



**City Council Work Session
Tuesday, October 8, 2024 at 6:05 PM or
Immediately Following the City Council Meeting
Public Meeting Room**

AGENDA

1. Call to Order

2. Items for Discussion

A. Continuation of Discussion of Corey Newby's Request for Variances at 15 3rd Ave SW

3. Future Discussion

4. Adjournment

(The Council may meet as a group for dinner)

Please contact the City Administrator's Office if you need special accommodations while attending this meeting.

Para pedir este documento en otro idioma, envíe un correo electrónico y adjunte el documento a accessibility@faribault.org.

Si aad u codsato dukumeentigan oo ku qoran luqad kale, fadlan e-mail u soo dir oo ku soo lifaaq dukumiintiga accessibility@faribault.org.



Council Work Session Memorandum

TO: Mayor and City Council
THROUGH: Jessica Kinser, City Administrator
David Wanberg, CED Director
FROM: Harry Davis, City Planner
MEETING DATE: October 8, 2024
SUBJECT: Continuation of Discussion of Corey Newby's Request for Variances at 15 3rd Ave SW

Discussion:

A special work session has been scheduled to discuss the direction the Mayor and City Council provided at the work session on October 1st. Staff has consulted with the City Attorney and would like to go over possible options in order to keep this discussion moving forward and find resolution as quickly as possible. No new information is presented with this item. All attachments are from the packet from the October 1st work session.

At the September 24 City Council meeting, City Council tabled a discussion on Corey Newby's requested variance to parking setbacks and curbing requirements for 15 3rd Ave SW. Council requested that the applicant work with staff to compromise on a solution for the variance. Please see the attached for the applicant's proposal and justification.

The City Planner did not have time to do an in-depth review of the proposal, but can provide the following observations:

Criteria and Preliminary Findings

1. The variance is in harmony with the general purposes and intent of the City's ordinances.
 - Preliminary Finding: The use of playground space and sports courts as a buffer between the applicant's proposed parking lot and the public ROW does not meet the general purposes and intent of the ordinance for establishing a parking setback along the ROW. The ordinance requires a setback to account for screening and security/safety of those within the ROW. Placing areas meant for kids to play in a narrow 10' wide space with a fence on one side and trip hazards (curb stops) on the other does not appear to be a safe situation and merely shifts safety

concerns brought up by Council at the last meeting from the public ROW onto the property. Although unclear from the proposal, the hop scotch and four square likely need a continuous solid surface, so the pavement would remain. The updated proposal does not fundamentally or substantially change that applicant's original request, so the original findings by staff still apply to this request.

2. The variance is consistent with the Comprehensive Plan.
 - Preliminary Finding: The findings for the original request apply to this update.
3. The applicant proposes to use the property in a reasonable manner not permitted by the City's ordinances.
 - Preliminary Finding: The applicant demonstrates through their site plan that parking could be located outside of the setback and that curbing coupled with wheel stops is achievable. On that alone, it is clear to staff that the required setback and curbing is reasonable from a dimensional standpoint. While past Supreme Court decisions established boundaries for required improvements (rough proportionality; rational nexus), the applicant is changing the property from an institutional use to a commercial one, reusing a playground area for a parking lot, and immediately across the street from residences. Parking lots are required to be setback from ROW and have curbing. The setbacks are for screening, security/safety, and aesthetics while the curb is (in the case of ribbon curb) to resist cracking pavement at parking lot edges resulting in debris. These minimum requirements for development are rational and proportional to the new use and impact both on and off the property. City staff regularly applies these requirements to both new and redeveloped property in Faribault. The findings for the original request also apply to this update.
4. Unique circumstances apply to the property, which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owner of the property has not had control. The unique circumstances do not result from the actions of the applicant.
 - Preliminary Finding: The findings for the original request apply to this update.
5. The variance does not alter the essential character of the neighborhood.
 - Preliminary Finding: The findings for the original request apply to this update.
6. The variance requested is the minimum variance, which would alleviate the practical difficulties.
 - Preliminary Finding: The applicant demonstrates through their site plan that parking could be located outside of the setback

and that curbing coupled with wheel stops is achievable. The required setback and curbing is not a practical difficulty and is achievable without great difficulty to the applicant. The findings for the original request apply to this update.

7. Economic conditions alone do not constitute practical difficulties.
 - Preliminary Finding: The findings for the original request apply to this update.

In summary, the City Planner does not consider the applicant's proposal to meet findings for granting a variance. This report is part of a discussion during a City Council Work Session, so there is no action needed at this time, but the Council should be free to provide feedback to the applicant on their variance request and the recent proposal.

If the City Council does find in favor of the applicant's updated proposal, or an alternative, the City Planner requests that City Council should provide clear direction on how to handle future requests for improvements on existing development and if amending City Code is necessary to achieve this direction.

Attachments:

1. Applicant Compromise 1
2. September 24 2024 City Council Packet for Resolution 2024-196

As you know, Council continued discussion on your variance requests to the next City Council meeting. They also invited you to come to the next work session and work through everyone's concerns to a compromise.

Compromise

- 1. Get around the setback variance till needed.**
- 2. Replace Curb with Concrete Wheel Parking lot stops.**

We can place you on the work session agenda, but if you want Council to review material beforehand you will need to have your compromise proposal to me **by noon tomorrow**. The agenda and packet will go out at the end of Thursday as the City Clerk is out of the office Friday. Alternatively, you may come to the meeting with your proposal, but you will miss the opportunity to give Council time to review before the meeting and staff (me) enough time to review and make a recommendation on your proposal.

To make sure that Council, staff, and you walk out of the work session understanding exactly what needs to be done, I suggest that your proposal be clear regarding:

- The setback between the property line and the ROW

Parkinglot can start at the 10' set back with variance allowing set back to stay a playground. South Side will contain a bocce ball court. East side will contain 4 square and hopscotch

- The location and type of curb, including a method for stopping cars if you pursue a ribbon curb

Would like to replace the curb with a Heavy Duty Wheel parking lot stop.

- What you plan to put in between the parking lot and ROW, which can be a combination of the following:
 - Wall (material, height, length)
Keep the current chain link fence but add slats for 90% opacity.
East side will be moved back onto the property line. City has approved 4 ft height for safety.
 - Shrubs (height, spacing, species)

You will need to make a case why your proposal meets the criteria for a practical difficulty.

The north side of the property is unusable with slope and construction of Division St. The amount of Building square footage space vs open space is unmatched. Located in Residential applies more ordinances with screening, setbacks, landscaping, etc.

It will not be enough to present only a narrative- your proposal should include scaled and dimensioned diagrams. I highly recommend you talk to your development team and see what they can do for you on short notice.

Both you and the Council brought up other aspects that you can address to bolster your proposal and project a complete plan for the property going forward. Some of these included:

- Providing a clear number of total requested parking spaces
 - Providing less parking than required does require a variance, but that variance is easier to grant if you provide a parking study. We can talk more about this if needed.
 - Parking lots of 50 spaces or more do require 1 parking lot tree per 25 spaces.
- Security and safety for:
 - Pedestrians in the ROW
 - Cars maneuvering on-site
 - Your property
 - Etc.

Addressing Variance Concerns

Major concern(s) of a setback variance

- Overhang into ROW
 - Starting the parking lot 10' from the property line with acceptance to leave current playground pavement in place.
 - South side Bocce Ball Court
 - Eastside 4 square and hopscotch
 - Existing fence will also provide added security.
 - It will need to be altered to 90% opacity
 - No sidewalk on the south side.
 - Also major guardrail in place on the Main entrance side of the parking lot.

Major concern(s) for curb variance

- Keeping cars in the parking lot
 - We have included concrete wheel stops to prevent any roll forwards or mis driving.
- Drainage
 - By not adding curb we don't alter drainage flow
 - Wheel stops and fence would keep any debris from entering ROW
 - Also have 10' buffer space between parking spots to the property line.
 - There is green space in ROW on both sides of the parking lot with no side walk to the South Side.

Major concern(s) for variance in general

- Future use
 - Allowing above reduces the variances needed.
 - By not having flexibility makes it more likely to have future owner
 - Is protection from
- **Sec. 2-470. - Variance conditions and guarantees.**
- The City Council may impose such conditions upon the premises benefited by the variance as may be necessary to comply with the standards established by the City's ordinances, or to reduce or minimize the effect of such variance upon other properties in the neighborhood and to better carry out the intent of the variance. The condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
- (Ord. No. 99-20, § 1, 11-23-99; Ord. No. 2011-17, § 3, 10-25-11)
- **Sec. 2-480. - Expiration of variance.**
- If substantial development or construction has not taken place within one (1) year of the date of approval of a variance, such variance shall be considered void unless a petition for a time extension has been granted by the City Council. Such extension request shall be submitted in writing at least thirty (30) days prior to expiration of the variance and shall state facts showing a good faith effort to complete work permitted under the original approval.

