



CITY OF FRANKLIN

DEPARTMENT OF PLANNING & ENGINEERING

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****UPDATED** BZA Staff Report**

To: Board of Zoning Appeals Members

From: Alex Getchell, AICP, Senior Planner

Date: August 5, 2019

Re: Cases ZB 2019-09 (V) | 1795 N Morton St | Take 5 Indiana, LLC

REQUESTS:

Case ZB 2019-09 (V)...Take 5 Oil Change. A request for eleven developmental standards variances from the City of Franklin Zoning Ordinance, as follows:

- 1.) Article 3, Chapter 18, to allow a primary structure to encroach into front setback along N Main St (50' required; 9.5' requested);
- 2.) Article 3, Chapter 18, to allow an accessory structure to encroach into front setback along N Main St (50' required; 13.9' requested);
- 3.) Article 3, Chapter 18, to allow a primary structure to encroach into front setback along N Morton St (50' required; 12.31' requested);
- 4.) Article 5, Chapter 4, to allow the main entrance of the primary structure to not be located on the façade wall that fronts the highest classified public street;
- 5.) **WITHDRAWN;**
- 6.) Article 5, Chapter 4, to not be required to provide sidewalks consistent with the Subdivision Control Ordinance.
- 7.) Article 5, Chapter 4, to not be required to provide pedestrian walkways from sidewalks to main entrance.
- 8.) Article 7, Chapter 10, to allow fewer parking spaces than required (11 required; 9 requested);
- 9.) Article 7, Chapter 12, to allow the entrance drive widths to be larger than 28'
- 10.) Article 7, Chapter 13, to allow encroachments into the sight visibility triangles at each entrance; and
- 11.) Article 7, Chapter 16, to not be required to provide 10' parking lot separation and associated landscaping along N Morton St;

in the MXC: Mixed-use, Community Center and GW-OL: Gateway Overlay districts. The property is located at 1795 N Morton St.

PURPOSE OF STANDARD:

The "MXC", Mixed Use: Community Center zoning district is intended to provide locations for a variety of small-to-mid-sized businesses and institutional facilities that serve the entire Franklin-area community. This district should be used alone and in combination with other zoning districts to create areas for community shopping, entertainment, services, and public gatherings.

The intent of the Gateway Overlay (GW-OL) district is to require development at the City's entrances that is aesthetically consistent, responsive to development pressures, and proportional to the area's traffic management issues.

CONSIDERATIONS:

1. Take 5 Indiana, LLC, (J Elliot Smith) petitioner, is proposing a Take 5 Oil Change development on the former Used Car Factory property (historically known as the Dog-n-Suds), located between N Main Street and N Morton St, just north of the Domino's Pizza and Firehouse Subs property.
2. Petitioner has submitted Site Development Plans for the proposed business. [See [Exhibit A: Site Plans](#)]
3. The proposed Site Development Plans have been reviewed by the entire Technical Review Committee, with comments provided and minor plan revisions expected. Site Development Plan approval cannot be completed without BZA approval of the above listed variances, or compliance with all development standards.
4. Petitioner submitted Findings of Fact for each variance requested [See [Exhibit B: Petitioner Findings](#)]

Front Setback

5. According to Article 3, Chapter 18, Minimum Front Setback table in the MXC: Mixed-use Community Center zoning district, Structures are not permitted closer than 50 feet to the right-of-way when adjacent to an Arterial Street.
6. According to the City of Franklin Comprehensive Plan Thoroughfare Plan, both N. Main St. and N. Morton St. are designated as Arterial Streets.
7. Variance (1.): Petitioner is requesting a variance from the minimum front setback of 50 feet in the MXC: Mixed-use Community Center zoning district, to be permitted to construct the primary structure 9.5 feet from the right-of-way of N. Main St. [See [Exhibit B, page 1](#)]
8. Variance (2.): Petitioner is requesting a variance from the minimum front setback of 50 feet in the MXC: Mixed-use Community Center zoning district, to be permitted to construct the dumpster enclosure 13.9 feet from the right-of-way of N. Main St. [See [Exhibit B, page 2](#)]
9. Variance (3.): Petitioner is requesting a variance from the minimum front setback of 50 feet in the MXC: Mixed-use Community Center zoning district, to be permitted to construct the primary structure 12.3 feet from the right-of-way of N. Morton St. [See [Exhibit B, page 3](#)]
10. The subject property, at its widest point between N. Main St. and N. Morton St., is 92.87 feet wide; therefore, with a 50 foot setback required from both sides, the front setbacks overlap each other across the entire lot, with no area on-site that is not located within a front setback area.
11. The existing structure on the site is 5.8 feet from the N. Main St. right-of-way (measured from foundation), and 14.9 feet from the N. Morton St. right-of-way. *Petitioners are proposing an increased setback along N. Main St. and a slightly reduced setback along N. Morton St.*

