

2021-0472

Request for Conditional Use Recommendation - City File No. 21-022 - Biggby - to add a modular coffee drive-through with landscaping within an outlot within the Meijer parking lot, 3099-3175 S. Rochester Rd., south of Auburn Rd., zoned B-3 Shopping Center Business District with an FB-3 Flexible Business Overlay, Parcel No. 15-35-100-056, Kyan Flynn and Deanna Richard, 24Ten, LLC, Applicant

*Present for the applicant were Kyan Flynn and Deanne Richard, 24Ten LLC, 807 Ironstone Dr., Rochester Hills, MI 48309, and Tonia Olson with BCubed Manufacturing, 666 McKinley Ave., Alpena, MI 49707.*

*Chairperson Brnabic introduced the request for Biggby to add a modular coffee drive through with landscaping within an outlot in the Meijer parking lot, located at 3099- 3175 S. Rochester Road, south of Auburn Road, zoned B-3 Shopping Center Business District with an FB-3 Flexible Business Overlay. She introduced the applicants Kyan Flynn and Deanne Richard.*

*Ms. Kapelanski noted that this project appeared before the Planning Commission at their November meeting, and at the meeting the commission requested a number of changes. She noted the applicant made the following changes to the plans in response to those requests: the parking lot islands on the north and west sides were modified to address circulation concerns, the proposed façade of the structure was updated to a brick-style structure with skirting around the building, and the foundation and construction will be per the manufacturer's specifications. She noted that all departmental reviews are recommending approval with some minor comments to be addressed on future submittals. She explained that this evening the applicant is seeking site plan approval, tree removal permit approval, and a positive recommendation of the conditional use permit.*

*Chairperson Brnabic asked the applicants for their presentation.*

*Ms. Richard said that they heard everything that was said at the November meeting, and they made some significant upgrades and modifications and took those comments to heart and appreciated them. She referred to the overhead screen showing the Biggby Coffee values and beliefs and said they are aligned with those beliefs. She said they understand that the City has a vision for the community, and they believe that what they have put together today fits this vision better. They would like to thank the commissioners for having them back today and will show exactly what they mean with some renderings. She said they are excited to bring this Biggby Coffee to the community, it is a top notch Michigan-based company that will thrive.*

*Ms. Flynn explained that their engineers put together a rendering, together with some suggestions from their landlord who is Meijer, another Michigan based company, and came up with a better traffic flow, with the only entrance and exit being on the south side. She explained that these changes allow for seventeen cars to be stacked, and also nine parking spaces designated just for Biggby. They also took into account the façade that the commissioners were looking for. She said that they have now rolled out the Cadillac version of the façade that BCubed offers, which is brick. She referred to pictures of other such brick*

structures.

*Ms. Olson said the revised site plan pays particular attention to the traffic flow and traffic pattern, creating the entrance and exit at one point to the south, which provided a great deal more stacking capacity and alleviates concerns of the surrounding uses. They added parking and the separating curb in between the Meijer parking area and Biggby's designated space, and enhanced the landscaping, paying attention to the comments that were received last time about some of the trees being too large. Therefore they looked at more shrubbery and grasses to be compatible. She said they heard the concerns that were expressed and have addressed them, and have provided a harmonious appearance with the a brick veneer finish, enhanced landscaping, and concealed foundation, and also provided increased stacking, and one entrance/exit. She referred to the photos showing the curbing at the bottom of the building to act as a skirt so that you cannot see underneath it.*

*Ms. Richard showed pictures of different locations that are up and running, in Kentucky, and in Akron, Ohio. She said the difference between the building shown and the one they are proposing is that it would not be orange at the bottom, and they would use either brick or a different color there. She explained that at the last meeting they got the feeling they needed to change that and they wanted to make it more Rochester Hills-esque. She showed additional pictures of installations in Cincinnati, Ohio, and Independence, Kentucky. Ms. Richard explained that some of the locations have the original dryvit facades. She said the Kentucky location has the brick exterior, and you can't see under the building at all, in that case they used landscape stone. She said that the Mt. Pleasant, Michigan photo shows the same chairs and railing that they will have but did not show on their rendering. They will also have umbrellas and planters, and they were thinking of doing a larger planter.*

