

# **NOTICE**

The **City of Stoughton** will hold a meeting of the **Board of Appeals** on **Monday, October 25, 2010** at **5:00 p.m. or as soon as this matter may be heard** in the **Public Safety Building, Council Chambers, Second Floor, 321 S. Fourth Street**, Stoughton, Wisconsin.

## **AGENDA:**

1. Call meeting to order.
2. Consider approval of the August 30, 2010 Board of Appeals minutes.
3. Mike Ashiky (Vlora LLC) owner of Sunrise Family Restaurant, 1052 W. Main Street, Stoughton, Wisconsin, Parcel # 281/0511-071-0264-4, with a legal description of: REPLAT OF BLOCK 2 EMERSON PARK BLOCK 3 LOT 3 & PRT LOT 4 & TH PRT LOTS 5 & 6 LYG N OF USH 51 & PRT VAC PARK AVE DESCR AS BEG INTERSECTION OF NLY LN USH 51 WITH E LN LOT 3 TH N0DEG15'10"W ALG SD E LN 224.12 FT TH S87DEG02'00"W 116.75 FT TH S2DEG28'40"E 137.20 FT TH S26DEG47'W 39.49 FT TO NLY LN USH 51 TH ALG ARC OF CURVE RAD 1096 FT L/C S70DEG32'41"E 137.35 FT TO POB SUBJ TO & TOG W/ESMT IN DOC #2780298, has appealed the requirements of the City of Stoughton zoning ordinance section 78-105(4)(b)8bF, which requires a minimum side yard setback of 10 feet for buildings within the PB - Planned Business District. The owner/applicant requests a variance to allow the existing building at 1052 W. Main Street, Stoughton to be expanded 5 feet to the east which leaves a setback of between 5.3 feet and 7.1 feet.
4. Adjournment.

10/12/10mps

## **SENT TO:**

Al Wollenzien, Chair  
Kristin Ott, Vice-Chair  
David Erdman, Secretary

Russ Horton  
Robert Busch

Robert Barnett, Alternate #1  
Gilbert Lee, Alternate #2

cc: Mayor Donna Olson (Packet)	Department Heads (via-email)
Deputy Clerk Pili Hougan (via-email)	Council Members (via-email)
Building Inspector Steve Kittelson (via-email)	Receptionists (via-email)
Zoning Administrator Michael Stacey (3 packets)	City Attorney Matt Dregne (Packet)
Stoughton Newspapers/WSJ (via-fax)	Area Neighbors
Mike Ashiky, 1052 W. Main Street, Stoughton (Packet)	Derek Westby (via-email)
Dave McKichan, 1324 Vernon Street, Stoughton (Packet)	

IF YOU HAVE ANY QUESTIONS REGARDING THIS NOTICE, PLEASE CALL MICHAEL STACEY AT 608-646-0421

"IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE, PLEASE CALL 873-6677 PRIOR TO THIS MEETING."

**NOTE: AN EXPANDED MEETING MAY CONSTITUTE A QUORUM OF THE COUNCIL.**

s:/common/mps/boardofappeals/Sunrise Rest. t10/Sunrise notice10.doc

## **Board of Appeals Meeting Minutes**

**Monday, August 30, 2010 5:00 p.m.**

**Public Safety Building, Fire Department Training Room, 401 E. Main Street, Stoughton WI.**

**Members Present:** Russ Horton; Kristin Ott; and David Erdman.

**Members Absent and Excused:** Al Wollenzien, Chair; Robert Barnett; and Robert Busch.

**Staff:** Michael Stacey, Zoning Administrator.

**Guests:** David Bartelt and Mark Holzmann.

1. **Call meeting to order.** Kristin Ott called the meeting to order at 5:05 pm.
2. **Elect Vice-Chair.** Erdman nominated Ott as Vice-Chair, 2<sup>nd</sup> by Horton. Motion carried 3 – 0. Vice-Chair Ott continued to chair the remainder of the meeting.

**Elect Secretary.** Ott nominated Erdman as Secretary, 2<sup>nd</sup> by Horton. Motion carried 3 – 0.

3. David Bartelt, owner of the following property: 116 N. Lynn Street, Stoughton, Wisconsin, Parcel #281/0511-054-6211-6, O M TURNER ADD S 66 FT LOT 1 S 66 FT LOT 2 BLOCK 3, has appealed the requirements of the City of Stoughton zoning ordinance section 78-105(2)(e)8bL, which requires a minimum side yard setback of 4 feet for accessory structures within the SR-6 - Single Family Residential District and has appealed the requirements of zoning ordinance section 78-105(2)(e)8bR, which requires a maximum accessory building height of 15 feet. The applicant requests a variance to allow the existing accessory structure to be expanded while keeping the existing 2-foot setback along the south side lot line and requests to allow a maximum accessory building height of 20 feet at 116 N. Lynn Street, Stoughton, WI.

