

7/15/2019

77-O-19

AN ORDINANCE

**Granting An Amendment to the Approved Planned Developments
Located at 100 and 128-132 Chicago Avenue**

WHEREAS, the City of Evanston is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of government, the City has the authority to adopt ordinances and to promulgate rules and regulations that protect the public health, safety, and welfare of its residents; and

WHEREAS, Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the “powers and functions of home rule units shall be construed liberally,” was written “with the intention that home rule units be given the broadest powers possible” (*Scadron v. City of Des Plaines*, 153 Ill.2d 164); and

WHEREAS, it is a well-established proposition under all applicable case law that the power to regulate land use through zoning regulations is a legitimate means of promoting the public health, safety, and welfare; and

WHEREAS, Division 13 of the Illinois Municipal Code (65 ILCS 5/11-13-1, *et seq.*) grants each municipality the power to establish zoning regulations; and

WHEREAS, pursuant to its home rule authority and the Illinois Municipal Code, the City has adopted a set of zoning regulations, set forth in Title 6 of the Evanston City Code of 2012, as amended, (“the Zoning Ordinance”); and

WHEREAS, on June 26, 2018, the City approved Ordinance 61-O-18, attached hereto as Exhibit 1 and incorporated herein by reference, which granted a

Special Use Permit for a Planned Development (the "Planned Development") at 100 and 128-132 Chicago Avenue (the "Subject Property"), which is legally described in Exhibit 1; and

WHEREAS, on June 24, 2019, the City approved Ordinance 65-O-19, attached hereto as Exhibit 2 and incorporated herein by reference, which extended the period for the applicant to obtain a building permit; and

WHEREAS, Ordinance 61-O-18 approved the construction of a new five (5) story seventy-two (72) foot tall multi-family development consisting of twenty-six (26) dwelling units, approximately four thousand nine hundred ninety-nine (4,999) square feet of ground indoor floor commercial space, approximately two thousand three hundred seventy-four (2,374) square feet of commercial space on the second floor, approximately seven thousand (7,000) square feet of outdoor garden/open sales lot, and thirty (30) parking spaces at the Subject Property (the "Project"), which is detailed at length in Exhibit 1; and

WHEREAS, the Developer and Applicant, Evanston Gateway, LLC (the "Applicant") requested a major adjustment by adding the number of dwelling units from twenty (26) to twenty-eight (28), where office space was originally proposed in the mixed-use building approved by Ordinance 61-O-18 and 65-O-19 (revised plans depicting this major adjustment are attached hereto as Exhibit 3); and

WHEREAS, in order to approve the major adjustment requested, the Applicants request amendments to Ordinances 61-O-18 and 65-O-19 (the "Previously Approved Ordinances"); and

WHEREAS, the Previously Approved Ordinances are pieces of legislation enacted by the City Council of the City of Evanston, subject to revision only by said City Council; and

WHEREAS, on July 22, 2019, the Planning and Development Committee (“P&D Committee”) held a meeting, in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 *et seq*), during which it considered the Applicants’ request and voted to retain jurisdiction over said request; and

WHEREAS, during said meeting, the P&D Committee received input from the public, carefully deliberated on the major adjustment, and recommended approval thereof by the City Council; and

WHEREAS, at its meeting of July 22, 2019, held in compliance with the provisions of the Illinois Open Meetings Act, the City Council considered the P&D Committee’s recommendation, heard public comment, made findings, and adopted said recommendation; and

WHEREAS, it is well-settled law in Illinois that the legislative judgment of the City Council must be considered presumptively valid (see *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747) and is not subject to courtroom fact-finding (see *National Paint & Coating Ass’n v. City of Chicago*, 45 F.3d 1124),

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The foregoing recitals are hereby found as fact and incorporated herein by reference.

SECTION 2: The City Council hereby accepts the major adjustment for the Planned Development on the Subject Properties in conformance therewith, pursuant to the Previously Approved Ordinances, as revised by this ordinance.

SECTION 3: Pursuant to Subsection 6-3-6-12-(C) of the Zoning Ordinance, the City Council hereby grants the following Major Adjustment to the Planned Developments approved by the Previously Approved Ordinances:

- (A) To add two dwelling units, for a total of 28 dwelling units, where office space was originally proposed in the mixed-use building approved by Ordinance 61-O-18 and extended by Ordinance 65-O-19.

SECTION 4: Except as otherwise provided for in this Ordinance 77-O-19, all applicable regulations of the Previously Approved Ordinances, the Zoning Ordinance, and the entire City Code shall apply to the Subject Properties and remain in full force and effect with respect to the use and development of the same. To the extent that the terms and/or provisions of any of said documents conflict with any of the terms herein, this Ordinance 77-O-19 shall govern and control.

SECTION 5: When necessary to effectuate the terms, conditions, and purposes of this ordinance, "Applicants" shall be read as "Applicants' agents, assigns, and successors in interest."

SECTION 6: The findings and recitals herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 7: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8: This Ordinance 77-O-19 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: July 22, 2019

Adopted: July 22, 2019

Approved:

July 31, 2019

Stephen H. Hagerty
Stephen H. Hagerty, Mayor

Attest:


Devon Reid, City Clerk

Approved as to form:

Michelle L. Masoncup
Michelle L. Masoncup,
Corporation Counsel