*Ms. Olson said that they included the Swartz Creek location because it is the closest location to Rochester Hills but did not have the brick façade. Ms. Olson referred to pictures of the interior of the building, which would only be for employees since there is no customer access to the interior. Ms. Olson referred to a news article about Jeff Konczak, BCubed's founder, noting that he came up with the idea and partnered initially with Biggby Coffee. She said that there are other brands now that use the concept. They want to point out that Mr. Konczak has done a lot of really great things and is manufacturing in Alpena, Michigan. The BCubed building is a modular building, for those aren't familiar with modular construction these days it is definitely a trend that is gaining in popularity. She said that more often, even if a whole building is not modular they may have parts that are modular. She said this includes hospitals, schools, apartment complexes, hotels; and while they may not have a complete cube that is part of the assembly they may have wall components. She said that more of them are coming in cubed fashion as the Modular Construction Institute talks about how there are many advantages to modular construction which is constructed in a manufacturing environment, the main benefit being better quality control.*

*Ms. Olson said that the other applicants had a choice in how they wanted to proceed with this project, and made what they feel is a very smart choice for*

*their business venture by choosing a BCubed building. She explained it as an affordable entry for entrepreneurs, and so is Biggby Coffee. She said when they do an installation of a BCubed building they cause minimal disruption for development, they are in and out in about 4-6 hours and the building is in place. She said that all of the utility connections are directionally bored and they are not tearing up the parking lot, making trenches or anything like that. She said that the BCubed concept makes use of typically underutilized small spaces, and it is a controlled construction environment, the building is expandable and relocatable. It is considered a permanent structure, it is connected to utilities, but in the event that they want to move it somewhere else or Meijer needs them to move it, they can very easily do that. It is an asset that they own, and when they leave that spot there would be no blight, because they just unplug from the utilities and repave the holes for the pier foundations and they move along their way. She said the other thing about this small 349 sq. ft. building is that it is highly insulated, and therefore super-efficient operationally and environmentally friendly.*

*Ms. Richard said this hopefully gives a better idea of what will be going in the Meijer parking lot, they added to the landscaping, and there will be a railing and chairs for a customer experience for them to sit outside and have their coffee. Ms. Flynn said that it was great to get all of the commissioners' feedback last month, which has allowed them to enhance what they are offering. They are quite excited now to see this great rendering and what they are able to bring to Rochester Hills.*

*Chairperson Brnabic asked for the width of the traffic aisle, from the front curb to the start of the parking spaces that are enclosed. Ms. Flynn responded that the traffic aisle is 12 ft. wide, and corrected herself to say it is 20 ft. total. Chairperson Brnabic thanked the applicants for addressing so many of the concerns that were expressed at the November 16th meeting. She stated that she definitely took notice of the changing of the façade to brick and with the skirting added, and with traffic and the two way aisle to the north, added the curbing and creating the south side entrance and exit only, and said that's a definite improvement. She explained that location is still a big concern to her, she likes the changes made but the location of the modular structure with all of the surrounding current uses, including two other drive throughs in close proximity still concerns her. She said that she is glad they curbed the north side off, although she can still see there could be a backup. But she guessed that traffic from the north will now circle around and may have to yield, cars coming from Rochester Road will be coming in, and then cars coming from Meijer may be trying to enter also. She said this is her biggest concern because this parking lot is already overcrowded, and she is concerned about adding this kind of use, because there will be so many cars. She said her concern is whether this pushes the balance for what is appropriate at this location at Meijer's.*

*Mr. Gaber asked whether this a public hearing again.*

*Chairperson Brnabic responded that the public hearing was held at the previous meeting, however anyone wishing to speak could provide a speaker's card.*

