

STERLING HEIGHTS ZONING BOARD OF APPEALS
REGULAR MEETING
CITY HALL
March 24, 2016

LOCATION: City Council Chambers, 40555 Utica Road, Sterling Heights, MI

SUBJECT: Minutes of the Regular Meeting of the Zoning Board of Appeals held
March 24, 2016.

Mr. D'Angelo called the meeting to order at 7:00 p.m.

Members present at roll call: Derek D'Angelo, Dale Deming, David Graef, Stefano
Militello, Nick Najjar, Pashko Ujkic, and Ray Washburn

Members absent at roll call: None

Also in attendance: Chris McLeod, City Planner
Don DeNault, City Attorney

APPROVAL OF AGENDA

Request by Mr. Najjar to amend agenda by moving item 2 to 1 and 1 to 2.

Motion by Najjar, supported by Militello, to approve the Agenda.

Ayes: Najjar, Militello, Ujkic, Washburn, D'Angelo, Deming, Graef

Nays: None

Absent: None

Motion carried.

CORRESPONDENCE

Mr. McLeod stated there is a correspondence in regards to the AutoZone application.

Mr. McLeod also stated there is a notice for the Master Land Use Plan Hearing, public forum that will be held April 20th, 7 p.m. at the Senior Center. This is for input relative to The Master Land Use Plan. All are welcome, including public, to have input for the future direction of the city. They will try to work the public input into the plan.

PZBA 16-0002 - AutoZone Development LLC - Jeff Kauerz

Requesting variances for: 1) twenty-eight foot parking lot setback variance along Van Dyke; 2) eight foot building setback variance along Utica Road; 3) twelve foot parking lot setback variance along Utica Road - East side of Van Dyke, west of Utica Road in Section 03

Property Address: Part of 43020 Van Dyke

Mr. D'Angelo referenced the correspondence received where AutoZone requested a 30 day extension on their application.

Mr. McLeod stated they have requested to be rescheduled to the April agenda. They are having issues with one of the adjacent property owners and would like time to work it out with the property owners prior to bringing the agenda item to the ZBA.

Mr. D'Angelo asked if there is a motion to postpone until April.

Motion by Militello, supported by Najjar to postpone until the April meeting.

Mr. D'Angelo asked if there was any discussion.

Mr. Washburn asked if the person's name appears on the information we have in reference to the application?

Mr. D'Angelo stated Rachael Smith. Mr. McLeod stated Rachael Smith is the consulting engineer working with the project from day one.

Mr. Washburn asked Mr. McLeod if he knew of Rachael Smith. Mr. McLeod confirmed, yes.

Mr. Washburn stated he would support

Mr. D'Angelo asked for any other discussion. Being none, called for a vote.

Ayes: Militello, Najjar, D'Angelo, Deming, Graef, Ujkic, Washburn

Nays: None

Absent: None

Motion Carried

Mr. D'Angelo stated the case will be moved to the April 28th meeting.

PZBA 16-0001 - New Generation Signs (dba I-Signs and Designs) - NKD Pizza

Requesting a variance to permit a second wall sign for a tenant space (non-corner lot) - South side of Metropolitan Parkway, east of Dequindre in Section 30.

Property Address: 2100 Metropolitan Parkway

Mr. D'Angelo invited representatives for this case to come forward then asked Mr. McLeod to give an overview.

Mr. McLeod stated the applicants are proposing a second wall sign for the shopping center tenant space. It is the end-cap unit on the western facade of the shopping center. The location is the east side of Dequindre and on the south side of Metropolitan Parkway. The existing zoning is C2; existing land use is a shopping center and the Master Land Use Plan designation is regional commercial. As part of our ordinance, only those properties that front on two different roadways are allowed a second wall sign meeting our size requirements. In this particular location they do abut the driveway which services the Lowe's and Target complex to the rear of them. However, this is not an actual road way and therefore the lot does not constitute a corner lot and therefore a second sign is not permitted. With that, the ordinance does allow a 6 sq. ft. size identification sign or logo sign to be placed on the building itself but not the 36 sq. ft. sign which the applicant is requesting.

Mr. D'Angelo asked the applicants to state their names and explain what they would like to do there and why they need the variance.

Applicant: Mo Asker, the owner of NKD Pizza in Sterling Heights.

Mr. Asker stated they are asking for a variance for the sign on the west side elevation. He stated they understand it doesn't face an intersection or a corner but, in their defense there is a Starbuck's tenant in the same building that has a side sign and a frontage sign. He explained they are a new brand coming to the state of Michigan. They would like to make the right "noise" in the market and would appreciate if the board would be a little lenient as far as the sign variance goes. It will be their first location in Sterling Heights and plan on rolling out more locations and would like to maximize the visibility at their current location. He stated the 6 sq. ft. sign the ordinance allows for would not look as nice as they would like it to. He explained it looks very small and would like to get the 36 sq. ft. sign they are requesting.

Mr. Asker introduced Steve from the sign company.

Mr. D'Angelo asked the applicants if there are other locations in other states and what's their relationship to the other locations. He asked for more background information about the business.

Mr. Asker stated it is both a sit down and carry out. Their core business is delivery. The concept is based from a brand in Washington, DC called NKD Pizza. They bought into the brand and have the rights to Michigan. They have committed to 10 to 15 locations in southeastern Michigan. They are working on a second location in Shelby Township. It's a fast casual type restaurant, a healthier pizza concept that they are bringing to the state, and Sterling Heights. Mr. Asker stated they would like to get the attention of the community and let them know they are here to serve the community. He feels the signage would help send that message.

Mr. D'Angelo asked if Washington, DC was the only other location.

Mr. Asker stated there are four other locations in the Washington, DC area. There are a few in the nation; one in Seattle, one in Louisiana (where the brand originated). There are also a few locations outside the U.S., specifically in Dubai, and growing in the Middle East as well. Additionally there are four locations in Georgia and more rolling out in Florida. They are working with corporate and their plan is to ultimately make it a national retail brand and launch over 250 locations/stores. Mr. Asker stated they are starting slow, here in Sterling Heights.

Mr. D'Angelo asked if the typical location of this brand is in a small plaza not a stand-alone restaurant.

Mr. Asker answered yes and they identified the location because of the new build and they like the area. It could be a case by case situation, but their ideal is typically in a small plaza.

Mr. Washburn stated being brand new to the area, if he were to pull into the parking lot and saw the sign he would have no idea what it was.

Mr. Asker clarified which sign the side or front.

Mr. Washburn stated the side sign, NKD.

Mr. Asker stated that is their logo and they have marketing material and a marketing plan they are putting into effect so there is brand recognition. They have a whole marketing team that is focused on that. Mr. Asker stated he is not worried about that, the slice of pizza on the sign suggests they are a pizza company. Once they are actually in business, Mr. Asker feels people will start to recognize the NKD name.

Mr. Washburn stated he doesn't totally agree he feels the sign as it stands (just the NKD) doesn't draw. The sign in the front identifies the business because the word "pizza" is on it; the proposed sign on the side on has the three letters.

Mr. Asker stated their mission is to try to get maximum exposure. They leased out the end unit to maximize their exposure. They went into the lease under the impression they would be able to put a sign up and maximize visibility of the restaurant where ever they can. When they were connected with I-Signs, they later learned it would be something they would have to appear in front of the board for. Mr. Asker stated he believes their marketing team will do a great job trying to get the message across that NKD is NKD Pizza and the sign and illumination will be good for business and help them grow in the future.

Mr. Washburn asked if there was a ground sign on this site.

Mr. Asker stated no.

Mr. Washburn asked that there will not be a ground sign put on the site.

Mr. Asker asked if he meant an A-frame sign. Mr. Washburn stated any ground sign and Mr. Asker stated no.

Mr. D'Angelo as the representative from the sign company to state his name.

Steve Rayes from New Generation signs, representing NKD Pizza.
Address: 37857 Tericrest Drive, Sterling Heights.

Mr. Rayes stated the reason for the three letters was for future ease and fast recognition.

Mr. Asker stated in time they would like to drop off the word "pizza" once the people begin to recognize the "NKD" as a pizza place.

Mr. Washburn asked if this is a separate, small development within the confines of a larger development.

