

ORDINANCE NO. F-0763

**AN ORDINANCE AMENDING
THE WHEATON ZONING ORDINANCE MAP
ON A CERTAIN PIECE OF PROPERTY
COMMONLY KNOWN AS 319 EAST ROOSEVELT ROAD
(MORREALE/ZONING APPLICATION 02-21)**

WHEREAS, John F. Morreale, as Trustee of the John F. Morreale Trust dated April 9, 1995, (hereinafter "Owner") has submitted an application to rezone the property at 319 East Roosevelt Road, Wheaton, Illinois from the R-4 Residential Zoning district to the O-R Office Research District; and

WHEREAS, the subject property at 319 East Roosevelt Road is located on the northwest corner of Washington Street and Roosevelt Road and is surrounded on the north by single family homes in the R-4 Residential District, on the south by office buildings in the O-R Office Research District; on the east by single family homes in the R-4 Residential District, and to the west by office buildings in the O-R Office Research District; and

WHEREAS, in conjunction with the rezoning, the petitioner has proposed the construction of a two story, 5000 square foot office building (hereinafter "Building") and associated on-site parking which, upon rezoning, would be in full compliance with the regulations of the City of Wheaton Zoning Ordinance; and

WHEREAS, the proposed site plan for on-site parking, including the number of parking spaces, as well as the layout and dimensions of the parking lot, would comply with the requirements of the Zoning Ordinance upon rezoning; and

WHEREAS, the Comprehensive Plan of the City of Wheaton designates the property for future O-R Office Research District rezoning.

WHEREAS, the Mayor and City Council of the City of Wheaton find that the rezoning of the Property to O-R Office Research District probably negatively impacts surrounding residences on Washington and Evergreen Streets as a result of off site parking on these streets by employees or invites of the Building in absence of an agreement by the Owner to control such parking; and

WHEREAS, Owner is willing to execute a covenant in favor of the City to control parking on Washington and Evergreen Streets as a condition of this rezoning.

NOW THEREFORE, be it ordained by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

1. The following legally described property shall be rezoned from the R-4 residential zoning district classification to the OR Office Research zoning district classification:

LOT 9 IN BLOCK 3 OF THE PLAT OF LINCOLN HIGHWAY SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 21, 1921 AS DOCUMENT 146122, IN DUPAGE COUNTY, ILLINOIS

Permanent Parcel No.: 05-16-418-010

2. That the rezoning of this property shall be subject to the following conditions:
 - a. That the property be developed in full compliance with the plans entitled, "Preliminary Engineering Plan for 319 E. Roosevelt Rd.," prepared by Cemcon, Ltd. dated February 11, 2002, and "Morreale Office Building; Elevations," prepared by Phelan Architects, Inc. dated February 25, 2002, and "Conceptual Landscape Development Plan," prepared by American Gardens, Inc. dated April 2, 2002 and revised April 26, 2002; and
 - b. That the Owner executes and delivers to the City of Wheaton, the Covenant controlling off-site parking, a copy of which is attached hereto and incorporated herein as Exhibit A; and
 - c. That the garbage dumpster proposed for the site be located on the southwest corner of the parking lot in an area subject to the reasonable approval of the City Director of Planning and Economic Development; and
 - d. The parking lot shall not be illuminated; and
 - e. That all defective sidewalks adjacent to the subject property be removed and replaced at the Owner's sole expense prior to the issuance of an occupancy permit; and
 - f. Upon approval of this ordinance, the City shall amend its City Code to prohibit the parking of vehicles on Washington Street, from Roosevelt Road to Evergreen Street.
3. The original Covenant described in Section 2(b) shall be recorded by the City Clerk at the Owner's sole expense.
4. All ordinances and parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed to the extent of any such conflict or inconsistency.
5. That if any part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this ordinance.

6. That this ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as is hereby authorized and directed to be done by the Mayor and City Council.