Ott made a motion to deny the variance request since the garage has been removed. Stacey stated we need to proceed through the public hearing to give the applicant and anyone else a chance to speak to the request.

Ott requested the applicant speak to the request.

David Bartelt, applicant and owner of 116 N. Lynn Street stated that he realized there were a lot of rotten boards within the existing walls when he was doing the initial demolition of the garage. Bartelt stated he is now interested in building a garage in compliance with the code and will bring in a plan to have reviewed tomorrow. There were questions from the Board related to the history of the garage and the intent of the applicant.

Mark Holzmann, 200 N. Lynn Street spoke in favor of rebuilding the old garage.

Stacey had nothing to add since the applicant plans to rebuild the garage in compliance with the zoning code.

Motion by **Erdman** to approve the variance request as presented, 2<sup>nd</sup> by **Ott**.

Erdman stated he cannot support the request because the garage was removed and there is no hardship on the landowner of this lot related to the previously proposed plans. Ott and Horton agreed with Erdman. Motion to approve the variance request failed 0 – 3.

- 4. Adjournment.** Motion by **Ott** to adjourn at 5:20 pm, 2nd by **Erdman**. Motion carried 3 - 0

Respectfully Submitted,

Michael Stacey

**To: Zoning Board of Appeals  
City of Stoughton**

**From: Mike Ashiky  
Sunrise Family Restaurant**

**Dear Members,**

**Please find attached information regarding our request for a slight variance to the side lot setback requirement to allow for repair work and dining addition to our business located in the business plaza at 1052 West Main Street, City of Stoughton.**

**The project started as a much needed upgrade to an area built as an atrium dining area. When built as an atrium the restaurant was based as a faster food type service with customers moving thru the seating area quickly. Our business as been built upon a full service menu and we have worked hard to make customers feel welcome to enjoy our food and relax. As a result, we have found many problems with both heating and cooling our space because of the atrium construction. Energy costs continue to be a large and growing expense to our business. We feel upgrades are necessary for the comfort of our customers.**

**In working with a local contractor, we have explored many options for our project. We have approached the adjacent property owner to try to purchase additional land to the east. The owner was receptive to the idea, but stated that at this time, due to certain conditions, he would not be able to enter into an agreement to parcel off the needed area. In exploring other options we found that with the changes needed to the atrium area, added to a project that would increase seating capacities, creates a number of issues. We explored an addition to the south (front). The loss of parking would be a problem, as in peak times, our on site parking is generally full. Also the per seat costs could not be justified and financially supported. Landscape areas would have to be taken out and parking configurations may have to be changed.**

**We looked seriously at this proposal with design concepts being created. We feel the south dining expansion would not be an option that will work for the long term success of the restaurant.**

**Trying to expand to the west is not an option for several reasons. Because of traffic flows and access easements, set backs of neighboring structures to the west and north, moving west, would close in that area and block vision of rear positioned buildings. Also kitchen area is primarily along the west wall and dining expansion would not flow with existing interior layout.**

**Mechanicals are at the rear (north) of the building and expansion for seating is not practical because of existing interior layout. Space is limited and traffic flows would be affected.**

**We are asking for a 5'0" variance to the east that would allow a small addition to a wall that would need to be removed for upgrades and provide a much improved seating configuration**

for families, mobility challenged, and larger groups. With this type of expansion the net added per seat costs become workable and would provide what we feel are long term improvements for our customers and our business.

Also as stated in our application the variance would not place a burden on adjacent properties because of existing travel lanes and parking configurations. We feel that the plaza is an older development and is not exactly duplicated within the city. New buildings on existing open spaces have been reconfigured in the Kings Lynn intersection, existing car lot area, and out lot at the Wellness Center. These areas were platted and configured according to new codes and buildings are positioned and built accordingly. All the buildings in the plaza, with the exception of the Speed Lube, have existed for many years.

Please consider our application based on the fact that there are mainly three business type zoning categories in use in the city, without any of the three being specific to an older plaza type development. In this area the success and harmony of all the businesses is important to the long term health of the plaza. All businesses in the plaza, contribute to the destination of customers and that is important as choices increase for the consumers of Stoughton.

We are proud to be a Stoughton business and are thankful for all our wonderful customers. We feel the changes we are considering would be positive for the city of Stoughton, the plaza businesses and most of all for the comfort to all those great customers.

Thank You for your consideration,

A handwritten signature in cursive script that reads "Mike Ashiky".