Mr. Asker stated not exactly. This specific location, they have teamed up with the headquarters in DC. Any future locations will be his company stores going forward. He asked if that answered question.

Mr. Washburn stated no. He wanted to know if the pizzeria was part of a larger development (other stores/businesses) at that location. Stated the out-lot is surrounded by pavement and gives the impression it is part of a bigger development, a larger shopping center.

Mr. Asker stated it is an out-lot to Lowe's.

Mr. Washburn asked if there were going to be any separate ground signs at all for the six or so businesses that are there.

Mr. Asker stated he didn't believe the landlord had any plans for a monument type sign.

Mr. D'Angelo asked what NKD stands for.

Mr. Asker stated is originally was Naked Pizza suggesting eating healthy pizza. He stated the reason for using the three (3) letters was because being based in DC, a lot of the politicians and/or government officials had a hard time searching and placing orders when they would type in Naked Pizza. They trimmed it down to NKD to be better to get thru the firewall.

Mr. D'Angelo stated to Mr. McLeod, the building looks as though it was made to have a sign on the end caps. He stated newer buildings like the north side of M-59, Piada seem to be built in this manner. When thinking of the different traffic patterns, and seeing the different ways commercial is developing, we know the entry way is not a main road but if I'm leaving Lowe's and exiting, he would not know what the pizza place was there with no sign on side. Mr. D'Angelo asked Mr. McLeod if he could speak on that.

Mr. McLeod stated it's an overall change in trends with signage. It's something that was discussed in strategic planning at the City Council. He and Mr. DeNault will be bringing amendments forward to zoning ordinances in the future regarding signage as a whole. He stated signage is much more inclusive now, much more involved where it's integrated in the overall architecture of the building. The idea of branding is much more prevalent. They want to push a brand on you and you do that with repetition. One of the trends is to try to replicate or continue to put signage everywhere they possibly can. The building here was designed in this way. If you look at the **façade**, right or wrong, it was set up this way. It is not uncommon for an ordinance to allow for a second wall sign on an end-cap unit. Our ordinance does not permit that, it indicates you have to be a corner lot. The driveway this unit fronts on is not necessarily a road way, but it does provide access to a number of sites as Mr. Washburn was referencing earlier. It not only services Lowe's and Target but services anyone who wants to come into the overall complex and go to the other out-lots that are located here. There are other driveways but this would provide access to a number of sites. This isn't a wall sign for their own driveway; it is a common usage driveway. He stated it is a bit more than a standard driveway.

Mr. D'Angelo asked if the entry way provides access to, probably, over a dozen businesses on that site.

Mr. McLeod stated he would agree with the different stand-alone users, there are also a couple strip centers in the front as well as the larger users in the back. There is a multitude of uses when you enter this driveway.

Mr. Washburn asked if the word "pizza" is removed from the front sign, how big will the "NKD" be on that sign.

Mr. Rayes looked over his notes and stated the NKD on the front sign is about 21 sq. ft. and if you eliminate the word pizza, it would be almost doubled.

Mr. Washburn asked if the NKD on the front sign is smaller than the NKD on the proposed sign that will be on the side. He stated if the drawings are to scale, the NKD is smaller in the front than on the proposed sign on side.

Mr. Asker stated he was correct.

Mr. Washburn asked what's to stop you from taking the smaller NKD and putting it on the side.

Mr. Asker stated because they are shortening the actual sign because they didn't need it to be as big if it was going to be that long. He stated it's recognizable even if it's a little smaller.

Mr. Washburn asked if the smaller sign would fit.

Mr. Rayes asked for clarification.

Mr. Washburn asked if you could put the smaller sign on the side, would it fit.

Mr. Rayes answered yes.

Mr. Washburn asked if they had given any thought in doing that, other than the one they were showing.

Mr. Rayes stated they are really not that large. If you look at the 48 x 108 it is the background of the sign, but the main letters are not that big.

Mr. Washburn stated that wasn't his question. His question was if they'd given any thought to putting the smaller sign on the side.

Mr. Asker stated the lettering will be the same. They aren't actually that different. It's because the background of the rectangle sign.

Mr. Washburn asked if they had the actual size of the one in front. He stated the side is 48 x 108, and the front is?

Mr. Rayes stated the front is 32 x 160.

Mr. Washburn asked for just the NKD size, not the overall sign. He stated if the drawings are to scale, the NKD of the sign in front looks considerably smaller than the one on the side.

Mr. Asker stated he felt Mr. Washburn was right. Just looking with the naked eye, but not very much larger as far as the lettering goes.

Mr. Washburn stated it appears to be if you look at the drawing. He stated no further questions.

Mr. D'Angelo stated as a consumer it might be less confusing which out-lot a business was in if there were a sign on the side. Sometimes businesses even put something on the back of the building. He asked Mr. McLeod if it's typically allowed to put a sign on the back to help people maneuver within the complex.

Mr. McLeod stated the city has traditionally allowed for these out-lot buildings to put signage on the rear portion of the building since it is not visible from a public thoroughfare. Our sign definition gets triggered when you say the sign is visible. We have typically allowed for these signs on the back portion of the buildings. It wouldn't help for what they are trying to do in terms of the corner unit. In terms of locating the building or the tenant space from Lowe's or Target's parking lots it could help navigate you to that site.

Mr. D'Angelo stated to the applicants, if that was part of the motion to approve the sign on the side, would you be opposed to a condition that you would not ask for a sign on the rear of the building.

Mr. Asker stated there is already a sign on the back of the building. He stated, to that point, there is an exact out-lot constructed on the opposite side just east of where this out-lot is. So we would like to distinguish which out-lot we are, the first or the second.

Mr. D'Angelo asked if it's facing 16 Mile Rd. or Dequindre.

Mr. Asker stated it's facing 16 Mile Rd.

Mr. D'Angelo clarified it's an identical out-lot facing 16 Mile Rd. just east of NKD.

Mr. D'Angelo asked if there were any other questions.

Mr. Deming stated he feels the applicants were not there regarding the design of the sign but it's not permitted by the ordinance. If you look at the ordinance, it is not permitted, strictly by the language of the ordinance; but, however, Mr. Deming feels it meets the intent of the ordinance. He states it basically is a corner. It's not a public roadway, but it's curbed. While it doesn't meet the strict language, it meets the intent.

Mr. D'Angelo asked for any other questions or comments from board members.

Being none, he asked if there was anyone in the public who would like to speak regarding this item.

Being none, public participation was closed.

Motion by Militello, supported by Najjar, in the case of PZBA-16-0001, New Generation Signs, 2100 Metropolitan Parkway, move to approve the variance with the following conditions:

1. The decision of the board will remain valid and in force as long as the facts and information presented to the Board in public hearing are found to be correct and that the conditions upon which the motion is based are forever maintained as presented to the Board. The petitioner agrees to abide by and comply with all the ordinances of the City of Sterling Heights and regulations of lawful agencies of governing authorities now hereafter in force;
2. Notice of the approval of the variance shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to file this notice shall serve as grounds to revoke the variance;
3. A Hold Harmless Agreement, in favor of the City of Sterling Heights, shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of

Deeds. Failure for the following agreement shall serve as grounds to revoke the variance. This motion to approve is supported by all the facts noted on the record and in documents reviewed by the Zoning Board unless modified during the hearing including the following specific facts:

1. The tenant space represents an end-cap unit for a shopping center and has extensive visibility to both north and west from Metropolitan Parkway.
2. The building center access is to one of the main driveways to the Lowe's/Target shopping center located behind subject address.
3. The sign, as proposed, meets the requirement permitted if the western **façade** was considered a frontage.
4. Similar signage exists elsewhere throughout the City of Sterling Heights and therefore will not disturb the character of the area and will not undermine the purpose intent of the zoning ordinance.

Mr. D'Angelo asked for any discussion on the motion.

Mr. D'Angelo asked Mr. Militello to consider putting that there is an identical out-lot to the east of this on the site because it separates this from other cases.

Mr. Militello agreed to amend the motion, Najjar supported.

Mr. D'Angelo asked for any other discussion on the motion. Being none, called for vote.