ATTEST:

Evelyn M. Connelley
City Clerk


Mayor

Ayes:

Roll Call Vote:

Councilman Gresk
Councilman Johnson
Councilwoman Johnson
Councilman Mork
Councilman Eckhoff

Nays:

Mayor Carr
Councilman Mouhelis

Absent:

None

Motion Carried

Passed: October 7, 2002
Published: October 8, 2002

**GRANT OF COVENANT TO
THE CITY OF WHEATON**

This Instrument Prepared By:

Mr. John M. Mulherin
Mulherin, Rehfeldt & Varchetto
211 S. Wheaton Avenue, #200
Wheaton, IL 60187

FOR RECORDER'S USE ONLY

This Grant of Covenant (the "Covenant") is made and entered into as of the 7th day of October, 2002, and is by John F. Morreale, not personally but as trustee of the John F. Morreale Trust dated April 9, 1995 (the "Owner"), in favor of the City of Wheaton, a municipal corporation (the "City").

RECITALS:

A. Owner is the title holder to the certain parcel of property situated within the corporate limits of the City, commonly known as 319 East Roosevelt Road, Wheaton, DuPage County, Illinois, which is legally described as follows:

LOT 9 IN BLOCK 3 OF THE PLAT OF LINCOLN HIGHWAY
SUBDIVISION OF PART OF THE SOUTHEAST QUARTER
OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST
OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO
THE PLAT THEREOF RECORDED JANUARY 21, 1921 AS
DOCUMENT 146122, IN DUPAGE COUNTY, ILLINOIS.

Permanent Parcel No.: 05-16-418-010

Hereinafter referred to as the "Property";

B. Owner intends to develop the Property by constructing a professional office building (the "Building") in conformity with all applicable bulk, site and use regulations established by the City for property in the O-R zoning district, including the provision for twenty (20) on-site parking spaces on the Property;

C. The Property is situated immediately adjacent to a residential district and the City has expressed a concern regarding the possibility of the utilization of the streets in the area of

the Property for overflow parking in the event that the on-site parking is not sufficient to meet the usual parking requirements of the persons using the Building.

D. Owner recognizes and acknowledges that the City has a substantial interest in the preservation of the residential character of the neighborhood, the safety of its residents and traffic flow on the residential streets, and as such must, to the greatest extent possible, limit or prohibit the utilization of residential streets for overflow parking;

E. The City has offered, and the Owner has accepted, payment in the amount of One Dollar (\$1) as consideration to the grant of the within Covenant; and,

F. The parties have agreed to execute a document to be recorded as a Covenant running with the land to which all subsequent titleholders to the Property shall be subject and which specifically provides a benefit to the City for purposes of enforcement and protection of the rights of its citizens.

NOW THEREFORE, in consideration of the payment of the sum of One Dollar (\$1) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Owner does hereby Covenant to the City as follows:

1. Incorporation of Recital Paragraphs

1.1 Recital paragraphs A-F shall be and the same are hereby incorporated into and made a part of this Covenant, as a part of the commitment of the Covenant.

2. Prohibition Against Street Parking

2.1 The Owner of the Property, or any Tenant of the Property, shall prohibit the Owner's or the Tenant's employees respectively, from parking on Washington Street or Evergreen Street at any time. All leases or sub-leases with Tenants of the Property shall obligate that the Tenants or other Occupants comply with this condition. Owner shall further post signs in the parking lot of the Property notifying persons employed at the Property, as well as invitees of the Property, that parking by those workers and invitees, is prohibited on Washington and Evergreen Streets. The design, number and the wording of the signs shall be subject to the reasonable approval of the City Planner.

3. Notice of Breach/Remedies

3.1 In the event that the City determines that the Owner, or any successor-in-interest to the Owner, is in default of its obligations hereunder, it shall serve a written notice ("Notice of Default") upon the Owner in the manner as prescribed in Section Four below, specifying in reasonable detail, the Owner's alleged default, with copies of supporting documentation as the City has in its possession to support the apparent violation of the Covenant. The Owner shall have a reasonable opportunity in terms of time and actions to cure the alleged default.

