

AVON BOARD OF ZONING APPEALS
MEETING AGENDA

MEETING DATE: October 17, 2019

TIME: 7:00 PM

PLACE: AVON TOWN HALL COUNCIL CHAMBERS

1. Call to order/Pledge of Allegiance
 2. Roll Call/ Determination of Quorum
 3. Approval of Minutes: No September meeting
 4. Request for Continuances or Agenda Modifications: None
 5. Public Comments: (Public may comment on items NOT part of a public hearing)
 6. Old Business: None
-

7. New Business / Public Hearings:

DOCKET # VAR 19-13 – IU Health – 10853 E US Highway 36

Development Standards Variance

A request for approval of a development standards variance to allow larger than permitted wall signage for a multi-tenant building. The property is approximately 1.16 acres located at 10853 E US Highway 36. The property is zoned SC and is within Tier 1 of the US Highway 36 Overlay District.

PETITIONER: Joe Kukola

DOCKET # VAR 19-14 – Smoothie King – 9777 E US Highway 36

Development Standards Variance

A request for approval of a development standards variance to allow additional wall signage. The property is approximately 1.82 acres located at 6851 E US Highway 36. The property is zoned C-2 and is within Tier 1 of the US Highway 36 Overlay District.

PETITIONER: Atlantic Sign Company

DOCKET # VAR 19-15 – Taco Bell – 6851 E US Highway 36

Development Standards Variance

A request for approval of a development standards variance to allow fewer parking spaces than required for a Class B restaurant. The property is approximately 0.64 acres located at 6851 E US Highway 36. The property is zoned C-2 and is within Tier 1 of the US Highway 36 Overlay District.

PETITIONER: GPD Group

Other Business: Signatures

Adjournment

Next Meeting: November 21, 2019

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of *Town of Avon*, should contact the *Town Administrative Offices* as soon as possible but no later than 48 hours before the scheduled event

VAR 19-13 IU Health Avon Urgent Care
Planning & Building Department Staff Report
October 17, 2019
Board of Zoning Appeals, Public Hearing
Jodi Dickey

- A. Petition Number: VAR 19-13 IU Urgent Care
- B. Applicant: Joseph Kukolla, Michael Rabinowitch
- C. Location: The subject property is located at 10853 E US Highway 36.
- D. Parcel Size: The entire parcel is about 1.16 acres
- E. Land Use and Zoning: The parcel is zoned SC (shopping center), lies within Tier 1 of the US Highway 36 Overlay District, and contains an existing multi-tenant building and parking area. The site is part of the Meijer development.
- Properties immediately surrounding the site to the east, west, and south are also zoned SC and contain commercial uses (Chick-fil-A, Meijer). To the north (across US 36), property is zoned C-2 (general commercial) and contains a variety of business uses (Old Bob's (being redeveloped as Take 5), Speedway gas station).
- F. Action Requested: Grant a Variance of Development Standards from the limits on wall signs for multi-use buildings in the SC zoning district. (Chapter 18 Section 18.8, 2). According to Chapter 18, wall signs for multi-use buildings are limited 1.5 square feet for each linear foot of public street frontage. In this case, the requested sign size exceeds that maximum size. That is the reason for this request.
- G. History: This is the first appeal for this property.
- H. Staff Comments: IU Health intends to occupy one of the three tenant spaces at an existing multi-tenant building to open an urgent care facility. The appellant has filed this appeal to allow installation of wall signage that is larger than what would be allowed for this particular tenant space. The space is approximately 47 feet long. That would allow a sign up to 70.5 square feet. The appellant's proposal shows signage totaling 109.19 sq.ft.
- In his letter of intent, the appellant indicates this location was selected after an exhaustive search for an adequate

site in Avon. The letter also notes the importance of adequate and visible signage to the overall market success of a clinic and states the building is difficult to see, given distance from the road and existing landscaping.