Mike Ashiky  
Sunrise Family Restaurant

## **Board of Appeals – Variance Information & Application**

### **City of Stoughton**

A variance is a relaxation of a standard in a zoning ordinance and is decided by the Zoning Board of Appeals. The Board is a quasi-judicial body because it functions similar to a court. The Board is appointed and governed by the State of Wisconsin zoning enabling law, contained in 62.23 Wis. Stats. The five regular members and two alternates of the Board are citizens appointed by the Mayor and approved by Council, who give their time without compensation. The Board's duty is not to compromise ordinance provisions for a property owner's convenience rather to apply legal criteria provided in state laws, court decisions and the local zoning ordinance to a specific fact situation. The board may only approve a variance request that meets the "Three Step Test" which is part of the application process. Typically, there are five voting members present for a hearing and it takes a majority of a quorum or three affirmative votes to approve a variance when five members are present. There must be at least four board members present to conduct a hearing. The alternates are used in case of an absence or conflict of interest. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden. There are two types of variances; a "use variance" would allow a landowner to use a property for an otherwise prohibited use; while an "area variance" provides an incremental relief (normally small) from a physical dimensional restriction such as a building height or setback.

#### **Next Steps:**

**Complete an application** form (attached) and submit a fee according to the current fee schedule;

**Stake out lot corners and/or property lines**, the proposed building footprint and all other features of your property (if applicable) related to your request so that the planning staff and/or Board members may inspect the site. There are copies of plats in the planning office at City Hall that may help an applicant locate property stakes.

**After submitting the application and fee**, a planning staff member will confer with the Board Chair to determine a hearing date. The Board typically will meet on the first Monday of the month as necessary, though in some cases a hearing may be necessary on a different date at the discretion of the Board Chair. Once a date has been determined, planning staff will publish a notice of the request for a variance in the city's official newspaper noting the location, reason and time of the public hearing. All property owners within 300 feet of your property and any affected state agency will also be given notice of the hearing. At the hearing, any party may appear in person or may be represented by an agent and/or attorney. The burden will be on the property owner or applicant to provide information upon which the Board may base its decision. The owner and/or representative must convince the Board to make a ruling in the owner/applicant's favor. City planning staff will provide a review of the variance request as it relates to the Three Step Test. The Board must make its decision based only on the evidence provided at the time of the hearing. The owner or representative must be present at the hearing to explain the request and answer questions because the board may not have sufficient evidence to rule in favor of the request and must then deny the application.

## Area and Use Variance Decision Process

**Step 1: Consider alternatives to the variance request.**

**Step 2: Determine if all three statutory variance criteria are met.**

**Area Variance** – Provides an increment of relief (normally small) from a dimensional restriction such as building height, area, setback, etc.

**Use Variance** – Permits a landowner to put property to an otherwise prohibited use.

**1. Unnecessary Hardship** exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Consider these points:

- Purpose of zoning restriction
- Zoning restriction's effect on property
- Short term, long term and cumulative effects of variance on neighborhood and public interest.

**1. Unnecessary Hardship** exists when no reasonable use can be made of the property without a variance.

**2. Unique physical property limitations** such as steep slopes or wetlands must prevent compliance with the ordinance. The circumstances of an applicant, such as a growing family, elderly parents, or a desire for a larger garage, are not legitimate factors in deciding variances.

**1. No harm to public interests** A variance may not be granted which results in harm to public interests. Public interests can be determined from the general purposes of an ordinance as well as the purposes for a specific ordinance provision. Analyze short-term, long-term and cumulative impacts of variance requests on the neighbors, community and statewide public interest.

**Step 3: Grant or deny request for variance recording rationale and findings.**

## City of Stoughton Procedural Checklist for Variance Review and Approval (Requirements per Section 78-910)

This form is designed to be used by the Applicant as a guide to submitting a complete application for a variance *and* by the City to process said application. Part II is to be used by the Applicant to submit a complete application; Parts I - IV are to be used by the City as a guide when processing said application.

### I. Recordation of Administrative Procedures for City Use.

Pre-submittal staff meeting scheduled:

Date of Meeting: \_\_\_\_\_ Time of Meeting: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_ *N/A*

Follow-up pre-submittal staff meetings scheduled:

Date of Meeting: \_\_\_\_\_ Time of Meeting: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_ *N/A*

Date of Meeting: \_\_\_\_\_ Time of Meeting: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

Application form filed with Zoning Administrator

Date: 9/27/10 By: MPS

Application fee of \$365 received by Zoning Administrator

Date: 9/27/10 By: MPS

Professional consultant costs agreement executed (if applicable):

Date: \_\_\_\_\_ By: \_\_\_\_\_ *N/A*

### II Application Submittal Packet Requirements for Applicants Use.

Prior to submitting the final complete application as certified by the Zoning Administrator, the Applicant shall submit 1 initial draft application packet for staff review, followed by one revised draft final application packet based upon staff review and comments.

