

143-O-99

AN ORDINANCE

**Amending the Conditions Imposed by
Ordinance 43-O-99 on the Grant of
Special Use and Major Variations to Allow a
Drive-Through Facility at 430 Asbury Avenue**

WHEREAS, the City Council by Ordinance 43-O-99, in case number 99-10-SU & V(R), on the application of Mid-Northern Commercial Services, Ltd., contract purchaser, as agent for Michael Leider Real Estate Corporation, the then property owner, granted a special use pursuant to Section 6-9-3-3 of the Zoning Ordinance, to allow use of 430 Asbury Avenue ("subject property") for a drive-through facility, for variations from Section 6-9-3-7 that buildings be built to lot lines and that parking in the subject yards be prohibited; and a variation from the off-street loading requirements of Section 6-16-5 to reduce the number of required loading berths from two to one, on property located in a C1 Commercial District; and

WHEREAS, subsequent to the passage of Ordinance 43-O-99, William Shiner, manager of Asbury Associates, Limited Liability Corporation, property owner, submitted an application, case no. ZBA 99-37-SU & V(R), to amend certain of the conditions to Ordinance 43-O-99 on the subject property pursuant to sections 6-3-5-12 and 6-3-8-14 of the Zoning Ordinance; and

WHEREAS, the ZBA conducted a public hearing on September 21, 1999 pursuant to proper notice in the aforesaid case no. ZBA 99-37-SU & V(R), and, after hearing testimony and receiving other evidence, made written findings pursuant to section 6-3-5-10 and 6-3-8-12 of the Zoning Ordinance that the application met the standards for

special uses and major variations, respectively, and recommended that the City Council grant the appreciation; and

WHEREAS, the Planning and Development Committee of the City Council considered and adopted the ZBA's findings and recommendation; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: The City Council hereby adopts the findings and recommendation of the Planning and Development Committee in the aforescribed case number ZBA 99-37-SU & V(R) and amends the grant of special use and major variation approved by Ordinance 43-O-99 by modifying the condition in Section 2A and 2C of Ordinance 43-O-99 and by adding additional conditions relating to delivery vehicles and prescription drug dispensing, more particularly described below, all on the subject property legally described in Attachment 1, attached hereto and made a part hereof.

SECTION 2: That pursuant to Section 6-3-5-12 and Section 6-3-8-14 of the Zoning Ordinance which provide that the City Council may impose conditions upon the grant of special uses and variations, respectively, these conditions are hereby imposed:

(A.) (1) Construction, landscaping, operation, and maintenance of the development authorized by this grant of special use and variations shall be in substantial compliance with the testimony and representations of the applicant and documents placed on file in connection with this case, and with all applicable legislation.

(2) This Ordinance 143-O-99 eliminates the requirement, which arose from representations to the Planning and Development Committee, by or on behalf of the applicant in case no. 99-10-SU & V(R), that the subject property contain

a "pork chop" or other concrete barrier at the southernmost exit from the subject property to create right-in/right-only traffic.

(B.) The subject property will receive no more than nine (9) semi-trailer trucks per week and no more than ten (10) trucks each day of lesser size. To the maximum extent possible the petitioner or the petitioner's successors in title to the subject property and any entity holding possessory interest in the subject property shall prohibit or otherwise not accept any truck delivery for the duration of two 1 hour periods. One said one-hour period shall commence one-half hour prior to the start of school at Chute Junior High School and end one-half hour after the start of school. The second one-hour period shall commence one-half hour prior to the close of school at Chute Junior High School and end one-half hour after the close of school. This prohibition on truck deliveries shall apply on any day in which Chute Junior High School is in session.

(C.) All vehicles making deliveries on the subject property shall have their engines shut off at all times while said vehicle is standing on the property except when directly involved in entering on to or exiting from the subject property.

(D.) The drive-through window shall be used primarily for dispensing prescription drugs.

