

ORDINANCE NO. F- 1471

AN ORDINANCE AMENDING CITY OF WHEATON ORDINANCE NO. E-3972 "AN ORDINANCE AMENDING THE WHEATON ZONING MAP AND GRANTING A SPECIAL USE PERMIT FOR PLANNED UNIT DEVELOPMENT ON A CERTAIN PIECE OF PROPERTY COMMONLY LOCATED AT THE NORTHEAST CORNER OF EAST LOOP ROAD AND BUTTERFIELD ROAD GRADY'S/COZYMEL'S RESTAURANTS" - CHICK-FIL-A

WHEREAS, The City of Wheaton, Illinois, ("City"), has previously enacted City Ordinance Nos. E-3972 ("Original Ordinance") recorded on May 2, 1994 as Document No. R94-100840 in the Office of the DuPage County Recorder which granted a special use permit for a planned unit development to allow the construction and use of two (2) restaurants, on the subject property described in the Original Ordinance; and

WHEREAS, application has been made to amend the special use permit for planned unit development approved in the Original Ordinance in order to demolish the existing restaurant on the property commonly known as 301 East Loop Road and legally described herein ("Subject Property") in order to construct a new restaurant with a drive-thru lane; and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton Planning and Zoning Board on January 12, 2010, to consider the issuance of the special use permit; and the Board has recommended the issuance of the special use permit for planned unit development.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The following described property has been and continues to be zoned and classified in the C-5 Planned Commercial District zoning classification:

LOT 1 IN DANADA FARMS EAST UNIT 4, BEING A RESUBDIVISION OF LOT 11 IN THE DANADA FARMS EAST UNIT 1, BEING A SUBDIVISION OF PART OF SECTION 28 AND THE NORTH HALF OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 10, 1996 AS DOCUMENT R96-0858160, IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 05-28-403-028

The subject property is commonly known as 301 East Loop Road, Wheaton, IL 60189.

Section 2: Pursuant to the Findings of Fact made and determined by the Planning and Zoning Board, a special use permit is hereby issued on the Subject Property to allow the construction of a 4,429 square foot restaurant with a single drive-thru lane, in full compliance with the plans entitled "Preliminary Engineering Plans, Landscape Plan, Vehicle Stacking, Sheets

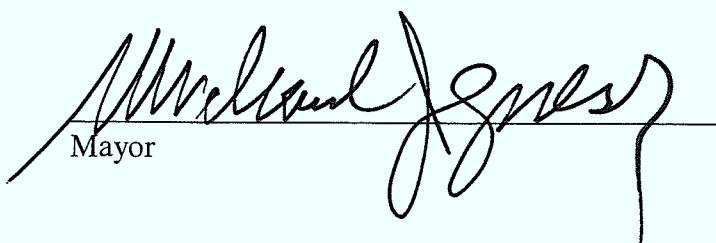
C-0.0, C-0.1, C-1.0, C-2.0, C-3.0, C-4.0, LP-1.0, EXH, prepared by Woolpert, Oakbrook Terrace, IL, dated, December, 2009; Site Plan, Sheet SP-1.0, prepared by Woolpert, Oakbrook Terrace, IL, dated December 2009, Revised January 14, 2010; Exterior Elevations, Floor Plans, Refuse Enclosure, Sheets A-2.1, A-2.2, A-1.1, A-3.4, prepared by E & H Architects, Brentwood, TN, dated December 3, 2009"; and in further compliance with the following conditions, restrictions, and requirements:

1. The proposed sidewalk and patio area shall be constructed with permeable pavers.
2. Prior to the issuance of an occupancy permit, the applicant shall submit a report to the City outlining what environmentally friendly practices were incorporated into the demolition and construction of the project.
3. The landscaping plan shall be revised to include additional screening around the perimeter of the trash enclosure.
4. The Developer shall enter into a Fire Lane Designation and Enforcement Agreement with the City in substantial compliance with Exhibit "A".
5. The demolition of the existing structures on the Subject Property shall be authorized by this Ordinance. Demolition of said structures, however, shall be carried out in conformance with Wheaton City Code Chapter 22, Article XIV, with the exception that the Developer shall not be required to wait 30 days prior to commencing demolition from the date of submitting a demolition permit application to the Building and Code Enforcement Department, and shall not be required to hold a "neighbor meeting" at least 30 days prior to submitting an application for building demolition.