*Initial Packet (1 copy to Zoning Administrator)*

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

↓ *Draft Final Packet (1 copy to Zoning Administrator)*

Date: 9/27/10 By: MPS

↓ ↓

☐ ☒ (a) A map of the subject property:

☒ Showing all lands for which the variance is proposed.

☒ Map and all its parts are clearly reproducible with a photocopier.

☐ Map scale not less than one inch equals 800 feet. *N/A*

☒ All lot dimensions of the subject property provided.

☒ Graphic scale and north arrow provided.

☐ ☒ (b) A map, such as the Planned Land Use Map, of the generalized location of the subject property to the City as a whole. *- STAFF -*

☐ ☒ (c) A written description of the proposed variance describing the type of specific requirements of the variance proposed for the subject property.

☐ ☒ (d) A site plan of the subject property as proposed for development.

☐ ☒ (e) Written justification for the requested variance consisting of the reasons why the Applicant believes the proposed variance is appropriate, particularly as evidenced by compliance with the standards set out Section 78-910(3)1- 6. (See part III below.)



### III Justification of the Proposed Variance for City Use.

1. What exceptional or extraordinary circumstances or special factors are present which apply only to the subject property? The response to this question shall clearly indicate how the subject property contains factors which are not present on other properties in the same zoning district.

Describe the hardship or that of other properties, and not one which affects all properties similarly. Such a hardship or difficulty shall have arisen because of the unusual shape of the original acreage parcel; unusual topography or elevation; or because the property was created before the passage of the current, applicable zoning regulations, and is not economically suitable for a permitted use or will not accommodate a structure of reasonable design for a permitted use if all area, yard, green space, and setback requirements are observed.

*Property is located in an older commercial "Plaza" style development. Original placement of buildings when constructed did not necessarily maximize lot usage because of shared feature due to plaza configuration. Parking requirement for each building need to be considered even though areas are contiguous. Tighter setbacks are apparent at other buildings within the plaza and this shows that plaza's have different characteristics as compared to newer stand alone commercial lots.*

#### NOTES:

- Loss of profit or pecuniary hardship shall not, in and of itself, be grounds for a variance.
- Self-imposed hardship shall not be grounds for a variance. Reductions resulting from the sale of portions of a property reducing the remainder of said property below buildable size or cutting-off existing access to a public right-of-way or deed restrictions imposed by the owner's predecessor in title are considered to be such self-imposed hardships
- Violations by, or variances granted to, neighboring properties shall not justify a variance
- The alleged hardship shall not be one that would have existed in the absence of a zoning ordinance. (For example, if a lot were unbuildable because of topography in the absence of any or all setback requirements.)

2. In what manner do the factors identified in 1. above, prohibit the development of the subject property in a manner similar to that of other properties under the same zoning district? The response to this question shall clearly indicate how the requested variance is essential to make the subject property developable so that property rights enjoyed by the owners of similar properties can be enjoyed by the owners of the subject property.

*Only expansion of existing building would be to the south taking away existing parking spaces. West side has been used historically as a thru drive area and existing buildings are very close to lot lines to the west and north. Changes to dated plumbing sealing areas are necessary and variance would allow opportunity for improving quantity and quality for customers and bring older building to more modern energy conditions. Building similar to a newer outlet style building that may have shared "greater area" conditions and tighter lot line requirements.*

3. Would the granting of the proposed variance be of substantial detriment to adjacent properties? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on adjacent properties.

Variance should not adversely affect other plaza properties. It does not change traffic patterns and placing east side of building closer to designated drive thru area. Substantial rework of proposed drive and parking areas along with dividing property and changing parking requirements would probably need to be in place before a new building could be built close to proposed east building wall.

4. Would the granting of the proposed variance as depicted on the required site plan (see (d), above), result in a substantial or undue adverse impact on the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the intent, provisions, and policies of the Zoning Ordinance, the Comprehensive Plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the City or other governmental agency having jurisdiction to guide growth and development? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on such long-range planning matters.

12: 15' between subject property and new building

By going to the east, the proposed addition would serve the area the best because of the traffic patterns within the plaza. Main drive thru is located adjacent to the east property line and the existing 10' cannot be used for parking. Reducing to 5' would retain all available parking and would not change traffic patterns within the plaza. Addition is small and would not block buildings in the other areas of the plaza.

5. Have the factors which present the reason for the proposed variance been created by the act of the Applicant or previous property owner or their agent (for example: previous development decisions such as building placement, floor plan, or orientation, lot pattern, or grading) after the effective date of the Zoning Ordinance (see Section 78-011.) The response to this question shall clearly indicate that such factors existed prior to the effective date of the Ordinance and were not created by action of the Applicant, a previous property owner, or their agent.

