

ORDINANCE NO. F-0949**AN ORDINANCE GRANTING A SPECIAL USE
PERMIT FOR A DRUG STORE WITH A DRIVE-THRU PHARMACY
AND VARIATIONS, 1400 E. ROOSEVELT ROAD (CVS PHARMACY)**

WHEREAS, written application has been made for the issuance of a Special Use Permit and variations to allow the construction of a new 10,880 square foot CVS Pharmacy with drive-thru pharmacy following the demolition of the former Jeep of DuPage Auto dealership and Riggs Auto Upholstery business at 1400 Roosevelt Road and 1414 E. Roosevelt Road, Wheaton, Illinois; and

WHEREAS, pursuant to notices required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, Public Hearings were conducted before the Wheaton Planning and Zoning Board on June 22, 2004 and July 22, 2004, to consider the issuance of Special Use Permit and variations; and

WHEREAS, the Wheaton Planning & Zoning Board voted 5 to 1 in favor of recommending the approval subject to several conditions; and

WHEREAS, the Mayor and City Council of the City of Wheaton have further reviewed the application and made additional recommendations for revisions which have been accepted by the applicant;

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 following described property has been, and continues to be, zoned and classified in the C3 General Commercial District zoning classification:

The legal description of the Subject Property is attached hereto and incorporated herein as Exhibit A and bearing PIN's 05-22-102-020 and 05-22-102-022.

This property is commonly known as 1400 and 1414 E. Roosevelt Road, Wheaton, Illinois 60187 (hereinafter "the Property").

SECTION 2. Pursuant to the findings of fact determined by the Wheaton Planning and Zoning Board, as well as additional modifications to site plans as recommended by the Wheaton Planning and Zoning Board and the Wheaton City Council, a Special Use Permit is hereby issued to allow for the construction and use of a new 10,880 square foot CVS Pharmacy with a drive-thru pharmacy on the Property and improvements on the adjacent rights-of-way in full compliance with the site plan prepared by ARC Design Resources, Inc. entitled "Layout Plan, Site Plan A", with a last revision date of September 10, 2004 ("Site Plan A"), the building elevation plan prepared by Stewart-Nosky Architects entitled "Exterior elevations, Sheet number ZA - 4.1 dated June 28, 2004 and in further compliance with the following conditions, restrictions and requirements:

- a. The Owner shall apply for, and City staff shall assist the Owner in an effort to secure, any and all permits from the Illinois Department of Transportation (“IDOT”) to install and construct a right hand turn lane from northbound Blanchard Street onto eastbound Roosevelt Road as depicted on Site Plan A (the “Right Turn Lane Improvements”). The Owner may commence construction of the building and other site improvements shown on Site Plan A (collectively the “Other Site Improvements”) pending IDOT’s review of the permit application for the Right Turn Lane Improvements. For a period of twenty four (24) months from the issuance of the building permit by the City for the Other Site Improvements, the Owner shall post a letter of credit or bond in the form of cash (in either case hereinafter referred to as the “security”) in a reasonable amount as determined by the City Engineer to construct and complete the Right Turn Lane Improvements to be constructed by the Owner and approved by the City Engineer. The security shall remain in effect for a period of twenty four (24) months from the issuance of a building permit for the Other Site Improvements (the “24 Month Period”). No interest shall accrue on the bond. If the IDOT permits for the construction of the Right Turn Lane Improvements are not issued by IDOT within the 24-Month Period, the City shall, at the request of the Owner, release the security. Notwithstanding any such release of the security prior to the completion of the Right Turn Lane Improvements, the Owner shall remain liable and responsible to pay the actual costs of the construction of the Right Turn Lane Improvements should IDOT subsequently issue a permit for same, limited, however, to a sum not in excess of the total of (i) the amount of the original amount of the security plus (ii) a non-compounded ten percent (10%) per annum of such original security for each year that has elapsed from the date the City issued its permit(s) for the Other Site Improvements until the IDOT permits for the Right Turn Lane Improvements is issued, limited, however, to five (5) such years (the “5-Year Period”), so that as of the beginning of the last year of the 5-Year Period, the Owner’s maximum required contribution shall be the original amount of security as determined by the City Engineer plus the interest described herein (“Maximum Contribution”). If the IDOT permit for the Right Turn Lane Improvements is not issued within the 5-Year Period, then (i) the Owner shall nevertheless remain obligated to contribute toward the cost of construction of the Right Turn Lane Improvements under the terms of this Section for so long as the Property continues to be used for a commercial use, but (ii) the Owner’s total monetary obligation to pay for the Right Turn Lane Improvements shall be limited to the lesser of (i) the actual cost of such Right Turn Lane Improvements or (ii) the Maximum Contribution.
- b. The Owner shall grant to the City a perpetual sidewalk easement over that portion of the northwest corner of the subject Property as shown and labeled “sidewalk easement” on Site Plan A within thirty days of written notice from the City Engineer to grant such easement and in such form as required by the City. This easement may be required by the City Engineer whether or not the Right Turn Lane Improvements at Blanchard Road are installed.