Plans submitted show wall signage that includes an IU Health business logo and the words "urgent care".

Staff is not satisfied all five findings have been met and therefore recommends denial of this request

I. Statutory Findings for Variance of Development Standard:

The Board of Zoning Appeals shall approve, conditionally approve or deny variances from the development standards (such as height, bulk, or area) of the Avon Zoning Ordinance. A variance may be approved under IC 36-7-4-918.5 only upon a determination in writing that:

Criterion 1: The approval will not be injurious to the public health, safety, morals, and general welfare of the community

Granting a variance to allow additional wall signage in this location would not be injurious to the general welfare of the community. This project is within an established commercial area where it is to be expected businesses will have signage on the buildings. Wall signage will not unduly add to visual clutter along US Highway 36. Staff considers this criterion to be met.

Criterion 2: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

Granting this variance should not adversely affect adjacent property uses or values. The property has been a commercial site since originally developed and signage is certainly a part of commercial businesses, so the adjacent properties should not be adversely impacted. Staff considers this criterion to be met.

Criterion 3: The strict application of the terms of the Avon Zoning Ordinance will result in practical difficulties in the use of the property

A practical difficulty is usually defined as a special condition that affects a particular property that can make strict adherence to the zoning regulation(s) unreasonable and/or that prevent a property from being utilized for a permitted use. In this case, wall signage is allowed, just at a smaller size than the appellant would like. There is also an existing pylon sign that has a tenant panel available for this building. That is an option available which would provide for

additional advertising and help with wayfinding. Staff is also of the opinion that the building is visible from both east and west bound travelers along US 36 and there are two entrances from which to access the site. If one were to pass by the building while looking for it, there is a second access available and the building is easily navigated to via other local landmarks.

Staff does **not** consider this criterion to be met.

Criterion 4: The variance requested is the minimum necessary

The request may or may not be the minimum necessary to install the desired wall signage. The request is for 1.5 times the allowed; the appellant may be able to only slightly increase the size and still achieve the desired visibility. The appeal also does not include a request for any additional wall signage. If Board members find the need for the additional size is warranted, the request would not be oversized or out of character for the building.

Staff is satisfied this criterion is met.

Criterion 5: The need for the variance is not caused by the owner, previous or present

As noted above, staff believes there is not a compelling practical difficulty with this site that would necessitate larger signage. Also, an urgent care facility is different than a typical business that might rely more on signage to attract passersby to stop in and shop.

Staff does **not** consider this criterion to be met.

CONDITIONS

Per IC 36-7-4-918.5, the Board may impose reasonable conditions as a part of the Board's approval.

J. Recommendation:

Because the appellant has **not** met the findings of fact for all five criteria, Staff recommends denial of VAR 19-13, request for a variance from the wall sign standards in Chapter 18 of the zoning ordinance.

VAR 19-13 IU Health Urgent Care Location Map



Sample BZA Motion

AVON BOARD OF ZONING APPEALS

Approval of a Variance of Development Standard

Case Number: VAR 19-13, IU Health Urgent Care

I move that we deny VAR 19-13, a variance of development standard to allow **larger than allowed wall signage** as not having satisfied all the requirements for variances under state law and subject to the staff Findings of Fact.

