

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

_____ Resolution or Ordinance (Blue) X *Waiver of First Requested*
 X Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager *DAH*

DATE: August 28, 2012 (BOT) Date: September 6, 2012

TITLE: PC 12-13: 401 E. North Ave.

SUBMITTED BY: Department of Community Development *WLB*

BACKGROUND/POLICY IMPLICATIONS:

Your Plan Commission transmits for your consideration its recommendation relative to the above-mentioned petition. This petition requests that the Village take the following actions for the subject property located in the B4 - Corridor Commercial District:

1. A conditional use for a drive-through establishment;
2. A conditional use for an outside service area;
3. A variation from Section 153.208(H) to allow signage within clear line of sight areas;
4. A variation from Section 153.505(B)(19)(b)(1)(a) to allow a property with a multi-tenant building setback less than 120 feet from the property line to display wall signs that are two times the lineal front footage of the tenant space;
5. Variations from Sections 155.416(J) & 155.707(A)(4) to reduce the required 30' transitional landscape yard;
6. A variation from Sections 155.706 (C) and 155.709 (B) of the Zoning Ordinance reducing the required perimeter parking lot and perimeter lot landscaping from five feet (5') to zero feet (0') to provide for shared cross-access; and
7. A Minor Plat of Subdivision with a variation from Section 155.416 (D) to allow a lot area of 35,382 sq. ft. where a minimum of 40,000 sq. ft.
8. Resolution Authorizing Signature of Village President and Clerk on a Cross-Access Connection Reimbursement Agreement. *(This item was not considered by the Plan Commission as it falls under the purview of the Board of Trustees)*

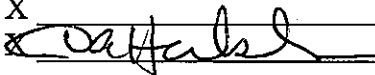
The Plan Commission recommended approval of the zoning actions associated with the petition subject to amended conditions.

The petitioner has requested a waiver of first reading.

Please place this item on the September 6, 2012 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X  _____	Date <u>8/29/12</u>

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: David A. Hulseberg, Village Manager

FROM: William Heniff, AICP
Director of Community Development *WH*

DATE: September 6, 2012

SUBJECT: PC 12-13; 401 E. North Avenue (Dunkin Donuts):

Attached please find the following items for Village Board consideration as part of the September 6, 2012 Village Board meeting:

1. Plan Commission referral letter;
2. IDRC report for PC 12-13;
3. Completed Standards;
4. An Ordinance granting a conditional use for a drive-through establishment; a conditional use for an outside service area; a variation from Section 153.208(H) to allow signage within clear line of sight areas; a variation from Section 153.505(B)(19)(b)(1)(a) to allow a property with a multi-tenant building setback less than 120 feet from the property line to display wall signs that are two times the lineal front footage of the tenant space; variations from Sections 155.416(J) & 155.707(A)(4) to reduce the required 30' transitional landscape yard; and a Minor Plat of Subdivision with a variation from Section 155.416 (D) to allow a lot area of 35,382 sq. ft. where a minimum of 40,000 sq. ft.;
5. Plans associated with the petition;
6. Draft Resolution authorizing the execution of a sales tax agreement; and
7. Draft Sales Tax Agreement.

The Plan Commission recommended approval of the zoning actions (#4 above) associated with the petition.

Draft Sales Tax Agreement

Also attached is a draft sales tax reimbursement agreement for costs associated with constructing cross access to the property to the east (Casey's). Currently, Casey's Restaurant does not have direct access to a signalized intersection and their direct access to North Avenue is limited to a right in/out. In 2002, Casey's installed an access drive out to Joyce Avenue to

the east. However, to get to the nearest signal at Grace Street; customers have to circle back around the Lombard Lagoon on Marcus Drive.

Originally, staff and the petitioner were talking about the need for only an easement to accommodate a future connection onto Casey's property. However after further review throughout the planning process, it was determined that the cross connection would require some significant engineering, given the existing grades. The petitioner's engineer did develop a preliminary engineering plan showing how this connection could be constructed. Based on the Village's review of their cost estimate, the proposed connection would cost approximately \$66,300. As a condition of approval, staff is recommending that the petitioner be responsible for the installation of the cross access drive, upon the consent of the Casey's property owner. Staff feels that just providing an easement will not result in a connection anytime soon and that should this project be approved, it would be much easier to design and construct the cross access at the same time the project is being developed. As this improvement can be deemed as a transportation benefit for the public, staff supports a rebate agreement to assist with the cost of construction. This would ultimately be subject to Village Board approval. This is a similar approach the Village took with the Murray's/O'Reilly's Auto Parts on Roosevelt Road for a watermain extension and Lombard Toyota expansion. The main highlights of the agreement are:

1. Cross access to the existing Casey's Restaurant to the east shall be constructed as part of the project and prior to the issuance of a Certificate of Occupancy, subject to the approval of Casey's Property Owner and in accordance with the preliminary engineering plan dated June 26, 2012 by RWG Engineering, LLC, except as it may be modified to meet Village Code.
2. The total reimbursement costs will be based upon the construction costs for the connection. Staff estimates that the approximate cost of the extension will be about \$66,300. The up-front costs associated with the project will be borne by the developer. Once the project is completed, the developer will submit their final construction costs for cross access connection to the Village.
3. The agreement provides for reimbursement using the one-percent Retailers' Occupation Tax Act collected by the State generated by future retail tenants to the site. If the property remains vacant or if a non-retail sales tax generating use occupies the building, the Village does not have an obligation to provide any reimbursement. The developer has indicated that Dunkin Donuts will be one of the tenants occupying the space. The agreement will strongly encourage the property owner to have the building occupied by other retail sales tax generating use.
4. The agreement caps the total reimbursement as the total accepted construction cost for the cross access connection with the costs to be reviewed and approved by the Village staff. Moreover, revenues to be reimbursed shall be generated within the first seven years after the agreement is approved. The agreement does not provide any interest reimbursement for the project.

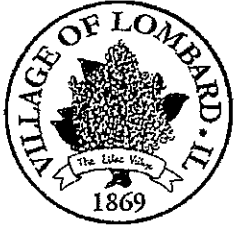
PC 12-13: 401 E. North Avenue (Dunkin Donuts)

September 6, 2012

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Action Requested

Please place this item on the September 6, 2012 Village Board agenda. Staff and the petitioner are requesting a waiver of first reading.



VILLAGE OF LOMBARD

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Brigitte O'Brien

Trustees

Greg Alan Gron, Dist. 1
Keith T. Giagnorio, Dist. 2
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Peter Breen, Dist. 4
Laura A. Fitzpatrick, Dist. 5
William "Bill" Ware, Dist. 6

Village Manager
David A. Hulseberg

"Our shared Vision for Lombard is a community of excellence exemplified by its government working together with residents and businesses to create a distinctive sense of spirit and an outstanding quality of life."

"The Mission of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

September 6, 2012

Village President, and
Board of Trustees
Village of Lombard

Subject: PC 12-13; 401 E. North Avenue

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioner requests that the Village take the following actions on the subject property located in the B4 – Corridor Commercial District:

1. A conditional use for a drive-through establishment;
2. A conditional use for an outside service area;
3. A variation from Section 153.208(H) to allow signage within clear line of sight areas;
4. A variation from Section 153.505(B)(19)(b)(1)(a) to allow a property with a multi-tenant building setback less than 120 feet from the property line to display wall signs that are two times the lineal front footage of the tenant space;
5. Variations from Sections 155.416(J) & 155.707(A)(4) to reduce the required 30' transitional landscape yard;
6. A variation from Sections 155.706 (C) and 155.709 (B) of the Zoning Ordinance reducing the required perimeter parking lot and perimeter lot landscaping from five feet (5') to zero feet (0') to provide for shared cross-access and parking; and
7. A Minor Plat of Subdivision with a variation from Section 155.416 (D) to allow a lot area of 35,382 sq. ft. where a minimum of 40,000 sq. ft.

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on July 16, 2012.

Mike Mallon, President of Mallon & Associates, 1755 South Naperville Road, Suite 100, Wheaton, serving as developer and petitioner which is Mallon III LLC, whose sole purpose is to develop and own the development, presented the petition. He provided a brief background of his company as well as his professional experience. He introduced the members of his team who were available to address specific details.

As a starting point, he showed an aerial of the site. He noted that the property was outlined in red and located at the southeast corner of North Avenue and Grace Street. It is currently under contract and known as the former BP Amoco Gas Station which occupied the site up until 2008 and has since been vacant. The site is currently undergoing an environmental cleanup which has been explained by our consultant in a summary report which has been provided. He has had experience in this field and has previously worked with BP on other projects of this nature so this will not pose a challenge. Describing the site he stated it was over 35,000 square feet in size, had a depth of 182 square feet with frontage on North Avenue. There are two existing curb cuts, one on North Avenue and the other on Grace Street. The curb cut on North Avenue will be modified to address their access in conformance with Village Code.

Noting that the site is zoned B-4, Mr. Mallon described the zoning in the immediate area and explained their compatibility. Of particular interest is a restaurant located to the east of the site known as Casey's Restaurant. We have talked with the owners to try and address a long-term plan for both parcels relative to better access.

A site plan was shown next. Mr. Mallon referred to the staff report which described it extensively. They are proposing to develop a 7,000+ square foot retail development within the character of North Avenue subject to a few considerations. The proposed plan provides for a 7,150 square foot retail shopping center with parking for 30 cars (which meets code). The retail building will consist of an approximate 2,000 square foot Dunkin Donuts on the easternmost space of the development as well as 3 or 4 other tenants in the remaining spaces. Those tenants could include a variety of other retail or service uses including a dry cleaner, telephone store, hair salon or office users but all would be compatible with the B-4 zoning.

As part of the Dunkin Donuts development, they are requesting conditional use approval for a drive through which will be located on the east side of the building as well as an outdoor seating area for customers in front on the store. Queuing for the drive through will begin from the southwest corner of the building and will travel eastbound to the window along the southern building elevation with enough room for 8 stacked cars. They will then exit onto the north side of the development. The outdoor dining area will consist of two tables and will be used weather permitting. Some of the variances they are requesting include the transitional landscape yard, perimeter landscaping, lot area and signage due to the setback and traffic flow on North Avenue.

Mr. Mallon indicated that their response to the standards for conditional use and the variations being requested are included as part of the public record. He mentioned that he has reviewed staff's IDRC report, which includes 12 conditions, and is in full agreement with them. Lastly, he requested approval of the petition subject to the 12 conditions.

Chairperson Ryan asked if anyone was present to speak in favor or against the petition.

John Karantonis, owner of Casey's Restaurant, 415 E. North Avenue, stated their restaurant is located next to the proposed development. He was here to speak in favor of this development and to confirm what the petitioner explained relative to how they might have a common driveway to connect the two parking lots. We agreed on that and have discussed it with them as long as the cost is absorbed by the developer.

Christopher Stilling, Assistant Director of Community Development, clarified that condition #7 in the staff report has been revised to state that in the event the property owner does not consent to the cross connection, the petitioner would have to provide for an easement.

Chairperson Ryan then requested the staff report.

Mr. Stilling presented the staff report which is being submitted to the public record in its entirety. The subject property is approximately 35,382 square feet and is currently vacant. The property was once developed with a gas station that had previously been razed. The petitioner is proposing to develop a 7,150 square foot multi-tenant commercial center. The new proposed development will include a drive-through facility and an outdoor dining area. As the drive-through and outdoor dining areas are conditional uses within the B4 – Corridor Commercial District, the petitioner is requesting conditional use approval for both items at this time. Additional requests for a minor plat, lot area variation and variation for perimeter landscaping are also being requested.

In conjunction with this request, the petitioner has also including a signage package, which consists of two freestanding signs, two informational signs, wall signage and incidental signs associated with the drive through. The petitioner is requesting a variation to display wall signs that are two times the lineal front footage of the tenant space, not to exceed thirty-five (35) feet and a variation to allow the freestanding sign on the northwest corner of the property to be located in the clear line of sight area.

He noted the IDRC comments from the other entities. Planning comments include the proposed improvements. The site is approximately 35,382 square feet in area and was formerly improved with a gas station. The petitioner is proposing to develop a 7,150 square foot multi-tenant commercial center with drive-through.

The Zoning Ordinance requires a minimum of 29 parking spaces (4 spaces/1000 square feet). The petitioner is providing 29 parking spaces and 2 accessible spaces for a total of 31 parking spaces.

As the subject property abuts property in the CR – Conservation/Recreation District, there are two separate provisions of the Zoning Ordinance that require a transitional landscape yard thirty (30) feet in width to be provided along the abutting lot line. The proposed drive through will be located along the southern portion of the building and encroaches into the required thirty (30) foot transitional landscape yard. The proposed plan attempts to minimize impacts of the building

and drive through onto the neighboring CR property to the south by maintaining the existing dense vegetation along the southern portion of the property.

The landscape plan also indicates that landscaping will be provided around the perimeter of the parking lot with the exception of those areas to the east where future cross access will be provided. The petitioner's plan shows approximately 19% open space. Village Code requires a minimum of 10%.

The petitioner has shown a dumpster at the southeast corner of the site. The materials would be consistent with the materials of the commercial building.

The petitioner is proposing to utilize the existing curb cuts located on both Grace Street and North Avenue. Access to North Avenue is restricted and will include a right in/out only. This curb cut onto North Avenue does exceed our maximum width of 35 feet. Therefore staff recommends as a condition that the curb cut be reduced to 35' wide at the north lot line. This modification will increase open space and likely allow for an additional parking stall. Access to Grace Street will be located at the southwest corner of the site. This point of ingress/egress will have full access to Grace Street.

As part of the plan, the petitioner is proposing to include a Dunkin Donuts with drive-through in the easternmost tenant space. Vehicles using the drive-through will queue from the southwest corner of the building and will travel eastbound to the window along the southern building elevation. A one-way bypass lane will be located adjacent to the drive through lane. The pickup window is located on the eastern elevation of the building. Traffic can then proceed to the North Avenue or Grace Street exits. In conjunction with staff, the petitioner amended the original plan submittal to ensure optimal site circulation. The revised site plan included the addition of the 'throat' element that merges the bypass lane and drive-through lane after the drive-through window. The plan was also revised to provide a notch out of the southeast corner of the building to allow for ease of turn radius.

The Village's traffic consultant, KLOA, reported that the proposed on-site circulation will be adequate in accommodating site traffic and the proposed stacking of the Dunkin Donuts drive-through facility will be adequate in accommodating the peak demand. KLOA did recommend that the radius on the southeast corner of the building should be increased to at least 13 feet in order to allow for smooth turns on the drive-through lane and a directional sign facing north should be placed at the North Avenue access drive directing entering traffic destined to the drive-through facility to turn right and drive around the building, in order to guide traffic more efficiently. Overall, staff believes that the petitioner's plan will adequately address internal drive-through circulation with the noted recommendations.

