

APPROVING A SPECIAL USE PERMIT FOR A RETAIL TOBACCO STORE AT 1180 W. LINCOLN HIGHWAY, DEKALB, ILLINOIS (DINA 5, INC., D/B/A SMOKER'S CHOICE).

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, DINA 5 INC, d/b/a Smoker's Choice (the "Petitioner"), is the lessee of the property located at 1180 W. Lincoln Highway, DeKalb, Illinois (the "Property"), who petitioned the City to approve a special use permit for a retail tobacco store on the Property (the "Petition"); and

WHEREAS, on November 7, 2022, pursuant to due notice, the City's Planning and Zoning Commission (the "PZC") conducted a public hearing on the Petition, made findings of fact, and recommended approving the Petition; and

WHEREAS, the City's corporate authorities adopt and incorporate by reference the PZC's findings of fact, find that approving the Petition is in the City's best interests for the promotion of the public health, safety and welfare, and specifically find that the proposed special use permit conforms with the applicable factors as follows:

STANDARDS OF A SPECIAL USE – ARTICLE 14.03.05(2) OF THE UNIFIED DEVELOPMENT ORDINANCE ("UDO")

- 1. The proposed special use complies with all provisions of the applicable district regulations.**

The proposed special use will comply with all regulations of the "LC" Light Commercial District and Article 7.17 "Retail Sale of Tobacco and Related Products" of the UDO. The proposed special use will also comply with Chapter 64 "Smoking Regulations" of the Municipal Code.

- 2. The proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or to the public welfare at large.**

The proposed special use will not have a detrimental effect on the adjacent properties or land uses. The site has been zoned "LC" Light Commercial for decades. The existing building on site previously had restaurant uses in the past. There are various commercial uses along W. Lincoln Highway that are compatible with the proposed special use. In addition, the proposed use meets the recommendations of the City's 2022 Comprehensive Plan. Conditions are suggested in the recommendation that will prohibit the use of the drive-through, ban smoking in the building and not allow an expansion of the building without an amendment to the special use permit.

- 3. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.**

The granting of the special use will not dominate the immediate area and will not prevent development on the neighboring properties. Much of the area is already developed with commercial uses and some multi-family housing.

4. Adequate utility, drainage and other such necessary facilities have been or will be provided.

Adequate public services are already provided to the subject site. There is adequate parking on-site for the proposed special use.

5. The proposed use, where such developments and uses are deemed consistent with good planning practice, or can be operated in a manner that is not detrimental to the permitted developments and uses in the district; can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; shall in all other respects conform to the applicable regulations of the district in which it is located; and is deemed essential or desirable to preserve and promote the public health, safety and general welfare of the City of DeKalb.

The proposed special use will not be detrimental to the permitted uses in the LC District. The proposed special use will be in compliance with the 2022 Comprehensive Plan, UDO and Municipal Code. Adequate parking is provided on the site. Conditions are suggested in the recommendation that will prohibit the use of the drive-through, ban smoking in the building and not allow an expansion of the building without an amendment to the special use permit.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The recitals to this Ordinance are true, material, adopted and incorporated herein as Section 1 to this Ordinance.

SECTION 2: This Ordinance is limited and restricted to the Property, which is legally described in Exhibit A attached hereto and incorporated herein and legally described as follows:

LOT 2 IN VILET SUBDIVISION, A SUBDIVISION OF PART OF LOT 33 OF JOSEPH F. GLIDDEN'S SUBDIVISION, ALL LOCATED IN THE EAST 1/2 OF NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF DEKALB ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "Y" OF PLATS AT PAGE 92, ON SEPTEMBER 15, 1994, AS DOCUMENT NUMBER 94012592, SITUATED IN DEKALB COUNTY, ILLINOIS.

Common Address: 1180 W. Lincoln Highway, DeKalb, IL 60115, and
Parcel Identification Number ("PIN"): 08-21-277-013.

SECTION 3: The City's corporate authorities grant the Petition and approve a special use permit for a retail tobacco store at the Property, subject to the following conditions:

1. The existing drive-through on the east side of the building shall not be used in the operation of the special use granted herein.
2. There shall be no smoking in the building on the Property.