Ayes: Militello, Najjar, Ujkic, Washburn, D'Angelo, Deming, Graef

Nays: None

Absent: None

Motion Carried

PZBA 16-0004 - Maple Ryan Plaza - Ghassan Abdelnour

Requesting Board approval for a Use Variance to permit a C-3 General Business Use (Drive Thru) in a C-1 Local Convenience Business zone - South side of 15 Mile Road, West of Ryan in Section 30.

Property Address: 3546 15 Mile Road

Mr. D'Angelo invited the petitioner to approach while Mr. McLeod gives an overview.

Mr. McLeod stated before the ZBA is a request for Use Variance to allow a drive-through use within the C-1 Local Convenience business district. This would solely be for the drive-through facility itself. The property is zoned C-1 so a shopping center is a permissible use. Setbacks and so forth are all being met, so the ZBA's decision is solely in terms of the actual Use Variance to allow or potentially allow a drive-through facility on the eastern **façade** of the building. The shopping center is proposed to be about 12,841 square feet and is located the south side of 15 Mile Rd., just west of Ryan. Right now there is not a specific tenant proposed for this particular center. However, the applicants have indicated that in an effort to make the potential shopping center more marketable, they need the ability to advertise it as a drive-through facility. They feel it will also help the long term viability of the shopping center in terms of helping market the overall center, provide for continuous occupants, and the impact to the adjoining uses will be minimal due to the distances from the major intersections.

Mr. McLeod showed an aerial view of the site. He stated Henry Ford is directly to the west, Fraser optical to the east, and Henry Ford wraps around the back of this property as well. The drain is also to the rear of this site and multiple family developments off to the southeast corner of the site. In actuality, the site is completely surrounded by non-residential uses. Again, this is a C-3 General Business Commercial Use for a drive-through on this one particular end unit on the east side of the **façade**. He asked if there were any questions from the ZBA. Mr. McLeod stated this is a Use Variance so five votes are needed to pass the motion for the potential use variance.

Mr. D'Angelo welcomed petitioners and asked to state name and give an overview regarding what they are asking for and why they would like the ZBA to grant the Use Variance.

Ghassan Abdelnour from GAV Associates, accompanied by the owner Mr. Talar Garmo (Tony)

Mr. Abdelnour stated after working with the planning department and Chris (Mr. McLeod) and going through the design of the shopping center, they tried to meet all the requirements but they are asking for is to be able to have a drive-through at one of the ends of the building. As they wrote in the letter, to make it easier to be leased because they have a lot of other units that do not have a drive-through, so they would like a drive-through on one end. He stated it would make it more leasable and bring a better tenant to the shopping center. In talking with Chris and the planning department, we tried to make the design of the shopping center more than one color and one brick material. We tried to divide it in a way to look like separate units in one building. With using different color bricks, canopies, limestone, and the different details to make each part of the building its own identity, but work together as a whole. He stated they do meet all the requirements for the parking and the circulation (with the fire department). The drive-through is not interfering with the site plan of the building. They think the surrounding buildings, not being residential, wouldn't have to worry about sounds coming from a drive-through. They feel the building meets the requirements and there are building next to them that have drive-throughs.

Mr. Garmo stated getting a drive-through would help them get a national tenant such as Starbucks, Panera, etc. When they have talked to these types, they always ask if there is a drive-through. So they feel this is an opportunity here. They would appreciate from the Board to approve it for them so they can move forward with the construction drawing and put the shovel in the ground.

Mr. D'Angelo asked if there were any questions from the Board for the petitioner.

Mr. Washburn stated they're showing a loading zone on the northeast corner of the property. Is it your belief the tenant at the far west end is going to use that loading zone rather than park a truck in the back and bring his stuff in to his building?

Mr. Garmo asked him to explain again.

Mr. Washburn stated you have a loading zone shown in the northeast corner with a sign, no cars to park there.

Mr. Abdelnour stated for this type of property, a lot of the small retailers on the other side would be like Verizon phones or some other small retailers that do not require a lot of loading area for this type of small shopping center; but we do have to require one, that is why we provide it on the side. We kept it closer to where the drive-through is in case we have some type of restaurant or coffee shop.

Mr. Washburn asked if they didn't believe, from a realistic point of view, that the people that have these tenant spaces are not going to park behind it and load and unload and therefore be parked in your zone that you're proposing across the back and along the side. That you're not going to have a truck there once in a while. You're going to have the people load in the front, unload their vehicle, bring it all the way back by a cart and go to go in their building and not be able to because cars are going to be parked there waiting to go up to the drive-through window.

Mr. Abdelnour stated Mr. Washburn was right and these things might happen. We will have to put signs or something that works with the shopping center. There is a rule they do have to stop of the other side because they can't stop in the drive-through because we are putting signs that this is a drive-through and it has to be open according to the fire department.

Mr. Washburn stated he knows it does, but from a realistic point of view, you think that is going to happen? Do you really believe your tenants are going to unload in the front and bring their stuff all the way back and possibly have to wait for a car that's sitting in the drive-through in order to get in the building?

Mr. Abdelnour stated the only thing with that situation, like we do with gas stations, if there is a loading area, the owner will have to put a rule; any loading area has to come a specific time during the day either in the morning. If it's a coffee shop and they're busy in the morning, they will have to come at a different time. It has to be worked out with the timing of the traffic to make sure.

Mr. Garmo stated they can try and implement that on the leases.

Mr. Washburn asked how they are going to enforce not having cars park in that loading zone that you have proposed? Somebody pulls in, parks, and runs in a store.

Mr. Abdelnour asked, in the loading zone area?

Mr. Washburn answered yes, how will you enforce that?

Mr. Garmo stated there will be a sign saying this is a loading zone and also will be imprinted on the ground, on the asphalt indicating that's what the space is for.

Mr. Washburn again asked how they will enforce that.

Mr. Garmo stated you can't be a police officer there all day trying to enforce it, but people do respect the sign and that's what the signs are there for. He stated just like when you go to a place and there is a handicap space and if you're not handicap, you don't park there. If there are certain individuals that break the law, there is nothing you can do about that.

Mr. Washburn stated, I think the way you have it set up, you are going to create a lot of problems for your other tenants getting in and out of the back of their buildings. You want them to go to the front on the right side and probably have to use a cart, or whatever, to bring their product to the back of the building. They get to the back of the building and there sets a car in the drive-through and they can't even get in their back door.

Mr. Abdelnour stated they are providing ten cars for the drive-through, typically there will not be that many cars in that area but we have to give the maximum situation. They will have to be careful and use the sidewalk. It is a one-way street so traffic will be going only one direction.

Mr. Washburn asked if they were familiar with the Sands store in Shelby Township or Utica, off M-59.

Mr. Abdelnour stated no.

Mr. Washburn stated if you look at the front of the store, to the left, they have a loading zone area and it's not unusual when you go in that store to have a couple cars parked there in the loading zone. It's clearly identified as a loading zone, but it's not unusual to have a car or two parked there. People stop there, run in the store real quick, it defeats the loading zone area there. I know what you have in the back is a drive-through, but the concept is the same in some areas. He feels that's what is going to happen here and the loading zone will be useless in the front. He feels there may be a problem with the tenants trying to go out the back and there is cars sitting there.

Mr. Abdelnour replied because of the one way street and the parking in the back, that's why they put it on the side to have a bigger space. So it's away from the "fire department" and doesn't interfere with that part of that.

Mr. D'Angelo asked Mr. McLeod if he knows of other places around the city with these types of situations so he knows they're not creating a problem here.

Mr. McLeod stated while there is always the potential for conflict, you can't always dictate how people operate within the site; we can only create the site in the manner we feel the site can operate in the proper manner. He referenced the shopping center from previous petitioner, NKD Pizza, and said the Starbucks that is located in the same plaza; they stack in a similar type fashion where they wrap around the building. It is not an uncommon design. The city requires a stacking of ten spaces as part of any sort of drive-through. It is pretty much the only way to do it on a site without creating a really unique drive pattern. He doesn't think it's uncommon to have the city approve this configuration in the past. He agrees that depending on how people use the site, it is going to take a landlord and property owner that monitors things. We can't always dictate how people utilize a particular site not matter how well it's set up.

Mr. D'Angelo stated it seems if there was an issue of a delivery truck in the stacking lanes, that would upset the drive-through owner and the landlord and tenants would figure out a solution. It seems if it was the other way around, they would work together to create a solution.