To the east of the subject property is the existing Casey's Restaurant. Throughout the initial planning process, staff has told the petitioner of its desire to include some type of shared access to the east for the benefit of both properties. Currently, Casey's Restaurant does not have direct access to a signalized intersection and their direct access to North Avenue is limited to a right in/out. In 2002, Casey's installed an access drive out to Joyce Avenue to the east. However, to

get to the nearest signal at Grace Street, customers have to circle back around the Lombard Lagoon on Marcus Drive.

Initially, staff directed the petitioner to explore cross access alternatives and that staff's preferred route would be at the southeast corner of their site. This would tie into the Casey's existing cross access out to Joyce Avenue. Given the existing grades between both properties, the impact to deliveries for Casey's and the proposed drive-through/one-way access drive behind the petitioner's building, it was determined that cross access should occur at the northeast corner, as shown in their current plan.

Originally, staff and the petitioner were talking about the need for only an easement to accommodate a future connection onto Casey's property. However after further review throughout the planning process, it was determined that the cross connection would require some significant engineering, given the existing grades. As with other similar projects located directly to the northwest of the site (CVS and the Overlook) and other projects on Roosevelt Road, staff has requested that the petitioner be responsible for final engineering and construction of the cross access. The petitioner's engineer did develop a preliminary engineering plan showing how this connection could be constructed. Based on the Village's review of their cost estimate, the proposed connection would cost approximately \$66,300. As a condition of approval, staff is recommending that the petitioner be responsible for the installation of the cross access drive, upon the consent of the Casey's property owner. Staff feels that just providing an easement will not result in a connection anytime soon and that should this project be approved, it would be much easier to design and construct the cross access at the same time the project is being developed. As this improvement can be deemed as a transportation benefit for the public, staff would be willing to support a rebate agreement to assist with the cost of construction. This would ultimately be subject to Village Board approval. This is a similar approach the Village took with the Murray's/O'Reilly's Auto Parts on Roosevelt Road for a watermain extension and Lombard Toyota expansion.

Also, a future easement on the south side of the site with Casey's Restaurant should also be provided for future additional cross access connection, if the Casey's site would redevelop. This cross access, given the proposed one-way eastbound configuration of the Dunkin Donuts drive-through lane and bypass lane, should only allow one-way traffic eastbound. This future cross access would provide ingress accessibility to delivery and refuse vehicles with minimal interaction with passenger vehicles.

The petitioner has submitted preliminary engineering plans showing how they plan to address stormwater on the site. Stormwater for the entire development will be handled by a detention basin located at the south side of the site. All necessary Best Management Practices (BMP's) required by the DuPage County Stormwater Ordinance are being provided. As noted in the IDRC comments, the some modifications to the petitioner's plans would be required to meet Code.

The petitioner has submitted elevation drawings for the proposed retail building. The petitioner's plan will also include additional awnings, recessed building elevations and brick banding to break up the building mass. The east and west elevations also include windows to

break up a portion of the side building mass and to give additional visibility to the corner tenants. The petitioner has provided a materials sample board.

Staff finds the elevations to be acceptable, but suggests amendments to the south elevation of the building, consisting of the inclusion of the same banding elements that are proposed along the north building elevation. The dense vegetation currently located along the southern portion of the property is to remain; however, during the fall/winter months, the foliage will be absent which will leave the southern elevation of the building exposed during such time. Furthermore, the drive-through component will draw customers to the back of the building. The final design of these elements for the south elevation shall be subject to the Director of Community Development. The proposed elevations also include gooseneck lighting over the Dunkin Donuts awning. As a condition of approval, each tenant will be required to provide gooseneck lighting.

As previously noted, the site was formerly improved with a gas station. The gas station and associated tanks have since been removed from the property, and the Village does have a highway authority agreement with the former user (BP Amoco) to protect the Village from any environmental impact to our adjacent right-of-way. The property is still being monitored by the IEPA. As a condition of approval, staff would recommend that the existing highway authority agreement shall be reviewed by Village Counsel and any necessary amendments shall be approved by the Village Board prior to the issuance of a building permit.

Compliance with the Zoning Ordinance

Commercial retail uses are identified as permitted uses in the B4 Corridor Commercial District. Therefore, the commercial center is compatible with the Zoning Ordinance.

A conditional use for a drive-through establishment:

As part of the plan, the petitioner is proposing to include a Dunkin Donuts with drive-through in the easternmost tenant space. Vehicles using the drive-through will queue from the southwest corner of the building and will travel eastbound to the window along the southern building elevation. A one-way bypass lane will be located adjacent to the drive through lane. The pickup window is located on the eastern elevation of the building. Traffic can then proceed to the North Avenue or Grace Street exits. In conjunction with staff, the petitioner amended the original plan submittal to ensure optimal site circulation. The revised site plan included the addition of the 'throat' element that merges the bypass lane and drive-through lane after the drive-through window. The plan was also revised to provide a notch out of the southeast corner of the building to allow for ease of turn radius. Staff does not object to this request, provided that certain conditions are approved.

A conditional use for an outside service area:

One outdoor dining area is proposed for the site. The outdoor dining area will service the proposed coffee/donut establishment that will occupy the easternmost tenant space and will be located along the northern building elevation. Staff does not object to this request as it allows for an alternate area for patrons to eat if desired. As the proposed dining area is removed from any residences, impacts of the outdoor dining function are minimal. However, to ensure that the dining function does not extend into the parking lot and patrons do not enter the drive-through

area, staff recommends that the perimeter of the dining area be fenced, with the design of the fence subject to the approval of the Director of Community Development. Staff would find a four-foot high decorative iron fence with an exit gate as an acceptable type of fence. This would be consistent with other recently approved outdoor dining petitions (i.e., The Overlook PC 05-08, Buffalo Wild Wings PC 06-13 and Wolfy's PC 12-10).

Variations from Sections 155.416(J) & 155.707(A)(4) to reduce the required 30' transitional landscape yard:

As the subject property abuts property in the CR – Conservation/Recreation District, there are two separate provisions of the Zoning Ordinance that require a transitional landscape yard thirty (30) feet in width to be provided along the abutting lot line. The proposed drive through will be located along the southern portion of the building and encroaches into the required thirty (30) foot transitional landscape yard. The proposed plan attempts to minimize impacts of the building and drive through onto the neighboring CR property to the south by maintaining the existing dense vegetation along the southern portion of the property.

A variation from Sections 155.706 (C) and 155.709 (B) of the Zoning Ordinance reducing the required perimeter parking lot and perimeter lot landscaping from five feet (5') to zero feet (0') to provide for shared cross-access and parking:

The landscape plan indicates that landscaping will be provided around the perimeter of the parking lot with the exception of those areas to the east where cross access easements will be provided. Those areas designated for landscaping meet the code requirements of five feet in width. Staff believes the cross access easements will allow sufficient traffic flow between lots in the event of future development and is therefore supportive of the requested relief.

Compatibility with the Sign Ordinance

A variation from Section 153.208(H) to allow signage within clear line of sight areas:

The petitioner submitted a signage plan with the site plan submittal and includes two freestanding signs and ancillary signage associated with Dunkin Donuts. According to the proposed site plan, the freestanding sign located at the corner of North Ave. and Grace St., along with the two directional signs, would be located in the clear line of sight areas. Aside from the clear line of sight variations, all of the freestanding signs meet the applicable signage provisions set forth in the Sign Ordinance. The clear line of sight triangles originate at the bisecting property lines adjacent to the respective rights of way, which in the case of the freestanding sign, would be North Avenue and Grace Street. Staff is supportive of clear line of the sight variation for the freestanding sign at the corner of North Avenue and Grace Street for a number of reasons. First, the additional parkway provided on this portion of North Avenue is greater than fifty (50) feet, which places the sign back a significant distance from the intersection. Second, the only portion of the sign that could be seen from eye-level would be the supportive pole, which is less than one foot in diameter. Lastly, at its signalized intersection with Grace Street, North Avenue provides a dual left-turn lane, three through lanes and an exclusive right-turn lane on the east approach. The west approach provides a single left-turn lane, three through lanes and an exclusive right-turn lane. As such, the sign would not be conflicting with traffic movements occurring in that intersection.

Staff is also supportive of the clear line of sight variations associated with the on-site informational signage. The signs are intended to provide direction to incoming and exiting traffic to/from the site. There are no other effective locations to place these signs as they are functionally beneficial only at major points of egress to/from the site. The submitted plans illustrate the informational sign located at the North Avenue entrance and is located at the southernmost portion of the landscape island to which it is located. This places the sign further away from North Avenue. However, the informational sign located at the Grace Street entrance is located closer towards Grace Street. As a condition of approval, the informational sign located at the Grace Street entrance shall be moved to the easternmost portion of the landscape island to which it is located. The final location of the sign shall be subject to the Director of Community Development. Staff is supportive of the clear line of sight variations. Under said conditions, the informational signs would be located at the furthest point from the respective right of way and adjacent to parking spaces which, if a vehicle were to be parked in the adjacent space, would create a greater line of sight obstruction than the actual signs.

A variation from Section 153.505(B)(19)(b)(1)(a) to allow a property with a multi-tenant building setback less than 120 feet from the property line to display wall signs that are two times the lineal front footage of the tenant space:

The proposed signage areas for the individual tenant spaces were not included; however, the property owner is requesting a variation to allow a property with a multi-tenant building setback less than 120 feet from the property line to display wall signs that are two times the lineal front footage of the tenant space. As the subject building will be oriented towards North Avenue, staff is supportive of the wall sign area variation. As previously mentioned, the additional parkway provided on this portion of North Avenue is greater than fifty (50) feet in width and the building itself is setback more than 120 feet from North Avenue. The setback provision pertaining to wall sign area is taken from the property line to the sign; however, staff believes that the additional parkway creates a situation where the allowable square footage could be deemed insufficient.

To ensure that the proposed signage and awnings present a favorable appearance to neighboring properties, staff recommends the following items be added as additional conditions of approval:

1. That channel lettering shall only be used for the wall signs.
2. That consistent with the Sign Ordinance, the awnings shall not include text in conjunction with the wall signage.
3. That any future awnings shall be of a compatible design and color around the building.

These standards are consistent with what was approved at the Overlook located directly northwest of the site.

Compatibility with the Comprehensive Plan

The Comprehensive Plan recommends Community Commercial uses on the subject property and the proposed commercial use is compatible with the Comprehensive Plan designation.

The site is currently vacant. There are single family residences located on the north side of North Avenue and across Grace Street from the subject property. The neighboring property to the east is zoned for commercial use and is developed with a restaurant. The parcel to the south of the subject property contains the Lombard Lagoon Park. According to the submitted landscape plan, a heavy patch of existing vegetation will remain between the subject property and the park property to the south. The proposed commercial building meets the transitional building setback requirement and will be located exactly 40 feet from the southern property line.

As previously mentioned, the property east of the subject site is improved with a restaurant, known as Casey's. To ensure compatibility to the abutting property, a cross access easement between the subject property and the adjacent property to the east is also to be included as part of the proposed development. This coordination would include provisions for cross-access and shared drive aisles. The cross access area would connect the parking/drive aisles along the northern portion of the proposed building and Casey's Restaurant. Given these considerations, staff believes the proposed development is compatible with the adjacent properties.

Compliance with the Subdivision and Development Ordinance

A Minor Plat of Subdivision with a variation from Section 155.416 (D) to allow a lot area of 35,382 sq. ft. where a minimum of 40,000 sq. ft.:

The site consists of one lot. As the subject property is not a recognized lot of record, approval of a plat of subdivision is required in order to facilitate any development on the lot. The lot does not meet the minimum lot width and area requirements for the B4 Zoning District; therefore, a Minor Plat of Subdivision with a variation to allow a lot area of 35,382 sq. ft. where a minimum of 40,000 sq. ft. is required.

Mr. Stilling referred to the July 16 modified conditions of approval that were distributed to the Commissioners tonight. He explained to the petitioner regarding condition #7 was modified to state that in the event the property owner wishes to not consent to the cross connection, the petitioner would have to provide for an easement.

The second modified conditions relates to the south side of the building. Since it will be more visible than previously thought the petitioner has agreed to include brick banding on the south side of the building. There is an elevation board for those who are interested.

Lastly, to achieve a favorable appearance to neighboring properties a 12th conditions was added. Similar to the Overlook which is located northwest of the site, the petitioner has agreed to signage modifications:

1. to use only channel lettering on wall signs
2. the awnings shall not include text in conjunction with the wall signage
3. any future awnings shall be of a compatible design and color around the building.

It is with those revised conditions that staff is supportive of the petition and recommends approval.

Chairperson Ryan then opened the meeting for comments among the Commissioners.

Commissioner Burke asked why they did not receive the environmental report the petitioner referred to in his presentation as it was introduced as evidence. Mr. Stilling responded that the petitioner did provide a summation which staff has. BP is currently working with the IEPA for the cleanup of the site and the Village has entered into a highway authority agreement to protect itself against potential contamination in the Grace Street right of way. Village counsel is reviewing all the environmental matters. We think all protections are in place and that BP would be ultimately responsible but that is why there is a condition relative to this. Village Counsel Wagner added that the Commissioners can accept the environmental report as part of the public hearing and it was not necessary to include it in the packet if staff has a copy.

Commissioner Sweetser referred to the insert from RWG Engineering that was included in their packets which indicates that the Village has a more restrictive stormwater detention ordinance and that they will proceed under the projected Village requirements that align with the County Ordinance. She asked if that is covered under conditions 1 and 2 of the modified conditions. Mr. Stilling answered yes.

Commissioner Mrofcza asked if the other tenants to the west would have rear entrances where they would receive deliveries. If so, with the drive through proposed for that side, how would deliveries be made if cars are stacked waiting in the drive through lane.

Mr. Mallon confirmed that all tenants will have a secondary access located on the south side of the building. They will have the door, sidewalk and then the stacking lane. Their experience with similar developments is that we secure tenants that complement and can coexist with Dunkin Donuts. Dunkin Donuts' business is geared toward the morning, so the tenants that will occupy the remaining space will not be geared to having a strong need for loading and unloading. They can still use the front doors as access and the similar developments previously mentioned have not experienced any conflicts.

After due consideration of the petition and the testimony presented, the Plan Commission found that the proposed ordinance amendment does **comply** with the standards required by the Lombard Zoning Ordinance, Sign Ordinance, Subdivision and Development Ordinance; and, therefore, moved that the Plan Commission does accept the findings included as part of the Inter-departmental Review Report be the findings of the Plan Commission and therefore, by a roll call vote of 4 to 0, recommend to the Corporate Authorities **approval** of PC 12-13 subject to the following modified conditions:

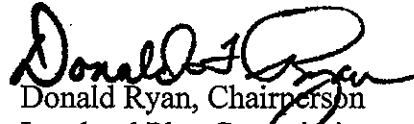
1. That the petitioner shall develop the site in accordance with the plans submitted as part of this petition and referenced in this IDRC report, except as they may be changed to conform to Village Codes and Ordinances.
2. That the petitioner's building improvements shall be designed and constructed consistent with Village Code and shall also address the comments included within the IDRC report.

