

MINUTES OF TOWN BOARD MEETING
OF THE TOWN OF BRIGHTON, COUNTY OF
MONROE, NEW YORK HELD AT THE
BRIGHTON TOWN HALL, 2300 ELMWOOD
AVENUE, ROCHESTER, NEW YORK

PRESENT: SEPTEMBER 30, 2009
Supervisor Sandra Frankel William Moehle, Attorney for the Town
Councilmember Sheila Gaddis
Councilmember Louise Novros Susan Kramarsky, Town Clerk
Councilmember Ray Tierney

MEETING CALLED TO ORDER: 7:10 PM

APPROVAL OF AGENDA:

Motion by Councilmember Louise Novros seconded by Councilmember James Vogel to approve the agenda.

UPON ROLL CALL VOTE MOTION UNANIMOUSLY CARRIED

PUBLIC HEARING:

MANER RE: HDL Property Group, LLC, and Fallsbridge Development VI, LLC vs. Town of Brighton proposed settlement
(Complete transcript under separate cover, including article from September 30, 2009 Wall Street Journal concerning Walgreen's)

Motion by Councilmember James Vogel seconded by Councilmember Sheila Gaddis that the Town Board adopt the resolution as prepared by the Attorney for the Town as set forth in Exhibit NO. 1 attached.

MOTION TO GO INTO EXECUTIVE SESSION:

To discuss the appointment of particular people.

Motion by Councilmember James Vogel seconded by Councilmember Louise Novros to go into executive session at 7:50 PM to discuss the appointment of particular people.

UPON ROLL CALL VOTE MOTION UNANIMOUSLY CARRIED

Motion by Councilmember Sheila Gaddis seconded by Councilmember James Vogel to come out of Executive session at 8:00 PM

UPON ROLL CALL VOTE MOTION UNANIMOUSLY CARRIED

MEETING ADJOURNED:

Motion by Councilmember Sheila Gaddis seconded by Councilmember James Vogel to adjourn at 8:10 PM

UPON ROLL CALL VOTE MOTION UNANIMOUSLY CARRIED

CERTIFICATION:

I, Susan Kramarsky, 79 Monteroy Road, Rochester, NY do hereby certify that the foregoing is a true and accurate record of the proceedings of the Town of Brighton County of Monroe, State of New York meeting held on the 30th of September 2009 and that I recorded said minutes of the aforesaid meeting of the Town Board of the Town of Brighton, New York.

At a Town Board Meeting of the Town of Brighton, Monroe County, New York, held at the Brighton Town Hall, 2300 Elmwood Avenue, in said Town of Brighton on the 30th day of September, 2009.

PRESENT:

SANDRA L. FRANKEL,
Supervisor

JAMES R. VOGEL
RAYMOND J. TIERNEY III
LOUISE NOVROS
SHEILA A. GADDIS

Councilpersons

WHEREAS, the Town and HDL Property Group, LLC, and Fallsbridge Development VI have agreed upon the terms of a Settlement Agreement and Release, with respect to litigation entitled HDL Property Group, LLC, and Fallsbridge Development VI, LLC vs. Town of Brighton, under which HDL will agree to construct offsite sidewalks as required under the original Incentive Zoning Agreement, previously approved by the Town Board, for the Walgreen's store at Elmwood and South Clinton Avenues and the parties would agree to amend the Incentive Zoning Agreement to amend the definition of "Pharmacy" to clarify that at least 50.5% of annual dollar volume of sales must consist of prescription drugs and prescripti9n medication, be received and filed; and

WHEREAS, the Town Board previously authorized the Supervisor to execute and deliver such an Agreement, and related Escrow Agreement, subject to amendment of the Incentive Zoning Agreement for such property, and to that end, duly called and held a public hearing to consider such amendment to the Incentive Zoning Agreement, on September 23, 2009, and continued to September 31, 2009, under which paragraph 1 of Schedule D of such Incentive Zoning Agreement shall be amended to read substantially as follows:

1) The use of the site as a Pharmacy (to be defined as a traditional pharmacy use at least fifty and one-half percent (50.5%) of annual dollar volume of sales of which use consists of

prescription drugs and prescription medication, will be permitted, subject to compliance with all parts of this resolution, and with the following additional conditions:

a) That there will be no sale of alcoholic beverages on the Site;

b) That there will be no sale of cigarettes to minors on the Site; and

c) That there will be no operation of a Restaurant, as defined in the Code, on the site or within any part of any building on the Site.; and

