

ORDINANCE NO. F-0364

**AN ORDINANCE AMENDING THE WHEATON ZONING MAP AND
GRANTING A SPECIAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT
ON A CERTAIN PIECE OF PROPERTY LOCATED ON THE SOUTH SIDE OF
EAST LOOP ROAD, EAST OF NAPERVILLE ROAD - 90 EAST LOOP ROAD
BUIKEMA'S ACE HARDWARE**

WHEREAS, written application has been made to amend the Zoning Map, which is attached to and forms the part of, the Zoning Ordinance of Wheaton, Illinois and for the issuance of a special use permit for a planned unit development to allow the construction of a retail store on property legally described herein within the city limits of Wheaton, Illinois, and located on the south side of East Loop Road, east of Naperville Road at 90 East Loop Road; and

WHEREAS, the Plan Commission reviewed the application at its June 1, 1999 meeting and has recommended approval; and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the City Zoning Ordinance, a public hearing was conducted by the Wheaton Board of Zoning Appeals on June 22, 1999 to consider the zoning amendment and special use permit; and the Wheaton Board of Zoning Appeals has recommended approval of the zoning amendment and issuance of the special use permit.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Zoning Map, which is attached to and forms a part of the City Zoning Ordinance, is amended by including the following described C-5 zoned property in the C-5 Special Use/Planned Unit Development District zoning classification:

LOT 2 IN KEIM'S OUTBACK SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 19, 1994, AS DOCUMENT R94-114712, IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-028-402-013


This property is commonly located at the south side of East Loop Road, east of Naperville Road at 90 East Loop Road ("Subject Property").

Section 2: Pursuant to the Findings of Fact determined by the Wheaton Board of Zoning Appeals, a special use permit is granted to permit the construction and use of a planned unit development consisting of a retail hardware store in substantial compliance with the preliminary elevation plan entitled "Proposed Buikema Ace Hardware, dated May 4, 1999 and bearing a last revision date of June 24, 1999 prepared by Jensen and Jensen, 2000 Spring Road, Oakbrook, IL", the preliminary site plan entitled "Proposed Ace Hardware, dated December 14, 1998 and bearing a last revision date of June 24, 1999 prepared by Jensen and Jensen, 2000 Spring Road, Oakbrook, IL", the landscape plan entitled "Proposed Ace Hardware, dated December 14, 1998 and bearing a last revision date of June 24, 1999 prepared by David R. McCallum Assoc., 350 N. Milwaukee Ave., Libertyville, IL" and the preliminary engineering plan entitled "Preliminary Engineering Plan for Ace Hardware PUD dated May 11, 1999 and bearing a last revision date of June 28, 1999, prepared by Cemcon Ltd., 1N131 County Farm Road, Winfield, IL" and in further full compliance with the following conditions, restrictions and requirements:

- A. Prior to the issuance of any site development or building permit, owner shall enter into a Fire Lane Designation and Enforcement Agreement with the City of Wheaton, providing for the designation, maintenance, and enforcement of the fire lane, which is appended and incorporated herein as Exhibit A.
- B. Prior to the issuance of a site development permit, owner/developer shall:
 - (1) File a final set of engineering plans with the Director of Engineering; the plans shall be subject to the reasonable approval of the Director of Engineering. The final engineering plans shall include a public sidewalk along East Loop Road fronting the subject property.
 - (2) File a site lighting plan in conformance with the requirements of the City Zoning Ordinance with the Director of Engineering; the lighting plan shall be subject to the reasonable approval of the Director of Engineering.
 - (3) File with the Director of Engineering evidence from the DuPage County Department of Environmental Concerns approving connection of the sanitary sewer on the Subject Property with the sanitary sewer system servicing the property.
 - (4) File a revised landscape plan with the Director of Planning which indicates the planting of parkway trees in accordance with the City of Wheaton Engineering Department's planting standards and the substitution of the red chokeberry bushes with another species of plant material meeting the reasonable approval of the Director of Planning.
- C. Prior to the issuance of a Building Permit, owner/developer shall:
 - (1) File a revised building elevation plan which indicates that the masonry utilized on all four facades of the proposed building be face brick and that all rooftop mechanical units be screened from view. Rooftop mechanical screening shall be subject to the reasonable approval of the Director of Planning. The revised building elevation plan shall also provide a Fire Department "siamese connection" on the north side of the building.
- D. Owner/developer shall pay to the City, not later than the date of issuance of a site development or building permit for the Subject Property, the sum of \$5,000 ("Road Improvement Contribution") as its only contribution for the East Loop/West Loop Road intersection improvement project completed by the City during the 1999 construction season.
- E. The owner of the Subject Property shall maintain all landscaping and plantings on the Subject Property so that the number, quality, and character of the landscaping shall not be less than that which is illustrated on the approved landscape plan.
- F. This special use permit, and the conditions, restrictions, and requirements recited herein, shall be considered a declaration of restrictive covenants and shall be binding upon the Subject Property and its owner, its successor, assigns, and grantees; this ordinance shall be recorded in the office of J.P. Carney, Recorder of Deeds, DuPage County, Illinois.