Mr. Gaber said that he appreciated the adjustments made to make this a more acceptable development; however the issue is that he just does not think it works. He said that this is not something he wants to see in Rochester Hills. He said this modular construction is very popular now and is being done in many places. He said that if you Google "modular drive through facilities" you will see quite a few of them. The reason these are popular they don't take up much space and they don't cost much, so they're easier to bring to market and they're easier to use for in-fill developments, and therefore they are proliferating around the country. However this is not the look that we want for Rochester Hills. Mr. Gaber said that because of the modular use, the materials, the aesthetics, he doesn't think it's compatible with Meijer, the Panda Express Building, Lowe's, Culvers, or anything around it. He does not think it is compatible or harmonious with surrounding buildings. He said that as he mentioned at the last meeting, he doesn't want to set a precedent that every parking lot where there is a small 1/10 acre spot that you could install one of these type of uses. He said that he thinks of North Hill shopping center, Winchester, the Kroger on Livernois, GFS north of Rochester High School, Adams Marketplace, and University Square in front of Whole Foods; there are a number of areas that could potentially be candidates for these type of uses. He said that these modular uses are not an attractive use, they do not enhance the aesthetics of the community, and they are not something the Planning Commission has endorsed in the past. He said that he doesn't think the commissioners should start down that road, because the precedent is going to be an adverse precedent for the City of Rochester Hills. For these reasons and with all due respect he said that he would put a motion on the table to deny the conditional land use and the motion was seconded by Dr. Bowyer. Additional discussion ensued.

Dr. Bowyer thanked the applicant for all of the updates they did, the way they blocked off the one entrance/exit so there is only one entrance, and stated that it is a much better way to go. She said the modular look in Rochester Hills is not something that the commissioners want, and being on City Council she would be the first one to receive complaints of letting such structures in the City. She asked the lifetime span on the modular building since it's not a brick and mortar building. She also asked the applicants to state the thickness of the brick to be used.

Ms. Olson said that the lifespan is the same as for any regular building once it is in place. She said that once it is in place it is no longer modular and it is a building, and it is the same quality materials. She said that in their factory they use higher quality materials than you would see in other stick built construction. It is intended to last in perpetuity and be able to be modified, added to, just like any stick construction that is in place.

Dr. Bowyer asked how long BCubed has been building these structures.

Ms. Olson responded for three years, but the industry has been around forever. She said that if you research modular construction on the internet it has been around for centuries, it's not new, it's just a concept you are seeing more frequently because there are so many important benefits to it. She said that once it is in place it is a building.

*Dr. Bowyer said that the proposal is not harmonious to the buildings around it, if you could do brick and then another veneer like the other buildings around it that may help, but as presented it looks very modular. She asked about the plans for tying into the sump line and utilizing a grinder pump, commenting that those notoriously break down. She asked what happens when the grinder breaks down, and whether they would close the business down for the day.*

*Ms. Olson responded that the structure would be equipped with a backup, so if it needed to be replaced there would be one there to replace it immediately. Ms. Olson said that to answer a previous question, she showed a sample of the brick veneer material that is on the exterior, and said it would be the same material that you see at Meijer, Panda Express, Taco Bell, and other fast food chain buildings. She said that McDonald's uses the exact same material that they do. She said that she believes that perhaps Taco Bell is now using modular construction. She said that you might never know if new construction was modular.*

*Dr. Bowyer said that based on the design of the building, she cannot support it. She said that the parking revisions will probably take care of a lot of the issues with Culver's if there is overlap.*

*Chairperson Brnabic said that the Planning Commission reviews all new construction and development they would know if any construction is modular, they would not be surprised if it was not brick and mortar.*

*Ms. Olson said that it would be difficult to say, you get a building construction plan and a site plan, if she did not say that was a modular building she asked how would you know and if so how.*

*Mr. Gaber responded that he would.*

*Ms. Olson apologized for being defensive and didn't want that to reflect poorly on the applicants, but someone had suggested at the last meeting why they don't build a stick built building to look the same. She said that to her that is contrary.*

*Mr. Struzik said that he had two major concerns at the previous meeting, and both of those were pretty well resolved. He had concerns about the sight lines exiting to the south, that was blocked off, there is no opportunity now for a vehicle to park there. He likes that it was closed off to the north toward Culvers, stating that it is a smart move to segregate the traffic from those other businesses. He said that he doesn't mind the aesthetics and that it's modular. His concern is that it is a little tight there in that parking lot, he does believe that parking lots in the City are bigger than they need to be. He said that he's never gone to Meijer and not found any parking spaces open. He said there is still underutilized parking on the west side of Meijer where they could ask employees to park to free up parking spaces in their main customer parking lot.*

*Mr. Kaltsounis said that he saw the work that was done with brick which looks good, the traffic pattern is good, now it's not that bad. He asked staff whether tables and chairs around the building need to be part of the conditional land use*

request.