Sec. 2-460. - Required findings for variance.

(A) - *Prerequisites for approval.* The City Council shall not vary the regulations of this ordinance, except under Subsection below, unless it makes each of the following findings based upon the evidence presented to it in each specific case:

(1) - The variance is in harmony with the general purposes and intent of the City's ordinances.

It follows other properties in the surrounding area. As well providing little to no impact on anything.

(2) - The variance is consistent with the Comprehensive Plan.

Fits the comp plan to a T. Hit all guiding principles located on page 8 of the comprehensive plan.

(3) - The applicant proposes to use the property in a reasonable manner not permitted by the City's ordinances.

A use from the private sector to help save a historic property is more than reasonable.

(4) - Unique circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owner of the property has not had control. The unique circumstances do not result from the actions of the applicant.

North Side (division) completely unusable due to slope and bridge. Property was built landlocked and already meets hard surface limits. Property is very old and hasn't changed for many decades.

(5) - The variance does not alter the essential character of the neighborhood.

It eliminates disturbance to the neighborhood.

(6) - The variance requested is the minimum variance which would alleviate the practical difficulties.

It's very minimal, and avoids more variance till future use.

(7) - Economic conditions alone do not constitute practical difficulties.

Use of square footage to maintain property and fill comp plan goals are more important than the economics.

(B)

Historical variance. The City Council may vary the regulations of this ordinance and declare that practical difficulties exist, regardless of economic circumstances, when the following facts and conditions are shown to exist in addition to the above conditions being satisfied:

(1)

The applicant's property is currently located within the HPD, Historical Preservation District, as identified in [Section 13-360](#), or listed on the National Register of Historic Places.

(2)

The historically significant structure would lose any or all of its historical value and/or architectural uniqueness if strict application of the regulations were carried out.

(Ord. No. 99-20, § 1, 11-23-99; Ord. No. 2011-17, § 3, 10-25-11)

"It is not hard to make a decision when you know what your values are." -Roy Disney (highlighted in Vision to 2040)

**BLOCK 4 SOUTHERN ADDITION
FARIBAULT, RICE COUNTY, MINNESOTA**



BASIS OF BEARING SYSTEM

All bearings are based upon the MnDot Rice County Coordinate System

LEGAL DESCRIPTION OF RECORD

NOTE:
The title work does not show ownership west of the west line of Block 4. Southern Addition depicts the west line of Block 4 being the quarter line between SE and

ES, HAUGH & SMITH INC.

This drawing and format are prepared by copyright and design as a test case. The use of this drawing and format is strictly prohibited without the written consent and permission of Jones, Haugh & Smith Inc.

No responsibility is accepted for the locations of utilities shown hereon. Verification of actual locations should be requested prior to the commencement of construction or the taking of any

GOPHER STATE ONE-CALL: 1-800-252-1166

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of

Abstract The purpose of this study was to determine whether there were differences in the prevalence of self-reported depression between men and women who had been exposed to violence during childhood and adulthood. Data from the National Longitudinal Study of Adolescent Health (*N = 9,800*) were used to examine the association between exposure to violence and self-reported depression among adolescents. Results showed that exposure to violence during childhood and adulthood was associated with higher rates of self-reported depression. Furthermore, the association between exposure to violence and self-reported depression was stronger for women than for men.

BLOCK 4 SOUTHERN ADDITION
EADDALE T. RICE COUNTY, MINNESOTA

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 JONES HAUGH SMITH Engineers + Surveyors	Survey: MDH Date of Field Work: 7/28/24 Reviewed: _____ Check-out: SAT Date of Plot or Map: 8/20/24 Date of File or Map: 8/20/24 515 South Washington Ave. Albert Lea, MN 56007 507-373-4876 415 West North Street Owatonna, MN 55060 507-451-4898
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SHEET NO. 1 OF 1 SHEETS



Request for Council Action

TO: Mayor and City Council
THROUGH: Jessica Kinser, City Administrator
David Wanberg, CED Director
FROM: Harry Davis, City Planner
MEETING DATE: September 24, 2024
SUBJECT: Resolution 2024-196 Deny Variance at 15 3rd Ave SW

Background:

Corey Newby (the "Applicant") requests approval of variances from parking setbacks in C-2 and curbing requirements for parking lots. The applicant did provide a narrative behind the variance requests, citing the historic character of the property for its uniqueness and the comprehensive plan for supporting small businesses. He also touched on traffic flows, drainage, and disturbance to the neighborhood. The full narrative by the applicant may be found in attachments. Diagrams and other information are also in the attachments.

The variances proposed by the applicant are not consistent with the planning and zoning aspects of the City of Faribault's Unified Development Ordinance. In general, many of the Applicant's main points for the variance criteria centered on the historic use and character of the property, how construction would be a disturbance for the neighborhood, and how the requirement is a strain on small business which is against the Comprehensive Plan.

The main points for having parking lot setbacks are: keeping cars away from public ROW (and potentially overhanging into it), keeping space between the parking lot and the road for landscape and screening, and to provide a more pleasant aesthetic appeal to passersby and neighbors. The main points for having curbing around parking lots are: keeping cars from rolling or driving over property line/ROW, keeping cars from destroying landscaping adjacent to parking areas, keeping cars and nature from expeditiously fraying pavement edges and creating debris, and helping collect and direct drainage and run off. The Applicant does not attempt to make any compromise of the code requirements in favor of preserving the character or history of the property, which is not a valid point. The historic church is not material to the request and would only be material if there was an alteration to the church itself. If the applicant were to propose a

compromise, i.e. providing a partial setback or establishing curbing in areas where parking would be near to the public ROW, City Staff might see this as an attempt to have the request be in harmony with the ordinance, but that is not the case. The applicant does cite drainage as a reason to not have curbing, but has provided no data or plans showing how drainage is already dealt with on-site and how a lack of curbs don't result in drainage spilling into the public ROW.

The Comprehensive Plan does have principles, goals, objectives, and policies that address development, but none of them allude to giving small businesses variances when they request them. One of the core guiding principles cited by the Applicant is "remove or minimize barriers and create or strengthen opportunities for all individuals, businesses, industries, organizations, and services to succeed." However, the ordinance is a requirement that City Council put in place as a minimum level of expectation for development. While the existing areas are not curbed and are too close to the property line, the Applicant is changing the use of the property from an institutional and school use to a commercial and retail use, along with converting a school yard into a parking lot.

The applicant cannot claim there is no room on the property to meet the requirements of code, as City Staff demonstrates in the attached staff report that there is adequate room for the applicant's proposed 50 spaces and meeting the parking lot landscape setback and not impacting the playground. Additionally, further documentation by the applicant's development team shows how meeting the setback and providing parking lot curbing is possible.

The Planning Commission at their September 3, 2024 meeting held a public hearing and heard from the applicant. The Planning Commission voted to continue discussion on the item to the next meeting to give the applicant additional time to put together more drawings and a clearer depiction of proposed improvements to the property. At the September 16, 2024 meeting, the applicant showed a property survey and site plan. The Planning Commission voted unanimously to recommend approval of the resolution to City Council and recommend denial of the applicant's request. See the attached resolution.

If the City Council agrees with the Planning Commission's findings and recommendations, the Council should approve the resolution denying the variance request. If the Council is inclined to consider approving the Applicant's request, the Council should provide direction to City Staff and continue the meeting for action at an upcoming Council meeting.

Refer to the attached Planning Commission report for additional information.

Recommendation:

Approve Resolution 2024-196 to deny the requested variance.

