



City of Oakbrook Terrace  
Planning & Zoning Commission Meeting  
Tuesday, May 19, 2015  
Case #16-1

The Planning and Zoning meeting was called to order by Chairman Noble at 6:00 P.M.

Present: Chairman Noble, Commissioner's Schneider, Ventura, Donoval, Smurawski  
Absent: Myszkowski  
Also Present: Mihaela Dragan, Building and Zoning Administrator, Peter Pacione, City Attorney, Janice Coglianesse, Building and Zoning / Planning and Zoning Secretary, Mark Daniel, of Daniel Law Office, Lee Fry of Butterfield Point, LLC, Anthony Di Mauro, of Butterfield Point, LLC, and Clifford Pixler of Intech Consultants, Inc.

Chairman Noble said the first order of business was to approve the minutes of April 21, 2015, the request by Millhurst Charhouse & Banquets, Inc. to approve an amendment to the previously approved site plan and a request for variations from the Zoning Ordinance of the City of Oakbrook Terrace ("Zoning Ordinance").

Chairman Noble asked for any discussion from the Commissioners; there was none.

Chairman Noble asked for a motion.

MOTION

Commissioner Ventura entertained a motion to approve the minutes of April 21, 2015, the request by Millhurst Charhouse & Banquets, Inc. to approve an amendment to the previously approved site plan and a request for variations from the Zoning Ordinance of the City of Oakbrook Terrace ("Zoning Ordinance").

Commissioner Donoval seconded the motion.

Ayes: Chairman Noble, Schneider, Ventura, Donoval, Smurawski  
Nays: None  
Absent: Myszkowski

MOTION PASSED UNANIMOUSLY WITH A VOICE VOTE OF 5-0.

Chairman Noble said the second order of business was, to consider the request by Butterfield Point, LLC ("Petitioner"), and asked to waive the entire reading due to the large extent of the reading to approve special uses authorized under Section 156.024(B) of the Zoning Ordinance and variations authorized under 156.023(B) of the Zoning Ordinance of the City of Oakbrook Terrace (the "Zoning Ordinance") as follows:

1. A special use for a multi-tenant building with (a) an above-ground service facility situated in the buildable area between the building and the front yard line (authorized under Section 156.051(D)(4) and Section 156.051(H)(3)), (b) for a restaurant in the south unit with a drive-through window and patio seating area (authorized under Section 156.087(A)(2) and Section 156.087(C)(34)) and (c) for a restaurant with operations on a patio dining area accessory to the north unit (authorized under Section 156.087(A)(2)).
2. A variation from Section 156.035(B), Section 156.045(B)(10) and Section 156.045(B)(35) in order to permit the service/trash enclosure with a south landscape wall in the east front yard.
3. A variation from Section 156.039(B)(1) prohibiting fences in the required east front yard in order to permit a gated masonry service/trash enclosure in the east front yard (southeast corner of the property).
4. A variation from Section 156.043(C)(2) prohibiting signs from obstructing drive-in-orders to permit a suspended height restriction sign at the entry to the drive through.
5. A variation from Section 156.043(C)(5) limiting the height of monument and pole signs to nine (9) feet in order to permit (a) a monument sign along the Midwest Road frontage not taller than twelve (12) feet, and (b) a pole sign at the entry to the drive through not taller than eleven (11) feet.
6. A variation from Section 156.051(D)(5) (prohibiting more than one above ground service facility within 250 feet of another) and Section 156.051(F) (requiring a landscape buffer) in order to permit an above ground service facility within 250 feet of another existing above ground service facility according to landscape plans on file with the City.
7. A variation from Section 156.087(B) (54) which limits the dining area on patios to 25% of the interior dining area in order to permit outdoor dining on two patios with (a) the dining area of the north patio not to exceed 306 feet or 35% of the interior dining area of the north unit and (b) the collective patio dining area not to exceed 406 feet or 32% of the combined

interior dining areas in the north and south units.

8. A variation from Section 156.087(G)(1) requiring minimum east and north front yards of not less than forty (40) feet and minimum front yards to pavement of ten (10) feet in order to permit (a) the location of the service/trash enclosure nine (9) feet west of the east front yard lot line and paved areas for the trash enclosure eight (8) feet west of the east front lot line) and (b) rows of parking spaces on the east, northeast and north front lot lines five (5) feet from these lot lines.
9. A variation from Section 156.087(G)(2) requiring a minimum west side yard to pavement of five (5) feet in order to permit the drive-through lane to be situated not closer than two (2) feet east of the west side yard.
10. A variation from Section 156.087(G)(3) requiring a minimum south rear yard of not less than forty (40) feet and a minimum rear yard to pavement of five (5) feet in order to permit (a) the location of the service/trash enclosure two (2) feet north of the rear lot line, (b) the location of the building not closer than 22.5 feet north of the rear lot line, (c) the location of the menu board not closer than 22.5 feet north of the rear lot line, (d) paved areas for (i) the trash enclosure (1.5) feet north of the rear lot line), (ii) drive through (2 feet north of the rear lot line), (iii) loading zone (2 feet north of the rear lot line) and (iv) fire lane (2 feet north of the rear lot line).
11. A variation from Section 156.087(G)(4) limiting the use of a common access drive to one-half of a side or rear yard requirement in order to permit (a) the location of the drive-through lane on the west side of the building to occupy an area that is as close as two (2) feet to the west lot line and extends across the side yard required by ordinance and (b) the drive-through lane and loading zone area on the south side of the building to occupy an area that is as close as two (2) feet to the south lot line.
12. A variation from Section 156.087(I), Section 156.049(H) and Section 156.049(I) in order to permit parking lot and general landscaping relief with the required landscaping reflected in the landscape plan on file with the City while (a) allowing a postponement of work in the area along the southwest corner lot lines such that plantings may be deferred until a light pole serving the property to the south is removed and the area restored, (b) allowing a reduction of plantings on the west side lot line as may be necessitated by final site engineering, and (c) allowing a reduction in interior landscaping and screening by as much as one (1) interior tree and screening required under Section 156.035(C)(4)(b) in order to permit a generator near the above ground service facility at the northwest corner of the building with the screening, fencing and landscaping as reflected in plans on file with the City.

13. A variation from Section 156.101(E) limiting widths of commercial district driveways across public property to a width of 35 feet at the right-of-way line and limiting driveway flares in a commercial district to five feet on each side of the driveways in order to permit (a) two existing driveways to remain substantially as constructed with widths not to exceed 36.5 feet between the faces of curbs, (b) driveway flares at the north driveway not to exceed 16 feet (west) and 22 feet (east), and (c) driveway flares at the east driveway not to exceed 9 feet (north) and 13 feet (south).
14. Pursuant to Section 156.023(B), such other variations and authorizations as may be required to permit the development of the use and improvements according to the plans on file with the City and as these plans may be amended through the City Council's consideration of this request.

Chairman Noble asked all those who would be speaking this evening to please stand up and be sworn in.

Attorney Mark Daniel, Lee Fry, Anthony Di Mauro, and Clifford Pixzler were sworn in by Janice Coglianesse, Building and Zoning / Planning and Zoning Secretary.