3. That the petitioner shall modify the south building elevation to include the same banding elements to that of the north elevation. The final design of these elements for the north elevation shall be subject to the Director of Community Development.
4. Each tenant space shall include gooseneck lighting above each of the respective awnings.
5. The informational sign located at the Grace Street entrance shall be moved to the easternmost portion of the landscape island to which it is located. The final location of the sign shall be subject to the Director of Community Development.
6. All comments and recommendations noted in the KLOA report dated July 10, 2012, attached to this report, shall be satisfactorily addressed.
7. Cross access to the existing Casey's Restaurant to the east shall be constructed as part of this project and prior to the issuance of a Certificate of Occupancy, subject to the approval of Casey's Property Owner and in accordance with the preliminary engineering plan dated June 26, 2012 by RWG Engineering, LLC, except as it may be modified to meet Village Code. In the event that the owner of the Casey's property does not consent to the construction of the cross access, an easement shall still be provided for future connection to the east.
8. A cross access easement shall be provided at the southeast corner of the site that would connect to the property to the east in a manner acceptable to the Director of Community Development.
9. Prior to the issuance of a building permit, the existing Highway Authority Agreement for the subject property shall be reviewed and amended as needed by Village Counsel, with the approval by the Village Board.
10. The curb cut onto North Avenue shall be reduced to no more than thirty-five feet (35') wide at the property line.
11. The outdoor dining area shall include a decorative black aluminum or wrought iron fence a minimum of four feet (4') high around the perimeter.
12. To ensure that the proposed signage and awnings present a favorable appearance to neighboring properties, staff recommends the following items be added as additional conditions of approval:
 - A. That channel lettering shall only be used for the wall signs.
 - B. That consistent with the Sign Ordinance, the awnings shall not include text in conjunction with the wall signage.

- C. That any future awnings shall be of a compatible design and color around the building.

Respectfully,

VILLAGE OF LOMBARD


Donald Ryan, Chairperson
Lombard Plan Commission

c. Petitioner
Lombard Plan Commission

Size of Property: 0.81 acres
Comprehensive Plan: Recommends Community Commercial
Existing Zoning: B4 Corridor Commercial District
Surrounding Zoning and Land Use:

North: B4 Corridor Commercial District; developed as a multi-tenant commercial strip center, known as The Overlook at North.
South: CR Conservation Recreation District; undeveloped land used as recreational open space, known as the Lombard Lagoon.
East: B4 Corridor Commercial District; developed with a restaurant, known as Casey's.
West: R2 Single Family Residence District; developed as Single-Family Residences.

ANALYSIS

SUBMITTALS

This report is based on the following documentation, which was filed with the Department of Community Development:

1. Petition for Public Hearing, received May 11, 2012.
2. Description of the Request, prepared by the petitioner.
3. Site Circulation and Access Evaluation, dated June 5, 2012 prepared by KLOA.
4. Response to Standards for Variations & Conditional Uses
5. Proposed Building Elevations, dated June 4, 2012, prepared by Gleason Architects, P.C.
6. Site Plan, dated June 4, 2012, prepared by Gleason Architects, P.C.
7. Landscape Plan, dated June 5, 2012, prepared by Gleason Architects, P.C.
8. Overview of Proposed Stormwater Management Program, dated May 10, 2012, prepared by RWG Engineering, LLC.

9. Proposed Dunkin Brands Floor Plan, dated April 23, 2012, prepared by Gleason Architects, P.C.
10. Proposed Directional Sign, prepared by Everbrite, LLC, dated December 2, 2009.
11. Proposed Menu Board, prepared by Everbrite, LLC, dated September 30, 2009.
12. Proposed Rotating Preview Board, prepared by Everbrite, LLC, dated September 9, 2009.
13. Proposed Awning Configuration, prepared by Everbrite, LLC, dated June 9, 2010.
14. Monument and Pole Sign Specifications, dated June 4, 2012, prepared by Gleason Architects, P.C.
15. Location Maps, prepared by Mallon and Associates, Inc.
16. Plat of Survey, dated March 27, 2012, prepared by JNT Land Surveying Services, Inc.
17. Preliminary Engineering Plan, dated May 10, 2012, prepared by RWG Engineering, LLC.
18. Proposed cross access plan to the property to the east dated June 26, 2012 by RWG Engineering, LLC.
19. Proposed Materials Samples Board prepared by Gleason Architects, P.C.

DESCRIPTION

The subject property is approximately 35,382 square feet and is currently vacant. The property was once developed with a gas station that had previously been razed. The petitioner is proposing to develop a 7,150 square foot multi-tenant commercial center. The new proposed development will include a drive-through facility and an outdoor dining area. As the drive-through and outdoor dining areas are conditional uses within the B4 – Corridor Commercial District, the petitioner is requesting conditional use approval for both items at this time. Additional requests for a minor plat, lot area variation and variation for perimeter landscaping are also being requested.

In conjunction with this request, the petitioner has also including a signage package, which consists of two freestanding signs, two informational signs, wall signage and incidental signs associated with the drive through. The petitioner is requesting a variation to display wall signs that are two times the lineal front footage of the tenant space, not to exceed thirty-five (35) feet

and a variation to allow the freestanding sign on the northwest corner of the property to be located in the clear line of sight area.

INTER-DEPARTMENTAL REVIEW COMMENTS

PUBLIC WORKS

Public Works Engineering has no comments.

ENGINEERING

The Private Engineering Services Division provides the following comments for the subject petition:

1. Separate services with individual valves are required for the domestic and fire suppression water services.
2. The grade change along the east property line will require a retaining wall since the slope will be steeper than 3H:1V.
3. Due to the steep grade along the east property line, a viable cross access will require extensive engineering on the neighboring property.
4. The proposed driveway apron on North Avenue exceeds the maximum width of 35 feet per Village Code Section 150.301.
5. The water main to the hydrant and the storm water facility must be contained in easements.
6. The Village is in the process of considering a local Code amendment to set a more stringent threshold for requiring storm water detention at 5,000 sf of additional total impervious area (TIA), in place of the new Countywide Ordinance threshold of 25,000 sf. The project is currently proposing to increase the TIA by 5,100 sf. Therefore, it is suggested that the site plan should be modified to reduce the TIA in order to be less than a 5,000 square foot increase in order to forego detention.

FIRE DEPARTMENT

The Fire Department has no issues or concerns with the proposed use of this property.

BUILDING DIVISION

The Building Division has no comments.

PLANNING

Proposed Improvements

As noted, the site is approximately 35,382 square feet in area and was formerly improved with a gas station. The petitioner is proposing to develop a 7,150 square foot multi-tenant commercial center with drive-through.

Parking

The Zoning Ordinance requires a minimum of 29 parking spaces (4 spaces/1000 square feet). The petitioner is providing 29 parking spaces and 2 accessible spaces for a total of 31 parking spaces.

Landscaping

As the subject property abuts property in the CR – Conservation/Recreation District, there are two separate provisions of the Zoning Ordinance that require a transitional landscape yard thirty (30) feet in width to be provided along the abutting lot line. The proposed drive through will be located along the southern portion of the building and encroaches into the required thirty (30) foot transitional landscape yard. The proposed plan attempts to minimize impacts of the building and drive through onto the neighboring CR property to the south by maintaining the existing dense vegetation along the southern portion of the property.

The landscape plan also indicates that landscaping will be provided around the perimeter of the parking lot with the exception of those areas to the east where future cross access will be provided. The petitioner's plan shows approximately 19% open space. Village Code requires a minimum of 10%.

Trash Enclosures

The petitioner has shown a dumpster at the southeast corner of the site. The materials would be consistent with the materials of the commercial building.

Traffic Analysis

The petitioner is proposing to utilize the existing curb cuts located on both Grace Street and North Avenue. Access to North Avenue is restricted and will include a right in/out only. This curb cut onto North Avenue does exceed our maximum width of 35 feet. Therefore staff recommends as a condition that the curb cut be reduced to 35' wide at the north lot line. This modification will increase open space and likely allow for an additional parking stall. Access to Grace Street will be located at the southwest corner of the site. This point of ingress/egress will have full access to Grace Street.

As part of the plan, the petitioner is proposing to include a Dunkin Donuts with drive-through in the easternmost tenant space. Vehicles using the drive-through will queue from the southwest corner of the building and will travel eastbound to the window along the southern building elevation. A one-way bypass lane will be located adjacent to the drive through lane. The pickup window is located on the eastern elevation of the building. Traffic can then proceed to the North Avenue or Grace Street exits. In conjunction with staff, the petitioner amended the original plan submittal to ensure optimal site circulation. The revised site plan included the addition of the 'throat' element that merges the bypass lane and drive-through lane after the drive-through

window. The plan was also revised to provide a notch out of the southeast corner of the building to allow for ease of turn radius.

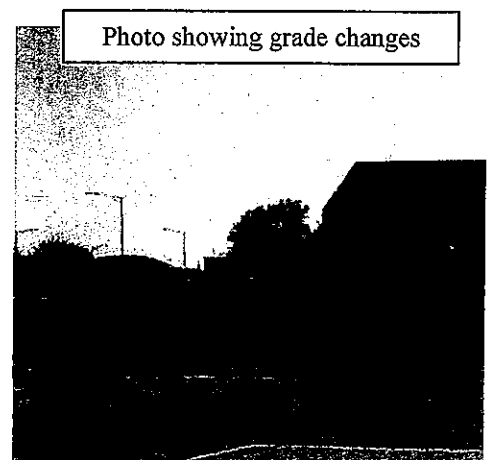
The Village's traffic consultant provided comments that can be found as an attachment to this report. KLOA reported that the proposed on-site circulation will be adequate in accommodating site traffic and the proposed stacking of the Dunkin Donuts drive-through facility will be adequate in accommodating the peak demand. KLOA did recommend that the radius on the southeast corner of the building should be increased to at least 13 feet in order to allow for smooth turns on the drive-through lane and a directional sign facing north should be placed at the North Avenue access drive directing entering traffic destined to the drive-through facility to turn right and drive around the building, in order to guide traffic more efficiently. Overall, staff believes that the petitioner's plan will adequately address internal drive-through circulation with the noted recommendations.

Cross Access

To the east of the subject property is the existing Casey's Restaurant. Throughout the initial planning process, staff has told the petitioner of its desire to include some type of shared access to the east for the benefit of both properties. Currently, Casey's Restaurant does not have direct access to a signalized intersection and their direct access to North Avenue is limited to a right in/out. In 2002, Casey's installed an access drive out to Joyce Avenue to the east. However, to get to the nearest signal at Grace Street (*see adjacent aerial*); customers have to circle back around the Lombard Lagoon on Marcus Drive.



Initially, staff directed the petitioner to explore cross access alternatives and that staff's preferred route would be at the southeast corner of their site. This would tie into the Casey's existing cross access out to Joyce Avenue. Given the existing grades between both properties, the impact to deliveries for Casey's and the proposed drive-through/one-way access drive behind the petitioner's building, it was determined that cross access should occur at the northeast corner, as shown in their current plan (see adjacent photo).



Originally, staff and the petitioner were talking about the need for only an easement to accommodate a future connection onto Casey's property. However after further review throughout the planning process, it was determined that the cross connection would require some significant engineering, given the

existing grades. As with other similar projects located directly to the northwest of the site (CVS and the Overlook) and other projects on Roosevelt Road, staff has requested that the petitioner be responsible for final engineering and construction of the cross access. The petitioner's engineer did develop a preliminary engineering plan showing how this connection could be constructed. Based on the Village's review of their cost estimate, the proposed connection would cost approximately \$66,300. As a condition of approval, staff is recommending that the petitioner be responsible for the installation of the cross access drive, upon the consent of the Casey's property owner. Staff feels that just providing an easement will not result in a connection anytime soon and that should this project be approved, it would be much easier to design and construct the cross access at the same time the project is being developed. As this improvement can be deemed as a transportation benefit for the public, staff would be willing to support a rebate agreement to assist with the cost of construction. This would ultimately be subject to Village Board approval. This is a similar approach the Village took with the Murray's/O'Reilly's Auto Parts on Roosevelt Road for a watermain extension and Lombard Toyota expansion.

Also, a future easement on the south side of the site with Casey's Restaurant should also be provided for future additional cross access connection, if the Casey's site would redevelop. This cross access, given the proposed one-way eastbound configuration of the Dunkin Donuts drive-through lane and bypass lane, should only allow one-way traffic eastbound. This future cross access would provide ingress accessibility to delivery and refuse vehicles with minimal interaction with passenger vehicles.

Stormwater Detention

The petitioner has submitted preliminary engineering plans showing how they plan to address stormwater on the site. Stormwater for the entire development will be handled by a detention basin located at the south side of the site. All necessary Best Management Practices (BMP's) required by the DuPage County Stormwater Ordinance are being provided. As noted in the IDRC comments, the some modifications to the petitioner's plans would be required to meet Code.

Building Materials

The petitioner has submitted elevation drawings for the proposed retail building. The petitioner's plan will also include additional awnings, recessed building elevations and brick banding to break up the building mass. The east and west elevations also include window to break up a portion of the side building mass and to give additional visibility to the corner tenants. The petitioner has provided a materials sample board.

Staff finds the elevations to be acceptable, but suggests amendments to south elevation of the building, consisting of the inclusion of the same banding elements that are proposed along the north building elevation. The dense vegetation currently located along the southern portion of the property is to remain; however, during the fall/winter months, the foliage will be absent which will leave the southern elevation of the building exposed during such time. Furthermore, the drive-through component will draw customers to the back of the building. The final design of these elements for the south elevation shall be subject to the Director of Community

Development. The proposed elevations also include gooseneck lighting over the Dunkin Donuts awning. As a condition of approval, the each tenant will be required to provide gooseneck lighting.

Environmental Issues

As previously noted, the site was formerly improved with a gas station. The gas station and associated tanks have since been removed from the property, and the Village does have a highway authority agreement with the former user (BP Amoco) to protect the Village from any environmental impact to our adjacent right-of-way. The property is still being monitored by the IEPA. As a condition of approval, staff would recommend that the existing highway authority agreement shall be reviewed by Village Counsel and any necessary amendments shall be approved by the Village Board prior to the issuance of a building permit.

Compliance with the Zoning Ordinance

Commercial retail uses are identified as permitted uses in the B4 Corridor Commercial District. Therefore, the commercial center is compatible with the Zoning Ordinance.

A conditional use for a drive-through establishment:

As part of the plan, the petitioner is proposing to include a Dunkin Donuts with drive-through in the easternmost tenant space. Vehicles using the drive-through will queue from the southwest corner of the building and will travel eastbound to the window along the southern building elevation. A one-way bypass lane will be located adjacent to the drive through lane. The pickup window is located on the eastern elevation of the building. Traffic can then proceed to the North Avenue or Grace Street exits. In conjunction with staff, the petitioner amended the original plan submittal to ensure optimal site circulation. The revised site plan included the addition of the 'throat' element that merges the bypass lane and drive-through lane after the drive-through window. The plan was also revised to provide a notch out of the southeast corner of the building to allow for ease of turn radius. Staff does not object to this request, provided that certain conditions are approved.