Gateway Overlay – Main Entrance Location

12. According to Article 5, Chapter 4, "The main entrance to the primary structure shall be located on the facade wall that fronts on a public street. If the structure fronts on 2 or more public streets, the main entrance shall be located on the facade wall that fronts on the street with the highest Thoroughfare Plan classification."
13. Variance (4.): Petitioner is requesting a variance to not orient the main entrance of the building toward N. Morton St., and to be located on the south façade wall with no road frontage. The proposed use will not have a pedestrian entrance; however, customers will enter the building, via automobile, in a one-way direction from the south to the north. Since this property fronts N. Morton St., N. Main St. and Schoolhouse Rd, and N. Morton St is the higher classified road, the Gateway Overlay district ordinance requires the main customer entrance to face N. Morton St. [See [Exhibit B, page 4](#)]

Gateway Overlay – Building Main Entrance Entry Features

14. **Variance (5.) WITHDRAWN:** *Petitioner has WITHDRAWN their request for a variance from the Gateway Overlay District Architectural Standards Entry Features, to not be required to provide entry features at the main entrance (south façade) to the structure. Petitioner has added at least three enhanced entry features on the south façade, the main customer entrance, and the variance is no longer desired. [See [Exhibit C: Revised Building Elevations](#)]*

Sidewalks & Pedestrian Walkways

15. According to Zoning Ordinance Article 5, Chapter 4, Sidewalks & Pedestrian Walkways:
- a. *Sidewalks:* Sidewalks shall be provided along all sides of the lot consistent with the design and construction requirements of the Franklin Subdivision Control Ordinance.
 - According to Subdivision Control Ordinance Article 6, Chapter 10, Sidewalks & Trail Standards, Sidewalks shall be provided along all streets designed with the urban cross-section, and shall be provided on both sides of the street.
 - b. *Pedestrian Walkways:* Pedestrian walkways shall be provided from the sidewalks to the main customer entrance of the structures on each lot and along the full length of any façade of a building that includes a customer entrance or abuts a parking area.
16. **Variance (6.):** *Petitioner is requesting to not provide public sidewalks along N. Main St., N. Morton St. nor Schoolhouse Rd. [See [Exhibit B, page 6](#)]*
17. **Variance (7.):** *Petitioner is requesting to not provide a pedestrian walkway from the right-of-way to the main customer entrance. The proposed drive-thru oil change business will not have a pedestrian entrance, as all customers stay in their vehicles. [See [Exhibit B, page 7](#)]*

Parking Standards

18. **Variance (8.):** *Petitioner proposes 9 parking spaces for the proposed drive-thru oil change business; **11 spaces** are required, including ADA compliant spaces. [See [Exhibit A: Site Plans & Exhibit B, page 8](#)]*
19. *Petitioner proposes to provide 8 regular parking spaces 9' wide x 19' length, and 1 ADA compliant space 18' wide x 19' length.*
20. According to Article 7, Chapter 10, Parking Standards:
- A minimum of 1 off-street parking space is required for (rounded to the nearest complete space):
 - a. Each employee working on the largest shift;
 - b. Each business vehicle stored on-site; and
 - c. Every 200 square feet in any car wash, repair or modification facility.
 - d. At least one (1) space must be reserved for disabled persons for every 25 parking spaces provided.
 - Minimum parking stall size is 9' x 18' and must be striped.
 - Each parking space must be paved with asphalt or concrete.
21. *Petitioner indicated 6 employees, no business vehicles and 1,000 sq. ft.; therefore 11 spaces are required.*

