

**ORDINANCE NO. O-2022-32**

**AN ORDINANCE GRANTING A REZONING AND A SPECIAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT, WITH EXCEPTIONS, TO ALLOW THE CONSTRUCTION AND USE OF A MIXED-USE BUILDING ON THE BLOCK BOUNDED BY LIBERTY DRIVE ON THE NORTH, HALE STREET ON THE EAST, WILLOW AVENUE ON THE SOUTH, AND WHEATON AVENUE ON THE WEST - WILLOW AVENUE APARTMENTS, LLC**

**WHEREAS**, an application has been submitted to consider a rezoning to the C-4 CBD Perimeter Commercial District with a Special Use Permit for a Planned Unit Development to allow the construction and use of a mixed-use building, with exceptions, on the block bounded by Liberty Drive on the north, Hale Street on the east, Willow Avenue on the south, and Wheaton Avenue on the west ("Subject Property"), following the demolition of the existing structures. The mixed-use building is proposed with 334 units, 7-stories, 438 parking spaces, and 4,502 square feet of first-floor commercial space ("Development"). The entire property is 112,820 square feet (2.59 acres) in size and currently zoned a mix of C-2 Retail Core Business District and C-4 CBD Perimeter Commercial District and is sometimes referred to as the ("Development Block"); and

**WHEREAS**, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, the Wheaton Planning and Zoning Board conducted a public hearing on a previous iteration of the current plan on April 24, 2022 and May 10, 2022, and on a 2-3 vote, failed to recommend approval of the application; and

**WHEREAS**, the original zoning request reviewed by the Planning and Zoning Board did not include four corner parcels within the block at 201 W. Willow Avenue (NWC of Hale Street and Willow Avenue) and 213 S. Wheaton Avenue, 221 S. Wheaton Avenue, and 223 S. Wheaton Avenue (NEC of Wheaton and Willow Avenues) (hereinafter "Corner Parcels"); and

**WHEREAS**, three dissenting Planning and Zoning Board members expressed concerns with the impact that the apartment complex would have on the Corner Parcels, the proposed height of the building, and the proposed lack of green space; and

**WHEREAS**, after the Planning and Zoning Board public hearing, the owner secured contracts to purchase the Corner Parcels and has incorporated them into the development plan; and

**WHEREAS**, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a further public hearing was conducted by the Wheaton City Council, on June 13, 2022 and June 27, 2022 to consider a revised rezoning for a Special Use Permit for a Planned Unit Development to allow the construction and use of a mixed-use building on the Subject Property, including the Corner Parcels, following the demolition of the existing structures; and

**WHEREAS**, at their June 13, 2022, public hearing, the City Council approved a motion to incorporate the evidence and testimony from the original public hearing held by the Planning and Zoning Board on April 24, 2022 and May 10, 2022 as part of the record of the City Council public hearing; and

**WHEREAS**, in passing this ordinance, the Corporate Authorities of the City have heard, deliberated and evaluated the totality of the information submitted and presented at the public hearings, applied their experience as elected officials of the City, and have exercised their legislative discretion as a home rule municipality, including the City Council's knowledge of market conditions and development trends, and how the Central Business District, as defined in the Wheaton Comprehensive Land Use Plan, has evolved over the last three decades; and

**WHEREAS**, with respect to the rezoning of two of the parcels comprising part of the Subject Property, evidence and testimony was provided by the applicant addressing the set of factors to be considered when reaching zoning decisions, collectively known as the LaSalle Factors; and

**WHEREAS**, Section 5.10D, subsections 1 – 7 of the Wheaton Zoning Ordinance, sets forth the standards for the City Council to evaluate in determining whether a Special Use Permit should be granted or denied; and

**WHEREAS**, the proposed development for the Subject Property is conceptually unified as a Planned Unit Development; and

**WHEREAS**, since the submission of the original proposal by the owner to the City, the owner has submitted revised site plans and made commitments to further improve the special use/PUD. The council concludes these will further promote the public health, safety and welfare, including:

- A. Environmental improvements; and
- B. Increased setbacks; and
- C. Improved façade; and
- D. Additional landscaping; and

**WHEREAS**, the Subject Property is located within and adjacent to City Tax Increment Financing Districts ("TIF Districts") and those TIF Districts were created and function or functioned to encourage the type of development set forth in the Special Use/PUD application, which is consistent with the City's Comprehensive Plan, and the City Council finds that the Special Use/PUD for the Subject Property approved by this ordinance in conjunction with City TIF Districts, will promote economic and social synergy in furtherance of the public health, safety and welfare, including the promotion of the City's economic vitality and the ability of all the City's taxing districts to continue to provide strong public services to their constituents; and