Section 3: All ordinances and parts of ordinances in conflict with these provisions are hereby repealed.

Section 4: This ordinance shall become effective after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilwoman Davenport
Councilman Gresk
Mayor Pro Tem Eckhoff
Councilman Johnson
Councilwoman Johnson
Councilman Mork

Nays: None

Absent: Mayor Carr

Motion Carried Unanimously

Passed: July 6, 1999
Published: July 7, 1999

FIRE LANE DESIGNATION AND ENFORCEMENT AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the **CITY OF WHEATON**, an Illinois Municipal Corporation, 303 West Wesley Street, Wheaton, Illinois 60189 (hereinafter referred to as "**CITY**"), and _____

(hereinafter referred to as "**OWNER(S)**", **OWNER(S)** of the property located at _____
_____ within the corporate limits of the City of Wheaton, Illinois (hereinafter referred to as "**Subject Property**"), and which is legally described below:

RECITALS

WHEREAS, the **OWNER(S)** desire to establish Fire Lanes upon the Subject Property to improve the health and safety of the citizens of Wheaton; and

WHEREAS, the **CITY** believes that it is in the best interests of the public health and safety that Fire Lanes be established, maintained and enforced upon the Subject Property;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the **OWNER(S)** and the **CITY** agree to the following in regards to the Subject Property:

1. The **CITY** Fire Chief, Chief of Police or their designated representative and **OWNER(S)**, shall identify the specific Fire Lane locations within the Subject Property which shall,

pursuant to the terms of this Agreement and Ordinance No. _____, be regulated. The specific locations of the Fire Lane(s) to be enforced shall be as set forth on the Site Plan ("PLAN") attached hereto and fully incorporated into this Agreement as Exhibit "A." The CITY Fire Chief, Chief of Police or their designated representative and OWNER(S) or designated representative may from time to time mutually agree to amend the Fire Lane(s) location(s) as set forth in the Site Plan. At such time the Site Plan shall be amended and appended to this Agreement as an Amended Exhibit "A."

2. OWNER(S) are responsible for providing any required pavement markings.
3. OWNER(S) shall, at their sole expense, shall be responsible for obtaining, erecting and maintaining the appropriate signage in accordance with applicable CITY and State of Illinois regulations and specifications.
4. The CITY shall inspect and approve the signage prior to entering into this Agreement.
5. Upon the execution of this Agreement, the CITY will enforce the Fire Lane parking and standing prohibitions and the Fire Lane maintenance requirements contained in sections 70-355 and 30-2 of the Wheaton City Code in regards to the Subject Property. No "special duty" to third persons shall be imposed by this Agreement. The CITY's enforcement obligation shall be legally the same as it is with all other ordinances.
6. This Agreement may be terminated by either party by providing not less than thirty (30) notice to the other party of the intention to terminate this Agreement.
7. This Agreement shall be assignable by OWNER(S) to their successors in interest upon the sale of lease of the subject property.
8. The OWNER(S) hereby agrees to release the City, its Officers, Agents and Employees from any and all claims, actions, causes of action, damages, deaths, injuries, costs or expenses

arising from or related to the Cities enforcement; failure to enforce or inadequate enforcement of this Agreement. Owner(s) further agree to hold harmless, indemnify and defend (including the payment of all costs and attorneys' fees) the City, its Officers, Agents, and Employees, in connection with any and all actions or claims for any loss, damage, personal injury or death caused by or related to the Owner(s), it's Officers, Agents or Employees breach of this Agreement or the Owner(s), it's Officers, Agents or Employees commission of negligent or wilful and wanton acts or omissions in matters related to this Agreement.

9. The sole remedy available to OWNER(S), upon any breach of this Agreement by the City, shall be the termination of the Agreement. It is of the essence of this Agreement that the CITY shall not be liable in money damage for any breach of this Agreement.

10. Whenever notice to the City is required, it shall be addressed to:

City Clerk
City of Wheaton
303 West Wesley Street
Wheaton, IL 60189-0727

Whenever notice to OWNER(S) is required, it shall be addressed to:

IN WITNESS WHEREOF, the parties hereto have executed this instrument by their duly authorized officers of the day and year first above written.

CITY OF WHEATON, ILLINOIS, an Illinois Municipal Corporation

BY: _____
CITY MANAGER

Attest: _____
CITY CLERK