

VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
MARCH 28, 2001 MEETING

**DRAFT**

**Call to order**

Chairman Beggs called the meeting to order at 7:30 PM.

**Roll call**

**Present:** Ch. Beggs, Mr. Detjen, Mr. Domijan, Mr. Lukas, Mr. Sleeter, Mr. White  
**Absent:** Mr. Benes

**Approval of minutes of February 28, 2001 meeting**

Chairman Beggs asked if there were any corrections or additions to the minutes as submitted. There being none, Chairman Beggs called for a Motion to approve the minutes as presented.

**Mr. Lukas moved to approve the minutes of February 28, 2001 as presented. Mr. Sleeter seconded the motion.**

**Ayes:** Mr. Lukas, Mr. Sleeter, Mr. Detjen, Mr. Domijan, Mr. White, Ch. Beggs

**Nays:** None

**The Motion passed unanimously.**

**Discussion of Procedures**

Chairman Beggs mentioned that a question was raised by Mr. Sleeter at the last meeting regarding meeting procedures for the Zoning Board of Appeals. He asked the Board members their opinions as to whether Board deliberation should be conducted at the end of all the hearings, as has been the practice, or immediately following each individual hearing.

Mr. Lukas asked Mr. Sleeter his reason for recommending a change in the procedure.

Mr. Sleeter said he thought it would be easier for the audience if a case was handled all at once, rather than having to wait until the end of the meeting to hear the Board's deliberation and decision. In addition, if the petitioner had a lawyer, they would not have to pay the time charges for the entire evening. Mr. Sleeter added that in cases with a long agenda, he believed the information presented on the individual cases would remain fresher in the minds of the Board members if deliberated on immediately.

Mr. Lukas said in a situation such as tonight's agenda, there is a problem in determining whether a particular case will have a great deal more interest to surrounding neighbors than another. It is difficult to determine which case will cause the most discussion, or how long that discussion will take.

Mr. Sleeter said no matter what order the cases were in, some people would be finished earlier than others. He did not see that changing the procedure would throw anything off.

Mr. Detjen said that the way the meetings are conducted now, everyone stays until the end if they choose. With this proposed change some would be able to go home sooner.

Mr. Domijan asked how they would handle extended deliberation on a case that might result in not covering the entire agenda. Mr. Sleeter responded that he did not think it would affect the whole meeting. In the past they have been very determined to get through an entire agenda. One recent meeting lasted until 1:00 AM.

Chairman Beggs said it has been his experience that most people leave after their case is presented. Those who desire to stay wait for the final decision. He did not believe attorney's fees to be an issue. Rather than belaboring the point, he asked for a Motion.

Mr. White stated that when he first joined the Board he was surprised by the practice, particularly since there was a gap between the presentation of information and the deliberation; however, he agreed that those who want to stay for the entire meeting will stay. Others were simply leave.

**Mr. White moved to retain the meeting procedure followed by the Zoning Board of Appeals in the past. Mr. Lukas seconded the Motion.**

**AYES: Mr. White, Mr. Lukas, Mr. Detjen, Mr. Domijan, Ch. Beggs**

**NAYS: Mr. Sleeter**

**Chairman Beggs declared the Motion passed by a vote of 5:1.**

### **Meeting procedures**

Chairman Beggs explained the procedures to be followed for the meeting, reviewing the five petitions before the Board. He asked anyone in the audience who intended to testify in any of the petitions in this public hearing to rise and be sworn in.

Chairman Beggs then asked Mr. Rathje to read the published public hearing notice for the first petition.

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**MC-4-01** A petition seeking annexation and rezoning from County R-4, Single Family Residence District to Village R-3, Single Family Residence District for vacant property located on the south side of 75th Street, approximately 129 feet east of Florence Avenue and bounded by 75th Street on the north and Queens Court on the south, commonly known as 7504 Queens Court, Downers Grove, Illinois (PIN 09-28-301-010); Bonifacio & Edna Wagan, Owners/Petitioners.

**LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING** - NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD BY THE ZONING BOARD OF APPEALS AT 7:30 P.M. ON WEDNESDAY, MARCH 28, 2001 IN THE COUNCIL CHAMBERS OF THE VILLAGE HALL, 801 BURLINGTON AVENUE, DOWNERS GROVE, ILLINOIS, ON A PETITION SEEKING ANNEXATION AND REZONING FROM COUNTY R-4, SINGLE FAMILY RESIDENCE DISTRICT TO VILLAGE R-2, SINGLE FAMILY RESIDENCE DISTRICT. THE VACANT PROPERTY IS LOCATED ON THE SOUTH SIDE OF 75TH STREET, APPROXIMATELY 129 FEET EAST OF FLORENCE AVENUE AND BOUNDED BY 75TH STREET ON THE NORTH AND QUEENS COURT ON THE SOUTH, COMMONLY KNOWN AS 7504 QUEENS COURT, DOWNERS GROVE (PIN 09-28-301-010) AND IS LEGALLY DESCRIBED AS FOLLOWS:

THE NORTH 338.38 FEET OF THE WEST 127.92 FEET OF LOT 2 IN VARONI'S DIVISION OF LOT 2 IN VIETH'S ASSESSMENT PLAT OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF VARONI'S DIVISION RECORDED FEBRUARY 18, 1947 AS DOCUMENT 515936 IN DU PAGE COUNTY, ILLINOIS, EXCEPT THE NORTH 100 FEET THEREOF DEDICATED FOR PUBLIC ROAD PURPOSES AS CONTAINED IN DOCUMENTS RECORDED AUGUST 17, 1950 AS DOCUMENT NUMBER 601545 AND OCTOBER 17, 1955 AS DOCUMENT NUMBER 777238 IN DU PAGE COUNTY, ILLINOIS.

ALSO

PURSUANT TO ILLINOIS REVISED STATUTES CHAPTER 24 ENTITLED "CITIES AND VILLAGES", THE NEW BOUNDARY OF THE TERRITORY TO BE ANNEXED SHALL EXTEND TO THE FAR SIDE OF ANY ADJACENT HIGHWAY AND SHALL INCLUDE ALL OF EVERY HIGHWAY WITHIN THE AREA TO BE ANNEXED.

INDIVIDUALS WITH A DISABILITY REQUIRING A REASONABLE ACCOMMODATION IN ORDER TO PARTICIPATE IN ANY MEETING SHOULD CONTACT THE COMMUNITY RELATIONS DEPARTMENT (630) 434-5560 PRIOR TO THE MEETING. WHEELCHAIR ACCESS MAY BE GAINED THROUGH THE SIDE (SOUTH) ENTRANCE OF VILLAGE HALL. ALL INTERESTED PERSONS SHOULD ATTEND THIS HEARING AND WILL BE GIVEN AN OPPORTUNITY TO BE HEARD. THE HEARING MAY BE CONTINUED FROM TIME TO TIME WITHOUT FURTHER PUBLIC NOTICE.

