

4/13/2010
3/29/2010

25-O-10

AN ORDINANCE

**Granting a Special Use for a Type 2 Restaurant
at 719 Church Street
in the D2 Downtown Retail Core Zoning District
("Andy's Frozen Custard")**

WHEREAS, the Zoning Board of Appeals ("ZBA") met on March 16, 2010, pursuant to proper notice, to consider case no. 10ZMJV-0010, an application by Jonathan K. Payne (the "Applicant"), lessee of the property located at 719 Church Street in the D2 Downtown Retail Core District (the "Subject Property"), with permission from Evanston Realty Associates, owner of the Subject Property, for a Special Use to establish a Type 2 Restaurant, "Andy's Frozen Custard", on the Subject Property, pursuant to Subsection 6-11-3-4 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 meeting of April 13, 2010, 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 meeting of April 13, 2010, 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 approves the Special Use for a Type 2 Restaurant on the Subject Property, legally described in Exhibit A, attached hereto and made a part hereof, applied for in case no. 10ZMJV-0010.

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; the testimony and representations of the Applicant to the ZBA, the P&D Committee, and the City Council; and the approved plans and documents on file in this case.
- B. 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.

- C. 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.
- D. 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 4: 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."

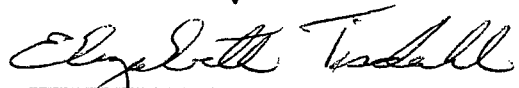
SECTION 5: That the Applicant shall record a certified copy of this ordinance, at its cost, including all Exhibits attached hereto, with the Cook County Recorder of Deeds, before the City may issue any permits or licenses related to the construction or operation of the Special Use hereby authorized.

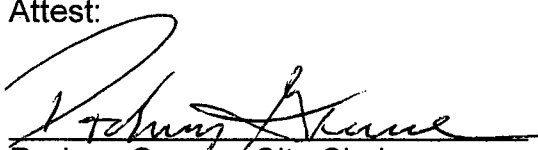
SECTION 6: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

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

SECTION 8: 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 13, 2010 Approved:
Adopted: April 13, 2010 April 15, 2010


Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene, City Clerk

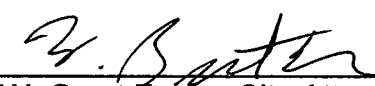
Approved as to form:

W. Grant Farrar, City Attorney

EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 150 FEET OF LOTS 5 AND 6 (AS A TRACT) IN BLOCK 16 IN THE ORIGINAL VILLAGE, NOW CITY OF EVANSTON, EXCEPTING FROM SAID PREMISES THE WEST 50 FEET AND ALSO EXCEPT THE EAST 25 FEET OF THE WEST 75 FEET OF THE SOUTH 50 FEET OF THE NORTH 60 FEET OF SAID LOT 6, IN SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN.

ALSO

THE WEST 50 FEET OF LOT 5 AND THE WEST 50 FEET OF THE SOUTH 15 FEET OF LOT 6 IN BLOCK 16 IN EVANSTON, ALL IN COOK COUNTY, ILLINOIS.

PIN: 11-18-305-005-0000

COMMONLY KNOWN As: 719 Church Street, Evanston, Illinois.