WHEREAS, based on the testimony at such public hearing, and the desire to resolve the pending litigation and have the construction of the off-site sidewalks completed to enhance the safety of walking in the area for pedestrians and to permit people to avoid the unnecessary use of their cars; it is therefore

RESOLVED, that the Town Board hereby approves an amendment to the Incentive Zoning Agreement for the Walgreens store located at Elmwood and South Clinton Avenues in the Town, to amend paragraph 1 of Schedule 0 of such Incentive Zoning Agreement to read in its entirety as follows:

1) The use of the site as a Pharmacy (to be defined as a traditional pharmacy use at least fifty and one-half percent (50.5%) of annual dollar volume of sales of which use consists of prescription drugs and prescription medication, will be permitted, subject to compliance with all parts of this resolution, and with the following additional conditions:

a) That there will be no sale of alcoholic beverages on the Site;

b) That there will be no sale of cigarettes to minors on the Site; and

c) That there will be no operation of a Restaurant, as defined in the Code, on the site or within any part of any building on the Site.

Dated: September 30, 2009

Sandra L. Frankel, Supervisor	Voting
James R. Vogel, Councilman	Voting
Raymond J. Tierney III, Councilman	Voting
Louise Novros, Councilperson	Voting
Sheila A. Gaddis, Councilperson	Voting

Proposed
9/30

Settlement Agreement and Release

This Settlement Agreement and Release (Agreement), dated and effective as of the _ day of September, 2009 (Effective Date), is made by and between the HDL Property Group, LLC and Falls Bridge Development VI, LLC (collectively, HDL), Walgreen Eastern Co., Inc. (Walgreens), and the Town of Brighton (Town).

WITNESSETH:

WHEREAS, on or about October 26, 2007, HDL commenced an action titled *HDL Property Group, LLC and Falls Bridge Development VI, LLC v. Town of Brighton*, in the Supreme Court of the State of New York, Monroe County Index Number 14149/2007 (Action), in which the Town was named as defendant;

WHEREAS, the Action is a dispute as to certain conditions related to the Town's March 23, 2005 approval of HDL's Incentive Zoning Application for development of a Walgreens 24 hour/day pharmacy location at the corner of Elmwood and South Clinton Avenues in the Town, and specifically, HDL's obligation to construct off-site sidewalks along Elmwood and South Clinton Avenues (Sidewalks) and the Town's entitlement to draw down on irrevocable letters of credit obtained by HDL for the benefit of the Town in the amount of \$212,000, which represented the estimated cost of the construction of the completed Sidewalks, and in the amount of \$5,000, which represented the estimated cost of a traffic study of the intersection of site driveways with Elmwood Avenue and Clinton Avenue (M&T Letters of Credit funds);

WHEREAS, Walgreens and the Town are willing to clarify their understanding of the definition of "pharmacy use" applicable to operation of the approved Walgreens 24 hour/day pharmacy location at the corner of Elmwood and South Clinton Avenues in the Town;

WHEREAS, in order to avoid the expenses and uncertainties of continued litigation, the

parties wish to compromise and **settle** the Action and all other related claims the parties may currently have against each other, on the terms and conditions as set forth herein;

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the sufficiency of which each party expressly acknowledges, the parties hereby agree as follows:

- (1) Sidewalks: HDL agrees to construct the Sidewalks on the following terms:
 - (a) The Sidewalks shall be constructed in accordance with the Overall Sidewalk Improvement Plan prepared by Costich Engineering and dated August 5, 2005, with noted January 11, 2006 revisions and as amended to reflect field changes that either the Town or HDL, with the Town's approval, deem necessary. In no event shall the total net field change costs exceed \$5,000.00 (five thousand dollars);
 - (b) HDL shall select, secure and pay for its own contractors for construction of the Sidewalks without restriction by the Town and shall obtain all permits necessary for the construction of the Sidewalks at its sole expense, which the Town has represented will be less than \$200.00 (two hundred dollars);
 - (c) Upon execution of this Agreement, HDL shall immediately apply for all necessary permits and, upon issuance of such permits, shall use commercially reasonable efforts to commence and complete construction of the Sidewalks during the 2009 construction season. In the event that HDL is unable to complete such construction during the 2009 construction season, HDL agrees to complete construction on or before August 1, 2010;
 - (d) The Town has represented that it has been working with RG&E to arrange the light/utility pole relocation related to construction of the Sidewalks and that the Town will facilitate RG&E's performance and coordination with HDL such that HDL's construction of the Sidewalks can be continuous and **uninterrupted**. HDL is not responsible for any delay in construction of Sidewalks caused by RG&E's delay or failure to perform;
 - (e) Within thirty (30) days of execution of this Agreement, the Town shall deposit the M&T Letters of Credit funds and any interest accrued since the Town's draw in January 2008 into an escrow account in the name of James E. Morris, Esq. pursuant to the terms of an escrow Agreement (Escrow Agreement) attached hereto as Exhibit A. Notwithstanding the foregoing, the Town shall withhold \$15,000.00 (fifteen thousand dollars) from the M&T Letter of Credit funds to be used to pay the cost of