We believe plaza was developed sometime in the 60's. Many zoning situations were not in place then and developers did not have those guidelines to assure maximum use of buildings in the future. Also we are not sure how or when separate parcels were divided or why lot lines are located where they are. Not typical lot style development.

6. Does the proposed variance involve the regulations of Section 78-203, Appendix C (Table of Land Uses)? The response to this question shall clearly indicate that the requested variance does not involve the provisions of this Section.

STAFF: The use is not changing. This request is to expand the building only.

IV. Final Application Packet Information for City Use.

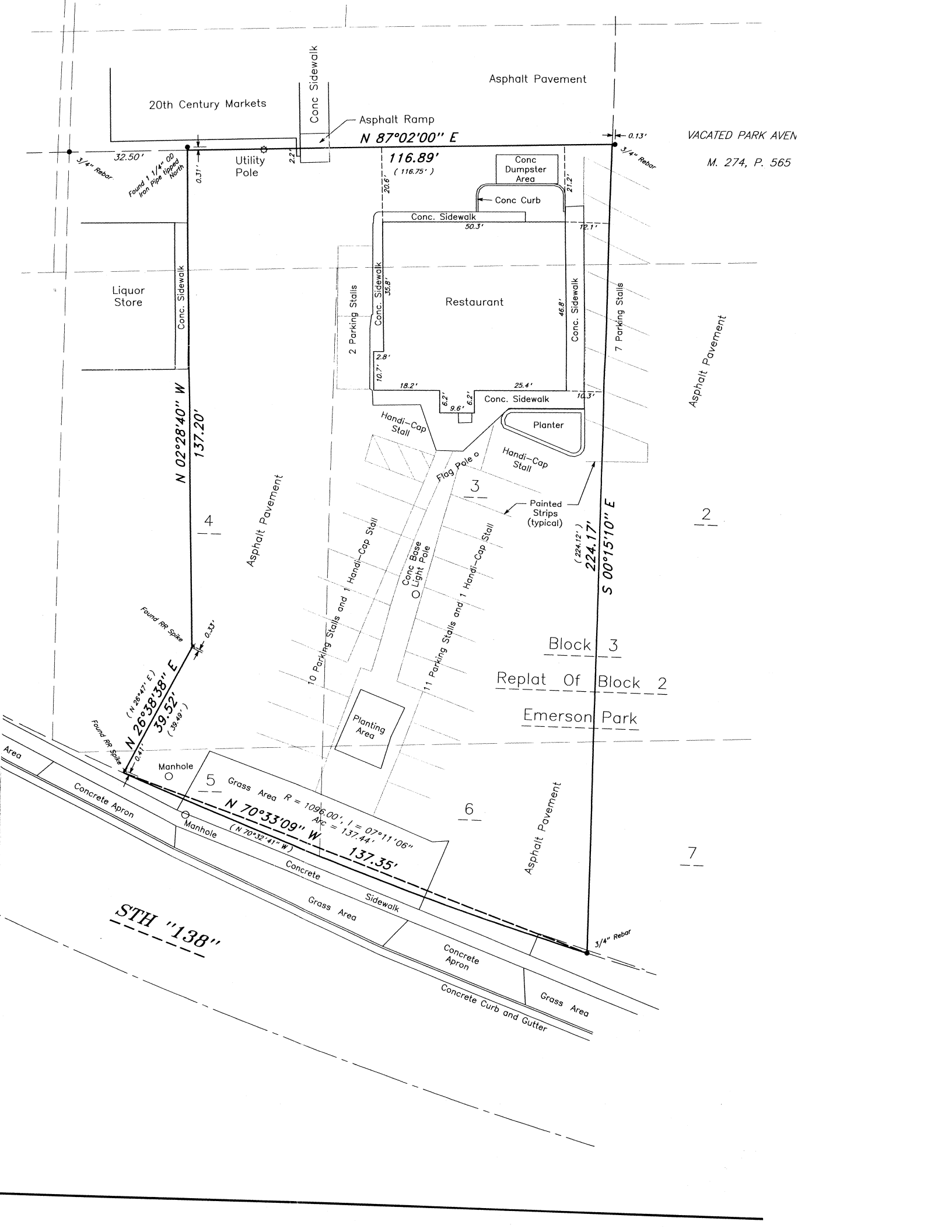
Receipt of Final Application Packet by Zoning Administrator Date: 9/27/10 By: MPS  
Notified Neighboring Property Owners (within 300 feet) Date: \_\_\_\_\_ By: \_\_\_\_\_  
Notified Neighboring Township Clerks (within 1,000 feet) Date: \_\_\_\_\_ By: \_\_\_\_\_  
Class 1 legal notice sent to official newspaper by Zoning Administrator Date: 9/27/10 By: MPS  
Class 1 legal notice published on 10-7-10 By: MPS

