

**VILLAGE OF ANTIOCH**

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**ORDINANCE NO. 16-08-20**

***AN ORDINANCE GRANTING A SPECIAL USE FOR A DRIVE-THRU FOR A SUBWAY  
STORE AT TOWNE SQUARE RETAIL CENTER  
(PZB-16-09)***

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**ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES**

**OF THE**

**VILLAGE OF ANTIOCH, ILLINOIS**

**ON**

**AUGUST 1<sup>st</sup>, 2016**

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**Published in pamphlet form by authority of the Village Board  
of the Village of Antioch, Lake County, Illinois,  
this 5<sup>th</sup> day of August 2016**

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LAWRENCE M. HANSON

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**Trustee**

**ORDINANCE NO. 16-08-20**

***AN ORDINANCE GRANTING A SPECIAL USE FOR A DRIVE-THRU AT A SUBWAY STORE AT THE TOWNE SQUARE RETAIL CENTER  
(PZB-16-09)***

**WHEREAS**, pursuant to Chapter 15 of Title 10 of the Antioch Village Code, a public hearing was commenced by the Combined Planning Commission and Zoning Board on June 23, 2016 following notification as required by State Law and Village Ordinance to consider a petition for a Special Use allowing for a drive-thru at a Subway Store at the Towne Square Retail Center after due notice by newspaper publication, pursuant to the application of Robert Ocwieja ("Owner"), at the northwest corner of Route 83 and Route 173.

**WHEREAS**, the Combined Planning Commission recommended approval to the Village Board to allow the operation of drive-thru; and

**WHEREAS**, the Corporate Authorities have concluded and found that the Special Use, subject to and in conformance with the terms and conditions of this Ordinance, conform to a majority of the required standards as required by ordinance, including; a) The compatibility of the proposed use with the existing and planned uses on abutting properties; b) Any increase in density or intensity of the proposed use that will affect the compatibility of the use with existing and planned uses in surrounding area; c) The proposed use will not change the predominant character of the surrounding area; d) The ability to mitigate adverse and understandable impact to the surrounding area, including, but not limited to the individual impacts, air emissions, noise, vibrations, glare, heat, odors, water pollution, electromagnetic interference and other nuisance effects; e) Amount of traffic generated and capacity and design of roadways and available parking facilities to handle anticipated traffic; f) The effect on infrastructure including water, wastewater, stormwater, utilities, and streets; g) The incorporation and integration of architectural and landscape features to mitigate impacts from the proposed use.

**WHEREAS**, the Corporate Authorities have concluded and found that the Special Use will further enhance economic development within the Village and promote the general welfare of the Village and the health, safety and welfare of the residents of the Village.

***NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, LAKE COUNTY, ILLINOIS, AS FOLLOWS:***

**SECTION I:** The representations, recitations and findings set forth in the foregoing recitals are material to this Ordinance and such recitals are hereby incorporated into and made a part of this Ordinance as though they were fully set forth herein. This Ordinance shall be liberally construed so that the purpose and intent represented by the recitals shall be accomplished to the greatest extent permitted by law.

**SECTION II:** That the real estate which is the subject of this ordinance (Subject Property) is legally described as follows: (See attached legal description)



**SECTION III:** That, subject to the conditions stated below, the Special Use shall be and is hereby approved and shall be binding upon the Village, Petitioner and Owner, and their respective owners successors, and assigns when a true execution copy of this Ordinance is tendered to the Village fully executed by the Petitioner and Owner, and when the Mayor has affixed his signature upon the Ordinance:

- A. That the applicant work with staff on some additional landscaping along Main Street to screen the menu board.
- B. Compliance with the requirements of the Antioch Fire Department.
- C. That the stacking of vehicles within this drive-thru be limited to five (5) vehicles and that the applicant shall be prohibited from obstructing any vehicular access drive within the Towne Square Retail Center.
- D. The electronic kiosk intended for ordering and paying for food and drinks shall be dark unless actually in use, and shall not be used for advertising purposes unless a customer is actually using the device.
- E. Failure to comply with conditions C and/or D shall provide the Village Board with the discretion to revoke this Special Use after due notice to the applicant and full consideration by the Village Board.
- F. This Special Use shall lapse in the event the specified tenant for the involved space, ie. Subway of Antioch (or any duly approved successor) shall cease operations at this location.
- G. This Special Use shall not be transferrable to any other location within the legally described premises, and shall not be transferrable as a matter of right to any other operator of a restaurant in the specifically designated space. Rather, the Village Board reserves full right and discretion to approve or disapprove any such proposed transfer to ensure that an expansion of a potentially problematic use does not occur to the detriment of the neighboring property owners.

