

MINUTES
January 20, 2016
PLAN COMMISSION & ZONING BOARD OF APPEALS
City of Batavia

NOTE: These minutes are not a word-for-word transcription of the statements made at the meeting, nor intended to be a comprehensive review of all discussions. They are intended to make an official record of the actions taken by the Board and to include some description of discussion points as understood by the minute-taker. They may not reference some of the individual attendee's comments, nor the complete comments if referenced.

1. MEETING CALLED TO ORDER

Chair LaLonde called the meeting of the Plan Commission & Zoning Board of Appeals to order at 7:00 p.m.

2. ROLL CALL

Members Present: Tom LaLonde, Chair; Gene Schneider, Vice-Chair; Tom Gosselin, Commissioner; Sara Harms, Commissioner; Joan Joseph, Commissioner; Sue Peterson, Commissioner (arrived 7:04 p.m.)

Members Absent: None

Others Present: Scott Buening, Director of Community Development; Drew Rackow, Planner; Jeff Albertson, Building Commissioner; Joel Strassman, Planning & Zoning Officer; and Cheryl Shimp, Recording Secretary

3. ITEMS REMOVED/ADDED/CHANGED

None

4. APPROVE MEETING MINUTES

Motion: To accept the minutes of the January 6, 2016 Meeting as presented.

Maker: Joseph

Second: Schneider

Voice Vote: 5 Ayes, 0 Nays, 1 Absent. All in Favor. Motion Carried.

5. PUBLIC HEARING: Proposed Dunkin Donuts Drive-Through at Shell Gas Station located at 108 North Batavia Avenue

Motion: To open Public Hearing for Variances & Public Hearing for Conditional Use

Maker: Schneider

Second: Joseph

Voice Vote: 5 Ayes, 0 Nays, 1 Absent. All in Favor. Motion Carried.

The Public Hearing was opened at 7:03 p.m.

Strassman explained that Harry Mehta, operator of the Shell gas station at Batavia Avenue and Houston Street is seeking to add a Dunkin' Donuts franchise in the building and to add a drive through. To

accomplish the proposal, the City Council will need to approve several variances and a conditional use. Additionally, Plan Commission approval of design review is needed.

The property is zoned DMU Downtown Mixed Use, as are all corners of this intersection. The property immediately to the north is designated for residential use in the Comprehensive Plan and is zoned R-2 Two Family Residential; it is improved with a single family residence.

The Zoning Board of Appeals (ZBA) has the responsibility of conducting the public hearing and determining if the findings for approval for each variance have been met. The ZBA must take a narrow view of the proposal – one that is limited to the findings for approval as stated in the Zoning Code. The City Council may take into consideration other factors.

The Findings for Approval for variances as stated in the Zoning Code are as follows:

- A. There are unique circumstances applicable to the property, including its size, shape, topography, location or surroundings, strict application of the Zoning Code would create a hardship or other practical difficulty, as distinguished from a mere inconvenience, and deprive the property owner of property rights enjoyed by other property owners in the same zoning district; and
- B. Such unique circumstances were not created by the current or previous owners or applicant; and
- C. The property cannot yield a reasonable return or be reasonably used for the purpose intended by the Zoning Code under the regulations in the district in which it is located; and
- D. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; and
- E. The variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general.

There are 2 variances that must be approved by the City Council in order to approve the conditional use for the drive through. The first one is for the lack of separation between the subject property and residential property. Properties with drive throughs must be at least 50 feet from properties designated for residential use in the Comprehensive Plan. The proposed property abuts the residential property to the north. Additionally, drive through aisles need to be at least 100 feet from residentially designated property. Only 50 feet would be provided to the residence to the north.

Except for altering the site for product rebranding, fuel/convenience-type retail has been continuous at this location for many years. While business may increase with the proposed drive through, it is not within the parameters of a variance to grant them solely for the purpose of survivability of a business as the applicant suggests in his submitted material.

Applying the required Findings for Approval for these 2 variances, staff feels that Findings A and B can be met, due to the site's slope. The current business operator acquired the business within the past year or two. Since then, no gas stations have opened in Batavia and one in downtown has ceased selling gas. Staff believes the property has the ability to house a viable a gas station, essentially as has been continuous for many years, therefore Finding C cannot be met. Finding D may be met considering the long-time presence of the former Burger King and Hardee's nonconforming site across Batavia Avenue. Finding E is difficult to meet due to the property being contiguous to residential and the drive through lane being only 50 feet away from the house. While the property-to-property condition is similar to the drive through situation across Batavia Avenue, the distance to the neighboring house is much less, and

there is a public alley located between the properties. Despite proposed landscaping to shield the drive through lane and even if a solid fence or wall would be erected, the lack of distance increases the possibility of the drive through negatively affecting the property to the north. Staff feels Finding E cannot be met.

Since staff believes all findings cannot be met, staff would recommend the ZBA not recommend approval of the variances for these separation distances.

Drive through lanes must be at least 20 feet wide to provide by-pass capability. A variance is requested to provide a minimum 10 foot wide lane. The Code does not specify a minimum width for lanes without bypass capability.

The applicant contends the slope of the site makes it cost-prohibitive to extend the drive through lane further east, and that the proposed aisle width is functional and safe. Other drive through businesses in town lack a by-pass lane. Staff is concerned that vehicle length and driver ability factors will affect this site more than others. Minimal turning area is proposed, and drivers that lack ability or do not obey posted maximum vehicle length limits may get stuck in one of the required 90 degree turns. The 20 foot minimum would provide added turning area.

The property's slope address Findings A and B that can be met, however, staff feels Finding C cannot be met. Having a unique slope, Finding D may be met. Staff feels an instance of a vehicle being stuck in the drive through lane would have minimal lasting impact on the general public, therefore, Finding E can be met.

Since staff believes all findings cannot be met, staff would recommend the ZBA not recommend approval of the aisle width variance.