A conditional use for an outside service area:

One outdoor dining area is proposed for the site. The outdoor dining area will service the proposed coffee/donut establishment that will occupy the easternmost tenant space and will be located along the northern building elevation. Staff does not object to this request as it allows for an alternate area for patrons to eat if desired. As the proposed dining area is removed from any residences, impacts of the outdoor dining function are minimal. However, to ensure that the dining function does not extend into the parking lot and patrons do not enter the drive-through area, staff recommends that the perimeter of the dining area be fenced, with the design of the fence subject to the approval of the Director of Community Development. Staff would find a four-foot high decorative iron fence with an exit gate as an acceptable type of fence. This would be consistent with other recently approved outdoor dining petitions (i.e., The Overlook PC 05-08, Buffalo Wild Wings PC 06-13 and Wolfy's PC 12-10).

Variations from Sections 155.416(J) & 155.707(A)(4) to reduce the required 30' transitional landscape yard;

As the subject property abuts property in the CR – Conservation/Recreation District, there are two separate provisions of the Zoning Ordinance that require a transitional landscape yard thirty (30) feet in width to be provided along the abutting lot line. The proposed drive through will be located along the southern portion of the building and encroaches into the required thirty (30) foot transitional landscape yard. The proposed plan attempts to minimize impacts of the building and drive through onto the neighboring CR property to the south by maintaining the existing dense vegetation along the southern portion of the property.

A variation from Sections 155.706 (C) and 155.709 (B) of the Zoning Ordinance reducing the required perimeter parking lot and perimeter lot landscaping from five feet (5') to zero feet (0') to provide for shared cross-access and parking;

The landscape plan indicates that landscaping will be provided around the perimeter of the parking lot with the exception of those areas to the east where cross access easements will be provided. Those areas designated for landscaping meet the code requirements of five feet in width. Staff believes the cross access easements will allow sufficient traffic flow between lots in the event of future development and is therefore supportive of the requested relief.

Compatibility with the Sign Ordinance

A variation from Section 153.208(H) to allow signage within clear line of sight areas;

The petitioner submitted a signage plan with the site plan submittal and includes two freestanding signs and ancillary signage associated with Dunkin Donuts. According to the proposed site plan, the freestanding sign located at the corner of North Ave. and Grace St., along with the two directional signs, would be located in the clear line of sight areas. Aside from the clear line of sight variations, all of the freestanding signs meet the applicable signage provisions set forth in the Sign Ordinance. The clear line of sight triangles originate at the bisecting property lines adjacent to the respective rights of way, which in the case of the freestanding sign, would be North Avenue and Grace Street. Staff is supportive of clear line of the sight variation for the freestanding sign at the corner of North Avenue and Grace Street for a number of reasons. First, the additional parkway provided on this portion of North Avenue is greater than fifty (50) feet, which places the sign back a significant distance from the intersection. Second, the only portion of the sign that could be seen from eye-level would be the supportive pole, which is less than one foot in diameter. Lastly, at its signalized intersection with Grace Street, North Avenue provides a dual left-turn lane, three through lanes and an exclusive right-turn lane on the east approach. The west approach provides a single left-turn lane, three through lanes and an exclusive right-turn lane. As such, the sign would not be conflicting with traffic movements occurring in that intersection.

Staff is also supportive of the clear line of sight variations associated with the on-site informational signage. The signs are intended to provide direction to incoming and exiting traffic to/from the site. There are no other effective locations to place these signs as they are functionally beneficial only at major points of egress to/from the site. The submitted plans illustrate the informational sign located at the North Avenue entrance and is located at the southernmost portion of the landscape island to which it is located. This places the sign further away from North Avenue. However, the informational sign located at the Grace Street entrance is located closer towards Grace Street. As a condition of approval, the informational sign located at the Grace Street entrance shall be moved to the easternmost portion of the landscape island to which it is located. The final location of the sign shall be subject to the Director of Community Development. Staff is supportive of the clear line of sight variations. Under said conditions, the informational signs would be located at the furthest point from the respective right of way and adjacent to parking spaces which, if a vehicle were to be parked in the adjacent space, would create a greater line of sight obstruction than the actual signs.

A variation from Section 153.505(B)(19)(b)(1)(a) to allow a property with a multi-tenant building setback less than 120 feet from the property line to display wall signs that are two times the lineal front footage of the tenant space.

The proposed signage areas for the individual tenant spaces were not included; however, the property owner is requesting a variation to allow a property with a multi-tenant building setback less than 120 feet from the property line to display wall signs that are two times the lineal front footage of the tenant space. As the subject building will be oriented towards North Avenue, staff is supportive of the wall sign area variation. As previously mentioned, the additional parkway provided on this portion of North Avenue is greater than fifty (50) feet in width and the building itself is setback more than 120 feet from North Avenue. The setback provision pertaining to wall sign area is taken from the property line to the sign; however, staff believes that the additional parkway creates a situation where the allowable square footage could be deemed insufficient.

To ensure that the proposed signage and awnings present a favorable appearance to neighboring properties, staff recommends the following items be added as additional conditions of approval:

1. That channel lettering shall only be used for the wall signs.
2. That consistent with the Sign Ordinance, the awnings shall not include text in conjunction with the wall signage.
3. That any future awnings shall be of a compatible design and color around the building.

These standards are consistent with what was approved at the Overlook located directly northwest of the site.

Compatibility with the Comprehensive Plan

The Comprehensive Plan recommends Community Commercial uses on the subject property and the proposed commercial use is compatible with the Comprehensive Plan designation.

Compatibility with Surrounding Land Uses

The site is currently vacant. There are single family residences located on the north side of North Avenue and across Grace Street from the subject property. The neighboring property to the east is zoned for commercial use and is developed with a restaurant. The parcel to the south of the subject property contains the Lombard Lagoon Park. According to the submitted landscape plan, a heavy patch of existing vegetation will remain between the subject property and the park property to the south. The proposed commercial building meets the transitional building setback requirement and will be located exactly 40 feet from the southern property line.

As previously mentioned, the property east of the subject site is improved with a restaurant, known as Casey's. To ensure compatibility to the abutting property, a cross access easement between the subject property and the adjacent property to the east is also to be included as part of the proposed development. This coordination would include provisions for cross-access and shared drive aisles. The cross access area would connect the parking/drive aisles along the northern portion of the proposed building and Casey's Restaurant. Given these considerations, staff believes the proposed development is compatible with the adjacent properties.

Compliance with the Subdivision and Development Ordinance

A Minor Plat of Subdivision with a variation from Section 155.416 (D) to allow a lot area of 35,382 sq. ft. where a minimum of 40,000 sq. ft.:

The site consists of one lot. As the subject property is not a recognized lot of record, approval of a plat of subdivision is required in order to facilitate any development on the lot. The lot does not meet the minimum lot width and area requirements for the B4 Zoning District; therefore, a Minor Plat of Subdivision with a variation to allow a lot area of 35,382 sq. ft. where a minimum of 40,000 sq. ft. is required.

FINDINGS AND RECOMMENDATIONS

The Department of Community Development finds that the information presented **meets** the Standards for conditional use, and variation as submitted by the petitioner and as part of this petition, and as set forth in the Zoning Ordinance, Sign Ordinance and Subdivision and Development Ordinance, subject to conditions of approval. Based on the above considerations, the Inter-Departmental Review Committee recommends that the Plan Commission make the following motion recommending **approval** of this petition:

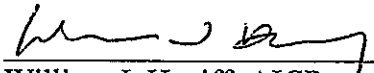
Based on the submitted petition and the testimony presented, the proposed ordinance amendment does comply with the standards required by the Lombard Zoning Ordinance, Sign Ordinance, Subdivision and Development Ordinance; and, therefore, I move that the Plan Commission adopt the findings included within the Inter-department Group Report

as the findings of the Lombard Plan Commission, and recommend to the Corporate Authorities **approval** of the PC 12-13, subject to the following conditions:

1. That the petitioner shall develop the site in accordance with the plans submitted as part of this petition and referenced in this IDRC report, except as they may be changed to conform to Village Codes and Ordinances.
2. That the petitioner's building improvements shall be designed and constructed consistent with Village Code and shall also address the comments included within the IDRC report.
3. That the petitioner shall modify the south building elevation to include the same banding elements to that of the north elevation. The final design of these elements for the north elevation shall be subject to the Director of Community Development.
4. Each tenant space shall include gooseneck lighting above each of the respective awnings.
5. The informational sign located at the Grace Street entrance shall be moved to the easternmost portion of the landscape island to which it is located. The final location of the sign shall be subject to the Director of Community Development.
6. All comments and recommendations noted in the KLOA report dated July 10, 2012, attached to this report, shall be satisfactorily addressed.
7. Cross access to the existing Casey's Restaurant to the east shall be constructed as part of this project, subject to the approval of Casey's Property Owner and in accordance with the preliminary engineering plan dated June 26, 2012 by RWG Engineering, LLC, except as it may be modified to meet Village Code.
8. A cross access easement shall be provided at the southeast corner of the site that would connect to the property to the east in a manner acceptable to the Director of Community Development.
9. Prior to the issuance of a building permit, the existing Highway Authority Agreement for the subject property shall be reviewed and amended as needed by Village Counsel, with the approval by the Village Board.
10. The curb cut onto North Avenue shall be reduced to no more than thirty-five feet (35') wide at the property line.

11. The outdoor dining area shall include a decorative black aluminum or wrought iron fence a minimum of four feet (4') high around the perimeter.
12. To ensure that the proposed signage and awnings present a favorable appearance to neighboring properties, staff recommends the following items be added as additional conditions of approval:
 - A. That channel lettering shall only be used for the wall signs.
 - B. That consistent with the Sign Ordinance, the awnings shall not include text in conjunction with the wall signage.
 - C. That any future awnings shall be of a compatible design and color around the building.

Inter-Departmental Review Group Report Approved By:



William J. Heniff, AICP
Director of Community Development

MEMORANDUM TO: Chris Stilling
Assistant Director of Community Development
Village of Lombard

FROM: Javier Millan
Senior Consultant

DATE: July 11, 2012

SUBJECT: Site Circulation and Access Evaluation
Lombard Commerce Center
Lombard, Illinois

This memorandum summarizes the methodology and results of a site circulation and access evaluation conducted by Kenig, Lindgren, O'Hara, Aboona, Inc. (KLOA, Inc.) which reviewed the plans for the proposed Lombard Commerce Center development which will include a Dunkin Donuts with a drive-through lane and a retail center to be located on the southeast quadrant of the intersection of North Avenue (IL 64) and Grace Street in Lombard, Illinois.

The site is approximately 0.6 acres in size and is planned to be developed with 2,000 square foot Dunkin Donuts with a drive-through lane and approximately 5,000 square feet of specialty retail. Access to the site will be provided via the existing right-in/right-out access drive on North Avenue and the full ingress/egress access drive on Grace Street.

The purpose of this evaluation was to address site access, internal circulation, drive-through operation and determine if any roadway or access improvements are necessary to accommodate the development.

The sections of this memorandum present the following.

- Existing roadway conditions
- A detailed description of the proposed development
- Vehicle trip generation for the proposed development
- Future conditions including recommendations for access to and from the site and circulation within the site

Existing Conditions

Existing conditions were documented based on field visits conducted by KLOA, Inc. The following provides a detailed description of the physical characteristics of the roads including geometry and traffic control, adjacent land uses and existing access.

Site Location

The site is currently vacant and is located on the southeast quadrant of the intersection of North Avenue with Grace Street. **Figure 1** shows an aerial view of the site location. The characteristics of the existing roads that surround the site/development are described below.

North Avenue (IL 64) is an east-west major regional arterial roadway bordering the site to the north. It has six through lanes, three in each direction separated by a raised landscaped median with a posted speed limit of 45 mph. At its signalized intersection with Grace Street, North Avenue provides a dual left-turn lane, three through lanes and an exclusive right-turn lane on the east approach. The west approach provides a single left-turn lane, three through lanes and an exclusive right-turn lane. North Avenue carries an average daily traffic (ADT) of approximately 43,700 vehicles. North Avenue is under the jurisdiction of the Illinois Department of Transportation (IDOT) and is designated as a strategic regional arterial (SRA).

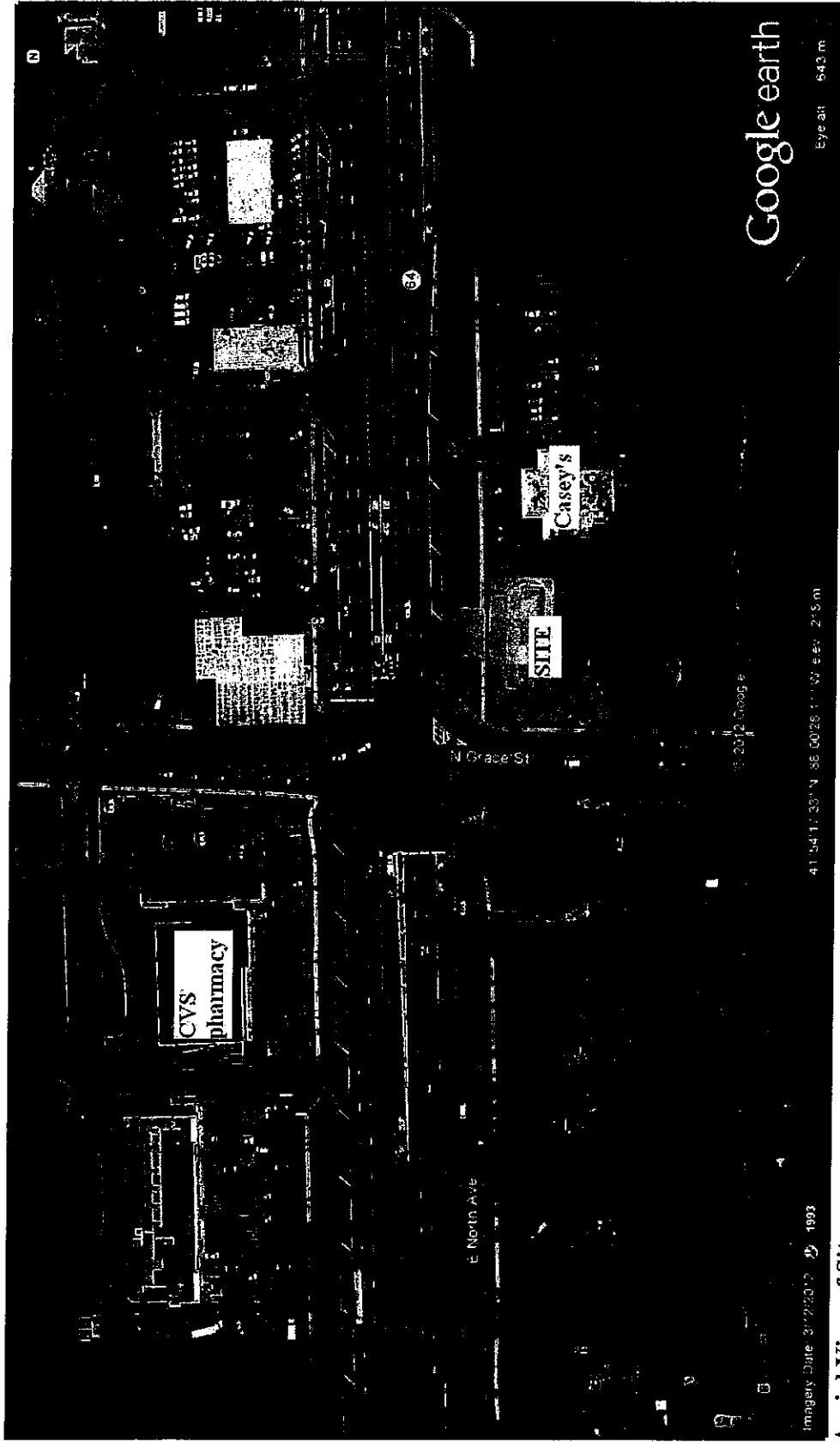
Grace Street is a north-south collector roadway bordering the site to the west. In the vicinity of the site, it has two southbound lanes and three northbound lanes striped for an exclusive left-turn lane, a through lane and an exclusive right-turn lane at its signalized intersection with North Avenue. The north approach provides an exclusive left-turn lane, a through lane and a combined through/right-turn lane. Grace Street has a posted speed limit of 30 mph and is under the jurisdiction of the Village of Lombard.