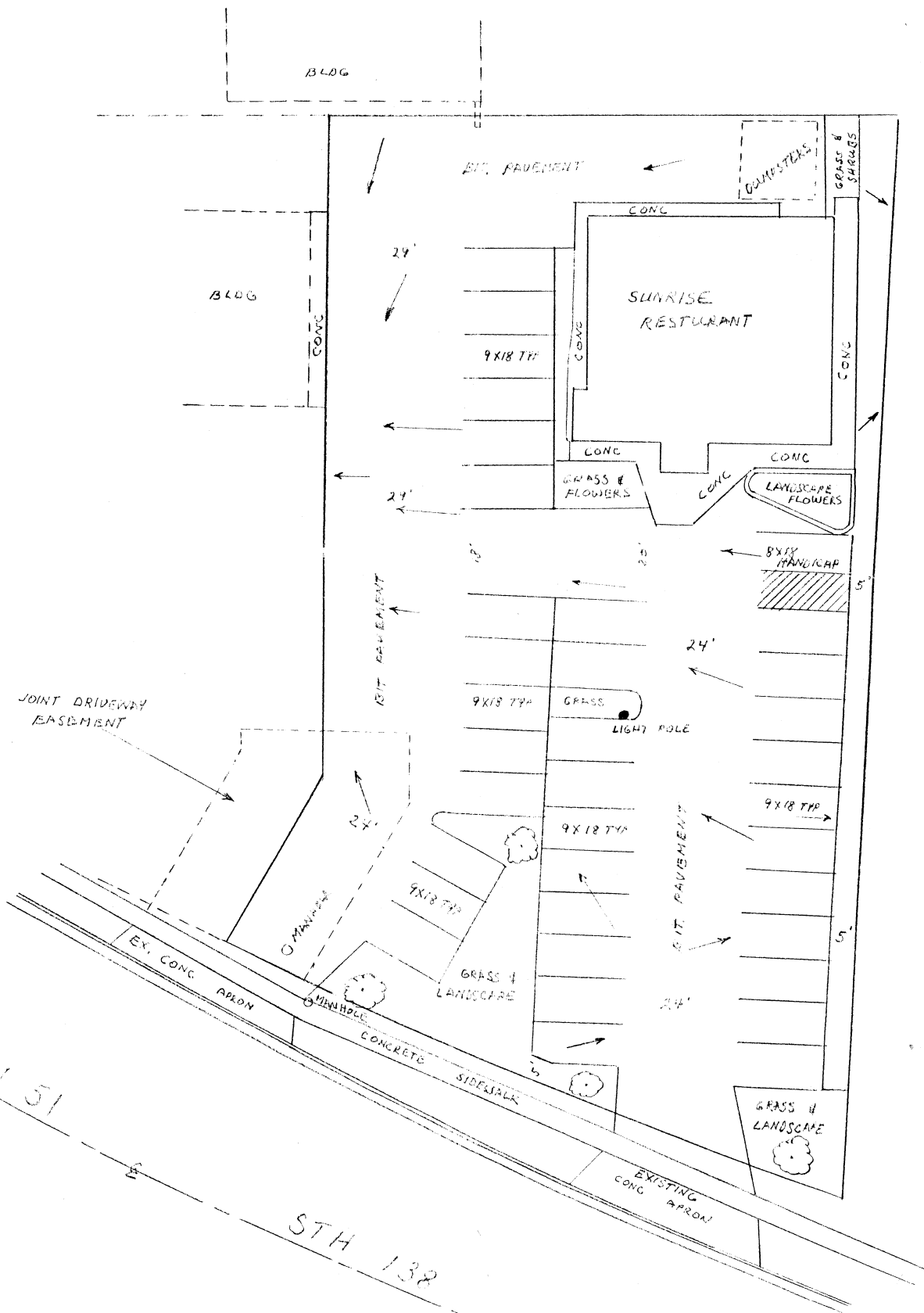
I certify that the information I have provided in this application is true and accurate. I understand that Board of Appeals members and/or City of Stoughton staff may enter and inspect the property in question.

Signed: (owner) Lirim Ashiku  
Date: 10/6/10

Remit to:  
City of Stoughton  
Department of Planning & Development  
Zoning Administrator  
381 E. Main Street  
Stoughton, WI. 53589

Questions? Call the Zoning Administrator at 608-646-0421







EXISTING BUILDING

LIQUOR STORE

DUMPSTERS

RESTAURANT

EXISTING EAST WALL

PROPOSED SIDELOT

NEW CONC. EXIST  
PAD - 5X5  
AT RELOCATED EXIT  
DOOR

PROPOSED EXTERIOR  
EAST WALL

PROPOSED SIDELOT

EXISTING LANDSCAPE

EXISTING LANDSCAPE

HC.