Canopy edge signage is counted as part of the allowable wall sign area. Multi-colored canopy edges displaying brand identity is signage. Most or all of the allowed wall sign area is already taken by the existing canopy edge treatment. Adding signs to this building's walls requires a variance.

Staff has consistently deemed multi-colored canopy edges displaying brand identity as signage. The applicant suggests this unfairly restricts the amount of signage on the building's walls, resulting in a competitive disadvantage for this property compared to other multi-tenant locations. Requesting a variance to display building wall signage is reasonable, and the requested amount of square footage is also reasonable. The HPC would review the designs of proposed signs. Staff is concerned with adding illumination to the north facing canopy edge as it would affect the residence to the north.

The Batavia Zoning Code's assigning canopy edge sign area to the allowable wall sign area effectively eliminates the opportunity for this site to display effective signage on the building's walls. For this reason, staff believes Findings A and B can be met. Building signage is an important factor in the success of a business and is generally available to all business locations, therefore, Findings C and D can be met. The proposed canopy edge changes visually will be minimal and would not affect others, except for the proposed illuminated bar on the north canopy edge. If this were non-illuminated, Finding E could be met.

With a ZBA condition of no added illuminated elements to the north canopy edge, all Findings can be met, and staff would recommend approval of the requested wall sign variance.

Monument signs are limited to 6 feet in height and 32 square feet. The existing sign's height of approximately 26 feet and area of approximately 83 square feet are nonconforming. The variance request is to increase the sign area by approximately 26.5 square feet, by adding an illuminated Dunkin' Donuts panel below the existing sign panels. The applicant states that the sign is necessary due to corporate requirements and would identify the additional tenant. Sign height would not increase. The added sign would help with increased competition from the additional Randall Road gas stations.

Staff recognizes the importance of providing tenant identification on freestanding signs. Staff feels the existing sign is overly tall and out of place in downtown Batavia. While added sign area would help the new business and allow the existing Shell messages to remain, the sign should be lowered in height to 8 feet, the allowed height for fuelling facility signs. Lowering the sign to offset the impact of added sign area may be a better compromise than reducing the amount of Shell's sign area.

Despite staff supporting additional sign area, staff believes that Findings A, B, C, and D cannot be met. Additional sign area would not result in a significant change, therefore Finding E can be met. Lowering the sign strengthens this opinion.

Since staff believes all findings cannot be met, staff would recommend the ZBA not recommend approval of the sign height and area variances. Staff encourages the ZBA to consider noting for the record that if the City Council feels adding sign area is appropriate, the City Council should require the sign to be lowered to not exceed 8 feet.

Sign element projections are limited to 2 inches from the canopy edge. The applicant states that Dunkin's corporate requirements for signage would project by more than allowed. There would be no negative effect by the added projection. The City's 2 inch limit is arbitrary and projection by an additional 2 inches would be similar to signage other gas stations have.

Staff feels that the 2 inch projection can be limiting and feels the requested projection is reasonable. Similar to the wall sign variance, staff feels the projection for the north canopy edge should not include any new illuminated sign elements.

With a ZBA condition of no added illuminated elements to the north canopy edge, all Findings can be met, and staff would recommend approval of the sign projection variance.

Ninety (90) degree parking spaces must be a minimum of 19 feet long and parallel spaces must be 10 feet wide. The proposed parking space dimensions replicate the existing dimensions and would be applied to the added parking along the south side of the site. The applicant notes these dimensions have functioned for years without incident. The addition of the drive through would not affect the parking spaces.

Staff feels there will be increased site traffic and vehicle maneuvering with a drive through. Staff is concerned about site maneuverability and reducing parking geometry exacerbates this concern. The south spaces may be widened, reducing potential conflicts. This would eliminate the need for a variance, but could trigger the need for an additional retaining wall due to the property's slope.

The slope along Houston is a limiting factor. The other reduced geometry would simply match what exists - nonconforming conditions. Findings A, B, C, and D may be met. The effect to the "public welfare in general" could exclude persons on this property being affected by the proposed changes, therefore, there may be no adverse impact elsewhere. Finding E can be met. Since staff believes all

findings can be met, staff would recommend the ZBA recommend approval of the parking geometry variances with the conditions that:

1. Additional landscaping be added adjacent to the north parking spaces;
2. A curb be added to the west end of the north parking area, similar to what's proposed for the south parking with landscaping; and
3. That the area south and west of the west end curb for the new south parking spaces be suitably landscaped.

Thirteen (13) parking spaces are required. The applicant notes that 12 spaces would be provided with one space landbanked. Landbanking parking does not require a variance; it may be sought through an administrative use approval. Staff feels that since the landbanked parking space would remain paved and not be landscaped, the space simply should be striped as shown. Staff may approve an application for landbanked parking if that area was landscaped.

The applicant notes that the required amount of parking is excessive. If the ZBA feels fewer parking spaces would be acceptable, this could allow for increased circulation area and reduce potential conflicts. The ZBA can continue consideration of this variance to allow a revised proposal to be submitted. Staff encourages exploration of solutions to this and other noted issues.

Staff feels unique circumstances have not yet been demonstrated applicable to the required Findings. Since staff believes all findings cannot be met, staff would recommend the ZBA not recommend approval of the parking supply variance.

The Zoning Code requires landscaping within 50 feet of Batavia Avenue. The addition of the south parking encroaches into this area. The applicant notes the impossibility of providing additional parking elsewhere. Parking in this area is common in the vicinity. The location of these proposed spaces does not alter the function of the site.

Staff acknowledges the limited opportunities to locate additional parking. Reducing parking in front of the store forces the parking to go elsewhere. Staff Findings A, B, C, D, and E may be met. Staff would recommend approval of this variance, subject to the area south and west of the west end curb for the south parking spaces be suitably landscaped, including a tree.

The Zoning Code prohibits wheel stops. Wheel stops are proposed for parking spaces along the storefront. The applicant wishes to retain the existing walkway space along the storefront without vehicle overhang. Wheel stops can provide for this space. Pedestrian convenience and safety would be enhanced.