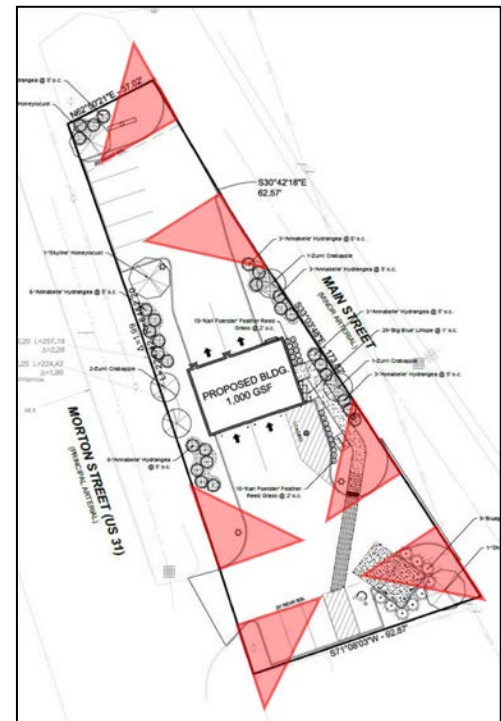
Entrance Drive Widths

22. According to Article 7, Chapter 12, Entrance Drive Requirements, no entrance shall exceed 14 feet per lane, measured from the outside edges of the curb at the public right-of-way which it accesses, and shall not include any acceleration or deceleration lanes or turning radii.
23. **Variance (9.):** *Petitioner is requesting a variance to allow the two entrance drives off of N. Main St. to be wider than 28 feet. In this case, the north and south entrances on N. Main St are proposed at 47.31 feet and 54.33', respectively, and both include the turning radii. [See [Exhibit B, page 9](#)]*

Sight Visibility Triangles

24. According to Article 7, Chapter 13, Sight Visibility Standards, a “sight visibility triangle” must be maintained at every intersection of an adjoining street with an entrance drive. Sight visibility triangles are required to be kept free of structures, vegetation, signs and other opaque or partially opaque objects between a height of 2 ½ and twelve feet.
25. All proposed entrances intersect with an Arterial road; therefore, 35 foot sight visibility triangles are required at each entrance intersection. [See [Figure 1, REVISED](#) to the right]
26. Variance (10.): *Petitioner requests approval to be allowed encroachments into each of the sight visibility triangles.* [See [Exhibit B, page 10](#), [Exhibit D: Sign Package](#), and [Exhibit E: Revised Landscape Plan](#)]
 - The entrance from N. Morton St. would have vehicles in parking spaces to the south. Landscaping has been revised and relocated out of visibility triangle to the north.
 - The south entrance from N. Main St. would have landscaping and the dumpster enclosure to the south and landscaping at the farthest triangle point to the north.
 - The north entrance from N. Main St. would have the pole sign encroaching at 8-11’ feet above grade, and the south would have landscaping at farthest triangle point away.

Figure 1: Sight Visibility Triangles



Parking Lot Perimeter Landscaping Separation

27. According to Article 7, Chapter 16, all parking lots, including parking spaces, interior drives, and loading/unloading areas, shall be separated from all street rights-of-way by a landscape area that is a minimum of 10 feet in width. The landscape area must also be planted with either of the following options, or a combination of both:
 - Trees & Shrubs: a minimum of 1 tree & 1 shrub for every 80 linear feet of landscape area; and/or
 - Landscape Berm: a berm a minimum of 3 feet in height along the length of the landscape area, plus 1 shrub for every 10 feet of landscape berm.
28. Variance (11.): *Petitioner is requesting a variance to not be required to provide the 10’ parking lot separation and associated landscaping along N Morton St., for the five parking spaces proposed on the north end of the property.* [See [Exhibit B, page 11](#)]

Surrounding Zoning:

North:	RSN, Residential: Suburban Neighborhood
South:	MXC, Mixed-use: Community Center GW-OL: Gateway Overlay District
East:	MXC, Mixed-use: Community Center GW-OL: Gateway Overlay District
West:	MXR, Mixed-use: Community Center GW-OL: Gateway Overlay District

Surrounding Land Use:

North:	Two-Family/Duplex/Lochry Add.
South:	Dominos, AT&T, & Firehouse Subs
East:	Franklin Liquor, Discount Tobacco
West:	Northwood Plaza Shops

Comprehensive Plan

29. The 2013 Franklin Comprehensive Plan, Land Use Plan, identifies this area as Community Activity Center. "Community activity centers area intended as areas of mixed land uses that provide gathering places and goods and services for the entire community. Community activity centers may include churches, schools, community parks, grocery stores, gas stations, shopping centers, offices, banks and restaurants. Community activity centers may also include residences located on the upper floors of otherwise commercial buildings. Community activity centers are generally located along major streets and at prominent intersections where they are readily accessible by people from throughout the community."

