

QUESTION 10 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK  
IV OR IN SOFTEST ANSWER SCREEN 10

Delta Development owns property in Dakota City, Michigan, on which it plans to build a Burger Fool fast-food restaurant. At the time Delta bought the property, it had sat vacant for more than five years and was in poor condition.

Delta's property is in a C-3 zoning district, which allows fast-food restaurants provided that "[n]o freestanding fast-food restaurant shall be located within 500 feet of an existing fast-food restaurant."

Pax Enterprises owns a neighboring fast-food restaurant, Big Belly Burger, located just north of Delta's property on the same side of the street. Due to the size of Delta's lot, its proposed restaurant would be located only 280 feet from Pax's restaurant. Because it is not possible to move the building any further away without violating other setback requirements, Delta sought and obtained a zoning variance from the Dakota City Planning Commission. Under the Dakota City zoning ordinance, the planning commission is authorized to grant a variance whenever there are "practical difficulties" in complying with the "strict letter of the zoning ordinance," so long as "public safety is secured" and "substantial justice done."

In granting Delta's requested variance, the planning commission considered the fact that there were other instances in the city where fast-food restaurants were less than 500 feet apart, with no reported problems. The commission also observed that (1) the property had been unproductive for some time, (2) the proposed restaurant was located on a major thoroughfare designed for high-traffic volume, and (3) the building was set back as far as possible and situated to ensure efficient drive-through operations.

After receiving its variance, Delta cleared trees from the property, obtained a building permit, installed underground utilities, and began construction of the building. Delta also entered into various subcontracts, making deposits in excess of \$300,000, for such things as signage, drive-through menu boards, kitchen equipment, and interior finishing.

Two months after construction began, Pax filed suit in Michigan in the Fairfield County circuit court seeking a

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preliminary injunction. Pax claims that the planning commission should have enforced the 500-foot requirement and that if Delta is allowed to open its restaurant, Pax's revenues will decline, its property will lose value, and it will eventually go out of business.

**Discuss the requirements for obtaining preliminary injunctive relief under Michigan law and how the court should rule on Pax's motion in light of those requirements.**