**Staff Presentation:**

Mr. Rathje announced that the public hearing notice for this petition was published in error stating that the published notice specified that the petition was a request to change the zoning to R-2 zoning, rather than the requested R-3 zoning. He stated that the property could function under R-2 zoning and asked the petitioner if he wanted to proceed with the hearing as R-2 rather than R-3 zoning.

Chairman Beggs noted that the two signs on the property did show a requested change to R-3. Mr. Rathje said that was correct; however, the public hearing notice was incorrectly published as R-2 zoning.

Chairman Beggs asked the petitioner if it was all right to proceed with R-2 zoning, and Mr. Wagan, the owner and petitioner, said it was supposed to be changed to R-3 zoning. Mr. Rathje explained the differences between the two classifications, stating that R-3 is less restrictive than R-2 zoning. The minimum lot size of R-3 zoning is 10,500 square feet while the R-2 minimum is 15,000 square feet. In addition, the area for R-3 zoning requires a front yard setback of 30', and R-2 is 35'. Mr. Rathje said they cannot move ahead with a hearing for the R-3 zoning as it is a more permissive zoning designation than for the designation that was published.

Chairman Beggs said he was not comfortable with the petitioner's understanding of what has occurred, and asked that this case be delayed to later in the meeting. Mr. Rathje said that in the meantime, Ms. Browne of the Village's planning staff would meet privately with the petitioner and explain what has occurred.

Mr. White stated that the worst case scenario would be that the case would be republished and the petitioner would have to return next month.

There being no further discussion, Chairman Beggs directed Ms. Browne to meet with Mr. Wagan, and asked Mr. Rathje to proceed to the next petition.

**Board's Deliberation:**

Ms. Browne said she discussed the options with the owner of the property, Mr. Wagan, and Mr. Wagan said he would prefer to have the staff republish the public hearing notice with the request for the property to be rezoned to R-3 zoning and meet again next month.

Chairman Beggs requested a Motion from the Board to close the public hearing.

**Mr. Detjen moved that in case MC-4-01 the Board close the public hearing.  
Mr. Sleeter seconded the Motion.**

**AYES: Mr. Detjen, Mr. Sleeter, Mr. Domijan, Mr. Lukas,  
Mr. White, Ch. Beggs**

**NAYS: None**

**Chairman Beggs declared the Motion carried.**

Mr. Rathje stated that staff would republish the notice of public hearing for next month's meeting, and another sign would be posted on the property with the new hearing date.

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Mr. Rathje explained that the next two petitions are related as they pertain to the same property. Therefore, he would read both public hearing notices and present the two cases at the same time, if the Board agreed. Chairman Beggs and the Board agreed to proceed in that manner.

**MC-5-01** A petition seeking rezoning from Village R-2, Single Family Residential to Village B-3, General Services & Highway Business for vacant property located on the west side of Fairview Avenue approximately 180 feet north of Ogden Avenue, Downers Grove, Illinois (PIN 09-05-214-011 & 012); First Midwest Trust Company as Trustee under Trust No. 5296, Owner; G. B. Ogden Developers, LLC, Agent.

**LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING** - NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD BY THE ZONING BOARD OF APPEALS AT 7:30 P.M. ON WEDNESDAY, MARCH 28, 2001 IN THE COUNCIL CHAMBERS OF THE VILLAGE HALL, 801 BURLINGTON AVENUE, DOWNERS GROVE, ILLINOIS, ON A PETITION SEEKING REZONING FROM VILLAGE R-2 SINGLE FAMILY RESIDENCE DISTRICT TO VILLAGE B-3, GENERAL SERVICES & HIGHWAY BUSINESS DISTRICT. THE VACANT PROPERTY IS LOCATED ON THE WEST SIDE OF FAIRVIEW AVENUE APPROXIMATELY 180 FEET NORTH OF OGDEN AVENUE, DOWNERS GROVE, ILLINOIS (PIN 09-05-214-011 & 012) AND IS LEGALLY DESCRIBED AS FOLLOWS:

LOTS 7 AND 8 IN BLOCK 24 IN ARTHUR T. MCINTOSH AND COMPANY'S FAIRVIEW AVENUE SUBDIVISION, BEING A SUBDIVISION IN THE EAST HALF OF SECTION 5, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN DU PAGE COUNTY, ILLINOIS  
INDIVIDUALS WITH A DISABILITY REQUIRING A REASONABLE ACCOMMODATION IN ORDER TO PARTICIPATE IN ANY MEETING SHOULD CONTACT THE COMMUNITY RELATIONS DEPARTMENT (630) 434-5560

PRIOR TO THE MEETING. WHEELCHAIR ACCESS MAY BE GAINED THROUGH THE SIDE (SOUTH) ENTRANCE OF VILLAGE HALL. ALL INTERESTED PERSONS SHOULD ATTEND THIS HEARING AND WILL BE GIVEN AN OPPORTUNITY TO BE HEARD. THE HEARING MAY BE CONTINUED FROM TIME TO TIME WITHOUT FURTHER PUBLIC NOTICE. ZONING BOARD OF APPEALS, GREGORY BEGGS, CHAIRMAN. PUBLISHED IN THE DOWNERS GROVE REPORTER, FRIDAY, MARCH 9, 2001.

**C-3-01** A petition seeking a special use for a drive-up window for a proposed pharmacy to be located in a new building at the northwest corner of Ogden and Fairview Avenues, Downers Grove, Illinois (PIN 09-05-214-011, 012 and 019); First Midwest Trust Company as Trustee under Trust No. 5296 and Amoco Oil Company, Owners; G. B. Ogden Developers, LLC, Agent.

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LOTS 7, 8, 9, 10, 11 & 12 IN BLOCK 24 IN ARTHUR T. MCINTOSH AND COMPANY'S FAIRVIEW AVENUE SUBDIVISION, BEING A SUBDIVISION IN THE EAST HALF OF SECTION 5, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN DU PAGE COUNTY, ILLINOIS  
INDIVIDUALS WITH A DISABILITY REQUIRING A REASONABLE ACCOMMODATION IN ORDER TO PARTICIPATE IN ANY MEETING SHOULD CONTACT THE COMMUNITY RELATIONS DEPARTMENT (630) 434-5560 PRIOR TO THE MEETING. WHEELCHAIR ACCESS MAY BE GAINED THROUGH THE SIDE (SOUTH) ENTRANCE OF VILLAGE HALL.

ALL INTERESTED PERSONS SHOULD ATTEND THIS HEARING AND WILL BE GIVEN AN OPPORTUNITY TO BE HEARD. THE HEARING MAY BE CONTINUED FROM TIME TO TIME WITHOUT FURTHER PUBLIC NOTICE. ZONING BOARD OF APPEALS, GREGORY BEGGS, CHAIRMAN. PUBLISHED IN THE DOWNERS GROVE REPORTER, FRIDAY, MARCH 9, 2001.

