



## VAR 24-07 – Dutch Bro’s Coffee – 7893 East U.S. Highway 36

Planning & Building Department Staff Report

April 15, 2025

Board of Zoning Appeals, Public Hearing

Paul J. Lambie, Senior Planner

<b>A. PETITION NUMBER</b>	VAR 24-07 Dutch Bro’s Coffee – Drive-Through in Front Yard 7893 East U.S. Highway 36
<b>B. APPLICANT</b>	Pavilion Development Co. c/o Tim Davies
<b>C. LOCATION</b>	7893 East U.S. Highway 36, Avon, IN 46123 Northwest portion of Lowe’s Addition, Lot 1
<b>D. PARCEL SIZE</b>	~0.75 acre
<b>E. LAND USE &amp; ZONING</b>	Zoned C-2: General Commercial and is located within Tier One of the US HWY 36 Overlay Zoning District.
<b>F. ACTION REQUESTED</b>	Requesting approval of a Variance of Development Standards to allow for drive-through components to be located within the required front yard along U.S. Highway 36, where all drive- through components are required to be located within side or rear yards.
<b>G. HISTORY</b>	<p>This overall lot, improved with a home improvement warehouse store, received plat approval via petitions MAP(P) 00-03, MAP(F) 00-04, &amp; MAP(A) 00-11, and received development plan review via petitions SPR(P) 00-11, SPR(F) 00-15 &amp; SPR(A) 00-25.</p> <p>A petition to create an outlet, MIP 06-01 was denied. A petition to revise the location of a vehicular connection to Vista Park Way, DPR(A) 06-26, was approved subject to submission of an access easement within 30 days, which did not occur.</p> <p>This petition, VAR 24-07, along with SE 24-05, was continued from the December 17, 2024 BZA hearing to the January 21, 2025 BZA hearing, at the request of the petitioner.</p>



<b>H. ADDITIONAL COMMENTS FOR APRIL 15, 2025</b>	<p>This petition, along with SE 24-05, was continued from the February 18, 2025 hearing to the April 15, 2025 hearing at the request of the petitioner.</p> <p>No additional information has been submitted at the time of this report, however, the petitioner has been in communication with staff about potential solutions. Staff would support an additional continuance, to the June 17, 2025 hearing, to allow time for submission and review of a plan to address the required connection to Vista Park Way.</p>
<b>I. ADDITIONAL COMMENTS FOR FEBRUARY 18, 2025</b>	<p>This petition, along with VAR 24-07, was continued from the January 21, 2025 hearing to the February 18, 2025 hearing at the request of the petitioner in order to review and respond to documentation regarding the obligation to provide a connection to Vista Park Way.</p> <p>The planning staff participated in a call at the request of representatives of the property owner (Lowe’s) on February 7, 2025 to answer questions and clarify staff’s position on the need to provide a vehicular access to Vista Park Way and the Town’s willingness to work with Lowe’s to find a mutually agreeable solution.</p> <p>No additional information has been submitted at the time of this report. Staff would support an additional continuance, if requested by the petitioner, to allow time to submit a plan to address this outstanding obligation.</p>
<b>J. STAFF COMMENTS (JANUARY 21, 2025)</b>	<p>This is a request for approval of a Variance of Development Standards to allow for the construction of a new coffee shop, with drive-through components located between the building and the U.S. 36 right-of-way. UDO 2.10(K) requires that “all components of a drive-through, including stacking spaces, menu boards, and pick-up windows must be located within the side or rear yards of a lot. The proposed development would occur on the far northwest portion of the ~19-acre property that is currently improved with a Lowe’s home improvement warehouse store (see Exhibit A). The site plan indicates the area proposed for the coffee shop as a 0.77-acre piece of property. The petitioner has not indicated whether they would propose to subdivide to create a separate outlot for this coffee shop or whether it would remain part of the Lowe’s lot.</p>