**SECTION IV:** The following exhibits shall be attached to and made a part of this Special Use Ordinance and, except as expressly modified by this Ordinance, compliance with all standards, requirements, designs or specifications in such exhibits shall be a condition of the grant of this Special Use Ordinance:

- A. Staff Reports, attached as Exhibit A;
- B. PZB Recommendation, attached as Exhibit B.

**SECTION V:** Any person violating the terms and conditions of this Ordinance shall be subject to a penalty not exceeding Five Hundred Dollars (\$500.00) with each and every day that the violation of the Ordinance is allowed to remain in effect being deemed a complete and separate offense. In addition, the appropriate authorities of the Village may take such other action as they deem proper to enforce the terms and conditions of this Ordinance, including, without limitation, an action in equity to compel compliance with its terms. Any person violating the terms of this Ordinance shall be subject, in addition to the foregoing penalties, to the payment of court costs and reasonable attorneys' fees. This section shall not apply to the Village of Antioch, its officials, agents or employees.

**SECTION VI:** If any provision, clause, sentence, paragraph, section, or part of this ordinance or application thereof to any person, firm, corporation, public agency or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this ordinance and the application of such provision to other persons, firms, corporation, or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, or circumstances involved. It is hereby declared to be the legislative intent of the corporate authorities that this ordinance would have been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section, or part thereof not be included.

**SECTION VII:** That the Village Clerk is hereby directed and ordered to publish this Ordinance in pamphlet form as provided by law.

**SECTION IX:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.


**Passed this 1<sup>st</sup> day of August, 2016**

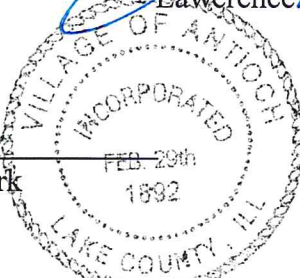
	<b>Ayes:</b>	<b>Nays:</b>	<b>Absent/Abstain:</b>
Scott A. Pierce	X		
Jay Jozwiak	X		
Ted Poulos	X		
Ed Macek			Absent
Mary Dominiak	X		
Jerry Johnson	X		

**APPROVED:**

By:   
Lawrence M. Hanson, Mayor

**ATTEST:**

By:   
Lori K. Romine, Village Clerk



Presented and read, or reading having been waived, at a duly convened meeting of the Corporate Authorities on August 1, 2016

STATE OF ILLINOIS)                    SS  
                               )  
COUNTY OF LAKE )

# CERTIFICATE

I, Lori K. Romine, certify that I am the duly appointed Municipal Clerk of the Village of Antioch, Lake County, Illinois.

I certify that on August 1, 2016, the Corporate Authorities of such municipality passed and approved Ordinance 16-08-20, entitled the applicant to operate a drive-thru at the Subway Store at the Towne Square Retail Center which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 16-08-20, including the Ordinance and cover sheet thereof, was prepared and a copy of such Ordinance was posted in the municipal building, commencing on August 5, 2016 and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Municipal Clerk.

DATED at Antioch, Illinois, this 5<sup>th</sup> day of August 2016

Nari K Romulo

Lori K. Romine, Village Clerk





Trustees  
**Mary C. Dominiak**  
**Jerry T. Johnson**  
**Jay Jozwiak**



Trustees  
**Ed Macek**  
**Scott A. Pierce**  
**Ted P. Poulos**

**Lawrence M. Hanson, Mayor**  
Lori K. Romine, Village Clerk

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**REPORT TO:** VILLAGE PRESIDENT and BOARD OF TRUSTEES  
**FROM:** MICHAEL S. GARRIGAN, Esq, AICP, CNU-A, Community Development Director  
**DATE:** July 14, 2016  
**SUBJECT:** REPORT TO VILLAGE BOARD

**CASE:** Subway (Drive-Thru)  
16-09 SU

**REQUEST:** Special Use

**LOCATION:** 1120 Main Street

**APPLICANT:** Robert Ocwieja

**ZONING:** Community Edge

#### **Background**

The applicant is seeking a Special Use for a drive-thru for the former Walgreen's at the northwest corner of Main Street and Route 83. The subject space has been vacant and the applicant is seeking to convert the end-cap of the Town Square development into a new Subway store with a drive-thru. The Village's Zoning Ordinance requires a drive-thru to obtain a Special Use. The applicant is proposing to use an existing drive-thru window that was previously used by Walgreen's.

