

19-O-02

AN ORDINANCE

**Granting a Special Use for a Drive-Through Facility and
Yard Variations to Allow a Retail Sales
Building at 101 Asbury Avenue**

WHEREAS, the Zoning Board of Appeals ("ZBA") met on February 5 and February 19, 2002, pursuant to proper notice in case no. ZBA 02-08-SU & V(R) to consider an application for special use for a drive-through facility and certain yard variations by Zaremba Group, LLC, contract purchaser, on behalf of CVS Pharmacy, to allow construction and operation of an approximately 11,000 square-foot retail sales building with a drive-through facility at 101 Asbury Avenue in a B2 Business District; and

WHEREAS, the ZBA, after hearing testimony and receiving other evidence, made a written record and findings that the aforescribed application met the standards for special uses and major variations in Section 6-3-5-10 and Section 6-3-8-12 (E), respectively, and recommended City Council approval thereof; and

WHEREAS, the Planning and Development Committee of the City Council considered the ZBA's record and findings at its March 11, 2002 and March 25, 2002 meetings and recommended City Council approval thereof; and

WHEREAS, the City Council considered the respective records and recommendations of the ZBA and the Planning and Development Committee at its March 11, 2002 and March 25, 2002 meetings, and

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

SECTION 1: That the City Council hereby adopts the record, findings, and recommendation of the ZBA and the recommendation of the Planning and Development Committee as amended and hereby approves the special use and yard variations sought in case no. ZBA 02-08-SU & V(R) more particularly described below, on property legally described in Exhibit A, attached hereto and made a part hereof and commonly known as 101 Asbury Avenue.

SECTION 2: That the special use was granted hereby pursuant to Section 6-9-3-3 of the Zoning Ordinance allows construction and operation of a drive-through facility at the subject retail sales use.

SECTION 3: That the major variation granted hereby to Section 6-9-3-7 of the Zoning Ordinance allows construction and operation of the subject building approximately two (2) feet from the west lot line along Asbury Avenue and approximately one hundred sixty (160) feet from the south lot line along Howard Street, with parking located within the yard between the building and Howard Street, with parking located within the yard between the building and Howard Street, whereas the Zoning Ordinance requires a) that buildings be built to lot lines and b) prohibits parking in front yards and side yards abutting a street.

SECTION 4: That pursuant to Section 6-3-5-12 and Section 6-3-8-14, which respectively permit the City Council to impose conditions upon the grants of special uses and variations, these conditions are hereby imposed:

- (A) 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.
- (B) The applicant shall prepare in form and content satisfactory to the City's Law Department, a covenant running with the land setting forth the conditions to this grant of special use and variations. The covenant shall provide that it shall be released only by prior written consent of the City Council. No building permits shall be issued until the applicant has filed with the Zoning Administrator a copy of the covenant recorded at the applicant's cost with the Cook County Recorder.
- (C) When necessary to effectuate the conditions imposed on the subject property by this Ordinance 19-O-02, "applicant" shall be read as "owner," "applicant's successor's in interest" and/or "operator of the use".

Daily Operational Conditions:

- (D) The subject property will receive no more than two (2) semi-trailer trucks per week. All deliveries will be between the hours of 9:00 A.M. and 5:00 P.M. and shall be limited to weekdays only. The unloading time for any delivery vehicle shall be no longer than two (2) hours. In no instance will any delivery vehicle remain on the subject property for a longer period than two (2) hours. In the event the applicant seeks a modification of the number of semi-trailer delivery trucks per week, application may be made to the City Council for such modification.
- (E) The engines of all vehicles making deliveries on the subject property shall be shut off at all times while said vehicles are

standing on the property except when said vehicles are entering onto or exiting from the subject property.

- (F) All garbage collection shall be between the hours of 9:00 A.M. and 5:00 P.M., weekdays only. Garbage will not be placed in a dumpster after 8:00 P.M. on any day.
- (G) Vertical compacting on the subject property will occur no more than twice daily and is limited to the hours of 9:00 A.M. and 5:00 P.M., Monday through Friday.
- (H) 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 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.
- (I) The applicant shall maintain and enforce a policy of no loitering or solicitation upon the subject property.
- (J) The drive-through window shall be used solely for dispensing prescription drugs. The drive-through window shall not service walk-up patrons.
- (K) No service through the drive-through facility window shall be made if music or any other amplified sound is audible off-site from the patron's vehicle.
- (L) At no time shall the use operate or use a speaker or amplifier system in conjunction with the drive-through window which amplifies voice or other sounds louder than normal speaking volume.