Mr. McLeod stated what the applicant stated is not an uncommon occurrence to say they will dictate that off-peak hours is when deliveries need to occur. It is not a fool-proof system, by any means, but the idea is to limit the potential for occurrence. To say they can only deliver in middle of the night or certain points during the day, depending on who the tenants end up being, that will help alleviate some concerns as well.

Mr. Najjar stated a couple of years ago; we approved Panera Bread on Van Dyke, south of 16 Mile. It was approved for a drive-through, it didn't have one, and he feels that plaza is similar to this plaza. Today most business, coffee shops and restaurants, will not take an end-cap and pay the extra money if there is no drive-through. This is part of the business today.

Mr. Militello stated at 16 Mile Rd. and Mound, where Happy's Pizza is, is exactly like this. It's tight for the big truck and they come in the middle of the night to load and unload. I agree with Mr. Najjar.

Mr. D'Angelo stated to Mr. McLeod, these are two places he's aware of and there are likely others in the city and it doesn't seem like there are any issues coming before the city, obviously they've been handled.

Mr. McLeod stated typically those kinds of issues would be handled between the tenant and the landlord. He is not aware of any official complaints that have come to the city that the design is disruptive. In most cases, it may be an inconvenience; it's not usually something that is a repeat offense to be detrimental to the site.

Mr. D'Angelo asked the petitioners even they don't know the tenant yet, what are their thoughts on the hours of operation for the drive-through.

Mr. Garmo stated it all depends on the tenant. He then asked if there are rules for that.

Mr. D'Angelo asked Mr. McLeod to address this. What types of places are they allowed to get in this zoned area. Could they have a McDonald's, Dunkin Donuts, pizza place, what types of business could we see in this space.

Mr. McLeod stated if it is left open as an unrestricted C-3 Use, in theory it could be any one of those uses unless the ZBA conditions it upon what they feel is an appropriate mixture or limitation of those uses. Our C-3 district would allow all of those potential drive-throughs.

Mr. D'Angelo asked why discussing C-3, isn't it a C-1.

Mr. McLeod stated it is a C-1 property but to get a drive-through for a restaurant use this is how it would be.

Mr. D'Angelo stated it is still a C-1 and we would just be allowing a drive-through in a C-1. So whatever would be allowed in a C-1 is what would be allowed here.

Mr. McLeod stated if that is the specific limitation you would like to see, he would post that as one of the conditions.

Mr. D'Angelo asked what would be allowed in a C-1. He would like to know what is allowed in a C-1 versus a C-3. He doesn't want to be overly restrictive but would like to know and be educated about the decision they are making. He also would like the Board and community to know as well if it is passed.

Mr. Abdelnour stated that usually places like McDonald's and such, have free standing buildings and most of the time have their own designs. So it would be hard to get something like this. He stated, you're mainly going to have a restaurant, Jimmy Johns, or something like that. That is more typical from his experience in working with these kinds of tenants. You wouldn't have the big McDonald's, Burger King, or Wendy's taking these kinds of spots.

Mr. D'Angelo agreed. He would like to make sure to have the background information. He asked Mr. DeNault if he found anything regarding this.

Mr. DeNault stated there are no hours of operation restrictions. If you look at the types of uses allowed in the district, (Mr. McLeod could reaffirm this) it's general convenience. It's department stores, merchandise, super markets, pet shops that are retail, bulk food stores, things that don't typically stay open all night.; even movie theatres.

Mr. D'Angelo asked as far as coffee shops and things like that, it would need to be C-3.

Mr. DeNault stated they are asking for permission to put a drive-through that is allowed in C-3 into a C-1, to use the property as you could use a drive-through in a C-3. This doesn't make it a C-3, you're not changing the zoning.

Mr. D'Angelo asked if they could put a coffee shop or a restaurant.

Mr. DeNault thinks you could, it wouldn't matter what kind of drive-through.

Mr. D'Angelo asked the way the zoning is worded, is it saying a drive-through is allowed but would have to be a C-1 type of business or if we allow the drive-through, are there a sub-section of things that are allowed to have a drive-through, which all those would be allowed now because we approved the drive-through.

Mr. DeNault stated that is an interesting question. If you look at the list allowed in a C-1, fast food restaurants are not one of them. You can have eating and drinking establishments, but it excludes fast food restaurants. Even if they have permission to put in a drive-through on a C-1 eating and drinking establishment, they would not have a Use Variance for a fast food restaurant. He asked Mr. McLeod if he agreed with that.

Mr. McLeod stated if you take the narrow interpretation, yes. He thinks the advertised use is for a C-3 use including drive-through. In the actual agenda statement, which was published, versus the staff report which states it is for a drive-through in a C-1 district. The Use Variance doesn't rezone the property. Going back to original statement, he feels the intent was for a C-3 use (meaning a C-3 use with a drive-through) would be allowed for this end-cap unit. He agrees with the applicant, to a degree it will be self-regulating. Many of the drive-through uses have their own standards which don't meet this requirement. He thinks that if a Starbucks or Panera wanted to go into this space, in theory how the intent was and what the advertisement was would allow that to occur.

Mr. Militello stated his experience, and Mr. Najjar can confirm, you are either going to get a Panera, Starbucks, Donkin Donuts, Biggby, or a Subway. Everyone else requires free standing buildings as far as McDonald's and those types of burger places.

Mr. D'Angelo agreed. He stated he wanted to make sure it was known and if people were concerned they could have they prepared beforehand if people in the public wanted to speak to that. With the question mark because of no lease agreement yet, it makes it simpler if it is known what types of places can go in the space so the Board knows what it is approving. He asked Mr. DeNault if he found anything more he would like to add as to help the Board to know if they would like any restrictions and such.

Mr. DeNault stated most of the restrictions have been covered but if it were to be granted a Special Land Use, if a fast food restaurant were allowed in a C-1 under Planning Commission Approval, under Special Approval Land Use, there are a couple of conditions the ordinance imposes on the Planning Commission. The free-standing won't apply because it's not a free standing building.

- It is located on a major thoroughfare.
- It does have (if you find it does have) adequate ingress and egress to handle the traffic that is anticipated.
- Drive-through lane has to have a satisfactory traffic pattern to prevent traffic congestion and impairment of vehicular circulation for the remainder of the development.
- Vehicle stacking lanes may not cross into any maneuvering lanes, drives, or sidewalks.
- There will have to be smoke, odor, and gas controls in place so there is no nuisance.
- A drive-through speaker system may not be any louder than 50 decibels, four feet between the vehicle and the speaker and in no case shall the transmission of voices or music from that speaker system be audible at the lot line.
- Has to comply with all city code provisions.

Mr. DeNault stated that would be under Special Land Use in a C-1.

Mr. D'Angelo asked the Board if there were any other questions.

Mr. Washburn asked Mr. D'Angelo that he indicated there are a number of other locations in the city that have a drive-through similar to this, but are the C-1 Local Convenience Zone districts or are they C-2 or C-3 that we were talking about. Plus you made an interesting comment; we would like to know exactly what we are approving before we do it. He thinks this request is actually premature. He stated he is not ready to open himself up to possibilities that a McDonald's might end up there. Just because all the others are in free standing buildings, you can go to centers along M59 and Bagger Dave's is in a center like this and it's a fast foot burger place just like a McDonalds. He would like to know what the use is going to be before he will vote in favor of this.

Mr. D'Angelo stated Bagger Dave's is not a fast food burger place. He then stated he also would like to know what he is approving before he approves it. He asked Mr. McLeod could they

Mr. Washburn asked why it is not a fast food burger place.

Mr. D'Angelo answered because it doesn't have a drive-through; you sit down and have a waitress. It's more of a restaurant.

Mr. Washburn asked how it is different, he understood you could go in, order, and come out.

Mr. D'Angelo stated you can get something to go, but it is a sit down restaurant. You have a waitress and give a tip.

Mr. Washburn asked other than the fact of no drive-through, how is it different than a McDonald's?

Mr. Militello stated you go in and sit down and you have a waitress.

Mr. D'Angelo stated they both have burgers is about the only commonality.