Attorney Daniel took the floor and stated that the Butterfield Point, LLC, with authority from the owner of the Subject Property, Angel Associates, LP, respectfully seeks various ordinances and resolutions of the City Council to approve a special use permit and variations for property commonly known as 17W615 Butterfield Road, Oakbrook Terrace, DuPage County, Illinois (Permanent Index Number 06-22-301-064) (referred to herein as the "Subject Property"). Witnesses will present evidence supporting the application and be available for examination and questions from the Planning and Zoning Commission. This application relates to zoning entitlements for the southwest corner of Butterfield Road and Midwest Road. Approval of the zoning relief will permit the redevelopment of a former gasoline service station and car wash to a five-unit mixed commercial center comprised of approximately 9,688 square feet, with a drive through serving Unit 1 (south end unit), two dining patios (for Unit 1 and Unit 5 (south and north end units) and a redeveloped exterior that includes sufficient parking, loading and landscaping for the intended use. Applicant seeks an ordinance approving special uses and variations. Special use authorization will allow the construction of a five-unit multi-tenant building with the following elements approved under Section 156.024(B): (a) an above-ground service facility situated in the buildable area between the building and the front yard line (authorized under Section 156.051(D)(4) and Section 156.051(H)(3)); (b) a restaurant in the south Unit 1 with a drive-through window and patio seating area (authorized under Section 156.087(A)(2) and Section 156.087(C)(34)); and (c) a restaurant

with operations on a patio dining area accessory to the north unit (authorized under Section 156.087(A)(2)). In light of the City's recent amendment to add patios to its permitted use list in Section 156.087(B), the patio aspects of the special use are more technical in nature inasmuch as the patios are clearly permitted uses.

Attorney Daniel stated that the variations requested under Section 156.023(B) involve relief from the patio area restriction for the north Unit 5 patio, yard requirements and paved area limitations, the use of yards, sign height (for a monument sign and a drive-through height restriction), and a handful of more technical development controls to manage existing conditions. The hardship supporting the variations generally arises from a combination of lot configuration, lot location and existing conditions. Practical difficulty arises from various planning and design matters such as grade changes in the southwest portion of the property, the impact of placing the building to the back of the parcel (an effort that also improves neighborhood commercial visibility) and the effort to reasonably adapt a former gasoline service station site to a viable commercial use. Following decades of use as a gasoline service station and as a service station with a car wash, the Subject Property is no longer suitable for use as a gasoline service station. Simply put, larger sites with more opportunity draw these types of uses with a car wash, full convenience store and small food provider. Eventually, the improvements were demolished, tanks were removed.

Attorney Daniel commented at one time, the current owner intended to redevelop the property for gasoline service station purposes, but the project did not go forward. Petitioner is now the contract purchaser of the Subject Property and intends to construct a five-unit, single level commercial structure that will be capable of hosting three restaurants (in its end units and in Unit 2) and retail or service uses in the middle units (Units 2-4). The redevelopment calls for parking on the north and east sides of the Subject Property, a drive through on the west and south sides of the building, patios on the north face and southeast corner of the building, tenant signage and ample landscaping. Due to the configuration, location and condition of the Subject Property, redevelopment cannot possibly meet all standards of the Zoning Ordinance (the Subject Property is of an irregular shape and has been the subject of takings for the improvement of Butterfield Road (IDOT) and Midwest Road (DuDOT)). Although one might reactively conclude that the pressure to develop the building to the south and west sides of the Subject Property would leave ample space for yards/setbacks, it is actually the angle of the corner on this side of the intersection that causes a larger than normal drive aisle in order to preserve parking opportunity and provide a safe drive aisle. Additionally, despite an excellent location, the adjacent roadway speeds

and street design contributes to hardship supporting variations that will benefit the public as much as the Applicant and its tenants.

Attorney Daniel continued to state that the redevelopment will have street access at one location along the west side of Midwest Road and another location on the south side of Butterfield Road. This will assist the City in its continued effort to improve the commercial presence at nodes where such uses are appropriate. Considering prior operations on the Subject Property, the active use area upon redevelopment will be slightly smaller than before, and the site will offer landscape buffering that has been non-existent since at least the 1960's. Applicant will reduce the number of entrances along Midwest Road from three to one while preserving the existing southernmost Midwest Road entrance and the Butterfield Road entrance at existing widths. The effort to consolidate entrances requires a consistent drive aisle between the two entrances and forces the building back to a point where the loading and enclosure for waste services will best be situated south and southeast of the building. Unit 1, the south end unit with a drive-through, is intended for a coffee and pastry restaurant +/- 2,022 gross square feet (400-600 square feet for dining) and a neighboring Unit 2 commercial space offering +/-1,620 gross square feet for restaurant, retail or service use. Unit 3 (+/-1,620 gross square feet) and Unit 4 (+/-1,701 gross square feet) are designed for retail or service use. On the north end, Unit 5 (+/-2,587 gross square feet, 875-950 square feet for dining, 100 square feet for bar) is designed for a restaurant that features a wine bar (beer and liquor will also be offered). Patio dining will be seasonal, with the southeast patio likely hosting eight (8) seats at two (2) tables and the north patio likely hosting twenty (20) seats at five (5) tables. The north patio will likely have a collection of standees on a frequent basis. Alcohol service is intended for the north patio, but the southeast patio is not intended for such use. There will be no patio use in front of Units 2-4. With two frontages, the Subject Property may rely on two monument signs and up to 402 square feet of overall signage. Under the Zoning Ordinance, monument signs at the Subject Property are limited to a height of nine (9) feet, but the City has recognized that signage at greater heights is necessary in the immediate area in order to effectively and safely draw traffic from abutting streets. Applicant seeks a variation for the height of one of its freestanding signs to permit the corner monument sign at a height measured from grade at the sign base not to exceed twelve (12) feet. The taller sign will serve to identify the uses on site at a point where a driver will more readily identify them without posing a hazard to others (such as a driver abruptly slowing to access the Subject Property or misidentifying a driveway).

Attorney Daniel stated that the Subject Property has an area of 41,396 square feet (0.95 acres). It abuts a ditch and an area detention facility to the west and Wendy's to the south. One of Wendy's light poles is situated

on the Subject Property (this is addressed in relation to landscape variations in order to avoid inconvenience to Wendy's). Other than a pump station, there is no building on the south side of Butterfield Road east of the Subject Property. The north face of the Terrace Oaks office building is roughly fifty feet south of the Subject Property's extended south property line. There are at least five above ground service facilities in the immediate area (southwest, north, northeast and east), and some of these are within 250 feet of the proposed facility in the landscaped area at the northwest corner of the proposed building. The Subject Property has three full entrances: one along Butterfield Road and two along Midwest Road (both slightly wider than 35 feet). Existing driveway tapers exceed the permissible width. Additionally, a right-turn in lies immediately south of the south line of Butterfield Road and along Midwest Road. The only restricted point of ingress and egress is the right turn in immediately south of the intersection. The proposal for the elimination of the right turn in and the middle entrance point along Midwest Road offers a significant improvement in safety inasmuch as the only Midwest Road entrance will now be roughly 200 feet south of the intersection. The Subject Property lies in the City's most productive B-3 General Retail zoning district. With the exception of the Shell gasoline service station (Village of Oak Brook, B-3 General Retail zoning) and Terrace Oaks (City B-2 Professional Office), the entire block is zoned B-3 General Retail. Directly north and northeast of the Subject Property lie three developments under the City's B-3 General Retail classification. East of the Subject Property is an arm of the Village of Oak Brook's largest B-3 General Business zoning district. The City's residential core (zoned R-1 Single Family Detached) lies 420 feet east of the Subject Property and directly east of the mix of office and retail uses on the east side of Midwest Road. The nearest residential building at Versailles is at least 500 feet west of the proposed building.