light/utility pole relocation. HDL shall not be responsible for any light/utility pole relocation costs in excess of the \$15,000.00 withheld by the Town. In the event that there are any funds remaining after the Town pays all costs of light/utility pole relocation, the Town shall promptly deposit such funds into the escrow account held by Mr. Morris. HDL further agrees to pay the outstanding \$372.98 (three hundred seventy-two dollars and ninety-eight cents) balance due for relocating one utility pole during construction of the Walgreens store simultaneously with its execution of this Agreement;

- (f) The M&T Letters of Credit funds and accrued interest referenced in lee) above shall be released from escrow to HDL upon approval of the satisfactory completion of the Sidewalks by Clough Harbour & Associates, LLP (CHA) and the Town Engineer, so long as the Town's approval is based on objective conformance with relevant plans and specifications, based on a good faith review, and is not unreasonably withheld, delayed or conditioned. HDL shall be solely responsible for any fees incurred for CRA's services; and
- (g) The Town shall amend paragraph 1 of Schedule D of its March 23, 2005 approval of HDL's Incentive Zoning Application to provide as follows:

"1. That use of the Site as a pharmacy (to be defined as a traditional pharmacy use, at least fifty and one half percent (50.5%) of annual dollar volume of sales of which use consists of prescription drugs and prescription medications) will be pennitted, subject to compliance with all parts of this resolution, and with the following additional conditions:

- (a) that there will be no sales of alcoholic beverages on the Site;
- (b) that there will be no sales of cigarettes to minors on the Site; and
- (c) there will be no operation of a Restaurant, as defined in the Code, on the Site or within any part of any building on the Site."

and such amended definition shall take effect immediately upon execution of this Agreement.

(2) Representations by the Town: The Town represents that it has obtained all easements necessary for the Sidewalks, including but not limited to all easements required for construction of the Sidewalks along South Clinton Avenue. The Town further agrees that HDL is not liable for any failure by the Town in this regard and that, in the event that the Town's failure to obtain any necessary easement(s) causes disruption or delay in construction of the

Sidewalks or precludes HDL from completing construction by the date stated in 1(c) above, HDL is not liable for delays or responsible for excess costs directly attributable to the Town's failure to obtain any necessary easement(s). HDL agrees to promptly notify the Town of any issues with easements of which it becomes aware during the course of construction and the Town agrees to promptly resolve any such issue. The Town further **represents** that it has obtained or will obtain all approvals necessary for the amendment to paragraph 1 of Schedule D of its March 23, 2005 approval of HDL's Incentive Zoning Application set forth in Section 1(g) above.

(3) Voluntary Discontinuance: The parties represent that they **have** filed no charge, claim, or lawsuit against one another apart from the Action (other than Walgreens which is not a party to the Action), and hereby agree to discontinue the Action with prejudice as soon as is practicable and no more than thirty (30) days after execution of this Agreement.

(4) Complete Defense: The parties hereby agree that in the event of the commencement or continuation of any action in violation of this Agreement, the Agreement may be pleaded as a complete defense to any such action, and may be asserted by way of counterclaim or cross-claim in such action.