VAR 19-14 Smoothie King

Planning & Building Department Staff Report

October 17, 2019

Board of Zoning Appeals, Public Hearing

Jodi Dickey

- A. Petition Number: VAR 19-14 Smoothie King
- B. Applicant: Atlantic Sign Company
- C. Location: The subject property is located at 9769 E US Highway 36.
- D. Parcel Size: The entire parcel is about 1.82 acres
- E. Land Use and Zoning: The parcel is zoned C-2 (general commercial), lies within Tier 1 of the US Highway 36 Overlay District, and contains an existing multi-tenant building and parking area. The site is part of the Gables of Avon development.
- Properties immediately surrounding the site to the east, west, and north (across US 36) are also zoned C-2 and contain commercial uses (Gable Village shops, Beauty Brands, remaining Gables of Avon shops). To the south property is zoned SC (shopping center) and contains a variety of business uses (Ashley Furniture, Buffalo Wild Wings, Aldi, etc.).
- F. Action Requested: Grant a Variance of Development Standards from the limits on the number of wall signs for multi-tenant buildings in the C-2 zoning district. (Chapter 18 Section 18.8, 2). According to Chapter 18, the number of wall signs allowed for multi-use buildings is limited to one sign per tenant bay. Tenants with frontage on more than one street may have one additional wall sign. In this case, only two wall signs are allowed and the owner desires to have three – one for each building façade.
That is the reason for this request.
- G. History SE 18-01 special exception for drive-through service
DPR 18-08 development plan approval
- This parcel was originally the site of a Jack-in-the-Box restaurant. When that went out of business, the property was acquired and redeveloped with the current multi-tenant structure. It currently houses Smoothie King and a Denny's Restaurant.
- H. Staff Comments: The appellant has filed this appeal to allow installation of

one additional wall sign that would be placed on the south elevation of the building. This elevation faces the existing Gables of Avon shopping center and the businesses there.

Signage on the north and east façades already exists.

In his letter of intent, the appellant indicates signage on the south (or rear) elevation would allow shoppers to find more easily the business when coming from Aldi's, Ashley Furniture, or any of the other existing businesses. It would also allow the owner to better market his place of business to potential customers.

Staff is not satisfied all five findings have been met and therefore recommends denial of this request

I. Statutory Findings for Variance of Development Standard:

The Board of Zoning Appeals shall approve, conditionally approve or deny variances from the development standards (such as height, bulk, or area) of the Avon Zoning Ordinance. A variance may be approved under IC 36-7-4-918.5 only upon a determination in writing that:

Criterion 1: The approval will not be injurious to the public health, safety, morals, and general welfare of the community

Granting a variance to allow additional wall signage in this location would not be injurious to the general welfare of the community. This project is within an established commercial area where it is to be expected businesses will have signage on the buildings. Wall signage on the rear façade will not add to visual clutter along US Highway 36. Staff considers this criterion to be met.

Criterion 2: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

Granting this variance should not adversely affect adjacent property uses or values. Again, the property has been a commercial site since originally developed and signage is certainly a part of commercial businesses, so the adjacent properties should not be adversely impacted. The appellant also notes, and staff concurs, that this is a unique business and having additional signage will not constitute unfair competition with other local shops. Staff considers this criterion to be met.

Criterion 3: The strict application of the terms of the Avon Zoning Ordinance will result in practical difficulties in the use of the property

A practical difficulty is usually defined as a special condition

that affects a particular property that can make strict adherence to the zoning regulation(s) unreasonable and/or that prevent a property from being utilized for a permitted use. In this case, two wall signs are allowed and the owner is free to place a sign on whichever elevation he would like. The appellant's findings note it could be difficult for customers to find the business without additional signage if they're coming from the anchor stores to the south. Staff disagrees; shoppers can easily see the building as they pass by it on their way to those stores. Staff does **not** consider this criterion to be met.

Criterion 4: The variance requested is the minimum necessary

The request may or may not be the minimum necessary to install the desired wall signage. The request is for an additional sign on a third façade. If Board members find the need for the additional signage is warranted, the request would not be oversized or out of character for the building. Staff is satisfied this criterion is met.

Criterion 5: The need for the variance is not caused by the owner, previous or present

As noted above, staff believes there is not a compelling practical difficulty with this site that would necessitate additional signage. The owner has the option to place one of his two permitted signs on the south elevation if he so chooses.

Staff does **not** consider this criterion to be met.

CONDITIONS

Per IC 36-7-4-918.5, the Board may impose reasonable conditions as a part of the Board's approval.