Mr. Washburn stated he wasn't familiar with the in service.

Mr. D'Angelo asked Mr. McLeod if they could build this with a drive-through and get permissions with the city and all would be fine. Is the only time they use the Use Variance when they go to utilize the drive-through?

Mr. McLeod stated in terms of having this as a drive-in or drive-through facility, the ordinance says that it is a C-3 use. If the question was, can they build the shopping center without the drive-through? Then yes; within the C-1 district they absolutely can. Anytime they put the drive-through in, based on the way our ordinance reads, the only time a drive-in or drive-through use shows up is in the C-3 district.

Mr. D'Angelo wondered if they built it and didn't use it, when does it actually become a drive-through. Is it when it's being used or being built?

Mr. McLeod stated he would take the more conservative stance and say as soon as it is physically built it becomes a drive-in or drive-through facility.

Mr. D'Angelo stated he was fine with that.

Mr. Washburn stated, he doesn't know how the other Board members feel, and they probably aren't going to be in agreement with this but he would like to table this until they know specifically what is going to go in the end building. At that time, it could be reconsidered and be brought back "off the table" for discussion. Based upon what he looked at, he is not certain what it says is requesting Board approval for Use Variance to permit a C-3 General Business Use (Drive-through) in a C-1 Local. So can you take one of the heavier uses in a C-3, say this is not the intent but put it in there open up a drive-through restaurant and just have somebody drive up to the side and end up with an auto repair in the back of that, a single, individual car. It doesn't say drive-through restaurant, it just says drive-through. Can somebody stretch that to mean we can put anything in a C-3?

Mr. D'Angelo stated the Board can certainly place restrictions with the way the motion is written. He also said he doesn't want to tie the developer's hands to the point where he has to have a tenant before he even puts a shovel in the ground.

Mr. Washburn stated then you don't even know if he needs a variance.

Mr. Najjar stated to Mr. Washburn, if they don't have an approval, if we don't grant it, he cannot go advertise or market the plaza as having a drive-through because he won't have one. If it was approval by C-1, he wouldn't be here. His point is the gentlemen are here to get approval for the drive-through so he can market the plaza. One of the selling points is that he would have a drive-through otherwise, why would Starbucks, Panera, Einstein Bagel, or whatever come in there. We cannot table it until he finds a tenant, because he's not sure who will be in there. Speaking as a business man, he will not be able to market that.

Mr. Washburn stated going back to what was just said, you don't have a tenant and you're not sure, you're going to have the same thing. You're going to have a variance for an unknown. Potentially that could be occupied and the drive-up window is not required. Now you're going to have a building sitting there with a drive-up window that, based upon the tenant, is not required. If you look at the intent of what a C-1 Local Business is, it's not intended for those kind of uses to even be located in that zone district.

Mr. Ujkic asked if the petitioner would be willing to put a restriction for a coffee shop...

Mr. Abdelnour stated you can just restrict to a coffee shop but you can restrict McDonald's, Burger King, and such.

Mr. Ujkic asked so would you be willing to put some kind of restriction to the big name franchisee so maybe Mr. Washburn will feel more comfortable.

Mr. Abdelnour stated yes, we're not going to put a car repair in; it's not designed for that. The owner will have the final answer but McDonald's and Burger King; we don't have a problem with that, but no coffee shop? You can't say a coffee shop can't go in there.

Mr. D'Angelo asked if they would be willing to take a restriction that says maybe a food service establishment. That gets rid of any of the car worries or anything else.

Mr. Ujkic stated it's called a full sit down service, meaning where you would have a waitress and getting a full sit down service.

Mr. Abdelnour asked if that was acceptable.

Mr. Ujkic stated no, they're talking about excluding that. That's what Mr. Washburn was pointing out.

Mr. Abdelnour and Mr. Garmo asked so no restaurants at all? Do you want something like McDonald's there or like a Kerby's where there is a restaurant with a drive-through be acceptable? Because McDonald's don't have waitresses, it's not a full service.

Mr. Ujkic said he understood but Mr. Washburn had a concern about a full sit down service, is that correct.

Mr. Washburn stated no, he is worried about granting a variance to something we don't know what we're granting a variance to.

Mr. Ujkic asked if there would be a difference from a McDonalds to a full sit down service.

Mr. Washburn stated sure. He asked if Mr. Ujkic was familiar with Riverland on Van Dyke. There is a coney island restaurant and there is no drive-through, it has waitresses.

Mr. D'Angelo asked the petitioners if they are going for food type establishment, if we set a restriction for food service?

Mr. Garmo asked what wouldn't be a food establishment.

Mr. D'Angelo stated car repair or anything other than food.

Mr. Najjar asked how about a pharmacy.

Mr. Garmo stated if he couldn't get a coffee shop or anything of that sort and a pharmacy came in, he would do a pharmacy.

Mr. D'Angelo stated they could come back and ask for an amendment to what would be granted. He said he is trying to work with petitioners and try to get something the Board can agree to. He stated it's probably 75% going to serve food in some way. He explained that if the Board votes for putting in a food service and they couldn't get one but a pharmacy would like to go in there, they could come back to the Board and ask for an amendment. He stated he is trying to restrict what goes in there so there is some power of what goes in there so we don't end up with whatever could show up there. At the same time, put some restrictions on it that will help dictate what will go in there. So if we made a restriction on hours, which the drive-through won't be open past 11 o'clock.

That's probably going to stop a Burger King or McDonalds from going in there without saying no Burger King, no McDonalds going in there. There are ways we can frame this that will hopefully give you the freedom to go after some tenants but also address some of Mr. Washburn's concerns that might be reflective of the greater community's concerns as well.

Mr. Abdelnour stated absolutely.

Mr. Deming stated suppose they told us tonight who would go in there and we approve. Then a year and a half later that tenant moves out and he's ready for a new tenant. Does he have to come back, do we have to approve his next tenant.

Mr. D'Angelo stated it depends how we word the approval. If we word it a food establishment, he doesn't have to come back. But if the next person is a pharmacy, two years from now, then he would.

Mr. Deming asked what was wrong with a pharmacy.

Mr. D'Angelo stated nothing. He's just stating hypothetically it depends how the motion is worded.

Mr. Deming asked aren't we tying a business man's hands.

Mr. D'Angelo stated he is just bringing up the facts that no motion has been made yet.

Mr. Graef stated his main concern is if we tie the owner's hands with restrictions, saying you can only have a food establishment and he can't find a food establishment, but he has a pharmacy ready to go. He would have to come back and wait for us to approve it then they find another spot. Mr. Graef's main concern is that he would lose business. The last thing he would want to see is another strip mall with empty stores. He already sees one on 15 Mile Rd. between Dodge Park and Van Dyke that is completely empty. His other concern is you're not going to have a repair facility in the middle of a shopping mall. Any kind of an auto repair facility is going to have its own area because you have to have all kinds of EPA restrictions as far as sewage so that car lubricants do not get into the environment. You aren't going to stick that next to a sub shop. It's just not going to happen. Speaking to hours of operation, you have a hospital right there with an emergency room. Mr. Graef gave a scenario: Say you have a coffee shop there that wants to stay open until midnight. As a parent, I have been to the emergency room at midnight, I'm tired, I would like a cup of coffee and I could run over there and get it. If you have something that restricts it to 10 o'clock at night, I'm going to be tired. Those are his concerns, that if the Board restricts them too much, they will not have the ability to go out and get tenants that will stay there and be positive tax revenue for the city.

Mr. Washburn asked why we are all assuming it's going to be a drive-up use.

Mr. D'Angelo stated that is the variance is asking for.

Mr. Washburn stated yes but why are we assuming that is what he is going to restrict that to.

Mr. D'Angelo apologized for not understanding the question. He stated he is asking for a variance for a drive-up.

Mr. Washburn stated he knows that but that doesn't mean sometime in the future it might not require a drive up because it's a lady's clothing store.

Mr. D'Angelo stated that would be allowed in a C-1.

Mr. Washburn asked if there are any uses for a C-1 that requires a drive-up.

Mr. McLeod stated there are some uses in the C-1 district that could perpetuate the need for a drive-through. A pharmacy or a bank are two that come to mind that would need a drive-through.

Mr. Washburn stated there are a lot of uses that don't require a drive-up.