(5) Release by HDL: By accepting the terms and conditions of this Agreement, HDL accepts the benefits provided by this Agreement in full and complete satisfaction of and hereby releases and forever discharges the Town, its predecessors, successors, its past, present and future: owners, directors, shareholders, principals, parents, subsidiaries, related entities, affiliates, employee benefit plans, officers, members, managers, attorneys, employees, sponsors, trustees, actuaries, insurers, assigns, heirs, executors and/or administrators, from any and all asserted and unasserted, known or unknown, causes of action, claims and counterclaims, of any kind whatsoever, including claims for additional compensation, whether in law or equity, that

exist now or may have existed from the beginning of the world to the Effective Date. This release includes claims related to the Action acquired by or assigned to HDL from any third party. However, this release is not intended to affect HDL's right) as expressly created by this Agreement.

(6) Release by **the** Town: By accepting the terms and conditions of this Agreement, the Town accepts the benefits provided by this Agreement in full and complete satisfaction of and hereby releases and forever discharges HDL, its predecessors, successors, its past, present and future: owners, directors, shareholders, principals, parents, subsidiaries, related entities, affiliates, employee benefit plans, officers, members, managers, attorneys, employees, sponsors, trustees, actuaries, insurers, assigns, heirs, executors and/or administrators, from any and all asserted and unasserted, known or unknown, causes of action, claims and counterclaims, of any kind whatsoever, including claims for additional compensation, whether in law or equity, that exist now or may have existed from the beginning of the world to the Effective Date. This release includes claims related to the Action acquired by or assigned to the Town from any third party. However, this release is not intended to affect the Town's rights as expressly created by this Agreement.

(7) Non-disparagement: Each party hereby agrees that it shall not defame or disparage any other party. Each party further agrees that, should it defame or disparage any other party, the party or parties defamed or disparaged shall be entitled to all actual damages resulting therefrom, as well as to immediate and complete measures to correct the disparagement.

(8) Miscellaneous:

(a) The headings of the sections and paragraphs in this Agreement are for convenience only and shall not affect its construction.

- (b) This Agreement may be signed by the parties in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- (c) This Agreement is intended, and shall be deemed, to be the complete and exclusive statement of the terms of the Agreement between the parties and shall be deemed to have integrated all promises, conditions, understandings, representations and warranties, if any, between the parties except as this Agreement may be subsequently modified in writing by the parties, upon joint agreement of the parties. This Agreement supersedes any previous Agreements the parties may have had respecting this subject matter.
- (d) This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, except that no party may assign this Agreement without the written consent of the other parties.

(9) **Enforcement:** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of New York. The parties agree further that any action to enforce this Agreement shall be commenced only in state or federal court in New York.

(10) **Notice:** For purposes of this Agreement, notice is to be given by hand-delivery, certified mail, registered mail or overnight mail as follows:

If upon HDL, to:	Peter H. Abdella, Esq. HARTER SECREST & EMERY LLP 1600 Bausch & Lomb Place Rochester, New York 14604
With a copy to:	Seamus P. Lyman, Esq. Senior Partner & General Counsel HDL Property Group LLC 7085 Manlius Center Road East Syracuse, New York 13057
If upon Walgreens, to:	Walgreen Co. 104 Wilmot Rd., MS #1420 Deerfield, IL 60015 Attn.: Richard F. Schmidt

If upon the Town, to: William G. Bauer, Esq.
WOODS OVIATT GILMAN LLP
700 Crossroads Building
2 State Street
Rochester, New York 14614

With a copy to: William W. Moehle, Esq.
2425 Clover Street
Rochester, New York 14618

(11) Opportunity to Consult Counsel: It is expressly understood and agreed that this Agreement is in full settlement and satisfaction of all disputed claims. By signing this Agreement, all parties represent that they have had the opportunity to review this Agreement with their attorneys. All parties enter into the Agreement knowingly, voluntarily and without coercion.

(12) Saving Clause: Should any provision of this Agreement be declared wholly invalid, illegal or otherwise unenforceable, the validity of the remaining provisions of the Agreement shall not be affected thereby. In such case, the parties to the Agreement shall endeavor to carry out the original intention of the Agreement and shall make such amendments or take such steps as may be necessary to ensure the continued validity of this Agreement (such revised terms as may be permitted by law).

(13) Authority: HDL, Walgreens, and the Town represent that they intend for this Agreement, including the release of claims contained herein, to be fully binding upon them, and that the person signing on behalf of the parties to this Agreement is fully authorized to do so.

(THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.)

Walgreen Eastern Co., Inc.