#### **Special Use**

The applicant is requesting a proposed drive-thru for this Subway and any drive-thru requires a Special Use. When reviewing any proposed Special Use, it is important to look at the surrounding uses and make sure that the proposed Special Use will not have any negative impact on the adjacent parcels. Therefore, it is necessary to look at the site's context, the nature of the surrounding uses and potential impact that the Special Use will have.

Below is a summary of the surrounding uses:

North: Commercial (Main Street Transitional)  
East: Main Street (Antioch High School)  
South: B-2 (Commercial)  
West: B-2 (Commercial)

In accordance with Section 10-15-5, any proposed Special Use must comply with three findings of facts that are outlined in this section of the Zoning Ordinance. The required findings of facts are as follows:

## ANALYSIS

*a) The compatibility of the proposed use with the existing and planned uses on abutting properties:*

The subject site is a retail center that is adjacent to an existing McDonald's and a KFC store. The subject site is an auto oriented commercial center that contains a high degree of vehicular traffic. The subject retail center previously contained a Walgreens at the eastern end cap of the retail building and the Walgreen's was designed with a drive-thru along the eastern edge of the building.

- Staff does have some concerns that a drive-thru with more than four or five vehicles could have a negative impact on the traffic flow not only within this retail center, but also the McDonald's and KFC stores.

*b) Any increase in density or intensity of the proposed use that will affect the compatibility of the use with existing and planned uses in the surrounding area.*

The major question pertaining to this proposed Special Use for a drive-thru is whether the drive-thru will have a negative impact on safety and the traffic flow within this retail center. As highlighted above, the applicant is proposing to re-use the existing drive-thru that once was used by Walgreen's. Typically, Walgreens have a very low volume drive-thru.

The question is whether the proposed Subway would be similar to the Walgreen's as a low-volume drive-thru or whether it would be creating a traffic issue within this retail center.

*c) The proposed use will not change the predominant character of the surrounding area.*

The proposed Subway drive-thru will have no negative impact on changing the auto oriented character of this existing retail center. The proposed Town Square development will continue to be an auto oriented retail development and the applicant's proposal is consistent with this character of this retail center.

*d) The ability to mitigate adverse and understandable impact to the surrounding area, including, but not limited to individual impacts, air emissions, noise, vibrations, glare, heat, odors, water pollution, electromagnetic interference and other nuisance effects.*

There is nothing to indicate that the propose drive-thru for a Subway would have any negative impact on the surrounding properties with respect to causing a negative impact on the air, heat, glare, odor, or water quality.

*e. Amount of traffic generated and capacity and design of roadways and available parking facilities to handle anticipated traffic.*

The biggest challenge for this proposed drive-thru is the potential impact it could have on the functionality of the traffic flow within this retail center. The Town Square incorporates two full access points on Main Street (Route 83). However, the access point on the north side is generally used for the drive-thru traffic.

Staff is concerned that if there is more than three vehicles in the drive-thru lane would conflict with the main east-west access drive of this retail center and block traffic. The proposed functionality of this drive-thru will not work if there are more than one care behind the menu board or a total of six cares. The applicant has identified stacking for a total of six vehicles. The menu board would provide stacking for only one car before conflict with the main access drive would result from this proposed configuration.

There remains serious concern about the proposed functionality of this drive-thru based on the number of cares stacked in the drive-thru. If there would be more than one car stacked behind the menu board, there would be a conflict of a vehicle blocking the main access drive for this retail center.



There is a significant amount of vehicular conflict already between this retail center and the existing McDonald's at the subject site. If there are more than six cars using this drive-thru, there would be the potential of safety issues pertaining to this request.

*f. The effect on infrastructure including water, wastewater, stormwater, utilities, and streets;*

The proposed drive-thru would have no impact on wastewater, stormwater, or utilities. The proposed Subway should not have a substantial impact on additional stormwater or water that is being used by this retail center. The proposed subway is approximately the same size as the existing Subway that already exists at the subject site.