Staff encourages pedestrian safety. Vehicles overhanging the walkway can limit safe passage. Little space exists to lengthen parking or widen the existing walkway. Having these existing conditions, the situation warrants consideration of code relief. Staff feels all Findings A-E can be met, therefore, staff would recommend approval of this variance.

The Plan Commission must review the requested conditional use. While drive through businesses generally is less desirable in downtown, this property is at the edge of the DMU District and is already designed as an automobile-oriented site. Staff agrees with the submitted Traffic Impact Analysis regarding traffic generation, but feels the limited front area space for maneuverability among gas, convenience store, and drive through customers, coupled with parking essentially surrounding this area

will challenge drivers to get to and from the various site facilities. At times of high demand this difficulty may extend to vehicles trying to enter the site, thus potentially affecting traffic on Batavia Avenue.

A requirement of the conditional use is that drive through business properties must be at least 50 feet away from properties designated for residential use in the Comprehensive Plan and drive through aisles must be at least 100 feet from away from residentially designated property.

The Plan Commission must consider conditional uses in light of the Findings Required for Approval. These Findings are:

1. The proposed use will not be detrimental to health, safety, or general welfare of persons living or working in the vicinity, to adjacent property, to the neighborhood, or to the public in general;
2. The proposed use, as conditioned, conforms with the purposes, intent, and policies of the Comprehensive Plan and any applicable area, neighborhood, or other plan adopted by the City Council;
3. The proposed use conforms with the conditions, requirements, or standards required by the Zoning Code and any other applicable local, State, or Federal requirements; and
4. The proposed use, as conditioned, would not unreasonably interfere with the use and enjoyment of nearby properties.

Unlike how the ZBA must apply its Findings, the Commission does not need to find in the affirmative for any of the Findings in order to recommend approval; the Commission must simply reach conclusions of whether each Finding has been met.

For Finding #1, staff feels the residential property immediately to the north and its inhabitants may potentially be negatively affected by the increased traffic being brought closer to the residence. While proposed landscaping can provide some buffering, and adding a solid fence or wall can increase screening, neither would work as well as distance. Staff believes Finding #1 cannot be met.

For Finding #2, staff believes the drive through business, with approved variances requiring added buffering features such as more landscaping and a wall along the north property line, is aligned with Comprehensive purposes of enhancing commerce in the downtown. The use would, however, be contrary to principles of providing transitions between non-residential and residential uses. In balance, staff believes Finding #2 cannot be met.

For Finding #3, with approved variances as conditioned, the use would conform generally with applicable codes and requirements. Staff believes Finding #3 can be met.

For Finding #4, as stated above most nearby properties would not be unreasonably affected, but the property immediately to the north, being single-family residential, could be. In balance, staff believes Finding #4 cannot be met.

The Commission must also conduct the design review. Due to the number of variances needed and staff's beliefs of the inability to meet the required Findings for variances and conditional use, staff cannot support the design review. Several positive site changes are proposed and itemized in the staff report to the Commission. Additional details, however, are needed.

Refuse enclosures specifications comply with Code, but the site plan must include elevations. The enclosure walls should mimic the building's finishes. Design elevations for the proposed retaining walls need to be provided, along with the specified corrugated metal screening added to the top of the wall. The HPC would review the design of these too. The site plan notes the City of Batavia to relocate the Batavia Avenue streetlight; this specification must be removed from the plan.

Staff feels the proposed patio area would be enhanced by a stair connection to the Houston Street sidewalk. The Commission may consider the merits of this feature. Other revisions to the site and landscape plans would be needed to reflect conditions of variance and conditional use approvals. The Fire Department has reviewed the plan and auto-turn, and feels what is proposed would be adequate. Specific turning radii would need to be provided with the final site plan/engineering.

Design Review consideration involves the Commission determining the following Findings for Approval:

- A. The project is consistent with applicable design guidelines.
- B. The project conforms to the Comprehensive Plan, and specifically to the Land Use, Urban Design, and Environment Elements.
- C. The project is consistent with all applicable provisions of the Zoning Code.
- D. The project is compatible with adjacent and nearby development.
- E. The project design provides for safe and efficient provision of public services.

Staff recommends the Commission and ZBA simultaneously conduct the open meeting for the design review and the public hearing for the variances and conditional use. If the Commission and/or ZBA feel that it would like to continue the hearing to allow for revisions to be made to any part of the proposal, the Commission and ZBA should continue the hearing for variances and conditional use, and continue the design review to a date specific. Only after all information has been offered and speakers have spoken, the Commission and ZBA should close the hearing.

The ZBA must act on the requested variances before Plan Commission action. The ZBA must first reach its findings for each variance. If the ZBA can find in the affirmative for each variance, the ZBA can recommend City Council approval of those variances. If the ZBA cannot find in the affirmative for each of the Findings, the ZBA cannot recommend approval of those variances. As an alternative to taking action now, the ZBA may continue the public hearing for one or all of the variances to a specific date and provide direction to staff and the applicant for design modifications.

Staff recommendations for each variance are based on staff's determination of whether Findings can be made in the affirmative.

1. Section 4.205.E – to allow a drive through business less than 50 from property designated for residential use in the Comprehensive Plan. Staff Recommends Denial
2. Section 4.506 – to allow a drive through aisle to be at least 100 feet from away from residentially designated property. Staff Recommends Denial
3. Section 4.209.A.1 – to allow a drive through lane less than 20 feet wide. Staff Recommends Denial
4. Section 4.407.B.1.e(2) – to allow an increase in wall sign area up to an additional 41 square feet on the south wall and up to 46 square feet on the west wall. Staff Recommends Approval with the condition of no added illuminated elements to the north canopy edge

