

**55-O-23**

**AN ORDINANCE**

**Granting A Special Use Permit for a Convenience Store Located at 831  
Foster Street, in the B1 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**, Mohammed Abdelmajid is the lessee (“the Applicant”), of the property located at 831 Foster Street, legally described herein (the “Subject Property”), attached hereto and incorporated herein as Exhibit A; and

**WHEREAS**, the Applicant has petitioned the City Council of the City of Evanston, for approval of a Special Use Permit for a Convenience Store in the B1 Business District pursuant to City Code Section 6-9-2-3, located at the Subject Property (“Special Use”); and

**WHEREAS**, following due and proper publication of notice in the Pioneer North 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 (“LUC”) conducted a public hearing on May 24, 2023 regarding case no. 23ZMJV-0026 to consider the requested Special Use, at which the Applicant presented evidence, testimony, and exhibits in support of the Special Use, and at which interested parties were provided the opportunity to provide public comment; and

**WHEREAS**, after having considered the evidence presented, including the exhibits and materials submitted, and public testimony provided, the LUC reviewed the standards for a Special Use pursuant to City Code Section 6-3-5-10 and found that:

1. Is one of the listed special uses for the zoning district in which the property lies: A store like a convenience store is permitted in the B1 business district so the standard is met.
2. Complies with the purposes and the policies of the Comprehensive General Plan and the Zoning Ordinance: A convenience store that utilizes the business space aligns with the goals and standards of the plan, so the standard is met.

3. Does not cause a negative cumulative effect in combination with existing special uses or as a category of land use: The minimal impact standard is met because the store's size and the nature of its offerings, along with the expectation of foot traffic rather than heavy vehicular traffic, suggests that the impact on the neighborhood will be minimal.
4. Does not interfere with or diminish the value of property in the neighborhood: A functioning business does more for property values than an empty storefront and no one has testified against the project, so the standard is met.
5. Is adequately served by public facilities and services: The proposed convenience store will not result in a significant increase in the building's usage compared to its previous use as a daycare and so the standard is met.
6. Does not cause undue traffic congestion: Most of the traffic for this use is pedestrian traffic, bicyclists, and people going to and from the train, so the standard is met.
7. Preserves significant historical and architectural resources: There is no change to the outside of the building so that standard is met.
8. Preserves significant natural and environmental resources: There is no change to the outside of the building so that standard is met.
9. Complies with all other applicable regulations of the district in which it is located and other applicable ordinances, except to the extent such regulations have been modified through the planned development process or the grant of a variation: They will be required to be licensed and monitored through the Health Department which is included as standard language of code and regulation compliance in the final ordinance, so the standard is met.

**WHEREAS**, after making its findings as set forth herein, the LUC recommended approval of the requested Special Use pursuant to Sections 6-3-5-7 and 6-3-5-10 of the Zoning Ordinance by a vote of six (6) “yes” votes and zero (0) “no” votes with three (3) absent to the Planning and Development Committee (“P & D Committee”) of the City Council; and

**WHEREAS**, on June 26, 2023, the P & D Committee held a meeting in compliance with the Illinois Open Meetings Act, received input from the public, carefully considered the findings, and recommendation for approval by the LUC in case no. 23MJV-0026 as outlined herein, concurred with said findings, and recommended approval of the Special Use to the City Council; and

**WHEREAS**, at its meetings on June 26, 2023 and July 10, 2023, held in compliance with the Open Meetings Act, the City Council considered the aforementioned findings of fact, as amended and outlined herein, and found it appropriate to grant the Special Use as recommended by the LUC and the P & D Committee; 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 City Council has considered the findings and recommendations of the LUC and the P & D Committee and the foregoing recitals are hereby found and adopted as fact with regard to the requested Special Use.

**SECTION 2:** Based upon the above findings of fact and pursuant to the terms and conditions of this ordinance and Section 6-3-5-8 of the Zoning Ordinance, the City Council hereby grants the Special Use Permit, as applied for in zoning case no. 23ZMJV-0026, to allow the operation of a Convenience Store on the Subject Property in the B1 Business District.

**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 hereby, which may be amended by future ordinance(s), 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. **Substantial Compliance:** The Applicant shall construct the associated improvements to the Subject Property as described herein, as authorized by the terms of this ordinance in substantial compliance with all applicable City Code requirements and the Applicant's testimony and representations to the Land Use Commission, the P&D Committee, and the City Council.
- B. **Recordation:** The Applicant shall, at their cost, record a certified copy of this ordinance, including all Exhibits attached hereto, with the Cook County Clerk's Office, and provide proof of such recordation to the City prior to issuance of a final Certificate of Occupancy.
- C. **Cashier:** The cashier shall be located at the front of the store.
- D. **Tobacco Sales:** Tobacco sales are not to exceed 50% of total sales or floor display.
- E. **Window:** The storefront window obstruction shall be restricted to a height of three (3) feet above the grade.
- F. **Refuse receptacle:** A refuse receptacle shall be placed near the cashier and shall be accessible to customers.
- G. **Litter clean-up:** The store owner shall clean up litter within 250 feet of the front of the store.
- H. **Hours:** Hours of operation are 6:00 am to 11:00 pm Sunday through Thursday and 6:00 am to 12:00 am Friday and Saturday.
- I. **Parking:** Employees shall not park on the street.

**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:** The City Council may, for good cause shown, waive or modify any conditions set forth in this Ordinance without requiring that the matter return for public hearing.

**SECTION 6:** The Building Official is hereby authorized and directed to issue building permits for the subject property, consistent with the approvals granted herein, provided that all conditions set forth hereinabove have been met and that the

proposed construction is in compliance with all other applicable laws and ordinances. This grant of the approvals shall expire and become null and void twenty-four (24) months from the date of passage of this Ordinance unless a building permit to begin construction in accordance with this Ordinance is applied for within said twenty-four (24)-month time period and construction is continuously and vigorously pursued provided, however, the City Council, by motion, may extend the period during which permit application, construction, and completion shall take place.

**SECTION 7:** If any provision of this ordinance or application thereof to any person or circumstance is held 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:** This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

**SECTION 9:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 10:** 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: June 26, 2023

Approved:

Adopted: July 10, 2023

July 12, 2023

*Daniel Biss*

Daniel Biss, Mayor

Attest:

Approved as to form:

*Stephanie Mendoza*

*Nicholas E. Cummings*

Stephanie Mendoza, City Clerk

Nicholas E. Cummings, Corporation Counsel

**EXHIBIT A**

**LEGAL DESCRIPTION**

THE WEST 24 FEET OF LOT 10 AND ALL OF LOT 11 IN BLOCK 2 IN WHEELER AND OTHERS SUBDIVISION OF THAT PART OF THE NORTH ½ OF THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF SHERMAN AVENUE, IN COOK COUNTY, ILLINOIS.

PIN: 11-18-104-019-0000

Commonly Known As: 827 -33 Foster Street, Evanston, Illinois