Traffic Characteristics of the Proposed Development

To evaluate the impact of the subject development on the area roadway system, it was necessary to quantify the number of vehicle trips the site will generate during the weekday morning and afternoon peak hours.

Proposed Site and Development Plan

As previously indicated, the site will be developed with a 2,000 square foot Dunkin Donuts with a drive-through lane and approximately 5,000 square feet of specialty retail. The site is currently vacant and used to be occupied by a gas station. Access will continue to be provided via the existing right-in/right-out access drive on North Avenue and the full ingress/egress access drive on Grace Street. In addition, cross access to the Casey's restaurant to the east is being contemplated.



Aerial View of Site

Figure 1

Site Access

The full ingress/egress access drive on Grace Street is located approximately 250 feet south of North Avenue's centerline and as proposed will provide one inbound lane and one outbound lane. Outbound movements should be under stop sign control. Given that Grace Street has two southbound lanes, vehicles traveling southbound can bypass a stopped vehicle desiring to turn left onto the access drive therefore maintaining efficient southbound traffic flow.

The right-in/right-out access is located approximately 155 feet east of Grace Street's centerline. The access drive should continue providing one inbound lane and one outbound lane with outbound movements under stop sign control.

In order to provide good connectivity between adjacent land uses, it is recommended that cross-access between the site and the Casey's restaurant east of the site be provided. The Casey's restaurant provides one-way westbound traffic on the north side of the building and one-way eastbound traffic on the south side of the building. Also based on field inspection, Casey's loading and dumpster areas are located on the south side of the building. Based on the existing layout of the Casey's restaurant and a review of the proposed development site plan, the provision of two-way cross access on the north side of the site and Casey's seems to be the most appropriate location for the following reasons:

- Casey's customers will have the opportunity to exit onto Grace Street
- It will reduce the amount of traffic that currently exits Casey's restaurant and travels through Joyce Street to connect with Grace Street.
- It will require the least number of parking spaces (eight instead of approximately fourteen if cross access is provided on the south side).
- Internal traffic flow within the site and the Casey's restaurant will be simple and efficient.

It should be noted that although cross access is recommended to be provided on the north side of the site and easement should also be provided for future additional cross access connection on the south side of the site. This cross access, given the proposed one-way eastbound configuration of the Dunkin Donuts drive-through lane and bypass lane, should only allow one-way traffic eastbound. This future cross access would provide ingress accessibility to delivery and refuse vehicles with minimal interaction with passenger vehicles.

Estimated Site Traffic Generation

The traffic generation characteristics of any development are based on the magnitude and character of its land use. The proposed development will consist of a 2,000 square foot Dunkin Donuts drive-through store and approximately 5,000 square feet of specialty retail.

The estimates of the peak hour traffic that will be generated by the proposed development were based on trip generation rates contained in the Institute of Transportation Engineers (ITE) *Trip Generation*, 8th Edition. **Table 1** shows the trip generation estimates for the two land uses. It should be noted that surveys conducted by ITE have shown that as many as 80 percent of trips made to coffee/donut shops are diverted from the existing traffic on the roadway system. This is particularly true during the weekday morning peak hour when traffic is diverted from the home-to-work trip. Such diverted trips are referred to as pass-by traffic. As a result, the number of new trips to be generated by the proposed development may be reduced.

Table 1
PROJECTED SITE-GENERATED TRAFFIC VOLUMES

ITE Land- UseCode	Land Use	Weekday Morning Peak Hour		Weekday Evening Peak Hour	
		In	Out	In	Out
937	Dunkin Donuts (2,000 s.f.)	112	108	43	43
814	Specialty Retail (5,000 s.f.)	<u>3</u>	<u>1</u>	<u>14</u>	<u>19</u>
	Sub Total	115	109	57	62
	80% Pass-by	<u>-90</u>	<u>-86</u>	<u>-34</u>	<u>-34</u>
	Total New Trips	25	23	23	28

As can be seen from Table 1, the number of new trips added to the existing traffic volumes in the area will be very minimal and as such will have a limited impact on traffic conditions on the adjacent intersections.

Internal Circulation and Drive-Through Evaluation

Under the proposed plan, the site will provide 24 foot wide two-way driving aisles on the north and west sides of the building. The south and east sides of the building will be converted to one-way eastbound and one-way northbound traffic only respectively thus providing a partial counterclockwise circulation. This change in circulation will accommodate the proposed drive-through facility and simplify internal site circulation. A “Do Not Enter” sign should be placed on the exiting throat of the drive-through lane facing north. In addition directional signs facing both driveways should be placed directing entering traffic to the drive-through facility.

The drive-through lane, as proposed, will serve the proposed Dunkin Donuts and will have a counterclockwise flow with vehicles traveling east to north on the south and east sides of the building. Based on a review of the site plan and an Auto Turn run, it is recommended that the radius on the southeast corner of the building be increased from 10 feet to at least 13 feet. This will smooth out the turning movement of the drive-through lane and allow a large vehicle to turn and be parallel with the pick-up window.

In order to ensure efficient emergency vehicle traffic flow within the site, an Auto Turn run of an emergency vehicle should be provided to determine if it can be accommodated. It is recommended that the radius on the south end island of the parking stalls facing Grace Street and the end island on the northwest corner of the building be increased to provide a two foot end nose and a 20 foot radius.

The current site plan shows that approximately nine vehicles can be stored within the drive-through lane without spilling into the drive aisle with a potential for an additional three vehicles before spilling into Grace Street. Based on KLOA, Inc's observations in the morning peak hour of the Starbucks coffee shop on the north side of North Avenue within the Overlook shopping center, the maximum observed queue was five vehicles and the average was three. Additional observations by KLOA, Inc. at other coffee shops, has indicated a maximum queue of eight vehicles with an average of six vehicles. As such, the stacking capacity provided for this facility will be sufficient to accommodate the drive-through peak demand and the vehicle queues at the drive-through facility.

In the unlikely event that queues at the drive-through facility are longer, the additional vehicles can queue internally within the site without impacting Grace Street. It should be noted that the peak demand of the drive-through facility will be early in the morning when most likely the other tenants will be either closed or generating very little traffic. During the afternoon peak when the other potential tenants generate higher amount of traffic, the proposed coffee shop traffic will be reduced thus allowing for good synergy between the land uses.

Conclusion

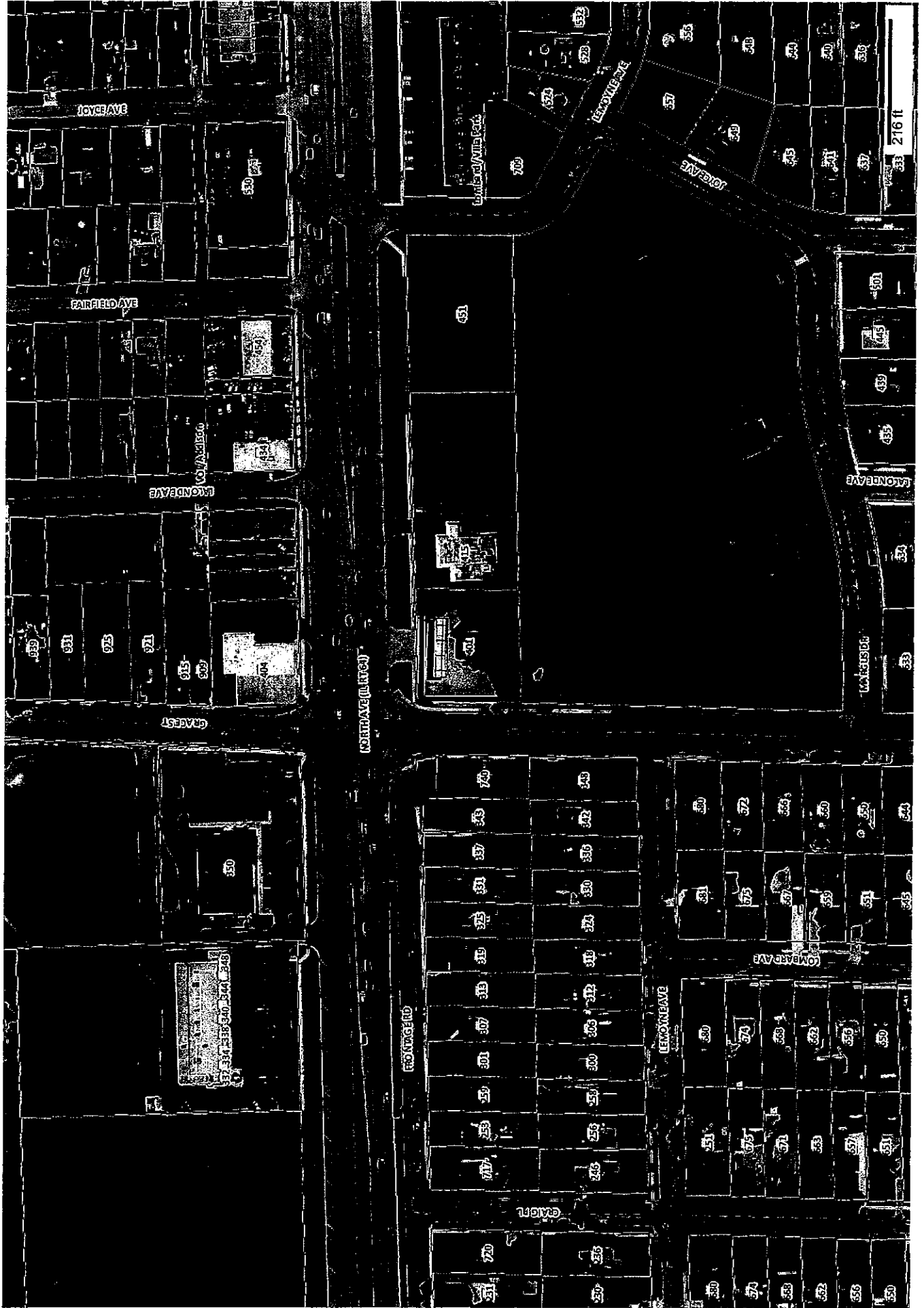
Based on the proposed development plan and the preceding evaluation, the following conclusions and recommendations are made.

- The traffic to be generated by the proposed land uses will not have a significant impact on the surrounding roadway network.
- The access drives on North Avenue and Grace Street will remain as they currently are providing right-in/right-out movements on North Avenue and full ingress/egress movements on Grace Street.
- Outbound movements from both access drives should be under stop sign control.
- The proposed on-site circulation will be adequate in accommodating site traffic.
- The radius on the south end island of the parking stalls facing Grace Street and the end island on the northwest corner of the building should be increased to provide a two foot end nose and a 20 foot radius in order to ensure efficient emergency vehicle flow.

- The radius on the southeast corner of the building should be increased to at least 13 feet in order to allow for smooth turns on the drive-through lane.
- The proposed stacking of the coffee shop drive-through facility will be adequate in accommodating the peak demand.
- Traffic exiting the drive-through facility should be under stop sign control.
- Way finding signs should be provided on-site to ensure proper circulation and drive-through usage.
- In order to guide traffic more efficiently, a directional sign facing north should be placed at the North Avenue access drive directing entering traffic destined to the drive-through facility to turn right and drive around the building.
- Cross access connectivity with the Casey's restaurant should be provided on the north side of the parcel thus providing Casey's customers the opportunity to access Grace Street and the signalized intersection of Grace Street with North Avenue.
- A future easement on the south side of the site with Casey's restaurant should also be provided for future additional cross access connection. This cross access, given the proposed one-way eastbound configuration of the Dunkin Donuts drive-through lane and bypass lane, should only allow one-way traffic eastbound. This future cross access would provide ingress accessibility to delivery and refuse vehicles with minimal interaction with passenger vehicles.



PC 12-13: 401 E. North Ave.



DESCRIPTION OF REQUEST

Mallon and Associates, Inc. as developer for Mallon III, LLC plans to improve the southeast corner of North Avenue and Grace Street. The vacant parcel was previously occupied by a BP Service Station. The service station ceased operation in 2008 and has remained vacant since then. The property is undergoing an environmental cleanup which is explained in detail in the attached summary from the environmental consultant; VERTEX Environmental Services, Inc. Our proposal would be to redevelop the property and to construct a 7,150 square foot retail shopping center with parking for 30 cars (4.2 spaces per 1,000 sqft.). The retail building will be anchored by a Dunkin Donuts in approximately 2,000 sqft. and 3 – 4 other tenants. The tenants could include a variety of other retail/service uses including a dry cleaner, telephone store, and hair salon or office users.

The project would require a conditional use in the existing B4 Corridor Commercial District to allow a drive through for Dunkin Donuts and an outdoor seating area for customers. The drive through would be located on the east side of the building and would have eight (8) stacking spaces for the drive through window. A majority of Dunkin Donuts business is done through the drive through and it is essential for their business. The outdoor seating area will consist of two tables on an oversized sidewalk in front of the store to permit customers to sit outside weather permitting while enjoying their meal. The standards for the conditional use are addressed in the attached statement.

The site plan has been developed to provide for a safe and pleasant shopping center experience. The shopping center will access off of Grace Street (right in – right out) with a full access on Grace Street. Based on the existing developments in the area and the limited size of the property (35,382 sqft.) the project requires the following variations to the Lombard Zoning Ordinance:

	SECTION	REQUIREMENTS	REQUEST
Transitional Landscape Yard	155.416 J.	30'	Minimum 15.8'
Shopping Center Identification Sign	155.235 (F)	Setback not less than seventy-five feet (75') from the centerline of the adjacent road.	Proposed Grace Street Monument Sign will be setback approx. 55' from the centerline.
Wall Signs	153.505 (B) (19) b. (1) a)	Wall sign shall not exceed one times the lineal front footage of the tenant space, excepting that each tenant shall be entitled to a minimum of twenty-five (25) square feet of sign surface area.	Allow the tenants wall signs based on two times the lineal front footage of the tenant space not to exceed thirty five (35) square feet of sign surface area.