Zoning Ordinance

30. The definition of a practical difficulty, according to the 2004 City of Franklin Zoning Ordinance is: A difficulty with regard to one's ability to improve land stemming from regulations of this Ordinance. A practical difficulty is not a "hardship," rather it is a situation where the owner could comply with the regulations within the Zoning Ordinance, but would like a variance from the Developmental Standards to improve his/her site in practical manner. For instance, a person may request a variance from a side yard setback due to a large tree that is blocking the only location that would meet the Development Standards for a new garage location.
31. According to Article 2.5: A special exception or variance ceases to be authorized and is expired if the obtaining of an Improvement Location Permit, or the execution of the approval has not been completed within 1 year of the date the variance or special exception is granted. The variance or special exception shall also expire if the approved construction has not been completed and approved by the Planning Director as being consistent with all written commitments or conditions, the requirements of this Ordinance, and all applicable permits within 2 years of the date the approval is granted.

CRITERIA FOR DECISIONS – DEVELOPMENT STANDARDS VARIANCE:

(The petitioner will need to address the Criteria for Decisions in their presentation**)**

In taking action on all special exception and variance requests, the Board of Zoning Appeals shall use the following decision criteria, consistent with the requirements of the Indiana Code. The Board may grant a special exception and a variance from development standards and limitations of this Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.5) that:

- - Continue on next page - -

DECISION CRITERIA – DEVELOPMENT STANDARDS VARIANCES

- 1. General Welfare: The approval (will or will not) be injurious to the public health, safety, morals, and general welfare of the community.***

Staff Finding:

Staff finds the approval of variances 1, 2 & 3, all related to the primary structure and dumpster enclosure encroaching into the front yard setbacks, will not be injurious to the general welfare. The existing structure is setback closer than the proposed, and has existed in that manner going back decades to when it was originally the Dog-n-Suds restaurant; therefore, the encroachments into the front setbacks would be reducing the non-conformity and will not be injurious to the general welfare going forward.

In regard to variance 4, staff finds the building design will not be injurious to the public health and safety, as petitioner has designed the structure with enhanced entry features at the main entrance and has provided adequate vehicle stacking on-site, by orienting the main entrance to face the south. Orienting the entrance to front on N. Morton St. would not allow vehicle stacking and would result in a dangerous traffic pattern.

Staff finds the approval of variances 6 & 7, both related to sidewalks and pedestrian walkways, will not be injurious to the public health, safety or general welfare of the community. The City is exploring and working with the Indiana Department of Transportation on a project to provide a trail within the right-of-way of US 31 / N. Morton St. along the length of the subject property and beyond; therefore, the lack of sidewalks along the property boundaries will not be injurious to the general welfare and is actually supported by staff, to ensure a seamless and compatible sidewalk/trail network, and will prevent the duplication of efforts. Additionally, the proposed business model is one that does not have any pedestrian traffic, as all customers drive their vehicles into the building and stay in their car for the duration of the oil change; therefore, the lack of pedestrian connections to the building from the right-of-way will not be injurious to the general welfare.

In regard to variance 8, staff finds the reduction in parking spaces provided will not be injurious to the public health, safety, morals or general welfare, as all customers drive their vehicles into the building and stay in their cars for the duration of the oil change, petitioners have provided ample vehicle stacking (waiting) areas, and the number of parking spaces provided exceeds the maximum number of employees on-site during any given shift, including shift overlap.

Staff finds the approval of variance 9, to allow entrance drive widths to be larger than 28 feet, will not be injurious to the public health, safety, and general welfare, as the additional entrance widths will allow for greater and easier vehicle maneuverability on the narrow / small lot and will help to limit any potential issues with encroachments in the sight visibility triangles.