*g. The incorporation and integration of architectural and landscape features to mitigate impacts from the proposed use.*

If there is support for this proposed drive-thru, staff would request that the applicant add some landscaping within the landscape buffer along Main Street which would mitigate the visual impact from Main Street of the proposed menu board that is being proposed for the subject site.

### Analysis

While staff does not believe that the proposed drive-use would have a negative financial impact on the surrounding properties, we continue to be concerned about the potential impact that this drive-thru could have on the functionality of this retail center. As outlined above, the proposed menu board is in close proximity to the main access drive for this retail center and stacking vehicles could block the main access drive for this retail center.

However, after extensive discussion by the PZB in June, there was a general consensus by the PZB that the proposed traffic volume for this drive-thru would be less than the Walgreens which was previously located at the subject site. The applicant identified that Subways have low traffic volumes for their stores and cannot be compared to typical fast food restaurant. The applicant further represented that a typical Subway will only have one or two cars in a drive-thru. Furthermore, the applicant surveyed Subways throughout the local region and identified stacking of three vehicles or less. The peak hours for a Subway do not compare with other fast food restaurants. In additionally, typically, 75% -80% of all customers for Subways continue to come into the store.

The fundamental question before the Village Board is whether the applicant's proposed projections are accurate. If the applicant's traffic volume is similar to the previous Walgreen's, then this proposed drive-thru will not have a negative impact on the traffic flow of this retail center.

However, if the proposed drive-thru exceeds more than three or four cars at the menu board, there would be a negative consequence on the traffic flow within this retail center.

### RECOMMENDATION

Based on the foregoing analysis, staff recommends the following motion:

*THE PZB recommended that the Village Attorney draft a Special Use ordinance for a drive-thru subject to the following stipulations:*

- 1. That the applicant work with staff on some additional landscaping along Main Street to screen the menu board.*
- 2. Compliance with the requirements of the Antioch Fire Department.*





August 9, 2016

To: The Honorable Larry Hanson, Mayor; and Members of the Village Board of Trustees

From: Robert Kaiser, Acting Chairman, Combined Planning and Zoning Commission

RE: Proposed Special Use for a drive-thru for a Subway Store at the Towne Square located at the northwest corner of Route 83 and Route 173.

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The Combined Planning Commission and Zoning Board conducted a public hearing on June 23, 2016 following notification, as required by State Law and Village Ordinances, to consider a Special Use for a drive-thru in accordance with 10-15-5 of the Antioch Zoning Ordinance.

Staff reviewed the findings of fact for the proposed Special Use. Specifically, staff outlined our concerns about the potential traffic issues that could result if the stacking in this proposed drive-thru exceeded a certain number of cars. The location of the proposed drive-thru could conflict with the main east-west access drive within this retail center.

Counsel for the applicant provided the PZB with a breakdown of the proposed drive-thru traffic that this Special Use will generate for the subject site. The applicant's counsel reviewed the traffic counts for the previous tenant, Walgreens along with the traffic count for several other Subway's throughout the metro area. In addition, counsel provided the PZB with an overview of the menu board and the fact that it would be fully automatic.

In accordance with Section 10-15-5 of the Zoning Ordinance, any applicant must demonstrate that the proposed Special Use will meet the following standards:

*a) The compatibility of the proposed use with the existing and planned uses on abutting properties:*

The PZB generally concurred with Staff's recommendation that the proposed Special Use would not have any negative impact on the existing or abutting properties.

*b) Any increase in density or intensity of the proposed use that will affect the compatibility of the use with existing and planned uses in the surrounding area.*

The PZB generally held that the proposed drive-thru would incorporate the same general low volume of traffic within this retail center as the previous tenant, Walgreens which vacated the subject site for a new location across the street.

*c) The proposed use will not change the predominant character of the surrounding area.*

The proposed Subway drive-thru will have no negative impact on changing the auto oriented character of this existing retail center. The proposed Town Square development will continue to be an auto oriented retail development and the applicant's proposal is consistent with this character of this retail center.