Attorney Daniel stated that the proposed building will be roughly 100 feet from the centerline of each abutting street. The speed limit is 40 m.p.h. along Butterfield Road and 35 m.p.h. along Midwest Road (with more curb cuts along Butterfield Road). The recent developments on the northwest corner (excluding the Jiffy Lube) include freestanding signs that were necessarily taller than allowed by ordinance; many freestanding signs along Butterfield Road exceed nine (9) feet. The proposed freestanding sign height of twelve (12) feet falls well within the established area signage and is quite shorter than signs recently approved by the City. Since the apparent initiation of use by American Oil Company in the early 1960's, the Subject Property has not been well-landscaped. With reasonable relief from the City's landscape requirements (interior and perimeter landscaping) the development will still offer attractive landscaping with prominent features that have not existed on site in decades. Applicant proposes the more significant landscape features for areas in the public view. The matter of seasonal outdoor dining will require

attention not only to clean operations but to noise. The patios will not be in a direct line of sight from Terrace Oaks and they are sufficiently removed from the City's residential areas that noise will not be an issue. Loudspeakers will not be used in patio operations, but ambient or other music will be an option for both patios. The noise from traffic and the bays at Jiffy Lube will continue to dominate the area. There will be no disturbance caused by the eight diners on the southeast patio or the twenty seated diners and a limited number of standing customers on the north patio. Both patios have sufficient separation from traffic movements and, by design; they are dedicated to the uses to which they are connected. The drive through will draw vehicles around the west side of the building to a window on the south face of the building—much in the same fashion as Wendy's to the south. The orientation of the menu board and ordering station will be similar to that which has prevailed on the Wendy's parcel, only more remote from adjacent uses. The loading zone depicted east of the window will not interfere with drive through operations, though caution will be utilized in accessing the loading zone. Loading operations will typically occur during low-volume hours and before units open for business. As the City has been aware, loading for the intended uses will typically occur during non-business hours or low-volume hours and trucks will frequently occupy a portion of a drive aisle for deliveries that require only limited time.

Attorney Daniel noted that none of the tenants should require trucks in excess of 35 feet in length. Most deliveries will occur from two-ton trucks or trucks of a similar classification. Waste hauling vehicles will likely access the Subject Property early in the day and temporarily back to a point near the walled refuse storage area and pull out. Waste operations occupy roughly four minutes of time on the date when service is provided. Applicant asks the City to approve an ordinance granting a special use for the restaurant with a drive through. The drive-through offers at least eleven (11) vehicle stacking spaces. Four (4) of these spaces are planned between the menu board and the window. There will be a window at the southeast corner of the south building face and a gated fence will separate the southeast patio dining area from drive through operations. Additionally, the width of the drive on the south side of the building expands for several purposes. Not only will the wider drive offer space for loading, a fire lane and access to the dumpsters, but it will also allow a vehicle that places a special order or an order that cannot be immediately met at the drive through to pull forward and utilize a parking space. The planning for the drive through exceeds that of other drive through operations in the area. The proposal to almost fully screen the west property line further screens the drive-through. Immediately to the south of the drive through window lie the drive aisle and the Wendy's parking lot. A ditch, detention pond and wooded area lie between Terrace Oaks and the drive through.

Attorney Daniel stated lastly, the Applicant requires a special use in order to locate an above ground service facility in the buildable area between the face of the building and the north front lot line. The property has two front yards and another above ground service facility west of the Wendy's building and a pump station near the detention pond already create visual distractions west and south of the property. Additionally, there are a number of above-ground service facilities situated near Midwest Road east and northeast of the property. Use of the buildable area in this instance not only avoids inefficiency, but it also helps to avoid a cluttered appearance along the abutting streets. In order to proceed with the redevelopment of the Subject Property, Applicant seeks variations from a handful of the City's B-3 zoning district regulations. One significant basis for each of these variations arises from the shape and location of the Subject Property. Still other grounds relate to practical difficulties encountered if yards were strictly enforced. In the absence of variations from these and the other regulations, Applicant would face practical difficulty and particular hardship (these are alternative standards). Specifically, Applicant seeks relief from yard a paved area regulations. At five (5) feet from the north and east lot lines, paved areas in the front yard will be located closer than ten (10) feet from the front lot lines (Section 156.087(G)(1)). At a few as two (2) feet, paved areas will be closer than five (5) feet to the west and south lot lines. (Section 156.087(G)(2) and (Section 156.087(G)(3)) situated roughly 25-26 feet north of the rear lot line, the building will be situated within forty (40) feet from the rear lot line. (Section 156.087(G)(3)) the south uncovered patio will be situated in the rear yard, and the masonry trash enclosure will be situated in the east front yard (Section 156.087(G)(1)). Additionally, with relief from Section 156.087(G)(4), the drive through lane (if viewed as a common access drive) will serve as more than one-half of a side and rear yard requirement. The regulations concerning structures in yards also play a role and Applicant seeks relief from Section 156.035(B), in the alternative, to permit the construction of fences and walls for uncovered improvements to accommodate (a) the southeast dining patio, (b) loading facilities and trash receptacles within enclosures and at the locations depicted in the front yard (east) and the rear yard (south).

Attorney Daniel stated that the Applicant seeks relief from the perimeter and interior landscaping requirements of Sections 156.087(I), 156.049(H) and 156.049(I). The variation related to the two trees and some landscaping at the southwest corner of the parcel seeks to allow the continuation of an encroachment by permission from the property to the south for one of Wendy's parking lot light poles. Once the light pole is removed, Applicant will plant trees and landscaping that could not have been planted with the light pole in place. Applicant also seeks flexibility along the west lot line where a retaining wall may, during final engineering, be extended slightly north. Finally, Applicant seeks

permission to avoid the installation of landscaping and plantings at the northwest corner of the building in order to allow for a fenced and screened transformer and generator. Without the generator, encroachment or retaining wall, the site will meet all perimeter points requirements and meet the interior tree planting requirement (See Section 156.049(H) and 156.049(I)). The extension of the retaining wall might reasonably be expected to cause the loss of six (6) 36" shrubs and the fenced area at the northwest corner of the building could cause the loss of an interior tree. Finally, rather than avoid the two (2) trees in the southwest corner, Applicant seeks only to defer planting as necessary to account for the light pole. This approval will avoid imposing difficulty and hardship on the Applicant inasmuch as Applicant's plans call for more landscaping than has ever existed on the Subject Property.

Attorney Daniel pointed out that the Applicant proposes two patios (now permitted uses under the Zoning Ordinance). The southeast patio will host not more than 100 square feet of dining area and the north patio will host not more than 306 feet of dining area. A variation is required in order to allow for the north patio at an increased percentage (35%) of interior dining area in Unit 5. Applicant will not have patios for the middle units and the aggregate patio area will not exceed 406 square feet or 32% of the interior dining area of Unit 1 and Unit 5. The Unit 1 patio will likely continue to rely on two tables that seat eight (8) people, but the configuration of tables and table sizes will remain flexible. The Unit 5 patio is planned for five (5) four-person round tables, but the configuration of tables and table sizes will remain flexible. The patios will feature gated temporary/emergency access within metal fences that are capable of supporting ground planters and hanging planters. The City has authorized patio dining in an area greater than 25% of the interior dining area on a handful of occasions, particularly when the patio is intended to be a feature patio such as the patio for Unit 5 which is designed to allow the use of added space that results from the lot shape. The best examples in the vicinity are the Redstone American Grill patio which has been reviewed and approved for different areas above and beyond 25% of its interior dining area. The City has historically authorized patio dining for its restaurants. (See Ordinance Nos. 02-18 (Case No. 02-07, June 4, 2002), 04-21, 11-17) two recent patios with an area in excess of 25% of the interior dining area were recently approved for the redevelopment of the former Pompeii site and for Specialty's.

