

VILLAGE OF BARTLETT

COMMITTEE AGENDA

OCTOBER 18, 2016

PLANNING & ZONING

Sonic Drive-In Site Plan Amendment and Variation

Ace Hardware Sales Tax Rebate

COMMUNITY DEVELOPMENT MEMORANDUM

16-211

DATE: October 5, 2016
TO: Valerie L. Salmons, Village Administrator
FROM: Jim Plonczynski, C.D. Director
RE: Ace Hardware sales tax rebate

BACKGROUND:

136 Bartlett Plaza is the 10,000 square foot back corner unit of Bartlett Plaza that was occupied by Ace Hardware from the beginning of the shopping center's construction of the L-shaped portion of Bartlett Plaza, with the addresses 114-168 Bartlett Plaza, until its closing in 2008.

Village officials, residents and Staff lamented Ace Hardware's closing, citing the excellent customer service that they provided, convenient location for downtown area residents, and the blight and poor image that the vacant anchor portion of that building contributed to. Staff has reached out to Ace Hardware at its corporate level and local operators periodically throughout the past eight years in an effort to attract a new operator to that location.

Staff was approached by the Zeigler family, well-known operators of eight Ace Hardware locations, and Mr. David Ziegler served as the chairman of the Ace Hardware Board of Directors from 2008 through 2014.

Due to what the Zeigler family reported as extraordinary costs and risk involved with the re-opening of an Ace Hardware location in downtown Bartlett, they have requested an incentive with their proposed reopening of an Ace Hardware location in Bartlett Plaza. Staff explained that without a Tax Increment Financing (TIF) district in place, the Village would consider an alternative, such as a sales tax rebate.

Staff continued meeting with father and son David and Adam Zeigler in an effort to attract Ace Hardware to this space. Last month, Staff discussed the specifics of a sales tax rebate incentive, specifically a maximum **\$50,000 rebate**, paid out as a **50% rebate** of the sales tax collected by the Village for a period of **ten years or until the \$50,000 threshold is achieved**, whichever comes first. Staff suggested that the Zieglers make a formal written request (see attached). The Zieglers believe this to be a fair offer as they are making a significant investment in the site.

The State of Illinois Department of Revenue's website indicates a total of 611 sales tax sharing agreements throughout the State, the majority of which are 50% or greater to the businesses and all of which have some amount of time and/or money within the parameters.

Bartlett does not currently have any active sales tax sharing agreements outstanding, but has previously entered into five: (1) Abel RV center expired March 2015; (2) Cee Bee's Finer Foods expired and out of business in 2000; (3) Dominick's Finer Foods expired in 2006 and out of business 2013; (4) Home Depot expired in 2011; and (5) Welch Brothers for ten years, April 2006 through April 2016.

Working cooperatively with the Zeiglers to redevelop the former Ace Hardware location into a new, better-run Ace Hardware operation would fulfill several goals and objectives for the Village's 2016-2017 Strategic Plan including continuing to develop the downtown and addressing policies, processes and regulations regarding the business community.

This project also fits well into the recently-adopted Marketing Plan for 2016-2020 by attracting new business and investment into a long-vacant space that can help serve as a catalyst to further investment in the downtown area in conjunction with the adoption of a TOD Plan.

Beyond the broad parameters of the rebate amount, Staff has several additional recommendations to help safeguard the Village's investment in this project, including a "claw back provision" should the Zeigler family sell their interest in the Ace to another operator, if the "Ace Hardware" flag would be removed or changed to a non-branded hardware store, if the Ace Hardware come to have multiple violations of property maintenance Code, or if the Ace Hardware should fail to meet its lease obligations.

Staff does not anticipate any of the above, as the Zeigler family has successfully operated Ace Hardware stores for over eight decades and indicated that they intend to operate in Bartlett permanently.

RECOMMENDATION:

To forward the Sales Tax Rebate Agreement with Zeigler Ace Hardware to the Village Board for a final vote in an effort to attract a new business and investment in a long-term vacant space at 136 Bartlett Plaza.

Ziegler's Hardware

215 N. Spring Street Elgin, Illinois 60120 847/741-8330 FAX 847/741-9520 www.zace.net

9-20-16

To: Village President and Board of Trustees of the Village of Bartlett

Subject: Request for Sales Tax Sharing Incentive

Ziegler's Hardware was founded in 1930 by Lyle A. Ziegler in Elgin, IL. He joined Ace Hardware Corporation in 1934. Ziegler's Ace is currently owned and operated by David and Adam Ziegler, third and fourth generation family members. We have eight first class Ace Hardware stores in Elgin (2), South Elgin, Huntley, Carpentersville, Lake in the Hills, Crystal Lake and Cary, IL.