**WHEREAS**, the special use/Planned Unit Development approved in this ordinance will support the City's Central Business District goal to encourage economic stability, and in conjunction with other units of government, provide services to its citizens which will make the City an attractive place benefiting the public health, safety and welfare; and

**WHEREAS**, based on the City's experience with Waterford Place, Wheaton Place, Courthouse Square and Wheaton 121, the Council finds no evidence to support the conclusion that the Development will diminish or destroy adjacent property values; and

**WHEREAS**, with respect to rezoning portions of the property from C2 to C4 Central Business District, the City Council, based on the entire public record, as well as the City Council's knowledge of the history of the City and the Central Business District, makes the following findings of fact and draws the following legislative conclusions:

1. For the zoning factors commonly known as the "LaSalle Factors," the City Council concludes that:
  - A. The Development continues and approves existing uses and zoning which are the same as or compatible with nearby property.
  - B. The plans illustrate a high value and quality development which is a factor in determining whether the Development will cause a diminution in this property and other property values. The City Council has also considered the plans, the overall Development plans and its experience with property values in the Central Business District related to other similar developments and find that experience is adequate to support the council's determination that the Development will not diminish property values. Based on its legislative experience, the council finds no further evidence is needed to support its legislative determination and waives the need for any additional evidence on this issue pursuant to its home rule authority.
  - C. The council has concluded that adjacent property values will not be destroyed based on the rationale set forth in response to Section 1B above.
  - D. The council concludes that the overall public benefits of the project will result in gain that exceeds hardships; if objective hardships exist. The council further finds that there is little, if any evidence, that is not speculative, of hardship on individual property owners.
  - E. The council finds for all the reasons set forth in the public record and this ordinance that the Subject Property is suitable for the zoned purpose.
  - F. The largest structure on the Subject Property has been substantially vacant for eight years. Current occupancies in the Development Block indicate four properties occupied for residential purposes. It appears that the remainder of the structures are occupied for office or commercial purposes or are vacant; and

**WHEREAS**, the Illinois Supreme Court has determined no single factor is controlling in determining rezoning under the LaSalle Factors. *LaSalle National Bank vs. Cook County*, 12 Ill.2d 40, 145 N.E.2d 65 (1957); and

**WHEREAS**, some of the advantages of the project in terms of the public health, safety, comfort, convenience and welfare are providing a residential structure within walking distance of commuter trains eliminating the need for additional cars being brought into the Central Business District by commuters who would like to live close to the train, reducing pollution associated with those vehicles, providing additional business for the Central Business District generally by the residents of those facilities that would be customers in the district. This should further decrease air pollution, noise pollution and negative environmental impact of those who would otherwise commute to the City in vehicles from outside the City; and

**WHEREAS**, the City Council finds the traffic and parking study prepared by Sam Schwartz for CAGE Civil Engineering to be credible, and further revisions to the development's site plans supports the conclusion that any additional traffic that will be generated by the development is acceptable from a public, health, safety and welfare standpoint; and

**WHEREAS**, the following are quotes from the 1999 Comprehensive Plan, which remains in effect as amended by the 2013 updates that were supplemented by the downtown strategic and street plan and state:

- A. "Wheaton can no longer be considered a growth community, but rather one reaching maturity. Wheaton's transition from a "growing" to a "maturing" community will signal the need to address several issues and respond with new development strategies, which capitalize on existing, stable resources through enhancement and redevelopment programs". (Emphasis added).
- B. "The Comprehensive Plan is a declaration of intent. It is advisory and does not itself constitute a regulation."
- C. The language indicating that it is "advisory and does not constitute a regulation" is included in the ordinance which adopts the Comprehensive Plan, as amended, and therefore the advisory nature of the Comprehensive Plan remains in effect despite the fact that it has been approved by ordinance.
- D. "The Plan serves as a guide for public and private decisions affecting the future of the community."
- E. "On the other hand, the Plan is not static. It must be re-examined periodically and updated as conditions and community aspirations change."
- F. "The Plan is not an end in itself. Rather, it serves as a guide for public and private decisions affecting the future of the community"; and

**WHEREAS**, Ordinance No. F-1758 amends the 1999 Comprehensive Plan adopted by Ordinance No. F-0425 by the addition of the Wheaton Downtown Strategic and Streetscape Plan (hereinafter "DSSP"), adopted February 3, 2014, states in part:

- A. One of the purposes of the DSSP is to: “elevate the position of Downtown Wheaton as a destination district in the western portion of the Chicago region by pursuing a number of civic improvements and regulatory changes designed to increase the capture rate of retail, office and residential land uses in the Downtown.”
- B. Goals for development that the approved Development of the Subject Property is consistent with the DSSP; and

**WHEREAS**, the determination of how policies described in the Comprehensive Plan are to be implemented is a legislative function of Wheaton’s Corporate Authorities; and