*Mr. Kapelanski responded that outdoor seating does not require conditional land use approval, it is identified on the plan and that is sufficient.*

*Mr. Kaltsounis asked regarding Dr. Bowyer's question at the last meeting, about the building being built on stilts or pylons, whether that was ever answered.*

*Ms. Kapelanski responded that she spoke with the Building Deputy Director Hollis about that question, and he said it would be built per the manufacturer specifications. Whatever the manufacturer requires for tying that in, that is how that would be reviewed and approved.*

*Mr. Gaber asked if it is a traditional foundation or not.*

*Ms. Olson responded that it is case on piers foundation, she said when she Googled on the Rochester Hills website the word "piers", she found a whole page of approvals for buildings with foundations constructed on piers, including foundations for mobile homes, renovations to homes, home additions, and it's on the building permit to identify if you have an pier as your foundation.*

*Mr. Cope explained that the type of foundation is determined by the engineer who designs it, and from the Building Department perspective they have seen a lot of different designs, even on not what you would consider a modular building but on a stick built or regular building. They can be columns with footings going in between them, so he does not have a particular concern with the type of foundation, that will be determined by the engineer and the support will be placed where it is identified and necessary. The different aspect of this as compared to a stick built building or brick and mortar building is that it will have some sort of tie down to the foundation that is usually from a cabling system or some kind of fixed system that will be anchored into that foundation. He said that all of this would be determined by the engineer and he has full confidence in the structure if it is modular, he has seen them built both ways and would have no concerns about the structural integrity of such a building.*

*Mr. Kaltsounis said that regarding the modular issue, he doesn't think that's the issue for precedent right now. He said that the issue we're going to have is the type of building that it is. He stated that the city does not currently have a drive through-only, no sit-in type walk up of coffee facility. He said the smallest one is the Starbucks by Papa Joe's, which is probably the smallest coffee house in the City. He said there was one by his house on 16 Mile Rd. and Dequindre where he grew up. He said that's the type of building that he's thinking of when everyone says precedent, and reiterated that there is not one like this in the city. He said that is not a modular issue, Mr. Cope will make sure that stays in line. He shared his screen and showed a small building on a construction site, the type of building that does not exist in Rochester Hills today. He explained that this is the precedent he doesn't want to set. He showed the Starbucks with a little sit-in area, a brick and mortar building. He said this was the smallest version of a coffee house in the City, it's not modular, and asked if commissioners want to have a drive-through only business. He said that the City has had significant pressure for many facilities to have drive throughs in*

many strange areas. He said that as Planning Commissioners they have a lot of hard decisions to make as to what can go where, that's in all of our minds. But the new concept is concerning too. He said that is his point of disagreement. He said if the building were made of gold there would still be this issue.

Ms. Olson said that to her knowledge the zoning ordinance does not restrict a drive-through only, nor is there a minimum size requirement for a building.

Mr. Kaltsounis said that is where the conditional land use standards come in. There are the intangibles that they have to deal with and there are a lot of intangibles with this request. In a conditional land use it is meant to come here and say this is a drive through in a certain spot, we've been through a lot of them, the last time with him his concern was the traffic. Again his concern is the concept that if they say yes to this, Wendy's or Taco Bell could come in and do it tomorrow. That's his biggest concern when looking at whether this would be harmonious, it would be the first of its kind and it would not be.

Mr. Hooper said he is going to disagree with other commissioners, he does not have an issue with a modular building. He said that the high end apartments that are being constructed at Adams and Hamlin are modular, and stated that it is a huge development. He said the same thing with pier foundations, they are used all of the time, nothing wrong with them, and as long as you get to a frost free depth, there is no issue. He said the traffic circulation is good and he does not have an issue with it, it is separated now so that there is only one way in and out, and it is separated from Culver's. He said that he really likes the plan. He said that commissioners are always asking how to we get entry level residential or commercial into the community. This is a perfect example of that, these are Rochester Hills residents with Michigan companies, and the commission should want to encourage that. He said that he remembers Starbucks, the discussion at that time, he remembers chairperson Kaiser said he thought it would be a hit and it was. That was the first drive through coffee restaurant in the community. He said that we are trying to change the rules mid game. If there is a minimum standard, minimum square footage for a building then we should stay that at the start. After they have gone through the process and developed their plans, address previous comments made and now they come back and tell them it's too small, he disagrees with that. He said that he personally doesn't have a problem with it and he supports it.