Ziegler's Ace Vision –*To be the most helpful hardware stores on the planet.*

Ziegler's Ace Noble Purpose – *Our team develops trusting relationships with our neighbors by helping them find everyday solutions for their home and business.*

Ace Hardware Corporation was formed in 1924 and is a dealer owned cooperative. It currently has approximately 4200 stores domestically and 600 stores internationally. In 2015, its global sales were just over \$5 billion. Ace Hardware stores are generally located in neighborhoods and offer a local alternative to the investor owned mega stores like Wal-Mart, Home Depot and Lowes.

Ace stores focus on convenience, reliability and helpfulness. Our merchandise mix includes many brands the big boxes do not carry including Craftsman tools and equipment, Benjamin Moore paint, Stihl power equipment and a higher end Weber and Traeger grill assortment.

If the Ziegler family moves forward with this investment, we would be responsible for coordinating interior alterations that include, polished concrete flooring, removal of one interior wall, LED overhead light replacements, new entry and loading doors, extensive painting and minor plumbing improvements. This totals approximately \$90,000.

Other significant investments include inventory \$400,000, along with new racking, computer equipment, interior and exterior signage and operating equipment investments of \$250,000.

We expect to staff the store with 4 full time and 8 part time associates. Our projected sales over the first ten years are just over \$12,000,000.

These are significant dollar amounts for a local family company to consider before investing in the Village of Bartlett. The sales tax sharing incentive will go a long way in mitigating some of the risk of moving forward with the project.



David Ziegler, President



Adam Ziegler, Vice President

**AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND
Z HARDWARE CO. FOR THE PROVISION OF FINANCIAL
ASSISTANCE IN THE FORM OF A SALES TAX REBATE**

This Agreement (the "Agreement") is made and entered into this ___ day of _____, 2016 by and between the VILLAGE OF BARTLETT, an Illinois Municipal Corporation, and Z HARDWARE CO., an Illinois Corporation.

SECTION 1: RECITALS

A. The Village of Bartlett currently receives municipal retailers' occupation sales tax (hereinafter "Sales Tax") in the amount of one percent (1%) of sales.

B. The Village President and Board of Trustees of the Village of Bartlett (the "Corporate Authorities") have determined that a portion of this sales tax may be rebated to businesses in Bartlett in order to assist with the expansion of existing businesses which help to provide a diverse economic base and a healthy tax base, all in accordance with 65 ILCS 5/8-11-20.

C. Z Hardware Co. doing business as Ziegler Ace Hardware and the Village of Bartlett desire to enter into an economic incentive agreement in accordance with 65 ILCS 5/8-11-20 whereby the Village of Bartlett will share or rebate a portion of retailers' occupation taxes received by the municipality and generated by the operation of a Ziegler Ace Hardware store in Bartlett, subject to the terms and condition of this Agreement.

D. Z Hardware Co. has proposed capital improvements (hereinafter the "Project") to facilities it intends to lease in the Bartlett Plaza Shopping Center, specifically the 10,000 +/- S.F. space commonly known as 136 Bartlett Plaza, Bartlett, Illinois (the "Lease Premises") in order to operate a hardware store in said space.

E. The Lease Premises were previously used by a different hardware store operator that closed its hardware store operations in 2008, and the Lease Premises have remained vacant for the last eight years.

F. The statutory prerequisites to the validity of such a sales tax abatement agreement are present and acknowledged in that:

(i) The Project requires economic assistance from the Village of Bartlett in order to stay competitive; and

(ii) The Project as contemplated would not be reasonably possible in absence of this Agreement; and

(iii) The Project is expected to create job opportunities within the Village; and

(iv) The Project will serve to further the development of adjacent areas; and

(v) Z Hardware Co. meets high standards of credit-worthiness and financial strength which is evidenced by Exhibit A which is a letter from a financial institution which has assets of \$10,000,000 or more, which is attached hereto and incorporated herein as if fully set forth.

(vi) The Project will strengthen the commercial sector and enhance the tax base of the Village; and

(vii) This economic incentive agreement is made in the best interest of the Village.

G. The Corporate Authorities of Bartlett have decided to rebate a portion of sales tax funds generated by Z Hardware Co. from its operation of a hardware store on the Lease Premises to offset the cost of reimbursement of its Project.

WHEREFORE, based on the foregoing Recitals, statutory authorization and other good and valuable considerations incorporated herein, the Village of Bartlett and Z Hardware Co. hereby agree as follows:

SECTION II: INCORPORATIONS OF RECITALS.

The foregoing recitals and findings are incorporated herein as is fully set forth as representing the intent of the parties and as substantive terms, conditions and covenants of this Agreement.