5. Section 4.407.B.2a(3) – to allow a monument sign area in excess of the allowed 32 square feet by adding approximately 27 square feet to the existing sign – Staff Recommends Denial
6. Section 4.407.B.2.f(3) – to allow canopy sign elements to project more than 2 inches from the canopy edge. Staff Recommends Approval with the condition of no added illuminated elements to the north canopy edge
7. Table 4.205.A – to allow parallel parking stalls to be 9 feet wide and perpendicular spaces to be 18 feet long. Staff Recommends Approval, with the following conditions:
 - Additional landscaping be added adjacent to the north parking spaces, with design review approval
 - A curb be added to the west end of the north parking area, extending west to meet the Batavia Avenue sidewalk, similar to what’s proposed for the south parking and inside this area should be suitable landscaping, including a tree, with design review approval; and
 - That the area south and west of the west end curb for the new south parking spaces be suitably landscaped, including a tree, with design review approval.
8. Table 4.204 – to allow 12 parking spaces where 13 are required. Staff Recommends Denial
9. Zoning Code Section 3.303.B – to omit landscaping within 50 feet of Batavia Avenue – Staff Recommends Approval subject to the area south and west of the west end curb for the new south parking spaces be suitably landscaped, including a tree, with design review approval
10. Section 4.203.Q to allow wheel stops – Staff Recommends Approval

For the conditional use, the Commission must open and conduct the public hearing the same as the ZBA hearing and reach conclusions for each Finding. As with the variances, the Commission may continue the hearing. Since staff recommends denial of the 2 variances needed for the distance separating residential from the drive through, staff recommends denial of the conditional use

For the design review, the Commission should consider and discuss the merits of the proposed plan. If the Commission wishes to take action, it must first reach conclusions for each Finding. Due to the number of design items yet to be addressed and needed revisions, many due to potential changes with variance and/or conditional use approval, staff recommends a continuance.

At this time, Chair LaLonde swore in audience members wishing to give testimony.

Steve Vasilion, Vasilion Architects – Introduced all team members involved in the proposal. Vasilion stated that there is clearly a viability issue on this site, having had 4 owners within the last 5 years. At the peak of gasoline operations, this site sold approximately 150,000 gallons of fuel per month. Currently the site is experiencing between 50,000 and 60,000 gallons per month. Vasilion reported this is due to the creation and development of the Randall Road corridor, which takes traffic away from the downtown area. He believes this is a huge factor and is puzzled that survivability of a business cannot be considered. Every gas station within the City offers some kind of supplementary service in order to be viable. The applicant is looking to put \$700,000 to \$800,000 into this site for upgrades and improvements. This is also the applicant’s one and only business. Without the drive-through there is no Dunkin’ Donuts and without Dunkin’ Donuts there won’t be a viable business. The increase in having Dunkin’ Donuts will not return traffic to the 150,000 gallons of fuel sold per month level. This site has supported much heavier traffic. Route 31 has approximately 16,000 vehicles a day traversing it, which dwarfs the impact this proposal. Vasilion said that he was troubled by the fact that the presence of a canopy, regardless of how it is decorated, is still considered signage in the Zoning Code and he finds this discouraging to any business. He

appreciates that Staff finds the signage request appropriate, however, encourages the code should be revisited and possibly changed. The monument sign issue didn't mention that the current sign predates the current 3-tier criteria for establishing building signs. Now Staff wants to change the sign. In 2012, the nearly exact proposal for signage revision was approved. Why was it okay in 2012 to do it but not now? Why is it that a pre-existing sign that works very well now needs to be removed in order to add additional signage (Dunkin' Donuts) to it. There is a perfectly functioning sign that Staff wants to take down. Vasilion noted that the applicant has not come to the City asking for money. Everything that is being done is being funded by the owner. The amount of money to remove the sign and replace with a smaller sign is counter-productive to the challenges that a small businessman faces when trying to improve to improve his site and make it viable. The current proposal includes outdoor seating and a bike rack area. Amenities the applicant has voluntarily included to tie in with the bike and pedestrian traffic from Houston Street. The cost of the sign change will make these improvements impossible and creates an unrealistic hardship. He appreciates that Staff is supportive of the canopy edge treatment and parking stall dimensions and landscaping improvements. Vasilion stated that the original plan submitted had 13 parking stalls (as required) and it was at the recommendation of the City that it be changed to 12 stalls with 1 land banked in order to improve circulation on the site. Now, after the applicant compiled, Staff has rejected this proposal. As such, the applicant will go back to the original plan and keep the 13 parking stalls, which would not require a variance. Applicant is fine with the landscaping at Batavia Avenue, curbing and wheel stops along the front of the building. Positive improvements to the site include: updating the building elevations all the way around; repainting and updating of the plain concrete block walls; lighting improvements; the east and south elevations of the project will be improved; a wider sidewalk will be created along Batavia Avenue to function as an extension of the bike/walk; removal of all the unpleasant planting materials and providing real landscaping; the current refuse enclosure is unsightly and will be replaced with a masonry with lockable gates and the applicant has agreed to provide a curb along Route 31 separating the gas pumping area from the sidewalk. Vasilion noted that the applicant has made several revisions based on Staff's recommendations to include concrete stamping on the retaining walls to mimic limestone. He believes there is plenty of detail provided to warrant a vote this evening and would like to get a "thumbs up or thumbs down" in order to move on.

Jon Green, President Engineering Resource Associates, Warrenville, Illinois – Green stated that he prepared the site survey and civil engineering drawings for this project. He stated that the existing site could comply with fewer variances if it were starting from scratch. There are existing, natural topographical features that are unique to this part of Batavia. The property slopes off, or falls off, approximately 15 to 20 feet towards the river. The \$2.4M Houston Street project is to the south and believes when this project is complete, will be a nice welcome and enhancement to Batavia or even an extension of the Streetscape project. The traffic circulation patterns will remain similar to what is current with the 2 main curb cuts on Route 31 remaining. Traffic engineers and traffic studies have been completed to show that circulation will be adequate for both the drive-through and the fueling operations. The project further reviewed first responders needs, which were approved by the Fire Chief. Although there are some parking stall conflicts with the stalls on the north side of the property with concerns of fuel trucks being able to turn around. Green noted that these stalls are not new to the site and fuel trucks have been able to maneuver through the site in the past. The applicant has, however, agreed to sign the stalls in question as employee only parking stalls. This would allow, if a conflict were to arise, the employee to move their vehicle. The applicant has also