Mr. Gaber said that to clarify, it's not the modular aspect, it's the aesthetics. He addressed Mr. Hooper, noting that to his point, discussions regarding entry level are in terms of residential. He commented that he does not think he has ever heard a discussion about entry level commercial developments. He said it is really the aesthetics, and they have the ability and the obligation to review a conditional land use by certain criteria. One of the criteria that has to be found to approve a conditional land use is that the site has been designed and is proposed to be operated, maintained and managed so as to be compatible, harmonious, and appropriate in appearance with existing and planned character of the general vicinity and adjacent uses of land and public services. He said that he challenges his colleagues to say that this is compatible and harmonious with the adjacent uses in the rear. He said from that standpoint it fails that

*particular requirement of the conditional land use approval. He said that as mentioned if the City approves one of these uses, the dominoes will fall, and he asked where they would stop when land is valuable and shopping center operators are looking to maximize their value. He said that where you may see an opportunity for 2/10 or 3/10 of an acre, those spots are all over our commercial landscape. That will encourage developers and shopping center owners to look at this and to do this all over, at the Village for instance. For example the Taco Bell concept they are ugly in his personal view, some are on stilts and they are very strange looking. Those are the concepts that we are dealing with and that's what the ordinance gives the opportunity to review in this context, and that's what we are doing. He commented that this is what he finds by his analysis, this conditional land use request does not comply with all of the criteria that it has to comply with to be given a recommendation for approval by this body and then approval by City Council. He said that's where he's coming from and would encourage his colleagues to think about it in those terms as well.*

*Mr. Dettloff thanked the applicants for listening to commissioners' comments at the previous meeting. He said that his thought, as a nearby resident of the previously mentioned Papa Joe's, is whether this has the same concept but not the same look as the Starbucks that is there by Papa Joe's. He commented that place is a gold mine, noting that Covid dealt the cards that are still being dealt with today that many fast food restaurants are strictly drive through and who knows when they'll open their dining rooms. He doesn't have a problem and would support it, he hears Mr. Gaber's concerns and he said he's not an attorney, he doesn't get into the legalese here. But his opinion has one concern, packing a lot into that particular site, with Culvers, not opposed and would support it.*

*Chairperson Brnabic asked Mr. Dettloff to comment regarding the Starbucks at Papa Joe's since she only goes that way every so often, had heard complaints quite a while ago, and asked whether they have a problem with stacking spaces, does it line up through the parking lot.*

*Mr. Dettloff responded that yes it is amazing particularly in the mornings, and in his opinion there is a stacking issue in that location.*

*Chairperson Brnabic said she's heard that over the years from residents that live in the vicinity that weren't happy about it.*

*Mr. Dettloff said that he was not on the Planning Commission when that project was put forth so he was not aware of the concerns that were discussed at that time. He commented that this being said, it's a very successful business there but there is a stacking issue there.*

*Chairperson Brnabic said yes it is successful but there is a problem, especially after all of these years. She explained that we are considering that now with drive throughs and stacking problems. It has become a bigger issue but she just wanted verification about this location.*

*Mr. Dettloff said that in his opinion, the current request is a larger space than the Starbucks, which is packed in the Papa Joe's parking lot pretty tightly.*

*Mr. Hooper said to address Mr. Gaber's concerns, there should then be square footage minimums on building size; if something this small is not going to be acceptable in the community and they would proliferate, then there needs to be minimums in the ordinance for construction to make it work. He asked staff how that could be addressed, whether the ordinance should have a minimum square footage for commercial developments.*

*Ms. Roediger responded that if that is a desire of the Planning Commission to go in that direction, that could be explored. She explained that the ordinance currently does not have minimum size standards for commercial buildings.*

*Mr. Hooper commented that it is then left to the harmonious and compatible standard for the overall site.*