**WHEREAS**, the City makes the following finding of facts and legislative conclusions associated with the application of the standards of special use requirements for granting special use:

- A. The council finds and concludes that based upon the recitals incorporated into this ordinance, as well as the findings in legislative conclusions under the LaSalle Factors, and all matters considered in the public hearing and further described in this ordinance that the Special Use Permit is not detrimental to the public health, safety morals, comfort, convenience, and general welfare and if it is in any way, such detriments are outweighed by the benefits.
- B. The council finds and concludes that based upon the recitals incorporated into this ordinance, as well as the findings in legislative conclusions under the LaSalle Factors, and as further described herein that the Special Use Permit is not injurious to the public health, safety morals, comfort, convenience and general welfare and if it is in any way such detriment are outweighed by the benefits.
- C. The council finds and concludes that the Special Use Permit, based upon the recitals incorporated into this ordinance, as well as the findings in legislative conclusions under the LaSalle Factors, will not impede normal and orderly development and improvement of the surrounding property for uses already permitted.
- D. The plans submitted and incorporated into this ordinance establish adequate utilities, access ways, drainage and other necessary facilities and the same is further established by the application of City ordinances and regulations which will require utilities, access ways, drainage and other necessary facilities before occupancy permits can be issued for the Development.
- E. The traffic reports prepared by Sam Schwartz, the engineering plans for the

Development, architectural plans, and the nature of the Development, establish that adequate measures have been taken to provide ingress and egress designed to minimize traffic congestion in the public streets.

- F. The special use complies with the objectives of the Wheaton Comprehensive Plan.
- G. The City Council finds that this ordinance requires conformance to the applicable requirements of the CBD 4 district, except as may be excepted by the City Council as a result of the PUD approval, as further set forth in this ordinance; and

**WHEREAS**, the Wheaton Zoning Ordinance authorizes the corporate authorities of the City to impose additional restrictions, covenants and easements on a Planned Unit Development that may not be modified, removed or released without express consent of the City Council, and which may be enforced by the City on future land owners within the proposed development; and

**WHEREAS**, the proposed Planned Unit Development will be under one ownership and unified control since all units in the proposed development shall be owned and operated by a single owner as rental units. The owner's use of the word "townhomes" for 17 of the residential structures in its application materials shall not be interpreted to allow sales of those "townhome" residential units as separately owned residences. All townhomes and apartments shall remain under single ownership of the special use/PUD improvement and property; and

**WHEREAS**, the City Council finds that the property is of sufficient size and shape to be planned and developed as a unified whole capable of meeting the objectives for which Planned Unit Developments may be established pursuant to Section 5.11 of the City Zoning Ordinance; and

**WHEREAS**, as required by Section 5.11C of the City Zoning Ordinance regarding Planned Unit Development conditions, the City Council finds and legislatively determines that:

- A. The proposed Planned Unit Development will enhance and support the character and vitality of the Central Business District and provide improved pedestrian amenities and experiences due to its design and proximity to area pedestrian amenities and experiences.
- B. There are no natural resources located on the Subject Property, except trees, which shall be replaced by the owner or paid for in conformance with the City Code which the City Council determines to be adequate for this Planned Unit Development.
- C. The increased density of the property will not be detrimental to adjacent land uses or the City at large because the use of commuter rail facilities by the residents of the property will reduce air pollution, minimize vehicular travel, and increase business in the Central Business District.

- D. Based upon the availability of various floor plans and sizes in the Subject Property that the PUD will provide a range of housing options covering a variety of lifestyle choices for different age groups and household types and that the mixed uses of the property as both residential and commercial are a complimentary mix.
- E. For the reasons set forth in this ordinance regarding the Comprehensive Plan, that the proposed PUD promotes the goals of the City's Comprehensive Plan as a public benefit.
- F. That the additional conditions imposed in this ordinance on the development of the Subject Property are appropriate and pertinent in the effectuation of the purposes of this section and this ordinance; and

**WHEREAS**, the most intense traffic in the area will not be generated by the Development but is instead the consequence of other area uses.

**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 foregoing recitals are incorporated herein as substantive provisions, factual and legislative findings and representing the intent of this ordinance as if fully set forth.

**Section 2:** The following described properties have been and continue to be zoned and classified in the C-4 CBD Perimeter Commercial District zoning classification:

Property 1 is commonly known as 211 S. Wheaton Avenue, Wheaton, IL 60187.