Attorney Daniel commented that the high demand for workday and weekend services in the area drives the request for a special use for the drive through. There are relatively few drive through operations when one considers the local demand. The drive through configuration is similar to the Wendy's location directly to the south and it is situated on the apparent rear faces of the building. It will not be unreasonably detrimental

to or endanger the public health, safety, moral and general welfare. Indeed, this is true within the Subject Property where the patios will be physically separated from the drive through with no pedestrian paths planned for the area of either the entrance to or exit from the drive through. The north patio is designed for the service of alcohol in accord with the local liquor control ordinance. The southeast patio is not designed for the consumption of alcohol by patrons. While the southeast patio is intended for more passive use than the north patio, the north patio will still confine its operations in a fashion that affords the City confidence that noise or other effects from the use of the patio will not have a detrimental impact on any surrounding use. The patio is situated substantially within the line of the north face of the building, shielded or removed by distance from uses to the south, east and west and intended to afford a style of service that allows patrons to enjoy a meal outdoors with a glass of wine or other drink. Outdoor speakers will be situated so as to confine noise to the Subject Property. Planned operations avoid a risk to injury to properties in the immediate vicinity. The substantial stacking (11 or more cars planned when only 6 are required) should avoid impediments to the use of adjacent roads and to the redevelopment or maintenance of nearby properties. Adequate utilities (in this instance Applicant will request approval of the use of Oak Brook water) have long existed at the Subject Property and the use will otherwise conform to the ordinances of the City, except where reasonably modified as discussed below.

Attorney Daniel noted that the Applicant's signage will meet the codes in all respects except for two. Applicant seeks minimal relief in order to allow a traffic control sign at the entry to its drive through. The height of this pole and its extension will not exceed eleven (11) feet, and it will be designed so that the height is only that which is necessary to suspend a height restriction over the drive through entry. Applicant also seeks a variation from the nine (9) foot height limit for freestanding signs in order to allow a twelve foot tall monument sign at the northeast corner of the Subject Property. The area of the taller sign falls well within the allowable area for the sign and the sign is a single-faced monument sign that will feature the project name and the name of the City at its highest point. This will increase visibility along the wide and irregularly-shaped intersection of Butterfield Road and Midwest/Summit Road. The circumstances relating to signage are not self-created inasmuch as the Subject Property has a less-than-ninety-degree angle at its corner, sits on the southwest side of a broad intersection that is 5-6 lanes across excluding the non-paved right-of-way, and sits amid other parcels with signs that are taller than nine (9) feet, indeed taller than twelve (12) feet. Much taller signage has traditionally served the Subject Property. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located because the site will lose its identity among other uses and patrons will

not be drawn to appropriate driveways and parking areas in the fashion that will best avoid confusion or interruption of existing traffic patterns. Within the frontages and blocks near this intersection, the need for additional more prominent signage is unique and fits within the essential character of the locality. These circumstances are particularly unique to the Subject Property. Lastly, the limitation of sign height variations to a traffic restriction device and one single-faced sign above the height limit of nine (9) feet indicates that the Applicant seeks only that relief which is necessary to avoid hardship. Applicant placed the building deep into the west and south portions of the Subject Property as a result of its configuration and the angle of the corner of the property at the intersection. Doing so affords the Subject Property its only opportunity for a reasonable parking lot design. The building, a portion of the drive through, the masonry service enclosure and the southeast patio will be situated in the 40-foot rear yard and southern portion of the 40-foot Midwest Road front yard. Operations in these yards will not be new to the area inasmuch as Wendy's operations situated directly to the south include a drive through, waste enclosure and outdoor dining opportunity—all of which are within view of the Subject Property. The south face of the building will remain at least 24 feet north of the south lot line and the screened trash enclosure close to the south lot line will be comprised of masonry that matches the building. Applicant proposes paved areas that will be close to all of its lot lines and it proposes a drive through served by a paved area that occupies more than 50% of the rear yard. If strictly enforced in this instance, the paved area regulations would constrain site development by pinching the interior access drive—possibly limiting access for delivery vehicles and fire and life safety vehicles. Moreover, the proposal for the north and east lot lines still maintains five feet that will not be paved. The west lot line will feature an unpaved area that is not less than two (2) feet wide. This will allow plantings, but a larger unpaved area is not necessary at this location because the ditch and Terrace Oaks' detention facility have added ample green space in this area. On the south side of the property, the preserved landscape area will be not less than two (2) feet wide.

Attorney Daniel stated in the landscape plan, Applicant provides for all of the required landscaping along the perimeter of the Subject Property. However, this landscaping may be the subject of adjustments during permitted. First, until after final engineering and site work has initiated, Applicant will not know how the tall Wendy's light pole is installed on the Subject Property, and this may make planting as many as two trees in the southwest corner impossible. Second, Applicant will not know the exact location of the northern reach of the retaining wall on the west side of the building until final engineering is complete. Third, Applicant proposes to reserve an area at the northwest corner of the building for a generator and this will require some relief from landscaping and screening requirements.

Applicant proposes to merely defer the planting of trees in the southwest corner until such time as the Wendy's light pole is removed. This avoids a battle and inconvenience to Wendy's which has been an apparent permissive user of this space for some time now. The commitment to plant such trees once the pole is removed is proof that the Applicant intends to obtain only the minimum relief necessary to accomplish avoidance of the hardship. Applicant proposes a retaining wall for the west line of the drive through, extending north from the southwest corner, and this wall is expected to be situated where depicted in the site plan and preliminary engineering. However, as the City and Applicant move closer to permitting for the development, final engineering approval may require an adjustment to increase the northern extent of this retaining wall.

The landscaping variations relate to the longstanding shape of the Subject Property, the grades and elevation of the Subject Property and the encroaching tall light pole that services Wendy's. Management of these conditions which are not attributable to the owner or the applicant requires minimal flexibility while attaining the objectives of the City's zoning regulations. Additionally, even though Applicant proposes to consolidate the three Midwest Road entrances into one entrance, Applicant will maintain the existing west and south driveways. Applicant requires variations in order to maintain drives that are only slightly wider than allowed by code and in order to avoid a complete redesign of the right-of-way improvements at the preserved entrances which have tapers that are wider than permitted by code.

Attorney Daniel noted that the City allows variations when an owner faces particular hardship. The Subject Property is unique due to its shape, size, and location. Particular hardship extends to include the topography of the site in relation to the drive through and abutting parcels. In the event that the City denies the variations, Applicant will face particular hardship because the Applicant would have no viable commercial development adapted to code standards at the Subject Property. While Applicant could raise the many others who have received yard and paved area variations, the simple fact of this case is that the shape of the property forces the building to the rear where the need for variations is most intense. Applicant's proposed paved area variations are comparable to those that are apparent on the northeast corner of the intersection. Compliance with the yard and paved area regulations would cause increased construction expense and the loss of at least two units within the commercial development. Much deeper impacts are possible because the parking alignment would change substantially. The City's enforcement and application of its sign regulations reflects the importance of proper signage on parcels with multiple frontages, particularly in the relevant B-3 zoning district and in a commercial environment, where multiple freestanding signs and larger building signs are often justified. There are multiple signs visible from the Subject Property that are taller than nine (9) feet (to the

