

4/11/2006

59-O-06

AN ORDINANCE

**Granting a Special Use for a
Type 2 Restaurant at 1630 Sherman Avenue,
in the D3 Downtown Core Development District,
(Barnes & Noble)**

WHEREAS, the Zoning Board of Appeals ("ZBA") met on April 4, 2006, pursuant to proper notice, in case number ZBA 06-14-SU(R) to consider an application by Barnes & Noble Booksellers, Inc., lessee, with permission from Sherman Plaza Partners, LLC, owner of 1630 Sherman Avenue (the "Subject Property"), located in the D3 Downtown Core Development District, for a special use to establish a Type 2 Restaurant, pursuant to Section 6-11-4-3 of the Zoning Ordinance; and

WHEREAS, the ZBA, after hearing testimony and receiving other evidence, made a *verbatim* record and written findings that the application for a special use for a Type 2 Restaurant met the standards for special uses in Section 6-3-5 of the Zoning Ordinance and recommended City Council approval thereof; and

WHEREAS, the Planning and Development Committee of the City Council considered and adopted the ZBA's record, findings, and recommendation at its April 24, 2006 meeting and recommended City Council approval thereof; and

WHEREAS, the City Council considered the respective records, findings, and recommendations of the ZBA and the Planning and Development

Committee at its April 24, 2006 meeting, and adopted said records, findings, and recommendations at its May 8, 2006 meeting, and

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

SECTION 1: That the foregoing recitals are found as fact and made a part hereof.

SECTION 2: That the City Council hereby adopts the respective records, findings, and recommendations of the ZBA and the Planning and Development Committee, and hereby approves the special use for a Type 2 restaurant applied for in case number ZBA 06-14-SU(R) on that portion of the Subject Property commonly known as 1630 Sherman Avenue. The Subject Property is legally described in Exhibit A, attached hereto and made a part hereof.

SECTION 3: That, pursuant to Section 6-3-5-12 of the Zoning Ordinance which provides that the City Council may impose conditions on the grant of a special use, the following conditions are hereby imposed and, when necessary to effectuate said conditions and limitations, "applicant" shall be read as "owner" or "operator" or "applicant's successors in interest".

A. Compliance with Applicable Requirements: Development and use of the Subject Property shall be in substantial compliance with all applicable legislation, with the testimony and representations of the applicant to the ZBA, the Planning and Development Committee, and the City Council, and with the approved plans and documents on file in this case.

B. Litter Collection Plan:

1) The applicant shall implement and adhere to a Litter Collection Plan requiring the policing of an area located within a two hundred fifty-foot (250')

radius of the building in which the use is located. This area shall be policed once every three (3) hours during the hours the use is in operation and shall be kept free of all litter, including, but not limited to, food, beverages, napkins, straws, containers, bags, utensils, plates, cups, bottles, cans, and all other litter of any type emanating from any source. The operator of the Type 2 Restaurant shall comply with the Litter Collection Plan. This Ordinance shall prevail over any inconsistent or contrary provisions in the Plan.

2) For the purpose of this Ordinance, "litter" shall include, but is not limited to: putrescible animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food; other putrescible waste, including animal waste, dead animals, yard clippings and leaves; nonputrescible solid waste, including rubbish, ashes, street cleanings, abandoned automobiles, solid business, commercial, and industrial wastes, paper, wrappings, cigarettes, cardboard, tin cans, glass, bedding, crockery and similar materials; and all other waste materials which, if thrown or deposited as herein prohibited, may create a danger to public health, safety, or welfare.

C. Litter Pick-Up Plan:

1) The owner of the Subject Property, the operator, and/or applicant of the Type 2 Restaurant shall provide and maintain on the Subject Property exterior litter receptacles in sufficient number and type adequate, in the City's judgment, and with collections therefrom of sufficient frequency, also in the City's judgment, to contain, with lids tightly shut, all litter emanating from operation of the use, and all litter collected pursuant to the Litter Collection Plan. Collections shall be a minimum of three (3) times a week, including collections on Sundays to the extent necessary, in the City's judgment, to comply with this condition. All litter receptacles shall be maintained in a clean condition with tight-fitting lids, and shall be placed on Code-compliant surfaces. The owner of the Subject Property shall provide adequate space at the rear of and on the Subject Property to accommodate the litter receptacles and collections required.

2) Within seven (7) days of written notice from the City to do so, the number of litter receptacles and/or the number of collections from each, shall be increased or modified in accordance with the City's directive.