**Petitioner's Presentation:**

Mr. Timothy McJoynt, attorney for the petitioner for both petitions, introduced the representatives of Gershman Brown and Associates who were present at the meeting to answer any questions the Board might have. He then explained

that CVS Pharmacy is a new drugstore chain coming into the Illinois market. There are presently two stores open in Illinois with another 13 coming on line in the immediate future. They intend to build a drugstore on the subject property on the northwest corner of Fairview and Ogden Avenues. The subject property includes the two lots to the north of the Amoco station which are residential lots and are included in the request to rezone the property from Village R-2 residential to Village B-3, General Services and Highway Business. He stated that the properties to the north are vacant and have some wetlands on them that are in need of maintenance. The Amoco site is presently boarded up. Mr. McJoynt explained that the use of the two northern lots will be minimal as only a small portion will be used for the drive-through facilities. The remaining portion of those lots will be retained as wetland area and serve as a buffer between the proposed business district zoning and the residentially zoned adjacent property.

Using the overhead projector, Mr. McJoynt showed drawings of the proposed CVS pharmacy. He explained that although the two northernmost lots are shown as residential zoning, under the Lakota Plan for the Ogden Avenue Redevelopment Program, an assemblage such as proposed here is what the Lakota plan anticipated for redevelopment of Ogden Avenue businesses. He stated that the property to the east of the subject site is used for commercial (office) use by virtue of a court order.

Mr. McJoynt said that the only way to develop the subject property is to develop it using the two adjacent lots. The wetlands issue has been dealt with extensively, and the petitioners have worked closely with staff. The petitioner's expert has prepared a report which was reviewed by the Village's experts regarding the wetlands, stating that this development will actually enhance the wetlands. The developer's intention is to improve the wetland area and continue to nurture and monitor the vegetation of the area, reduce the waste and clean up the site. This will improve the wetlands and the two parcels will serve as a buffer between the pharmacy and the residential area.

] There were no questions regarding the rezoning petition from the Board.

Regarding the special use, Mr. McJoynt referred to a proposed site plan on the overhead projection showing how the area is laid out with a curved driveway that will be in a portion of the wetland area. By utilizing that driveway they will have complete traffic circulation around the store, allowing for four-car stacking in the drive-through area. Mr. McJoynt stated that their plan reflects compliance with all of the Village's requirements including setbacks, parking, greenspace, etc. He emphasized that no variances were being requested. They are only requesting a special use permit which is allowed by the Village's Zoning Ordinance.

Mr. McJoynt stated that stacking was a primary concern, and their traffic report shows that there will be a minimal need for stacking. He said that

stacking of four-cars will be unheard of as the drive-through facility is only for prescription pick-ups. A customer cannot order and wait for a prescription at the drive-through window. Only pre-ordered prescriptions will be available at the drive-through window, which will eliminate any stacking problems.

Regarding access on Fairview Avenue, DuPage County has indicated their approval for a complete in and out access from either direction on Fairview Avenue. With regard to the Ogden Avenue entrance, however, IDOT has approved a right-turn out only as a safer utilization of Ogden Avenue access. The applicant agrees with the recommendation of IDOT for safety reasons.

Mr. McJoynt stated that the Village's Ordinance for a special use requires that certain findings be made by the Board. He stated that the applicant believes those findings can be made. The proposed facility will provide a service to the community and will benefit the neighborhood in general. The site is in close proximity to Good Samaritan Hospital. Presently, the applicant is looking at a 24-hour operation of the store and the drive-through facility. He stated that the business plan has not yet been finalized. Mr. McJoynt said that the applicant feels the special use permit would not be detrimental to the health or welfare of the community and residents. They have made great efforts to work with staff in preparing their engineering and general plans for this site. The applicant will enhance the property and they do not anticipate any adverse traffic patterns as a result of this facility. He noted that staff has reviewed these issues as well.

Mr. McJoynt summarized his presentation requesting approval of both the application for rezoning and for the special use permit, as the applicant is in complete compliance with all of the Village's zoning requirements.

Mr. Sleeter said that in cases such as this with a previously zoned residential area rezoning to a business district, there are always concerns about a drop in property values. He asked whether the applicant researched that issue. Mr. McJoynt said they consulted with brokers involved in the property acquisition and felt that the development of the property and the improvements made to it would enhance the area. Using the overhead, he showed how they believed the added greenspace acting as a buffer between the two zoning districts would improve the area.

Chairman Beggs asked about the surrounding zoning. Mr. McJoynt showed the surrounding zoning on the overhead projection, with B-3 to the south, R-2 to the north, and R-1 to the east (offices under a court order), with business zoning on all corners of the Ogden Avenue/Fairview Avenue intersection.

There being no further questions from the Board, Chairman Beggs called upon staff to report its findings.

### **Staff Presentation:**

Mr. Rathje stated he would present the findings for both the rezoning and conditional use petitions together. He began with the rezoning petition.

Mr. Rathje said that the petitioner is seeking approval to rezone property located on the west side of Fairview Avenue approximately 180 feet north of the north line of Ogden Avenue. The petitioner is requesting that the subject property be rezoned from Village R-2, single family residential to Village B-3, General Services and Highway Businesses district. He explained that the subject property consists of two lots that have a total width that ranges from 100.01 feet as measured on the east to 101.00 feet as measured on the west, a depth that ranges from 272.88 feet as measured on the north to 272.87 feet as measured on the south, with an overall area of approximately 27,425 square feet or 0.6296 acres. The property is a vacant parcel of land with no improvements.

Mr. Rathje said the petitioner seeks rezoning of the subject property to B-3, General Services and Highway Business District so that it may be utilized along with the former Amoco gas station property located at the northwest corner of Ogden and Fairview Avenues. The petitioner intends to construct a new commercial building on the property to accommodate a CVS Pharmacy, which will also have a drive-up facility. To meet all zoning requirements and development requirements, they need a site larger than the Amoco site; therefore, the two adjacent lots presently zoned residential are proposed to be rezoned and included as part of the entire development site.

Mr. Rathje described the zoning of property adjacent to the subject property as B-3 to the south, southeast and southwest, and R-2, single family residential to the west and north. He explained that the property located to the east of the subject property appears on the Zoning Map as being zoned R-1, single family residential; however, it is the subject of a Judgement Order which permitted that property to be improved with two medical office buildings each with total floor areas of approximately 14,700 square feet. Parking for the two buildings totals 178 spaces.

Mr. Rathje said that the subject property appears on the Village's Future Land Use Plan with a land use designation of Residential @ O-6 d/u/a. He noted also that the Future Land Use Plan classifies Fairview Avenue that bounds the subject property along its east side as a minor arterial roadway. Mr. Rathje stated that although the proposed rezoning is not consistent with the Future Land Use Plan, it is being pursued in order to redevelop the former Amoco gas station site with a new commercial development in a manner that would be in compliance with the various Zoning Ordinance requirements of the underlying B-3 zoning. Mr. Rathje explained that only a small portion of the subject property will be developed in association with the proposed commercial

development to accommodate a portion of the proposed drive-through facility in the requested special use.

