

12/10/2007
12/2/2007

108-O-07

AN ORDINANCE

**Granting a Special Use for a
Type 2 Restaurant at 809 Davis Street
in the D3 Downtown Core District,
("Red Mango" Frozen Yogurt)**

WHEREAS, the Zoning Board of Appeals ("ZBA") met on November 13, 2007, pursuant to proper notice, in case no. ZBA 07-38-SU (R), to consider an application by Stephen Lee, lessee (the "Applicant"), with permission from Sherman Plaza Partners, LLC, owner of the property located at 809 Davis (the "Subject Property"), in the D3 Downtown Core District, for a Special Use to establish a Type 2 Restaurant, "Red Mango", within Sherman Plaza, 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, amended, and adopted the ZBA's record, findings, and recommendation, as amended, at its December 10, 2007 meeting and recommended City Council approval thereof; and

WHEREAS, the City Council considered and adopted the respective records, findings, and recommendations of the ZBA, as amended, and the Planning and Development Committee at its December 10, 2007 meeting,

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

SECTION 1: 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, as amended, and the Planning and Development Committee, and hereby approves the Special Use for a Type 2 Restaurant applied for in case no. ZBA 07-38-SU (R) on the Subject Property, legally described in Exhibit A, attached hereto and made a part hereof, and commonly known as 809 Davis Street.

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 City Council hereby imposes the following conditions:

- A. Compliance with Applicable Requirements:** The Applicant shall develop and use the Subject Property in substantial compliance with all applicable legislation, 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. Special Use Exclusive to the Site:** The Special Use granted herein shall allow for the operation of a Type 2 Restaurant only on the portion of the property commonly known as Sherman Plaza, as illustrated in the Site Plan, attached hereto and made a part hereof as Exhibit B, and with the particular address of 809 Davis Street.

C. 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 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, 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.

D. Litter Pick-Up Plan:

- 1) The Applicant, the owner of the Subject Property, and/or the operator 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 there from of sufficient frequency, also in the City's judgment, to contain, with lids tightly shut, all litter emanating from operation of the use. Litter shall be collected a minimum of three (3) times per 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 Applicant, the owner of the Subject Property, and/or the operator of the Type 2 Restaurant shall increase or otherwise modify the number of litter receptacles and/or the number of collections from each, in accordance with the City's directive.

- E. Parking Plan:** The Applicant shall implement and adhere to an employee parking plan that requires, at a minimum, the operator and the operator's employees to park at an off-street parking facility available in the area when driving to their employment at said Type 2 Restaurant.
- F. Cooking Appliances:** The Applicant, the owner of the Subject Property, and/or the operator of the Type 2 Restaurant shall not use in or on the Subject Property any deep fryers, grills, ovens, or other cooking appliances that ventilate to the exterior of the building.
- G. Penalty for Non-Compliance:** Should the City determine that the Applicant has failed to comply with any of the terms of this Ordinance, the City may deliver written notice of non-compliance to the Applicant. If the Applicant does not cure the non-compliance identified in the notice within five (5) days, the Applicant shall owe the City a fine in the amount of two hundred fifty and no/100 dollars (\$250.00) per day that the Applicant is not in full compliance. If, in the City's determination, the Applicant is diligently pursuing the cure of such non-compliance and that such cure cannot be completed within five (5) days, the City may grant the Applicant additional time that the City determines to be reasonably necessary. The Applicant shall pay the total fine assessed within thirty (30) days after written notice from the City to do so. If the Applicant fails to pay the total amount of the fine within the thirty (30) days after written notice from the City to do so, the City may revoke the Special Use granted by this Ordinance.

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

SECTION 6: That the Applicant shall record a certified copy of this Ordinance, at its cost, including all Exhibits attached hereto, with the Cook County Recorder of Deeds, before the City may issue any permits or licenses related to the construction or operation of the proposed Special Use hereby authorized.

SECTION 7: If any provision of this Ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION 8: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

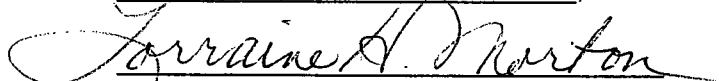
SECTION 9: That this Ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: December 10, 2007

Approved:

Adopted: December 10, 2007

December 12, 2007



Lorraine H. Morton, Mayor

Attest:



Mary P. Morris, City Clerk

Approved as to form



Herbert D. Hill
First Assistant Corporation Counsel

EXHIBIT A**Legal Description of 809 Davis Street****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 DISTANCE 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 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 11 MINUTES 41 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 00 MINUTES 14 SECONDS EAST, 0.31 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 16.64 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.50 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.30 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 2.17 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 1.08 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 6.90 FEET; THENCE SOUTH 34 DEGREES

57 MINUTES 00 SECONDS EAST, 16.32 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 47.82 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 15.00 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 13.71 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 1.00 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.08 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 37.70 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 23 SECONDS EAST, 26.40 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.33 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 0.60 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 6.47 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 19.36 FEET; THENCE SOUTH 89 DEGREES 36 MINUTES 33 SECONDS WEST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.50 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 18.92 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.50 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 18.92 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.50 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.25 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 19.58 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 0.04 FEET; THENCE SOUTH 27 DEGREES 41 MINUTES 23 SECONDS WEST, 19.40 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 10.43 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.29 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 4.00 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 0.67 FEET; THENCE SOUTH 89 DEGREES 20 MINUTES 58 SECONDS WEST, 0.29 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 14.58 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.29 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 3.17 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.04 FEET; THENCE SOUTH 89 DEGREES 33 MINUTES 59 SECONDS WEST, 0.04 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.21 FEET; THENCE NORTH 06 DEGREES 39 MINUTES 58 SECONDS WEST, 0.38 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 12.62 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 1.67 FEET; THENCE NORTH

00 DEGREES 19 MINUTES 33 SECONDS WEST, 36.50 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 1.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 2.67 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 1.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 2.04 FEET; THENCE NORTH 86 DEGREES 50 MINUTES 50 SECONDS WEST, 0.17 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 DEDFINED 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.

EXHIBIT B

SITE PLAN

