

114-O-19

AN ORDINANCE

**Granting a Special Use Permit for a Planned Development
Located at 1012-1018 Church Street in the D3 Downtown Core
Development District**

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, 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, 174-75 (1992)); 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 2012, as amended, (“the Zoning Ordinance”); and

WHEREAS, Northlight Theater (“Applicant”), the Applicant for the proposed development located at 1012-1018 Church Street, 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 6-11-1-10, “Planned Developments” in Downtown Zoning Districts, to permit the construction and operation of a Planned Development with a cultural facility at the Subject Property in the D3 Downtown Core Development Zoning District (“D3 District”); and

WHEREAS, the Applicant sought approval to construct a new three (3) story, thirty-seven thousand eight hundred (37,800) square foot cultural facility, a live theater performance venue, with a two hundred eighty-nine (289) seat main stage and a building height of forty-one (41) feet; 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 the number of parking spaces provided and an increased setback from the street frontage property line at the first floor; and

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

WHEREAS, on September 11, 2019 and September 12, 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, case no. 19PLND-0075, 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 does meet applicable standards set forth for Special Uses in Subsection 6-3-5-10 of the Zoning Ordinance and Planned Developments in the D3 Downtown Core Development District per Subsection 6-11-1-10 of the Zoning Ordinance; and

WHEREAS, on September 12, 2019, the Plan Commission recommended the City Council approve the application; and

WHEREAS, on September 23, 2019, the Planning and Development ("P&D") Committee of the City Council held a meeting, in compliance with the provisions of the Open Meetings Act and the Zoning Ordinance, received input from the public, carefully considered the findings and recommendation for approval of the Plan Commission, and recommended approval thereof by the City Council; and

WHEREAS, at its meetings on September 23, 2019, and October 14, 2019, held in compliance with the Open Meetings Act and the Zoning Ordinance, the City Council considered the recommendation of the P&D Committee, 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) and is not subject to courtroom fact-finding (see *National Paint & Coating Ass'n v. City of Chicago*, 45 F.3d 1124),

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: Pursuant to the terms and conditions of this ordinance, the City Council hereby grants the Special Use Permit applied for in case no. 19PLND-0075, to allow construction and operation of the Planned Development for a new three (3) story, thirty-seven thousand eight hundred (37,800) square foot Cultural Facility, a live theater performance venue, with a two hundred eighty-nine (289) seat main stage and a building height of forty-one (41) feet.

SECTION 3: The City Council hereby grants the following Site Development Allowances:

- (A) Number of Parking Spaces:** A Site Development Allowance is hereby granted for a total of zero (0) off-street parking spaces, whereas Subsection 6-16-2, Table 16-B of the Zoning Ordinance requires a minimum of thirty-two (32) off-street parking spaces for the proposed Planned Development in the D3 District.
- (B) Street front setback:** A Site Development Allowance is hereby granted for a two (2) foot setback from the street frontage property line at the first floor where as Subsection 6-11-1-4 requires a zero (0) foot setback from the street frontage property line at the first floor for a minimum building height of twenty-four (24) feet but not more than forty-two (42) feet for all new structures facing Church Street in the D3 District.

SECTION 4: 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 Development Plan; 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) **Arts for Everyone:** The Applicant shall annually provide not less than one thousand (1,000) complimentary tickets to Evanston not-for-profit partners and the Evanston Public Library. The Applicant shall offer senior pricing discounts. The Applicant shall make space available for use by other local arts organizations and groups.
- (D) **Bird-Friendly Measures:** The Applicant shall provide appropriate bird friendly measures on the north building facade, including fritted glass.
- (E) **City of Evanston Employment:** The Applicant agrees to employ at least three (3) Evanston residents, with a goal of ten (10) Evanston residents, during construction.
- (F) **Public Art Installation:** Prior to issuance of the Final Certificate of Occupancy (FCO), the Applicant shall install public art on the portion of the west facade visible from Oak Avenue. The public art installation shall require approval of the Arts Council and the Design and Project Review Committee.
- (G) **Further Review Required:** Prior to issuance of a building permit, approval of the Design and Project Review Committee shall be required for the following items relating to peak patron arrival and departure times:
 - 1. Parking plan
 - 2. Bike lane management and on-street parking configuration
 - 3. Multi-modal transportation plan

- (H) **Construction Schedule:** Pursuant to Subsection 6-11-1-10(A)(4) of the Zoning Ordinance, the Applicant shall obtain a building permit within twenty-four (24) months of the passing of this Ordinance. Additionally, the Applicant must complete the construction of the Planned Development within twenty-four (24) months from the date the Applicant receives its building permit.
- (I) **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 5: 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 6: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SECTION 7: 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 8: All ordinances or parts of ordinances that are in conflict with the terms of this ordinance are hereby repealed.

SECTION 9: 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 10: 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: September 23, 2019

Approved:

Adopted: October 14, 2019

November 4, 2019

Stephen H. Hagerty
Stephen H. Hagerty, Mayor

Attest:

Approved as to form:

Eduardo Gomez
~~Devon Reid, City Clerk~~
Eduardo Gomez, Deputy City Clerk

Michelle L. Masoncup
Michelle L. Masoncup, Corporation
Counsel

EXHIBIT A

Legal Description

LOT 4 AND THE EAST 30.0 FEET OF LOT 5 IN BLOCK 67 IN THE ORIGINAL VILLAGE (NOW CITY) OF EVANSTON IN THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 11-18-302-006-0000

COMMONLY KNOWN As: 1012-108 Church Street, Evanston, IL 60201

EXHIBIT B

Development Plans