Moving to a discussion of the special use permit requested by the petitioner, Mr. Rathje said that the petitioner is seeking approval to have a drive-up window to serve the pharmacy customers of a new CVS Pharmacy store that the petitioner intends to develop on the subject property. The site of the proposed development would include the site of the former Amoco gas station and the approximately 100 foot by approximately 273 foot property located to the north of the former gas station property.

Mr. Rathje explained that Section 28-606(e) of the Zoning Ordinance provides that, "Drive-in, drive-up and drive-through uses, including but not limited to banks and restaurants," shall be treated as a special use in the B-2, General Retail Business zoning district, and according to the provisions of Section 28-609(a) of the Zoning Ordinance also is a special use in the B-3, General Services and Highway Business zoning district. Special uses are regulated under the provisions of Section 29-1900 and following of the Zoning Ordinance.

Mr. Rathje said the subject property, including the property that is the subject of the rezoning petition in case MC-5-01, is a somewhat "L" shaped property which has a total width as measured along the south of 200 feet (a straight section measuring 180 feet and a radiused corner at the southeast corner of the subject property), and the property has a depth as measured along the north property line of 273 feet. The property has a north to south dimension as measured along the east property line of 300.05 feet (a straight section measuring 280.05 feet and a radiused corner at the southeast corner of the subject property). The area of the subject property is approximately 1.54 acres or 67,083 square feet.

Mr. Rathje described the southerly 200 feet of the site as currently sited with a 2,393 square foot gas station building and two canopies which had been used to protect the gas station's pump islands. All but a very small portion of the former gas station site is paved. The petitioner's plans call for all of the existing gas station improvements to be razed upon the redevelopment of the site. The northerly 100.5 feet of the subject property is vacant. This portion of the site has certain wetland characteristics which Mr. Rathje said were reviewed and addressed in the memorandum from Mr. Jungwirth, the Village Engineer, that was included in the Board's information packet.

Regarding the redevelopment of the site, Mr. Rathje said the petitioner proposes to construct an 85 foot by 128 foot one story commercial building which includes a 1,400 square foot mezzanine floor area with a total floor area of 12,280 square feet. Access to the site will be restricted to one full-access driveway onto Fairview Avenue approximately 225 feet north of the north right of way line of Ogden Avenue, and one driveway onto Ogden Avenue located

approximately 170 feet west of the west right of way line of Fairview Avenue. There are presently two access driveways on Ogden Avenue, and two driveways on Fairview Avenue. They will be replaced by one driveway access on Fairview and one driveway access on Ogden Avenue.

Mr. Rathje explained the request for a special use is for a drive-up pharmacy window to serve pharmacy customers of the proposed business. The drive-up window is to be located on the north wall of the proposed building just to the east of the building's northwesterly corner. The window will be served by a driveway which has a vehicle storage capacity of four to five cars. The driveway has been dimensioned so as to permit a modified by-pass lane which will permit drive-through patrons who may change their minds and choose not to wait in line to exit the site. The by-pass lane is being described as a modified by-pass lane as the pavement narrows at a point approximately 35 feet east of the west line of the building because of the wetlands constraints which exist on the northerly portion of the site. If more than three cars are in line waiting to access the drive-up window, a customer desiring to exit the waiting line may have to wait to utilize the by-pass lane. This design should not create a problem as this type of business has a relatively low number of patrons who use the drive-up window, and this business is not a peak hour oriented business like restaurants and banks.

Mr. Rathje informed the Board that the Village has retained the services of a consulting traffic engineer to review the petitioner's plans. The consultant's report along with a summary of the report prepared by David Conley, the Village's Director of Engineering, has been forwarded to the petitioner, and the petitioner has modified the plans in accordance with the Village's consultant's recommendations; however, there are a couple of issues which must be reviewed.

Mr. Rathje said the first issue is delivery truck access and egress. It has been agreed that delivery trucks servicing the store will take access via the Fairview Avenue driveway and will egress the site with a right turn movement onto Ogden Avenue. Second, the Village's consultant has pointed out that the location of the Ogden Avenue driveway relative to the eastbound to northbound left turn lane has the potential to cause conflict with left turn vehicles being stopped by ingress traffic to the site. The recommendation has been made that the Ogden Avenue driveway's egress movement be limited. This ultimately permits right-in, right-out and left-in traffic movements. He explained that access to Ogden Avenue is the jurisdiction of the State of Illinois. Finally, with respect to the public sidewalks, the petitioners have agreed to place the sidewalk on private property due to the lack of adequate right of way width; therefore, the petitioner will need to grant an easement over that portion of the parcel for the sidewalks as they will be used as public sidewalks.

Mr. Rathje noted that with respect to other zoning-related issues, the petitioner has presented a site plan which indicates that the development will

meet all of the various requirements such as setback, the provision of parking spaces, and the satisfaction of green space requirements. More specifically, Mr. Rathje said the setback along the Fairview Avenue front property line of the subject property is to be a minimum of 25 feet. Parking spaces are to be located 27 feet from the east property line, and the building is to have a setback of 93 feet. Along the Ogden Avenue frontage of the subject property, parking is to be set back 50 feet from the centerline of the Ogden Avenue right of way, and the building is to be set back a minimum of 75 feet from the centerline.

The site plan indicates that parking is to be set back 50 feet from centerline while the building is going to be set back a distance of 116 feet from centerline.

With respect to parking, Mr. Rathje said a retail business must provide a minimum of one parking space per 300 gross square feet of building area. Based upon a gross floor area of 10,880 square feet, a minimum of 40.9 or 41 spaces must be provided. The site plan indicates that 54 spaces are to be provided including three handicapped spaces. The number of regular and handicapped spaces satisfies both the Village's requirements for total spaces and the State's requirements for handicapped spaces.

Regarding green space, Mr. Rathje stated that the petitioner's site plan indicates that 0.387 acres or approximately 16,857 square feet, which equals 25.13% of the site, is to be set aside as green space which exceeds the minimum 10% required within the B-3, General Services and Highway Business zoning district. The site plan indicates that of the 0.387 acres set aside as green space, approximately 7,131 square feet or approximately 10.6% of the site is green space that is located within the site's two front yards. The petitioner's landscape plan has been reviewed by the Village Forester, Kerstin von der Heide, who has provided a memorandum indicating that the petitioner's landscape plan is appropriate.

Mr. Rathje reminded the Board that in its deliberation of the proposed special use petition, the Board may wish to review and consider the conditions that are necessary for the granting of a special use as enumerated under Section 28-1902 (i) through (iv) of the Zoning Ordinance as follows:

"(i) That the proposed use at the particular location requested is necessary or desirable to provide a service or a facility which is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community.

(ii) That such use will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, or general welfare of persons residing or working in the vicinity or injurious to property values or improvements in the vicinity.

(iii) That the proposed use will comply with the regulations specified in this Zoning Ordinance for the district in which the proposed use is to be located.

(iv) That it is one of the special uses specifically listed for the district in which it is to be located.”