Attachments:

1. Resolution 2024-196 Deny Variance at 15 3rd Ave SW
2. PC Staff Report
3. Applicant Submittal

CITY OF FARIBAULT

RESOLUTION #2024-196

DENY VARIANCE AT 15 3RD AVE SW

WHEREAS, Corey Newby (the Applicant/Owner) requests variances from parking setbacks and curbing requirements at 15 3rd Ave SW; and

WHEREAS, the property described in the above recitals and graphically depicted in Exhibit A are hereinafter referred to as the subject property; and

WHEREAS, the Applicant requests maintaining the existing extent of pavement in an area proposed to be a parking lot, resulting in a setback of zero (0) feet from the property line where a thirty (10) foot setback for off-street parking is required under Appendix B UDO, Chapter 11, Article 1, Sec 11-100, Table 11-2, as depicted in Exhibit B; and

WHEREAS, the Applicant requests maintaining the existing pavement in an area proposed to be parking with no curb around the perimeter of the parking lot, resulting in no curbing around the proposed parking area where perimeter curbing is required under Appendix B UDO, Chapter 8, Article 2, Sec 8-110(A), as depicted in Exhibit B; and

WHEREAS, City Staff has completed a review of the application and made a report to the Planning Commission, as depicted in Exhibit C; and

WHEREAS, the Planning Commission, on September 3, 2024 and September 16, 2024, following proper notice, held a public hearing regarding the requests, and following said public hearing made findings and recommended that the City Council deny the requested variances; and

WHEREAS, following said public hearing, the Planning Commission recommended denial of the requested variances based on the following findings as required by Section 2-460 of the City's Unified Development Ordinance:

1. The variance is in harmony with the general purposes and intent of the City's ordinances.

Finding: The applicant claims that the variances do not impact the site and ordinance in any way and not putting the curb in or removing some of the pavement to establish a setback would keep disturbances down.

The criteria asks for details on how the variance is in harmony with the purpose or intent of the ordinance, which the Applicant does not provide. The main points for having parking lot setbacks are: keeping cars away from public ROW (and potentially overhanging into it), keeping space between the parking lot and the road for landscape and screening, and to provide a more pleasant aesthetic appeal to passersby and neighbors. The main points for having curbing around parking lots are: keeping cars from rolling or driving over property line/ROW, keeping cars from destroying landscaping adjacent to parking areas, keeping cars and nature from expeditiously fraying pavement edges and creating debris, and helping collect and direct drainage and run off. The Applicant does not attempt to make any compromise of the code requirements in favor of preserving the character or history of the property, which is not a valid point. If the applicant were to propose a compromise, i.e. providing a partial setback or establishing curbing in areas where parking would be near to the public ROW, City Staff might see this as an attempt to have the request be in harmony with the ordinance, but that is not the case. The applicant does cite drainage as a reason to not have curbing, but has provided no data or plans showing how drainage is already dealt with on-site and how a lack of curbs don't result in drainage spilling into the public ROW.

Due to the largely residential character surrounding the subject property, staff sees all the main points above as critical for maintaining compatibility between the new use of the paved area as a parking lot and the adjacent properties. The variances requested by the applicant are not in harmony with the general purposes and intent of the City's ordinances.

2. The variance is consistent with the Comprehensive Plan.

Finding: The property is guided for commercial land use per the Comprehensive Plan and the proposed use of the land is for a retail business. The applicant claims that the variances cut out an unneeded step and strain on small business and help build up the core values of the comprehensive plan. The Applicant listed the core guiding principles in the comprehensive plan to support their requests.

The Comprehensive Plan does have principles, goals, objectives, and policies that address development, but none of them allude to giving small businesses variances when they request them. One of the core guiding principles cited by the Applicant is "remove or minimize barriers and create or strengthen opportunities for all individuals, businesses, industries, organizations, and services to succeed." However, the ordinance is a requirement that City Council put in place as a minimum level of expectation for development. While the existing areas are not curbed and are too close to the property line, the Applicant is changing the use of the property from an institutional and school use to a commercial and retail use, along with converting a school yard into a parking lot. The City regularly deals with business and property owners moving into older parts of the City where the property owner is required to update much of their property, which usually includes the parking lot, up to current code. Most of these projects are shifting from commercial to commercial uses. Some of these projects are not complete updates, as the amount and cost of the updates must be proportional to the overall improvements of the property.

City Staff does not see how the variance requests comply with the Comprehensive Plan.

3. The applicant proposes to use the property in a reasonable manner not permitted by the City's ordinances.

Finding: The applicant claims that the property has been as-is for almost 70 years with no issues and that the variances help save the first catholic church in Faribault.

City Staff does not see the applicant's above reasonings as justification for the criteria of reasonable use. In a previous criteria, City Staff listed numerous reasons why a parking setback and curbing are good for development and help with compatibility. Providing curb around a parking lot or having parking setback from the public ROW are reasonable requirements contributing to compatibility with adjacent properties. The historic character of the church, while a generally important topic, does not extend to the proposed parking area and is not a valid point for this criteria. The applicant does propose to use the property as a commercial business, which is a use permitted by the ordinance, but commercial uses should be compatible with adjoining properties and be as compliant with code as possible. Use of part of the property as a parking lot without setbacks and curbing isn't reasonable and permitted by ordinance.

4. Unique circumstances apply to the property, which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owner of the property has not had control. The unique circumstances do not result from the actions of the applicant.

Finding: The applicant claims that fewer alterations on a historic property from 1856 are better and that the money would be better spent on repairing the buildings.

The applicant's reasonings above fail to establish a unique circumstance that applies to the property. The Applicant bought the subject property, used previously as a church and school, with the intent to use it as a commercial business. They requested and succeeded in rezoning the property from P/I, Public Institutional to C-2, Highway Commercial. Previous discussions with the Applicant include phasing over time to use all of the subject property, including structures. The historic church is not material to the request and would only be material if there was an alteration to the church itself. Additionally, the applicant cannot claim that repairs to the building override necessary improvements outside of the structure, as the public is expected to use interior and exterior parts of the property and the parking lot is part of the outward property appearance. The property owner is also required to maintain the building as a base expectation prior to opening to the public. The circumstances stated by the applicant are not grounds for a variance, with circumstances created by the applicant during the process of buying and getting zoning entitlement for the subject property.

5. The variance does not alter the essential character of the neighborhood.

Finding: The applicant claims that the variance would result in less disturbance and that they would prefer to keep the original character.

The Applicant did not provide any additional information on how parking lot curbing and setbacks would be a significant break from the essential character of the area. As stated above, the proposed parking area is not part of the historic character for the property. While property redevelopment is generally disruptive, it is not something that happens for very long and does not impact the essential character of the neighborhood on its own. City Staff maintains that the required curb and parking setback would do more to protect the essential character of the neighborhood, which is primarily residential.

6. The variance requested is the minimum variance, which would alleviate the practical difficulties.

Finding: The applicant claims that the variance would result in less disturbance and that they would prefer to keep the original character.

Previous findings established that the applicant's points do not adequately address variance criteria, which mean there is no practical difficulty experienced by the Applicant. In City Staff's report to the Planning Commission (Exhibit C), the City Planner demonstrates how the applicant could develop a parking area in roughly the same location without needing a parking setback variance. Additionally, the improvements can be done without significantly impacting other elements on the subject property, like the playground. City Staff does not see a minimum necessary variance in the applicant's proposal.

7. Economic conditions alone do not constitute practical difficulties.

Finding: The applicant claims that the variance would be better due to less change for the historic property and less disturbance for the neighborhood using the subject property's playground. Additionally, a change to the current conditions of the property may leave less growth for the business.

The argument regarding historic character is thrown out in previous criteria and does not apply. The neighborhood's use of the playground is not a valid reason for denying the variance as the property is not a public park and is immaterial to the variance at hand. The argument regarding a lack of room for growth if the parking area were to be compliant with ordinances is debunked in City Staff's report and diagram within Exhibit C. Based on the arguments presented by the applicant and previous discussions with the Applicant, City Staff is not convinced that the request is without economic conditions. In a previous criteria, the Applicant stated that they would rather put more money into the building for repair. This point is the

most applicable to the variance criteria, but sadly cannot be the only condition to the property or circumstance to be granted a variance.

WHEREAS, the City Council, at a public meeting, on September 24, 2024, considered the request, the report to the Planning Commission, and the results of the public hearing, and concurred with all findings of the Planning Commission as stated in the above recitals and hereby makes the identical findings.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY FARIBAULT, MINNESOTA AS FOLLOWS:

Section 1: Denial of the Requested Variances. The City Council hereby denies the requested variances from Chapter 11, Article 1, Sec 11-100, Table 11-2 and Chapter 8, Article 2, Sec 8-110(A), of the City's Unified Development Ordinance. Said denial is based on the foregoing recitals, which are incorporated herein by reference, and which constitute the findings of the City Council, all of which are to protect the public's health, safety, and welfare.

Section 2. Compliance. The City Council authorizes the Mayor, City Administrator, City Planner, and the City Attorney to take any additional steps and actions necessary or convenient to accomplish the intent of this resolution.