By: _____

Approved as to form:

Notary Public

STATE OF _____)
COUNTY OF _____) SS.:

On the _____ day of _____, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

NOTARY PUBLIC

The Town of Brighton

By: _____
Sandra Frankel, Supervisor

Approved as to form:

William G. Bauer, Esq.
WOODS OVIATT GILMAN LLP
700 Crossroads Building
2 State Street
Rochester, New York 14614

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On the day of , 2009; before me, the undersigned, a Notary Public in and for said State, personally appeared **Sandra Frankel, Supervisor**, personally known to me or proved to me **on the basis of satisfactory** evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

INDEX TO BUSINESSES

These indexes cite notable references to most parent companies and people in today's edition. Articles on regional page inserts aren't cited in these indexes.

Affiliated Computer Services C16	Alcoa A8	Allianz SE CU	Amazon.com BI,BS	American Beacon Large Cap Value C15	American Equity Investment Life C12	American Financial Group CU	Banco Bilbao Vizcaya Argentaria C13	Bank of America C6	Bank of Ireland C13	Bank VTB A15	Barclays CU,C13	Behring Harvard C6	Belgravia Asset Management Cg	Bertelsmann B8	Big 5 Sporting Goods C5	Bilbao Vizcaya Argentaria C2	Biogen Idec B2,C5	BlackRock CU	BNP Paribas C2,C16	Boeing B4,C5	Boston Scientific 82	BP B4	BT Group B7	Cadbury B1	California Public Employees' Retirement System C9	Centerbridge Partners C6	Cerberus Capital Management C6	Chesapeake Energy C16	Chevron A14	China National Offshore Oil A14	China National Petroleum A14	China Petrochemical A14	Cisco Systems C1	CIT Group A1,A6,C5	Citigroup C2	Clarium Capital Management A2	Compass Group C2	Corus Bank C6	Credit Suisse C12	O/S Caremark B2	DE Shaw Group C6	Datalogic B5	Dell B1,C5	Dent Tactical C15	Depository Trust & Clearing C13	Direct Brands inc. B8	DuPont B4	Dynegy C5	eBay B3	EDF 84,O6	Elan B2	ENI B4	EW Scripps C5	Extended Stay C6	Fannie Mae C6	Fiat B3,C13	First Industrial Realty Trust C5	Five Mile Capital Partners C6	Fogelson Properties C6	Forest City Enterprises C6	Fortress Investment Fraport B5	Freddie Mac C6	Gannett B8,C5	Gazprom A15,B4	General Electric B3	General Motors B3	Geno B4	Goldman Sachs C2,C13	Google B4	Government of Singapore Investment C2	Grall Advisors C15	Grail American Beacon Large Cap Value C15	Hartford Financial Services C1	Heineken B4	Hewlett-Packard B1	Home Depot C5	Honda Motor C2	HSBC C13	Hyundai B4	Hyundai Heavy Industries B4	IBM B5	Insight Venture Partners C3	Intel C1,C5	Intesa Sanpaolo C2	Invesco C15	Italy C13	Jefferies CU	Johnson & Johnson 81,82	J.P. Morgan Chase A2,C2,CU,C13	Khosla Ventures B4	Kraft Foods B1	Lagardere B1	LCH.Cleamet C13	Lorillard C5	Lufthansa B5	Magna Inti B3	Marathon Oil A14	Markstone Capital Partners A4	Massachusetts Mutual Life Insurance C2	McClatchy C5	McGraw-Hill C5	Media General C5	MetLife C12	Micron Technology 82	Microsoft B5,(5)	Moodys C5	Morgan Stanley C2,C3,C13	Motorola B5	Najafi B8	New York Times C5	News Corp B1	Nike B4	Nissan Motor C2	Northrop Grumman B4	NYSE Euronext C13	Office Depot C5	OfficeMax C5	Oil & Natural Gas A14	Onyx Pharmaceuticals C5	Palmer Capital Partners Cg	Polo Ralph Lauren C5	PowerShares Active Alpha Multi-Cap Fund C15	PowerShares Active AlphaQ Fund C5	Protective Life CU	Prudential Financial C6	Rambus C5	Renault C13	Rio Tinto AB	RiverPark Advisors C15	Rosneft A15	RBS CU	Royal Dutch Shell A14,C13	RP Financials C5	RP Focused Large Cap Growth C5	RP Growth C15	RP Technology C15	RRI Energy C5	Rusal A8	Sealy C5	Silicon Image C5	SL Green Realty C6	Société Générale C13	Solta Medical C5	Sonangol A14	Staples C5	Starbucks C5	Starwood Capital C6	STX Group B4	Superior Well Services C5	T. Rowe Price C3	Tempur-Pedic International C	Tetra Technologies C	Total SA A14,B4	Toyota Motor B3,B4	Twitter C3	UBS C2,C13	Under Armour B4	UniCredit C2,C16	Vanderlande Industries B5	Verenex Energy A14	Walgreen B2,C5	Warner Music B4	Wedgewood Partners C5	Wells Fargo C6	Xerox C16
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CORPORATE NEWS