agreed to have fuel deliveries during off peak hours. Green noted that they have worked over the past 8 to 12 months with Staff and with the experts on the team and have located the ordering board on the south side of the building away from the residential property. This should alleviate any concerns of noise. The pick-up window will be located on the north side of the east face of the building. With an office building to the east of this site, there shouldn't be any concerns for noise and circulation due to that orientation. The retaining walls to the rear and south of the site will be rebuilt. The existing concrete wall will be removed and pushed out approximately 5-6 feet to the east. The existing pavement on the north side of the building is already 16 feet north of the existing building and only about 2-3 feet will be added. Although the existing pavement of 16 feet would be adequate the studies have indicated that additional space would make traversing this area easier. The retaining walls will include a screening area on the top of the wall extending up 36-40 inches to screen any headlights, including larger vehicles such as a Ford F150 Pickup. An overhead bar or limiting size bar at the entrance to the drive-through will limit any large commercial trucks from using the drive-through, which is consistent to what is already being used throughout the City. The refuse area will be relocated to the north and although it will be smaller, it will still be able to adequately service the property owner needs. Additional landscaping will be added along the north side of the property to supplement the current fence. The relocation of the refuse area will provide better screening and visual enhancement to the property. The front elevation will be flattened out and will provide a handicapped stall to include striping and a ramp to comply with ADA standards. Green stated that once the landscaping is improved and the outdoor seating is complete, this will provide a better scenic overlook off the south face of the building. This will allow residents to dine outside and take advantage of the new Houston Street gateway. The traffic analysis showed adequate parking for the site. Some of the fuel bays may also offer additional parking or vehicle storage area. There are currently paved areas on the north and south ends of the site that will be striped to code and show off the proposed landscaping. The property owner, as well as members of the team, have reached out to the neighbors to the north as well as other residents in the area and have submitted a petition in support of the project. Although many of the items on the site have been there for many years and are grandfathered in, the capital improvements of this project has the potential to expand the tax base back to 2005-2006 levels. Green noted that they are agreeable to many of the recommended changes and encourages a vote. They need a recommendation one way or the other in order to move forward. Expect that this project should add 12-15 additional jobs. There is a snow plow removal plan and if necessary, have the snow hauled off premises. Green space along Houston Street and to the north of the property will be utilized for snow removal. Storm water improvements will include additional catch basins and connection to the recent Houston Street infrastructure improvements.

Joseph Kohn, Parent Petroleum, St. Charles, Illinois – Stated he is the vendor for the fuel supply for this business and they provide fuel to over 300 gas stations within the Chicagoland area. Parent Petroleum became involved with this business approximately 2 years ago when it was sold by Gas Mart. When they first became involved, they noted that the site was built poorly and was run poorly generally because the owner/operator was interested more in making the lease payments than making a successful business. Kohn stated that Parent Petroleum is a strong support of the small business. Every one of their customers is a small business. When they saw the project being branded Shell, they were relieved because being based in St. Charles, they want the suburb business. They have many prime locations on Randall Road and they want to see the suburbs come back to life and succeed especially the Randall Road and Route 31 corridors. He believes that the

success of the Randall Road corridor has taken away from that small business feel. One of the most frustrating things they see in their business going forward is the fact of joint ventures of business such as Circle K and Shell or the large Speedways. The one consistency seen in these ventures are the large sites with multiple profit centers. The days of a 1000 sq. foot convenience store with 3 or 4 pumps outside does not work in the suburbs. It works in the inter-city neighborhoods of Chicago, but not in the suburbs. There is too much competition and too many choices. When Harry (Mehta) was able to buy the property from the 2 previous owners, they saw an individual who knew how to operate a convenience store and what it would take to get it to its full potential. Currently, the potential of the site has maxed out and it cannot go any further. Dunkin' Donuts is an opportunity to try to increase the business, increase the small business traffic and essentially improve the business in the downtown Batavia area. Kohn noted that they brand a lot of gas stations and they just branded a station in the historic district of St. Charles that had a similar issue with the canopy. It is a backlit canopy, which means there is no light which intrudes out. It only highlights and shines a little bit of a yellow color. If the members would like to see an example of this lighting, Kohn invited them to the location at Fourth Street and Main in St. Charles. Kohn thanked everyone for their time.

Jim Duerr, Dunkin' Donuts – Stated that Harry (Mehta) approached them about the site. One of the reasons they (Dunkin' Donuts) is drawn to the site is that there is going to be a significant amount of money into improvements. Dunkin' Donuts has spent in excess of \$500,000 before upgrading a site and interior with all the equipment to do the buildup. Dunkin' Donuts believes they have the potential to generate an estimated \$1.2M in sales once this store is stabilized. They are proud to be part of this development and working with Harry. They have worked with landlords who make no improvements to their property.

Tom Brown stated that he has lived in the property to the north of this site since September 2011 and rents from the owner, Jim Warwick. Since they have lived here, there have been 3 (gas station) owners. Brown stated that he and his wife love downtown Batavia and take advantage of everything they can. As long as Harry (Mehta) has been the owner, he has been a good neighbor. Mr. Brown stated he has had an opportunity to read the plan and it sounds like a good plan. As a tenant, however, he would like to point out (fan of Dunkin' Donuts) some concerns such as when they first moved in, the hours of operation were from 6 a.m. to 10 p.m. Just before the previous owner left, the hours of operation were from 4:30 a.m. to midnight. He is concerned if these hours are going to remain, and if it will be an all night drive-thru. He is unsure if there are any ordinances governing this. There has been talk about the deliveries being done off-hours. The garbage is picked up around 5 a.m., Coke delivers at 5 a.m., gas may be delivered at any time. Yesterday (01/19/16) it was 6 p.m. He is concerned about deliveries and the fuel trucks being able to turn. What the plans don't show is that the fuel trucks don't actually pull in and turn. It pulls in and parks to unload fuel. It pulls up to the sidewalk and in order for it to leave, it has to backup and when it turns, it utilizes all the parking spaces. If there are vehicles parked in these spaces, the fuel truck has to wait. Sometimes, the fuel trucks back in off of Route 31. When this occurs, there is a backup of traffic on Route 31 from McKee to Houston. There is also a school bus drop off next door. There is pedestrian traffic in addition to whatever traffic will be added. He requested more information about the trees being proposed. Basic concerns are deliveries during the day and operating hours. He doesn't want to see 4:30 a.m. to midnight with deliveries all day and night. The garbage pickup and Coke deliveries are actually 23 feet from Brown's bedroom and with a garbage enclosure half the size, this could result in additional pickups during the week. He inquired if this could mean 2 or 3