The standards for the variations are addressed in the attached statement.

STANDARDS FOR CONDITIONAL USES

Please find our detailed responses to all of these standards for our request for a Conditional Use.

SECTION 155.103 (F)(8) OF THE LOMBARD ZONING ORDINANCE

No conditional use shall be recommended by the Plan Commission unless it finds:

1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to, or endanger the public health, safety, morals, comfort, or general welfare;

The proposed request to allow a drive through and outdoor seating area for a restaurant will not be detrimental to, or endanger the public health, safety, morals, comfort or general welfare. The drive through and outdoor seating area have been designed to address these issues.

2. That the conditional use will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, not substantially diminish and impair property values within the neighborhood in which it is to be located;

The proposed project will not be injurious to the uses and enjoyment of other properties in the immediate vicinity, not substantially diminish and impair property values within the neighborhood. The existing property is vacant and the proposed project will be a significant improvement in the neighborhood which should help to increase property values. .

3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;

The establishment of the drive through and outdoor seating area will not impede the normal and orderly development and improvement of the surrounding properties. In fact the proposed redevelopment will have a positive impact on the area that could result in additional redevelopment and improvement in the area.

4. That the adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;

The proposed project has adequate utilities, access roads, drainage and other necessary facilities will be provided.

5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;

The proposed project has been designed to provide for ingress and egress to minimize traffic congestion on the public street.

6. That the proposed conditional use is not contrary to the objectives of the current Comprehensive Plan for the Village of Lombard; and,

The proposed drive through and outdoor seating area are not contrary to the objectives of the current Comprehensive Plan for the Village of Lombard.

7. That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation, in each instance, be modified pursuant to the recommendations of the Plan Commission.

The proposed drive through and outdoor seating area will conform to the applicable regulations of the B4 Corridor Commercial District. The overall redevelopment will require minimal variations to the regulations based on unique circumstances that are addressed in the standards for variances.

STANDARDS FOR VARIATIONS

Please find our detailed responses to all of these standards for our request for a Variation.

SECTION 155.103 C.7 OF THE LOMBARD ZONING ORDINANCE

No variations to the regulations shall be recommended by the Plan Commission unless it finds:

1. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be applied.

The proposed redevelopment is limited by the size of the parcel (35,382 sqft.). The property abuts the Lombard Lagoon Park to the south. Given the existing vegetation and the park setting the typical transitional landscaped yard is not necessary. Increasing the monument sign setback along Grace Street to 75' from the centerline would place the sign thirty five feet (35') off the property line and given the existing vegetation the monument sign would not be visible. The proposed building will be setback over two hundred and seventy feet (270') from the centerline of North Avenue limiting the tenant's signs to one times the lineal foot frontage of the tenant space would provide a particular hardship to the tenant and the owner in leasing the shopping center.

2. The conditions upon which an application for a variation is based are unique to the property for which the variation is sought, and are not generally applicable to other property within the same zoning classification.

The conditions upon which the variations are based are unique to our corner property and are generally not applicable to other properties within the B4 Corridor Commercial District.

3. The purpose of the variation is not based primarily upon a desire to increase financial gain.

The reasons for the variations are not primarily upon a desire to increase financial gain, however are based on the hardships that would be experienced if we had to adhere to the strict letter of the regulations.

4. The alleged difficulty or hardship is caused by this ordinance and has not been created by any person presently having an interest in the property.

The hardship is caused by the strict letter of the regulations and has not been caused by any person having an interest in the property.

5. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

The granting of the variations and the conditional uses will not be detrimental to the public welfare or injurious to other properties or improvements in the neighborhood.

6. The granting of the variation will not alter the essential character of the neighborhood; and,

The granting of the variations and the conditional uses will not alter the essential character of the neighborhood.

7. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public street, or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

The proposed variations will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public street, or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

May 31, 2012

Village Of Lombard

Department of Community Development

255 E. Wilson Avenue

Lombard, Illinois 60148-3926

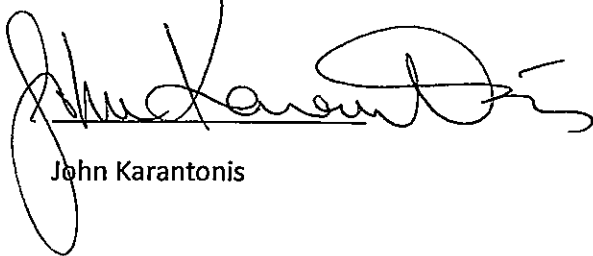
To Whom It May Concern:

My name is John Karantonis, owner of Casey's Restaurant. Recently, Mr. Michael Mallon shared his plan to purchase and develop the southeast corner of Grace and North Avenue in Lombard. Our property, Casey's Restaurant to the east, has a cross easement with the corner property.

Originally, our preference for this cross easement was to locate it on the southern portion of the property. Mr. Mallon showed us his plan for the structure and explained why the cross easement would not work on the southern side of the property but would work on the northern side nearest North Avenue.

We are in complete agreement with Mr. Mallon's plan and hereby accept it for the cross easement.

Respectfully,

A handwritten signature in black ink, appearing to read "John Karantonis", written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke.

John Karantonis

**MEMORANDUM**

TO: David A. Hulseberg, Village Manager

FROM: William Heniff, AICP
Director of Community Development *WH*

DATE: August 23, 2012

SUBJECT: PC 12-13: 401 E. North Avenue

The subject property is currently vacant and the petitioner is proposing to develop a multi-tenant commercial center which includes a Dunkin Donuts with a drive through. The Plan Commission recommended approval of this petition at their July 16, 2012 meeting and it was scheduled for first reading on the August 23, 2012 Board of Trustees meeting agenda.

The petitioner is requesting that this petition be continued to the September 6, 2012 Board of Trustees meeting in order to finalize a companion Sales Tax Agreement (see attached e-mail). This continuance would allow the zoning actions as well as the Sales Tax Agreement to be considered concurrently. The petitioner will be requesting a waiver of first reading at that time.

Recommendation:

That the Village Board of Trustees continue all actions associated with PC 12-13 to the September 6, 2012 meeting.

Downer, Janet

From: Stilling, Christopher
Sent: Wednesday, August 08, 2012 9:31 AM
To: Heniff, William
Cc: Downer, Janet
Subject: FW: Agreement
Attachments: Sales Tax Agreement 882012.docx; Force Majeure.doc

Below, Mike Mallon requests the continuance and a waiver of first for the 9/6 BOT Meeting

Christopher Stilling, AICP
Assistant Director of Community Development
Village of Lombard
255 E Wilson Avenue
Lombard, IL 60148
Tel: (630) 620-5717
Fax: (630) 629-2374
stillingc@villageoflombard.org

From: Mike Mallon [<mailto:mike.mallon@malloninc.com>]
Sent: Wednesday, August 08, 2012 9:23 AM
To: Stilling, Christopher
Subject: RE: Agreement

Chris-

Per our conversation, please find our changes to the proposed sales tax agreement for the North & Grace project. I have also included the proposed language for "Force Majeure". I would appreciate this matter be continued if necessary to the September 6th Village Board meeting so that the ordinance approving the zoning and the sales tax agreement could be approved at the same time. Please have the board consider waiving first reading so that the matter could be reviewed and approved at the same meeting. As you are aware, our waiver of due diligence needs to be satisfied by September 7th.

Your assistance in this matter would be greatly appreciated.

Please do not hesitate to contact me if you have any questions.

Michael Mallon

Mallon and Associates, Inc.

A REAL ESTATE AND DEVELOPMENT COMPANY

1755 South Naperville Road, Suite #100

Wheaton, Illinois 60189

630.510.3225 office

630.510.3227 fax

708.878.1689 cell

www.malloninc.com



ORDINANCE NO. _____

AN ORDINANCE GRANTING APPROVAL OF A CONDITIONAL USE FOR A DRIVE-THROUGH ESTABLISHMENT; A CONDITIONAL USE FOR AN OUTSIDE SERVICE AREA; A VARIATION TO ALLOW SIGNAGE WITHIN CLEAR LINE OF SIGHT AREAS; A VARIATION TO ALLOW WALL SIGNS THAT ARE TWO TIMES THE LINEAL FRONT FOOTAGE OF THE TENANT SPACE; VARIATIONS TO REDUCE THE TRANSITIONAL LANDSCAPE YARD; AND A MINOR PLAT OF SUBDIVISION WITH A VARIATION FROM LOT AREA.

(PC 12-13: 401 E. North Ave)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Sign Ordinance, otherwise known as Title 15, Chapter 153 of the Code of Lombard, Illinois; the Lombard Zoning Ordinance, otherwise known as Title 15, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, the Subject Property as defined below is zoned B4 – Corridor Commercial District; and,

WHEREAS, an application has been filed requesting approval of a conditional use for a drive-through establishment; a conditional use for an outside service area; a variation from Section 153.208(H) to allow signage within clear line of sight areas; a variation from Section 153.505(B)(19)(b)(1)(a) to allow a property with a multi-tenant building setback less than 120 feet from the property line to display wall signs that are two times the lineal front footage of the tenant space; variations from Sections 155.416(J) & 155.707(A)(4) to reduce the required 30' transitional landscape yard; and a Minor Plat of Subdivision with a variation from Section 155.416 (D) to allow a lot area of 35,382 sq. ft. where a minimum of 40,000 sq. ft.; and,

WHEREAS, a public hearing on the forgoing application was conducted by the Village of Lombard Plan Commission on July 16, 2012 pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the conditional uses and subsequent variations described herein, subject to conditions; and,

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That a conditional use is hereby granted for the property described in Section 7 below pursuant to Title 15, Chapter 155, Section 416 (C)(10) of the Lombard Village Code to allow for a drive-through establishment; and,

SECTION 2: That a conditional use is hereby granted for the property described in Section 7 below pursuant to Title 15, Chapter 155, Section 416 (C)(21) of the Lombard Village Code to allow for an outside service area; and,

SECTION 3: That a variation is hereby granted for the property described in Section 7 below pursuant to Title 15, Sections 155.416(J) & 155.707(A)(4) to reduce the required 30' transitional landscape yard; and,

SECTION 5: That a variation is hereby granted for the property described in Section 7 below pursuant to Title 15, Sections 155.706 (C) and 155.709 (B) of the Zoning Ordinance reducing the required perimeter parking lot and perimeter lot landscaping from five feet (5') to zero feet (0') to provide for shared cross-access; and,

SECTION 6: That a variation is hereby granted for the property described in Section 7 below pursuant to Title 15, Section 155.416 (D) to allow a lot area of 35,382 sq. ft. where a minimum of 40,000 sq. ft. associated with a major plat of subdivision; and,

SECTION 7: That a variation is hereby granted for the property described in Section 7 below pursuant to Title 15, Section 153.208(H) to allow signage within clear line of sight areas; and,

SECTION 8: That a variation is hereby granted for the property described in Section 7 below pursuant to Title 15, Section 153.505(B)(19)(b)(1)(a) to allow a property with a multi-tenant building setback less than 120 feet from the property line to display wall signs that are two times the lineal front footage of the tenant space.

SECTION 9: That this Ordinance is limited and restricted to the property located at 401 E. North Ave., Lombard, Illinois and legally described as follows:

That part of the northeast 1/4 of section 5, township 39 north, range 11 east of the third principal meridian, described as follows: beginning at a point on the south line of north avenue, (state route 64) which point is 90 feet east of the west line of grace street; thence east on the south line of north avenue, a distance of 195 feet; thence south and parallel with the west line of grace

Street, a distance of 182 feet; thence west parallel with the south line of north avenue, a distance of 195; thence north on a line 90 feet east of and parallel to the west line of grace street 182 feet to the point of beginning.

Excepting therefrom that part of the northeast 1/4 of section 5, township 39 north, range 11, east of the third principal meridian, described as follows:

Beginning at a point on the south line of north avenue (route 64) which point is 90.0 feet east of the west line of grace street; thence on an assumed bearing north 88 degrees 14 minutes 45 seconds east along the south line of north avenue 5.00 feet; thence south 12 degrees 17 minutes 42 seconds west, 25.74 feet to the east line of grace street, being 90.0 feet east of and parallel to the West line of grace street; thence north 1 degree 06 minutes 28 seconds east along the east line of grace street, 25.00 feet to the point of beginning, in DuPage county, Illinois.

Parcel Number: 06-05-200-016; (the "Subject Property").

SECTION 10: The requested zoning actions, as provided for in Sections 1-8 of this Ordinance shall be granted subject to compliance with the following conditions:

1. That the petitioner shall develop the site in accordance with the plans submitted as part of this petition and referenced in this IDRC report, except as they may be changed to conform to Village Codes and Ordinances.
2. That the petitioner's building improvements shall be designed and constructed consistent with Village Code and shall also address the comments included within the IDRC report.
3. That the petitioner shall modify the south building elevation to include the same banding elements to that of the north elevation. The final design of these elements for the north elevation shall be subject to the Director of Community Development.
4. Each tenant space shall include gooseneck lighting above each of the respective awnings.
5. The informational sign located at the Grace Street entrance shall be moved to the easternmost portion of the landscape island to which it is located. The final location of the sign shall be subject to the Director of Community Development.

6. All comments and recommendations noted in the KLOA report dated July 10, 2012, attached to this report, shall be satisfactorily addressed.
7. Cross access to the existing Casey's Restaurant to the east shall be constructed as part of this project and prior to the issuance of a Certificate of Occupancy, subject to the approval of Casey's Property Owner and in accordance with the preliminary engineering plan dated June 26, 2012 by RWG Engineering, LLC, except as it may be modified to meet Village Code. In the event that the owner of the Casey's property does not consent to the construction of the cross access, an easement shall still be provided for future connection to the east.
8. A cross access easement shall be provided at the southeast corner of the site that would connect to the property to the east in a manner acceptable to the Director of Community Development.
9. Prior to the issuance of a building permit, the existing Highway Authority Agreement for the subject property shall be reviewed and amended as needed by Village Counsel, with the approval by the Village Board.
10. The curb cut onto North Avenue shall be reduced to no more than thirty-five feet (35') wide at the property line.
11. The outdoor dining area shall include a decorative black aluminum or wrought iron fence a minimum of four feet (4') high around the perimeter.
12. To ensure that the proposed signage and awnings present a favorable appearance to neighboring properties, staff recommends the following items be added as additional conditions of approval:
 - A. That channel lettering shall only be used for the wall signs.
 - B. That consistent with the Sign Ordinance, the awnings shall not include text in conjunction with the wall signage.
 - C. That any future awnings shall be of a compatible design and color around the building.

SECTION 11: This ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2012.

Ordinance No. _____
Re: PC 12-13
Page 5

First reading waived by action of the Board of Trustees this ____ day of _____, 2012.