EXISTING  
LIGHT POLE

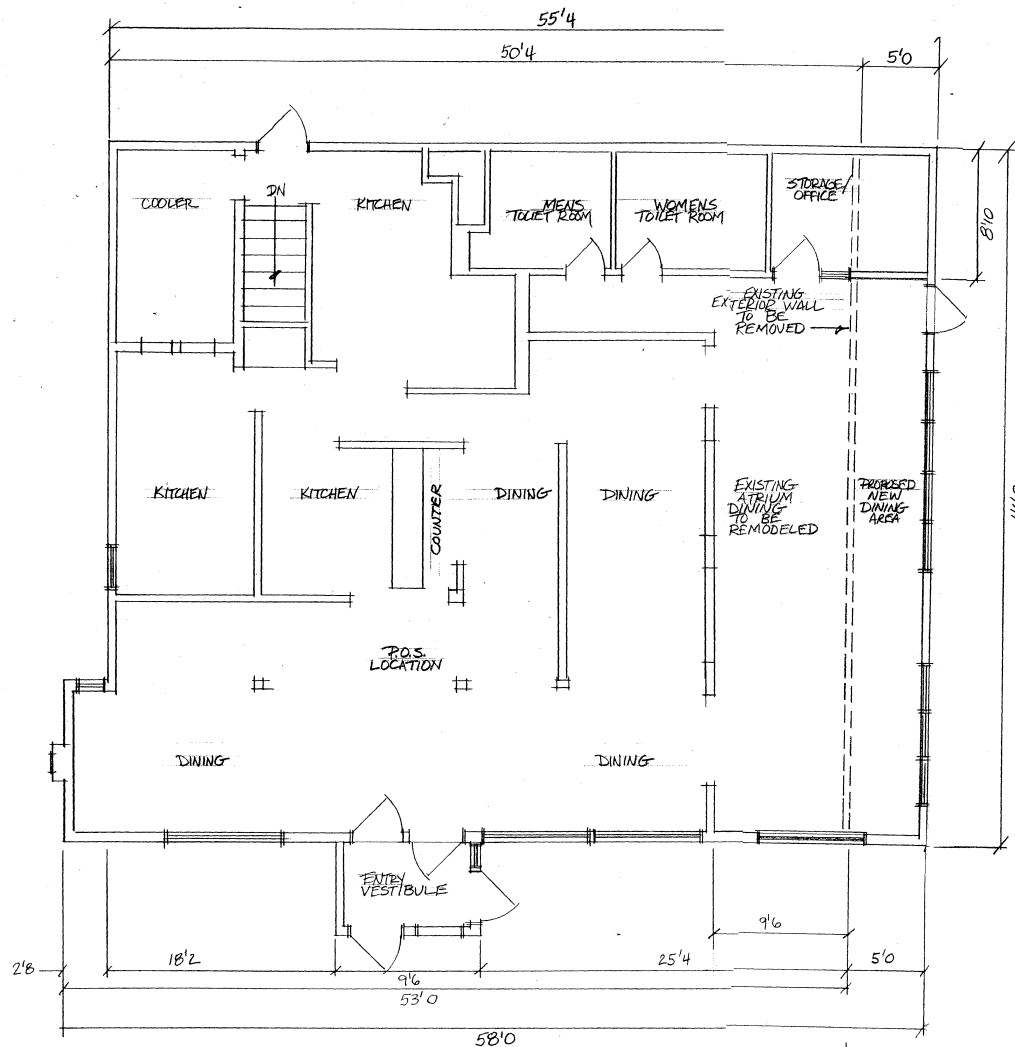
9X18 STALL  
TYP

CONC DRIVE APRON

USH 51 / 5TH 138

CONC DRIVEWAY  
APRON

SCALE  
1" = 20'  
JLM



### REMODELED ATRIUM AREA

PROPOSED 5'0" ADDITION TO ALLOW FOR MAXIMUM SEATING  
AREA = 14'0" WIDE SPACE

REMOVE OLD ATRIUM WINDOWS AND SKYLIGHTS

REMOVE 4" STEEL COLUMNS AND BEAM

NEW WINDOWS APPROX 3'0" WIDE X 4'0" TALL

RELOCATE EXIT ONLY DOOR

NEW FINISHES (WALL/CEILING/FLOORS)

\*CONCEPT REQUIRES VARIANCE TO 10'0" EAST SIDELOT REQUIREMENT

EXISTING BUILDING  
PROPOSED DINING ADDITION

### PROPOSED DINING ADDITION - EAST SIDE

SUNRISE RESTAURANT

1052 W. MAIN STREET

STOUGHTON, MA.

FIELD MEASURE AND DRAWINGS FOR DMC INC.

