

**Conditional Use Standards  
For  
Former Tim Horton's**

**Westgate Shopping Center  
1412 Congress Street  
Portland, Maine**

**By  
Charter Realty & Development Corp. (applicant)  
Charter Westgate, LLC (owner)  
800 Westchester Avenue, Suite S-632  
Rye Brook, NY 10573**

**Dated April 7, 2014**

Westgate Plaza is located at 1354 – 1422 Congress Street at the intersection with Stevens Avenue (“Site”) in the B-2 Community Business Zone. Westgate Plaza (“Plaza”) is an active neighborhood shopping center, which was originally developed in 1959 with a Shaw’s Supermarket. Shaw’s ultimately relocated to a larger space within the Plaza and developed several smaller retail spaces. The Plaza also contains three separate building pads with drive-through windows; a Bank of America, TD Banknorth and a Tim Horton’s Restaurant. A significant redevelopment to the Plaza took place between 2008 and 2011 which included new building façades, significant site improvements such as landscaping and drainage and a new bus turn-off and shelter, conversion of the old Friendly’s to a Tim Horton’s Restaurant as well as construction of the TD Banknorth building. An amended site plan and conditional use approval was granted on August 12, 2008 for the Tim Horton’s. They operated from early 2009 to November 2013, when closed by the corporate office. There were no operational issues associated with the Tim Horton’s and all conditional of approval were met. We are seeking an amendment to the 2008 approval to change tenancy to Dunkin Donuts, an identical use.

**Permitted Uses**

Existing uses within Westgate Plaza are permitted uses pursuant to Sec. 14-182 which lists:

- *General, business and professional offices, as defined in section 14-47;*
- *Personal services, as defined in section 14-47;*
- *Retail establishments;*
- *Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m.;*

**Conditional Uses**

Drive-through windows are permitted uses as accessory to permitted uses and require conditional approval pursuant to Section 14-183(a) (4) because the Site is adjacent to a

residential zone. The properties across Congress Street are zoned R-5. There are no proposed changes to anything related to the site layout. There are minor changes proposed to drive-through features related to branding and appropriate signage for a change in tenancy.

A Conditional Use approval is required for Drive-throughs in the B-2 or B-2b zones as they are adjacent to any residential use or zone pursuant to Section 14-183 Conditional Uses. They are allowed, as provided in section 14-474 (conditional uses), if they meet the following requirements:

6. *Drive-throughs, where permitted, shall also specifically comply with the following conditions:*
  - a. *Location of Drive-throughs: Features, such as windows, vacuum cleaners and menu/order boards, stacking lanes, must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than forty (40) feet from any residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to any property line. In addition, drive-through features shall not extend nearer than twenty-five feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.*

The proposed drive-through features at the former Tim Horton's building are located behind and to the side of the building as shown on the attached Drive-Thru Exhibit Congress Street, Portland, ME dated April 3, 2014 ("Drive-Thru Exhibit"). The Drive-Thru Exhibit also illustrates the location of drive-through features and corresponding setbacks associated with the requirements of this section. This plan shows that the lot complies with the provisions of Section 14-183 6.a. The Dunkin Donuts use requires slightly more stacking than a Tim Horton's which can easily be accommodated as shown on the Drive-Thru Exhibit.

- b. *Noise: Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.*

No changes are proposed to any features that will impact noise. A stipulation of the 2008 Conditional Use approval required quarterly monitoring of the noise levels. The conclusion of the monitoring was that the operation of the drive-through speaker is undetectable above the ambient noise level and therefore in compliance with the Planning Board's requirements. We do not anticipate that ambient noise levels have changed and therefore noise monitoring is of no value in this location.

- c. *Lighting: Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.*

No changes are proposed to lighting.

- d. *Screening and Enclosure: Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts; and*

No changes are proposed to screening and enclosures nor are any additional provisions necessary as mitigation.

- e. *Pedestrian access: Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.*

No changes are proposed which would impact existing pedestrian access.

- f. *Hours of Operation: The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.*

No changes are proposed to the restaurant hours of operation which are: daily 5am – 11 pm.