northwest (1), north (2) and northeast (1)). The particular hardship Owner faces in allowing reasonable property and tenant identification is significant inasmuch as insufficient tenant and site identification can be a disincentive to prospective and existing tenants. The hardship in being unable to install an effective height restriction sign as a traffic control device is quite obvious when the maximum height sign will be hung to a lower sign elevation that is slightly above 8'6", yet the sign itself, the pole and the chains suspending the sign will exceed six inches above the bottom of the suspended sign. Hardship relating to the monument sign arises from the configuration, location and depth of the property from the busy intersection. The foregoing hardship discussion also relates to practical difficulty. Even in the absence of particular hardship, the City recognizes that variations are appropriate in cases where practical difficulties arise. The practical difficulty analysis allows the City to adopt a preference of setting the building back and allowing development in a fashion that provides for better views along and across Butterfield Road and Midwest Road. Moreover, the practical difficulty in situating and screening the masonry trash enclosure (southeast corner of the property) and the above ground service facility and generator (northwest corner of the building) at locations in or near the south yard lines or the west lot lines is also quite apparent in that these facilities would constrain the area of the commercial units to a point where the site would be unattractive to most tenants. The Planning and Zoning Commission and the City Council have recognized efforts to preserve existing conditions relating to grade/topography and relating to street access and it has also recognized practical difficulty in relation to pre-existing light poles and the avoidance of a dispute among neighbors. Lastly, practical difficulty in planning for an appropriately-sized and properly-defined outdoor patio dining area leads to the particulars for the north patio area. This area cannot exceed 306 feet or 35% of the interior dining area of Unit 5. In addition to creating a clear development constraint on the north patio, the requested relief also allows the efficient use of the area north of the building so that it appears as a vibrant location within the City rather than a location of limited availability to residents and visitors during its seasonal operations. The City has recognized the value in larger patios quite often, but the request arises in order to avoid waste of buildable area between the north face and the irregular front yard line along Butterfield. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located. Signage is always a significant decision point for any prospective tenant or property owner. The hardship and difficulty described above functionally limit the Subject Property and its profitability because visibility is an issue for all tenants and for drivers. The resulting limitations affect many aspects of site operations, including: (a) planning for the consolidated internal traffic between two entrances rather than four; (b) assessing when and how to enter the property from the right-of-way; and

(c) safety for those using the public rights of way. Property and tenant identity have been recognized as key elements of ownership and tenancy, and shortcomings in signage often lead to demands for concessions on other economic terms.

Attorney Daniel continued to state that the current owner previously attempted rehabilitate and redevelop the Subject Property for service station purposes but the only plans that have good chance of consumer and economic success will be those that take the form and substance of the proposal in this instance. There can be no reasonable return if the Applicant loses at least two tenant spaces due to yard, screening and paved area regulations that have purposes served in so many other ways within the site planning and landscaping design of the project. The plight of the owner is due to unique circumstances not of its own creation. Owner and Applicant had no role in the creation of the Subject Property—a parcel that dates back to an old assessment plat—or the laying out of the abutting streets and their expansion. The maximization of opportunity at the Subject Property is not a decision that creates plight but rather is the result of every landowner's right to reasonably improve property. The positioning of buildings to draw tenants cannot be viewed as creating the plight relating to yards, accessory structures, building location, parking, loading and signage because each owner of land has a reasonable expectation that appropriate planning will be available under the local Zoning Ordinance. In this instance, it is also safer to conclude that the placement of the building to afford more landscaping and open space on the north and east arises from circumstances related to public benefit as well as the Applicant's intentions. This circumstance is unique when compared to most other commercial properties in town. There is no known parcel that is similarly-situated to the Subject Property and does not appear to have yard, paved area or sign relief. The variation, if granted, will not alter the essential character of the locality. The locality in this instance is commercial. Essential characteristics of the area include appropriate signage, efficient management of site access along routes with 35-40 m.p.h. speed limits through proper signage, and access to properties while avoiding multiple entrances onto Midwest Road. If granted, the variations will benefit the locality by efficiently drawing traffic into the Subject Property and by preserving the views along and over the abutting rights of way. The proposal sets the building and improvements at locations that do not alter the appearance intended for this B-3 corridor.

Attorney Daniel stated, lastly, the signage will support the EAV in the City by incentivizing businesses to occupy a more appropriately identified commercial development. The modernization of the Subject Property and the improvement of site access through reasonable signage will support occupancy and necessarily have a positive impact on taxing bodies. The maintenance of occupancies at the Subject Property also serves area

businesses. Each design element related to a variation reflects that Applicant seeks the minimum relief necessary. The Applicant greatly appreciates the City's interest in redevelopment of the Subject Property. The Applicant has proposed a development that appropriately maintains views across the intersection and offers significant landscaping that has never before existed at the Subject Property. The special use for a building with a drive through and the other improvements will serve the area well. Development according to the variations requested will not change the character of the area or cause any concern over public safety or general welfare. The relief serves to avoid hardship and practical difficulty relating to the Subject Property while also affording the City and its residents and visitors certain benefits such as better signage, improved landscaping in front of the building, consolidated access and open views at an important intersection in town. The Applicant requests that the Planning and Zoning Commission recommend the relief sought on all accounts. If the Planning and Zoning Commission has a concern for any single aspect of the project, Applicant requests that the members isolate the particular relief sought and consider it distinctly so that the City Council is clearly aware of the basis for the recommendation.

Chairman Noble asked if there were any comments from Building and Zoning Administrator Dragan.

Building and Zoning Administrator Dragan took the floor and stated that Attorney Daniel made a very detailed presentation of the proposed development. In the summary, the Applicant request includes special use permits, variations from the Zoning Code regulations with respect to yards, fences, landscaping, driveway width and flares, and signage. Building and Zoning Administrator Dragan stated that the Commission received plan review comments from the City Engineer, Building Inspector, and Assistant Fire Chief as well as the Applicant's correspondence relating to the Staff comments. Building Inspector reviewed the Applicant's response, and at this time, he has no objections to a drive-through on a corner lot; there were no comments from the Chief of Police or the Public Service Director. The Applicant concurs with the comments received from the City Engineer and the Oakbrook Terrace Fire District, and indicated that all the issues will be addressed during the building permit process.

Chairman Noble asked if there were going to be too many units for this particular lot.

Building and Zoning Administrator Dragan commented that Attorney Daniel explained the hardship of the property and the Applicant is proposing a total of five (5) units with a building of 10,000 square feet; however the property is zoned as a B-3 General Retail District, which means that it could be a single tenant building or could be five (5) tenants. Building and Zoning

Administrator Dragan pointed out that they are actually here to approve the foot-print of the building, location of the building, building elevation, and landscaping. When the owner is ready to lease the building, there could be three (3) tenants or a different number of tenants; however, what they thought would be best for them is a total of five (5) tenants.

Chairman Noble asked based on Building and Zoning Administrator Dragan's calculation if there would be enough parking.

Building and Zoning Administrator Dragan said there would be as Attorney Daniel had previously indicated in his presentation. There are forty-two (42) total proposed parking spaces which they calculated ahead of time so as not to have to come before the Commission for a parking variation. According to the code forty-two (42) spaces are sufficient for this building.

Chairman Noble asked if there were any questions or comments from the Commissioners.

Commissioner Donoval showed concern about deliveries being made in the front of the building where there would be a traffic of people going in and out the front of the building.

Attorney Daniel stated that typically deliveries would not be made during opening hours, but around 1:00 - 2:00 A.M; however, some may occur during business hours in Unit 5 after the coffee and pastry location opens which would be a very quick delivery. If there was a need for a delivery for additional wine and beer that too would be a very quick delivery. Generally, no deliveries will be scheduled during normal business hours. There may be something during the morning and the evening rush and a 35 foot truck would be able to maneuver in and out efficiently if needed.

Commissioner Donoval commented that deliveries are usually at the back door and may interfere with the guest going into a restaurant.

Commissioner Donoval asked if the generator was actually required and if some of these businesses may actually require a generator. There are a lot bigger shopping centers in the area with no generators.