J. Recommendation:

Because the appellant has **not** met the findings of fact for all five criteria, Staff recommends denial of VAR 19-14, request for a variance from the wall sign standards in Chapter 18 of the zoning ordinance.

VAR 19-14 Smoothie King Location Map



Sample BZA Motion

AVON BOARD OF ZONING APPEALS

Approval of a Variance of Development Standard

Case Number: VAR 19-14, Smoothie King

I move that we **deny** VAR 19-14, a variance of development standard to allow **more than allowed wall signage** as **not** having satisfied all the requirements for variances under state law and subject to the staff Findings of Fact.

VAR 19-15 Taco Bell Landscaping– 6851 E US Hwy 36

Planning & Building Department Staff Report

October 17, 2019

Board of Zoning Appeals, Public Hearing

Jodi Dickey

- A. Petition Number: VAR 19-17 Taco Bell Landscaping
- B. Applicant: Yezenia Ortiz, GDP Group
- C. Location: The subject property is located at 6851 E US HWY 36, south of US HWY 36.
- D. Parcel Size: The subject parcel is approximately 0.64 acres.
- E. Land Use and Zoning: The parcel is zoned C-2 (general commercial) and is currently the old Felds Carpet One Floor and Home and lies within Tier 1 of the US Highway 36 Overlay District.
- Properties surrounding the site to the east, west, and south contain office/commercial uses (American Mortgage, Westridge Investment, Shell gas station). Avon Intermediate School West also lies south of the subject property. To the north (across US 36), property is zoned C-2 and contains various retail uses (McDonalds, Kroger shopping center, Conkle Funeral Home).
- F. Action Requested: Grant a development standards variance to allow fewer than the required number of parking spaces. Chapter 15, Section 15-7, specifies the number of spaces based upon the type of use.
- The appellant is proposing an infill project to tear down the Felds Carpet One and build a new Taco Bell restaurant. The existing site conditions limit the amount of property available for the building and parking, along with the other site improvements. That is the reason for this request.
- Staff recommends approval based on the findings of fact.
- G. History Associated appeals:
SE19-01: Taco Bell Drive Through
VAR 19-07: Building Setback
VAR 19-08 Landscaping
- H. Staff Comments: The appellant proposes to remove the existing building and construct a new Taco Bell restaurant. The new structure would be oriented to the Avon Intermediate School Road and has access via an existing drive. The existing access

will remain. The proposed building will be located in the middle of the site (north/south) and nearest to the eastern boundary. The building is oriented with the front façade facing the private drive. Parking and a patio area are in front of the building, with drive through lane and components to the south and east. The conceptual layout provides clear and efficient access to and through the site. At the June 20, 2019 BZA meeting, a special exception for drive-through services was granted as was a variance to exceed minimum setbacks and a variance to reduce the landscape buffer yard. While proceeding through the plan commission technical review process, the required number of parking spaces was noted and communicated to the appellant. For this business (Class B restaurant), a minimum of 21 spaces is required. The site can accommodate 16 spaces.

This project will be required to go through the plan commission process for plan approval prior to construction.

I. Statutory Findings for a Variance of Development Standard:

The Board of Zoning Appeals shall approve, conditionally approve or deny variances from the development standards (such as height, bulk, or area) of the Avon Zoning Ordinance. A variance may be approved under IC 36-7-4-918.5 only upon a determination in writing that:

Criterion 1: The approval will not be injurious to the public health, safety, morals, and general welfare of the community

Granting a variance to allow a reduction in the required number of parking spaces will not be injurious to the general welfare of the community. The proposed use is a quick serve restaurant and the majority of customers will be using the drive-through for service and will not require a parking space. The owner feels 16 spaces is adequate to serve his needs and the business will not need the additional spaces.

Staff considers this criterion to be met.

Criterion 2: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

Granting this variance should not adversely affect adjacent property uses or values. The parcel is commercially zoned and lies amidst commercial uses. A reduction in the number of parking spaces should not adversely affect adjoining properties as the parking lot is expected to accommodate anticipated traffic.