Mr. Rathje said the petitioner's request for approval of a special use for a drive-through window in conjunction with the proposed CVS Pharmacy is a special use that is authorized within the underlying B-3, General Services and Highway Business zoning district. He stated the petitioner has prepared a plan and has provided background information upon which the Village's consulting traffic engineer has been able to make a determination that the proposed drive-through facility would not have significant impact either on interior traffic or on the surrounding streets, but has recommended that the special use be made subject to the following conditions:

- a) That the Ogden Avenue driveway be limited to no left turn egress (i.e.; no southbound to eastbound exiting),
- b) That delivery trucks be restricted to accessing the site via the Fairview Avenue driveway and be restricted to exiting the site via the Ogden Avenue driveway as a right turn only, and
- c) That petitioner provide an easement for the public sidewalks that are to be located on private property as part of its building permit activities.

Mr. Rathje reiterated that any recommendation for a special use is subject to the Board and Village Council being able to make appropriate findings as outlined under Section 28-1902 of the Zoning Ordinance. In addition, the proposed project is reliant upon the Village Council's approval of Zoning Board of Appeals' Case MC-5-01 as the northerly portion of the special use site is currently zoned R-2, single family residential and is proposed to be rezoned to B-3, General Services and Highway Business. If the Board finds in favor of the proposed petition, it may be appropriate for the Board to make approval of the special use petition contingent upon the Council's approval of Case MC-5-01.

Mr. White asked Mr. Rathje whether the goal of stormwater review was to assure that the development would not adversely impact the neighboring properties. Mr. Rathje responded that the reason the staff spends the amount of time it does on a special use is that the special use is driven by the site plan. Staff wants a high level of assurance that the site plan presented to the Board and to the Council can be implemented as is shown. He explained that in regard to the stormwater design, the petitioner's site plan depicts below grade stormwater detention and the petitioner meets 100% of the stormwater

requirements. He noted that they are seeking no exceptions to any of the Village's requirements.

Chairman Beggs asked about other drive-up windows in the vicinity. Mr. Rathje said there is a drive-through window for the Walgreens at Main and Ogden Avenues, as well as a McDonald's to the east, Brown's Chicken, and the Oberweis Dairy also to the east.

Chairman Beggs asked what document is being considered as the site plan. Mr. Rathje showed the pertinent document on the overhead projection, stating there is a number 3.0 at the bottom of the sheet.

Chairman Beggs asked how they can limit an encroachment onto another lot, as the petitioner is talking about a limited area for its driveway onto the wetland site. He asked whether it is limited by description or by a specific drawing. Mr. Rathje responded it is limited by the drawings as the petitioner goes through the building permit process. One of the important aspects of the development concerns the site improvements such as grading plans, landscape plans, etc. He said the wetlands have already been delineated and staked. Chairman Beggs asked whether the design plan complies with Federal regulations for that level of wetland, and Mr. Rathje said that the wetland consultant and the Village's stormwater engineer have reviewed the data and agreed it would satisfy the applicable regulations for that level of wetland. He further noted that the petitioner has agreed to the limitations expressed by both the wetland consultant and the Village's stormwater engineer.

Mr. Sleeter asked, given the site plan as presented, whether there was any reason why the northernmost of the two vacant wetland lots would actually need to be rezoned to business from residential, since it will not be developed. Mr. Rathje responded that separating the two properties would create a nonconformity regarding the minimum lot width requirement, which would be a significant problem. He said there is a significant advantage to getting the properties under one ownership and under one zoning designation.

There being no further comments from the Board, Chairman Beggs called upon anyone in the audience who wished to speak either in favor of or in opposition to the petition.

There being no one in opposition to the petition, Chairman Beggs asked the petitioner whether it agrees with all of the conditions expressed by staff in its findings. Mr. McJoynt responded that the petitioner does agree with the conditions stated.

There being no further discussion, Chairman Beggs closed the public portion of the meeting.

**Board's Deliberation:**

Mr. Detjen said he believes the petitioner is properly positioning the proposed drugstore on the property and has no other alternative to make the traffic flow smoothly on the site. He thinks the efforts in preparation for the building are appropriate and he has no objection to the petition.

Mr. Lukas said he believed the rezoning for the lots to be appropriate. He said looking north from Ogden, having this property come under the control of a responsible owner would be a plus for the area. It will be preserved as a wetland by law, and it will also be a desirable and attractive asset to the surrounding area. Mr. Lukas said he thought there was a good stacking plan for the drive-up window facility and he does not see it as causing any traffic hazard. It also provides safety as the customers do not have to exit their car. He said he thought the access off Fairview Avenue will work well, and there will be signage restrictions regarding Ogden Avenue access points. The only point he thought might be odd concerns loading and unloading the dumpsters, as it may cause temporary blockage of the driveway. However, he doubted that would pose any serious problems. He believes the petitions meet all the requirements of the Village's Zoning Ordinance. This type of pharmacy facility is the way to go in terms of convenience to the customer and improving business. He said the petitioner went out of their way to see that the development meets all of the Village's guidelines, and he is in favor of granting the request in each case.

Chairman Beggs asked if there were any contrary opinions.

Mr. Sleeter said he had some conflicting thoughts on this case, as he normally does not like to see a situation where an established boundary between business and residential zoning is violated, as he sees that as causing a reduction in property values. He noted that in this case, however, none of the neighbors objected to the plan. Also, there is a buffer provided which he thinks is a good one and which provides some open space as well. He said this development would probably improve the condition of that part of the neighborhood, and that overcomes his objections to an encroachment into a residential area.

**Mr. Lukas moved in respect to case MC-5-01 that the Board recommend approval to the Village Council for the requested rezoning from Village R-2, Single-Family Residential to Village B-3, General Services & Highway Business as requested. Mr. Domijan seconded the motion.**

**AYES: Mr. Lukas, Mr. Domijan, Mr. Detjen, Mr. Sleeter,  
Mr. White, Ch. Beggs**

**NAYS: None**

**Chairman Beggs declared the Motion carried.**

**Mr. White moved in case C-3-01 that the Board recommend to the Village Council that the petition seeking a special use for a drive-up window for a proposed pharmacy to be located in a new building at the northwest corner of Ogden and Fairview Avenues be approved. Mr. Detjen seconded the Motion.**

**AYES: Mr. White, Mr. Detjen, Mr. Domijan, Mr. Lukas, Mr. Sleeter, Ch. Beggs**

**NAYS: None**

**Chairman Beggs declared the Motion carried.**

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**MC-6-01** A petition seeking annexation and rezoning for vacant property located at the southwest corner of Ogden Avenue and Drendel Road, commonly known as 2601 Ogden Avenue, Downers Grove, Illinois (PIN 08-01-304-007, 008, 009, 010, 011); Mike G. & George Pagones, Owners; George M. Pagones/Gus W. Kostopulos, Agent

**LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC**

**HEARING** - NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD BY THE ZONING BOARD OF APPEALS AT 7:30 P.M. ON WEDNESDAY, MARCH 28, 2001 IN THE COUNCIL CHAMBERS OF THE VILLAGE HALL, 801 BURLINGTON AVENUE, DOWNERS GROVE, ILLINOIS, ON A PETITION SEEKING REZONING FROM COUNTY B-2, GENERAL RETAIL BUSINESS DISTRICT TO VILLAGE B-3, GENERAL SERVICES & HIGHWAY BUSINESS DISTRICT. THE VACANT PROPERTY IS LOCATED ON THE SOUTHWEST CORNER OF OGDEN AVENUE AND DRENDEL ROAD, COMMONLY KNOWN AS 2601 OGDEN AVENUE, DOWNERS GROVE, ILLINOIS (PIN 08-01-304-007, 008, 009, 010, 011) AND IS LEGALLY DESCRIBED AS FOLLOWS:

LOTS 1, 2, 3, 4 AND 5 IN BLOCK 3 IN ARTHUR T. MCINTOSH AND COMPANY'S BELMONT GOLF ADDITION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 1 AND IN THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 14, 1925 AS DOCUMENT 199614, IN DUPAGE COUNTY, ILLINOIS.