Petitioner Fry, to answer Commissioner Donoval's first concern noted that he has a Chipotle, Panda Express, and Panera Bread on Route 59 which are all front loaded with no deliveries in the back. Petitioner Fry said you don't see these large semi's like you would see at Jewel, but smaller trucks and vans that mostly come early in the morning at 5:00 A.M. Petitioner Fry stated that the generator was his fault that he asked for the generator because they are very conscious of their tenants and when there are power outages it is a horrifying situation for business owners. Businesses like to

lease from them, because they are good landlords who think about their needs, and they give them something special like the generator.

Commissioner Donoval brought up the issue of the BP Amoco gas station which occupied the space in the past and asked if there was a clean bill of health from the EPA.

Petitioner Fry responded that they have a letter from the previous company and had their own tests done which the site was cleared for development. For many years BP Amoco had a deed restriction on the property, which the Petitioner was able to convince them to get rid of that restriction which is in writing between the attorneys, and they have the right to go forward.

Chairman Noble asked if there were any other comments from the Commissioners.

Commissioner Schneider questioned the generator height of six (6) feet and the location on the north corner of the property.

Attorney Daniel stated after the specs come out on the generator, it will probably be more like 4 ½ to 5 feet in height with the fence screening going to 6 feet in height.

Petitioner Fry showed that the generator wouldn't be any higher than the table he was sitting at.

Attorney Daniel chimed in and showed on the drawings the location of the generator and the transformer with the fence enclosure which could be a board on board. They are giving the City Council an option of a solid fence or a solid wired green meshed fence, which creates a greener appearance around the north end of the building and gives a greener appearance around not only the north end of the building, but the east end and still gives full screening to the generator and a natural appearance.

Commissioner Schneider directed his next question toward the garbage facility and the 3 foot shrubs leading up to it.

Petitioner Fry said his view of this wall area is like Wrigley Field with vines all around. There will be a brick masonry wall with shrubs in front and vines growing up the wall to the top. No one will be able to see the wall or even know it's there; it will be beautiful.

Commissioner Schneider asked if he did this on his other properties.

Petitioner Fry said he is known for his dumpsters.

Commissioner Ventura commented in regards to the Petitioner's concern about site identity, which she agreed with, but was not convinced that a 12 foot monument sign was necessary on the corner of Midwest Road and Butterfield Road due to it being a corner, which has a lot of site identity already.

Commissioner Ventura said her next question was directed towards the garbage; she did not know of any one business that allows the garbage to be placed so close to a busy route with a trash enclosure just feet away from Midwest Road. Commissioner Ventura understands that the trash enclosure has to be placed there due to request for a drive-through and there is nowhere else to put it. Commissioner Ventura's concerns were with the over-flow of the garbage given that there may possibly be a restaurant and coffee shop.

Petitioner Fry understands Commissioner Ventura's concerns, but as a general rule the garbage pick-ups are regulated by them and they make sure that the tenants don't put them in a situation for the garbage to be over-flowing. There is nothing worse has for him as a consumer to drive into a parking lot to see garbage all over the place. Petitioner Fry said they police this with a very serious commitment to their tenants and with the landscaping, he promises they will not even know it's there.

Commissioner Ventura stated that it is still very close to the road.

Petitioner Fry said it was, but they had no other place to put it and wants the Commission to know that they are doing everything possible to protect it and they have been doing this for some thirty (30) years and is a bugaboo for them.

Commissioner Ventura worries about the safety issues of making a left turn off of Butterfield Road and the busy intersection with the ingress and egress in the morning. Commissioner Ventura understands that McDonalds and Chase Bank have the same issues; however, they are not on a corner.

Attorney Daniel stated on this point the City Engineer did not have an issue and he personally reviewed all the traffic numbers and movements while eating lunch there, drank coffee there and watched the morning and evening traffic since his office is close to this location, and Attorney Daniel gave a summary to Building and Zoning Administrator Dragan in response to staff comments regarding the drive-thru on a corner lot. Attorney Daniel mentioned many drive-thru's on corner lots along state jurisdiction highways. If IDOT had an issue they would push you to avoid those turn movements. Attorney Daniel commented that the gas station generated more traffic during more hours of the day than what they will see at this location with the issues that were proposed.

Attorney Daniel commented that Mr. Pixler has been in touch with IDOT Engineers who will be the ones reviewing the safety issues and the Petitioner will have to deal with IDOT with permit conditions relating to that entrance as they arise. Attorney Daniel commented that the busiest hours are between 7:00 A.M. and 9:00 A.M. and 4:00 P.M. and 6:00 P.M.

Commissioner Ventura noted that it will be getting even busier with Specialty's Café across the street coming in and other property that may be developed someday.

Commissioner Ventura pointed out that the drive-thru is 2 feet from the building and is very tight even though there is a retention pond there and wanted to know if this was typical.

Attorney Daniel stated that typically the drive-thru will be 2 - 4 feet from the building and so far this one has met the fire code standards and the Fire District had no concerns about the rear doors.

Attorney Daniel continued to comment on the height of the monument sign in which it would be hard for traffic passing by the sign to see the bottom two tenants in ordinary view, so this increased the height in the signage.

Commissioner Ventura stated that the sign would be facing northeast down Butterfield Road where there would be the most visibility versus traveling down Midwest Road heading eastbound to Butterfield Road. It's a large variance to go from 9 feet to 12 feet.

Attorney Daniel commented that he understood, but it was still below a lot of the views or a lot of the signs in existence in that intersection that had been raised due to the high speed roads and busy intersections. Attorney Daniel stated Moogie's and Jiffy Lube were above 9 feet in height.

Commissioner Ventura asked where the parking lot lighting would be located.

Petitioner Fry had a comment for Commissioner Ventura and said regarding the height of the sign, the peak of the sign was actually 2 feet in height so the signage itself was only around 10 feet. They placed the peak on to give sign more appeal and the arch gives it an appearance of being less than 12 feet in height.

Commissioner Ventura thanked Petitioner Fry.

Building and Zoning Administrator Dragan noted that if you look at the triangle on the sign it reads, Butterfield Point at Oakbrook Terrace.

Commissioner Ventura commented that this was a nice thing to do.

Attorney Daniel responded to the location of the lights by saying that they would be located on each side of the entrances and between the entrances there will be two (2) on the north line property to cover the north parking row and northeast parking row, one (1) in the center of the west parking row, and the rest of the lights are building lights. All the lighting is 15 feet in height to comply with the 16 foot standard of the City along with LED lighting, which the City prefers.

Chairman Noble asked if there were any other comments from the Commissioners.

Commissioner Schneider commented, for the record, that Oakbrook Terrace has a problem throughout Oakbrook Terrace with each sign becoming larger and larger on every project; the Gardner School is humongous.

Chairman Noble asked if the signs were digital or lit.

Attorney Daniel said they were to be lighted signs and if there were any concerns on certain variances, he asked that the Commission separate out those issues.

Chairman Noble opened the floor for public participation.

Chairman Noble asked for positive testimony. There was none.

Chairman Noble asked for negative testimony. There was none.

Chairman Noble asked if there were any other comments from the audience; there were none.

Chairman Noble closed the floor to public participation.

Chairman Noble asked if there were any comments from the City Attorney.

City Attorney Pacione recommended if there were to be issues on certain variances that they take a separate vote according to Attorney Daniel comments and that the Commissioners should identify the number of the variance when making a motion unless they wanted to do them individually.

Petitioner Fry said he would like them to do all the variances at once.

Commissioner Smurawski said he had a problem with the 12 foot signage.