Section 3. Effective Date. This resolution shall become effective immediately upon its passage and without publication.

Date Adopted: September 24, 2024

Faribault City Council

Kevin F. Voracek, Mayor

ATTEST:

Jessica L. Kinser, City Administrator

Exhibit A Property Description



Blue Outline = Subject Property

PID 18.31.4.26.029 – 15 3rd Ave SW

Exhibit B Depiction of Variance

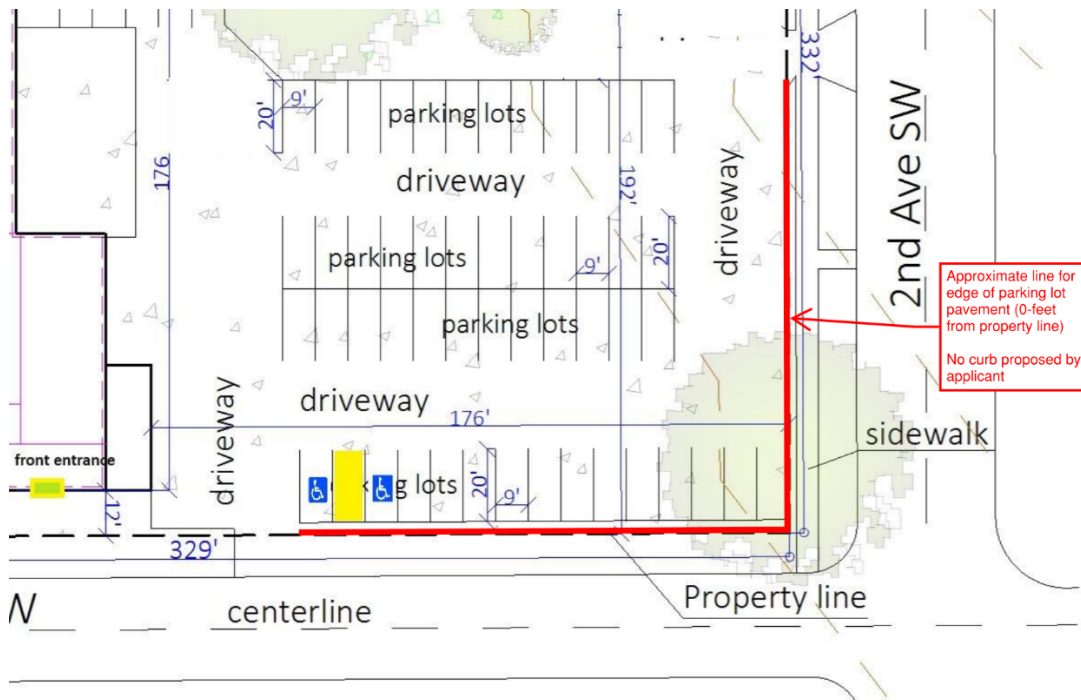
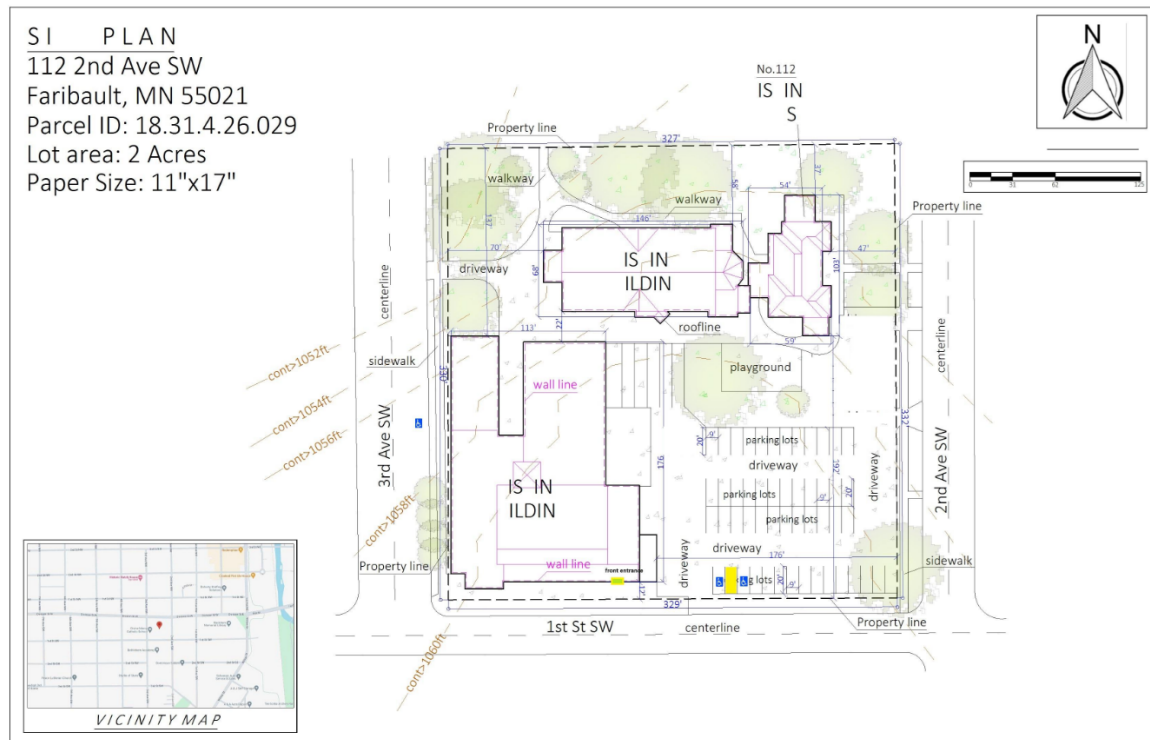


Exhibit C
Staff Report from Planning Commission

(insert document after this page)



Staff Report to the Planning Commission

TO: Planning Commission
THROUGH: David Wanberg, CED Director
FROM: Harry Davis, City Planner
MEETING DATE: September 16, 2024
SUBJECT: Deny Variances for Parking Setback and Curbing –
Corey Newby/15 3rd Ave SW

Request:	Applicant requests approval for parking setbacks and curbing variances.
Recommendation:	The DRC and City Planner recommend denial of the variances to City Council based on the findings and conditions in the attached draft resolution.
Recommended Motion(s):	Motion to forward and recommend denial of the variance requests, with findings and conditions suggested by city staff.

Request:

Corey Newby (the Applicant/Owner) requests approval of variances from parking setbacks in C-2 and curbing requirements for parking lots as depicted in the attached plans.



Location of former Divine Mercy Church and School Property owned by Applicant

Background and Project Description:

In November 2023, the applicant approached staff with interest in buying the Divine Mercy Catholic School property at 15 3rd Avenue SW. The Applicant intends to bring a mostly online auction business to Faribault and adapt the elementary school building on the subject property for online operations and a retail storefront. In April 2024, the Applicant successfully amended the comprehensive plan and zoning map to allow commercial uses under C-2, Highway Commercial zoning on the subject property.

The applicant is now coming forward with plans to occupy and use the property as intended. The requested variances are the Applicant's next step before submitting for site plan review.

Paper Size: 11"x17"

Table 1 – Variance Table

Variance Issue	Requirement	Proposed	Variance
Front setback for off-street parking and loading areas (Sec 11-100, Table 11-2)	10-foot setback from property line	0-foot setback	10 feet
Curbing (Sec 8-110(A))	Drives, landscape islands, and parking/maneuvering areas shall have concrete curbing around perimeter	No curbing	No curbing

The applicant did provide a narrative behind the variance requests, citing the historic character of the property for its uniqueness and the comprehensive plan for supporting small businesses. He also touched on traffic flows, drainage, and disturbance to the neighborhood. The full narrative by the applicant may be found in attachments.