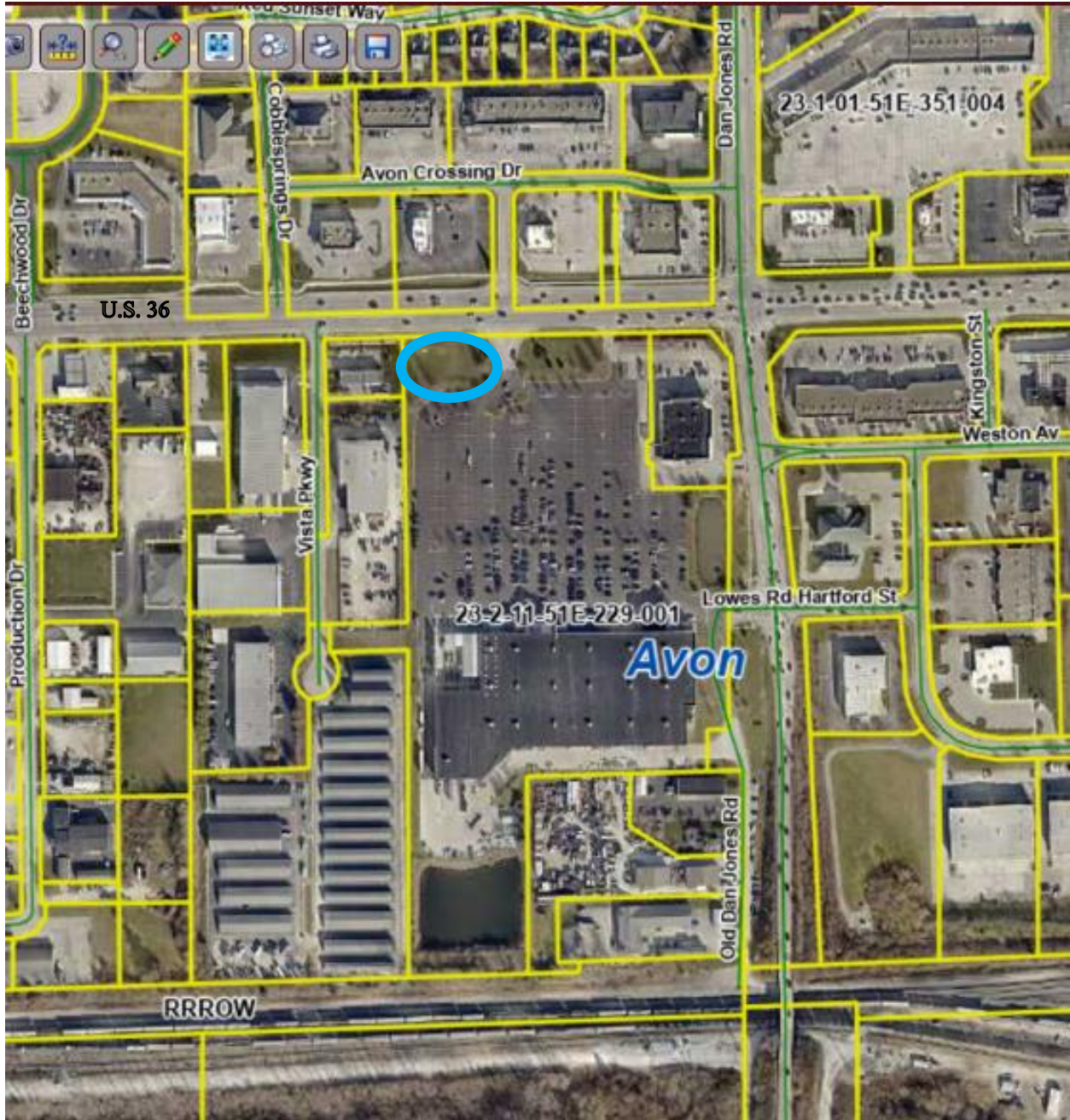
	<p>The submitted site plan proposes an ~950-sqaure foot building on the east end of the “outlot” nearest the Lowe’s driveway to/from U.S. 36. The “outlot” would be accessed via a private drive internal to the Lowe’s lot near the southwest corner of the proposed “outlot”. Drivers utilizing the drive-through would proceed toward the northwest corner of the outlot, then turn eastward paralleling U.S. 36 before turning southward to reach the building and complete their transactions. One row of off-street parking would be located along the south end of the “outlot” (see Exhibits B &amp; C).</p>
<b>K. STATUTORY FINDINGS</b>	<p>The Board of Zoning Appeals shall approve, conditionally approve or deny variances from development standards of the Avon Zoning Ordinance. A variance may be approved under IC 36-7-4-918.5 only upon a determination in writing that:</p> <p><b>Criterion 1. Will the approval of the variance be injurious to the public health, safety, morals, and general welfare of the community?</b></p> <p><i>Petitioner response: “No, existing drive-through uses exist within the front yard that faces US Highway 36 today including Chick-fil-a both locations and Dairy Queen. Additionally, the proposed layout provides the best opportunity for site circulation and separation between the start of the drive-through and the US 36 curb cut.”</i></p> <p>Staff believes that the requirement for drive-through facilities to be located to the side and/or rear of buildings is intended to create a vista along U.S. 36 where the visibility of building fronts is prominent with minimal parking areas in front of buildings. Staff believes that rows of queued vehicles parallel to U.S. 36 would be inconsistent with that desired aesthetic.</p> <p><b>Criterion 2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?</b></p> <p><i>Petitioner Response: “The existing driveway entrances along US 36 and Dan Jones Road are not be impacted with the proposed development and the proposed use is consistent with the surrounding area.”</i></p>



	<p>Staff does not believe that the proposed drive-through would substantially affect the adjacent commercial properties.</p> <p><b>Criterion 3. Will the strict application of the terms of the Unified Development Ordinance constitute a practical difficulty if applied to the property for which the variance is sought?</b></p> <p><i>Petitioner Response: “The building location and pick-up window is required to be 60 feet from the property line limiting the stacking, parking, and circulation of the proposed development. Meeting the Town of Avon code as written would increase the potential for traffic issues as vehicles come in and off US 36.”</i></p> <p>Staff does not agree that the UDO’s sixty (60)-foot front building setback requirement creates a practical difficulty because alternate designs could be used to meet the ordinance. As one example, the drive-through queue and the off-street parking could essentially switch places with drive-through transactions completed on the east side of the building. Additionally, since this “outlot” is being created out of a parcel that has off-street parking far exceeding the requirements of the ordinance, the “outlot” could be made larger, if necessary, to the meet the development standards of the ordinance.</p> <p><b>CONDITIONS</b> Per IC 36-7-4-918.5, the Board may impose reasonable conditions as a part of the Board’s approval.</p>
<b>L. RECOMMENDATION</b>	Staff recommends <b>denial</b> of this variance request.



## Exhibit A – Location / Zoning Map









## Exhibit D – Site Photos



**1) View of site facing east from northwest corner of proposed “outlot”**



**2) View of site facing west from northeast corner of proposed “outlot”**



## Exhibit D – Site Photos



**3) View from proposed "outlot" facing north from Lowe's parking lot.**



**4) View from proposed "outlot" facing south to Lowe's parking lot.**



## Exhibit D – Site Photos



5) View of Lowe's property facing east from Vista Park Way.