Staff considers this criterion to be met.

Criterion 3: The strict application of the terms of the Avon Zoning Ordinance will result in practical difficulties in the use of the property

Given the parcel size and configuration, there isn't adequate room to locate the building and all necessary US 36 Overlay site improvements and also allow adequate maneuvering space for vehicles within the drive-through.

The site is large enough to accommodate this use, the building is not excessively large, and the property is designed to provide for safe and efficient use overall.

Requiring the owner to provide an additional 5 parking spaces would require the owner to redesign his site, build a smaller building, or not provide a drive-through. In addition, other variances would be needed to fully develop the site.

As noted with earlier variances, it is unlikely any common use (quick serve restaurant, bank, pharmacy, etc.) will locate on the parcel without having drive through service.

Although C-2 zoning offers many options for commercial/retail uses, the parcel is small enough to limit many of the other development options.

Staff considers this criterion to be met.

Criterion 4: The variance requested is the minimum necessary

The request is the minimum necessary to construct the desired improvements on the site. Meeting ordinance requirements would necessitate reducing the size of the building or removing either the drive-through or loading and trash enclosure area.

Staff considers this criterion to be met.

Criterion 5: The need for the variance is not caused by the owner, previous or present

As previously noted, the property was platted and improved prior to the establishment of the US 36 Overlay regulations.

These regulations make it more difficult to redevelop this site. The proposed layout offers the most efficient means to develop a restaurant on this site, while maintaining safe traffic patterns.

Staff considers this criterion to be met.

CONDITIONS

Per IC 36-7-4-918.5, the Board may impose reasonable conditions as a part of the Board's approval.

J. Recommendation:

Because the appellant has met the findings of fact for all five criteria, Staff recommends approval of VAR 19-15.

VAR 19-15 Taco Bell Location Map



Sample BZA Motion

AVON BOARD OF ZONING APPEALS

Approval of a development standards variance

Case Number: VAR 19-15, Taco Bell Parking Spaces– 6851 US Hwy 36

I move that we **approve** VAR 19-15, a development standards variance to allow fewer than the required parking spaces as **having** satisfied the requirements for variances under state law and subject to the approved Findings of Fact.

FINDINGS OF FACT
**VARIANCE FROM THE
DEVELOPMENT STANDARDS
BOARD OF ZONING APPEALS
AVON, INDIANA**



Project Name: Taco Bell Restaurant - 6851 East US Highway 36

Requested Variance: Per Chapter 15, Section 15-7 (Off-Street Parking Requirements) 1. Required spaces- Class A = 1 space for every 3 seats plus per employee on the largest shift. Requesting a variance for 4 spaces.

The petitioner seeking a variance from the development standards before the Avon Board of Zoning Appeals must answer the following three (3) questions and provide any documentation that may support the findings. (These may serve as the basis for the written Findings of Fact for this petition)

