

## ORDINANCE NO. F-0865

### AN ORDINANCE AMENDING THE WHEATON ZONING ORDINANCE MAP ON A CERTAIN PIECE OF PROPERTY COMMONLY KNOWN AS 401 EAST ROOSEVELT ROAD (SUNSET SIDING & WINDOWS)

**WHEREAS**, written application has been made to amend the zoning map which is attached to and forms a part of the Zoning Ordinance of Wheaton, Illinois and to obtain a variation to Article 6.6.2 of the Wheaton Zoning Ordinance, to allow the conversion of an existing single-family house to a business and professional office and the construction of a seven-space parking lot on the property legally described herein and located at 401 East Roosevelt Road, Wheaton, IL 60187; and

**WHEREAS**, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing to consider the proposed rezoning and variation request was conducted by the Wheaton Planning and Zoning Board on November 11, 2003 and the Wheaton Planning and Zoning Board has unanimously recommended approval of the zoning amendment.

**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:

Section 1: The zoning map which is attached to and forms a part of the Wheaton Zoning Ordinance is amended by deleting the following described R-4 Residential District property, and including it in the O-R Office Research zoning classification:

LOT 10 (EXCEPT THE SOUTH 20 FEET THEREOF) IN BLOCK 4 IN THE LINCOLN HIGHWAY SUBDIVISION, BEING A 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.  
P.I.N. 05-16-422-010

The aforementioned property is commonly known as 401 East Roosevelt Road, Wheaton, IL 60187.

Section 2: Pursuant to the findings of fact as determined by the Wheaton Planning and Zoning Board, rezoning from R-4 Residential District to O-R Office Research zoning classification and a variation to Article 6.6.2 of the City of Wheaton Zoning Ordinance to reduce the required parking lot setback from 15 feet to 5 feet from the north property line and to 10 feet from the east property line is hereby granted to permit the conversion of an existing single-family house to a business and professional office and to allow the construction of seven-space parking lot in full compliance with the plans entitled "*Proposed Site Improvements for Sunset Siding and Windows*," prepared by C.M. Lavoie & Associates, Inc., sheets 1-4, revised September 24, 2003; and subject to the following conditions:

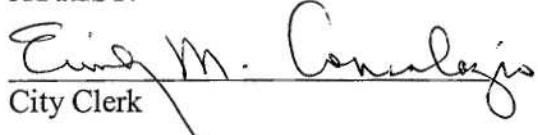
1. That any and all trash receptacles associated with the property shall be stored inside the existing detached garage; and

2. Prior to the issuance of an occupancy permit, the applicant shall provide a sign plan for approval by the Director of Planning and Economic Development. Said sign shall be a low, subdued, externally lit monument sign not exceeding 24 square feet per sign face. The monument sign structure shall not exceed 24 square feet per side, excluding the allowable 24 square feet per sign face; and
3. Prior to the issuance of a site development permit, the applicant shall provide a landscape plan and tree preservation plan for approval by the Director of Planning and Economic Development prepared in accordance with Article 6 of the City of Wheaton Zoning Ordinance; and
4. Prior to the issuance of a site development permit, the applicant shall execute and deliver to the City of Wheaton, a Covenant controlling off-site parking, a copy of which is attached hereto and incorporated as Exhibit A; and
5. Prior to the issuance of a site development permit, a cross access easement shall be recorded on the subject property to provide vehicular access from the proposed parking lot to the east adjoining property and shall be subject to approval by the City Attorney.

Section 3: All ordinances or parts thereof in conflict with the provisions of this ordinance are to the extent of such conflict expressly repealed.

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

ATTEST:

  
Cindy M. Conneligan  
City Clerk

  
James Carr  
\_\_\_\_\_  
Mayor

Roll Call Vote:

Ayes: Councilman Mouhelis  
Councilman Bolds  
Councilwoman Corry  
Mayor Carr  
Councilwoman Johnson  
Councilman Mork

Nays: None

Absent: Councilman Johnson

Motion Carried Unanimously

Passed: December 1, 2003  
Published: December 2, 2003

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## EXHIBIT "A"

### GRANT OF COVENANT TO THE CITY OF WHEATON

This Grant of Covenant (the "Covenant") is made and entered into as of the 1<sup>st</sup> Day of December, 2003, and is by William C. Highstreet (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 401 E. Roosevelt Road, Wheaton, DuPage County, Illinois, which is legally described as follows:

LOT 10 (EXCEPT THE SOUTH 20 FEET THEREOF) IN BLOCK 4 IN THE LINCOLN HIGHWAY SUBDIVISION, BEING A 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.  
P.I.N. 05-16-422-010

Hereinafter referred to as the "Property";

B. Owner intends to develop the Property by converting an existing single-family house to a business and professional office and the constructing a seven-space parking lot in the O-R Office Research Zoning District;

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 subjected 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 wording of the signs shall be subject to the reasonable approval of the Director of Planning and Economic Development.

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 the 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 of 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 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 attorney's 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 (3<sup>rd</sup>) 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

It to the City: The City of Wheaton  
303 West Wesley Street, Box 727  
Wheaton, IL 60189-0727  
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 of 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.

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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

WILLIAM C. HIGHSTREET

By: W C Highstreet  
William C. Highstreet

CITY

CITY OF WHEATON, a municipal corporation

By: C. James Carr  
C. James Carr, Mayor

ATTEST:

By: Emily M. Consolazio  
Emily M. Consolazio, City Clerk

F-0866

ACKNOWLEDGMENTS

STATE OF ILLINOIS      )  
                            )  
COUNTY OF DUPAGE      ) ss

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 Council 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 the 2nd day of December, 2003.

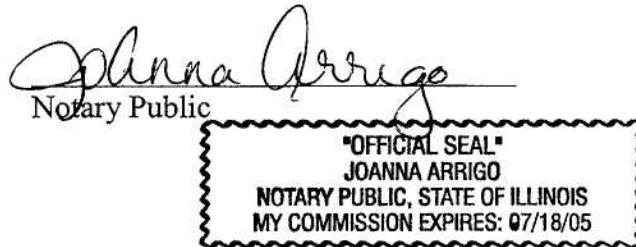


Rosemary E. Ryan  
Notary Public

STATE OF ILLINOIS      )  
                            )  
COUNTY OF DUPAGE      ) ss

I, the undersigned, Notary Public, in and for the county and state aforesaid, DO HEREBY CERTIFY THAT William C. Highstreet personally known to me to be the same person whose name is subscribed in the foregoing instrument, 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 the 5th day of December, 2003



After Recording, Mail to:  
City of Wheaton  
303 West Wesley Street, Box 727  
Wheaton, IL 60189-0727  
Attn: City Clerk