

3/4/2020

**49-O-20**

**AN ORDINANCE**

**Granting a Special Use Permit for a Planned Development  
Located at 605 Davis 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 legislation 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 unit 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**, Vermillion Enterprises, LLC ("Applicant"), the Applicant for the proposed development located at 605 Davis Street, Evanston, Illinois (the "Subject Property"), legally described in Exhibit A, which is attached hereto and incorporated herein by reference, applied, pursuant to the provision 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 drive through financial institution and accessory parking located at the Subject Property in the D3 Downtown Core Development Zoning District ("D3 District") ; and,

**WHEREAS**, the applicant sought approval to construct a new eighteen (18) story, two hundred twenty (220) foot tall Class A office building with a floor area ratio of 13.02, approximately four thousand five hundred (4,500) square feet of ground floor retail space including a drive through for a financial institution and thirty-nine (39) parking spaces; 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 floor area ratio, building height, number of parking spaces provided, ziggurat setback along the Davis Street property line, ziggurat setback along the east interior lot line, and ziggurat setback along the west interior side lot line; 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 March 11, 2020, 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-0036, 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 meets 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 March 11, 2020, the Plan Commission recommended the City Council approve the application; and

**WHEREAS**, on April 13, 2020, the Planning and Development ("P&D") Committee of the City Council held a meeting, in compliance with the provision 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 April 13 and April 27, 2020, 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 found as fact 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-0036, to allow construction and operation of the Planned Development for an eighteen (18) story, two hundred twenty (220) foot tall Class A office building with a floor area ratio of 13.02, approximately four thousand five hundred (4,500) square feet of ground floor retail space including a drive through for a financial institution and thirty-nine (39) parking spaces.

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

- A. Floor Area Ratio ("FAR"):** A Site Development Allowance is hereby granted for an FAR of 13.02, whereas Subsection 6-11-4-6 of the Zoning Ordinance allows a maximum FAR of 4.5 in the D3 District with Subsection 6-11-1-10(C)(2) allowing for an additional development allowance of 3.5 FAR.
- B. Building Height:** A Site Development Allowance is hereby granted for a building height of two hundred twenty (220) feet, whereas Subsection 6-11-4-8 of the Zoning Ordinance allows for a maximum building height of eighty-five (85) feet in the D3 District with Subsection 6-11-1-10(C)(1) allowing a maximum height of two hundred twenty (220) feet as a development allowance.

- C. **Number of Parking Spaces:** A Site Development Allowance is hereby granted for a total of thirty-nine (39) on-site parking spaces, whereas Subsection 6-16-3-5 of the Zoning Ordinance requires a minimum of four hundred-twenty (420) parking spaces for the proposed Planned Development in the D3 District.
- D. **Ziggurat Setback from the East Interior Lot Line:** A Site Development Allowance is hereby granted for a ziggurat setback of zero (0) feet at a height of twenty-nine (29) feet, whereas Subsection 6-11-1-10(C)(1)(c) of the Zoning Ordinance requires a ziggurat setback of twenty-five (25) feet for a structure above forty two (42) feet from an interior side lot line in the D3 District.
- E. **Ziggurat Setback along the Davis Street Property Line:** A Site Development Allowance is hereby granted for a ziggurat setback of fifteen (15) feet at a height of twenty-nine (29) feet, whereas Subsection 6-11-1-4 of the Zoning Ordinance requires a ziggurat setback of forty (40) feet for a structure above forty two (42) feet from any front or side lot line abutting a street in the D3 District.
- F. **Ziggurat Setback from the West Interior Lot Line:** A Site Development Allowance is hereby granted for a ziggurat setback of zero (0) feet at a height of twenty-nine (29) feet, whereas Subsection 6-11-1-10(C)(1)(c) of the Zoning Ordinance requires a ziggurat setback of twenty-five (25) feet for a structure above forty two (42) feet from an interior side lot line 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 following: the terms of this ordinance; the Development and Landscape Plans in Exhibit B and C, attached hereto and incorporated herein by reference; all applicable City Code requirements; 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 staging plan, on-street and on-site construction parking restrictions, hours of operation, a plan including cross sections showing

pedestrian access around the site with the use of curb ramps, signage and/or striping, foundation survey of surrounding structures including weekly reporting of seismographs for the duration of construction, submittal of environmental testing report prior to construction, visibility diagram for all construction site access points, proposed schedule for street opening for utility connections with cross section details, and project updates via monthly newsletter and project website.