Discussion:

The variances proposed by the applicant are not consistent with the planning and zoning aspects of the City of Faribault’s Unified Development Ordinance. The following provides an overview of the key planning and zoning-related items associated with:

Variance Summary

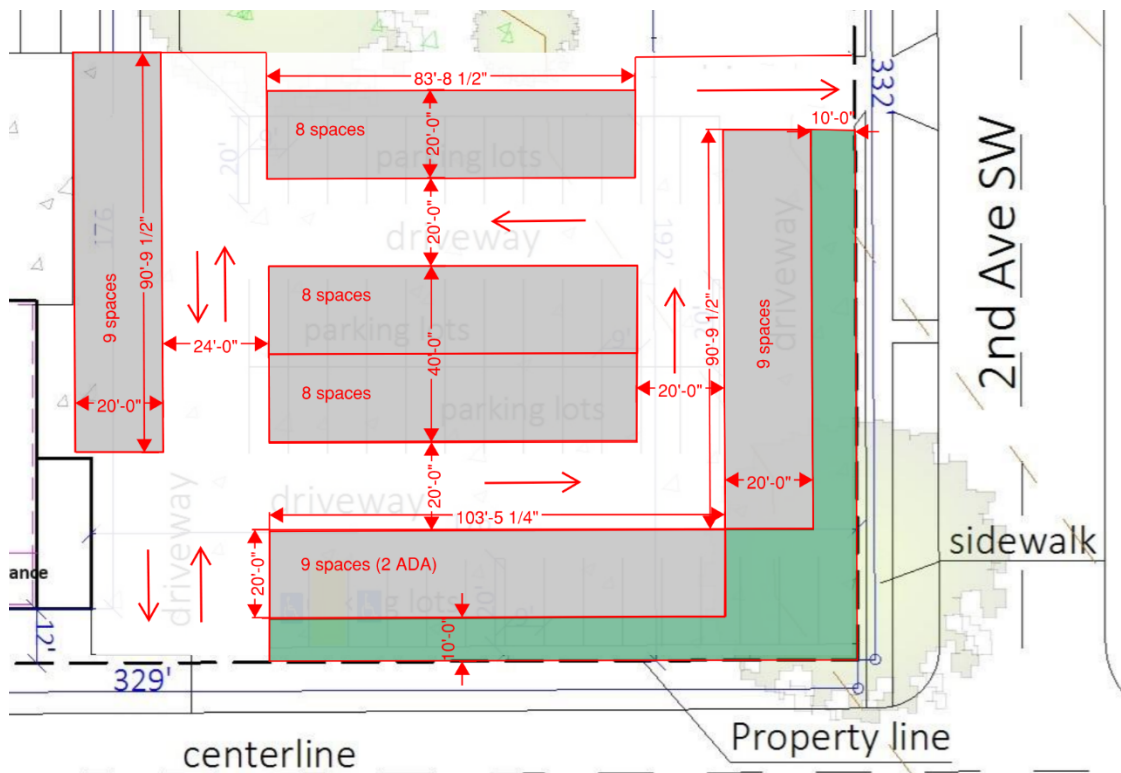
- In general, many of the Applicant’s main points for the variance criteria centered on the historic use and character of the property, how construction would be a disturbance for the neighborhood, and how the requirement is a strain on small business which is against the Comprehensive Plan.

The main points for having parking lot setbacks are: keeping cars away from public ROW (and potentially overhanging into it), keeping space between the parking lot and the road for landscape and screening, and to provide a more pleasant aesthetic appeal to passersby and neighbors. The main points for having curbing around parking lots are: keeping cars from rolling or driving over property line/ROW, keeping cars from destroying landscaping adjacent to parking areas, keeping cars and nature from expeditiously fraying pavement edges and creating debris, and helping collect and direct drainage and run off. The Applicant does not attempt to make any compromise of the code requirements in favor of preserving the character or history of the property, which is not a valid point. The historic church is not material to the request and would only be material if there was an alteration to the church itself. If the applicant were to propose a compromise, i.e. providing a partial setback or

establishing curbing in areas where parking would be near to the public ROW, City Staff might see this as an attempt to have the request be in harmony with the ordinance, but that is not the case. The applicant does cite drainage as a reason to not have curbing, but has provided no data or plans showing how drainage is already dealt with on-site and how a lack of curbs don't result in drainage spilling into the public ROW.

The Comprehensive Plan does have principles, goals, objectives, and policies that address development, but none of them allude to giving small businesses variances when they request them. One of the core guiding principles cited by the Applicant is "remove or minimize barriers and create or strengthen opportunities for all individuals, businesses, industries, organizations, and services to succeed." However, the ordinance is a requirement that City Council put in place as a minimum level of expectation for development. While the existing areas are not curbed and are too close to the property line, the Applicant is changing the use of the property from an institutional and school use to a commercial and retail use, along with converting a school yard into a parking lot.

The applicant cannot claim there is no room on the property to meet the requirements of code, as City Staff demonstrates below that there is adequate room for the applicant's proposed 50 spaces and meeting the parking lot landscape setback and not impacting the playground:



In summary, the variance does not meet the standards for a practical difficulty. A more detailed breakdown by criteria may be found in the draft resolution.

Development Review Committee Recommendation. The City's Development Review Committee (DRC) reviewed the proposed variances on August 20, 2024 recommended denial of the variances.

Public Comment. The City Planner received no public comment prior to publishing this report. Notification for this item was published in the paper on August 22, 2024 and letters sent to property owners within 350-feet on August 21, 2024.

September 3, 2024 Planning Commission. The Planning Commission did previously review and hold a public hearing for this item during the September 3, 2024 Planning Commission meeting. The applicant was present and spoke to the request during the public hearing. The Planning Commission voted to continue discussion on the variance requests to the next meeting to give the applicant time to prepare additional information and diagrams to support the request. New diagrams and information are included. City staff still recommend denial of the requests based on the same findings as before.

Recommendation:

The DRC and City Planner recommend denial of the variances to City Council based on the findings and conditions in the attached draft resolution.



APPLICATION FOR REQUESTED ACTION
Variance

Planning Case # _____
Filing Fee _____
Hearing Date _____

SITE ADDRESS 15 3rd Ave SW, Faribault, MN, 55021

APPLICANT Corey Newby E-MAIL coreynewby@gmail.com

PHONE 952-460-0055 (H) _____ (W) _____ (FAX) _____

APPLICANT ADDRESS 9594 202nd St W, Lakeville, MN 55044

OWNER (if other than applicant) _____

PHONE _____ (H) _____ (W) _____ (FAX) _____

OWNER'S ADDRESS _____

LEGAL DESCRIPTION Lot Block 4 of SOUTHERN ADD

ACREAGE/SIZE OF PROPERTY 2 acres

CURRENT ZONING Commercial 2

EXISTING USE OF PROPERTY None

PROPOSED USE OF PROPERTY Retail
(Including number of units per acre and types of uses if mixed use)

IDENTIFY ALL ADJACENT LAND USES Institutional and Residential

SIGNATURE OF APPLICANT Corey Newby DATE 7/31/2024
(Must submit proof of property control)

SIGNATURE OF THE OWNER Corey Newby DATE 7/31/2024
(If other than the applicant)

**PLEASE PROVIDE ALL INFORMATION REQUESTED ON
THIS FORM AND THE ATTACHED CHECKLIST.**

VARIANCE
Required Submittals

☐ **Site plan**

- ☐ Drawn to scale, with scale noted
- ☐ Date and North arrow
- ☐ Boundaries and dimensions shown graphically
- ☐ Location of any streets, public trails, railroads, or waterways
- ☐ Location of existing and proposed structures, with distance from property lines noted
- ☐ Location and dimensions of existing and proposed off-street parking and loading spaces, with distance from property lines noted (when applicable)

☐ **Required supplemental information**

- ☐ Written summary stating the specific variation requested, giving distances as needed
- ☐ Written summary stating exceptional conditions/peculiar difficulties which make the variance necessary
- ☐ Written statement as to why you feel a variance should be granted
- ☐ Other information as required

☐ **Filing fee**

☐ **SIGNATURE OF APPLICANT** Corey Newby **DATE** 7/31/2024

Planning Case # _____

Please answer the following questions as they relate to your specific variance request:

1. In your opinion, is the variance in harmony with the purposes and intent of the ordinance?

Yes (☒) No (☐) Why or why not?

It doesn't affects the site and/or ordinance in any way.

It only keeps disturbance down

2. In your opinion, is the variance consistent with the comprehensive plan?

Yes (☒) No (☐) Why or why not?

It cuts out un needed step and stain on a small business

It helps build up the core values of the comprehensive plan

3. In your opinion, does the proposal put property to use in a reasonable manner?

Yes (☒) No (☐) Why or why not?

This property has been this way for almost 70 years with no issues.

Helps save the first catholic church in Faribault, historic preservation is a must.

4. In your opinion, are there circumstances unique to the property?

Yes (☒) No (☐) Why or why not?

This is a historic property from 1856. Less alterations the better. It is also in need of great re pair and money should be focused on that,

5. In your opinion, will the variance maintain the essential character of the neighborhood?

Yes (☒) No (☐) Why or why not?

It is less disturbance this way

The original character has been this way since 1954, would like to keep it.