Mr. McLeod stated logically speaking those would go in other tenant spaces. That's not to say if they found someone that was a 12,800 square foot user that didn't need a drive-through he would imagine they would lease to a tenant that would want to use it. The variance would go null and void or they simply would not utilize the drive-through.

Mr. Washburn stated he, personally, is not willing to grant a variance not knowing what is going in there.

Mr. D'Angelo stated you wouldn't know who was going in there ten years from now if the tenant changed because it goes with the property, correct?

Mr. Washburn stated potentially.

Mr. D'Angelo stated eventually in the end, we don't have control.

Mr. Washburn stated he's asked to grant a variance to a building, to put a drive-through window, and have no idea of what's going in there. It may not require it and so it's premature. What goes in there may or may not require it. If they get a use that requires it fine, if they don't, we have a building with a drive-through window that doesn't serve a purpose. I don't know potentially down the road, I know what's in front of me right now. Right now I don't know what their proposing to put in the building.

Mr. D'Angelo stated he thinks that's the reason they should be looking at whether or not they want to allow a drive-through facility in a Local Convenience Business District rather than do we want to allow a Dunkin Donuts in a Local Convenience Business District.

Mr. Washburn stated he feels there are too many open ended issues with this. He asked if there are any C-3 uses that could be put in there that would not be your typical type of use that would require a drive-up window but someone could come in here and say, I'm going to put this use in there and I'll put a drive-in window.

Mr. D'Angelo asked Mr. McLeod if they would be allowing any C-3 use in this end-cap of the shopping center.

Mr. McLeod stated a possible solution to this would be to place a condition that would state "any C-1 or food use with a drive-through". So that way you're automatically limiting the types of uses that go on there. Café's and eating establishments are a permissible use in the C-1 district with Special Land Use but they specifically exclude a drive-through. That would get them around the food use issue. If you then put the caveat on there that it has to be a C-1 use that says some of your bigger uses, you might be somewhat leary of in the C-3 district can't go in this location. Whether a pharmacy needed a drive-through, which would be allowable under a C-1, you would be covered there so that way you're not restricting them. If a bank wanted to go in and have a drive-through that is allowed in a C-1, you would be covered. That way you're also negating the potential for the more intense C-3 uses other than just the drive-through itself for a food use. That way you're protecting yourself long term. The solution might be to put the caveat on there that it's a C-1 or food use with a drive-through.

Mr. D'Angelo asked Mr. DeNault if he had anything to add.

Mr. DeNault stated he was reading from the wrong list earlier, C-2, and wanted to clarify C-1 uses. These are things they can do right now. Things like paint stores, grocery stores, meat markets, fruit markets, retail bakery store, drug store, beauty shop, barber shop, shoe repair, small appliance repair, watches and clocks, locksmiths, and skipped

over some. He is trying to give a sense of what C-1 is for. It's for things like when you go in for a service and come out, you don't really stay, unless for example a haircut. Liquor stores, stationary, jewelry, hobbies, toys, cameras, gifts, florist, tobacco, pet supplies, home decorating, cell phones. Those are the kind of stores that are allowed in C-1. If you went to the Planning Commission and for a Special Approval Land Use, you could get to a carry-out restaurant or a regular restaurant but those are limited. You have to have a certain size; you can't have drive-throughs in those. In C-1, even to get to a food use, other than a bakery or market type use, you would have to get to a Special Approval Land Use for some kind of restaurant service.

Mr. Washburn asked if Mr. DeNault just stated that in a C-1 restaurants and fast food are permitted subject to Planning Commission Use Approval but no drive-through window.

Mr. DeNault stated C-1 would allow you to have a carry-out or a restaurant under 5,000 square feet, and there are other rules, basically a small restaurant or small carry-out restaurant but no drive-through even if Planning Commission approved it.

Mr. Washburn asked specifically identified as no drive-through in a C-1.

Mr. DeNault stated that is why they need a Use Variance. So when you talk about when you get drive-through permission in C-3, the kinds of things C-3 use contemplates are veterinary clinics, auto dealers, hotels, motels, rental places, large appliance repair, auto supply, auto rental. But the one that really applies here is eating and drinking establishments including outdoor eating areas, banquet facilities, and fast food restaurants. So if you get to a C-3, you can have a fast food restaurant, it's more intense use. Then you would be subject to the requirements I read earlier like the noise, odor, etc.

Mr. Washburn stated he also listed the C-2, and asked if that's because the C-3 picks up the C-2.

Mr. DeNault stated yes and hopefully that helps everyone understand what is allowed. C-3 is more intense, fast foot is good. C-1 is less intense, fast food is not even allowed even with a Special Approval Land Use if it has a drive thru.

Mr. Washburn asked if Mr. DeNault could touch on the uses of the C-2.

Mr. DeNault stated C-2 is what he read earlier when he read the wrong list. C-2 is department stores, merchandise stores, supermarkets, gyms, pet shops, bulk food, home and home furniture, photo studios, museums, theatres, dry cleaning, and the only that applies here, eating and drinking establishments but not fast food restaurants. Only in C-3 is a fast food allowed if that helps narrow it down.

Mr. Washburn asked about he keeps saying, the one that applies here. If you look at the way it is printed, it says drive-through. It doesn't specify anything else. And a drive-through can conceivably be more than a restaurant. He stated he is not going to vote for this because he doesn't know specifically what will be going in there. He would much prefer to know what is going in there and if you don't want to table it, that is fine.

Mr. Militello stated he would bet 99% that what is going to go there is a Starbucks, a Biggby, or a Dunkin Donut and those national chains will help him fill the rest of the shopping center. He understands why the applicant wants a drive-through. This way if they put something like that in, it will attract people which will utilize the rest of the shopping center. If you don't have that, you're limiting the shopping center and chances of filling it are slim to none. The shopping centers that have the drive-through are usually the more successful ones because that pull a national tenant like a Dunkin Donuts, or a Biggby, or Panera. But Panera has been going free standing last five stores he's seen built so chances of getting a Panera may be limited. You need somebody big at one of the ends to fill the rest of the plaza. Otherwise, it ends up like Riverland and just sits there even with Burlington. You need a drive-through coffee shop in there to get the tenants to come in there.

Mr. Najjar stated three years ago Rena Travel, Dequindre south of 15 Mile Rd. The lady built the plaza and came in front of the Board. When we put a lot of restrictions on that plaza, no smoker outlets, no liquor store, no this, no that. It's been three years and the plaza is still empty. She cannot fill the plaza. She just rented a couple of stores. We put so many restrictions and the lady has been suffering. She spent a million and a half dollars and she cannot recover one-tenth of what she spent because there is so much restriction on her.

Mr. Washburn stated he is not saying they can't put that in there. At no time has he said that. All he said was he would like to table it so when they get ready to put something in there, they would come back and tell us what it is.

Mr. Militello stated but they can't build it or advertise it if we do that. He stated Mr. McLeod said they can't build a drive thru and can't advertise a drive-through.

Mr. Washburn stated so there is one rental space that is a concern.

Mr. D'Angelo stated the one, leads to the rest. He asked for any other discussion. Being none, asked for public input.

C. Elaine Fontanta, 3178 Castle Court, Sterling Heights, stated she is on the corner of Shell and Castle Court. She has to go out Shell to 15 Mile Rd., it already is a nightmare. She states it has not been mentioned what a horrible traffic situation a drive-through could present. There is a big shopping center on the left hand side and the restaurant on 15 Mile Rd. draws a lot of traffic, it goes out to 15 Mile Road. You have Henry Ford Hospital; traffic goes in and out of there. You have the entrance and exit to the optical shop and to CVS. Even right now it is a nightmare to make a left hand turn. She is afraid of the terrible mess if there is a drive-through. It will be in and out traffic, people coming out of the shopping center, and there are going to be accidents. She stated her husband was hit by a car going into Henry Ford Hospital because someone cut in front of him. She feels there will be so much cutting in and out in the area and is asking the Board to please understand the danger of this. She stated the traffic is already unbearable and please to consider the dangers. She knows people complained when the Welcome Center went up because of the traffic, it was built and there is an abundance of traffic.

Mr. D'Angelo invited other members of public to speak. Being none, closed public participation.