SECTION III: DEFINITIONS.

The purpose of this Agreement, the following terms shall have the following meanings:

A. The term "Ziegler Ace Hardware" shall mean Z Hardware Co., an Illinois corporation.

B. "Z Hardware Co." does business as "Ziegler Ace Hardware", and as used herein shall be one and the same, and shall refer to the Illinois corporation.

C. The term "Village" shall mean the Village of Bartlett.

D. The term "Municipal Sales Tax" shall mean any and all "municipal retailers' occupation tax", "municipal service occupation tax", and "municipal use tax", as such terms are used in Article 8, Division 11 of the Illinois Municipal Code, as the same may from time to time be amended, or as may be contained in an ordinance passed pursuant to the Village's authority with respect to the Village's obligations under this Agreement.

E. The term "Commencement Date" shall mean the first day of January of the 2017 calendar year so long as Ziegler Ace Hardware has received a building permit for the Project during 2016 or 2017.

F. The term "Sales Tax Year(s)" shall mean the 12 consecutive month period starting on the Commencement Date and ending 12 months later.

G. The term "Period" shall consist of a maximum of ten (10) consecutive Sales Tax Years starting with 2017 and ending with 2027, or until payment in full of the Maximum Reimbursement Amount, whichever shall first occur.

H. The term "Project" shall mean the Required Improvements at the Site.

I. The term "Maximum Reimbursement Amount" shall mean the sum of Fifty Thousand Dollars (\$50,000.00) coming solely from sales tax proceeds generated by Ziegler Ace Hardware on the Site in Bartlett, Illinois, after approval of this Agreement by the Village.

J. The term "Department" shall mean the Illinois Department of Revenue.

K. The term "Agreement" shall mean this Agreement dated as of _____, 2016 between the Village of Bartlett and Z Hardware Co. a/b/a Ziegler Ace Hardware.

L. The term "Site" shall mean the Lease Premises commonly known as 136 Bartlett Plaza, Bartlett, Illinois, as more fully described and depicted on Exhibit B, which is attached hereto and incorporated herein as if fully set forth.

M. The term "Required Improvements" shall mean improvements to the Site as described in Exhibit C, which is attached hereto and incorporated herein as if fully set forth.

SECTION IV: CONDITIONS PRECEDENT TO ZIEGLER ACE HARDWARE RECEIPT OF FINANCIAL ASSISTANCE

A. Ziegler Ace Hardware shall provide the Village with a copy of a lease for the Lease Premises from Bartlett Plaza Properties, LLC as Landlord, to Z Hardware Co., as Tenant, for the Lease Premises commonly known as 136 Bartlett Plaza, in the Village of Bartlett.

B. Ziegler Ace Hardware shall have been issued a building permit for improvements to the Lease Premises after submission of plans showing the Required Improvements for the Project. All plans shall be in conformance with current ordinances and codes of the Village.

C. Payments shall be suspended if the Project is not completed by _____, 2017, but shall recommence upon any date thereafter when the Project has been completed so long as Ziegler Ace Hardware is in compliance with the other terms of this Agreement.

SECTION V: PROCEDURE AND REQUIREMENTS FOR THE PROVISION OF FINANCIAL ASSISTANCE TO Z HARDWARE CO.

A. Distribution Formula. Provided Ziegler Ace Hardware shall first have satisfied all terms and provisions of Section IV of this Agreement, and thereafter completes the Project by _____, 2017, and further complies with and continues to be in compliance with all other terms and provisions of this Agreement, the Village shall distribute the Sales Tax revenues payable to the Village and generated by retail sales activities for Ziegler Ace Hardware on the Lease Premises for each Sales Tax Year during the Municipal Sales Tax Participation Period, to the extent the same are received by the Village from the Department (“Sales Tax Distributions”) as follows:

Years 1-10. Ziegler Ace Hardware shall receive 50% of sales tax revenues annually generated by Ziegler Ace Hardware from the operation of a hardware store on the Lease Premises and payable to the Village for each year during years 1-10 as stated in the Procedure for Distribution, up to the \$50,000 Maximum Reimbursement Amount. All sales tax reimbursements from the Village to Z Hardware Co. shall terminate (i) when the aggregate amount of sales tax rebate paid to Z Hardware Co. total the \$50,000 Maximum Reimbursement Amount; or (ii) upon payment of the Sales Tax Distribution at the end of the 10th Sales Tax Year, whichever shall first occur.