Passed on second reading this ____ day of _____, 2012, pursuant to a roll call vote as follows:

Ayes: _____

Nays: _____

Absent: _____

Approved this ____ day of _____, 2012.

Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Published by me in pamphlet from this ____ day of _____, 2012.

Brigitte O'Brien, Village Clerk

RESOLUTION
R _____ 13

A RESOLUTION AUTHORIZING SIGNATURE
OF PRESIDENT AND CLERK ON AN AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard has received a an Agreement between the Village of Lombard and Mallon III, LLC regarding an Economic Incentive Agreement for Mallon III(, LLC, as attached hereto and marked Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

Section 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Agreement as attached hereto.

Section 2: That the Village Clerk be and hereby is authorized to attest said Agreement as attached hereto.

Adopted this _____ day of _____, 2012.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____ 2012.

Village President

Attest:

Brigitte O'Brien, Village Clerk
Village Clerk

**CROSS-ACCESS CONNECTION REIMBURSEMENT AGREEMENT FOR
401 E. NORTH AVENUE**

THIS AGREEMENT (hereinafter referred to as the "Agreement") is entered into on this _____ day of _____, 2012, by the **VILLAGE OF LOMBARD**, DuPage County, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "**Village**"); and **MALLON III, LLC.**, an Illinois Limited Liability Company (hereinafter referred to as "**Developer**"); (the Village and Developer are sometimes referred to herein individually as a "Party" or collectively referred to as the "Parties").

WITNESSETH:

Pursuant to the provisions of Article VII, Section 10 of the 1970 Illinois Constitution, and 65 ILCS 5/8-11-20 (hereinafter referred to as the "Rebate Statute"), and in consideration of the Preliminary Statements, the mutual covenants herein contained and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The Village is a non-home rule municipality lawfully existing under the constitution and laws of the State of Illinois.
- B. The Developer is the developer of record for certain property, located within the boundaries of the Village, which the Developer intends to improve with a retail commercial building, said property being legally described in EXHIBIT "A" attached hereto and made part hereof (hereinafter referred to as the "**Subject Property**").
- C. Developer intends to improve the Subject Property with a cross-access connection to service the business establishment located on the Subject Property and the Casey's Restaurant Property (hereinafter referred to as the "**Casey's Property**") located to the East of the Subject Property.
- D. The Village Board approved the zoning actions associated with proposed activity on the Subject Property on September 6, 2012, pursuant to Ordinance _____.
- E. In order to accommodate the development proposed by the Developer, the Village, as a condition of the approval of Ordinance _____ requires a cross-access connection between the Subject Property and the Casey's Property, as depicted on EXHIBIT "B" attached hereto and made a part hereof (hereinafter referred to as the "**Cross-Access Connection**").

- F. The Village is desirous of having the Subject Property operated in accordance with the Village Code in order to service the needs of the Village and its residents.
- G. The Cross-Access Connection, if completed, will improve traffic and circulation in the vicinity of the Subject Property.
- H. In light of the foregoing, a portion of the cost of the Cross-Access Connection should properly be paid for by the Village, and, as such, the Village contemplates certain incentives under the terms and conditions hereinafter set forth to assist in the construction of same.
- I. The Parties hereto acknowledge, and Developer represents and warrants, that while the Developer will construct the Cross-Access Connection, the Cross-Access Connection requires economic assistance from the Village in order to complete the same, and, but for the economic assistance to be given by the Village, the Cross-Access Connection as contemplated would not be economically viable nor eligible for the financing necessary for its completion.
- J. Pursuant to the Rebate Statute, the Village finds as follows:
 - 1. The Subject Property has remained vacant for at least one (1) year;
 - 2. The proposed development of the Subject Property is expected to create job opportunities within the Village;
 - 3. The proposed development of the Subject Property will serve to further the development of adjacent areas;
 - 4. Without this Agreement, the proposed development of the Subject Property would not be possible;
 - 5. The Developer meets/will meet the criteria set forth in 65 ILCS 5/8-11-20(6)(C);
 - 6. The proposed development of the Subject Property will strengthen the commercial sector of the Village;
 - 7. The proposed development of the Subject Property will enhance the tax base of the Village; and
 - 8. This Agreement is made in the best interests of the Village.”
- K. For the purposes of this Agreement, the use of the terms "**Sales Tax**" and "**Sales Tax Revenues**" shall be construed to refer to that net portion of taxes imposed by the State of Illinois (hereinafter referred to as the "**State**") for distribution to the Village pursuant

to the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., and the Service Occupation Tax Act, 35 ILCS 115/1 et seq., (as said Acts maybe amended) and which are collected by the State and distributed to the Village (currently such net portion is one percent (1%) of the total amount of gross sales within the Village, which are subject to the aforementioned taxes).

II. CONDITIONS PRECEDENT TO THE UNDERTAKINGS ON THE PART OF THE VILLAGE

All undertakings on the part of the Village pursuant to this Agreement are subject to satisfaction of the following conditions by Developer, on or before the dates hereinafter specified. In the event Developer does not comply in all material respects with the conditions precedent set forth in this Article II, then all obligations on the part of the Village pursuant to this Agreement shall be cancelled, and the Village shall have no further obligations with regard to the Cross-Access Connection and this Agreement, and any right on the part of Developer to demand performance thereof shall be deemed waived and also cancelled and of no force and effect.

- A. By September 6, 2013, Developer shall have applied for a building permit with the Village for the Cross-Access Connection, and have supplied the Village with a certified engineer's cost estimate for the Cross-Access Connection. If the contractor's cost proposal for the Cross-Access Connection exceeds the Engineer's Cost Estimate for the work to be performed, then the Developer shall submit the costs to the Village for approval prior to authorizing the contract to perform the Cross-Access Connection construction activity.
- B. By September 6, 2013, Developer must have obtained final approval of its plans from any other governmental unit or agency, which has jurisdiction or authority over any portion of the Cross-Access Connection and/or plans. The submitted plans (hereinafter referred to as the "**Final Plans**") associated with the permit shall be in accordance with the regulations and ordinances of the Village, it being understood that the Village, in its capacity as a municipal corporation, has sole discretion to approve all plans for development within the Village, and the Village shall not be deemed to have caused a default hereunder or have any liability for its failure to approve the Final Plans for the Cross-Access Connection, except for its willful misconduct. The "Final Plans" shall include any and all documents, plans and drawings submitted to the Village in order to obtain any permit required from the Village relative to the Cross-Access Connection.
- C. By September 6, 2014, Developer must have completed the Cross-Access Connection and delivered to the Village a certified statement in regard to the total cost of the Cross-Access Connection. Said certification shall be over the signature of the chief financial officer of Developer. Developer shall allow the Village Manager or his designee to review a breakdown of, and supporting documentation for, Developer's costs in regard to the Cross-Access Connection.

III. UNDERTAKINGS ON THE PART OF THE VILLAGE

- A. Upon satisfaction by Developer of all the conditions hereinabove stated in Article II, delivery to the Village of a certificate from Developer that all representations and warranties contained in Article V hereof are true and correct, the Village shall begin to make the Quarterly Installment Payments (as defined below).
- B. The Village hereby agrees to pay Developer the Quarterly Installment Payments (as defined below), beginning the last to occur of September 6, 2013 or the date that Developer has leased the Subject Property to its first tenant and the tenant has taken possession of the Subject Property (hereinafter referred to as the "Start Date"), and continuing until the first to occur of, (i) seven (7) years or (ii) the Village paying the Developer Seventy-Thousand Dollars (\$70,000) or the total cost of the Cross-Access Connection as certified pursuant to Article II Section C., whichever is less, with the first of the Quarterly Installment Payments to be made fifteen (15) days after the Start Date, with subsequent Quarterly Installment Payments being made at three (3) month intervals thereafter, subject to the following calculations, deductions, terms and conditions:
- 1) The "**Quarterly Installment Payments**" shall mean an amount equal to the Sales Tax Revenues received by the Village from the State, , which are generated from sales on the Subject Property during the three (3) month period preceding the payment date as referenced above. All amounts paid to Developer will be due and payable, solely from the Sales Tax Revenues received by the Village from the Subject Property, on the dates provided herein.
 - 2) In no event shall the Village be obligated under this Agreement to make Quarterly Installment Payments to Developer, which, in the aggregate over the life of this Agreement, exceed the total certified costs for the Cross-Access Connection.
 - 3) Prior to making each of the Quarterly Installment Payments, the Village shall mail to Developer a letter, itemizing the gross Sales Tax receipts received from the State for the preceding quarter, from retail sales on the Subject Property, any deductions to be retained by the Village, and the net dollar amount to be paid to Developer pursuant to this Agreement.
- C. The Village shall provide for Quarterly Installment Payments required under this Agreement by appropriating an adequate amount therefor in its annual budget ordinance for the fiscal years in which such payments are due. The payments shall be the limited obligation of the Village payable solely out of the Sales Tax Revenues received from retail sales on the Subject Property.

- D. In the event Developer fails to deliver to the Village all of the certifications provided for herein, within the time periods set forth, or otherwise materially violates any term or provision of this Agreement, then in such event, the Village shall have no obligation to make any payment to Developer until such time as any such failure or violation is corrected to the reasonable satisfaction of the Village, and all rights of Developer to demand any current or future payment from the Village shall be deemed waived until such failure or violation is so corrected.

IV. UNDERTAKINGS ON THE PART OF DEVELOPER

- A. Developer shall complete the Cross-Access Connection in accordance with the schedule set forth herein and in accordance with the Final Plans, and all applicable ordinances, rules and regulations of the Village in existence as of the date of such approval, and all rules and regulations thereunder.
- B. Developer recognizes and agrees that the Village has sole discretion with regard to all approvals and permits relating to the Cross-Access Connection, including but not limited to approval of the Final Plans, building permit and occupancy permit, and failure on the part of the Village to grant any required approval or issue any required permit shall not be deemed as the cause of a default by the Village under this Agreement or give rise to any claim against or liability of the Village pursuant to this Agreement, unless such failure arises out of the negligence or misconduct of the Village. Notwithstanding the foregoing the Village shall not exercise its authority under the subsection in an unreasonable manner.
- C. Developer shall provide the Village with a power of attorney letter(s) addressed to, and in a form satisfactory to, the Illinois Department of Revenue, or such other form or documentation as required by the Illinois Department of Revenue, authorizing the Illinois Department of Revenue to release to the Village's Finance Director, for each calendar month, all gross revenue and Sales Tax Revenues information relating to retail sales on the Subject Property, which letter shall authorize such information to be released to the Village and shall be in the form attached hereto as EXHIBIT "C", and made part hereof, or such other or additional forms as required from time to time by the Illinois Department of Revenue in order to release such information to the Village. No payments required under this Agreement shall be made by the Village without receipt of satisfactory information from the Illinois Department of Revenue indicating the Sales Tax Revenues generated from retail sales on the Subject Property for the time period covered by the applicable Annual Installment Payment. All such information received by the Village shall be considered, and is hereby represented to be by the Developer confidential proprietary financial information which, if disclosed, would cause competitive harm to the business entity to which it relates, and shall not be disclosed to any other person or entity by the Village or its Finance Director without the written consent of the business entity paying the Sales Tax Revenues to the Illinois Department of Revenue. For the purposes of this subsection it is the intent of the Parties that such

information shall be deemed exempt from public disclosure pursuant to 5 ILCS 140/7(g), or any future recodification thereof.

- D. Developer hereby covenants and agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind that it may at any time be lawfully finally assessed with respect to the Subject Property; provided, however, that Developer may withhold any such tax payment for which it has filed a formal protest, with a certified copy forwarded to the Village, pursuant to a prescribed statutory procedure allowing for such nonpayment until the protest has been ruled upon; provided further, however, that any payment required after such protest is ruled upon shall be promptly paid.
- E. Developer shall give the Village notice regarding any defaults on the payment of any Sales Tax due to the Illinois Department of Revenue from retail sales on the Subject Property.

V. **REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

- A. Developer hereby represents and warrants that the Cross-Access Connection requires economic assistance from the Village in order to complete it in accordance with the approved Final Plans, and, but for the economic assistance to be given by the Village as heretofore stated, the Cross-Access Connection as contemplated would not be economically viable nor eligible for the financing necessary for its completion.
- B. Developer hereby represents and warrants that the Cross-Access Connection shall be constructed and fully completed in a good and workmanlike manner in accordance with the Final Plans approved by the Village.
- C. Developer hereby represents and warrants that it will not knowingly violate any applicable Village zoning ordinance or regulation, building or fire code regulation, or any other applicable Village ordinance, resolution or regulation as they relate to the Subject Property unless they are being contested in a lawful manner.
- D. Developer hereby represents and warrants that it will not knowingly violate any applicable law, rule or regulation of the State, County of DuPage or the United States of America, and all agencies thereof, as they relate to the Cross-Access Connection, unless they are being contested in a lawful manner.
- E. Developer hereby represents and warrants that it is an Illinois Limited Liability Company in good standing.
- F. Developer will begin construction on the Cross-Access Connection on or before September 6, 2013 except in the event Developer is unable to begin said construction due to any strike, lockout, labor dispute, construction delays, civil disorder, riot, war,

casualty or act of God or other similar event beyond the reasonable control of Developer.

- G. Developer hereby represents and warrants that attached as EXHIBIT "A" is the legal description of the Subject Property and that said legal description is accurate and correct.

VI. DEFAULTS

The occurrence of any one of the following shall constitute an event of default by Developer under this Agreement:

- A. Failure to comply with any term, provision or condition of this Agreement within the times herein specified;
- B. Failure of a representation or warranty of Developer contained herein to be materially true and correct when made.
- C. In the event of any non-monetary default and/or breach of this Agreement or any terms or conditions by either Party hereto or bound by this Agreement, such Party shall upon written notice proceed promptly to cure or remedy such default or breach within said sixty (60) days after receipt of such notice; provided, however, that in the event such default is incapable of being cured within the sixty (60) day period and the defaulting Party commences to cure within said sixty (60) day period and proceeds to cure with due diligence, such Party shall not be deemed to be in default under this Agreement. In case such action is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above time or in the event of a monetary default (time being of the essence with respect to the payment of any sums required hereunder), the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach including but not limited to proceedings to compel specific performance by the Party in default or breach of its obligations, but not specific performance of any obligations to construct any buildings or other improvements. The rights of the Parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it of any one or more of such remedies in relation to the same default or breach by the other Party. No waiver made by either Party with respect to any specific default by the other Party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting Party under this Agreement or with respect to the particular default except to the extent specifically waived in writing. Notwithstanding anything contained herein to the contrary, all monetary damages resulting from a breach of this Agreement shall be limited to the non-defaulting Party's actual out of pocket costs and expenses resulting from such breach along with all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting Party in enforcing this Agreement. In the

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, and for the purposes of any lawsuit between the Parties concerning this Agreement, its enforcement or the subject matter thereof, venue shall be in DuPage County, Illinois.