- (M) The exit on the east side of the building from the second floor storage room will be an enclosed emergency-only exist with no entrance at the bottom. This door must not be opened except in an emergency.

Prohibitory Operational Conditions:

- (N) At no time shall there be an outside pay telephone on the subject property.
- (O) At no time shall there be an outside ATM on the subject property.
- (P) As represented by the applicant at the ZBA hearing, alcoholic liquor shall not be sold on the subject property.

Structural Conditions:

- (Q) No fewer cameras than twelve (12) inside and four (4) outside to deter and record criminal activity, shall be installed and maintained.
- (R) The applicant will establish an underground stormwater detention system. The applicant will construct a curb on the subject property and will slope the ground to prevent runoff on neighboring properties.
- (S) No more than four (4) HVAC units shall be on the subject property. Said HVAC units shall be place on the roof of the building and shall be appropriately screened from view off the property and appropriately baffled to prevent any intrusion of noise on neighboring properties.
- (T) Lighting in the parking lot and on the building shall shine downward with no spillage of light off the subject property. Lighting on the subject property will be in conformance with the applicant's testimony and representations in this case, no. 02-08-SU & V(R).
- (U) The applicant will place graffiti-resistant glass on two (2) sides of the bus shelter and shall maintain said improvements in good and sightly condition. The bus shelter shall not exceed eight (8) feet in height.

- (V) The staircase to the mezzanine on the east side of the building shall be enclosed.
- (W) The applicant will bring the corbelled treatment of the brick present on the Howard and Asbury frontages around the corners onto the north side from the west side.

Landscape Conditions:

- (X) 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 thirty (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 two hundred seventy (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 \$5,000.00 within thirty (30) days after expiration of the Planting Period or Extended Planting Period, as the case may be.

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

Zaremba Group
LLC for Dearborn Land Investment, LLC
14600 Detroit Avenue
Lakewood, Ohio 44107

Traffic Control Conditions:

- (Y) Safety devices and procedures shall be implemented and maintained for direction and control of vehicular and pedestrian traffic on the subject property as well as with regard to entrances and exits. Stop signs shall be placed and maintained at all points of vehicular egress from the subject property. Signage requiring "right turn only" or "left turn only" shall be placed and maintained at the northernmost exit onto Asbury Avenue.
- (Z) The applicant shall pay for the costs of restriping Asbury Avenue adjacent to the property.

Off-Property Improvements:

- (AA) The applicant will make and pay for improvements in the Dobson cul-du-sac immediately east of the subject property and shall maintain said improvements in good and slightly condition in accordance with the above-mentioned Landscape Plan.
- (BB) The applicant will erect brick and wood fences generally around the along the north and east edges of the subject property as discussed and shall maintain said improvements in good and slightly condition. Said fence adjacent to the east lot line shall be six (6) feet tall, brick, and will be located no less than six (6) feet west of the east lot line of the subject property. Said fence adjacent to the east lot line will allow for an appropriate turning radius and provide sufficient space to pile snow so that vehicles may exit the

garage at 1216 Dobson. Fences will be erected and maintained in accordance with City ordinances and regulations and shall have all posts set into the ground no less than 42 inches below grade.

- (CC) The applicant shall remove the fences at 1216 Dobson, and shall replace these with a securable front and rear gate and erect a fence to attach from the house and from the garage at 1216 Dobson to the brick wall.
- (DD) The applicant shall plant and shall maintain in good and sightly condition grass between the brick wall approximately parallel to the east lot line of the subject property and the east lot line of the subject property. For the period concluding sixty (60) days after completion of the masonry wall on the east property line, the titleholders of 1216 Dobson maintain the right to ask for additional landscaping, such as climbing vines or evergreen hedges along the east side of the brick wall approximately parallel to the east lot line. The titleholders of 1216 Dobson and the applicant will agree on a weekly time at which the applicant will enter through the alley to maintain the landscaping between the brick wall approximately parallel to the east lot line of the subject property and the east lot line of the subject property.
- (EE) The applicant will remove the hedges in front of 1216 Dobson, if the owners of that property request such removal in writing. Said removal is to occur no later than forty-five (45) days of applicant's receipt of the written request.