6. In your opinion, is the variance requested the minimum variance which would alleviate the practical difficulty?

Yes (☒) No (☐) Why or why not?

By altering the current parking lot will change drainage and disrupt the land that has been this way for 70 years.

7. In your opinion, do the economic conditions alone constitute the practical difficulty?

Yes (☐) No (☒) Why or why not?

Its a 150+ year established historic property, less change the better.

By changing current conditions will leave less room for growth and disturb the current community use of playgrounds.

The City Council must make an affirmative finding on all of the seven criteria listed above in order to grant a variance. The applicant for a variance has the burden of proof to show that all of the criteria listed above have been satisfied.

The undersigned certifies that they are familiar with application fees and other associated costs, and also with the procedural requirements of the City Code and other applicable ordinances.

Applicant's Signature:

Corey Newby

Date:

7/31/2024

SI PLAN

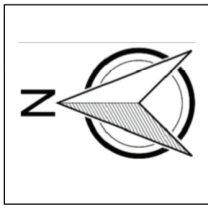
112 2nd Ave SW

Faribault, MN 55021

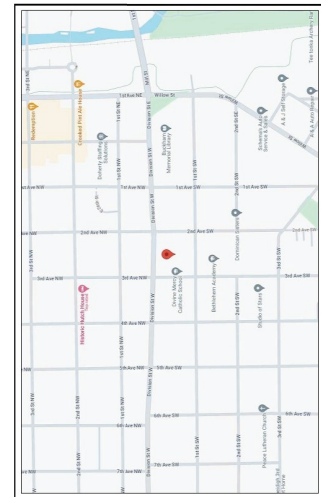
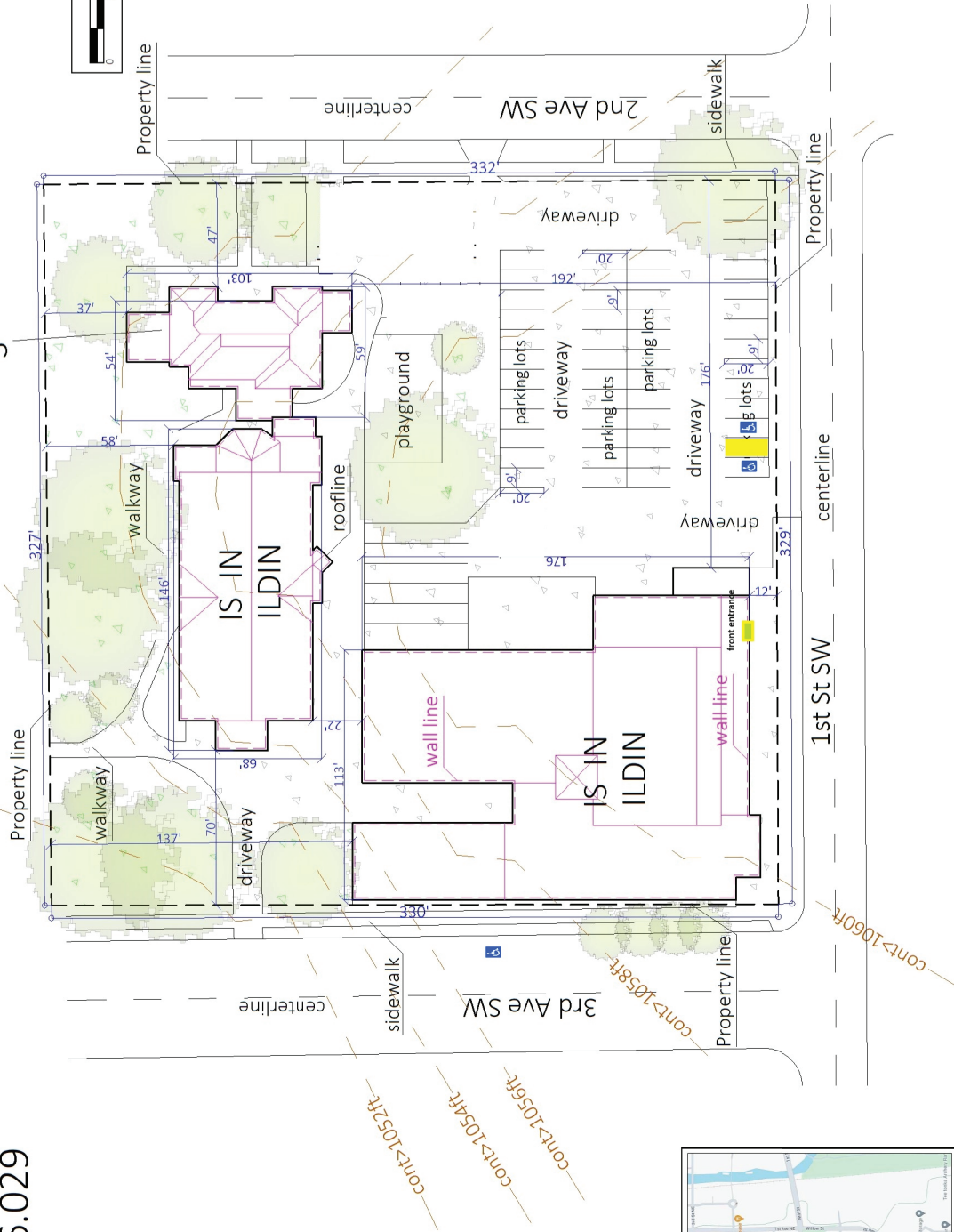
Parcel ID: 18.31.4.26.029

Lot area: 2 Acres

Paper Size: 11"x17"



No.112
IS IN
S



VICINITY MAP

Urban Flea Market Parking Lot Variance - The Greater Good

I am requesting a Parking lot Variance, including setbacks and curbing. The uniqueness and age of this property along with the comprehensive plan warrant and make these variances necessary.

If setbacks are put into effect future use of remaining property becomes an issue for off street parking requirements. It also keeps the existing flow of traffic and drainage the same as it has been since 1958. Traffic and drainage were highlighted by the city engineer as the 2 main concerns. By using this variance we eliminate these 2 issues.

Variance also creates less disturbance to the neighborhood while maintaining the current essential character of the neighborhood. Disturbance was also a big worry for city staff during the rezoning process.

Most importantly it follows the guidelines of the comprehensive plan.

1. **Foster a strong sense of community** among all people and constituencies in Faribault.
2. **Identify, protect, enhance, and celebrate our iconic and historic sites and architecture** as well as our significant natural areas, which define our sense of place.
3. **Remove or minimize barriers and create or strengthen opportunities for all individuals, businesses**, industries, organizations, and services to succeed.
4. **Encourage innovation**, creativity, **flexibility**, and **openness to new ideas and positive change** in all sectors of the community.
5. **Strive for excellence in all sectors of the community**

The above demonstrates its not just about economics. It's about the future use of the property. It's about following the comprehensive plan and finding the greater good for the community. It's about maintaining the first catholic church in Faribault. The city is built on historic preservation. We should continue to follow it.

The benefits of this variance greatly outweigh any if any negative impacts. Lets implement "The Vision to 2040 and The Comprehensive Plan" and I can start impacting this community!

Supporting Doc

I've included the original concepts where city planner had suggested setback variance and stall size variance for the parking lot. It also demonstrates the importance of the variances to allow for expansion when the other buildings are ready for use.

By keeping the current set back, we can eliminate the stall size variance. Adding the curbing variance allows for more room in the parking lot if an island in future is added. It also eliminates any drainage issues that the city engineer was concerned about. Drainage was a hot topic this year for Faribault.