- (C) **Approval of Change in Use:** Any change in use, with the exception of the removal of the drive-through facility, must be approved as an amendment to the Planned Development.
- (D) **Alley Reconstruction:** The Applicant shall reconstruct the west half of the alley immediately adjacent to the development site.
- (E) **Downtown Evanston Contribution:** The Applicant shall provide \$50,000 support for event programming in Fountain Square through Downtown Evanston.
- (F) **Viaduct Improvement Contribution:** The Applicant shall provide \$50,000 support for improvements to downtown Evanston viaducts at Benson/Davis and/or Elmwood/Davis.
- (G) **Affordable Housing Fund Contribution:** The Applicant shall provide a \$50,000 contribution to the City's Affordable Housing Fund.
- (H) **Bird-Friendly Measures:** The Applicant shall apply bird friendly measures to the building, including but not limited to bird friendly glass, fritted balcony rails and lighting control at night per the drawings in Exhibit B.
- (I) **Mayor's Monarch Pledge:** The Applicant shall comply with the Mayor's Monarch Pledge.
- (J) **Electric Vehicle Charging Stations:** The Applicant shall provide eight (8) electric vehicle charging stations in the garage with additional conduit to allow easy installation of additional electric vehicle charging stations in the future.
- (K) **Metered Parking:** The Applicant shall make any necessary improvement, including signage and pavement striping to provide two (2) new metered parking spaces along Davis Street in front of the development site.
- (L) **Davis Street Bike Lane:** The Applicant shall extend bollards and other safety measures for the Davis Street protected bike lane in front of the development site.
- (M) **Long Term Parking Lease:** Prior to issuance of building permit, the Applicant shall execute a long term parking lease agreement with the City of Evanston to lease a maximum of one hundred and fifty (150) parking spaces based on the

standard current monthly parking fee from the 525 Church Street parking garage. The lease of fifty (50) parking spaces would be initiated upon issuance of a Temporary Certificate of Occupancy (TCO). The remaining leased spaces would be leased by the Applicant as the building is occupied and prorated by a percentage gross floor area occupied (e.g., if the building is 50% occupied, the Applicant would be required to lease 75 parking spaces). Upon the building reaching stabilization (i.e., 95% occupancy), the Applicant would be required to lease the full one hundred fifty (150) spaces, regardless of the building occupancy. The parking spaces shall be leased at market rate without fixed pricing and be subject to increases annually, and such increases shall not exceed the increases applied to other public parking spaces in the 525 Church Street garage. For a period of sixty (60) months, starting from the issuance of the TCO, the Applicant must provide annually to the City parking data detailing how many parking spaces (leased from the City and provided within the building) are utilized by building tenants. The data must be provided by January 31<sup>st</sup> of each year following the issuance of a Temporary Certificate of Occupancy (TCO). At the end of the 18th month following the building reaching stabilization (as defined above) but no earlier than 36 months following issuance of the TCO, the Applicant shall have the right to amend the parking lease agreement to match the highest number of vehicles leased within the Church Street parking garage.

- (N) **Drive-Through Facility:** The Drive-through facility shall be limited to use by a financial institution. Should the building owner gain ownership or control of the drive-thru facility, the building owner shall remove the curb cut and absorb the drive-thru area into the adjacent ground floor retail space. The building owner shall obtain a building permit to absorb the drive-through area into the adjacent ground floor retail spaces within ninety (90) days of gaining control or ownership of the drive-thru facility, and complete the work within one (1) year of obtaining the building permit. Should the building owner fail to remove the curb cut as required by this section, the City shall be empowered to remove the curb cut and place a lien on the property, should it so choose..
- (O) **Composting:** The Applicant shall provide a composting program in the building through Collective Resource or the current franchisee.
- (P) **On-Site Deliveries:** Deliveries for the on-site commercial use must be performed from the alley and are prohibited during the hours of 7 A.M. to 9 A.M. and 4 P.M. to 6 P.M., Monday through Friday.
- (Q) **Evanston High School Trade Fair:** The Applicant shall sponsor an Evanston Township High School (ETHS) trade fair prior to issuance of the Final Certificate of Occupancy (FCO).
- (R) **Evanston Business Enterprises Hiring:** The Applicant agrees to employ at least five (5) Evanston residents during construction. The Applicant also agrees

to offer thirty percent (30%) of the permanent jobs to Evanston residents, subject to their qualifications for employment..

**SECTION 5:** When necessary to effectuate the terms, conditions, and purposes of this ordinance, "Applicant" shall be read as "Applicant's tenants, agents, assigned, 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:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 8:** 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.

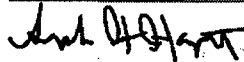
**SECTION 9:** The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: April 13, 2020, 2020

Approved:

Adopted: April 27, 2020, 2020

April 30, 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 A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**  
**DEVELOPMENT PLANS**

**EXHIBIT C**  
**LANDSCAPE PLANS**