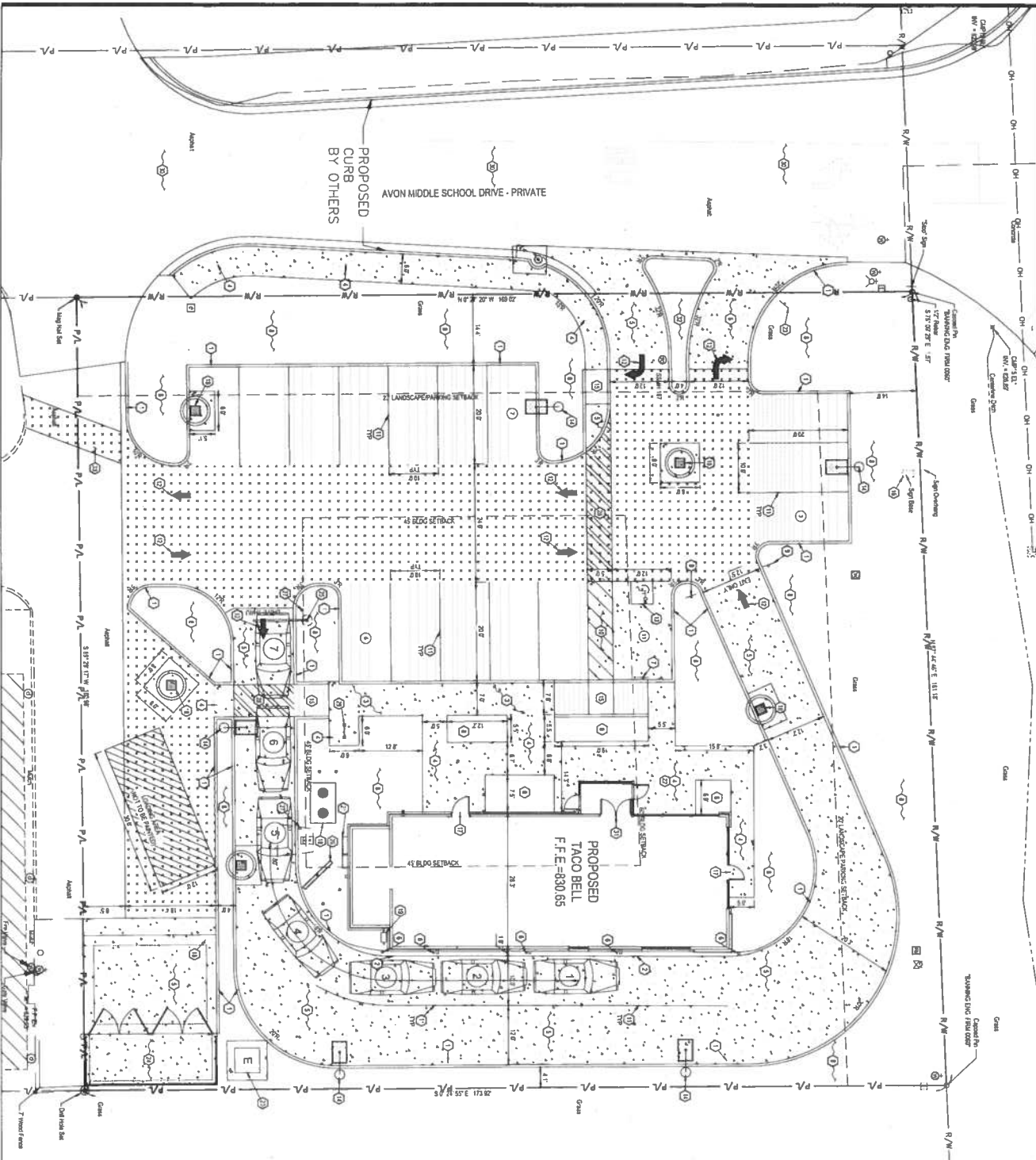
1. **Will the approval be injurious to the public health, safety, morals, and general welfare of the community?** (Please answer *yes* or *no* and state the reason[s] for your answer on the lines below.)
The subject site is located in a retail and restaurant neighborhood (Commercial Business District), the US Highway 36 Overlay District and under the Class A requirement where 20 spaces are typically required. Due to the parcel size only 16 spaces are able to be accommodated. Given that the proposed use of the parcel is a quick service restaurant and our patrons will mainly use the drive-thru, the parking provided will be adequate to serve the store. Aside from vehicular access, there are pedestrian and bike accommodations to the site.

2. **Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?** (Please answer *yes* or *no* and state the reason[s] for you answer on the lines below.)
No. The proposed use compliments the adjacent properties and will not be detrimental to the zoning district as noted in previous responses. Adding additional spaces will also minimize the amount of green space.