Conditional Use Permit

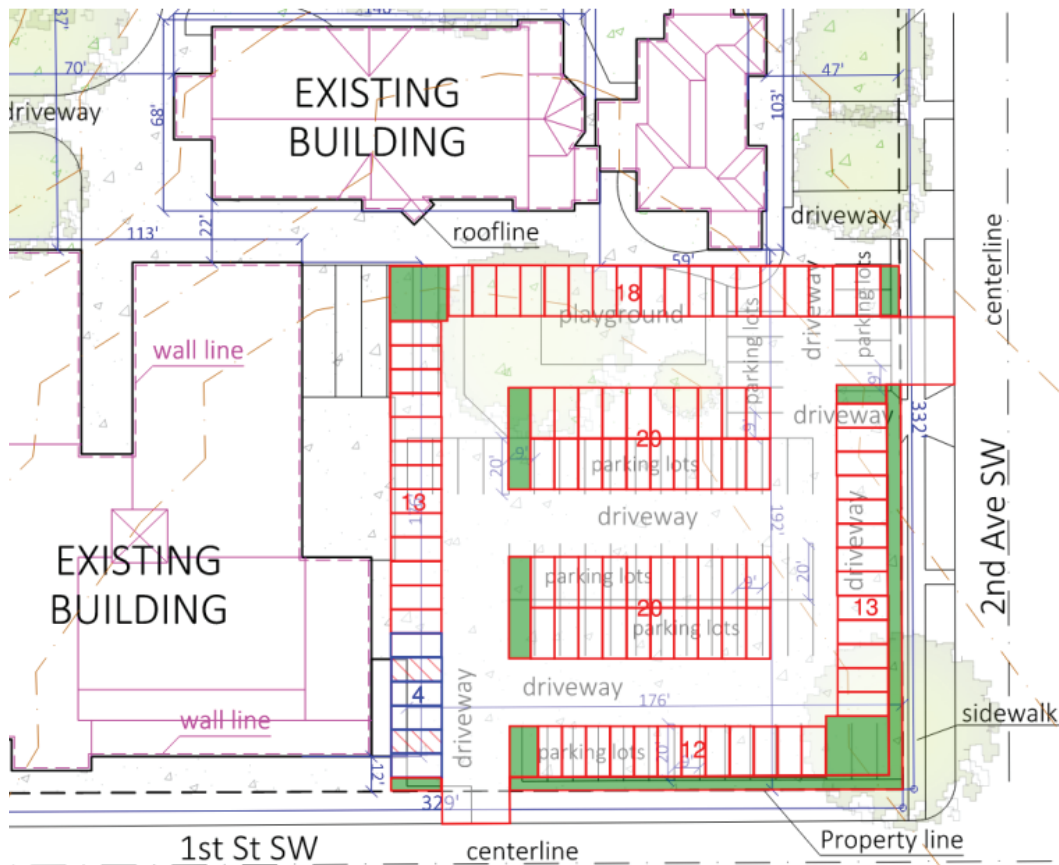
Please see the attached report from the December 4th Planning Commission workshop.

Planning Commission Workshop December 4th, 2023 Summary

At the December 4th Planning Commission Workshop, the City Planner presented the business and subject property concept. Cory Newby followed with a presentation of their own. The reaction from the Planning Commission to the proposed flea market use was mixed and included discussion on traffic, parking, the viability of the use, the current state of the buildings, and consideration of what the property should or should not be going into the future. Planning Commission requested Cory Newby work with staff on establishing more details regarding parking and use of the structures on the property.

Planning Commission Workshop December 18th, 2023

Cory Newby submitted new documents with additional details and a preliminary site plan for parking, which are attached to this report. City staff are concerned about utilizing the existing paved area on-site and converting into efficient and useable parking for the proposed (or any potential) business. The initial parking plan provided by Cory Newby did not adequately provide parking improvements expected with a change of use, so the City Planner suggests, and Cory Newby supports, a potential parking layout as shown below and in the attachments.



This preliminary parking plan would provide 100 spaces on-site, but requires minor parking variances, such as parking space length (18-feet vs 20-feet) and parking setbacks (five feet vs 10-feet). Cory Newby's calculations for parking needs based on to-be-used space on the property are 46 parking spaces. Calculations are shown below:

Total Building Space: ~33,500 sq ft

Space Not Used/Open to Public: ~10,900 sq ft

- House 5216 sq ft
- Church Basement 1143 Sq Ft
- Church & House breezeway 450 sq ft
- School Basement 1360 sq ft
- School 2nd floor 2695 sq ft Usable

Space: ~22,600 sq ft Proposed Use

Space: ~18,000 sq ft

- Retail ~12,000 sq ft (Open to Public)
- Storage/Limited Processing ~6,000 Sq Ft (Not Open to Public)

Retail: 1 Space per 300 sq ft = 40 spaces

Storage/Limited Processing: 1 Space per 1,000 sq ft = 6 spots

Total Spaces Needed: 46

Based on the preliminary calculations from Cory Newby and the preliminary parking improvement plan, adequate parking exists for the uses proposed. Although the UDO does not specifically account for storage and processing areas for a business like this, the City Planner sees the proposed 1 space per 1,000 sq ft as reasonable for discussion. With the possibility of 100 parking spaces provided on-site, the ratio of parking spaces to building area is around 1 space per 225 sq ft of useable space, as noted by Cory Newby above and attached. This is a higher ratio of parking than generally required for retail uses elsewhere in the city. Against the total existing building area, including parts Cory Newby is not proposing to use, would raise the ratio to approximately 1 space per 335 square feet.

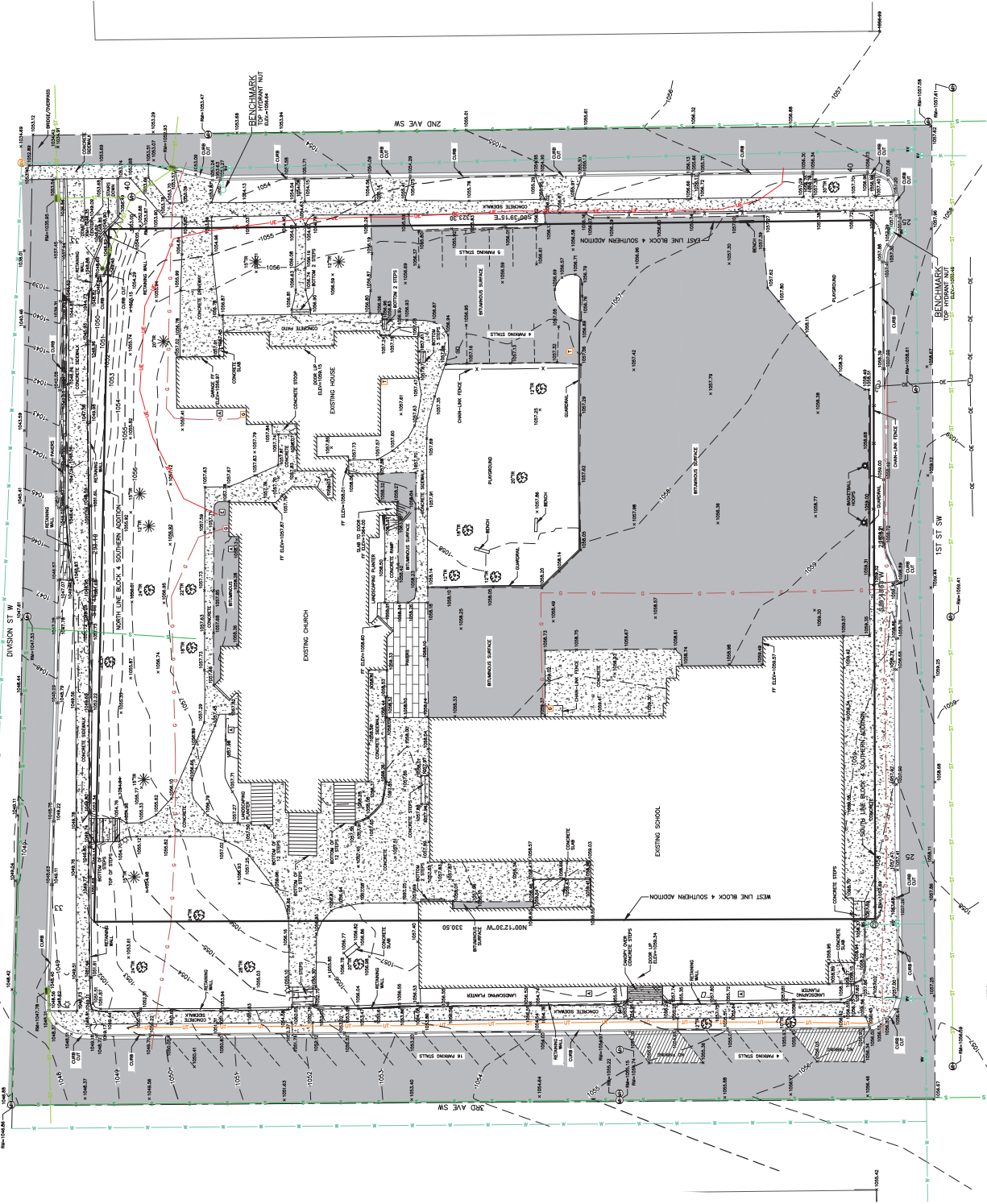
In addition to the building use and parking calculations, Cory Newby provided a rough traffic impact analysis (see attached). The City Engineer did not review the analysis before writing this report, so initial feedback is unavailable.