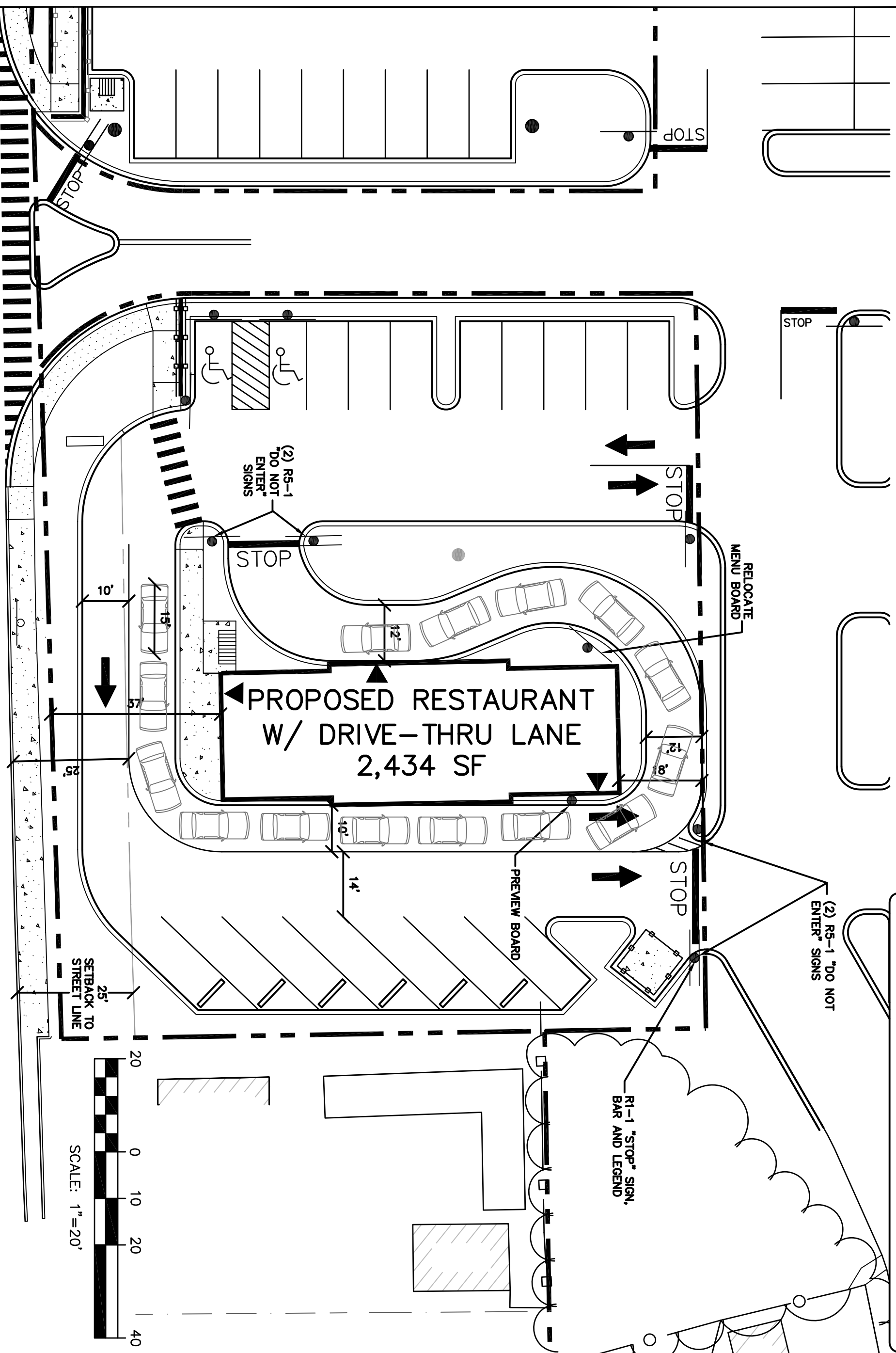
PICKUP WINDOW TO 25' SETBACK  
MENU BOARD TO 25' SETBACK

15 VEHICLES  
12 VEHICLES

(2) R5-1 "DO NOT  
ENTER" SIGNS

R1-1 "STOP" SIGN,  
BAR AND LEGEND

RELOCATE  
MENU BOARD



PROPOSED RESTAURANT  
W/ DRIVE-THRU LANE  
2,434 SF