Section 3: In all other respects, the terms and conditions of the original ordinance are ratified and remain in full force and effect.

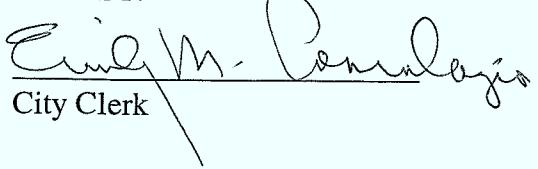
Section 4: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 5: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



Michael Jones
Mayor

ATTEST:



Cindy M. Ronzagno
City Clerk

ROLL CALL VOTE:

Ayes: Councilman Scalzo
Councilman Suess
Councilwoman Corry
Mayor Gresk
Councilman Levine
Councilman Mouhelis
Councilman Prendiville

Nays: None

Absent: None

Motion Carried Unanimously

Passed: February 1, 2010
Published: February 2, 2010

EXHIBIT "A"

FIRE LANE DESIGNATION AND ENFORCEMENT AGREEMENT

(INSERT LEGAL(S) AND P.I.N(S))

RECITALS

WHEREAS, the OWNER(S) desire to establish Fire Lanes upon the Subject Property to improve the health and safety of the citizens of Wheaton; and

WHEREAS, the CITY believes that it is in the best interests of the public health and safety that Fire Lanes be established, maintained and enforced upon the Subject Property.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the OWNER(S) and CITY agree to the following in regards to the Subject Property:

1. The CITY Fire Chief, Chief of Police or their designated representative and OWNER(S), shall identify the specific Fire Lane locations within the Subject Property which shall, pursuant to the terms of this Agreement and Ordinance No. be regulated. The specific locations of the Fire Lane(s) to be enforced shall be as set forth on the Site Plan ("Plan") attached hereto and fully incorporated into this Agreement as Exhibit " ". The CITY Fire Chief, Chief of Police or their designated representative and OWNER(S) or designated representative may from time to time mutually agree to amend the Fire Lane(s) location(s) as set forth in the Site Plan. At such time, the Site Plan shall be amended and appended to this Agreement as an Amended Exhibit " ".
2. The OWNER(S) are responsible for providing any required pavement markings.

3. The OWNER(S), at their sole expense, shall be responsible for obtaining, erecting and maintaining the appropriate signage in accordance with applicable CITY and State of Illinois regulations and specifications.

4. The CITY shall inspect and approve the signage prior to entering into this Agreement. The CITY Fire Chief, Chief of Police or their designated representative may require additional signage and/or pavement markings, if it is later determined that the inspected and approved signage does not provide adequate notification of the established fire lanes.

5. Upon execution of this Agreement, the CITY will enforce the Fire Lane parking and standing prohibitions and the Fire Lane maintenance requirements contained in Sections 70-355 and 30-2 of the Wheaton City Code in regards to the Subject Property. No "special duty" to third persons shall be imposed by this Agreement. The CITY's enforcement obligation shall be legally the same as it is with all other ordinances.

6. This Agreement may be terminated by either party by providing not less than thirty (30) days notice to the other party of the intention to terminate this Agreement.

7. This Agreement shall be assignable by OWNER(S) to their successors in interest upon the sale or lease of the Subject Property.

8. The OWNER(S) hereby agrees to release and hold harmless, indemnify and defend (including the payment of all costs and attorneys' fees) the CITY, its Officers, Agents and Employees, in connection with any and all actions or claims for any loss, damage, personal injury or death occurring as a consequence of the performance of this Agreement.

9. The sole remedy available to the OWNER(S), upon any breach of this Agreement by the CITY, shall be the termination of the Agreement. It is of the essence of this Agreement that the CITY shall not be liable in money damage for any breach of this Agreement.