3. **Will the strict application of the terms of the Avon Zoning Ordinance constitute a practical difficulty if applied to the property for which the variance is sought?** (Please answer *yes* or *no* and state the reasons[s] for your answer on the lines below.)
Yes, due to the parcel size it would be impossible to develop the site for the use and will cause a hardship on the owner and preventing the site from being operational for its purpose.

4. **Is the variance requested the minimum necessary?** (Please answer *yes* or *no* and state the reason[s] for your answer on the lines below.)
Yes, the granting of the variance will allow the development. Aside from vehicular access, there are pedestrian and bike accommodations to the site.

5. **The need for the variance was not caused by the owner, previous or present.** (Please answer *yes* or *no* and state the reason[s] for your answer on the lines below.)
No, the need for the variance is required to meet the guidelines stipulated by the overlay district.



- PLAN NOTES**
1. PROPOSED P.C.C. DRIVE
 2. PROPOSED DRIVE AREA AT DRIVE THRU
 3. PROPOSED P.C.C. DRIVE THRU
 4. PROPOSED P.C.C. DRIVE THRU
 5. PROPOSED P.C.C. DRIVE THRU
 6. PROPOSED P.C.C. DRIVE THRU
 7. PROPOSED P.C.C. DRIVE THRU
 8. PROPOSED P.C.C. DRIVE THRU
 9. PROPOSED P.C.C. DRIVE THRU
 10. PROPOSED P.C.C. DRIVE THRU
 11. PROPOSED P.C.C. DRIVE THRU
 12. PROPOSED P.C.C. DRIVE THRU
 13. PROPOSED P.C.C. DRIVE THRU
 14. PROPOSED P.C.C. DRIVE THRU
 15. PROPOSED P.C.C. DRIVE THRU
 16. PROPOSED P.C.C. DRIVE THRU
 17. PROPOSED P.C.C. DRIVE THRU
 18. PROPOSED P.C.C. DRIVE THRU
 19. PROPOSED P.C.C. DRIVE THRU
 20. PROPOSED P.C.C. DRIVE THRU
 21. PROPOSED P.C.C. DRIVE THRU
 22. PROPOSED P.C.C. DRIVE THRU
 23. PROPOSED P.C.C. DRIVE THRU
 24. PROPOSED P.C.C. DRIVE THRU
 25. PROPOSED P.C.C. DRIVE THRU
 26. PROPOSED P.C.C. DRIVE THRU
 27. PROPOSED P.C.C. DRIVE THRU
 28. PROPOSED P.C.C. DRIVE THRU
 29. PROPOSED P.C.C. DRIVE THRU
 30. PROPOSED P.C.C. DRIVE THRU
 31. PROPOSED P.C.C. DRIVE THRU
 32. PROPOSED P.C.C. DRIVE THRU
 33. PROPOSED P.C.C. DRIVE THRU
 34. PROPOSED P.C.C. DRIVE THRU
 35. PROPOSED P.C.C. DRIVE THRU

LEGEND

- PROPOSED NEW DUTY ASPHALT
- PROPOSED STANDARD DUTY ASPHALT
- PROPOSED CONCRETE
- CONSTRUCTION NOTE
- PROPOSED 1/2" WIDE SPACE MARKER
- PROPOSED DRIVE THRU THRU CAN NUMBER

BUILDING SETBACKS

FRONT	10'	10'	10'
REAR	10'	10'	10'
LEFT	10'	10'	10'
RIGHT	10'	10'	10'

PARKING SETBACKS

FRONT	10'	10'	10'
REAR	10'	10'	10'
LEFT	10'	10'	10'
RIGHT	10'	10'	10'

LANDSCAPE SETBACKS

FRONT	10'	10'	10'
REAR	10'	10'	10'
LEFT	10'	10'	10'
RIGHT	10'	10'	10'

TACO BELL
 6811 S. 151st St., N.W.
 ALDEN, WA 98007

SITE PLAN
 T40

C-11