DRAWN BY DWM

9/24/2010

SCALE 3/16" = 1'0"

C2









## OFFICIAL NOTICE

Please take notice that Mike Ashiky (Vlora LLC) owner of Sunrise Family Restaurant at 1052 W. Main Street, Stoughton, Wisconsin, Parcel # 281/0511-071-0264-4, with a legal description of: REPLAT OF BLOCK 2 EMERSON PARK BLOCK 3 LOT 3 & PRT LOT 4 & TH PRT LOTS 5 & 6 LYG N OF USH 51 & PRT VAC PARK AVE DESCR AS BEG INTERSECTION OF NLY LN USH 51 WITH E LN LOT 3 TH N0DEG15'10"W ALG SD E LN 224.12 FT TH S87DEG02'00"W 116.75 FT TH S2DEG28'40"E 137.20 FT TH S26DEG47'W 39.49 FT TO NLY LN USH 51 TH ALG ARC OF CURVE RAD 1096 FT L/C S70DEG32'41"E 137.35 FT TO POB SUBJ TO & TOG W/ESMT IN DOC #2780298 , has appealed the requirements of the City of Stoughton zoning ordinance section 78-105(4)(b)8bF, which requires a minimum side yard setback of 10 feet for buildings within the PB - Planned Business District. The applicant requests a variance to allow the existing building at 1052 W. Main Street, Stoughton to be expanded 5 feet to the east which leaves a setback of between 5.3 feet and 7.1 feet.

Notice is hereby given that the Board of Appeals will conduct a hearing on this matter on October 25, 2010 at 5:00 p.m. in the Council Chambers, Second Floor, Public Safety Building, 321 S. Fourth Street, Stoughton.

For questions related to this notice contact City Zoning Administrator 608-646-0421

Board of Appeals  
Al Wollenzien, Chair  
AW:mps

Published: October 7, 2010 HUB

## **DEPARTMENT OF PLANNING & DEVELOPMENT REVIEW**

Name and Address of Applicant: Mike Ashiky  
1052 W. Main Street  
Stoughton, WI. 53589

THE FOLLOWING IS THE SPECIFIC ZONING ORDINANCE SECTION(S) THE APPLICANT IS REQUESTING RELIEF FROM:

*Zoning ordinance section 78-105(4)(b)8bF, which requires a minimum side yard setback of 10 feet for buildings within the PB – Planned Business district.*

### **Summary of Request**

The applicant/owner is requesting to expand the existing building at Sunrise Family Restaurant, 1052 W. Main Street, Stoughton five feet to the east. The expansion is proposed to provide more area for customers and increase cooling and heating efficiencies. The expansion would leave a side yard setback of between 5.3 feet and 7.1 feet while the zoning ordinance requires a 10-foot side yard setback.

DATE OF APPLICATION: September 27, 2010

DATE PUBLISHED: October 7, 2010

DATE NOTICES MAILED: October 7, 2010

DATE OF HEARING: October 25, 2010

FACTUAL AND LEGAL BASIS FOR THE DEPARTMENT OF PLANNING & DEVELOPMENT RECOMMENDATIONS, BASED UPON THE **STANDARDS FOR VARIANCES**:

1. The particular physical surroundings, shape or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

*The property at 1052 W. Main Street is approximately 22,000 square feet. The minimum lot area required for a non-residential lot within the Planned Business district is 20,000 square feet. There does not appear to be any particular physical or topographical condition that would result in a hardship for the applicant/owner. The property is however located in a unique historic commercial area of the City.*

2. The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zone classification.

*The conditions upon which the application is based are generally not applicable to similar properties within the PB – Planned Business district. There are no real solutions for expanding the existing structure/use while trying to maintain the required parking and setbacks. The owner needs this upgrade to curb energy costs and to make customers feel more comfortable.*

3. The purpose of the variance is not based exclusively upon a desire for economic or other material gain by the applicant or owner.

*We believe the purpose of the variance is not based exclusively for the economic gain of the owner/applicant. We believe the primary intent is to provide more area for customers and to increase heating and cooling efficiencies.*

4. The alleged difficulty or hardship is caused by this ordinance and has not been created by any persons presently having an interest in the property.

*Aside from a variance request, the zoning ordinance does not provide flexibility for unique situations such as this one. The original use was a fast food restaurant which was converted to a full service restaurant. If the variance request is approved, the applicant will still need to acquire a conditional use permit from the Common Council.*

5. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvement in the neighborhood in which the property is located.

*We believe the granting of this variance should not harm the public interest. The addition should improve the appearance of the building.*

6. The proposed variance will not impair the use and enjoyment of adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

*We believe the proposed variance should not impair the use and enjoyment of adjacent property. The owner has made site changes in the past to improve parking and relations with the adjacent property owner. Notices have been sent to property owners within 300 feet of the applicant's property to give them a chance to provide input on this variance request.*