*Mr. Struzik said that in terms of not having a lobby, it is not a show stopper for him, he frequents Taco Bell more than he'd like to admit and if that building were 500 sq. ft. smaller and did not have a lobby he would still go there and would still order tacos and burritos. He does not have a desire to hang out there since it's so close to his house. He said that there are trends with consumers, and Biggby will be competing with Starbucks, in that if people want to have that sit down experience they are going to go across the street. In regards to the stacking spaces, preprinted Condition #2 from the staff report states "If, in the determination of City staff, the intensity of the drive-through changes or increases, in terms of traffic, queuing, noise, hours, lighting, odor, or other aspects that may cause adverse off-site impact, City staff may require and order the conditional use approval to be remanded to the Planning Commission and City Council as necessary for re-examination of the conditional use approval and conditions for possible revocation, modification or supplementation." He said that if this ends up seeing more traffic than what they are anticipating or if they are not able to efficiently run the location, then they risk having that Condition #2 kick in and they would need to come back to the Planning Commission for a remedy.*

*Mr. Dettloff asked the land lease terms and whether it is a five year lease.*

*Ms. Olson responded that the lease is five years with three auto renews, so a twenty year lease.*

*Mr. Kaltsounis said regarding Mr. Gaber's comments, with a type of building like this, imagine McDonald's, Chick-fil-A, or Burger King, everyone would want to make life easier for themselves and make all of their businesses drive throughs, that's what he's worried about. He said this would be setting a precedent with a coffee house, but put a McDonald's on there you are going to get it because we allowed it. He agrees with Mr. Hooper, that the ordinances should be looked at to address some of the questions that have come up with regard to other dense developments. His biggest concern is not having the dining room, this concept is brand new and he is concerned about it. He said with Covid, restaurants may not want anyone inside their dining rooms, and they locked them. And now they want to build without dining rooms because of Covid and people don't want to get together any more.*

*Ms. Olson responded that they started this venture before Covid, but Covid did accelerate things.*

*Mr. Kaltsounis said that it goes back to the intangibles that he mentioned before. There are a lot of intangibles and they are always torn as to which direction to go. But he could see a Chick-fil-A on that property tomorrow, if one were proposed, and they would have people lining up for a meeting to complain that we would let a Chick-fil-A in with no seats and a drive through, the emissions and stacking, that is in his mind now. His vote would be mainly because of that, it's not because of the modular structure, it is a new concept. He agrees with Mr. Hooper that they need to draw the line and these applicants have drawn a new line for the commissioners to think about, whether this passes or not today.*

*Chairperson Brnabic said in response to Mr. Struzik's comment about the City re-reviewing a project and coming back to the Planning Commission, that condition has been put in place recently because of some of the unexpected problems from existing drive throughs. He commented that if one considers the Starbucks on Tienken that was approved years ago and it's more difficult to take action now, viewing this current proposal now, it should be strongly considered how many stacking spaces are provided, and not just wait to see how this goes. She explained she would prefer to think about it now and what is projected and not worry about bringing them back. She said that especially when we can expect a certain number of cars, that is her opinion on waiting to see how it goes and meet again in the future. She doesn't want to have to do that if at all possible.*

*Dr. Bowyer said that she knows the applicants have done a lot of work, however when looking at the City there could be 100 of these by next year if this is approved. She stated that this is not something that Rochester Hills residents are going to want to see, and being on City Council, that is what she is concerned with. This is clearly not the type of building that the city would want to proliferate throughout all of the parking lots. Based on that, she is still a hard "no". She commented that if the applicants make it past the Planning Commission they have to go to City Council. Council will review all of the comments that are made, they will have to make a decision about if such structures are allowed, you may get McDonald, Taco Bell, Chick-fil-A who will all know that they don't need a sit-down restaurant and they will just put up a modular building that is cheap and they can run 100,000 cars a day. Then residents would wonder how they ended up with a city that has that; Rochester Hills is innovative and residents want businesses that are established and aesthetically pleasing. She admires the idea and what the applicants are doing but she doesn't want to see these buildings proliferate throughout the City. She commented that as Mr. Gaber said, that would not be harmonious; and she said she doesn't think that they have to worry about having standards for minimum building size, it comes back to what is fitting. There have been a couple of projects that have passed through and approved by the Planning Commission that don't look anything like the surrounding area and they look bad. She said that she doesn't want to be part of a commission that leads to residents asking*

*what is that doing out here. She appreciates all of the applicants' efforts and the investment that they want to make, and noted that if the proposal does pass here it still has to go to City Council.*

*Chairperson Brnabic noted that there have been no comment cards received at this meeting and the public hearing was held as part of the November meeting.*

