

City of Monroe  
Zoning Board of Appeals Minutes  
July 13, 2015

A. CALL TO ORDER & ROLL CALL

Chairperson Klassy called the meeting to order at 5:14 pm. Present at roll call were Nate Klassy, Bud Pilz, Daniel Demuth, John Wyttenbach, and Secretary Carol Stamm. Also present were City Atty. Ewald, Asst. Admin. Shanks, Building Inspector/Zoning Admin. Lindsey, and Michelle Behnke & another person representing Four Points Holdings, LLC. Dennis Dalton, David Haroldson, and Tyler Schultz were absent.

B. CORRECTION OF MINUTES

None

C. BUSINESS

1. CONSIDERATION OF REQUEST FOR VARIANCE TO ALLOW A FRONT SETBACK OF LESS THAN 40' FOR PROPERTY LOCATED AT 548 8<sup>TH</sup> AVENUE

City Attorney Ewald presented background information and explained to the members what their role is. The decision is to be based on the information presented at this meeting. Ewald then recited the basic facts. A permit was issued allowing expansion of the structure on the west end. The expansion encroaches into the required front yard setback.

Michelle Behnke then spoke. The architect thought the setback was 20' at the time. The property owners wanted to sell the real estate and the buyer questioned the setback, but proceeded with the closing. She is here on behalf of the new owner, Four Points.

Ewald made more comments about approving variances. They are not routinely given. They must be unique and spec circumstances.

Questions and discussion ensued. The board went of the finds of fact as follows:

1. An Application for Zoning Variance was filed on May 29, 2015 by Four Points Holdings, LLC [the "Applicant"], owner of a parcel of real estate in the City with a street address of 548 8<sup>th</sup> Avenue, designated tax parcel number 23-251-2424.3000 and shown within the white dashed outline on the aerial image in Exhibit A [the "Subject Property"].

2. This appeal was heard by the Board on July 13, 2015.

3. The Subject Property is currently used as a Burger King Franchise restaurant and has been so used continuously since at least 1995.

4. The Subject Property is located entirely within the City's General Business zoning district and is bounded on the west, south and east sides by property in the General Business district and on the north side by property in the Single Family Residence District.

5. The minimum yard requirements for property in the General Business district are set forth in Section 5-8-5(C) of the Monroe City Code:

*5-8-5(C) Yard Requirements: The following minimum yards shall be provided and maintained:*

1. *The front yard shall be not less than forty feet (40'), with the front ten feet (10'), measured from the property line, devoted to open landscaping (trees, shrubs, grass).*
2. *Side yards shall not be less than twenty feet (20') adjacent to any residential use district.*
  - (a) *The side yard on a corner lot shall not be less than twenty feet (20').*
  - (b) *Notwithstanding the previous rules, principal structures on adjoining lots may share common walls.*
3. *Rear yards shall not be less than fifteen feet (15').*

6. In 1995 the City's Building Inspector issued a building permit allowing expansion of the structure located on the Subject Property by the addition of a play area and additional interior seating on the west end of the structure. The expansion was constructed in the location authorized by the permit and encroaches into the required front yard setback, the approximate extent to which is indicated by the notation "B-2 District Front Yard Boundary" on the aerial image in Exhibit A [the "Setback Encroachment"].

7. The Setback Encroachment is from a boundary of the Subject Property that abuts the right-of-way of 8<sup>th</sup> Avenue in a location where the 8<sup>th</sup> Avenue right-of-way lies contiguous to the right-of-way for State Highway 69.

8. At the location where the Subject Property that abuts the right-of-way of 8<sup>th</sup> Avenue there exists sufficient city-controlled right-of-way to enable the expansion of 8<sup>th</sup> Avenue to the west without encroaching upon the right-of-way for State Highway 69.

9. The Setback Encroachment was expressly approved in a previously issued building permit.

10. This is a request for an area variance only and the nature of the requested variance is to allow the Setback Encroachment to remain and that the front yard required for the Subject Property be deemed to exclude the footprint of the existing structure for all purposes relevant to administration of the City's Zoning code [the "Requested Variance"].

11. The issue presented to the Board for decision is whether special conditions exist such that a literal enforcement of the front yard requirements applicable to the Subject Property will result in practical difficulty or unnecessary hardship for the Applicant and can be varied consistent with the spirit of the zoning regulations, public safety and welfare.

12. Section 2-5-5(D) of the Monroe City Code grants the Zoning Board of Appeals the following authority:

*To authorize upon appeal in specific cases such variance from the terms of the zoning regulations of this Code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the zoning regulations of this Code will result in practical difficulty or unnecessary hardship so that the spirit of the zoning regulations of this Code shall be observed, public safety and welfare secured, and substantial justice done.*

The board then went over Conclusions of Law as follows:

13. *The use of the Subject Property as a Burger King Franchise restaurant is lawful in the B-2 zoning district.*

14. *If an area variance is not granted the Applicant will suffer an unnecessary hardship because the applicant will be prevented from using a material and substantial portion of the existing structure on the Subject Property for an otherwise permitted use.*

*15. The circumstances relating to the Subject Property and the requested variance are unique because the need for the variance was precipitated by construction of an addition to the structure that was expressly approved in a previously issued building permit and because the City controls excess right-of-way to the west of 8<sup>th</sup> Avenue and it is highly probable that the City could construct improvements to 8<sup>th</sup> Avenue without acquiring right-of-way from the Subject Property.*

*16. If the Requested Variance is granted the spirit of the zoning regulations of this Code will continue to be observed and public safety and welfare secured.*

*17. The Requested Variance will not be contrary to the public interest.*

Motion made by John Wyttenbach and seconded by Bud Pilz to issue a variance to Four Points Holding LLC for Burger King Restaurant. On roll call vote, the motion carried.

D. ADJOURNMENT

Motion made by Daniel DeMuth and seconded by Bud Pilz to adjourn. Motion carried.

Carol J. Stamm, CMC/WCMC  
City Clerk/Dir. Of Gen. Govt.