

LETTER OF INTENT AND SUP JUSTIFICATIONS

2535 Briarcliff Road

The applicant is requesting a special use permit on the 0.836 acre property located at 2535 Briarcliff Road to permit the redevelopment and continued use of the property with a drive-thru facility as a part of a restaurant use. The property is currently developed with an existing restaurant and drive-thru facility and the applicant is proposing to reuse the existing improvements for a new drive-thru restaurant. The existing drive-thru facility does not have the required special land use permit and the applicant is seeking to bring the site into compliance with the code requirements with this request. Access to the property will be provided via Briarcliff Road and through a private access easement with the adjacent property to the north. Parking on the site will be accommodated via an existing surface parking lot.

Concurrent with the special use request, the applicant is also filing an application for a concurrent variance. The applicant is requesting a variance from Section 27-855 that requires a bypass lane for drive throughs.

1. Whether the proposed use is consistent with the comprehensive plan and other adopted policies of the city;

The zoning proposal is in conformity with the policy and intent of the comprehensive plan. The property is located in the Briar Hills Innovation District Character Area. Appropriate land uses in the Briar Hills Innovation District Character Area include neighborhood commercial and retail uses. The proposed redevelopment of the property is directly aligned as it includes a restaurant with drive-thru use which is a neighborhood commercial use. The proposed use of the property is already existing on the property and has been for decades prior. The purpose of this application is to allow the redevelopment and re-use of the existing improvement on the property.

2. Whether the proposed use complies with the requirements of this zoning ordinance;

The proposed use of the property generally complies with the requirements of the zoning ordinance. The restaurant use is permitted by right and the drive-thru is permitted only through a grant of a special use permit, which is the impetus of this request. The property as a whole will comply with all other requirements of the ordinance.

3. Whether public services, public facilities and utilities are adequate to serve the proposed use;

The property is located in a largely developed area. Existing utilities, public services and public facilities are adequate to support the proposed development.

4. Whether the proposed use will create adverse impact upon any adjoining land use by reason of:

- a. Noise, smoke, odor, dust or vibration generated by the proposed use;**
- b. Hours of manner of operation of the proposed use; and**
- c. Traffic volumes generated by the proposed use;**

No adverse impacts will be created by the proposed use on any adjoining land use. The proposed drive-thru restaurant use will not create any noise, smoke, odor, dust or vibration of any significance. The operation of the proposed use will be similar to that of the existing and prior use

of the property but with enhanced and improved operations. The trip generation and traffic volumes generated by the proposed use will not significantly impact adjoining land uses beyond the traffic volumes already existing.

5. Whether the proposed use would result in an over-concentration of the subject use type within the area of the proposed development;

As mentioned above, the property contains an existing restaurant with drive-thru use. The proposed use of the property is a continuation of that existing use and no additional drive-thru use is being added to the current number of uses in the area. While there are other restaurants with and without drive thru uses in the immediate area there will not be an over-concentration of the use type.

6. Whether the aesthetic and architectural design of the site is compatible with the intent and requirements of the comprehensive plan, the character area study, and all applicable zoning ordinance regulations; and

The aesthetic and architectural design of the site is compatible with the intent and requirements of the comprehensive plan and character area as shown on the enclosed elevations.

7. Whether the proposed use is compatible with adjacent properties and land uses, based on consideration of the size, scale and massing of proposed buildings and the overall site plan.

The property is located in an area that is populated by various office uses, retail, restaurants and other commercial developments. The zoning proposal will accommodate the redevelopment of the property with a use that is suitable in view of the use and development of adjacent and nearby properties. The proposed size and scale of the development is compatible with the adjacent properties on the east and west sides of the property.

CONCURRENT VARIANCES JUSTIFICATION

1. The grant of the variance will not be detrimental to the public health, safety or welfare or injurious to property or improvements;

The variance is requested primarily due to the shape and existing improvements on the property. The applicant is rehabilitating the existing restaurant and drive through on the property, which will result in a new restaurant and drive-through. The location of the drive-through will remain in its current location as it has for the previous few decades without a bypass lane. The variance request to eliminate the bypass lane requirement is not detrimental to the public health, safety or welfare or injurious to property or improvements.

2. The variance request is based on conditions that are:

- a. Unique to the subject property;**
- b. Not generally applicable to other properties in the same zoning district;**
- c. Not the result of the subject property owner's or applicant's actions;**

The variance request is unique to the subject property as this property is significantly limited by the shape, size and existing improvements on the property. The conditions are not generally applicable to properties in the same district as other properties are not similarly improved on a

parcel sandwiched between two larger properties at a corner near an oddly configured intersection. The conditions are not created by the owner's or applicant's actions as the property is being acquired in its current state.

- 3. Because of the particular conditions, shape, size, orientation or topographic conditions, the strict application of the requirements of this zoning ordinance would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners;**

The applicant would be deprived of the property rights of other similarly situated property owners because of the shape and size of the property. The primary limiting factor of this property is the shape. The shape combined with the existing improvements that will largely remain the same creates a particular situation on the property that limits the ability to install a bypass lane. Requiring the strict application of the ordinance on this property relative to the bypass lane would require a total redevelopment of the property that would render the property undevelopable. This would deprive the owner of the property of rights and privileges enjoyed by other similarly situated property owners.

- 4. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other similarly situated properties;**

The existing restaurant including the location of the existing drive through are being repurposed for use by a new restaurant. As mentioned above, the installation of the bypass lane is limited due to the shape and size of the property, which does not provide space sufficient to install a bypass lane. The only variance that could be requested in this situation is a variance to eliminate the requirement altogether. This request reflects the minimum necessary to afford relief while not granting a special privilege inconsistent with the limitations upon other similarly situated properties.

- 5. The literal interpretation and strict application of the applicable provisions or requirements of this zoning ordinance would cause undue hardship or practical difficulty, as distinguished from a mere inconvenience; and;**

The literal interpretation and strict application of the ordinance would go beyond a mere inconvenience and would create a practical difficulty. The proposed redevelopment of the existing restaurant and drive-through would be limited such that the project would not be viable enough to pursue. This would not only create a practical difficulty and impossibility for the applicant but would also undermine the intent of the character area to ensure development of appropriate neighborhood commercial uses.

- 6. The requested variance would be consistent with the spirit and purpose of this zoning ordinance and the comprehensive plan.**

The intent of the zoning ordinance as it relates to this development is to allow for efficient use of land including the ability to undertake infill projects such as the one proposed. Further, and as previously discussed, it is the intent of the comprehensive plan's character area designation for this property that neighborhood commercial uses are included in the mix of uses of this area. The proposed redevelopment is an infill project and is directly aligned with the policy goals and intent of the character area. As such, the requested variance is consistent with the spirit and purpose of the zoning ordinance and comprehensive plan.