

2/27/2019
3/5/2019

22-O-19

AN ORDINANCE

**Granting a Special Use Permit for a Planned Development
Located at 910-938 Custer Avenue and Amending the Zoning Map to
Re-Zone Certain Property from the MUE Transitional Manufacturing-
Employment District to the MXE Mixed-Use Employment District
(“Custer Avenue Townhomes”)**

WHEREAS, the City of Evanston is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of government, the City has the authority to adopt ordinances and to promulgate rules and regulations that protect the public health, safety, and welfare of its residents; and

WHEREAS, Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the “powers and functions of home rule units shall be construed liberally,” was written “with the intention that home rule units be given the broadest powers possible” (*Scadron v. City of Des Plaines*, 153 Ill.2d 164); and

WHEREAS, it is a well-established proposition under all applicable case law that the power to regulate land use through zoning regulations is a legitimate means of promoting the public health, safety, and welfare; and

WHEREAS, Division 13 of the Illinois Municipal Code (65 ILCS 5/11-13-1, *et seq.*) grants each municipality the power to establish zoning regulations; and

WHEREAS, pursuant to its home rule authority and the Illinois Municipal Code, the City has adopted a set of zoning regulations, set forth in Title 6 of the Evanston City Code of 1979, as amended, (“the Zoning Ordinance”); and

WHEREAS, Kevin Lee (the “Applicant”), owner and developer of the property located at 910-938 Custer Avenue, Evanston, Illinois (the “Subject Property”), legally described in Exhibit A, which is attached hereto and incorporated herein by reference, applied, pursuant to the provisions of the Zoning Ordinance, specifically Section 6-3-5, “Special Uses,” Section 6-3-6, “Planned Developments,” and Subsection 6-13-4-3, “Special Uses” in the MXE Mixed-Use Employment District, to permit the construction and operation of a Planned Development located at the Subject Property in the MXE Mixed-Use Employment District; and

WHEREAS, the Applicant sought approval to re-zone the Subject Property from the current MUE Transitional Manufacturing-Employment District to the proposed MXE Mixed-Use Employment District; and

WHEREAS, the Applicant sought approval to construct forty (40) new four (4) story forty-seven (47) feet and four (4) inches tall single-family attached dwelling units, commonly referred to as townhouses; and

WHEREAS, construction of the Planned Development, as proposed in the application, requires exception from the strict application of the Zoning Ordinance with regards to number of dwellings, building height of each dwelling, west rear yard setbacks, orientation of front entrance of town homes, setbacks for balconies and width of landscaping strip; and

WHEREAS, pursuant to Subsection 6-3-6-5 of the Zoning Ordinance, the City Council may grant Site Development Allowances to the normal district regulations established in the Zoning Ordinance; and

WHEREAS, on February 13, 2019, in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*) and the Zoning Ordinance, the Plan Commission held a public hearing on the application for a Special Use Permit for a Planned Development and Rezoning from MUE Transitional Manufacturing-Employment District to MXE Mixed-Use Employment District, case no. 18PLND-0100, heard extensive testimony and public comment, received other evidence, and made written minutes, findings, and recommendations; and

WHEREAS, the Plan Commission's written findings state that the application for the proposed Planned Development met applicable standards set forth for Special Uses in Subsection 6-3-5-10 of the Zoning Ordinance and Planned Developments in the MXE Mixed-Use Employment District per Subsection 6-13-4-3 of the Zoning Ordinance and Map Amendments per Subsection 6-3-4-5; and

WHEREAS, the Plan Commission's written findings state that the amended application for the proposed Planned Development meets applicable standards set forth for Special Uses in Subsection 6-3-5-10 of the Zoning Ordinance and Planned Developments in the MXE Mixed-Use Employment District per Subsection 6-13-4-3 of the Zoning Ordinance; and

WHEREAS, the Plan Commission recommended the City Council approve the amended application with conditions; and

WHEREAS on March 11, 2019, the Planning and Development (“P&D”) Committee of the City Council held meetings, in compliance with the provisions of the Open Meetings Act and the Zoning Ordinance, received input from the public, carefully considered and adopted the findings and recommendations of the Plan Commission, and recommended approval thereof by the City Council; and

WHEREAS, construction of the Planned Development, as presented in the submitted revised plans, requires exception from the strict application of the Zoning Ordinance with regards to number of dwellings, building height of each dwelling, rear yard setbacks, orientation of front entrance the dwellings, setbacks for balconies and width of landscaping strip; and

WHEREAS, at its meetings of March 11, 2019 and April 8, 2019, held in compliance with the Open Meetings Act and the Zoning Ordinance, the City Council considered the recommendation of the P&D Committee, the Applicant’s application, received additional public comment, made certain findings, and adopted said recommendation; and

WHEREAS, it is well-settled law that the legislative judgment of the City Council must be considered presumptively valid (see *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747 (1991)) and is not subject to courtroom fact-finding (see *National Paint & Coating Ass’n v. City of Chicago*, 45 F.3d 1124 (7th Cir. 1995)),

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

SECTION 1: The foregoing recitals are hereby found as facts and incorporated herein by reference.