In regard to variance 10, staff finds the approval of the proposed encroachments into the sight visibility triangles at each entrance will not be injurious to the public health, safety and general welfare, as petitioner has designed all encroachments as far from the entrances and with as little sight impairment as is feasible for this site. Staff finds approval of the proposed encroachments will balance the need for site landscaping and signage, while not compromising safety.

Staff finds the approval of variance 11, to not require a 10 foot landscaping separation between the north five parking spaces and the right-of-way of N. Morton St., will not be injurious to the general welfare. The existing pavement extends between 6-to-8 feet into the right-of-way of N. Morton St. and will be removed and replaced with a grassy area in the right-of-way, and on-site with new pavement and a 6 inch curb bounding the new parking spaces. Approval of the proposed variance 11 will be a reduction in non-conformity and will not be injurious to the general welfare.

2. Adjacent Property: The use and value of the area adjacent to the property included in the variance (will or will not) be affected in a substantially adverse manner.

Staff Finding:

Staff finds the approval of variances 1, 2 & 3, all related to the primary structure and dumpster enclosure encroaching into the front yard setbacks, will not have a substantially adverse effect on the use and value of adjacent properties. The existing structure is setback closer than the proposed, and has existed in that manner going back decades to when it was originally the Dog-n-Suds restaurant; therefore, the encroachments into the front setbacks would be reducing the non-conformity and will not affect adjacent properties.

In regard to variance 4, staff finds the approval would not have a substantial effect on adjacent properties, as the subject property is unique with the narrow configuration, road frontage on three sides, including Arterial classified roads on two sides, and the property is located at one of the busiest intersections in Franklin and Johnson County. Therefore, the orientation of the main entrance will not substantially impact the use and value of adjacent properties, as the main entrance will include enhanced entry features.

Staff finds the approval of variances 6 & 7, both related to sidewalks and pedestrian walkways, will not substantially affect the use and value of adjacent properties, as the adjoining property to the south also does not have sidewalks to connect to, and the City is exploring and working with the Indiana Department of Transportation on a project to provide a trail within the right-of-way of US 31 / N. Morton St. along the length of the subject property and beyond. Therefore, the lack of sidewalks along the property boundaries will not affect adjacent properties and is actually supported by staff, to ensure a seamless and compatible sidewalk/trail network, and will prevent the duplication of efforts.

In regard to variance 8, staff finds the reduction in parking spaces provided will not affect the use and value of adjacent properties, as all customers drive their vehicles into the building and stay in their cars for the duration of the oil change, petitioners have provided ample vehicle stacking (waiting) areas, and the number of parking spaces provided exceeds the maximum number of employees on-site during any given shift, including shift overlap. Therefore, the reduction in parking required will not create parking burdens on adjacent properties.

Staff finds the approval of variance 9, to allow entrance drive widths to be larger than 28 feet, will not have a substantially adverse impact on adjacent properties, as petitioners are utilizing the original entrance locations, but reducing their width, and removing an entrance on N. Main St. Moreover, the additional entrance widths, beyond 28 feet, will allow for greater and easier vehicle maneuverability on the narrow / small lot and will help to limit any potential issues with encroachments in the sight visibility triangles.

In regard to variance 10, staff finds the approval of encroachments into the sight visibility triangles at each entrance will not have a deleterious effect on adjacent properties, as the petitioners proposed site development will not create new or worsened sight visibility issues for adjacent entrances/exits, nor unsafe conditions for vehicles entering and exiting the property.

Staff finds the approval of variance 11, to not require a 10 foot landscaping separation between the north five parking spaces and the right-of-way of N. Morton St., will not have a substantially adverse effect on any adjacent properties, as the abutting right-of-way is the eight-lane US Hwy 31 / N. Morton St., with grassy median. Moreover, the existing nonconforming parking lot pavement extends between 6-to-8 feet into the right-of-way of N. Morton St. and will be removed and replaced with a grassy area in the right-of-way, and on-site with new pavement and a 6 inch curb bounding the new parking spaces. Approval of the proposed variance 11 will be a reduction in non-conformity and will not be deleterious to the use and value of adjacent properties.

3. ***Practical Difficulty: The strict application of the terms of the ordinance (will or will not) result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.***

Staff Finding:

Staff finds the strict application of the terms of the ordinance will result in practical difficulties in the use of the property, related to all variance requests. The subject lot is narrow, small, and almost every existing site feature is nonconforming to the current zoning standards. Petitioners are proposing to repurpose the lot and reduce the nonconformities wherever feasible and practical. The new primary structure will be setback farther from the rights-of-way, the paved surface area will be reduced so that the impervious surface area is below the maximum lot coverage allowed, and landscaping will be provided.