B. Procedure for Distribution. For each Sales Tax Year during the Municipal Sales Tax Participation Period, the Village shall make one (1) Sales Tax Distribution by the first quarter of the following Sales Tax Year. Ziegler Ace Hardware shall cooperate with the Village and sign any and all documents required by the Department to enable the Village to secure information from the Department necessary to compute the amount due. The Village shall compute the Municipal Sales Tax revenues for each twelve (12) month annual and make Sales Tax Distributions in accordance with the formula set forth in the foregoing paragraph “A”. The Village shall make the annual Sales Tax Distributions within 90 days of the end of the annual period (provided the Village has actually received from the Department the distribution of all Municipal Sales Tax Revenues applicable to the annual period in question) and each Sales Tax Distribution shall be accompanied by an affidavit from the Village Director of Finance setting forth the determination of such Sales Tax Distribution. If, for any reason, the

Department fails to distribute all of the Municipal Sales Tax Revenues to the Village within 90 days of the close of any annual period, then the Village shall make the required annual Sales Tax Distributions within a "reasonable period" of time after it shall have received from the Department all of the Municipal Sales Tax Revenues due the Village for such annual period.

C. Defaults. Subsequent to the Commencement Date, and for the duration of the term of this Agreement or the Municipal Sales Tax Participation Period, whichever shall apply, Ziegler Ace Hardware shall continue to be in compliance with all of the terms and conditions of this Agreement, and all other applicable codes, ordinances, rules, regulations and permits. Should Ziegler Ace Hardware for any reason, fail to remain in continual compliance with the standards set forth herein and, after 30 days written notice and the failure of Ziegler Ace Hardware to remedy any such noncompliance, the Village's duty to make the Sales Tax Distributions during such period of non-compliance shall cease. If, at any time during the balance of the term of this Agreement or the Municipal Sales Tax Participation Period, as appropriate, Ziegler Ace Hardware shall re-establish compliance with all of the applicable standards and the Village shall acknowledge that such compliance exists, the Village's duty to make Sales Tax Distributions as herein provided for shall again become effective. If the Village's duty to make Sales Tax Distributions becomes effective again after a period of non-compliance, the Sales Tax Distributions payable to Ziegler Ace Hardware shall reflect Municipal Sales Tax revenues generated by retail sales activities by Ziegler Ace Hardware sales occurring on the Site during such period of non-compliance provided such Municipal Sales Tax revenues are actually received by the Village from the Department.

D. Abandonment by Ziegler Ace Hardware. Should Z Hardware Co. fail to maintain an ongoing new retail hardware store business on the Lease Premises, or fail to make payment of any and all taxes properly due and owing, it shall be considered to have abandoned the Lease Premises. Upon the abandonment of the Lease Premises by Z Hardware Co., or in the absence of the Village's approval of a proposed transferee, Z Hardware Co. shall make payment to the Village as follows:

If the abandonment occurs during the five (5) years following the Commencement Date of this Agreement, Ziegler Ace Hardware shall reimburse the Village 100% of all amounts paid by the Village to Z Hardware Co. under this Agreement.

After five (5) years, no reimbursement from Z Hardware Co. shall be required.

E. Notice of Default. In the event of any default, breach or violation of this Agreement, the party not in violation, breach or default shall serve written notice upon the party or parties in violation, breach or default, which notice shall be in writing and shall specify the particular violation, breach or default. The parties hereto reserve the right to any of them hereunder within 30 days from written notice of such violation, breach or default. If such violation, breach or default is so cured to the satisfaction of

the parties hereto within said 30-day period, all the terms and conditions of this Agreement shall remain in full force and effect. Any obligation of the Village to make payments hereunder during any violation, breach or default period shall be stayed. Furthermore, any period of violation, breach or default shall not extend the time limits set forth for payments hereunder.

F. Additional Terms and Conditions. The Sales Tax Distributions set forth herein shall be subject to the following additional terms and conditions:

i. Such Sales Tax Distributions shall be payable solely from Municipal Sales Tax Revenues actually received by the Village from the Department and originating from the retail sales activities of Ziegler Ace Hardware on the Site, and the Village shall not be obligated to pay any Sales Tax Distributions identified herein from any other fund or source. The obligations of the Village created by or arising under this Agreement shall not be a general debt of the Village or a charge against its general credit or taxing powers, and no recourse shall be had for any payment required to be made under this Agreement against any officer, employee, attorney, elected or appointed official, past, present or future, of the Village.

ii. The Village shall not be required to effect any Sales Tax Distributions from any Municipal Sales Tax Revenues generated after expiration of the Municipal Sales Tax Participation Period. The foregoing, however, shall not relieve the Village from effecting Sales Tax Distributions from Municipal Sales Tax Revenues paid after expiration of the Municipal Sales Tax Participation Period, subject to the limitations of this Agreement, to the extent that such Municipal Sales Tax Revenues were generated during the Municipal Sales Tax Participation Period.

iii. The amount of Sales Tax Distributions required to be paid by the Village to Z Hardware Co. shall not exceed the Distribution Formula.

