

2/24/2020

33-O-20

AN ORDINANCE

Extending the Time for the Applicant to Obtain a Building Permit to Construct the Dwelling Units in the Planned Development at 910-938 Custer Ave. Previously Authorized by Ordinance 22-O-19

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 legislation and to promulgate rules and regulations that protect the public health, safety, and welfare of its residents; 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, on April 8, 2019, the City Council enacted Ordinance 22-O-19 by a supermajority vote, as required by Section 6-3-6-6 of the Zoning Ordinance, attached hereto as Exhibit 1 and incorporated herein by reference, which, pursuant to the provisions of the Zoning Ordinance, granted a Special Use Permit for a Planned Development (the "Planned Development") and Rezoning from MUE Transitional

Manufacturing-Employment District to MXE Mixed-Use Employment District at 910-938 Custer Avenue (the "Subject Property"), which is legally described in Exhibit 1; and

WHEREAS, the Planned Development Ordinance approved the creation of 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 at the Subject Property (the "Project"); and

WHEREAS, on February 14, 2020, the property owner for the Subject Property, Kevin Lee (the "Applicant") requested an amendment to the Planned Development in order to extend the timeframes for himself and any successor in interest to obtain a building permit to construct the dwelling units and finish the last phase of the Project (the "Amendment"); and

WHEREAS, City Code Sections 6-3-5-15(A) and 6-8-1-10(A) provide for a time period for construction of one (1) year unless the City Council approves for an extended date by which to obtain a building permit in order to allow for a staged development; and

WHEREAS, in order to commence construction of the residential units, the Applicant requests an amendment to the Planned Development to provide for an additional one (1) year to obtain a building permit to commence construction of the dwelling units in the Project, revising the date to obtain a building permit to be March 23, 2021 (the "Extension Request"); and

WHEREAS, Applicant's Extension Request was timely received but was unable to be fully addressed due to the recent COVID-19 outbreak and state of emergency in the City;

WHEREAS, on March 9, 2020, the Planning and Development Committee ("P&D Committee") held a meeting, in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 *et seq*), during which it retained jurisdiction over the Extension Request; and

WHEREAS, during said meeting, the P&D Committee received input from the public, and carefully deliberated on the Extension Request and the Applicant was given notice of the P&D and City Council meetings; and

WHEREAS, at its meetings on March 9, 2020 and April 13, 2020, held in compliance with the provisions of the Illinois Open Meetings Act, the City Council considered the P&D Committee's deliberations and recommendations, heard public comment, made findings and considered this Ordinance 33-O-20 and the Extension Request,

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 fact and incorporated herein by reference.

SECTION 2: Pursuant to the terms and conditions of this ordinance and Sections 6-3-5-15(a) and 6-11-1-10(A)(4) of the Zoning ordinance, the City Council hereby grants an amendment to the Planned Development Special Use Permit previously authorized by Ordinance 22-O-19 to allow for a one (1) year time extension to the Applicant to obtain a building permit for the limited purpose of construction of the dwelling units at 910-938 Custer Avenue in the Planned Development described herein.

SECTION 3: Pursuant to Subsection 6-3-5-12 of the Zoning Ordinance, the City Council imposes the following conditions on the Special Use Permit granted for the Planned Development, 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 following: the terms of this Ordinance 33-O-20; terms of Ordinance 22-O-19; all applicable City Code requirements; the Applicant's testimony and representations to the P&D Committee, and the City Council; and the approved documents on file in this case.
- (b) **Construction of Residential Units:** The Applicant must obtain a building permit for the construction of forty (40) new four (4) story forty-seven (47) feet and four (4) inches tall single-family attached dwelling units within one (1) year (April 13, 2021). The construction shall be in compliance with all applicable City Code restrictions, including but not limited to, the construction must be completed within a period of twenty-four (24) months after issuance of the building permit.
- (c) **Changes in Property Use:** Any change as to the property's use in the future must be processed and approved as an additional amendment to the Planned Development.
- (d) **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 4: Except as otherwise provided for in this Ordinance 33-O-20, all applicable regulations of the Ordinance 22-O-19, 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/or provisions of any of said documents conflict with any of the terms herein, this

Ordinance 33-O-20 shall govern and control.

SECTION 5: When necessary to effectuate the terms, conditions, and purposes of this ordinance, "Applicant" shall be read as "Applicant and its agents, assigns, and successors in interest" and shall mean Kevin Lee, and any and all successors, owners, and operators of the Subject Property.

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.

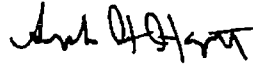
SECTION 10: The findings and recitals herein are hereby declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: March 9, 2020, 2020

Adopted: April 13, 2020, 2020

Approved:

04 / 20 / 2020, 2020



Stephen H. Hagerty, Mayor

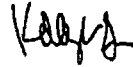
Attest:

Eduardo Gomez

~~Devon Reid, City Clerk~~

Eduardo Gomez, Deputy City Clerk

Approved as to form:



Kelley A. Gandurski
Corporation Counsel

EXHIBIT 1
ORDINANCE 22-O-19