Commissioner Ventura mentioned that she had the same issue, but liked the idea that the point stays on top of the sign and that it has Oakbrook Terrace on it.

City Attorney Pacione said he was ok with that being one vote unless there was distinction from the Petitioner to have it individually.

Building and Zoning Administrator asked Commissioner Donoval if he was in favor of the sign.

Commissioner Donoval said to vote on the whole thing; the City Council will do what they want to do.

Building and Zoning Administrator Dragan commented that the City Council will have the minutes of tonight's meeting and the Letter of Recommendation along with the concerns of Items 2 and 5.

City Attorney Pacione asked if the Commission wanted to parcel the variances out.

Building and Zoning Administrator Dragan said someone should make the motion to approve the request for the legal notice to exclude Items 2 and 5 concerning dumpsters and signage.

Attorney Daniel asked for clarification if it would be Item 2 and Item 5A, the second height variance for the height restriction of the drive-through.

Building and Zoning Administrator Dragan stated that the 11 feet is absolutely necessary.

City Attorney Pacione stated that he didn't want to separate Item 5A and 5B.

Building and Zoning Administrator Dragan said to go with the first motion.

**MOTION** Commissioner Schneider entertained a motion to approve Items 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, and 14 which are:

1. A special use for a multi-tenant building with (a) an above-ground service facility situated in the buildable area between the building and the front yard line (authorized under Section 156.051(D)(4) and Section 156.051(H)(3)), (b) for a restaurant in the south unit with a drive-through window and patio seating area (authorized under Section 156.087(A)(2) and Section 156.087(C)(34)) and (c) for a restaurant with operations on a patio dining area accessory to the north unit (authorized under Section 156.087(A)(2)).

3. A variation from Section 156.039(B)(1) prohibiting fences in the required east front yard in order to permit a gated masonry service/trash enclosure in the east front yard (southeast corner of the property).
4. A variation from Section 156.043(C)(2) prohibiting signs from obstructing drives in order to permit a suspended height restriction sign at the entry to the drive through.
6. A variation from Section 156.051(D)(5) (prohibiting more than one above ground service facility within 250 feet of another) and Section 156.051(F) (requiring a landscape buffer) in order to permit an above ground service facility within 250 feet of another existing above ground service facility according to landscape plans on file with the City.
7. A variation from Section 156.087(B) (54) which limits the dining area on patios to 25% of the interior dining area in order to permit outdoor dining on two patios with (a) the dining area of the north patio not to exceed 306 feet or 35% of the interior dining area of the north unit and (b) the collective patio dining area not to exceed 406 feet or 32% of the combined interior dining areas in the north and south units.
8. A variation from Section 156.087(G)(1) requiring minimum east and north front yards of not less than forty (40) feet and minimum front yards to pavement of ten (10) feet in order to permit (a) the location of the service/trash enclosure nine (9) feet west of the east front yard lot line and paved areas for the trash enclosure eight (8) feet west of the east front lot line) and (b) rows of parking spaces on the east, northeast and north front lot lines five (5) feet from these lot lines.
9. A variation from Section 156.087(G)(2) requiring a minimum west side yard to pavement of five (5) feet in order to permit the drive-through lane to be situated not closer than two (2) feet east of the west side yard.
10. A variation from Section 156.087(G)(3) requiring a minimum south rear yard of not less than forty (40) feet and a minimum rear yard to pavement of five (5) feet in order to permit (a) the location of the service/trash enclosure two (2) feet north of the rear lot line, (b) the location of the building not closer than 22.5 feet north of the rear lot line, (c) the location of the menu board not closer than 22.5 feet north of the rear lot line, (d) paved areas for (i) the trash enclosure (1.5) feet north of the rear lot line), (ii) drive through (2 feet north of the rear lot line), (iii) loading zone (2 feet north of the rear lot line) and (iv) fire lane (2 feet north of the rear lot line).

11. A variation from Section 156.087(G)(4) limiting the use of a common access drive to one-half of a side or rear yard requirement in order to permit (a) the location of the drive through lane on the west side of the building to occupy an area that is as close as two (2) feet to the west lot line and extends across the side yard required by ordinance and (b) the drive-through lane and loading zone area on the south side of the building to occupy an area that is as close as two (2) feet to the south lot line.
12. A variation from Section 156.087(I), Section 156.049(H) and Section 156.049(I) in order to permit parking lot and general landscaping relief with the required landscaping reflected in the landscape plan on file with the City while (a) allowing a postponement of work in the area along the southwest corner lot lines such that plantings may be deferred until a light pole serving property to the south is removed and the area restored, (b) allowing a reduction of plantings on the west side lot line as may be necessitated by final site engineering, and (c) allowing a reduction in interior landscaping and screening by as much as one (1) interior tree and screening required under Section 156.035(C)(4)(b) in order to permit a generator near the above ground service facility at the northwest corner of the building with the screening, fencing and landscaping as reflected in plans on file with the City.
13. A variation from Section 156.101(E) limiting widths of commercial district driveways across public property to a width of 35 feet at the right-of-way line and limiting driveway flares in a commercial district to five feet on each side of the driveways in order to permit (a) two existing driveways to remain substantially as constructed with widths not to exceed 36.5 feet between the faces of curbs, (b) driveway flares at the north driveway not to exceed 16 feet (west) and 22 feet (east), and (c) driveway flares at the east driveway not to exceed 9 feet (north) and 13 feet (south).
14. Pursuant to Section 156.023(B), such other variations and authorizations as may be required to permit the development of the use and improvements according to the plans on file with the City and as these plans may be amended through the City Council's consideration of this request.

Commissioner Donoval seconded the motion.

Chairman Noble asked for any final discussion. There was none.

Ayes: Chairman Noble, Schneider, Ventura, Donoval, Smurawski  
Nays: None  
Absent: Myszkowski

MOTION PASSED WITH A VOTE OF 5-0.

MOTION Commissioner Smurawski entertained a motion to approve Item 2 for a variation from Section 156.035(B), Section 156.045(B)(10) and Section 156.045(B)(35) in order to permit the service/trash enclosure with a south landscape wall in the east front yard.

Commissioner Donoval seconded the motion.

Chairman Noble asked for any final discussion. There was none.

Ayes: Chairman Noble, Smurawski  
Nays: Schneider, Ventura, Donoval  
Absent: Myszkowski

MOTION WAS DECLINED WITH A VOTE OF 3-2.

City Attorney asked for a motion to approve Item 5 for a variation from Section 156.043(C)(5) limiting the height of monument and pole signs to nine (9) feet in order to permit (a) a monument sign along the Midwest Road frontage not taller than twelve (12) feet, and (b) a pole sign at the entry to the drive through not taller than eleven (11) feet.

MOTION Commissioner Smurawski entertained a motion to approve Item 5 for a variation from Section 156.043(C)(5) limiting the height of monument and pole signs to nine (9) feet in order to permit (a) a monument sign along the Midwest Road frontage not taller than twelve (12) feet, and (b) a pole sign at the entry to the drive through not taller than eleven (11) feet.

Commissioner Donoval seconded the motion.

Chairman Noble asked for any final discussion.

Commissioner Ventura mentioned that she would love to see the point with Butterfield Point in Oakbrook Terrace on the sign, but on a smaller sign.

City Attorney Pacione clarified that only the point reaches 12 feet and tapers off.

Chairman Noble asked if there were any other comments. There were none.

Ayes: Chairman Noble, Schneider, Donoval, Smurawski  
Nays: Ventura  
Absent: Myszkowski

MOTION PASSED WITH A VOTE OF 4-1.