(E.) The condition imposed by Section 2.C. of Ordinance 43-O-99 is deleted and the following substituted therefor:

The applicant has submitted a landscape plan that has been approved by the City and has agreed that any plant planted pursuant to said plan that dies or fails to thrive (each a "Failed Plant") shall be replaced during the earliest available planting season thereafter. If applicant shall not so replace the Failed Plants, applicant shall pay a fine of \$5,000 to the City. The procedure in connection with the Failed Plants shall be as follows:

- 1) The City shall notify applicant in writing of its obligation to replace a Failed Plant or Plants (the "Landscape Notice");

- 2) Within 30 days after the date of receipt of the Landscape Notice (the "Replanting Period"), applicant shall either (i) replace each Failed Plant, or (ii) if a replacement therefor is not available or if the weather does not permit planting within the replanting period, notify the City in writing (the "Extension Notice") of the circumstances preventing it from planting a Failed Plant and its reasonable estimate of the time period in which a replacement plant will be available and/or the weather will permit planting, which in no event shall be longer than 270 days from the date of receipt of the Landscape Notice (the "Extended Replanting Period"). If the City disagrees with the applicant's estimate, the City and applicant shall work together to arrive at a reasonable time period, which time period shall then be referred to as the Extended Replanting Period. If applicant shall fail to replant a Failed Plant within the Replanting Period, or the Extended Replanting Period if applicant shall have delivered an Extension Notice, then applicant shall pay a fine to the City of \$5,000 within 30 days after expiration of the Planting Period or Extended Planting Period, as the case may be.

Applicant shall from time to time notify the City of its notice address for purposes of this provision. At this time said address is as follows:

c/o Mid-Northern Equities Management, Ltd.
3100 West Dundee
Suite 304
Northbrook, Illinois 60062

(F.) The following conditions, expressed in Ordinance 43-O-99 in Sections 2B, 2D, 2E, and 2F, are renumbered and incorporated otherwise unchanged in this Ordinance 143-O-99,

Section 2A of Ordinance 43-O-99 having been modified above by the addition of subparagraph 2 (A)(2):

- (1) As represented by the applicant at the ZBA hearing, alcoholic liquor shall not be sold on the subject property, nor shall the retail use and drive-through be operated other than during the hours of 8:00 AM through 10:30 PM.
- (2) The applicant shall submit a landscape plan, which shall provide for maintenance of landscaping, for review and approval by the City Superintendent of Parks and Forestry which shall guarantee that any plants planted pursuant to the landscaping plan which die or fail to thrive shall be replaced during the earliest available planting season thereafter, upon written notification by the City. Failure to replace plantings within the time specified by the City shall require payment of \$5,000.00 to the City within 30 days after expiration of the time given by the City for such replacement.
- (3) The applicant shall submit a litter collection plan, acceptable to the City Manager, for the subject property and adjoining public rights-of-way. Said plan shall be applicable to the subject property beginning with the construction phase and continuing throughout the term of this grant. As a minimum, said plan shall require policing of the subject property and said adjoining public rights-of-way no less than twice daily and removal of shopping carts, trash and garbage, including, but not limited to, discarded construction materials, food, beverage containers, cigarette butts, plastic and paper bags, lottery tickets, and all other discarded waste materials, regardless of type, emanating from any source. Said plan shall be submitted and approved prior to the issuance of any building permits.
- (4) The applicant, developer, or operator of the retail use shall erect, place, or implement safety

devices and procedures to direct and control vehicular and pedestrian traffic on the subject property as well as with regard to entrances and exits.

- (5) The applicant shall prepare in form and content satisfactory to the City's Law Department, a covenant running with the land containing the provisions of this Section 2 (E.)(1) through 2 (E.)(4) The covenant shall provide that it shall be released only by the City Council. No building permits shall be issued until a copy of the recorded covenant has been filed with the Zoning Administrator.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: January 10, 2000

Adopted: January 24, 2000

Approved: January 28, 2000

Lorraine H. Norton
Mayor

ATTEST:

Mary P. Morris
City Clerk

Approved as to form:

[Signature]
Corporation Counsel