voting no for the monument sign.

Chairman Price: Tony.

Tony Caraballo: I concur with all reasons stated earlier. Seeing that this is the first building constructed per this Code, and it is close enough to the road as it is, I concur with the others and I will be voting no.

Chairman Price: Donna,

Donna Vozar: Mr. Chairman. As to variance number seven, a variance to allow a monument sign contrary to Section 1284.17. The Boards findings of facts and conclusions of law are as follows; there can be beneficial use of the property without the variance, since the Board has granted all the other variances. The Board also indicated that based on the testimony that there is significant signage on the building and it is substantial based on the Code and on the use of the property. The character of the neighborhood would be substantially altered if the variance was granted due to the fact that this it the TCD district. There are special conditions which exist, but those conditions have the building close enough to the roadway and with significant signage to find that there is no practical difficulty found. It is against the spirit of the Code. The Board finds that no practical difficulty has not been established. If the Board would like to vote we can go from there unless anything else to add.

Chairman Price: Anything? Call the roll.

Miss Cabo: Can we discuss this?

Chairman Price: We already had discussion on this.

Miss Cabo: Can we speak something.

Chairman Price: We are kind of done.

Donna Vozar: Mr. Chairman you already started calling the vote.

Chairman Price: Yes.

Paula Recker: You aren't going to change my mind.

Chairman Price: Continue with the roll call.

Miss Cabo: If Taco Bell believes that they will start losing business because they are the only ones on the street that doesn't have a sign. When I talked to the client about the bell I explained to him that you will not lose business because of that. Unfortunately, with the monument sign, a tiny monument sign might be a deal killer.

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: This would be to either the Building Department or even Mrs. Vozar, the signs that are existing in the TCD areas. Should, at some point, any of the businesses on 82 or even throughout the City that are in TCD, if they went to replace their ground signs do I understand that that would be not allowed now?

Donna Vozar: Mr. Chairman, if I could. First off we are in the middle of a vote. I think that it is inappropriate for us to have any further discussions. If the Board members want to reopen this up for discussion by all means, but we are in the middle of the roll, we need to go forward or go back into discussion.

Chairman Price: I suggest that there is another variance and it deals with signs and can be discussed at that point.

Donna Vozar: Actually Mr. Chairman, variance number eight isn't required, it will only occur if the ground sign was granted because it is for the sidewalk setback for the signage, so no need to go forward with number eight.

Chairman Price: Continue with the roll call.

Paula Recker: No.  
Tony Caraballo: No.  
Chairman Price: No.  
Dan Kasaris: No.  
John Ranucci: No.

Ayes – none. Nays – all.  
Variance #7 denied. (0-5)

Paula Recker: Mrs. Vozar.

Donna Vozar: Yes.

Paula Recker: Seeing as variance seven has been denied do we bring forth the motion and then just vote.

Donna Vozar: You might have some discussion, but I assume the discussion will be what I just said.

Moved by Paula Recker, seconded by John Ranucci to approve a variance of 9-feet less than the minimum required side lot setback as prescribed in Section 1284.10(d) of the Zoning Code with regards to this proposed monument sign.

Chairman Price: I have a motion and second.

Paula Recker: Mr. Chairman. Obviously if variance number seven was denied so thus then variance number is disallowed in my opinion. I will be voting no.

Dan Kasaris: Mr. Chairman. I don't think that there is anything to vote for. I think its moot. There is no variance in front of us because what they were requesting a variance on has been denied. I just think its moot.

Chairman Price: Any other comments.

John Ranucci: Mr. Chairman. I agree with both of those comments. Pick which one you want.

Chairman Price: Tony.

Tony Caraballo: I agree with Dan. It is moot.

Chairman Price: I do also.

Donna Vozar: Mr. Chairman. Based on the findings of facts and conclusion of law as to variance number eight, due to variance number seven being denied by this Board, variance number eight is moot, but the evidence has been heard and it is before the Board. Practical difficulty has not been established.

Chairman Price: Call the roll.

Chairman Price:	No.
Tony Caraballo:	No.
Paula Recker:	No.
Dan Kasaris:	No.
John Ranucci:	No.

Ayes – none. Nays – all.  
Variance #8 denied.

Moved by Paula Recker, seconded by Dan Kasaris to adjourn the BZA meeting of June 22, 2009.

The meeting was adjourned at 8:43 pm

Approved: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_