pickups during the week. Inquired where 12-15 additional employees would be parking. He believes that with the more fuel efficient vehicles, this can also be a contributing factor to the drop off in fuel consumption. Voiced concerns about the trees being used in the landscaping again. Noted that they have a patio out back and enjoy sitting out there in the summertime, which is right along the property line. He inquired if the vacuum machine would remain. (It was noted that this machine will remain).

Harry Mehta, owner/operator of the Shell gas station, noted that Mrs. Linda Brown worked for him for approximately a year. He further noted that he employs residents of Batavia. He stated that if anyone had any questions about the site plan, he would be more than happy to go over everything with them. Mehta noted that not all of the 12-15 employees would be working at the same time. At peak times, they could have as many as 4-6. Currently there are 2 employees working at any given time. Mehta has requested that deliveries be made after 10 a.m. (after the morning rush). He noted that this station has been in business for over 30 years and have been getting fuel deliveries at all times. Mehta has requested that Parent Petroleum conduct fuel deliveries between the hours of 10 p.m. and 12 a.m. They will monitor the situation to determine if this is an appropriate time frame.

LaLonde inquired about additional refuse pickup times. Mehta stated that additional pickups may be necessary; it will depend on the size of the container. A smaller container is being proposed to fit in a smaller enclosure.

LaLonde inquired about landscaping details. Green stated that the proposed landscaping supplements the existing green-wall type landscaping that currently exists along the north property line. The first 2 stalls will have some arbor type screening. Five (5) additional arbor binding type plant materials will be used in front of the refuse enclosure. Immediately behind the refuse area and extending along the balance of the north property line are 4 more proposed trees. These will be planted to the City standards so they have an opportunity to mature and grow. Discussion continued on the plantings. It was noted that the fence is owned by the neighbor to the north. The area around the order board and along Houston Street is designed to enhance the newly constructed bike lane. Green stated that they have agreed to construct a new retaining wall with a concrete stamped pattern and will provide a means for public art to be displayed on the wall. Felt this was a nice feature as a welcome to Houston Street, welcome to Batavia, you have arrived. Green noted that the outdoor seating is located on the south/east corner of the building, north of the drive-thru. It is about 10 feet wide and 18-20 feet long. The bike rack is just adjacent to the outdoor seating. Curbing and decorative fencing will be added for safety. There are a set of double glass doors that will provide direct access to the outdoor seating. Customers will not have to traverse around any of the drive-thru lane to get to the seating area. Green noted they want to be a bicycle and pedestrian friendly business. Discussion continued on the size of the refuse enclosure and the amount of pickups that will be required.

Jim Warwick, owner/landlord 118 N. Batavia Avenue, stated he was completely opposed to the building of a Dunkin' Donuts drive-thru for a variety of reasons:

- 1) The tenants' bedrooms all front the gas station. The drive-thru will create more light, noise, traffic and pollution for his 3 tenants. The current owner has extended his business hours without consulting them, which affects his tenants' ability to sleep. He was informed by the owner that should they get the Dunkin' Donuts drive-thru, the hours of operation will

increased with the business opening even earlier (4:30 a.m.) and doesn't believe the owner will close the drive-thru at 8:30 p.m. He stated his tenants have the right to sleep in peace and quiet and darkness, and noted he bought this property because the business closed at 9 p.m. and opened at 6 a.m.

- 2) The refuse will be moved from the back of the property to the middle of the property along the fence line and only 5 feet from the property line. He is unsure if this meets City Code. He is concerned that the new refuse container will be smaller than the current container and that there will be an increase in its use and believes it will either be built bigger than shown or have to be emptied all the time. The dumpster will be moved from entire shade to full sunlight. The food products will attract raccoons, opossums, rats, mice, bugs, etc. The tenants will have to put up with the smell of rotting food and grease in the hot sun. The enclosure will be lined up with the property's backyard and will be seen over the top of the fence. The smells will make it unpleasant for the first floor tenants to enjoy their patio area, barbeque and gardening that they have been accustomed to. The second floor tenant, with a spectacular view of the Fox River and historic buildings, will have to see the top of the dumpster all the time. The smells will make it unpleasant to enjoy a deck party. The garbage trucks doing pickup will be extremely noisy right next to the tenant's bedrooms. With a dumpster located right along the fence, no one will want to rent his apartments any longer. His apartments will go from desired, to undesirable.
- 3) The owner plans to build 3 parking spaces along his fence line, which will be located right next to the tenant's bedrooms. Not only will it be an invasion of privacy, there will be noise from the cars turning on and off and radios.
- 4) Cars will leave the drive-thru from the back of the store and build up speed while driving along the fence. His fence, built for privacy, is built all the way to the sidewalk. People walking or cycling are going to get hurt or killed traveling from his property line to the Shell station because cars won't see them approaching from around the fence.
- 5) If the owner wishes a Dunkin' Donuts business, he should be encouraged to build it on the vacant Hardee's property. It has all the infrastructure needed.
- 6) The property north of the Hardee's property is a business. The property north of the Shell is a residence. A business the size of a Dunkin' Donuts should not be allowed next to a residence.
- 7) The Shell station is planned for 12 spaces plus 1 handicapped space. He is concerned about where the snow will be stored. How are the plows going to get around the drive-thru? He is concerned the 6 parking spaces on the side will become giant snow mounds. He is worried the decorative fence will be destroyed from snow plows and storage. Employees will have to park in the customer spots when the other spots are filled with snow. There is not enough parking. He is concerned about big trucks parking in front of his 2-flat, illegally, and making noise.
- 8) He has owned the property for 10 years. The owner of the Shell gas station has only been there for 2 years. This should matter for something.
- 9) The proposed concept plan makes the 2-flat look tiny and insignificant. This is deceptive. His property should be shown in full detail. The bedrooms, 2nd floor deck and 1st floor patio are not shown on these plans.
- 10) He encourages the members of the committee to take a tour of his property before any decisions are made, and doesn't believe this project has been thought through and stated that negatives far out way the positives. Thanked everyone for their time.