3.2 For purposes of this Covenant, a reasonable period of time to cure defaults shall be that period of time established by the City which shall be not less than ten (10) business days, nor more than twenty (20) business days following the date of service of the Notice of Default. If, by reason of the fact that the Owner does not have direct control over persons apparently violating the provisions of the Covenant, or undertakes actions to alleviate any conditions which by their nature require additional time for cure, the Owner's prompt initiation of actions designed to enforce compliance with the terms of the Covenant on a diligent and continuous basis, shall extend the period of time within which the Owner shall have to cure any default. The Owner shall in that instance provide the City with documentation of all action taken by it to cure regarding any alleged default.

3.3 If after receipt of the Notice of Default, the Owner fails to take corrective action or without reasonable factual basis or denies a violation of the Covenant, the City may declare the Owner to be in default of this Covenant and seek such remedies at law or equity as may be available to the it.

3.4 Owner, on behalf of himself and his successors-in-interest acknowledges that the substantial and continuous violations of this Covenant may cause substantial and irreparable damage which cannot be expressed in terms of monetary damages and for which there is no adequate remedy at law, and upon a finding that the Owner is in default of its obligations under this Covenant, a court of competent jurisdiction may enter a judgment or decree of injunction prohibiting the Owner from further violations of the provisions of the Covenant.

3.5 In conjunction with any finding by a court of competent jurisdiction of the Owner, or Owner's successor-in-interest, of a violation of the provisions of this Covenant, the court may award, in addition to primary injunctive relief, reasonable attorneys' fees and costs incurred in conjunction with the City's prosecution of the case. For purposes of this Covenant, the word "costs" shall include all expenses incurred by the City which are directly connected with the enforcement of the provisions of this Covenant.

4. Notices

4.1 All notices and communications to be given hereunder shall be in writing and shall be delivered either by: (i) personal receipted delivery; (ii) recognized overnight private mail service; (iii) or by United States Postal Service certified mail, return receipt requested. A notice shall be deemed to have been served when actually received if served by personal delivery or overnight private mail service, or on the third (3rd) business day following posting if served by certified mail.

4.2 All notices to be given hereunder shall be addressed to the parties as follows:

If to Owner: Name and address of the current recipient of
real estate tax bills assessed against the Property

If to the City: The City of Wheaton
305 Wesley
Wheaton, IL 60187
Attn: City Manager

5. Miscellaneous

5.1 Applicable Law

This Covenant shall be construed in accordance, and enforced under the provisions of the laws of the State of Illinois.

5.2 Successors and/or Assigns

This Covenant shall be binding upon and enured to the benefit of each of the parties and their respective successors and/or assigns. Further, all references to the "Owner" shall in all instances mean the current title holder to the Property irrespective of whether a title holder is a party to this instrument. Further, the conveyance of title to the Property by a party shall in and of itself, relieve the conveying party from any further liability hereunder provided that the conveying party shall have no further ownership interest in the Property.

5.3 Covenant Runs with the Land

This Covenant may be recorded with the Recorder of Deeds of DuPage County and shall be deemed to be a Covenant-running-with the land, and binding upon all of the successors-in-interest to title to the Property.

5.4 Limitations on Amendment

The provisions of this Covenant may be amended only by an instrument executed by the then-current title holder to the Property and the City, after securing appropriate authority for the amendment to the agreement and the recording of the same with the Recorder of Deeds of DuPage County. The City's failure to enforce the provisions of the Covenant shall not be deemed to be a waiver of its rights for subsequent enforcement of the Covenant.