SECTION 2: The City Council hereby amends the Zoning Map to remove those properties with the addresses and PINs listed in Exhibit B and identified in Exhibit C, both attached hereto and incorporated herein by reference, from the MUE Transitional Manufacturing-Employment District and place them within the MXE Mixed-Use Employment District.

SECTION 3: Pursuant to the terms and conditions of this Ordinance, the City Council hereby grants the Special Use Permit applied for in case no. 18PLND-0100, to allow construction and operation of the Planned Development described herein.

SECTION 4: The City Council hereby grants the following Site Development Allowances:

- (A) **Number of Dwellings:** A Site Development Allowance is hereby granted permitting forty (40) dwelling units to be constructed whereas the requirement in subsection 6-13-4(4)(B)(2) permits thirty-two (32) dwelling units on the Subject Property.
- (B) **Building Height:** A Site Development Allowance is hereby granted for an maximum building height of approximately forty-seven (47) feet and four (4) inches, whereas subsection 6-13-4-7 permits a maximum building height of forty-one (41) feet on the Subject Property.
- (C) **Rear Yard Setback:** A Site Development Allowance is hereby granted permitting a rear yard setback of five (5) feet from the western property line of the Subject Property, whereas subsection 6-13-4-6(D) requires a minimum of a fifteen (15) feet rear yard setback from the western property line of the Subject Property line on the Subject Property.
- (D) **Townhouse Orientation:** A Site Development Allowance is hereby granted permitting the townhomes to face the interior or side yards, whereas subsection 6-13-11-1 requires townhomes to have frontage on a public street on the Subject Property.
- (E) **Balcony Yard Obstruction (Front yard):** A Site Development Allowance is hereby granted permitting a seven (7) foot front yard setback for a balcony on the

Subject Property, whereas subsection 6-4-1-9-B requires a nine (9) foot front yard setback for the installation of a balcony on the Subject Property.

- (F) **Balcony Yard Obstruction (South interior side yard):** A Site Development Allowance is hereby granted permitting a two (2) foot south interior side yard setback for a balcony on the Subject Property, whereas subsection 6-4-1-9-B requires a four and half (4.5) foot south interior side yard setback for the installation of a balcony on the Subject Property.
- (G) **Balcony Yard Obstruction (West rear yard):** A Site Development Allowance is hereby granted permitting a one (1) foot west rear yard setbacks for a balcony on the Subject Property, whereas subsection 6-4-1-9-B requires a thirteen and half (13.5) west rear yard setback for the installation of a balcony on the Subject Property.
- (H) **Landscaping Strip:** A Site Development Allowance is hereby granted permitting a minimum of five (5) feet landscape strip along the south and west property boundaries of the Subject Property, whereas subsection 6-13-1-10(B)(3) of the Zoning Ordinance requires a minimum of a twenty-five (25) feet landscape strip is required for this development in the MXE Mixed-Use Employment District.

SECTION 5: Pursuant to Subsection 6-3-5-12 of the Zoning Ordinance, the City Council imposes the following conditions on the Special Use Permit granted hereby, which may be amended by future ordinance(s), and violation of any of which shall constitute grounds for penalties or revocation of said Special Use Permit pursuant to Subsections 6-3-10-5 and 6-3-10-6 of the Zoning Ordinance:

- (A) **Compliance with Applicable Requirements:** The Applicant shall develop and operate the Planned Development authorized by the terms of this Ordinance in substantial compliance with: the terms of this Ordinance; the Site and Landscape Plans in Exhibits D and E, attached hereto and incorporated herein by reference; all applicable legislation; the Applicant's testimony and representations to the Design and Project Review Committee, the Plan Commission, the P&D Committee, and the City Council; and the approved documents on file in this case.
- (B) **Construction Management Plan:** The Applicant shall sign and agree to a Construction Management Plan (CMP) with the City of Evanston prior to issuance of the Building Permit. The CMP shall include but is not limited to the following: construction phasing/staging plans; construction hours; site access including traffic and pedestrian safety plans; contractor parking; damage control

and vibration monitoring; construction exhibits; project communication and signage.