*d) The ability to mitigate adverse and understandable impact to the surrounding area, including, but not limited to individual impacts, air emissions, noise, vibrations, glare, heat, odors, water pollution, electromagnetic interference and other nuisance effects.*

There is nothing to indicate that the proposed drive-thru for a Subway would have any negative impact on the surrounding properties with respect to causing a negative impact on the air, heat, glare, odor, or water quality.

*e. Amount of traffic generated and capacity and design of roadways and available parking facilities to handle anticipated traffic.*

The PZB held that the proposed drive-thru would not have any negative impact on the vehicular functionality of the subject site or surrounding properties.

*f. The effect on infrastructure including water, wastewater, stormwater, utilities, and streets;*

The PZB held that the proposed drive-thru would have no impact on wastewater, stormwater, or utilities. The proposed Subway should not have a substantial impact on additional stormwater or water that is being used by this retail center. The proposed subway is approximately the same size as the existing Subway that already exists at the subject site.

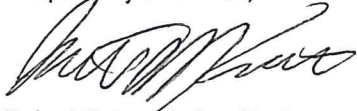
*g. The incorporation and integration of architectural and landscape features to mitigate impacts from the proposed use.*

The PZB generally held that the applicant met this finding of fact.

Therefore based upon the review of the standards of 10-15-5 of the Village Code, and the current facts of the case, the PZB recommended approval of the proposed Special Use for the drive-thru with the following stipulations:

1. Compliance with the requirements of the Antioch Fire department.
2. That the applicant work with staff and add some landscaping along Main Street to buffer the menu board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert Kaiser', written in a cursive style.

Robert Kaiser, Acting Chairman  
Combined Planning Commission and Zoning Board



Trustees  
Mary C. Dominiak  
Jerry T. Johnson  
Jay Jozwiak



Trustees  
Ed Macek  
Scott A. Pierce  
Ted P. Poulos

**Lawrence M. Hanson, Mayor**  
Lori K. Romine, Village Clerk

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August 8, 2016

Mr. Robert Ocwieja  
338 S. Dominion  
Wood Dale, IL 60191

Mr. Ocwieja,

Enclosed please find an executed copy of Ordinance No. 16-08-20 granting a special use for a drive-thru for a Subway Store at Towne Square Retail Center.

Section III of the ordinance States:

*That, subject to the conditions stated below, the Special Use shall be and is hereby approved and shall be binding upon the Village, Petitioner and Owner, and their respective owners successors, and assigns when a true execution copy of this Ordinance is tendered to the Village fully executed by the Petitioner and Owner, and when the Mayor has affixed his signature upon the Ordinance:*

- A. That the applicant work with staff on some additional landscaping along Main Street to screen the menu board.*
- B. Compliance with the requirements of the Antioch Fire Department.*
- C. That the stacking of vehicles within this drive-thru be limited to five (5) vehicles and that the applicant shall be prohibited from obstructing any vehicular access drive within the Towne Square Retail Center.*
- D. The electronic kiosk intended for ordering and paying for food and rinks shall be dark unless actually in use, and shall not be used for advertising purposes unless a customer is actually using the device.*
- E. Failure to comply with conditions C and/or D shall provide the Village Board with the discretion to revoke this Special Use after due notice to the applicant and full consideration by the Village Board.*
- F. This Special Use shall lapse in the event the specified tenant for the involved space, ie. Subway of Antioch (or any duly approved successor) shall cease operations at this location.*

G. *This Special Use shall not be transferrable to any other location within the legally described premises, and shall not be transferrable as a matter of right to any other operator of a restaurant in the specifically designated space. Rather, the Village Board reserves full right and discretion to approve or disapprove any such proposed transfer to ensure that an expansion of a potentially problematic use does not occur to the detriment of the neighboring property owners.*

Please execute below, stating your receipt of the ordinance, and your full understanding of the conditions stated. Once executed, please forward one original copy to:

Village of Antioch  
Lori K. Romine, Village Clerk  
874 Main Street  
Antioch, IL 60002

Upon receipt of this acknowledgement, the ordinance will be considered approved and binding.

Sincerely,



Michael Garrigan  
Antioch Community Development

**ACCEPTANCE**

I, Robert Ocwieja, do hereby acknowledge and accept Ordinance No. 16-08-20 entitled "An Ordinance Granting a Special Use for a Drive-Thru for a Subway Store are Towne Square Retail Center (PZB 16-09), subject to all conditions.

X

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Robert Ocwieja  
Owner