5.5 Severability

In the event that any provision of this Covenant is declared to be null and void as against public policy, the offending provision shall be deemed to have been severed from the Covenant and the remaining provisions of the Covenant shall remain in full force and effect to the greatest extent possible, giving consideration to the deletion of the offending provision.

5.6 Execution in Multiple Counterparts

This instrument may be executed in multiple counterparts, each of which shall be deemed to be an original document.

5.7 Execution by City

The execution of this Covenant by the City of Wheaton constitutes the acceptance of the Covenant and its undertaking with payment of the consideration as prescribed herein.

5.8 Certification of Authority to Act

Owner does hereby certify that he has the full power and authority to execute the foregoing Covenant in his capacity as trustee and that the execution of the Covenant constitutes a binding obligation of the Trust in accordance with the terms of this instrument.

IN WITNESS WHEREOF, the Owner and the City have executed this Covenant as a reflection of the undertaking of each of the parties and the acceptance of the benefits by the City of Wheaton.

OWNER

JOHN F. MORREALE, Trustee
of the John F. Morreale Trust

By:


John F. Morreale, Trustee

CITY

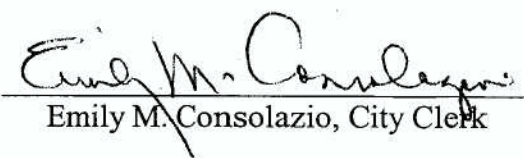
CITY OF WHEATON, a municipal
corporation

By:


C. James Carr, Mayor

ATTEST:

By:


Emily M. Consolazio, City Clerk

Ordinance F. 0763
Ex A. p 7.

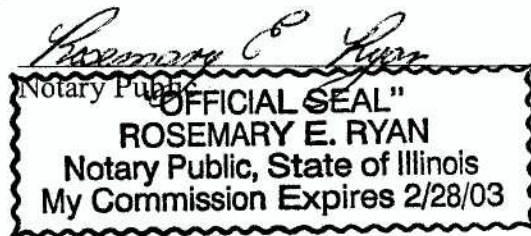
ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) ss
COUNTY OF DUPAGE)

I, the undersigned, Notary Public, in and for the county and state aforesaid, DO HEREBY CERTIFY THAT C. James Carr, personally known to me to be the Mayor of the City of Wheaton, and Emily M. Consolazio, personally known to me to be the City Clerk of the aforesaid municipal corporation, and personally known to me to be the same persons whose names are subscribed in the foregoing instrument, appeared before me this day in person and separately acknowledged that as such Mayor and City Clerk they signed and delivered the aforesaid instrument and caused the corporate seal of the municipal corporation to be affixed thereto, pursuant to the authority given by the City Counsel of the municipal corporation, as their free and voluntary act and as the free and voluntary act and deed of said municipal corporation for the uses and purposes therein set forth.

Given under my hand and official seal this 22 day of October, 2002.

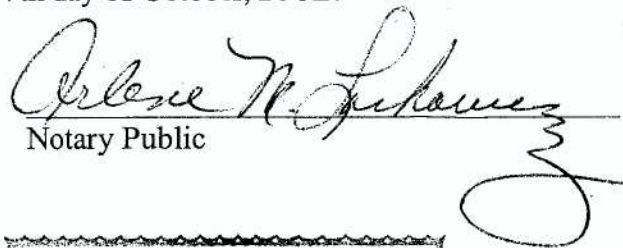
STATE OF ILLINOIS)
) ss
COUNTY OF DUPAGE)



I, the undersigned, Notary Public, in and for the county and state aforesaid, DO HEREBY CERTIFY THAT John F. Morreale, personally known to me to be the trustee of the John F. Morreale Trust, under Trust Agreement dated April 9, 1995, appeared before me this day in person and acknowledged that he executed the foregoing Grant of Covenant to the City of Wheaton as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 7th day of October, 2002.

After Recording, Mail to:
City of Wheaton
305 West Wesley
Wheaton, IL 60187
Attn: City Clerk


Notary Public