D. Parking Plan: An employee parking plan shall be implemented and adhered to, as a minimum, requiring the operator of the Type 2 Restaurant and the operator's employees to park at an off-street parking facility available in the Downtown area when driving to their employment at the Type 2 Restaurant.

SECTION 4: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

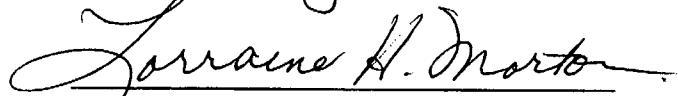
SECTION 5: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: April 24, 2006

Approved:

Adopted: May 8, 2006

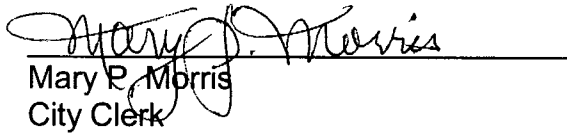
May 9, 2006



Lorraine H. Morton
Mayor

Attest:

Approved as to form:



Mary P. Morris
City Clerk



Herbert D. Hill
First Assistant Corporation Counsel

EXHIBIT A

LEGAL DESCRIPTION FOR 1630 SHERMAN AVENUE

PARCEL 1:

LOTS 2, 3 AND 4 IN SHERMAN PLAZA RESUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPLE MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH PLAT WAS RECORDED DECEMBER 9, 2001 AS DOCUMENT NO. 0434404084.

PARCEL 2:

PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR SUPPORT, INGRESS AND EGRESS, AND OTHER PURPOSES AS DESCRIBED AND DEFINED IN SECTION 4 AND, FOR THE BENEFIT OF LOT 3, AS DESCRIBED AND DEFINED IN SECTION 9, OF THE RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404085.

PARCEL 3:

LEASEHOLD ESTATE AS CREATED BY THE LEASE BETWEEN CITY OF EVANSTON AND SHERMAN PLAZA VENTURE, L.L.C., (AS DISCLOSED OF RECORD BY THE MEMORANDUM THEREOF RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404088), AS ASSIGNED TO SHERMAN PLAZA PARTNERS, LLC, BY ASSIGNMENT AND ASSUMPTION OF AGREEMENTS RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404089, WHICH DEMISES AND LEASES THE FOLLOWING DESCRIBED PORTION OF LOT 1 IN SHERMAN PLAZA SUBDIVISION, AFORESAID, FOR A TERM COMMENCING AND EXPIRING AS THEREIN DEFINED:

THAT PART OF LOT 1, AFORESAID, LYING ABOVE GROUND TIER FINISHED FLOOR ELEVATION OF 600.8, MORE OR LESS, AND BELOW SECOND TIER RAMP AND PARKING AREA FINISHED FLOOR ELEVATIONS RANGING FROM 609.83 THROUGH 623.58, MORE OR LESS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 21 MINUTES 30 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, A DISTNACE OF 44.55 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST 2.69 FEET FOR THE PLACE OF BEGINNING; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 14.45 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 44 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.31 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 23 MINUTES 4 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.94 FEET; THENCE NORTH 80 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 28 MINUTES 08 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.31 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 39 MINUTES 06 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.31 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 01 SECONDS WEST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.62

FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 20.75 FEET TO THE PLACE OF BEGINNING.

PARCEL 4:

PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 3 FOR SUPPORT, INGRESS AND EGRESS, AND OTHER PURPOSES AS DESCRIBED AND DEFINED IN SECTION 3 OF THE RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404085.

PARCEL 5:

LEASEHOLD ESTATE AS CREATED BY THE RETAIL PARKING LEASE BETWEEN CITY OF EVANSTON AND SHERMAN PLAZA PARTNERS, LLC, RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404092, WHICH DEMISES AND LEASES THE FOLLOWING FOR A TERM COMMENCING ON THE COMMENCEMENT DATE AS DEFINED THEREIN AND TERMINATING UPON THE 40TH ANNIVERSARY THEREOF:

“...SUFFICIENT UNASSIGNED AND UNRESERVED AUTOMOBILE PARKING SPACES TO COMPLY WITH THE CITY OF EVANSTON’S ZONING ORDINANCE, AS THAT ORDINANCE MAY BE MODIFIED FROM TIME TO TIME, LOCATED AT THE PLANNED NEW PUBLIC PARKING GARAGE LOCATED...” ON LOT 1 IN SHERMAN PLAZA SUBDIVISION, AFORESAID.