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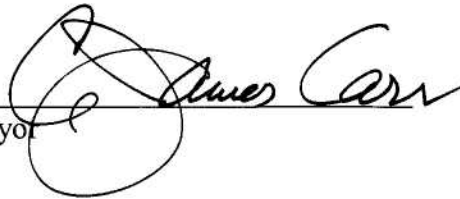
- c. The Owner of the subject Property shall maintain all landscape and planting on the subject Property so that the number, quality and character of the landscaping shall not be less than that which is illustrated on the final approved landscape plan. In the event any landscaping, plantings or vegetations on the property dies, in whole or in part, at any time, the Owner shall, forthwith, replace the non-viable landscaping vegetation and/or plantings with reasonably similar substitutes of original planting size or larger as directed by the City Planner.
- c. Owner has previously provided to the City a copy of the executed reciprocal easement and joint driveway agreement dated as of August 25, 2004 between the Owner/Developer and the property owner to the east (the "Reciprocal Easement"). Prior to the issuance of any permits by the City for the Other Site Improvements, the Owner shall provide to the City evidence that the Reciprocal Easement has been recorded.
- d. 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 successors, assigns and grantees.
- e. The Owner/Developer shall enter into a Fire Lane Designation and Enforcement Agreement with the City in substantial compliance with Exhibit "B".
- f. The Owner/Developer shall submit a Plat of Consolidation for the Subject Property.
- g. This Ordinance shall be recorded in the office of J.P. Carney, Recorder of Deeds, DuPage County, Illinois, at the Owner's expense.

By application for, and receipt of, any site development or building permit and the commencement of construction of any improvements on the Property, Owner, for itself, its successors assigns and grantees, hereby agrees to all terms and conditions of this Ordinance and declares this Ordinance to constitute a covenant running with, and binding, the subject Property, in perpetuity.

SECTION 3. The following variations from the Wheaton Zoning Ordinance are hereby granted: Parking lot landscape setback variations of 4.74 feet in lieu of 15 feet on the west, 5 feet in lieu of 15 feet on the north, and 0 feet in lieu of 10 feet on the east with 7 feet of landscaping along the east foundation of the building with 2 feet of vehicle overhang between the Midas parking and CVS drive aisle.

SECTION 4. All Ordinances or parts of Ordinances in conflict with these provisions are repealed.

SECTION 5. This Ordinance shall become effective after its passage, approval and publication in pamphlet form in the manner described by law.


Mayor

ATTEST:


City Clerk

Roll Call Vote

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

Nays: Councilman Mouhelis

Absent: Councilman Johnson

Motion Carried

September 20, 2004
September 21, 2004

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EXHIBIT "A"

LOTS 8, 9, 10, 11, 12 AND 13 (EXCEPT THE NORTH 5 FEET OF SAID LOTS 8, 9, AND 10) IN BLOCK 31 IN WHEATON ESTATES, BEING A SUBDIVISION IN SECTION 22, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 12, 1924 AS DOCUMENT 182391, IN DUPAGE COUNTY, ILLINOIS.

LOT 7 (EXCEPT THE EAST 24 FEET AND EXCEPT THE NORTH 5 FEET THEREOF), LOT 15 (EXCEPT THE NORTH 18 FEET THEREOF) AND LOT 14 (EXCEPT THE NORTHEAST CORNER THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 14; THENCE WEST 24 FEET ALONG THE NORTH LINE; THENCE SOUTH FOR A DISTANCE OF 18 FEET, THENCE EAST 24 FEET; THENCE NORTH TO THE POINT OF BEGINNING), ALL IN BLOCK 31 IN WHEATON ESTATES, BEING A SUBDIVISION IN SECTION 22, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 12, 1924 AS DOCUMENT 182391, IN DUPAGE COUNTY, ILLINOIS.

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EXHIBIT "B"

FIRE LANE DESIGNATION AND ENFORCEMENT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2004, by and between the City of Wheaton, an Illinois Municipal Corporation, 303 W. Wesley Street, Wheaton, Illinois 60189 (hereinafter referred to as "CITY") and _____ (hereinafter referred to as "OWNER(S)"), OWNER(S) of the property located _____, within the corporate limits of the City of Wheaton, Illinois (hereinafter referred to as "Subject Property"), and which is legally described below:

LOTS 8, 9, 10, 11, 12 AND 13 (EXCEPT THE NORTH 5 FEET OF SAID LOTS 8, 9, AND 10) IN BLOCK 31 IN WHEATON ESTATES, BEING A SUBDIVISION IN SECTION 22, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 12, 1924 AS DOCUMENT 182391, IN DUPAGE COUNTY, ILLINOIS.

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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 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. F-0949, 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 "___". 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 "___".

2. The OWNER(S) are responsible for providing any required pavement markings.

3. The OWNER(S), 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. The CITY Fire Chief, Chief of Police or their designated representative may require additional signage and/or pavement markings, if it is later determined that the inspected and approved signage does not provide adequate notification of the established fire lanes.

5. Upon 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.

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6. This Agreement may be terminated by either party by providing not less than thirty (30) days 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 or lease of the Subject Property.

8. The OWNER(S) hereby agrees to release and 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 occurring as a consequence of the performance of this Agreement.

9. The sole remedy available to the 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 the Owner 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, a Municipal Corporation

BY: _____
City Manager

ATTEST: _____
City Clerk

BY: _____

ATTEST: _____