3. The existing building shall not be expanded without an amendment to the special use permit granted herein; and
4. Applicant and its assigns, successors, and owners shall comply with all applicable laws, ordinances, and regulations for the use and operation of a tobacco retail store at the Property including, but not limited to, Chapter 64 of the City's Municipal Code as may be amended from time to time.

SECTION 4: The City Manager and his designee are authorized to record this Ordinance in the DeKalb County Clerk and Recorder's Office.

SECTION 5: This Ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 6: This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 14th day of November 2022 and approved by me as Mayor on the same day. Passed on First Reading by an 8-0 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None. Second Reading waived by an 8-0 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None.




COHEN BARNES, Mayor

ATTEST:



Ruth A. Scott, Executive Assistant

EXHIBIT A

PLAT OF SURVEY

OF

LOT 2 IN VILET SUBDIVISION, A SUBDIVISION OF PART OF LOT 33 OF JOSEPH F. GLIDDEN'S SUBDIVISION, ALL LOCATED IN THE EAST 1/4 OF NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF DEKALB, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK "Y" OF PLATS AT PAGE 92, ON SEPTEMBER 15, 1994 AS DOCUMENT NUMBER 94012592, SITUATED IN DEKALB COUNTY, ILLINOIS.

WEST LINCOLN HIGHWAY (ASPHALT PAVED - 45' RIGHT OF WAY TO CENTRALLINE) * ALSO KNOWN AS ILLINOIS ROUTE 98 *

NOTES:

THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT STATE OF ILLINOIS MINIMUM STANDARDS FOR BOUNDARY SURVEYS.

PREPARED FOR THE DOHERTY LAW FIRM, DEKALB, ILLINOIS.

ALL DIMENSIONS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF.

ALL BEARINGS AND DISTANCES: MEASURED > RECORD.

REFER TO TITLE POLICY AND LOCAL ORDINANCES FOR OTHER IMPORTANT INFORMATION REGARDING SETBACKS, EASEMENTS, COVENANTS AND/OR RESTRICTIONS THAT MAY PERTAIN TO THIS SITE. THE SURVEYOR HAS NOT CONDUCTED A TITLE SEARCH FOR THE PROPERTY.

- "S. P." = STEEL POST
- "L. P." = LIGHTPOLE
- "U. P." = UTILITY POLE
- "TRANS" = TRANSFORMER
- "G. M." = GAS METER
- "E. M." = ELECTRIC METER
- "C. B." = CATCH BASIN
- "V. P." = VERTICAL PIPE (PURPOSE UNKNOWN)
- "F. I. P." = FOUND IRON PIPE AT LOT CORNER
- "F. I. R." = FOUND IRON ROD AT LOT CORNER

STATE OF ILLINOIS)
) S S
COUNTY OF DEKALB)

I, EDWARD A. DIENHART, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT I HAVE SURVEYED THE PROPERTY DESCRIBED ABOVE, AND THAT THIS PLAT REPRESENTS SAID SURVEY.

DATED THIS 4th DAY OF MARCH, 2016.