Angela Febles, 212 N. Van Buren Street, stated she was new to Batavia and commended the owner for the investment in the business and the efforts they are making to improve their property. However, there is a bit of a conflict with the neighbors next door. She appreciates the opportunity to speak. From an environmental aspect, she has a son with asthma, and is concerned with the additional traffic. This is an area where individuals are encouraged to walk and exercise and this proposal is looking to increase traffic. She is unaware of any other downtown areas that have a gas station so close to residential. She wants the Committee to consider the aesthetics and the population of the community that would support this proposal.

Duerr noted that Dunkin' Donuts does not build walk-up only stores in this area. Walk-in only locations are located at train stations, downtown Chicago CTA stops, etc. They don't work in the suburbs. The current desire is for a drive-thru facility and 2/3 of their business is done by way of a drive-thru. If there is no drive-thru, there will not be a Dunkin' Donuts. It was further noted that donuts would be delivered once a day to this location. There would not be any donut making at this site. Duerr reported that Dunkin' Donuts has no intention of having poor sanitation on the site. If additional pickups are required as business increases, this will be done. They are consistently inspected at all their locations. Employees are instructed in proper sanitation. Green stated that they are open to other locations for the refuse. He further noted that it will be an upgraded and masonry enclosed structure.

Mehta stated that they have made changes to the plan to help buffer the noise, parking is as it has always been, safety is always a major concern, the site isn't making enough money as it is, and he is willing to work with the site plan, etc.

Discussion continued about the site always being difficult, especially with the topography, and businesses not doing well on this site; traffic concerns; the applicant only visioning 2 variances and there now being 9; working constructively with everyone involved; what it takes for this site to be viable; pushing the retaining wall further out; snow removal plan; drive-thru designed to standards; single lane drive-thru; etc.

Don Gregory, 124 N. Batavia Avenue, voiced concerns about the trash that is consistently left in his yard from patrons of the Shell. Patrons get drinks, candy, and cigarettes from the convenience store and leave that trash in his yard as they walk by. This includes a number of cigarette butts and candy wrappers. Burger King promised to keep the area clean, but it didn't happen. Smell of gasoline and noise from Batavia Avenue is a great concern. Batavia Avenue is so noisy, they cannot use their front porch.

Motion: To close the public hearing

Maker: Joseph

Second: Harms

Voice Vote: 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

The public hearing was closed at 9:12 p.m.

Motion: To conclude the Findings for the variance to Section 4.205.E – to allow a drive through business less than 50 feet from property designated for residential use as recommended by Staff as follows: Findings A, B & D can be met and Findings C & E cannot be met.

Maker: Schneider

Second: Harms

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To recommend to City Council approval of the variance to Section 4.205.E – to allow a drive through business less than 50 feet from property designated for residential use.

Maker: Schneider

Second: Joseph

Roll Call: Gosselin – Nay, Harms – Nay, Joseph – Nay, LaLonde – Nay, Peterson – Nay, Schneider – Nay. 0 Ayes, 6 Nays, 0 Absent. Motion failed.

Motion: To conclude the Findings for the variance to Section 4.506 – to allow a drive through aisle to be at least 100 feet away from residentially designated property – as recommended by Staff as follows: Findings A, B & D can be met and Findings C & E cannot be met.

Maker: Joseph

Second: Peterson

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To recommend to City Council approval of the variance to Section 4.506 – to allow a drive through aisle to be at least 100 feet away from residentially designated property.

Maker: Peterson

Second: Joseph

Roll Call: Gosselin – Nay, Harms – Nay, Joseph – Nay, LaLonde – Nay, Peterson – Nay, Schneider – Nay. 0 Ayes, 6 Nays, 0 Absent. Motion failed.

Motion: To conclude the Findings for the variance to Section 4.209.A.1 – to allow a drive through lane less than 20 feet wide – as recommended by Staff as follows: Findings A, B, D & E can be met and Finding C cannot be met.

Maker: Joseph

Second: Peterson

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Nay, Peterson – Aye, Schneider – Aye. 5 Ayes, 1 Nays, 0 Absent. Motion carried.

Motion: To recommend to City Council approval of the variance to Section 4.209.A.1 – to allow a drive through lane less than 20 feet wide.

Maker: Joseph

Second: Peterson

Roll Call: Gosselin – Nay, Harms – Nay, Joseph – Nay, LaLonde – Aye, Peterson – Nay, Schneider – Nay. 1 Aye, 5 Nays, 0 Absent. Motion failed.

Motion: To conclude the Findings for the variance to Section 4.407.B.1.e(2) – to allow an increase in wall sign area up to an additional 41 sq ft on the south wall and up to 46 sq ft on the west wall with condition of no added illuminated elements to the north canopy edge – as recommended by Staff as follows: Findings A, B, C, D & E can be met.

Maker: Joseph

Second: Peterson

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To recommend to City Council approval of the variance to Section 4.407.B.1.e(2) – to allow an increase in wall sign area up to an additional 41 sq ft on the south wall and up to 46 sq ft on the west wall subject to the condition of no added illuminated elements to the north canopy edge.

