

7/6/2009

**59-O-09**

**AN ORDINANCE**

**Granting a Special Use for a  
Type 2 Restaurant at 1223 Chicago Avenue  
in the B1 Business Zoning District  
("Fruit Chill")**

**WHEREAS**, the Zoning Board of Appeals ("ZBA") met on April 28, 2009, pursuant to proper notice, in case no. 09ZMJV-0037 to consider an application by Urmish Patel, lessee (the "Applicant"), with permission from Nimesh Patel, owner of the property located at 1223 Chicago Avenue (the "Subject Property"), in the B1 Business District, for a Special Use to establish a Type 2 Restaurant, "Fruit Chill", on the Subject Property, pursuant to Subsection 6-10-4-3 of Title 6 of the Evanston City Code, 1979, as amended, ("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**, at its July 13, 2009 meeting, the Planning and Development Committee of the City Council ("P&D Committee") considered and adopted the ZBA's record, findings, and recommendations and recommended City Council approval thereof; and

**WHEREAS**, at its July 27, 2009 meeting, the City Council considered and adopted the respective records, findings, and recommendations of the ZBA and the P&D Committee,

**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 and the P&D Committee, and hereby approves the Special Use for a Type 2 Restaurant, applied for in case no. 09ZMJV-0037 on the Subject Property, legally described in Exhibit A, attached hereto and incorporated herein by reference.

**SECTION 3:** That, pursuant to Subsection 6-3-5-12 of the Zoning Ordinance, the City Council hereby imposes the following conditions on the grant of a Special Use, violation of any of which shall constitute grounds for revocation of said Special Use pursuant to Subsection 6-3-10-6 of the Zoning Ordinance:

- A. Compliance with Applicable Requirements:** The Applicant shall develop and use the Subject Property in substantial compliance with all applicable legislation, with the testimony and representations of the Applicant to the ZBA, the P&D Committee, and the City Council, and with the approved plans and documents on file in this case.
- B. Cooking Appliances:** The Applicant shall not use in or on the Subject Property any cooking appliances that ventilate to the building's exterior.
- C. Hours of Operation:** The Applicant may operate the Type 2 Restaurant authorized by the terms of this ordinance only during the following hours:
  - 1)** between 7:00 a.m. and 9:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday;

- 2) between 7:00 a.m. and 8:00 p.m. on any Saturday; and
- 3) between 9:00 a.m. and 6:00 p.m. on any Sunday.

- D. Litter Collection Plan:** The Applicant shall implement and adhere to a Litter Collection Plan that requires the policing of an area located within a radius of two hundred fifty feet (250') of the Subject Property. The Applicant shall police this area at least once every three (3) hours during the hours the Special Use is in operation and shall keep it free of all litter, from any source. For the purpose of this ordinance, "litter" shall include, but is not limited to: food, food waste, and beverages; solid waste, including paper, wrappings, containers, cardboard, napkins, straws, utensils, plates, cans, glass, crockery, cigarette butts, ashes and similar materials; animal waste and dead animals; yard clippings and leaves; and all other waste materials which, if thrown or deposited as herein prohibited, may create a danger to public health, safety, or welfare.
- E. Litter Pick-Up Plan:** The Applicant and/or the owner of the Subject Property shall provide and maintain on the Subject Property exterior litter receptacles, in sufficient number and type, and with collections therefrom of sufficient number and frequency, in the City's judgment, to contain, with lids tightly shut, all litter emanating from operation of the Special Use authorized hereby. Litter shall be collected no less than three (3) times per week, including collections on Sundays as 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. Within seven (7) days of written notice from the City to do so, the Applicant and/or the owner of the Subject Property shall modify the number of litter receptacles and/or the number of collections therefrom, as directed by the City.
- F. Fine 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 said notice within five (5) days, the Applicant shall owe the City a fine of two hundred fifty and no/100 dollars (\$250.00) per day that the Applicant fails to comply. 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 any such fine within thirty (30) days of written notice from the City to do so.

**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 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: July 13, 2009      Approved:  
Adopted: July 27, 2009      July 29, 2009  
Elizabeth B. Tisdahl  
Elizabeth B. Tisdahl, Mayor

Attest: [Signature]      Approved as to form:  
Rodney Greene, City Clerk      [Signature]  
Elke Tober-Purze, Interim  
First Assistant Corporation Counsel

**EXHIBIT A**

**LEGAL DESCRIPTION**

LOT 19 IN THE WEST ½ OF BLOCK 76 IN NORTHWESTERN UNIVERSITY SUBDIVISION IN THE NORTH ½ OF THE NORTH ½ OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PIN:** 11-19-200-006-0000

**COMMONLY KNOWN AS:** 1223-25 Chicago Avenue, Evanston, Illinois.