As this project moves forward, the City Planner recommends a conditional use permit that is specific and comprehensive in terms of conditions: what is required, which buildings/spaces are used for the proposed business, if an annual review is required, etc. These conditions are not atypical compared to conditional uses approved in other jurisdictions. If the proposed development does not adhere to the conditions, enforcement of the conditions could be challenging for city staff and the business operator.

K:\Common Share\Projects\2023\Preliminary and Other Projects\112 2nd Ave NW - Urban Flea Market\12.18.23 PC\Review 1

TOPOGRAPHIC AND BOUNDARY SURVEY

BLOCK 4 SOUTHERN ADDITION
FARIBAULT, RICE COUNTY, MINNESOTA



- LEGEND**
- Water Main
 - Sanitary Sewer
 - Storm Sewer
 - Gas Main
 - Electric
 - Chain Link Fence
 - Flag Pole
 - Electric Meter
 - Telephone
 - AC Unit
 - Power Pole
 - Guy Anchor
 - Water Service Valve
 - Spot Elevation
 - Dead End Tree
 - Concrete Surface
 - Blumhouse Surface

BASIS OF BEARING SYSTEM
All bearings are based upon the NAD83 Rice County Coordinate System

LEGAL DESCRIPTION OF RECORD
Block 4, Southern Addition of Rice County, Minnesota, according to the record of said block in the Rice County, Minnesota, records.

NOTE
The survey was conducted in accordance with the Minnesota Surveying Act, Chapter 83A, Minnesota Statutes. The survey was conducted in accordance with the Minnesota Surveying Act, Chapter 83A, Minnesota Statutes.

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No responsibility is accepted for the locations of utilities shown here. Verification of actual locations should be requested prior to the commencement of construction or the taking of any other action relying on the actual locations.

Locations of all utilities shown are approximate.

Gopher State One-Call: 1-800-251-1968

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am duly Licensed Land Surveyor under the laws of the State of Minnesota.

Scott A. Hutchinson, L.S. No. 12446

DATE: 8/29/24

TOPOGRAPHIC AND BOUNDARY SURVEY
BLOCK 4 SOUTHERN ADDITION
FARIBAULT, RICE COUNTY, MINNESOTA

FOR COREY NEWBY

Drawn by:	John H. Smith	Scale:	1" = 20'
Surveyed by:	John H. Smith	Check:	John H. Smith
MDH:	MDH	State:	MINN.
Project No.:	2024-001	County:	RICE
Sheet No.:	1	Section:	36
Revised:		Drawn:	8/29/24



JONES HAUGH SMITH
Engineers & Surveyors

BLOCK 11, SOUTHERN ADD.

URBAN FLEA MARKET
PARKING LOT
112 2ND. AVE. SW, FARIBAULT, MN
55021

PROJECT TEAM	DRAWING INDEX
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ARCHITECT: ROBERT W. READY, AIA/CSI, LEED AP APPRO DEVELOPMENT 10000 W. LAKESIDE AVENUE LAKEVILLE, MN 55044 (612) 489-2171 APPRO@approdevelopment.com		DRAWING INDEX	
Sheet Number	Sheet Name		
A-General			
AD-1	COVER SHEET		
AD-1#			
AD-1-1	SITE PLAN		
STRUCTURAL ENGINEER: NAME COMPANY ADDRESS 1 ADDRESS 2 PHONE NUMBER EMAIL			

CODE SUMMARY

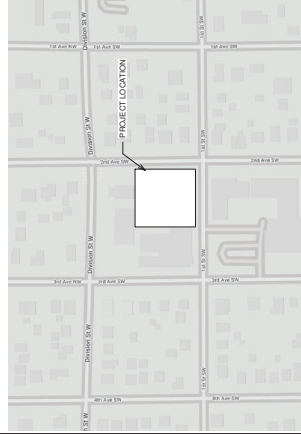
PROJECT TEAM	DRAWING INDEX
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ARCHITECT: ROBERT W. READY, AIA CSI, LEED AP APPRO DEVELOPMENT 10000 W. LAKESIDE AVENUE LAKESIDE, MN 55049 (C) 952-468-2171 (C) 612-419-1732 Ready@approdevelopment.com		DRAWING INDEX	
Sheet Number	Sheet Name		
A-General			
AD-1	COVER SHEET		
B-Civil			
A1-1	SITE PLAN		
STRUCTURAL ENGINEER:			

PROJECT DESCRIPTION

SCOPE OF WORK: RESTRIPE PARKING LOT, PUT UP NEW FENCING AND RELOCATE BASKETBALL COURTS.

IMAGE



ABBREVIATIONS

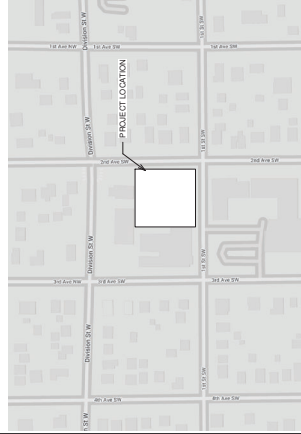
8	ANSI	FT.	FEET OR ROOT	PM	RED WAT	W.C.
9	ANGLE	FRP	FIBER REINFORCED PLASTIC	PAINT	(PAINTED)	W.H. WATER LASTER
0	CENTERLINE	F.F.E.	FINISHED FLOOR ELEVATION	PART.	PARKING	W.B.B. WATER RESISTANT
1	DIAMETER	F.E.	FIRE EXTINGUISHER	PAR.	PARITION	WT. WEIGHT
2	FEET OR POUNDS	F.D.	FLOOR DRAIN	PLYWOOD	PLYWOOD LAMINATE	WID. WIDOW
3	FLATE	FLOOR	FLOORING	PLYWOOD	PLYWOOD	W. WITH JOINT
4	ACOVE FINISHED FLOOR	FLOR.	FLOORING	P.V.	POST INSULATION VALVE	WD. WOOD
5	ACOVE FINISHED CEILING	GPAL.	GALLONS PER MINUTE	2	PROPERTY LINE	
6	ADJUSTABLE	GA.	GAUGE GAGE	GT	QUARRY TILE	
7	AGGREGATE	GA.	GAUGE GAGE	GT	RADIUS	
8	AH.U.	GA.	GAUGE GAGE	GT	RADIUS	
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4	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
5	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
6	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
7	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
8	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
9	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
0	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
1	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
2	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
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4	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
5	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
6	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
7	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
8	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
9	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
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3	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
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7	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
8	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT	RADIUS	
9	ANCHOR BOLT	GL.B.K.	GLASS BLOCK	GT		

STANDARD DRAWING SYMBOLS

[illegible]

LOCATION MAP

(NOT TO SCALE)



ELEVATION TARGETS	ELEVATION NUMBERS	KEYNOTE TARGET	NUMBER (CORRESPONDS WITH NUMBER IN SPECIFICATIONS)

A diagram of a building with a target. The building is represented by a vertical line with a semi-circle at the base. A horizontal line extends from the top of the building to the right, ending in a target symbol. The target is a circle with a crosshair. The word "BUILDING" is written vertically to the right of the building. The word "TARGET" is written vertically above the target. The words "ELEVATION NUMBERS" are written vertically to the left of the building, with arrows pointing to the building and the target.

REVISION NUMBER: 3
 ROOM & ROOM NUMBER: 2400/000

Diagram illustrating a room layout with accessibility features:

- ROOM NUMBER:** 101
- HANDICAPPED ACCESSIBILITY SYMBOL:** (Red cloud-like shape)
- DOOR TARGET:** (Door handle)
- DOOR NUMBER:** (Number on the door)

Properties with Variances?

No Curb or partial Curbs

Arby's
DQ
Halal Market
Brighton Hospice
Pillar
Autowash
Farm Bureau Insurance
Mercury
City & Lakes
MRG
Francis Pest Control
Auto Zone
Storage on 7th
Truss
C & S Vending
Bliss Ford
Mobile
Lyndala Halal Market
Jersey Mikes (we'll see)
Southern China Cafe
J-Mo
Crown

Curb/Setback Variances

Napa
Dominos
Fams Barber Shop
Dentist House
All of the Cannon Buildings
Sammons
Abubaker Center
Environmental Tillage
Ace Hardware
Five Star Car Sales

BA

2020 - greenhouse parking lot
No Curb
No Screening
No Landscaping
Not sure about setbacks

The majority of these have no screening to partial screening. Landscaping requirements are in question on most as well.