

2/6/95  
2/16/95

12-O-95

AN ORDINANCE

Granting a Special Use and Release From a Covenant  
Imposed Under a Prior Ordinance to Permit Use  
and Operation of a Type 2 Burger King Restaurant  
with Drive-Through Facility at 1829 Dempster Street

WHEREAS, the Zoning Board of Appeals ("ZBA") held a public hearing on January 17, 1995, in case number 94-27-SU(R), pursuant to proper notice, on the application of Sheldon T. Friedman, lessee, d/b/a Land Venture, d/b/a Burger King, for a special use and release from certain covenants imposed under Ordinance 66-0-81 and Ordinance 4-0-87 to permit use and operation of a Type 2 Burger King restaurant with a drive-through facility on the property at 1829 Dempster Street ("subject property"); and

WHEREAS, Ordinance 66-0-81 granted a variation from the use regulations of the 1960 Zoning Ordinance to Glenview Drumsticks, Ltd. for a drive-in restaurant at the subject property; and

WHEREAS, a Covenant restricting the use of the Subject Property, dated September 8, 1981 and recorded as Document No. 26009434, was executed by the then Owner of the Subject Property in consideration of the granting of said use variation; and

WHEREAS, among the conditions in Ordinance 66-0-81 was no. 4, that the variation be limited to operation and occupancy of the subject property by Glenview Drumsticks, Inc.; and

WHEREAS, on January 26, 1987, the City Council adopted Ordinance No. 4-0-

87 granting additional zoning relief with respect to the use of the subject property; and

WHEREAS, Ordinance 4-0-87 required the Owner of the subject property to execute and record an amendment to that covenant deleting condition 4 and substituting a new condition in its place, i.e., that the variations granted by means of Ordinance 66-0-81 and 4-0-87 shall be valid only so long as the property is used as a drive-in restaurant of a fried-chicken franchise; and

WHEREAS, recordation of the aforesaid amendment pursuant to Ordinance 4-0-87 rendered further action on Ordinance 66-0-81 unnecessary in this case; and

WHEREAS, the ZBA, after hearing testimony and receiving other evidence, found that the application met the standards for special use pursuant to section 6-3-5-10 of the Zoning Ordinance, and recommended approval of the application; and

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

SECTION 1: That the application of Sheldon T. Friedman, lessee, d/b/a Land Venture, d/b/a Burger King, for a special use and to permit use and operation of a type 2 Burger King Restaurant with a drive-through facility is hereby granted, on property legally described as:

"Lot "A" in Plat of Consolidation of Lots One to Five, inclusive in N.P. and W.S. Williams Subdivision of Block Three of Chase and Pitner's Addition to Evanston, being a Subdivision of the Northwest Quarter of the Northeast Quarter of Section Twenty-four and the South Half of the Southwest Quarter of the Southeast Quarter of Section Thirteen, (Except the North 71.50 ft. thereof). Township Forty-one North, Range Thirteen, East of the Third Principal Meridian, in Cook County, Illinois", commonly known as 1829 Dempster Street, Evanston, Illinois.

SECTION 2: That the application for release of condition 2, regarding limitation of the variations granted by Ordinance 4-0-87 to a time in which the subject

property is used as a drive-in-restaurant of a fried chicken franchise, is hereby granted. A release of said condition in substantially the form attached hereto as Exhibit A, shall be executed, recorded by the applicant at its sole cost.

SECTION 3: That the City Council hereby adopts the findings of the ZBA that the aforesaid grant meets the standards of Section 6-3-5-10 of the Zoning Ordinance for special uses.

SECTION 4: That the aforesaid grant of a special use is conditioned upon:

- a. Operation and use of the subject premises shall be in substantial compliance with the testimony presented at the hearing of this case, including testimony relating to the design and use of the premises, action to be taken to prevent cars from stacking and interfering with the public sidewalk or adjacent rights-of-way, the use of the drive-through, and the parking area serving the lot on which the restaurant is located;
- b. Trash receptacles shall be placed at the exits from the premises;
- c. The City shall be allowed to post a sign or signs describing the City Ordinance applying to litter at the entrances to the parking area for the lot;
- d. The hours of operation for the restaurant with a drive-through facility shall be limited to 6:00 a.m. to 10:00 p.m., Sunday through Thursday, and 6:00 a.m. to 12:00 midnight, Friday and Saturday;
- e. The owner and/or operator of the restaurant shall be responsible for the litter collection within a 150-foot radius of the subject property. Litter pick-up shall include gathering litter which is used to wrap or carry any food or beverage from any source, no less often than twice a day;
- f. The applicant shall take all necessary steps to prevent vehicles entering or leaving the subject premises from stacking and double-parking or obstructing the public right-of-way, street, parkway, or public sidewalk. Such efforts may include, but shall not be limited to, the hiring of a security guard, an off-duty police officer or reimbursing the City for stationing a police officer on the premises to direct traffic, and if the traffic problems persist, the applicant agrees to permit the installation of traffic signs prohibiting left turns to vehicles entering and leaving the premises;
- g. Within five days of the receipt of a written notice of any violation of the provisions of this Ordinance, staff will initiate steps effective to promptly alleviate any traffic

problems, and to that end, the applicant agrees to consult with the City's Traffic Engineer;

