

ORDINANCE NO. F- 0998

AN ORDINANCE AMENDING
SECTION 2A OF ORDINANCE NO. F-0949
(CVS Pharmacy)

WHEREAS, the Corporate Authorities of the City of Wheaton, upon further consideration, elect to amend Section 2A of Ordinance No. F-0949 only with respect to the amount of CVS Pharmacy's contribution for a right hand turn lane improvement; and

WHEREAS, this amendment does not affect the Special Use Permit for a drug store with a drive-through pharmacy and variations in any respect from a zoning standpoint; and

WHEREAS, the Corporate Authorities of the City of Wheaton have determined that this amendment may be adopted without public hearing in consequence that it does not in any way from a zoning standpoint impact the Special Use Permit variations for the property; and

WHEREAS, CVS is willing to donate the eleven thousand six hundred thirty dollars and twenty cents (\$11,630.20) bond to the City of Wheaton in case the right hand turn lane improvement described herein is not constructed.

NOW, THEREFORE, be it Ordained by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, that sub-section 2A of Ordinance No. F-0949 is hereby repealed and rescinded in its entirety and replaced with a new sub-section 2A which shall read as follows:

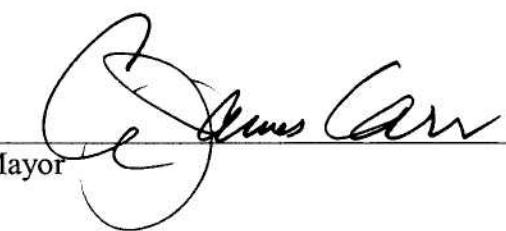
- a. The Owner shall apply, and City staff shall assist the Owner in an effort to secure, any and all permits from the Illinois Department of Transportation ("IDOT"), to install and construct a right hand turn lane from northbound Blanchard Street onto eastbound Roosevelt Road as depicted on site plan A ("the Right Turn Improvements"). The Owner may commence construction of the building or other site improvements shown on site plan A (collectively the "other Site Improvements") pending IDOT's review of the permit application for the right hand turn lane improvements. If the Owner receives the permit for construction of the Right Hand Turn Improvements at any time prior to the issuance of an occupancy permit, it will construct the Right Hand Turn Improvements at its sole expense and upon completion and acceptance of the same from the City's Director of Engineering, its bond shall be refunded. The Owner shall post a bond with the City in the sum of eleven thousand six hundred thirty dollars and twenty cents (\$11,630.20), which constitutes the Owners engineers estimate of the cost of said improvements. If the Right Hand Turn Improvements are not constructed during the Owner's site improvements, the City in its discretion may proceed to construct the Right Hand Turn Improvements at any time. If the City elects not to install the Right Hand Turn Improvements, it shall retain the bond which shall be transferred to its General Fund for General Corporate Purposes. The timing of the transfer shall be in the sole discretion of the City but shall not occur prior to the Owner's completion of its site improvements.

SECTION 4: By executing a copy of this ordinance, the Owner agrees to its terms and conditions including the provision permitting the City to retain the eleven thousand six hundred thirty dollars and twenty cents (\$11,630.20) bond for its General Fund if the Right Hand Turn Improvements are not installed.

SECTION 5: That 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.

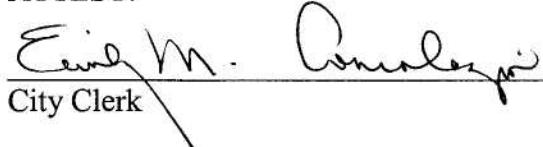
SECTION 6: That if any part of part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such partial invalidity shall not affect the remainder of this ordinance.

SECTION 7: 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.



James Carr
Mayor

ATTEST:



Emily M. Rondeau
City Clerk

Ayes:

Roll Call Vote:

Councilman Mork
Councilman Bolds
Councilwoman Corry
Mayor Carr
Councilwoman Johnson

Nays:

None

Absent:

Councilman Johnson
Councilman Mouhelis

Motion Carried Unanimously

ATTEST:

CVS Representative

Ordinance No. F-0998

SUBSCRIBED and SWORN TO before me
this day of , 2005.

Notary Public

(See attached "Consent By Owner" page and attorney letter dated 3/3/05)

Passed: February 7, 2005

Published: February 8, 2005

CONSENT BY OWNER

CVS 7134 IL, L.L.C.
a Delaware limited liability company

By: Timothy E. Kramer

Timothy E. Kramer, Assistant Secretary

STATE OF OHIO)
COUNTY OF SUMMIT) ss.

I, Marcia Jasany, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Timothy E. Kramer, personally known to me to be the Assistant Secretary of CVS 7134 IL, L.L.C., a Delaware limited liability company, appeared before me and acknowledged that he signed and delivered the said instrument on behalf of CVS 7134 IL, L.L.C. as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 31st day of January, 2005

Marcia Jasany
NOTARY PUBLIC

My commission expires:

(NOTARY SEAL)

MARCIA JASANY
Notary Public

State of Ohio

My Commission Expires 3/1/2009

F-0998

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A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
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THEODORE N. SCHNELL, JR. - Retired

March 8, 2005

Emily M. Consolazio
City Clerk, City of Wheaton
303 West Wesley Street
Box 727
Wheaton, IL 60189-0727

Re: CVS Pharmacy - Roosevelt Road - Wheaton, Illinois

Dear Ms. Consolazio:

On March 4, 2005, I spoke with your City attorney, Jim Knippen. I advised Mr. Knippen (and by copy of this letter to him am reconfirming) that my client, CVS, has agreed to the changes which were made to your ordinance F-0998 (which ordinance amends Section 2A of ordinance F-0949).

I had previously sent to Mr. Knippen (and by now his office has no doubt forwarded to you) four counterpart signature pages to the ordinance, all signed by CVS. YOU ARE HEREBY AUTHORIZED TO ATTACH THE EXECUTED CVS SIGNATURE PAGES TO THE ORDINANCE.

Please send me one certified copy of both ordinances (that is, original ordinance F-0949 and new ordinance F-0998) with all signatures attached.

Ms. Consolazio, I thank you and Mr. Knippen for your assistance.

Very truly yours,



Peter C. Bazos

PCB: ceg