Mr. D'Angelo asked Mr. McLeod if there were any traffic studies done on 15 Mile Rd. or anything to address regarding the citizens concern.

Mr. McLeod stated the city has heard and is aware of the concerns regarding the traffic on 15 Mile Road. While this particular application has not provided a traffic study, as currently zoned, the shopping center can go in, minus the drive-through. The shopping center will already create traffic or turning movements into the center with people passing by. Drive-throughs, depending on the use, could generate additional traffic but in many instances they are not traffic generators but accept the traffic already going by. He stated it is understood that 15 Mile Road, especially close to the Ryan intersection, is an issue. The city has recently, and in the past, restricted turning movements in and out of certain shopping centers as you get closer to the intersection. The city is working through the problems of traffic there. Some of the traffic concerns are what they are and the city is working to help mitigate some of those concerns. It is something to take into consideration with the ZBA. One of the things discussed with the applicant, is cross access to adjoining parking lots to try to minimize curb cuts and allow for additional access points. That way you don't necessarily have to go out to 15 Mile if you use and adjoining site. He stated again, it is understood that traffic is a concern here.

Mr. D'Angelo stated that his thoughts were, you may not go out of your way to go to the coffee shop, but you would stop there if it was on your way to and from a destination. It would accept the traffic that is already there which could lead to more traffic and

accidents. As stated already, they can put a plaza there without a drive-through without any approval. He asked if the applicants need anything from the Board for the additional curb cuts, anything that needs to be discussed.

Mr. McLeod stated that if the ZBA feels it's imperative those need to occur the Board could make those conditions. He stated they worked with the applicants to provide for those cross access potentials both east and west. If the ZBA felt they wanted to take it a step further, you could reiterate that concern, or reiterate that need to go in, or somehow otherwise mitigate the traffic coming to and from the site.

Mr. D'Angelo stated he thought it would certainly help. He gave an example, if he was on 15 Mile and saw the coffee shop, he wouldn't have to stop fast, there would be another entry to the plaza so he could stay safe driving with the curb cuts in there. He stated that if it prevented three accidents in the next ten years, that would be great.

Mr. D'Angelo asked the applicants if they have talked to the adjoining property owners about the curb cuts.

Mr. Abdelnour stated when they were dealing with the Planning Department. They requested the applicants show the easement to get into the lots and they complied. He stated they have not asked the neighbors if they could do that.

Mr. D'Angelo confirmed the applicants have not talked to the surrounding neighbors. He does not feel you could make it a condition presently.

Mr. McLeod stated if the Board felt it is relative to granting the variance to help mitigate the traffic for the drive-through, that would be something the applicants should do. He hopes the applicants have heard the concerns regarding in and out access and maybe those conversations will happen between the adjacent property owners. Some of that may be already set up for creating the cross access.

Mr. D'Angelo asked if they could make it a requirement that the applicants ask in the motion.

Mr. McLeod stated yes.

Mr. DeNault stated, was the question can we force them to ask?

Mr. D'Angelo stated yes.

Mr. DeNault stated if we are going to force them to ask, don't we need to know what the answer is before we can make a decision.

Mr. D'Angelo stated, you can't force the other party to say yes.

Mr. DeNault agreed but asked, wouldn't you want to know the answer before you agree. He stated forcing them to ask has no meaning.

Mr. D'Angelo stated it may not change his decision but he certainly would like to make that happen if we have the power to ask. He stated it would not change his vote but would like to see it happen and anything he can do to make sure of that, if he has the power, he would like to do that.

Mr. DeNault stated it is a meaningless question. He asked if we would require them to send us a copy of the letter that asks.

Mr. D'Angelo replied with consent.

Mr. DeNault state you would have to, to enforce the condition if the Board adopted that. He stated there is nothing stopping them from withdrawing the request the minute the letter is received. He stated he doesn't know if he can encourage this line of thinking.

Mr. Militello asked why not just make it so they make it amicable to agree with what the City Planner, at his discretion, chooses.

Mr. D'Angelo stated he felt it was meanings as well as the other things that are being talked about. He asked Mr. DeNault what options there are with regards to the curb cuts.

Mr. DeNault asked if the goal is to create alternative entry and exit points.

Mr. D'Angelo stated yes.

Mr. DeNault stated if that is the goal, if enough of the Board members feel this is not sufficient to alleviate the concerns about traffic flow, then you should vote against or vote to postpone. He stated he didn't know if you can vote to approve a Use Variance but mandate where those ingress and egress points are going to be at this point. He stated it seems like a planning function.

Mr. McLeod stated that's why, at this point, the cross access points are set up. Maybe the applicant can go forward with some of those conversations. He stated he thinks the one to the west is probably setup and he believes it is already a joint access agreement that is in place for that roadway, immediately to the west. He thinks the questions should be asked, to the property owner to the east, and they can work with the applicant through the rest of the site planning process to try to make that happen.

Mr. Washburn asked if they know what the road to the west is for.

Mr. McLeod stated the one to the west is to Henry Ford.

Motion by Militello, supported by Graef, in the case of PZBA 16-0004 - Maple Ryan Plaza, Tony Garmo, move to approve the Use Variance with the following conditions:

1. That the decision of the Board will remain valid and in force as long as the facts and information presented to the Board in Public Hearing are found to be correct, and that the conditions upon which the motion is based are forever maintained as presented to the Board. The petitioner agrees to abide by and comply with all the ordinances of the City of Sterling Heights and the regulations of every lawful agency or governing authority now or hereafter in force;
2. Notice of the approval of the variance shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to file this notice shall serve as grounds to revoke the variance;
3. A Hold Harmless Agreement, in favor of the City of Sterling Heights, shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for the recording with the Macomb County Register of Deeds. Failure to follow this agreement shall serve as grounds to revoke the variance;
4. The applicant will install a landscape hedge significant ensure substantial screen, minimize the effects of a more intense use the entire length of the parking lot that abuts to 15 Mile Rd.
5. The outdoor patio area shown on the plan must include a full landscape treatment sufficient to minimize the impact of the drive-through lane on the outdoor seating area.
6. The applicant must work with the Planning Department to develop a plan to provide additional landscaping along the west and east property lines to substantially conceal the stacking area of the drive-through facility.

7. A defined pedestrian connection must be provided from the sidewalk along 15 Mile Rd., through the parking area, and in front of the shopping center.
8. The petitioner work with the Planning office to obtain the extra curb cut to the west of the plaza.

The motion is supported by the following findings of fact:

1. The shopping center will be more attractive to perspective tenants with the exclusion of the drive-through tenant space there by, increasing the long term visibility of the shopping center and its other tenants.
2. The drive-through use is ancillary to the over use of the property as a shopping center and is not the primary use of the site or uses.
3. The applicant has provided additional architectural landscape amenities to substantially minimize the visual impact and the increased usage impact of the drive-through facility.
4. The property of the southwest corner of 15 Mile Rd. and Ryan also has a drive-through facility in the C-1 zoning district therefore the use of the property for a drive-through is ancillary use to the shopping center will not be completely unique to the proposed location.
5. The properties to the west and the east are non-residential zone and utilize properties and consist largely of parking lots immediately adjacent to the drive-through facility and the property to the rear of the existing Big Beaver Creek and includes parking utilized by the Henry Ford facility.
6. The drive through will not be detrimental to the future development of surrounding properties as the drive thru is a small portion of the overall development of the site as a commercial shopping center and provides adequate and safe maneuvering and stacking lanes.

Mr. D'Angelo asked for any discussion on the motion. He referenced number eight of the motion and asked Mr. DeNault if there is anything that should be added to it.

Mr. DeNault stated we are back to asking and then changing our minds. He is not sure how to word it without knowing what the goal is. He asked Mr. Militello what his goal was and then he could come up with the wording for it.

Mr. Militello stated he would like the applicant to work to ease up the concerns of the traffic. So maybe if he could work with Henry Ford Hospital in obtaining that.

Mr. DeNault asked if his motion is contingent upon, or conditioned upon, them actually having new access points.

Mr. Militello stated no. He would like the applicant to be open to it and work for it. He is not making it a condition that if he doesn't do it.

Mr. D'Angelo stated he felt there should not be a number eight.