ALSO

PURSUANT TO ILLINOIS REVISED STATUTES CHAPTER 24 ENTITLED "CITIES AND VILLAGES", THE NEW BOUNDARY OF THE TERRITORY TO BE ANNEXED SHALL EXTEND TO THE FAR SIDE OF ANY ADJACENT HIGHWAY AND SHALL INCLUDE ALL OF EVERY HIGHWAY WITHIN THE AREA TO BE ANNEXED.

INDIVIDUALS WITH A DISABILITY REQUIRING A REASONABLE ACCOMMODATION IN ORDER TO PARTICIPATE IN ANY MEETING SHOULD CONTACT THE COMMUNITY RELATIONS DEPARTMENT (630) 434-5560

PRIOR TO THE MEETING. WHEELCHAIR ACCESS MAY BE GAINED THROUGH THE SIDE (SOUTH) ENTRANCE OF VILLAGE HALL. ALL INTERESTED PERSONS SHOULD ATTEND THIS HEARING AND WILL BE GIVEN AN OPPORTUNITY TO BE HEARD. THE HEARING MAY BE CONTINUED FROM TIME TO TIME WITHOUT FURTHER PUBLIC NOTICE. ZONING BOARD OF APPEALS, GREGORY BEGGS, CHAIRMAN. PUBLISHED IN THE DOWNERS GROVE REPORTER, FRIDAY, MARCH 9, 2001.

**Petitioner's Presentation:**

Mr. George M. Pagonos of 3587 Melanie Lane in Northbrook, stated he and his father own two of the lots at the corner of Drendel and Ogden Avenue, and have owned the property since 1968. They have since purchased the three lots adjacent to the property to develop it and would like to put a retail center at that location.

There being no questions from the Board, Chairman Beggs called upon staff to report its findings.

**Staff Presentation:**

Mr. Rathje said the petitioner is requesting approval of a pre-annexation zoning petition for the subject property which is located at the southwest corner of Ogden Avenue and Drendel Road. The petitioner requests that the subject property be rezoned from County B-1, General Business Zoning to Village B-3, General Services & Highway Business upon annexation. It is the petitioner's desire to have the subject property annexed into the Village and to develop the site with a retail commercial development.

Mr. Rathje explained that when property is annexed into the Village it is designated with an R-1 zoning designation. The property owner in this case is requesting immediate rezoning of the property from the R-1 designation to the B-3 designation, once the property is annexed into the Village.

Mr. Rathje said the subject property is made up of five lots. The overall frontage of the subject property is 224.48 feet. The property has a width of 255.8 feet not withstanding the radiused corner of Lot #1 along the north and 254.80 feet as measured along the southerly lot line. The property has a depth of 200 feet as measured along the west property line and has an area of 49,592 square feet or 1.1385 acres. The property is vacant.

Mr. Rathje described the zoning adjacent to the subject property as Village ORM, Office Research Manufacturing to the north and west, County R-4 to the south, County B-1 to the east of Drendel Road and Village B-3, General Services and Highway Business to the east of the lot located at the southeast corner of Drendel Road and Ogden Avenue.

Mr. Rathje stated that the subject property appears on the Village's Future Land Use Plan with a land use designation of Commercial. This designation is consistent with the B-1, B-2 and B-3 zoning districts. He added that the petitioner's request for B-3, General Services and Highway Business zoning upon annexation is consistent with the Village's Future Land Use Plan and with other zoning decisions which have been made along the section of Ogden Avenue in which the subject property is located.

Mr. Sleeter asked if there is an annexation agreement with the owners of the property south of the subject site. Mr. Rathje said this area is not under one of the water annexation agreements similar to what the Village has entered into with other areas. Those other areas were given a specified number of years to get access to the Village's water lines, and at the end of that time the property would be annexed to the Village. The Village did several water annexations in the areas of Belmont/Maple, and Main Street/63<sup>rd</sup> Street, which is now in the annexation process. The subject area is an area where the Village chose not to offer an annexation agreement for the area. Property owners who want to avail themselves of the Village's water have the opportunity to do so, but they must annex when they become contiguous to the Village through the annexation of adjacent property. He noted that in regards to the subject site, it falls on the Downers Grove side of the Downers Grove/Lisle boundary agreement line, and would eventually be annexed into the Village.

There being no further comments from the Board at this time, Chairman Beggs called upon anyone in the audience who wished to speak either in favor of or in opposition to the petition.

Mr. Joseph Maas stated he owns the property immediately south of the subject site. He asked what the petitioner's plans for development are as there is a severe stormwater problem in the area. He would be more inclined to oppose the development of the property if his property would be affected. Chairman Beggs responded that the Board is being asked to determine whether or not this particular zoning classification is appropriate for the subject site in view of what the other surrounding zoning classifications are. He said there are other Ordinances which would limit the water runoff from the property. The Zoning Board of Appeals has no jurisdiction over that, but only whether this classification is appropriate. Mr. Maas said his property would be affected by becoming contiguous with commercial zoning.

Mr. Rathje said that the petitioners are requesting zoning comparable to what they already have under the County on that property. In order to develop the property, they have to get water and must annex to the Village in order to get Village water. Stormwater control regulations are essentially the same in the Village as they are in the County. When the petitioners proceed with their development plans they will have to design the site in a manner which accommodates the drainage regulations of the Village, which are essentially the

same as the County. He said that typically the development process requires the property owner to maintain drainage in a manner that will not make drainage on adjoining properties any worse than it is now. Oftentimes, it becomes better; however, the property owner is not obligated to fix other property owners' problems. Mr. Rathje said that the Village has not seen any plans for development at this time. The petitioner first needs to find out whether or not the Village will allow the rezoning and annexation.

Mrs. Samiec of 4615 Drendel stated she has several concerns regarding any type of access off Drendel Road when this property is developed, as well as concerns about flooding possibilities. She said she does not understand how they can look at annexing or rezoning property without looking at the entire picture and how it will affect other properties. Mrs. Samiec expressed concern as to who would maintain their street as they are currently unincorporated. She said that Lisle Township maintains the roads and ditches, and Downers Grove controls the north end of the street. She also asked whether the petitioner's property would be on the sewer system. She stated that the area south of Ogden Avenue is on a septic system.