Edward A. Dienhart

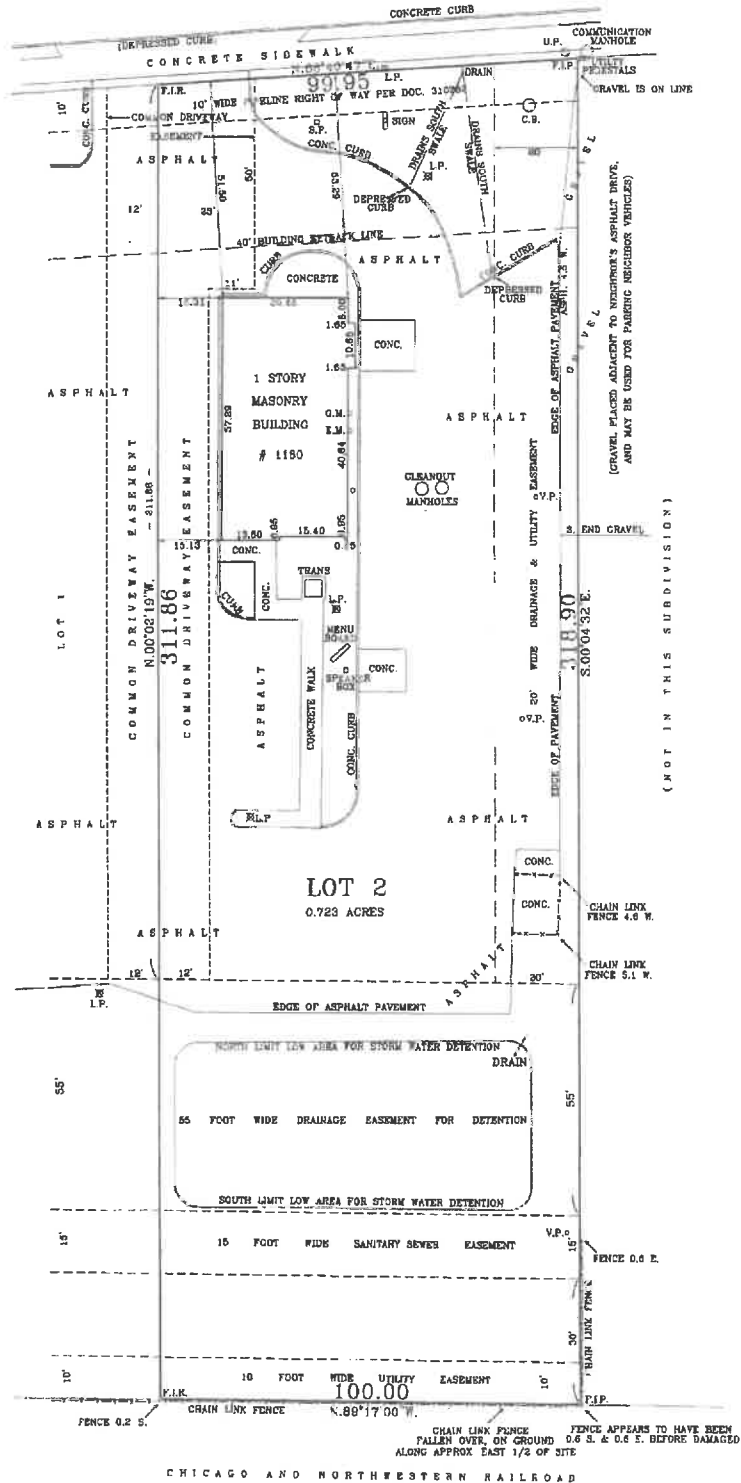
EDWARD A. DIENHART, I.P.L.S. 035-003219
125 N. FIRST STREET, DEKALB, ILLINOIS 60115
PHONE (815) 508-9766 Email: eadienhart@aol.com



LICENSE RENEWABLE NOV. 2016



SCALE: 1" = 20'
JOB 2016 - 030





2022010990

DOUGLAS J. JOHNSON
RECORDER - DEKALB COUNTY, IL
RECORDED: 11/18/2022 01:42 PM
REC FEE: 55.00

STATE OF ILLINOIS)
COUNTY OF DEKALB) SS
CITY OF DEKALB)

PAGES: 5

CERTIFICATION

I, **RUTH A. SCOTT**, am the duly qualified and appointed Executive Assistant of the City of DeKalb, DeKalb County, Illinois, as authorized by Local Ordinance 2019-059, and as such Executive Assistant, I maintain and am safe-keeper of the records and files of the Mayor and City Council of said City.

I do hereby certify that the attached hereto is a true and correct copy of:

ORDINANCE 2022-067

APPROVING A SPECIAL USE PERMIT FOR A RETAIL TOBACCO STORE AT 1180 W. LINCOLN HIGHWAY, DEKALB, ILLINOIS (DINA 5, INC., D/B/A SMOKER'S CHOICE).

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 14th day of November 2022.

WITNESS my hand and the official seal of said City this 18th day of November 2022.

RUTH A. SCOTT, Executive Assistant



Prepared by and Return to:

City of DeKalb
City Manager's Office
Attention: Ruth A. Scott
164 E. Lincoln Highway
DeKalb, Illinois 60115