10. Whenever notice to the CITY is required, it shall be addressed to:

City Clerk
City of Wheaton
303 West Wesley Street
Wheaton, IL 60189-0727

Whenever notice to the Owner is required, it shall be addressed to:

IN WITNESS WHEREOF, the parties hereto have executed this instrument by their duly authorized officers of the day and year first above written.

CITY OF WHEATON, ILLINOIS, a Municipal Corporation

BY: _____
City Manager

ATTEST: _____
City Clerk

BY: _____

ATTEST: _____

BY: _____

ATTEST: _____

EROSION CONTROL NOTES

GRADING NOTES

ITY NOTES

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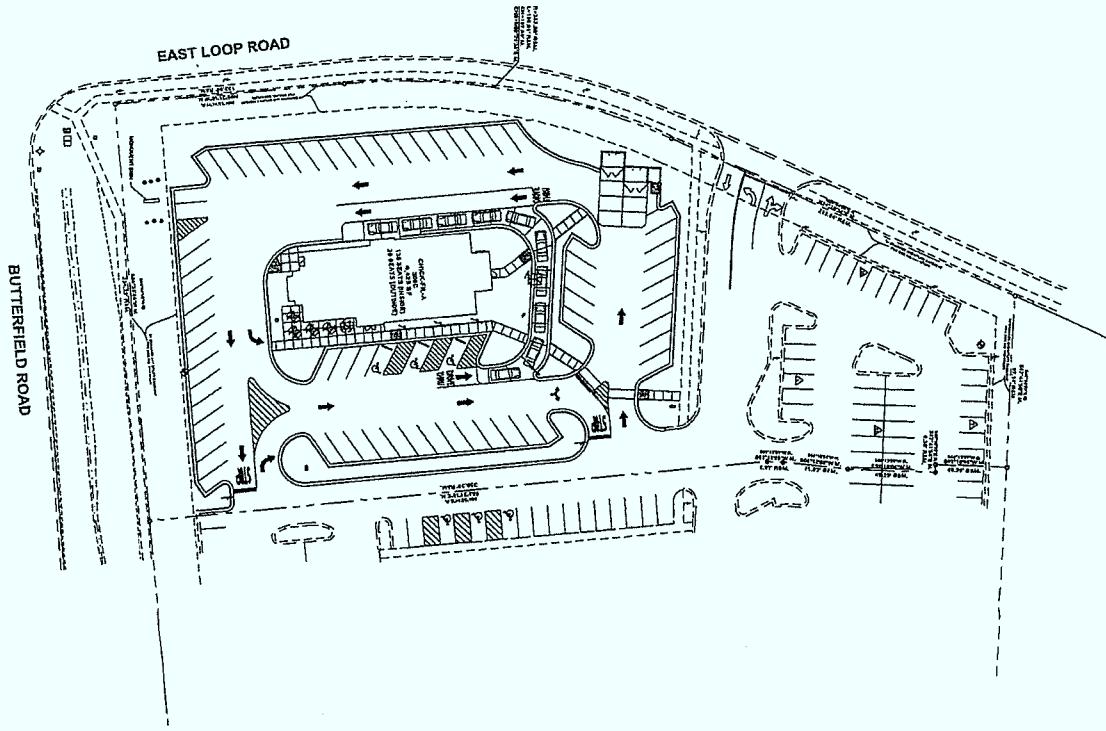
WARNING