Staff finds the strict application of the front setback requirements (variances 1, 2, & 3) would prevent any new development, as the subject lot is only 92.87 feet deep at the widest point, and the 50 foot front setbacks from N. Main St. and N. Morton St. overlap across the entire property. Moreover, petitioners are increasing the setbacks, compared to the existing structure.

In regard to variance 4, staff finds practical difficulties in strictly requiring the main customer entrance to face N. Morton St. Staff finds the building cannot be oriented to face N. Morton St due to 1.) the narrow lot configuration, 2.) the lack of a main pedestrian entrance vs. a vehicular entrance, 3.) the need for vehicles to safely maneuver into the building for service, and 4.) the need to provide adequate vehicle stacking for those waiting.

Staff finds the strict application of the requirements to provide sidewalks and pedestrian walkways (variances 6 & 7) will result in practical difficulties, as petitioner's business model has no pedestrian foot traffic. Customer vehicles will enter the site and the building, customers will stay in their vehicles while the oil change service is performed, and then customers will exit the site in their vehicles. The nature of the business is not such that pedestrians would need to approach the building on foot. Moreover, the City is exploring and working with the Indiana Department of Transportation on a project to provide a trail within the right-of-way of US 31 / N. Morton St. along the length of the subject property and beyond.

Staff finds a practical difficulty in strictly requiring the petitioner provide the required number of parking spaces (variance 8), as the subject business model does not require customers to park and exit their vehicle, and petitioner is providing more spaces than necessary for the maximum number of employees.

Staff finds the strict application of the ordinance regarding the entrance drive widths to be larger than 28 feet (variance 9), will result in practical difficulties, as petitioners are utilizing the original entrance locations, but actually reducing their width, and removing an entrance on N. Main St. Moreover, the additional entrance widths, beyond 28 feet, will allow for greater and easier vehicle maneuverability on the narrow / small lot and will help to limit any potential issues with encroachments in the sight visibility triangles.

In regard to variances 10 & 11, staff finds the strict application of the ordinance will result in practical difficulties. The existing parking lot encroaches into the right-of-way of US Hwy 31 by 6-8 feet, and petitioner is removing that encroachment and replacing with a grassy landscape area. Although the additional 10 feet of landscape area will not be provided, the proposed is a reduction in nonconformity and will increase sight visibility. Strictly requiring the 10 additional feet of landscaping, with one tree and one shrub, would create more issues with providing parking on the north end, could potentially result in a narrower exit drive, and generally less maneuverability on-site. Additionally, staff finds the narrow and small property creates challenges for providing all the necessary site features, while balancing safety and sight visibility. Staff finds petitioners have done as much as practical and necessary to limit encroachments into the sight visibility triangles.

STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES

Based on the written findings above:

Staff recommends **approval** of the variances 1, 2, 3, 6, 7, 8, 9, and 11 with the following conditions:

- a. All applicable federal, state, county, and local permits/approvals are required; including, but not limited to, Site Development Plan approval, Improvement Location Permits, and compliance with all building, fire, and health codes.

Staff recommends **approval** of variance 4, regarding main entrance orientation, with the following conditions:

- a. All applicable federal, state, county, and local permits/approvals are required; including, but not limited to, Site Development Plan approval, Improvement Location Permits, and compliance with all building, fire, and health codes.
- b. At least three (3) enhanced entry features, out of a choice of five (5) options, are required on the façade wall of the building where vehicles enter for service.

Staff recommends **approval** of variance 10, regarding the request to allow encroachments into the sight visibility triangles, with the following conditions:

- a. All applicable federal, state, county, and local permits/approvals are required; including, but not limited to, Site Development Plan approval, Improvement Location Permits, and compliance with all building, fire, and health codes.
- b. Landscaping shall be planted per the revised landscape plan submitted August 5, 2019.
- c. Freestanding pole sign located within sight visibility triangle must be free of sign cabinets and/or decorative base between grade and 8 feet above grade.
- d. Directional signs must be setback at least 2 feet from all public rights-of-way.