- (C) **On-Street Parking Pay Boxes:** The Applicant agrees to make a one-time contribution to the City of Evanston in the amount of nine thousand dollars (\$9,000.00) to pay for the installation of an on-street parking pay box.
- (D) **Contaminated Materials:** The Applicant shall remove and remedy any contaminated materials located on the Subject Property in compliance with the Illinois Environmental Protection Agency's regulations.
- (E) **Affordable Housing Units:** The Applicant shall comply with the Inclusionary Housing Ordinance in effect at time of application, whereby ten percent (10%) of units must be affordable or pay a fee-in-lieu at a rate of one hundred thousand dollars (\$100,000.00) per affordable unit, with the applicant agreeing to pay a fee-in-lieu of one hundred thousand dollars (\$100,000.00) per affordable unit for a total payment of four hundred thousand dollars (\$400,000.00).
- (F) **Streetscaping:** The Applicant shall make streetscape improvements, per the site plans in Exhibit E, including landscaping, emergency vehicle grass-road pavers, right-of-way bump out near Main Street, street trees on private property, Custer Avenue turnaround, and landscaping of the Metra embankment.
- (G) **Alley Easement:** The Applicant agrees to establish an easement agreement to increase the north-south and east-west alleys to twenty (20) feet in width where each alley abuts the Subject Property.
- (H) **Alley Construction:** The Applicant shall reconstruct the north-south and east-west alleys where they abut the subject property and including the alley easement area, to include storm water management, burying of utilities where possible, and surface pavement, all per City of Evanston Public Works Agency requirements, with timing consideration with the City's water main project in the vicinity.
- (I) **Snow Removal:** The Applicant shall ensure the Homeowner's Association is responsible for snow removal in the alley where adjacent to the Subject Property, and shall ensure snow removal is not deposited or plowed into the remainder of the alleyway.
- (J) **Public Art Contribution:** The Applicant shall provide a payment of twenty-five thousand dollars (\$25,000) for public art or install an art piece in the vicinity of the development site with an approximate cost of twenty-five thousand dollars (\$25,000), subject to the approval of the Arts Commission and Design & Project Review Committee.
- (K) **Green Building Ordinance:** The development shall comply with the City of Evanston Green Building Ordinance.

- (L) **Pedestrian Countdown Timers:** The Applicant agrees to contribute fifteen thousand dollars (\$15,000.00) to the City of Evanston to be utilized when the City conducts its traffic light update.
- (M) **On Street Parking: Residential On-Street Parking Permits:** Residents of the building shall not be eligible to obtain residential on-street parking permits .
- (N) **Recordation:** Pursuant to Subsection 6-3-6-10 of the Zoning Ordinance, the Applicant shall, at its cost, record a certified copy of this Ordinance, including all exhibits attached hereto, with the Cook County Recorder of Deeds, and provide proof of such recordation to the City, before the City may issue any permits pursuant to the Planned Development authorized by the terms of this Ordinance.

SECTION 6: When necessary to effectuate the terms, conditions, and purposes of this Ordinance, "Applicant" shall be read as "Applicant's tenants, agents, assigns, and successors in interest."

SECTION 7: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SECTION 8: Except as otherwise provided for in this Ordinance, all applicable regulations of the Zoning Ordinance and the entire City Code shall apply to the Subject Property and remain in full force and effect with respect to the use and development of the same. To the extent that the terms and provisions of any of said documents conflict with the terms herein, this Ordinance shall govern and control.

SECTION 9: All Ordinances or parts of ordinances that are in conflict with the terms of this Ordinance are hereby repealed.

SECTION 10: 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 11: The findings and recitals herein are hereby declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: April 8th, 2019

Adopted: March 11th, 2019

Attest:



Devon Reid, City Clerk

Approved:

April 22, 2019



Stephen H. Hagerly, Mayor

Approved as to form:



Michelle L. Masoncup, Corporation Counsel

EXHIBIT A

Legal Description

LOT 1 IN DARD PRODUCTS THIRD CONSOLIDATION, BEING A CONSOLIDATION OF LOT 3 AND THE NORTH HALF OF LOT 4 IN RAILWAY SUBDIVISION AND LOT 1 IN DARD PRODUCTS SECOND CONSOLIDATION, IN THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED.

PINs: 11-19-117-063-0000

COMMONLY KNOWN AS: 910-938 Custer Avenue, Evanston, IL

EXHIBIT B

**Addresses and PINs of Properties Removed from the MUE Transitional
Manufacturing-Employment District and Placed Within the MXE Mixed-Use
Employment District**

PINs: 11-19-117-063-0000

COMMONLY KNOWN AS: 910-938 Custer Avenue, Evanston, IL

EXHIBIT C

Map of Properties Removed from the MUE Transitional Manufacturing-Employment District and Placed Within the MXE Mixed-Use Employment District

EXHIBIT D
Development Plans

EXHIBIT E
Landscape Plans