Chairman Beggs explained again that those issues are not the jurisdiction of this Board. Maintenance of the roadways is not within this Board's authority. Regarding drainage, he reiterated Mr. Rathje's statement regarding drainage. Mrs. Samiec asked whether there would be further notices in the paper for development of the property. Chairman Beggs explained that the Zoning Board of Appeals makes recommendations to the Village Council as to whether or not the Board thinks it would be good to classify the property in a certain manner. The Village Council makes the final decision regarding the petitioner's request. He said she could keep in touch with Mr. Rathje's office and the building department regarding when this would go before the Village Council.

Mr. Pagonis said that they have thought about putting in a small 1,000 square foot retail center, or making the site office space. They have no specific plans because they wanted to see whether they would be annexed and rezoned. There is nothing in the way of development plans finalized at this time. They were told by staff that this was the first step they needed to take with the Village.

There being no further comments from the public, Chairman Beggs closed the public portion of the meeting.

### **Board's Deliberation:**

Mr. Sleeter said he has no problem with this petition. The strip along Ogden Avenue is clearly of a business nature. He would be comfortable with recommending approval of the rezoning as requested.

Mr. White said he is more comfortable with this property being zoned in the Village for a business use, as development would be under the control and

supervision of the Village rather than the County. Chairman Beggs agreed with that statement.

Mr. Lukas said he would also be in favor of the rezoning upon annexation of the property.

There being no contrary opinions, Chairman Beggs called for a Motion.

**Mr. Sleeter moved that in case MC-6-01 the Zoning Board of Appeals recommend to the Village Council that the petition seeking rezoning from County B-1, General Business Zoning to Village B-3, General Services & Highway Business upon annexation be approved. Mr. Detjen seconded the Motion**

**AYES: Mr. Sleeter, Mr. Detjen, Mr. Domijan, Mr. Lukas, Mr. White, Ch. Beggs**

**NAYS: None**

**Chairman Beggs declared the Motion carried.**

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**V-3-01** A petition seeking a variation to allow the reduction of the applicable front yard setback. Property is located on the west side of Cumnor Road, approximately 249 feet north of Sheldon Avenue, commonly known as 4806 Cumnor Road, Downers Grove, Illinois (PIN 09-09-104-025); Janet Panarese, Owner/Petitioner

**LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC**

**HEARING** - NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD BY THE ZONING BOARD OF APPEALS AT 7:30 P.M. ON WEDNESDAY, MARCH 28, 2001 IN THE COUNCIL CHAMBERS OF THE VILLAGE HALL, 801 BURLINGTON AVENUE, DOWNERS GROVE, ILLINOIS, ON A PETITION SEEKING A VARIATION TO ALLOW THE REDUCTION OF THE APPLICABLE FRONT YARD SETBACK. THE PROPERTY IS LOCATED ON THE WEST SIDE OF CUMNOR ROAD, APPROXIMATELY 249 FEET NORTH OF SHELDON AVENUE, COMMONLY KNOWN AS 4806 CUMNOR ROAD, DOWNERS GROVE, ILLINOIS (PIN NO. 09-09-104-025) AND IS LEGALLY DESCRIBED AS FOLLOWS:

LOT 2 IN PARK VIEW ESTATES, BEING A SUBDIVISION OF PART OF SECTION 09, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 15, 1955 AS DOCUMENT 749565, AND THE CORRECTION PLAT RECORDED AS DOCUMENT 794393 IN DU PAGE COUNTY, ILLINOIS

INDIVIDUALS WITH A DISABILITY REQUIRING A REASONABLE ACCOMMODATION IN ORDER TO PARTICIPATE IN ANY MEETING SHOULD CONTACT THE COMMUNITY RELATIONS DEPARTMENT (630) 434-5560

PRIOR TO THE MEETING. WHEELCHAIR ACCESS MAY BE GAINED THROUGH THE SIDE (SOUTH) ENTRANCE OF VILLAGE HALL. ALL INTERESTED PERSONS SHOULD ATTEND THIS HEARING AND WILL BE GIVEN AN OPPORTUNITY TO BE HEARD. THE HEARING MAY BE CONTINUED FROM TIME TO TIME WITHOUT FURTHER PUBLIC NOTICE. ZONING BOARD OF APPEALS, GREGORY BEGGS, CHAIRMAN. PUBLISHED IN THE DOWNERS GROVE REPORTER, FRIDAY, MARCH 9, 2001.

**Petitioner's Presentation:**

Ms. Janet Panarese said she was the petitioner and owner of the house in question. She provided the Board members with pictures of the house for the file and stated that she recently purchased it. On the day prior to closing on this property, she was informed by the seller's attorney that there was a problem with the front porch on the house and the Village wanted them to either tear down the porch or seek a variation. Because there were two house closings on the same day, they had to move forward with the house purchase.

Ms. Panarese said that the previous owner of the house built the porch. It would be costly for her to tear that porch down and rebuild and re-landscape the front of the house. She said that the porch adds to the house, but it does not meet the setback rules. They bought the house because it was perfect for them. The previous owner was a rehabber and gutted the house. Ms. Panarese said they are not financially equipped to put further money into the house, and being required to tear the porch down would cause a great financial hardship. She is requesting that the Board grant the variance they need so they can keep the porch on the house.

Chairman Beggs said he looked at the house and noticed that the house to the south of her seemed to have a similar situation. Ms. Panarese said that the owner of that house was also present at the meeting.

There being no further questions from the Board, Chairman Beggs called upon staff to report its findings.

**Staff Presentation:**

Ms. Amanda Browne said the petitioner is seeking approval of a variation from the front yard setback requirement for an existing porch on a single family residence located on the west side of Cumnor Road, approximately 249 feet north of Sheldon Avenue at 4806 Cumnor Road, Downers Grove.

Specifically, Ms. Browne said the petitioner is requesting a variation that would allow the porch to remain as built with a reduction from the required R-2 zoning district front yard setback of 35 feet to a setback ranging from 28.8 feet for a reduction of 6.2 feet or 17.71%, to 29.1 feet for a reduction of 5.9 feet or 16.86%. The petitioner is seeking approval of this variation under Section

28-1802(b) of the Zoning Ordinance, which authorizes the Board to "permit any yard of less dimension than required by the applicable regulations not to exceed a fifty percent (50%) reduction."

Ms. Browne explained that the previous owner of the residence constructed the subject front porch without the necessary building permit. In July of 2000, the un-permitted construction of the front porch was discovered by a Village Code Enforcement Officer who was inspecting the detached garage for which the previous owner had received a building permit. Over the following months through October of 2000, Staff from the Code Services Department and the Planning Department endeavored to help the previous owner either bring the front porch into compliance with the Zoning Ordinance by either reducing its size, or by applying for a variation. The previous owner did not respond to the Village's enforcement efforts, and further did not pursue either option but instead sold the property to the petitioner.