G. Changes in Law. The parties acknowledge that the Agreement to distribution Municipal Sales Tax Revenues as herein provided is predicated on existing law in the State of Illinois providing for the payment to Illinois municipalities of one per cent (1%) of the sale taxes generated within each such municipality. The General Assembly of the State of Illinois, from time to time, has considered modifying or eliminating the distribution of sales tax revenues to Illinois municipalities. The parties desire to make express provision for the effect of such potential legislative change upon the operation of this Agreement. Accordingly, the parties agree as follows:

i. The Village shall not, under any circumstances, be required to impose a Village sales tax or other tax for providing a source of funds for the Sales Tax Distributions herein contemplated.

ii. Should the Village, through an exercise of its home rule authority, impose a Village sales tax, the revenues thereby generated shall not be subject to the Sales Tax Distributions herein provided for, except to the extent provided otherwise in subsection (vi) hereof.

iii. Should the Illinois General Assembly hereafter and during the Municipal Sales Tax Participation Period eliminate the distribution of sales tax revenues to Illinois municipalities, or otherwise alter the distribution formula in a manner which prevents the Village and Z Hardware Co. from being able to ascertain with specificity the amount of Municipal Sales Tax Revenues being received by the Village as a direct result of the retail sales activities generated by Ziegler Ace Hardware on the Site, the Village shall have no obligation to make Sales Tax Distributions to Z Hardware Co. based upon the retail sales activities generated by Ziegler Ace Hardware on the Site, except to the extent provided otherwise in subsection (vi) hereof. In such instance, Z Hardware Co. shall have option to terminate this Agreement unless it has received the Maximum Benefit hereunder without the requirement of repayment of any sums received by Z Hardware Co.

iv. Should the Illinois General Assembly hereafter and during the Municipal Sales Tax Participation Period increase the percentage of sales tax revenues distributed to Illinois municipalities, the Sales Tax Distributions provided for herein shall continue but shall apply solely to the amount of Municipal Sales Tax revenues equal to one percent (1%) of retail sales activities of Ziegler Ace Hardware on the Site, with such distribution continuing to be made in accordance with the distribution formula contained in this Agreement.

v. Should the Illinois General Assembly hereafter and during the Municipal Sales Tax Participation Period reduce the percentage of sales tax revenues distributed to Illinois municipalities, Sales Tax Distributions provided for herein shall continue but solely to the extent of Municipal Sales Tax revenues generated from retail sales of Ziegler Ace Hardware on the Site, with such distribution continuing to be made in accordance with the distribution formula contained in this Agreement.

vi. Should the Illinois General Assembly hereafter and during the Municipal Sales Tax Participation Period eliminate, reduce or alter the formula for the distribution of sales tax revenues, as contemplated in subsections (iii) or (v) hereof, and should the Village, during any such period of elimination, reduction or non-attributability occurring within the Municipal Sales Tax Participation Period, through an exercise of its home rule authority, impose a Village sales tax on retail sales activities occurring within the Village's boundaries, and provided the amount of sales tax revenues generated by businesses located on the Site can thereafter be determined with specificity, then the sales tax revenues generated thereby, up to an amount equal to one percent (1%) of the retail sales activities of all businesses located on the Site, shall be distributed in accordance with the distributions (ii) and (iii) of paragraph F above.

H. Documentation Confirming Municipal Sales Tax Revenues. The Village shall provide such authorization and/or take such additional actions as may be required to obtain necessary information from the Department to enable the Village to determine the amount of Municipal Sales Tax Revenues generated by all retail sales activities of businesses located on the Site during any portion of the Municipal Sales Tax Participation Period. Z Hardware Co. shall provide the Department with any and all documentation required by the Department and shall further provide the Village with a

letter in a form satisfactory to the Department, authorizing the Department to release all gross revenue and sales tax information to the Village. In the event the Department refuses or otherwise fails to make the necessary sales tax information available to the Village, Z Hardware Co. shall furnish to the Village copies of the ST-1 and ST-2 monthly statements filed with the Department, certified by the general manager of Ziegler Ace Hardware, Bartlett showing the amount of Municipal Sales Tax Revenues paid during such month by Z Hardware Co. and the Village agrees to rely upon such certified monthly statements as evidence of payment in calculating the amount of Sales Tax Distributions available for disbursement to Z Hardware Co. If, for any reason and at any time during the Term of this Agreement, the Department stops using either the ST-1 or ST-2 monthly statement forms for the reporting of gross sales receipts and the determination of gross sales tax obligations, Z Hardware Co. shall furnish to the Village replacement forms as the Department may then employ for determining and receiving such information provided the Village receives certified copies of such replacement forms and evidence of payment of the sums referred to in such forms.