Maker: Joseph

Second: Schneider

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To conclude the Findings for the variance to Section 4.407.B.2.a(3) – to allow a monument sign area in excess of the allowed 32 sq ft by adding approximately 27 sq ft to existing sign – as recommended by Staff as follows: Findings A, B, C & D cannot be met and Finding E can be met.

Maker: Joseph

Second: Peterson

Roll Call: Gosselin – Aye, Harms – Nay, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 5 Ayes, 1 Nays, 0 Absent. Motion carried.

Motion: To recommend to City Council approval of the variance to Section 4.407.B.2.a(3) – to allow a monument sign area in excess of the allowed 32 sq ft by adding approximately 27 sq ft to existing sign.

Maker: Joseph

Second: Gosselin

Roll Call: Gosselin – Nay, Harms – Nay, Joseph – Nay, LaLonde – Nay, Peterson – Nay, Schneider – Nay. 0 Aye, 6 Nays, 0 Absent. Motion failed.

Consensus of the members was that if the City Council feels additional sign area is appropriate, the Council should require the sign to be lowered to not exceed 8 feet to allow more sign area. The sign would be set back to allow for visibility of Batavia Avenue.

Motion: To conclude the Findings for the variance to Section 4.407.B.2.f(3) – to allow canopy sign elements to project more than 2 inches from the canopy edge with the

condition of no added illuminated elements to the north canopy – as recommended by Staff as follows: Findings A, B, C, D & E can be met.

Maker: Joseph

Second: Peterson

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To recommend to City Council approval of the variance to Section 4.407.B.2.f(3) – to allow canopy sign elements to project more than 2 inches from the canopy edge with the condition of no added illuminated elements to the north canopy.

Maker: Joseph

Second: Gosselin

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To conclude the Findings for the variance to Table 4.205.A – to allow parallel parking stalls to be 9 ft wide and perpendicular spaces to be 18 ft long – as recommended by Staff as follows: Findings A, B, C, D & E can be met with the following conditions: 1) Additional landscaping be added adjacent to the north parking spaces; 2) A curb be added to the west end of the north parking area, extending west to meet the Batavia Avenue sidewalk; 3) That the area south and west of the west end curb for the new south parking spaces be suitably landscaped.

Maker: Joseph

Second: Peterson

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To recommend to City Council approval of the variance to Table 4.205.A – to allow parallel parking stalls to be 9 ft wide and perpendicular spaces to be 18 ft long with the following conditions: 1) Additional landscaping be added adjacent to the north parking spaces; 2) A curb be added to the west end of the north parking area, extending west to meet the Batavia Avenue sidewalk; 3) That the area south and west of the west end curb for the new south parking spaces be suitably landscaped.

Maker: Peterson

Second: Schneider

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Jon Green, President Engineering Resource Associates, Warrenville, Illinois, formally withdrew the applicant's request for a variance to Table 4.204 – to allow 12 parking spaces where 13 are required.

Motion: To conclude the Findings for the variance to Section 3.303.B – to omit landscaping within 50 ft of Batavia Avenue with the condition that the area south and west of the west end curb for the new south parking spaces be suitably landscaped, including a

tree, with design review approval – as recommended by Staff as follows: Findings A, B, C, D & E can be met.

Maker: Joseph

Second: Gosselin

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To recommend to City Council approval of the variance to Section 3.303.B – to omit landscaping within 50 ft of Batavia Avenue with the condition that the area south and west of the west end curb for the new south parking spaces be suitably landscaped, including a tree, with design review approval.

Maker: Peterson

Second: Gosselin

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To conclude the Findings for the variance to Section 4.203.Q – to allow wheel stops – as recommended by Staff as follows: Findings A, B, C, D & E can be met.

Maker: Joseph

Second: Gosselin

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Motion: To recommend to City Council approval of the variance to Section 4.203.Q – to allow wheel stops.

Maker: Joseph

Second: Gosselin

Roll Call: Gosselin – Aye, Harms – Aye, Joseph – Aye, LaLonde – Aye, Peterson – Aye, Schneider – Aye. 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

Strassman noted that the public hearing is closed so the Members would have to consider the Conditional Use as presented. Discussion continued on options available for the Conditional Use as well as Design Review. The following Members noted that they could find in favor of this Plan and/or not necessarily against it with some additional improvements: Gosselin & LaLonde. The remaining Members (Joseph, Harms, Peterson, Schneider) were not in favor. Discussion continued on whether or not to send the Plan back to the applicant or move forward with the conditional use.

Motion: To conclude the Findings for the Conditional Use to allow a drive through on this site as presented by Staff, Findings 1, 2, and 4 cannot be met and Finding 3 can be met.

Maker: Schneider

Second: Joseph

Roll Call: Gosselin – Nay, Harms – Aye, Joseph – Aye, LaLonde – Nay, Peterson – Aye, Schneider – Aye. 4 Ayes, 2 Nays, 0 Absent.

Motion: To recommend to City Council approval of the Conditional Use to allow a drive through on this site.
Maker: Schneider
Second: Joseph
Roll Call: Gosselin – Aye, Harms – Nay, Joseph – Nay, LaLonde – Aye, Peterson – Nay, Schneider – Nay. 2 Ayes, 4 Nays, 0 Absent. Motion failed.

Discussion was held on options for the Design Review, City Council approval, Appeal process, procedure for moving through the process, etc.

Motion: To continue the Design Review of the Shell/Dunkin’ Donuts to the February 17, 2016 Plan Commission Meeting.
Maker: Joseph
Second: Harms
Voice Vote: 6 Ayes, 0 Nays, 0 Absent. All in favor. Motion carried.

ADJOURNMENT

There being no further business, a motion was made by Gosselin to adjourn the meeting at 10:10 p.m. Seconded by Schneider. All in favor. Motion carried.

Ayes 6 Nays 0 Absent 0

The meeting was adjourned at 10:10 p.m. The next meeting will be held Wednesday, February 17, 2016.

Respectfully submitted,

Cheryl A. Shimp, Recording Secretary