

## **DECISION FORM**

Town of Brookfield Zoning Board of Appeals

### ***FINDINGS OF FACT***

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

Filing Date: **July 21, 2022**

Affidavit of publication/posting is on file.

Hearing Date: **August 17, 2022**

- A. The Owner and Petitioner are (name and address): \_\_\_\_\_  
**Petitioner: Jason Keen                      1211 S. White Chapel Blvd., Southlake, TX. 76092**  
**Owner: VRE Bluemound, LLC 1211 S. White Chapel Blvd., Southlake, TX. 76092**
- B. The Owner and/or Petitioner are the owner of real property which is the subject of this Application (street address and Tax Key Number): \_\_\_\_\_  
**585 N. Barker Rd., Brookfield, WI. 53045**  
**Tax Key No: BKFT1128997001**
- C. The Owner and/or Petitioner proposes (brief project description/attach plans): \_\_\_\_\_  
**Request for approval of variance to allow new monument sign to exist within the parameters of the required site triangle at intersection of N. Barker Rd. and Bluemound Rd. See attached exhibit.**
- D. The Owner/Petitioner requests an area variance under Section **17.06** of the ordinance.
- E. The standard(s) that relate to the grant or denial of the Application are:
1. Unnecessary Hardship. Exists when compliance would unreasonably prevent the Owner/Petitioner from using the Property for a permitted purpose (leaving the Property Owner/Petitioner without any use that is permitted for the Property) or would render conformity with such restrictions unnecessarily burdensome. The Board must consider the purpose of the zoning restriction, the zoning restriction's effect on the Property, and the short-term, long-term, and cumulative effects of a variance on the neighborhood, the community and on the public interests.
  2. Unique Property Limitations. The Property contains unique limitations that create an unnecessary hardship, such as steep slopes or wetlands that prevent compliance with the ordinance. The circumstances of an Owner/Petitioner (growing family, need for a larger garage, financial concerns etc.) are not a factor. Property limitations common to other properties in the area are not unique.
  3. No Harm to the Public Interest. A variance may not be granted which results in harm to public interests. The Board should review the purpose of the ordinance and related statutes in order to identify public interests. The Board must consider the short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors and the community. The focus should focus be on the general public interest, rather than the narrow interests or impacts on neighbors, patrons or residents in the vicinity of the project.

**CONCLUSIONS OF LAW**

Based on the above findings of fact, the Board concludes that:

The variance (does/does not) meet all three of the following tests:

1. Unnecessary hardship (~~is~~/~~is not~~) present because \_\_\_\_\_  
**Right-of-way takings in the corner of the property**  
\_\_\_\_\_
2. The hardship (~~is~~/~~is not~~) due to unique physical limitations of the Property because \_\_\_\_\_  
**The parking elevation is 2-3 feet below the roadway intersection**  
\_\_\_\_\_
3. The variance (~~will~~/~~will not~~) harm the public interest because \_\_\_\_\_  
**The right hand turn lane reduces the need for vision**  
\_\_\_\_\_

**DECISION AND ORDER**

Based on the findings of fact, conclusions of law, and the record in this matter, the Board orders:

The requested variance is (denied/**granted**/granted-in-part), subject to the following conditions/mitigation (if applicable):

1. Any requirements of the county/state DOT.
2. Any additional taking of land will result in the nullification of the variance and a new variance request may be considered.
3. Should business operations of Shake Shack cease – the sign must be removed on the last day of operation.

The Zoning Administrator (is/is not) directed to issue a zoning permit incorporating these conditions and certifying by the Owner and Petitioner’s signatures that they understand and accept the conditions.

Expiration of permit. Any privilege granted by this Decision and Order must be exercised within months of the date of this Decision after obtaining the necessary building, zoning, and other permits for the proposed project. This period will be extended if this Decision is stayed by the order of any court or operation of law.

Revocation. This Decision and Order may be revoked by the Board after notice and opportunity to be heard for violation of any of the conditions imposed.

Reconsideration and Appeal. This Decision and Order by the Board may be subject to reconsideration at its next scheduled meeting, and thus, the language contained herein may be subject to change or modification. Any person or persons, jointly or severally, aggrieved by a Decision and Order of the Board may appeal from the Decision and Order of the Board within thirty (30) days after filing of the Decision and Order in the office of the Board in a manner provided in Wis. Stat. § 62.23. This Decision and Order was filed in the office of the Board as of the date identified below.

Town of Brookfield Zoning Board of Appeals

\_\_\_\_\_  
Dean Pearson, Chairman

Attest:

\_\_\_\_\_  
Georgia Balcerowski, Secretary

Filed: \_\_\_\_\_