Walgreen Rides Store Re

Sales Climb as Design Changes Reduce 'Clutter, Decrease Invent

BY AMY MERRICK AND KELLY NOLAN

Walgreen Co. spent the past year cutting costs and revamping stores to make shopping in them easier. Now, it appears the efforts are paying off.

The largest U.S. drugstore chain by number of stores Tuesday reported higher quarterly sales in its pharmacy and general-merchandise operations, and higher cash flow from operations. Investors Tuesday bid up the Deerfield, Ill., company's shares nearly 10% despite a 1.6% decline in its fiscal fourth-quarter profit, as expense controls were offset by an accounting gain in the year-ago quarter.

Walgreen's cash flow from operations increased 55% for the quarter ended Aug. 31, mainly because of lower inventories. Gross on-drug sales, which account for two-thirds of total revenue, increased 9%. That is a key measure of profitability, increased slightly because of rising generic-drug sales.

Long known for a relentless focus on opening new stores, Walgreen last year disclosed it would slow the pace of expansion. The company said it would devote more time and money to improving its stores, which executives said had become cluttered and outdated. It has about 7,000 stores.

Walgreen also is changing how it buys merchandise, in hopes of improving sales of general merchandise, which have lagged sales gains in the pharmacy department. "They are playing a little bit of catch up in the market," especially compared to rival CVS Caremark Corp., which focused less on expansion in recent years than Walgreen, said Steven P. Halper, an analyst with Thomas Weisel Partners.

Walgreen's new stores take between two and three years to become profitable, and nearly 40% of the retailer's locations were less than five years old in



Walgreen is seeing early benefits from an ongoing store revamping that adds signs while reducing inventory. The Deerfield, Ill., pharmacy chain rep.

scal year 2008, according to ymond James health care analyst John Ransom.

Walgreen said it expects its collection of stores, excluding acquisitions, to increase between 4.5% and 5% in the current fiscal year, and by 2.5% to 3% in subsequent years.

A remodeled Walgreen store in suburban Chicago illustrates the changes it made to ease shopping in its stores.

Shelves were lowered to 66 inches from 78 inches high, so aisles look brighter and less cramped. The vitamin area has new shelf signs that promote the supplements' health benefits. Well-organized displays of mouthwash and paper towels help customers find departments easily.

The store looks so much less cluttered that a few customers discovered for the first time that the store has windows, said Bryan Pugh, Walgreen's vice president of merchandising.

In some departments, Walgreen has slashed the number of items stocked. In paper goods, the variety of products declined 30%, but sales jumped because the department is less confusing for shoppers, Mr. Pugh said.

Employees used to squeeze 22,000 different items on store shelves. But in the newly remodeled outlets, stores carry about 4,000 fewer products. The streamlining makes it easier to keep goods in stock. In total, the drugstore chain reduced the value of its inventory per store by more than 11% in its fiscal fourth quarter.

Walgreen is remodeling 400 stores this fall in the new format, at a cost of about \$40,000 per store. By December 2010, the company expects to finish about 80% of its planned store remodels, Mr. Pugh said. Walgreen has changed the merchandise for all its stores in 36 categories, which account for 65% of non-pharmacy sales, he added.

Mr. Pugh said the company also sees new opportunities for sales growth in particular markets. In certain Chicago neighborhoods, for example, Walgreen is expanding its grocery selection in areas that have no supermarket within a 1.5 mile-radius, he said.

The recession has shaped Walgreen's long-term plans for its stores. "Consumers are concerned with rising unemployment, keeping their homes and

INDEX TO PEOPLE

Aisner, Robert C6	Gehrig, Bruno C13	Pettitt, Robin A11
	Gibbs, Jeffrey B1	Price, Alex C9

Boston Scientific, J&J Settle S'