IX. ASSIGNMENT

Developer shall not assign this Agreement to any person or entity without the prior written consent of the Village, which consent shall not be unreasonably withheld. No such assignment shall be effective, even if consented to by the Village, unless and until the assignee assumes in writing the obligations of Developer hereunder, and upon such assumption in writing, Developer shall be released from and no longer be liable for any of its obligations and the performance thereof pursuant to this Agreement.

X. TIME

Time is of the essence unless otherwise stated in this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance.

XI. BINDING EFFECT

This Agreement shall inure to the benefit of and shall be binding upon the Village and Developer and their respective successors and assigns, subject however to the provisions of Articles IX and XII hereof.

XII. LIMITATIONS OF LIABILITY

No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Village, its officers, agents or employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Developer hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village, its officers, agents or employees in excess of such amounts and all and any such rights or claims of Developer against the Village, its officers, agents or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against Developer, its officers, agents or employees, in excess of their obligations to the Village hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by Developer, its officers, agents and employees in excess of their obligations hereunder.

XIII. CONTINUITY

Notwithstanding any provision of this Agreement to the contrary, including, but not limited to, the assignment by Developer of this Agreement, Developer shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon it by this Agreement until such obligations have been fully performed or until the Village, at its sole option, has otherwise released Developer from any or all of such obligations.

XIV. NO WAIVER OR RELINQUISHMENT OF RIGHT TO ENFORCE AGREEMENT

Failure of any Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

XV. FORCE MAJEURE

Whenever a period of time is provided for in this Agreement for either Developer or the Village to perform any act or obligation, and Developer or the Village, as the case may be, is unable to perform or complete such act or obligation because of Force Majeure, ("Force Majeure" being defined as an Act of God or other event or cause not reasonably within the control of Developer or the Village including, without limitation, delays by the State of Illinois or Illinois Department of Revenue, fires or other casualty, strikes, building material supply shortages, vendor problems not caused by Company, embargoes, civil riot, floods, or natural catastrophe) then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such act or obligation shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure. A Party may rely on a Force Majeure event to delay performance of its obligations under this Agreement only after sending notice of such Force Majeure event to the other party, which notice shall be sent not later than ten (10) business days after the discovery of such event. The Parties shall consult during the continuation of any Force Majeure event no less frequently than weekly to exchange a progress report and estimated duration thereof.

XVI. VILLAGE APPROVAL OR DIRECTION

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be given only

after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

XVII. SECTION HEADINGS AND SUBHEADINGS

All Article headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

XVIII. AUTHORIZATION TO EXECUTE

The manager of the Developer, who has executed this Agreement, warrants that he/she has lawful authority to execute this Agreement on behalf of the Developer. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Corporate Authorities of the Village to execute this Agreement. Developer and the Village shall deliver, upon request, to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties.

XIX. AMENDMENT

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Developer and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings either oral or written, expressed or implied, between them, other than are herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

XX. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

XXI. CONFLICT BETWEEN THE TEXT AND EXHIBITS

In the event of a conflict in the provision of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

XXII. SEVERABILITY

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised here from and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve the Village from performance under such invalid provision of this Agreement; provided, however, if the judgment or decree relieves the Village of any of its monetary obligations under Section III of this Agreement, then this Agreement shall terminate.

XXIII. DEFINITION OF VILLAGE

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

XXIV. EXECUTION OF AGREEMENT

This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on Page 1 hereof which date shall be the effective date of this Agreement.

IN WITNESS WHEREOF, this Agreement as of the date and year first written above.

VILLAGE OF LOMBARD, an Illinois Municipal Corporation

By: _____
Village President

ATTEST:

By: _____
Brigitte O'Brien, Village Clerk

DEVELOPER: MALLON III, LLC

By: _____

Name: _____
Manager

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY that the above-named _____, personally known to me to be the
Manager of Mallon III, LLC., and also personally known to me to be the same person whose
name is subscribed to the foregoing instrument as such Manager, and that he/she appeared
before me this day in person and acknowledged that as such Manager, he/she signed and
delivered the said instrument, consenting to its recordation, pursuant to authority given by said
company, as his/her free and voluntary act, and as the free and voluntary act and deed of said
company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____,
2012.

Commission expires _____, _____.

Notary Public

EXHIBIT A
Legal Description for Subject Property

That part of the northeast 1/4 of section 5, township 39 north, range 11 east of the third principal meridian, described as follows: beginning at a point on the south line of north avenue, (state route 64) which point is 90 feet east of the west line of grace street; thence east on the south line of north avenue, a distance of 195 feet; thence south and parallel with the west line of Grace Street, a distance of 182 feet; thence west parallel with the south line of north avenue, a distance of 195; thence north on a line 90 feet east of and parallel to the west line of grace street 182 feet to the point of beginning.

Excepting therefrom that part of the northeast 1/4 of section 5, township 39 north, range 11, east of the third principal meridian, described as follows:

Beginning at a point on the south line of north avenue (route 64) which point is 90.0 feet east of the west line of grace street; thence on an assumed bearing north 88 degrees 14 minutes 45 seconds east along the south line of north avenue 5.00 feet; thence south 12 degrees 17 minutes 42 seconds west, 25.74 feet to the east line of grace street, being 90.0 feet east of and parallel to the West line of grace street; thence north 1 degree 06 minutes 28 seconds east along the east line of grace street, 25.00 feet to the point of beginning, in DuPage county, Illinois.

Parcel Number: 06-05-200-016; (the "Subject Property").

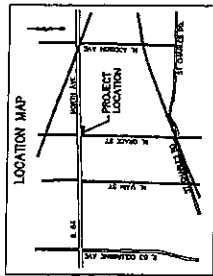
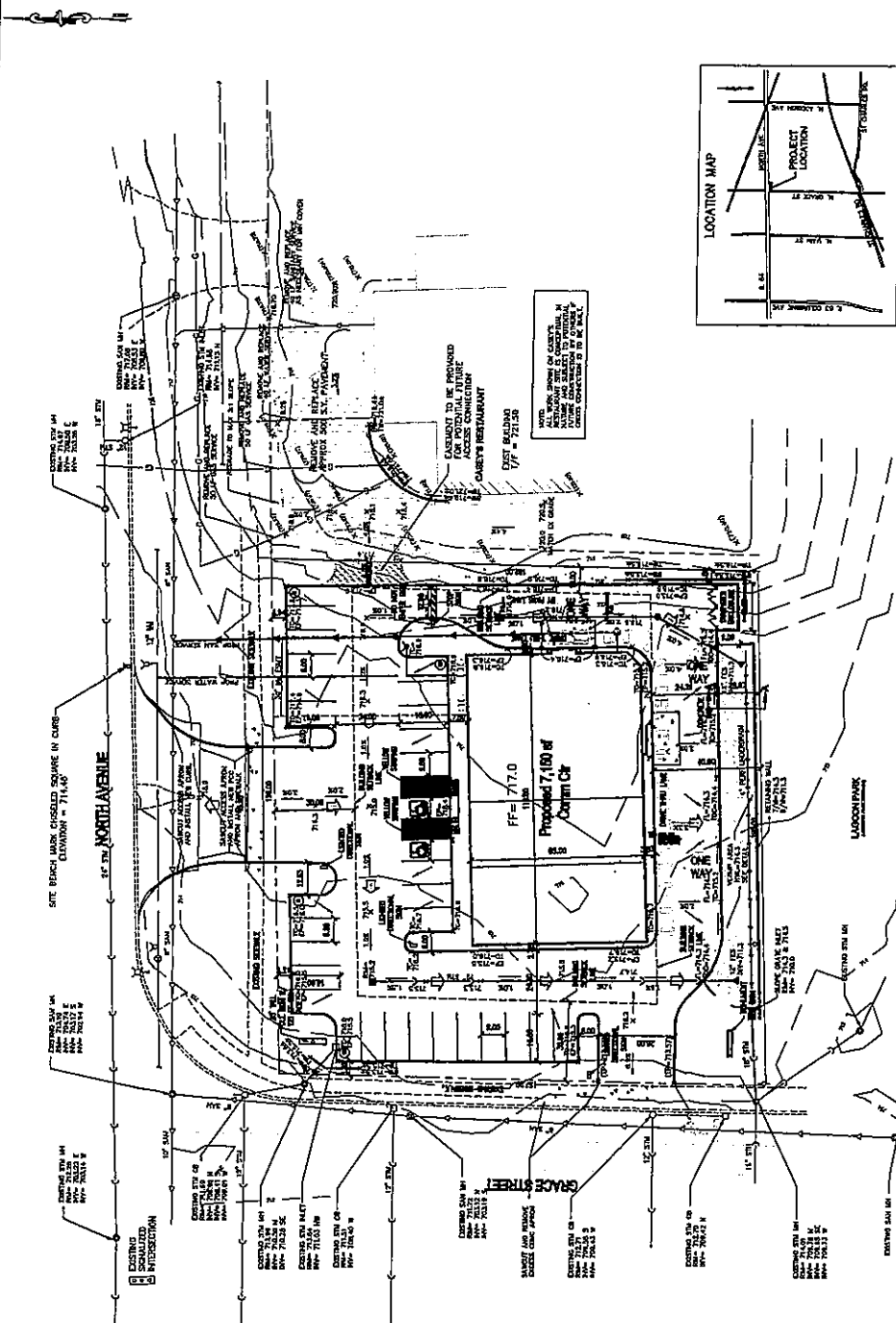
EXHIBIT B
Cross-Access Connection Exhibit

DATE	DESCRIPTION
11/17/12	PRELIMINARY DESIGN
11/17/12	CONCEPT DESIGN
11/17/12	PRELIMINARY DESIGN
11/17/12	CONCEPT DESIGN
11/17/12	PRELIMINARY DESIGN
11/17/12	CONCEPT DESIGN

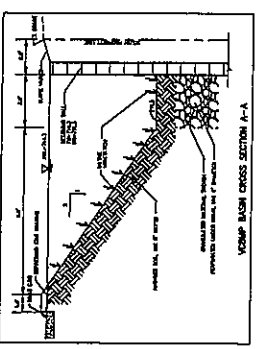
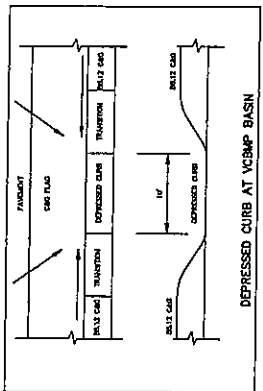
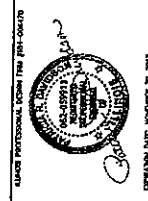
LOMBARD COMMERCE CENTER
 LOMBARD, ILLINOIS
 PRELIMINARY ENGINEERING

RWG Engineering, LLC
 875 E. 22nd Street, Suite 403, Whittier, IL 60591
 Phone: (815) 774-4000 Fax: (815) 774-4001
 www.rwg-engineering.com

PROJECT NO.	111111
SHEET NO.	1 of 1
DATE	11/17/12
SCALE	AS SHOWN
DESIGNED BY	...
CHECKED BY	...
IN CHARGE	...



BENCH MARK
 1. CHECK BENCH MARK ON 1/4" SCALE DRAWING
 2. VERIFY BENCH MARK WITH SURVEYOR



LEGEND	
EXISTING	PROPOSED
SHOULDER MARKING	SHOULDER MARKING
STREET MARKING	STREET MARKING
CATCH BASIN	CATCH BASIN
PROJECT FLOOD DRAIN SECTION	PROJECT FLOOD DRAIN SECTION
CONCRETE MANHOLE	CONCRETE MANHOLE
VALVE BOX	VALVE BOX
FRIT INFRANT	FRIT INFRANT
BUFFALO BOX	BUFFALO BOX
CLEANOUT	CLEANOUT
SANITARY SINKER	SANITARY SINKER
FORCE MAIN	FORCE MAIN
STORM SEWER	STORM SEWER
WATER MAIN	WATER MAIN
CONCRETE WATER MAIN	CONCRETE WATER MAIN
CONCRETE WATER MAIN	CONCRETE WATER MAIN
STREET LIGHT	STREET LIGHT
ELECTRICAL CABLE	ELECTRICAL CABLE
2" CONCRETE ENCASEMENT	2" CONCRETE ENCASEMENT
ELECTRICAL TRANSFORMER	ELECTRICAL TRANSFORMER
OR FURNISH	OR FURNISH
STREET SIGN	STREET SIGN
GLASS MAN	GLASS MAN
TELEPHONE LINE	TELEPHONE LINE
CURTAIN	CURTAIN
SPOT ELEVATION	SPOT ELEVATION
WETLANDS	WETLANDS
FLOODPLAIN	FLOODPLAIN
HIGH WATER LEVEL (HWL)	HIGH WATER LEVEL (HWL)
NORMAL WATER LEVEL (NWL)	NORMAL WATER LEVEL (NWL)
DIRECTION OF SURFACE FLOW	DIRECTION OF SURFACE FLOW
DATE ON SCALE	DATE ON SCALE
OVERHEAD RAIL ROUTING	OVERHEAD RAIL ROUTING
SCALE BAR	SCALE BAR
TRUCK TURNING SIZE	TRUCK TURNING SIZE
TRUCK PROBE	TRUCK PROBE
PRICE LINE, WIRE OR SET	PRICE LINE, WIRE OR SET
PRICE LINE, CHAIN LINK OR BOW	PRICE LINE, CHAIN LINK OR BOW
PRICE LINE, WOOD OR PLASTIC	PRICE LINE, WOOD OR PLASTIC
CONCRETE SIDEWALK	CONCRETE SIDEWALK
CURB AND GUTTER	CURB AND GUTTER
DEPRESSED CURB	DEPRESSED CURB
REVERSE PITCH CURB & GUTTER	REVERSE PITCH CURB & GUTTER
FLASHING LINE	FLASHING LINE

PROJECT NOTES

1. CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE ILLINOIS CONSTRUCTION CODE AND WITH THE LATEST EDITIONS OF THE ILLINOIS CONSTRUCTION CODE.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF LOMBARD.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF LOMBARD.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF LOMBARD.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF LOMBARD.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF LOMBARD.
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8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF LOMBARD.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF LOMBARD.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF LOMBARD.
11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF LOMBARD.

EXHIBIT C

**POWER OF ATTORNEY LETTER AUTHORIZING
THE ILLINOIS DEPARTMENT OF REVENUE
TO RELEASE GROSS REVENUE AND SALES TAX INFORMATION
TO THE VILLAGE OF LOMBARD**

The undersigned is an authorized officer (agent, principal) of _____ (“Taxpayer”) which is doing business as a _____ (the “Store”) located at 401 E. North Avenue, in Lombard, Illinois (the “Village”).

In order to induce the development of the Store, the Village is utilizing certain sales tax revenues in order to provide for reimbursement for construction of a cross-access connection.

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue (“DOR”) to release to the Village the monthly amount of municipal retailer’s occupation tax and municipal service occupation tax generated by Taxpayer, as shown in required filings with DOR.

TAXPAYER

By: _____

TAXPAYER ILLINOIS SALES TAX #

SUBSCRIBED and SWORN
before me this _____ day of
_____, 20____.

NOTARY

(Seal)