Attorney Daniel asked for procedural clarification to Item 2 presentation during the portion of the public hearing, and he was not sure the discussion about where you placed these items if they adjusted the setbacks was lost, but he might ask for reconsideration on that. He's not sure if they would like to have more hearing testimony on it, but he doesn't know if the Planning Zoning Commission has considered the issue of the location of that trash enclosure if you put it behind the building away from the streets, because you're not going to get a truck in there. You're going to have a 35-foot deep building, and it's just not going to work, and that's probably the most glaring portion of hardship when it comes to trash service to the property. It's has to go in one front yard or the other or else you're going to lose significant part of the floor area of that building, but he believes that decision on Item 2 is a serious significant concern that they have going forward with the City Council.

Commissioner Donoval asked if there was any location to place it.

Petitioner Fry mentioned that they looked all around and the only way was to chop off a whole root portion of the building which would ruin everything. The geometrics of the lot dictated what they could and could not do and by moving the building back into the corner was the best they could do under the circumstances to give it a professional look. They spent a significant amount of time figuring out how to hide it, and protect it. Number 1 on his priority is not to let garbage overflow and fall onto the street and Number 2 is the landscaping of it.

Commissioner Donoval commented in the summertime there is a lot of walking traffic and if it's 100 degrees outside you are bound to smell the garbage.

Petitioner Fry said without a question it will smell, but it won't because they will demand that it be cleaned all the time.

Commissioner Ventura asked if Petitioner Fry would ever consider a joint garbage with Wendy's.

Attorney Daniel commented he thought on the joint facility option they have made attempts at that in the past. When there's one owner, it's possible to do that. In this case you have one owner, but even when you have one owner or typically has an enforcement nightmare when there are problems with those being disclosed on those containers, and he knows recently there have been some trash issues in his office building with fly dumping and that kind of thing.

Commissioner Ventura stated that Wendy's has such a large trash dumpster and Petitioner Fry's looks so much smaller.

Attorney Daniel commented it is smaller in all of its dimensions than the length of the Wendy's enclosure.

Commissioner Donoval said this was just not about garbage, but on the grease that needs to be enclosed inside.

Petitioner Fry said the grease goes into traps that go into the ground.

Petitioner Fry mentioned his other locations, with outdoor seating and packed with people, and how the garbage is policed at all times. Petitioner Fry mentioned as owners it is their responsibility to keep the property clean and policed properly.

Commissioner Donoval asked what they do now.

Building and Zoning Administrator Dragan said they can reconsider the motion.

City Attorney Pacione said there is a request from the Petitioner to reconsider the motion which he thought was appropriate.

Chairman Noble asked for a motion to reconsider Item 2.

MOTION Commissioner Ventura entertained a motion to reconsider Item 2.

Commissioner Donoval seconded the motion.

Chairman Noble asked for any discussion from the Commissioners.

Commissioner Schneider questioned the portion that arches out in front of Unit 1 referring to the patio.

Attorney Daniel stated that with a patio you have two (2) tables and a fence, a landscape island, the entryway which has to be unobstructed to the point leading to the ramp, the handicap ramp, and an accessible stall.

Commissioner Schneider asked if the Petitioner could photograph the dumpsters with the vines growing on them to show to the City Council.

Petitioner Fry they could photograph the masonry walls, but the vines and the planting was something they did for this project and again all he could say that it will look like the vines at Wrigley Field.

Commissioner Donoval said their biggest problem are too many businesses for too small of a property.

Chairman Noble asked for any other final discussion.

Commissioner Schneider questioned them about their commitment about policing their garbage facilities.

Attorney Daniel commented that the dumpster and enclosure, the masonry enclosure located near the exit for the drive-thru which is a special use, you're able to condition the approval of a special use and if you need conditions relating to that exit area of the drive-thru which is near the dumpster they can relate to anything including conditions that the tops of the dumpsters be closed at all times and if necessary to accomplish that there would be a mechanism there so that they're not laying open. That's your smell, or a box blowing out into the drive-thru of some kind, but you're entitled to put those types of conditions on it. Additionally, there could be a condition about cleaning upon demand of code enforcement if there's a complaint and they haven't noticed something. Attorney Daniel has worked with Lee Fry Enterprises for some time and have dealt with their developments on a personal level, and when they mentioned the Chipotle situation you wouldn't know it's there when you're dining next to it. You don't smell the Starbucks ones when you're in the Starbucks drive-thru behind or in front of Pete's or behind the Starbucks on 22nd. There are those exceptional circumstances where it does arise, but if it's taken care of quickly things are handled, but those are possible conditions that the Commission could impose on the special use.

Petitioner Fry commented in response to that they can state exactly that they will agree at all times to never allow garbage to overflow and the lids always be shut on all dumpsters in the enclosure. Petitioner Fry said they will power wash the insides every month during the summer hours.

Commissioner Ventura asked if there could be some assurance that any cars traveling on Midwest Road would not see any sign of garbage.

Petitioner Fry under normal conditions, no, but if the door is open for the truck to remove the garbage, yes.

City Attorney Pacione asked Attorney Daniel if they can leave this up to the City Council since they already agreed on the special use.

Attorney Daniel had some concerns over the vote when it reaches the City Council on whether it changes the variances as opposed to the special use.

City Attorney Pacione asked Attorney Daniel if he would like a motion on the variance.

Commissioner Ventura asked if there was any assurance that the Petitioner could pursue the possibility of joining garbage with Wendy's.

Petitioner Fry said he does not want to do anything with Wendy's.

Commissioner Ventura thought Petitioner Fry might like to add this to the motion.

Petitioner Fry stated that he was not asking it to be part of the motion.

City Attorney stated at the present time they have the motion to reconsider.

Chairman Noble asked Secretary Coglianesi to take the roll.

Ayes: Chairman Noble, Schneider, Ventura, Donoval, Smurawski

Nays: None

Absent: Myszkowski

MOTION PASSED WITH A VOTE OF 5-0.

Chairman Noble asked for a motion to pass Item 2.

MOTION Commissioner Schneider entertained a motion to pass Item 2 as discussed.

Commissioner Smurawski seconded the motion.

Chairman Noble asked for any final discussion. There was none.

Ayes: Chairman Noble, Schneider, Ventura, Donoval, Smurawski

Nays: None

Absent: Myszkowski

MOTION PASSED WITH A VOTE OF 5-0.

Chairman Noble asked Building and Zoning Administrator Dragan when the petition would be presented to the City Council.

Building and Zoning Administrator Dragan stated that the Letter of Recommendation will be placed on the May 26, 2015 City Council meeting agenda and the Commission may wish to cancel the June 2, 2015 Planning and Zoning Commission meeting since there are no public hearings scheduled.

Chairman Noble asked for a motion to cancel the Planning and Zoning meeting.

MOTION Commission Schneider entertained a motion to cancel the Planning and Zoning Commission meeting for June 2, 2015.

Commissioner Ventura seconded the motion.

Ayes: Chairman Noble, Schneider, Ventura, Donoval, Smurawski  
Nays: None  
Absent: Myszkowski

MOTION PASSED UNANIMOUSLY THROUGH A VOICE VOTE OF 5-0 .

Chairman Noble asked for a motion to adjourn the meeting.

MOTION Commissioner Schneider entertained a motion to adjourn the meeting.

Commissioner Donoval seconded the motion.

MOTION PASSED UNANIMOUSLY THROUGH A VOICE VOTE OF 5-0.

Chairman Noble adjourned the meeting at 7:40 P.M.

Respectfully submitted by,



Janice Coglianese  
Building and Zoning / Planning and Zoning Secretary