*Chairperson Brnabic restated the motion on the table made by Mr. Gaber and seconded by Dr. Bowyer with the preprinted Findings and Conditions. Mr. Gaber said that those Findings and Conditions do not apply to a motion for denial.*

*Ms. Richards said that it may be a moot point now but thinking back to the discussion about McDonald's and Taco Bell, they are a coffee shop and they don't serve fast food, the stacking is at most a minute in that line. They are not frying up things, it would not be a stacking issue because they go through so quickly. She explained that during their on-the-job training they literally have a counter right above them, they can see how quickly people are getting through the line and it's very quick. She concluded they're not making burgers, chicken or fries - it's espresso.*

*Ms. Olson asked regarding the comments made, hoping they could get in writing any record of public comment of how harmonious and compatible is defined, and some acknowledgement of their design exceeding stacking requirements.*

*Chairperson Brnabic asked for clarification if they are requesting that after the motion is voted on.*

*Ms. Kapelanski said that some of those items would be in the minutes, it's on the record how many stacking spaces are required and how many are provided. She said regarding the compatible and harmonious standard, she would suggest that as part of the motion the commission should lay out some findings as to why it is not compatible and harmonious.*

*Chairperson Brnabic said that they do need to provide Findings and Conditions because it is a motion to deny and the current preprinted ones only fit any approval, they could take them and do the opposite, that these wouldn't promote the intent and purpose of the zoning ordinance. Mr. Gaber and Dr. Bowyer have both explained why they do not believe it is compatible and harmonious, as have other commissioners, that information has already been stated for the record that will become the minutes.*

*Ms. Olson asked to reiterate is it because the building is too small that seems to be the primary comment that it is not harmonious and compatible. She said that the brick exterior and the structure's skirting were largely agreed to address concerns from the first meeting.*

*Chairperson Brnabic said that is one of the reasons; there are a few different opinions here on what the problem is, it is not just the size of the structure itself. She said that she is still concerned about the location and with everything that is*

*going on right there, and would agree that this would set a precedent in the community.*

*Mr. Gaber said that the commission is not obligated to provide such a document. He appreciated the applicants asking for that information, but if they refer to the minutes the rationale will be clearly stated in the minutes. The commission is not obligated to provide a bullet point list of exactly what the reasoning is; it will be in the minutes and the applicant can glean from that once the minutes are approved.*

*The vote was taken at this point in the meeting.*

**A motion was made by Gaber, seconded by Bowyer, that this matter be Denied. The motion failed by the following vote:**

**Aye** 4 - Brnabic, Kaltsounis, Bowyer, Gaber

**Nay** 3 - Hooper, Dettloff, Struzik

**Excused** 2 - Neubauer, Weaver

*There was some discussion on whether this motion passes or fails with a 4-3 vote. Chairperson Brnabic said that they have a quorum.*

*Mr. Hooper said that they faced this circumstance several years ago and it was the same thing, it's a nine member commission, five votes is the majority.*

*Chairperson Brnabic said they would review whether the yes vote with four (4) members to deny was sufficient to pass the vote or if there needs to be five (5) votes for a majority. She said that since this is being questioned Ms. Roediger is going to review the Bylaws.*

*Ms. Roediger said that in her reading of the Bylaws it states that for all transaction of ordinary business at any regular meeting, five (5) members shall constitute a quorum, and an affirmative vote of at least five (5) members present shall be necessary in order to take action. So Mr. Hooper is correct.*

*Chairperson Brnabic instructed the applicants that they would be scheduled for the January 18th agenda. She asked if they had any further questions and thanked them.*

*Chairperson Brnabic called for a brief break at 8:08 p.m. prior to the next agenda item.*

**Postponed**

[2021-0473](#)

Request for Site Plan Approval - City File No. 21-022 - City File No. 21-022 - Biggby - to add a modular coffee drive-through with landscaping within an outlot within the Meijer parking lot, 3099-3175 S. Rochester Rd., south of Auburn Rd.,

zoned B-3 Shopping Center Business District with an FB-3 Flexible Business Overlay, Parcel No. 15-35-100-056, Kyan Flynn and Deanna Richard, 24Ten, LLC, Applicant

**See discussion under Legislative File 2021-0473.**

**Postponed.**