Mr. DeNault stated he felt number eight was meaningless.

Mr. Militello stated to cross off number eight.

Mr. D'Angelo felt the applicants heard the concerns.

Mr. Abdelnour stated they are willing to do it, and asked are they (Henry Ford) willing to.

Mr. McLeod stated that is what the applicant would have to find out.

Mr. Graef agreed to amend his support.

Mr. Garmo asked if they were talking east or west side of the property.

Mr. D'Angelo stated both. On their plans, an owner provided easement for possible future curb cut. The Board and the City as well, would like to see both of those happen.

Mr. Garmo asked if the city could go ask them to allow it and he would say okay.

Mr. Militello stated it isn't their job.

Mr. Garmo stated he understood, but the city knows the owner and if they ask them, he would agree.

Mr. D'Angelo asked Mr. McLeod if the city is ever in middle of these discussions.

Mr. McLeod stated he didn't know if it should be the city prompting that discussion but by all means, they will come to the table to encourage it. It's something the city would like to see. They work with ever land owner to try to do this between non-residential sites. Ultimately it will be a conversation between the applicant and the other land owner.

Mr. D'Angelo stated the motion has been amended, the support has been amended. It is not going to be a condition of approval or disapproval of this motion. He thinks the applicant heard loud and clear, and would also like safety to be very important for their business purposes. The Board would like to see the applicant reach out to the neighbors on both sides and see what can happen. He stated they will do everything to make this a safer area.

Mr. D'Angelo stated the discussion of it being a C-1 use or C-3 food service, and then stated to Mr. Militello that was not one of your conditions.

Mr. Militello stated he didn't want to restrict the applicant, as Mr. Deming, Mr. Graef, and Mr. Najjar commented. He feels the applicant knows the intent and he doesn't see anyone like McDonalds going in there. He doesn't want him to end up with an empty shopping center.

Mr. D'Angelo stated he agreed, he didn't want to tie them up too much but when we say anything in a C-1 and any food establishment in a C-3.

Mr. Militello stated he won't attract that kind (big fast food), he's going to get a Biggby or Dunkin Donuts, etc.

Mr. D'Angelo asked why not make it a condition.

Mr. Militello stated then we restrict his hands and he wouldn't be able to put a pharmacy in there.

Mr. McLeod stated if it was open to a C-1 and a food use with a drive-through, they would be allowed to put in a bank, pharmacy, or food service.

Mr. D'Angelo stated he feels that helps address a little of Mr. Washburn's concerns.

Mr. Washburn stated no matter what the use, if it creates an excessive amount of cars in the drive-up, whether it's a Biggby or McDonalds it wouldn't make a difference.

Mr. DeNault asked Mr. Militello, as the motion is currently presented, you've asked for the Board to vote to approve, by five members, the right to use the property as a C-1 but have one drive-through window installed on the east end of the development. He asked if that was correct.

Mr. Militello stated yes.

Mr. DeNault stated if you leave the motion that way, they cannot advertise for fast food or any type of restaurant use because you haven't made that a part of what you are granting them to do. They have asked for a drive-through window at the east end, they have not asked to have a C-3 use in a C-1.

Mr. D'Angelo and Mr. Militello stated it is on the agenda.

Mr. DeNault stated he read it as a drive-through use in a C-1, the variance isn't allowing any C-3 use to go in a C-1. It's the drive-through aspect of a C-3 that's being allowed in C-1. We haven't yet told anybody whether we're getting beyond grocery stores, meat markets, retail bakery's, etc. He stated maybe Mr. McLeod could help clarify.

Mr. D'Angelo stated he thought that's what was talked about earlier in the conversation. When he looked up drive-through in C-3, the drive-through meant food and those types of places.

Mr. DeNault stated he didn't feel it read that way.

Mr. D'Angelo asked that it's allowing a drive-through and C-1 uses.

Mr. DeNault stated there are no drive-through fast food uses in C-1, and it sounds like that's what the applicant wants, the option to be able to put one in potentially. So are we saying the use that they are now allowed to have will be fast food or carryout drive-through use or are we just saying you can have a drive-through use. Maybe it fits with the C-1 or maybe it has to come back for food later.

Mr. D'Angelo stated it might be better to have a number eight that states any C-1 use with a drive-through or a food service, then stated not sure how to word it.

Mr. DeNault stated the Special Approval Land Use says carryout restaurants or restaurants but even those are not allowed to have drive-throughs. So you would say those are C-1's, but do you want to limit it to those C-1's, the carryouts and restaurants under 5,000 sq. ft. and just add the condition they are allowed to have a drive thru.

Mr. Ujkic asked about places like Starbucks, Donkin Donuts, are they in C-1 or C-3. He stated that is the applicant's intent for a tenant.

Mr. DeNault stated those are C-3.

Mr. Ujkic asked if they gave approval for a drive-through, they still cannot go after the tenants he intends to have.

Mr. DeNault stated he didn't believe so the way it was worded at that point. He stated the wording needs to be clearer that it isn't just the fact that they can have a drive- thru window but what can it be used for. Just giving them the window, they still would have to be C-1.

Mr. Ujkic asked so does that mean they will have to come in front of us again to get that special approval for that particular tenant.

Mr. DeNault stated that if they choose to go food, he doesn't feel he can sign off on saying food, restaurant type establishments are allowed. Examples like a bakery, drug store, or dry cleaning would work and you could give them drive-through permission but not a restaurant type of use. He stated he did not feel the motion covers the tenants he intends to try and get.

Mr. Ujkic asked if Mr. Militello is willing to add to the motion, will that be legal and good to go.

Mr. DeNault stated yes. If Mr. Militello's intent in granting the drive-through Use Variance option is to say that not only can you do C-1 but you can also add to C-1 by

having a restaurant use. If that is his intent, that is what it should say. He stated that is why he is trying to clarify what the goal is.

Mr. Militello stated the goal is to let the applicant put in what they have been discussing. He assumed that is what the motion was.

Mr. DeNault stated he thinks the motion must be amended to allow for the use. He said the motion is to grant a Use Variance for a drive thru restaurant facility in the C-1 Local Convenience Business District. He asked Mr. McLeod if he agreed that it works.

Mr. McLeod stated he would broaden it slightly to include a drive-through facility for any C-1 or restaurant use.

Mr. D'Angelo clarified with Mr. Militello that he wanted to amend the motion so the Variance would read a C-1 use or food service use with a drive-through.

Mr. Graef supported the amendment.

Mr. Washburn stated by wording it that way, he understands a C-3 picks up a C-32, are you saying then that it's locked to just the uses of the C-3 as permitted by the C-3.

Mr. DeNault clarified that he would not put C-3 in there, any C-1 they could do know with the window or they could have a food service use there as well. It's pulling that out of C-3 and adding it to what they are allowed to do with that drive-through.

Mr. McLeod stated but nothing else in a C-3.

Mr. Washburn asked if they can have a food service without a drive-up window too then.

Mr. DeNault stated no because the Use Variance is any drive-through use that C-1 already has or any drive-through food service use. That is the Use Variance.

Mr. Washburn asked if they would be able to have a small restaurant in there.

Mr. DeNault stated if they want a restaurant, they have to go to the Planning Commission for Special Approval Land Use.

Mr. D'Angelo asked for any further discussion. Being none, asked for a vote.

Ayes: Militello, Graef, Najjar, Ujkic, D'Angelo, Deming
Nays: Washburn
Absent: None
Motion Passed

APPROVAL OF MINUTES

Motion by Militello, supported by Deming to approve minutes from February 25, 2016.

Ayes: Militello, Deming, Graef, Najjar, Ujkic, D'Angelo
Nays: None
Absent: None
Abstained: Washburn - Not present at February 25th meeting.
Motion Carried

NEW BUSINESS

None

OLD BUSINESS

None

PUBLIC PARTICIPATION

None

MOTION TO ADJOURN

Motion by Militello, supported by Deming, to adjourn.

Ayes: Militello Deming, Graef, Najjar, Ujkic, Washburn, D'Angelo

Nays: None

Absent: None

Motion Passed

Meeting adjourned at 9:00 P.M.

Respectfully submitted,

Derek B. D'Angelo, Chairman
Zoning Board of Appeals