Ms. Browne noted that the petitioner did not learn of the previous owner's violations until one day prior to the scheduled closing date of the purchase, November 2, 2000. Since her purchase of the property, Staff has made reasonable efforts to assist the petitioner in seeking resolution in this matter, and she has chosen to request this variation to rectify the violation which she did not create.

Ms. Browne described the 13,716 square foot subject property as rectangular in shape with a lot width of 60.00 feet as measured in a north-south direction, and a depth of 228.6 feet as measured in an east-west direction. The property is zoned R-2, Single Family Residence, and is improved with a one story, single family residence with a detached garage. This district has a minimum front yard setback requirement of 35 feet pursuant to Section 28-1110(c)(1) of the Zoning Ordinance.

Ms. Browne said that the main portion of the residence, excluding the porch in question, was constructed in 1955 and is lawfully nonconforming as to its front setback. The northeast corner of the residence has a setback of 33.2 feet, and the southeast corner has a setback of 32.7 feet. For the purpose of building code regulations, an access porch would be allowed to project into the front yard under the provisions of Section 28-1100(c)5 of the Zoning Ordinance. Under the building code, an access porch is a landing of no less than 4 feet by 4 feet in area; therefore, that is the maximum size allowable as a permitted yard obstruction. Any porch larger than 4 feet by 4 feet is required to maintain the minimum required setback.

Ms. Browne said the petitioner submitted a Plat of Survey which depicted the subject porch as 4 feet deep as measured from east to west, and 18.1 feet long as measured from north to south and has an area of 72.4 square feet. The porch, therefore, does not qualify as a permitted yard obstruction and must

either be reduced in size to no more than 4 feet by 4 feet in area, or be authorized to remain by means of a variation.

Ms. Browne said that the zoning of the area surrounding the subject property varies from R-1 to R-4; therefore, the minimum required front setbacks vary from a minimum of 25 feet in the R-4 District to a minimum of 40 feet in the R-1 District. She said the structures in the area of the subject property have varying front setbacks, some are lawfully nonconforming, while others exceed the minimum setback requirement. She referenced an aerial photograph which was included in the Board's packet depicting the varying building setbacks. She described the approximate front setbacks of structures within 250 feet of the subject property and on the west side of Cunnor Road from north to south are as follows: 33 feet, 32 feet, 28 feet, 28 feet, and 18 feet. On the east side of Cunnor Road and within 250 feet, the approximate front setbacks are as follows: 34 feet, 54 feet, 35 feet, 33 feet and 32 feet.

Ms. Browne stated the provisions of Section 28-1803(a) of the Zoning Ordinance provide that "a variation shall be permitted only if the Board finds that it is in harmony with the general provisions and interests of this Zoning Ordinance and that there are practical difficulties or particular hardships in the way of carrying out the strict letter of the provisions of this Zoning Ordinance. In its consideration of the standards of practical difficulties or particular hardship, the Board shall require that:

- 1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located.
- 2) The plight of the owner is due to unique circumstances.
- 3) The variation, if granted, will not alter the essential character of the locality."

Ms. Browne concluded that the petitioner is seeking approval of a variation that would allow a reduction from the applicable required 35 foot front yard ranging from 29.1 feet as measured at the northeast corner of the front porch to 28.8 feet as measured at the southeast corner of the front porch. The requested variation will constitute a percent of variation ranging from 17.71% to 16.86% of the 35 foot front yard requirement which is within the maximum 50% setback variation that the Board is authorized to grant under the provisions of Section 28-1802(b) of the Zoning Ordinance. She stated the Board may grant the requested variation provided that it is able to make the required findings for such a variation as outlined under the requirements of Section 28-1803 of the Zoning Ordinance.

Chairman Beggs asked how far north the R-4 zoning district extends between Cunnor and Florence. Ms. Browne said the properties fronting to the south

are zoned R-4, and those fronting on Cumnor are R-3. She said there are varying degrees of setbacks required.

Mr. Rathje explained that the area along Cumnor Road was in the Village for quite some time. The area east of Cumnor Road up to Roslyn Road was annexed into the Village in the 1980s. It was agreed that the Village would undertake the effort and expense of the rezoning petitions up to a certain time. Any property owners who chose not to voluntarily annex to a certain date would not be given the benefit of the Village undertaking the zoning petitions at the Village's expense. This created somewhat of a "deck of cards" in terms of varying zoning districts with varying setback requirements. There are examples of all four residential zoning districts in the area.

Mr. White clarified that if the subject property were zoned R-4 there would be no problem as it would comply with the setback. Ms. Browne verified that statement.

There being no further comments from the Board, Chairman Beggs called upon anyone in the audience who wished to speak either in favor of or in opposition to the petition.

Mrs. Laude of 4800 Cumnor Road said she sent a letter to the Board in favor of this variation. She lives one house north of the subject house, and said that the porch is an asset to the house. She said it replaced an old deplorable porch.

Mr. Louis Kier of 4815 Cumnor Road said he lives in the section with the varying setbacks. He said that the previous owner of the subject property tore out the old porch and built it over a cement stoop. The new porch is more decorative. Mr. Kier said the house two doors to the south of the subject house has a 28 foot setback. He believes the subject house should be allowed to keep the porch as is. He said all of the houses were built about the same time.

There being no further comments from the public, Chairman Beggs closed the public portion of the meeting.

### **Board's Deliberations:**

Mr. White said he would be in favor of granting this variation. He said for the record that this is an unfair situation; however, he did not want to create the idea that by selling a property it would somehow wash out an otherwise improper situation. He has tremendous sympathy for the situation, however, that is not factoring his personal decision to vote in favor of the variation. He favors the variation because improving properties is an essential part of ownership in a home. Secondly, there is the unique circumstance of a patchwork of zoning districts and setbacks in the area. The aerial photograph

and testimony from neighbors provide him with no doubt that allowing this variation would be appropriate. He said his decision is based entirely on the physical structure and situation of the property.

There were no contrary comments.

**Mr. White moved that in case V-3-01 the Board grant a petition seeking a variation to allow the reduction of the applicable front yard setback for property located at 4806 Cumnor Road as requested in the petition which allows the existing porch to have a reduced setback varying from 28.8 feet to 29.1 feet. Mr. Domijan seconded the Motion.**

**AYES: Mr. White, Mr. Domijan, Mr. Detjen, Mr. Lukas,  
Mr. Sleeter, Ch. Beggs**

**NAYS: None**

**Chairman Beggs declared the motion carried.**

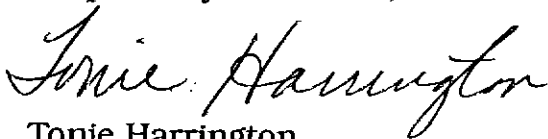
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**Discussion**

Mr. Rathje stated that the first petition for a pre-annexation zoning petition would be republished and be placed on next month's agenda. He also noted that the Park District's special use petition has been remanded back to the Zoning Board of Appeals for further discussion.

There being no further discussion, Chairman Beggs adjourned the meeting at 9:59 PM.

Respectfully submitted,



Tonie Harrington  
Recording Secretary