Construction Conditions:

- (FF) Times of construction of the subject property shall comply with the City Code and all other applicable regulations. Pile-driving or other activities that may cause shaking of neighboring houses are prohibited.
- (GG) Prior to issuance of the Certificate of Occupancy, the applicant will remove prior to issuance to a final occupancy certificate the tree currently at the northeast corner of Parcel 3 as described on Exhibit A.

SECTION 5: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: March 11, 2002

Adopted: March 25, 2002

Approved:

April 2, 2002

Lawrence H. Norton
Mayor

ATTEST:

Mary P. Morris
City Clerk

Approved as to form:

[Signature]
Corporation Counsel

EXHIBIT A TO ORDINANCE 19-0-02

PARCEL 1: THAT PART OF LOTS 10 AND 11 TAKEN AS A TRACT IN THE COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS IN THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 10 (BEING THE CENTER LINE OF ASBURY AVENUE, SAID POINT BEING 70 FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 10, AND RUNNING THENCE NORTH ALONG THE SAID WEST LINE, 126.69 FEET, TO THE CENTER LINE OF DOBSON STREET, PRODUCED; THENCE EAST ALONG SAID CENTER LINE PRODUCED, 180 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 10 TO A LINE PARALLEL WITH THE SOUTH LINE OF SAID LOT 10 (DRAWN THROUGH THE PLACE OF BEGINNING); THENCE WEST 180 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS, EXCEPT THAT PART THEREOF TAKEN FOR WIDENING ASBURY AVENUE, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOTS 9 AND 10 IN BRUMMEL AND CASE HOWARD WESTERN AVENUE ADDITION, BEING A SUBDIVISION OF LOT 3 IN REIS SUBDIVISION OF LOTS 3, 4 AND 5 IN SUBDIVISION OF LOT 9 (EXCEPT THE NORTH 24 FEET THEREOF) IN COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS IN THE NORTHWEST QUARTER OF LOT 13 IN COUNTY CLERK'S DIVISION OF PART OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: THAT PART OF LOT 10 IN THE COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS IN THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 10 BEING A POINT ON THE CENTER LINE OF ASBURY AVENUE; RUNNING THENCE NORTH ALONG THE WEST LINE OF LOT 10, A DISTANCE OF 70 FEET TO A POINT; THENCE EAST IN A LINE PARALLEL WITH THE SOUTH OF LOT 10 A DISTANCE OF 180 FEET TO A POINT; THENCE SOUTH PARALLEL WITH THE WEST LINE OF LOT 10, 70 FEET TO THE SOUTH LINE OF LOT 10; THENCE WEST ALONG SAID SOUTH LINE 180 FEET TO A POINT OF BEGINNING. (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING ASBURY AVENUE IN COOK COUNTY, ILLINOIS)

PARCEL 4: LOTS 11, 12, 13 AND 14 (EXCEPT THAT PART OF LOT 14, LYING WEST OF A LINE PARALLEL WITH AND 40 FEET EAST OF WEST LINE OF SECTION 30) IN BRUMMEL AND CASE HOWARD WESTERN ADDITION, BEING A SUBDIVISION OF LOT 3 IN REIS SUBDIVISION OF LOTS 3, 4 AND 5 IN THE SUBDIVISION OF LOT 9 (EXCEPT THE NORTH 24 FEET) IN COUNTY CLERK'S DIVISION OF UNSUBDIVISION OF LOT 9 (EXCEPT THE NORTH 24 FEET IN COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS IN THE NORTHWEST QUARTER AND LOT 13 OF THE COUNTY CLERK'S DIVISION OF PART OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AND: ALL THAT PART OF THE EAST-WEST ALLEY LYING SOUTH OF LOT 10 IN COUNTY CLERK'S DIVISION IN THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EAST LINE OF ASBURY AVENUE, AND LYING WEST OF THE WEST LINE OF LOT 2, EXTENDED IN THELIN AND THELIN RESUBDIVISION OF PART OF LOTS 10 AND 11, IN SAID COUNTY CLERK'S DIVISION, EXCEPTING THEREFROM THE EAST 3 FEET THEREOF; ALL IN COOK COUNTY.