I. Confidentiality. The Village, to the fullest extent permitted by law, shall treat information received by it pursuant to this Agreement as confidential proprietary business information under the Illinois Freedom of Information Act, and, to the extent the Village is required to disclose such information, it shall limit such disclosure so that proprietary information of Ziegler Ace Hardware is protected and kept confidential to the extent authorized by law.

J. Assignment of Rights. The Village acknowledges that Ziegler Ace Hardware is providing, or causing to be provided, the portion of the financing necessary to complete the Project, and that payments made to Z Hardware Co. pursuant to this Agreement are intended to partially reimburse Z Hardware Co. for the costs it incurs in undertaking such activities. The terms of this Agreement apply and bind to the successors and assignees of the Village. This Agreement may not be assigned by Z Hardware's Co.'s successors without the prior written approval of the Corporate Authorities of the Village, which approval shall not be unreasonably withheld upon the presentation of a successor dealer with adequate experience and funding who agrees to be bound by this Agreement, and who sells new motor vehicles at the Site.

K. Annual Appropriation. Where required by law and as is consistent with the concept that the amounts due under this Agreement are not general debt of the Village but only a reimbursement obligation based on sales tax generated by Ziegler Ace Hardware on the Site, the Village shall provide for payments required under this Agreement by annual appropriation in its annual budget ordinance for the fiscal year in which such payment is likely to occur.

L. Notice. All notices and requests required pursuant to this Agreement shall be sent as follows:

If to the Village: Village Administrator
Village of Bartlett
31 South Prospect Road
Bartlett, Illinois, 60172

With a copy to: Village of Bartlett Attorney
Bryan E. Mraz
Bryan E. Mraz & Associates, P.C.
111 East Irving Park Road
Roselle, Illinois, 60172

If to Ziegler Ace Hardware: Z Hardware Co.
215 N. Spring Street
Elgin, Illinois, 60120

With a copy to: Ralph Hardy, Ariano Hardy, Ritt, Nyuli, Richmond,
Lytle & Goettel, PC
2000 McDonald Road, Suite 200
South Elgin, Illinois, 60177

or at such addresses as the parties may indicate in writing to the other either by personal delivery, overnight courier or by certified or registered mail, return receipt requested, all with proof of delivery thereof:

M. Time. Time is of the essence under this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

N. Binding Effect. Subject to the limitations set forth in Section V. J., this Agreement shall inure to the benefit of and shall be binding upon the Village, Z Hardware Co., and their respective successors and assigns.

O. Prior Negotiations. All prior negotiations between the parties are incorporated into this Agreement and there are no other agreements or understandings related to the subject matter of this Agreement between them.

P. Amendment. This Agreement may not be modified revised or amended in any way except by written document approved and executed by the mutual Agreement between the parties.

Q. Waiver. No inaction or course of conduct by either party shall be interpreted to waive, release, amend or otherwise alter any term, covenant, or provisions of this Agreement. No written waiver by any party to any term, covenant this Agreement shall constitute or be interpreted to constitute a waiver of any other term, covenant or provision of this Agreement.

R. Jurisdiction. Exclusive jurisdiction to resolve any and all disputes related to this Agreement shall be in the Court of the 18th Judicial Circuit, DuPage County, Illinois.

S. Limitation of Liability.

i. Z Hardware Co. hereby waives and releases the Village of Bartlett, its elected officials, officers, agents, employees and successors in their individual capacities from any and all claims, actions, causes of actions, damages, liability, right or claim at law or in equity, except solely as to those Sales Tax Distributions to be paid by the Village to Z Hardware Co. in strict conformance with the terms, covenants, and conditions of this Agreement, and any other such claims, rights, damages, liability, right, or claims at law or equity are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

ii. Z Hardware Co. hereby agrees to indemnify, defend and hold the Village, its elected officials, officers, agents, employees and successors harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorney's fees and court costs) suffered or incurred by the Village arising from or in connection with (a) material misrepresentations or omissions in this Agreement, the Project any financing documents related thereto which are the result of information supplied or omitted by Z Hardware Co. or by agents, employees, contractors, or persons acting under the control or at the request of Z Hardware Co. or (b) the failure of Z Hardware Co. to cure any misrepresentations or omissions in this Agreement; or (c) any claim or cause of action for injury or damage to persons or property brought by third parties arising out or the construction or operation of the Project by Z Hardware Co.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement as duly authorized as of the date and year first above written.

VILLAGE OF BARTLETT

Z HARDWARE CO.