- h. The operator will patrol and inspect the exterior of the premises, including, but not limited to, parking areas at night, so as to prevent any loitering on the premises;
- i. The existing security lights will be repaired, the pole lighting of the parking area will be placed in working order and the parking area shall be illuminated during the hours of operations.
- j. The applicant has agreed to the following procedure in the interest of public safety: If, in the sole judgment of the Chief of Police the number of calls for police services to the subject property becomes significant, the owner or operator shall hire a security guard to be on duty inside the restaurant during the days and hours stipulated by the Chief of Police.
- k. No automated sound system such as a jukebox or similar device, which may be activated by patrons or persons who are not employees, is permitted.
- l. Recording of the covenant described in section 2, above, of this Ordinance, and receipt by the City of a copy thereof are conditions precedent to the validity of this Ordinance 12-0-95.

SECTION 5: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

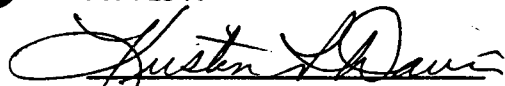
Introduced February 13, 1995

Adopted: February 27, 1995

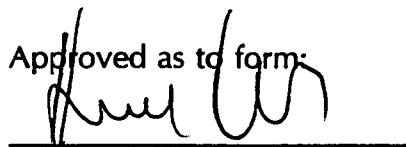
Approved: March 1, 1995

Lorraine A. Morton  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
Corporation Counsel

## Exhibit A

Amendment to Covenant  
Recorded as Document 87619617

This Declaration, made this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under Trust No. 55583 (hereinafter referred to as the "Owner).

WITNESSETH:

WHEREAS, Owner is the record owner of the following-described parcel of real estate located in the City of Evanston, County of Cook, State of Illinois:

Lot A in PLAT OF CONSOLIDATION of Lots 1 to 5, inclusive in N.P. and W.S. Williams Subdivision of Block 3 of Chase and Pitner's Addition to Evanston, being a subdivision of the Northwest quarter of the Northeast quarter Section 24 of the South 1/2 of the Southwest 1/4 of the Southeast 1/4 of Section 13 (except the north 71.50 feet thereof), Township 41 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

and commonly known as 1829 Dempster Street (which property is hereinafter referred to as the "Subject Property"); and

WHEREAS, a Covenant restricting the use of the Subject Property, dated September 8, 1981 and recorded as Document No. 26009434, was executed by the then Owner of the Subject Property in consideration of the granting of a variation from the use regulations of the Evanston Zoning Ordinance so as to permit the construction of a drive-in restaurant and installation of thirty- one off-street parking spaces.

WHEREAS, on January 26, 1987, the City Council of the City of Evanston adopted Ordinance No. 4-0-87 granting additional zoning relief with respect to the use of the subject property;

WHEREAS, Ordinance 4-0-87 required the Owner of the subject property to execute and record an amendment to that covenant dated September 8, 1981 deleting Condition 4 and substituting a new condition in its place, i.e., that the variations granted by means of Ordinance 66-0-81 and 4-0-87 shall be valid only so long as the property is used as a drive-in restaurant of a fried-chicken franchise; and

WHEREAS, the aforesaid amendment required by Ordinance 4-0-87 to be made to the covenant recorded as document 26009434, was made by an "Amendment to Covenant" recorded as document 87619617, and

WHEREAS, the City Council of the City of Evanston passed Ordinance 12-0-95, which granted a special use and release from a certain covenant imposed under a prior ordinance to permit use and operation of a Type 2 Burger King restaurant with drive-through facility at 1829 Dempster Street; and

WHEREAS, Ordinance 12-0-95 required the owner of the subject property to execute and record an amendment to the covenant recorded as document 87619617, releasing condition 2 of that document, which limited the variations granted by Ordinances 66-0-61 and 4-0-87 to a time in which the subject property is used as a drive-in restaurant of a fried-chicken franchise;

NOW, THEREFORE, the Owner does hereby covenant and agree on behalf of itself, its successors and assigns in interest as follows:

1. Condition 4 of the Covenant dated September 8, 1981, and recorded with the Cook County Recorder of Deeds as Document No. 26009434 was released by City of Evanston Ordinance 4-0-87 and is of no further effect.
2. Condition 2 of the amendment recorded pursuant to Ordinance 4-0-87 as document 87619617, is hereby released and is of no force and effect.

This covenant shall run with the land and shall be binding, not only upon the Owner but upon its successors and assigns, and may be released only by agreement with the City of Evanston.

AMERICAN NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO,  
as Trustee under Trust  
No. 55583

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Its: \_\_\_\_\_

State of Illinois                    )  
  ) SS  
COUNTY OF COOK                )

I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid,  
DO HEREBY CERTIFY that \_\_\_\_\_ and \_\_\_\_\_,  
personally known to me to be the \_\_\_\_\_ and \_\_\_\_\_  
Secretary, respectively, of American National Bank and Trust Company of Chicago, in whose  
name the foregoing instrument is executed, appeared before me this day in person and  
acknowledged that they signed and delivered the said instrument as their own free and  
voluntary act and as the free and voluntary act of American National Bank and Trust  
Company of Chicago for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Notary Public