

12/12/2022

128-O-22

AN ORDINANCE

**Granting a Special Use Permit for a Convenience Store in the B3
Business 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, Gemal Alhelali, “the Applicant”, requests approval of a Special Use Permit for a convenience store to sell food, beverages and tobacco in the

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B3 Business District, located at the property commonly known as 321 Howard Street, legally described and attached by reference herein as Exhibit A,; and,

WHEREAS, pursuant to Subsection 6-9-4-3, a convenience store is an allowed Special Use in the B3 Business District; and

WHEREAS, following due and proper publication of notice in Pioneer North, a suburban publication of the Chicago Tribune, not less than fifteen (15) nor more than thirty (30) days prior thereto, and following written notice to all property owners within 500 feet of the Subject Property, and following the placement of signs on the Subject Property not less than ten (10) days prior thereto, the Evanston Land Use Commission conducted a public hearing on November 9, 2022, in compliance with the provisions of the Illinois Open Meetings Act (5 ILCs 120/1 *et seq.*) on the application for a Special Use Permit for a convenience store, filed as zoning case no. 22ZMJV-0073; and

WHEREAS, the Land Use Commission received extensive testimony, heard public comment, and made findings pursuant to Subsection 6-3-5-10, of the Zoning Ordinance, and by a vote of seven (7) “yays” and zero (0) “nays” with three (3) Commissioners absent, recommended City Council approval with conditions of the application for Special Use Permit for a convenience store with the below findings incorporated into the record:

1. Is one of the listed special uses for the zoning district in which the property lies: A Convenience Store is listed as a special use in the B3 Business District.
2. Complies with the purposes and the policies of the Comprehensive General Plan and the Zoning Ordinance: The proposed use is compliant with the Zoning Ordinance and Comprehensive General Plan promoting economic growth and development of a business and commercial area increasing pedestrian traffic.

3. Does not cause a negative cumulative effect in combination with existing special uses or as a category of land use: The proposed use has limited potential to negatively interfere with any proximate residential or commercial uses.
4. Does not interfere with or diminish the value of property in the Neighborhood: The proposed use would occupy a currently vacant storefront and is non-objectionable to surrounding commercial uses.
5. Is adequately served by public facilities and services: The building is served by adequate sidewalks, streets with dedicated bike lanes, trash collection, on-street parking and is near CTA bus and train service.
6. Does not cause undue traffic congestion: The location is well suited for customers to access by foot or bike and customer parking is available on the street and within the block area.
7. Preserves significant historical and architectural resources: This standard is not applicable.
8. Preserves significant natural and environmental resources: This standard is not applicable.
9. Complies with all other applicable regulations: The proposal complies with all other applicable regulations; and

WHEREAS, on December 12, 2022, 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 with conditions of the Land use Commission, and recommended approval thereof by the City Council; and

WHEREAS, at its meetings on December 12th, 2022 and January 9th, 2023, 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, as applied for in zoning case no. 22ZMJV-0073, to allow the operation of one (1) convenience store on the property located at 321 Howard Street, as legally described and attached herein by reference as Exhibit A.

SECTION 3: Pursuant to Subsection 6-3-5-12 of the Zoning Ordinance, the City Council imposes the following conditions on the aforementioned zoning relief granted hereby, being a Special Use Permit for a convenience store as requested under zoning case no. 22ZMJV-0073, 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:

1. That the cashier be located at the front of the store;
2. That the tobacco sales are not to exceed fifty percent (50%) of the total sales or floor display;
3. That the storefront window obstruction be restricted to a height of three (3) feet) and above the grade;
4. That a refuse receptacle be placed near the cashier and is accessible to customers;
5. That litter in front and rear of the store be cleaned up by the store owner;
6. That any deliveries to and from the property be conducted in the alley;
7. That the hours of operation be limited to 7:00 am to 10:00 pm daily and

8. That prior to a Certificate of Occupancy issuance, a floor plan be provided that shows the tobacco products behind the sales counter with a note indicating the planned storage and security.

SECTION 4: 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 5: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SECTION 6: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: 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 8: 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: December 12, 2022

Adopted: January 9, 2023

Approved:

January 11, 2023

Daniel Biss

Daniel Biss, Mayor

Attest:

Stephanie Mendoza

Stephanie Mendoza, City Clerk

Approved as to form:

Nicholas E. Cummings

Nicholas E. Cummings, Corporation Counsel

EXHIBIT A**LEGAL DESCRIPTION**

THAT PART OF THE SOUTH 6.25 CHAINS OF THE NORTHEAST ¼ OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING ON A LINE PARALLEL WITH AND 33.00 FEET NORTH OF (MEASURED AT RIGHT ANGLES TO) SOUTH LINE OF SAID NORTHEAST ¼ AT A POINT 550.87 FEET EAST OF (MEASURED ALONG SAID PARALLEL LINE) THE EASTERLY LINE OF CHICAGO AVENUE (FORMERLY CLARK STREET) THENCE NORTH AT RIGHT ANGLES TO SAID PARALLEL LINE, 85.00 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST ¼ 71.57 FEET MORE OR LESS TO THE WESTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO MILWAUKEE AND ST. PAUL RAILROAD AT A POINT 118.00 FEET NORTH OF (MEASURED AT RIGHT ANGLES TO) THE SOUTH LINE OF SAID NORTHEAST ¼; THENCE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID RIGHT OF WAY 115.81 FEET MORE OR LESS TO A POINT 33.00 FEET NORTH OF (MEASURED AT RIGHT ANGLES TO) THE SOUTH LINE OF SAID NORTHEAST ¼; THENCE WEST 149.46 FEET MORE OF LESS TO PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS ...COMMONLY KNOWN AS 309 – 323 HOWARD STREET, EVANSTON, ILLINOIS.

PIN: 11-30-213-020-0000