By: _____
Kevin Wallace, Village President

By: _____
David Ziegler, President

Attest:

Attest;

Lorna Gilles, Village Clerk

Adam Ziegler, Secretary

COMMUNITY DEVELOPMENT MEMORANDUM

16-216

DATE: October 10, 2016
TO: Valerie L. Salmons, Village Administrator
FROM: Jim Plonczynski, Community Development Director
RE: **(#16-10) Sonic Drive-In**

PETITIONER

Seth Wolken, on behalf of Boom Real Estate Development, LLC

SUBJECT SITE

1121 W. Stearns Road – Lot 4 of the Home Depot Subdivision (Rt. 59 and Stearns Road)

REQUESTS

Site Plan Amendment and Variations for: (a) reduction in the previously granted building/canopy setback from 53.7' to 43.7' and (b) elimination of the previously reduced 10 foot interior parkway requirement for the property located at 1121 W. Stearns Road in the Home Depot Subdivision. **This request is precipitated by IDOT right-of-way acquisition for the Route 59 and Stearns Road intersection improvements.**

EXISTING AND PROPOSED CONDITIONS

	<u>Land Use</u>	<u>Comprehensive Plan</u>	<u>Zoning</u>
Subject Site	Commercial	Commercial	B-4
North	Commercial	Commercial	B-3 PUD
South	Commercial	Commercial	B-4
East	Commercial	Commercial	B-4
West	Commercial	Commercial	B-4

ZONING HISTORY

1. The Home Depot Shopping Center was granted variations on August 15, 2000 by Ordinance #2000-85 to allow parking in the 60 foot front yard creating a ten foot front parking setback along Stearns Road which included the Sonic property on Lot 4 of the Home Depot Subdivision and also a 15 foot variation from the 25 foot

interior parkway landscape requirement reducing the interior parking landscape to 10 feet.

2. Sonic was granted Site Plan approval, Special Use Permits for: (a) drive-in restaurant, (b) drive-thru window and (c) outdoor seating and Variations for: (a) canopies in the required front and side yards, (b) to allow parking in the required rear and side yards and (c) reduction of foundation landscaping requirement on September 2, 2008 by Ordinance #2008-86.

DISCUSSION

1. Due to the Route 59 and Stearns Road intersection improvements, IDOT will be acquiring between 9.5'-12' of the northern lot line of the Sonic Drive-in property. Due to this acquisition, Boom Real Estate is requesting Variations for: (a) reduction in the previously granted building/canopy setback variation from 53.7' to 43.7' and (b) elimination of the previously reduced 10 foot interior parkway requirement and a Site Plan Amendment due to the variation requests to their existing 1.03 acre site.

RECOMMENDATION

1. The Staff recommends forwarding the petition to the Zoning Board of Appeals for further review and to conduct the public hearing for the Variances and to the Plan Commission for further review of the Site Plan Amendment.
2. A copy of the Site Plan and additional background information are attached for your review.



September 8th, 2016

Village of Bartlett

Community Development Department

228 S. Main Street

Bartlett, IL 60103

RE: Sonic Drive In

Bartlett, IL

Dear Village of Bartlett President and the Village Board of Trustees:

Boom Enterprises, LLC, the franchisee for the Sonic Drive In located in Bartlett, Illinois requests a variance from the Village of Bartlett to change the setback requirement from 10' to 0' due to IDOT work scheduled for completion at the corner of Route 59 and Stearns Roads. We appreciate your consideration in reviewing our request. Enclosed is the variance application with supporting documentation.

Thank you.

Kindest Regards,

Boom Enterprises, LLC

A handwritten signature in black ink, appearing to read "Seth Wolken". The signature is fluid and cursive.

Seth Wolken



VILLAGE OF BARTLETT VARIATION APPLICATION

For Office Use Only
Case # 16-10
RECEIVED
COMMUNITY DEVELOPMENT
SEP 12 2016
VILLAGE OF
BARTLETT

PETITIONER INFORMATION (PRIMARY CONTACT)

Name: Boom Real Estate Development, LLC

Street Address: 1540 E Dundee Road, Suite# 320

City, State: Palatine, IL

Zip Code: 60074

Email Address: seth.wolken@boomenterprises.net

Phone Number: 847-907-9660

Preferred Method to be contacted Email

PROPERTY OWNER INFORMATION

Name: Boom Real Estate Holdings- Bartlett, LLC

Street Address: 1540 E Dundee Road, Suite# 320

City, State: Palatine, IL

Zip Code: 60074

Phone Number: 847-907-9660

OWNER'S SIGNATURE: [Signature] Date: 9/8/2016

(OWNER'S SIGNATURE IS REQUIRED or A LETTER AUTHORIZING THE PETITION SUBMITTAL.)