NO SMOKING

PERMIT

REMOVED

PERMIT



GRAPHIC SCALE IN FEET

EXH

EDG: SECTION 07.1
REVISION

Job No.: 020272

Sheet No.: 224

Date: 12/09/09

Drawn By: EAU

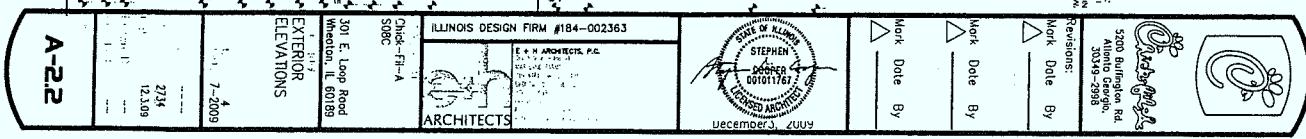
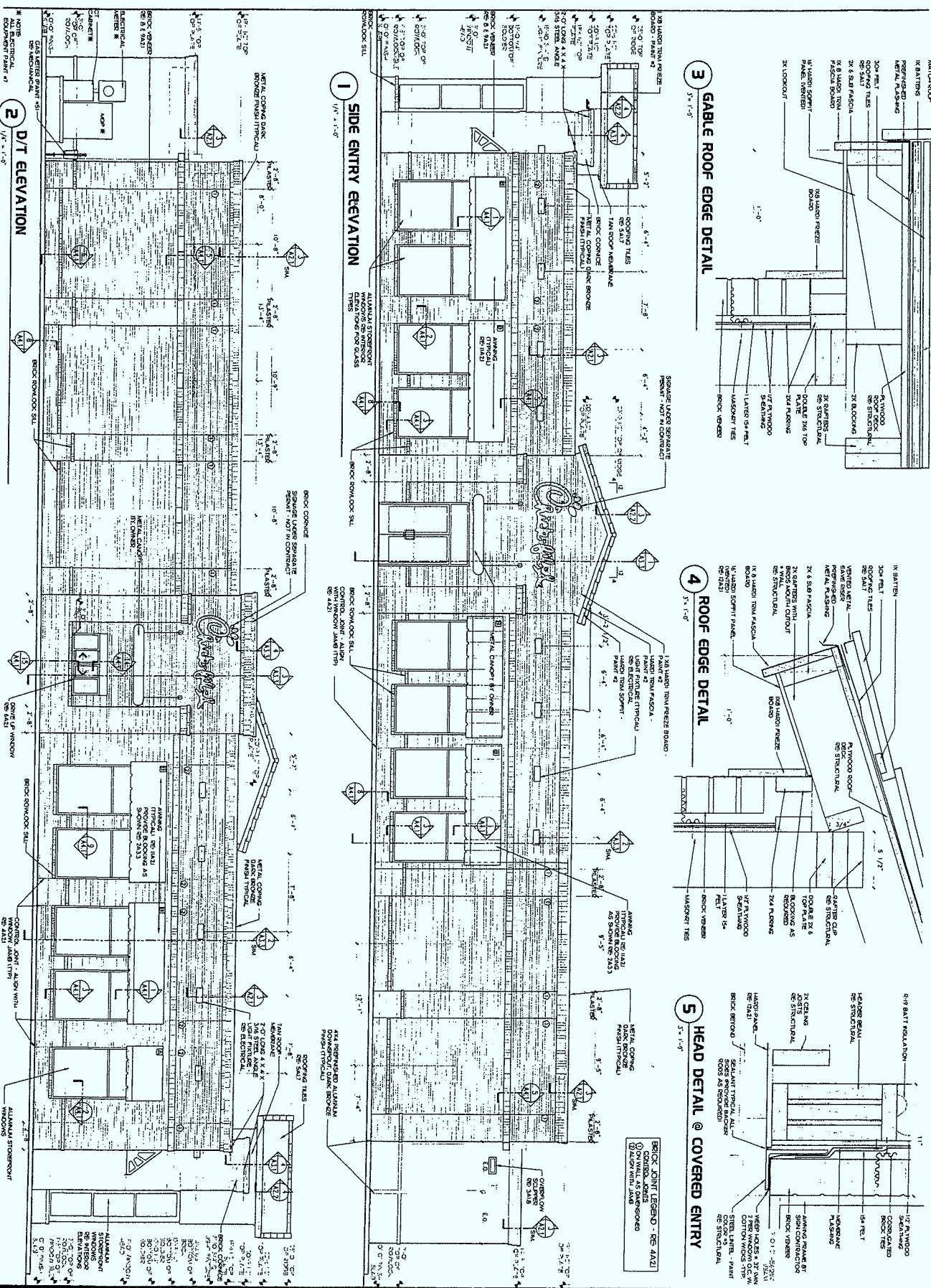
Checked By: JMH



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