DESCRIPTION OF VARIATION REQUEST (i.e. setback, fence height) including SIZE OF REQUEST (i.e. 5ft., 10 ft.)

Requesting a change to the set back requirement of 10' to 0'.

PROPERTY INFORMATION

Common Address/General Location of Property: 1121 W Stearns Road Bartlett, IL 60103

Property Index Number ("Tax PIN"/"Parcel ID"): 01-04-403-031

Acreage: 1.03

Zoning: B-4 (Refer to Official Zoning Map)

APPLICANT'S EXPERTS (If applicable, including name, address, phone and email)

Attorney _____

Surveyor _____

Other _____

FINDINGS OF FACT FOR VARIATIONS

Both the Zoning Board of Appeals and the Village Board must decide if the requested variation is in harmony with the general purpose and intent of the Zoning Ordinance and if there is a practical difficulty or hardship in carrying out the strict letter of the regulations of the Zoning Ordinance.

The Zoning Board of Appeals shall make findings based upon evidence presented on the following standards: **(Please respond to each of these standards in writing below as it relates to your case. It is important that you write legibly or type your responses as this application will be included with the staff report for the ZBA and Village Board to review.)**

1. That the particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.

Due to the inability to receive adequate support from IDOT for proposed road expansion work, Boom Enterprises is respectfully requesting a setback modification which will allow the existing curb line to remain in place. Given IDOT's position, Boom Enterprises has no choice but to request this modification as they will be unable to complete the requested site work due to insufficient support from IDOT.

2. That conditions upon which the petition for a variation is based are unique to the property for which the variation is sought and are not applicable, generally, to other property within the same zoning classifications.

Our request is due to a hardship created by a new IDOT right of way. The requested variance may be consistent with the other requests from neighboring properties.

3. That the purpose of the variation is not based exclusively upon a desire to make more money out of the property.

The variance requested, if approved, will allow Boom Enterprises to remain a conforming use. Due to IDOT's inability to provide sufficient support and resources for work requested, Boom Enterprises respectfully requests this variance in order to remain in compliance with Village standards and accommodate IDOT's road improvements.

4. That the alleged difficulty or hardship is caused by the provisions of this Title and has not been created by any person presently having an interest in the property.

The hardship has not been caused by any person presently having an interest in the property. Boom Enterprises' request is due to a hardship created by a new IDOT right of way.

5. That the granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhoods in which the property is located.

The requested variance will not be detrimental to the public welfare or injurious to other property or improvements where the property is located. This request, if approved, will allow Boom Enterprises to remain a conforming use and accommodate IDOT's road improvements.

6. That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the adjacent neighborhood.

The proposed variation will not impair supplies of light, increase congestion on public streets, endanger the public safety, increase the fire danger, or impair property values of the adjacent neighborhood.

7. That the granting of the variance requested will not confer on the applicant any special privilege that is denied by the provisions of this Title to other lands, structures or buildings in the same district.

The granting of this variance will not confer on the applicant any known special privilege that is denied by the Resolution to other lands, structures or buildings in the same district.

ACKNOWLEDGEMENT

I understand that by signing this form, that the property in question may be visited by village staff and Board/Commission members throughout the petition process and that the petitioner listed above will be the primary contact for all correspondence issued by the village.

I certify that the information and exhibits submitted are true and correct to the best of my knowledge and that I am to file this application and act on behalf of the above signatures.

Any late, incomplete or non-conforming application submittal will not be processed until ALL materials and fees have been submitted.

SIGNATURE OF PETITIONER: 

PRINT NAME: Seth Wolken

DATE: 9/8/2016

REIMBURSEMENT OF CONSULTANT FEES AGREEMENT

The undersigned hereby acknowledges his/her obligation to reimburse the Village of Bartlett for all necessary and reasonable expenses incurred by the Village for review and processing of the application. Further, the undersigned acknowledges that he/she understands that these expenses will be billed on an ongoing basis as they are incurred and will be due within thirty days. All reviews of the petition will be discontinued if the expenses have not been paid within that period. Such expenses may include, but are not limited to: attorney's fees, engineer fees, public advertising expenses, and recording fees. Please complete the information below and sign.

NAME OF PERSON TO BE BILLED: Boom Real Estate Development, LLC

ADDRESS: 1540 E Dundee Road, Suite# 320
Palatine, IL 60074

PHONE NUMBER: 847-907-9660

EMAIL: seth.wolken@boomenterprises.net

SIGNATURE: 

DATE: 9/8/2016

Case #16-05

Sonic Drive-In

Site Plan Amendment and Variations



STEARNS ROAD
(100' ROW)

Current Property Line
Proposed New Property Line

Curb to remain