PARCEL 1: ALL THAT PART OF LOT 3 LYING SOUTH OF SOUTH LINE OF RAILROAD AVENUE (NOW LIBERTY DRIVE) (EXCEPTING THEREFROM THE EAST 30 FEET THEREOF) IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON/ BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2: LOT 4 (EXCEPT THAT PART LYING IN LIBERTY DRIVE) IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3: LOT 6 (EXCEPTING THEREFROM THAT PART OF SAID LOT CONVEYED FOR THE RELOCATION OF SOUTH RAILROAD STREET, BY DEED, RECORDED AS DOCUMENT NUMBER 73623) IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE

THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 4: LOT 5 (EXCEPT THAT PART WHICH LIES IN LIBERTY DRIVE) IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 5: THAT PART OF THE EAST 30 FEET OF LOT 3 LYING SOUTH OF THE SOUTH LINE OF SOUTH RAILROAD STREET IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 6: WEST 12 FEET OF THE NORTH 99 FEET OF LOT 1 AND LOT 2 (EXCEPT THE SOUTH 49.5 FEET THEREOF) IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 7: THE EAST 16 FEET OF LOT 7 AND ALL OF LOT 8 IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 8: THAT PART OF LOT 1 LYING SOUTH OF THE SOUTH LINE OF LOT 2 EXTENDED WESTERLY TO THE WEST LINE OF SAID LOT 1, IN FARRAR'S ASSESSMENT PLAT OF THE WEST 40 FEET OF LOT 11, THE NORTH 48 FEET (EXCEPT THE WEST 40 FEET THEREOF) OF LOT 11 AND THE NORTH 48 FEET OF LOT 12, ALL IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO WHEATON, A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 17, 1960 AS DOCUMENT NUMBER 976280, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 9: THAT PART OF BLOCK 4 OF J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855, AS DOCUMENT NUMBER 9567, DESCRIBED BY COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF WILLOW AVENUE WITH THE WEST LINE OF HALE STREET AND RUNNING THENCE WEST ALONG THE NORTH LINE OF WILLOW AVENUE 48 FEET FOR A PLACE OF BEGINNING; THENCE NORTH PARALLEL TO HALE STREET, 84 FEET; THENCE WEST PARALLEL TO WILLOW AVENUE, 40 FEET; THENCE SOUTH 84 FEET TO THE NORTH LINE OF WILLOW AVENUE; THENCE EAST 40 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 10: LOT 9 IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS.

05-16-314-014; -018; -021; -023; -024

Property 2 is commonly known as 213 W. Willow Avenue, Wheaton, IL 60187.

LOT 10 IN BLOCK 4 IN J.C. WHEATON'S ADDITION TO WHEATON, IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

05-16-314-015

Property 3 is commonly known as 213 S. Wheaton Avenue, Wheaton, IL 60187.

THE NORTH 66 FEET OF THE WEST 50 FEET OF LOT 7 IN BLOCK 4 IN J.C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855, AS DOCUMENT NO. 9567, IN DUPAGE COUNTY, ILLINOIS.

PIN 05-16-314-010

Property 4 is commonly known as 221 S. Wheaton Avenue, Wheaton, IL 60187.

THE WEST 50 FEET OF THE NORTH 33 FEET OF THE SOUTH 66 FEET OF LOT 7 IN BLOCK 4 IN J.C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855, AS DOCUMENT NO. 9567, IN DUPAGE COUNTY, ILLINOIS.

PIN 05-16-314-011

Property 5 is commonly known as 223 S. Wheaton Avenue, Wheaton, IL 60187.

THE SOUTH 33 FEET OF THE WEST 50 FEET OF LOT 7 IN BLOCK 4 IN J.C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855, AS DOCUMENT NO. 9567, IN DUPAGE COUNTY, ILLINOIS.

PIN 05-16-314-012

Property 6 is commonly known as 201 W. Willow Avenue, Wheaton, IL 60187.

EAST 48 FEET OF THE SOUTH 84 FEET OF LOT 12 IN BLOCK 4 IN J.C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855, AS DOCUMENT NO. 9567, IN DUPAGE COUNTY, ILLINOIS.

PIN 05-16-314-019

Property 7 is commonly known as the vacated public alley that runs east-west between Wheaton Avenue and Hale Street on the block bounded by Liberty Drive on the north, Hale Street on the east, Willow Avenue on the south, and Wheaton Avenue on the west.

ALL OF THE 16.5 FOOT EAST-WEST ALLEY AS DEDICATED AND RUNNING THROUGH THE CENTER F BLOCK 4 IN J.C. WHEATON'S ADDITION TO WHEATON, BEING A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS AND, AS DESCRIBED IN DOCUMENT NUMBER R1855-009567, AND AS FURTHER AFFECTED BY THE NORTH 5 FOOT STREET LIGHT EASEMENT (1,330 SQUARE FEET) AND THE SOUTH 5 FOOT STREET LIGHT EASEMENT (270 SQUARE FEET) AS DESCRIBED IN DOCUMENT NUMBER R2009-114990.

**Section 3:** Pursuant to the findings of fact made and determined by the Wheaton City Council with respect to the LaSalle Factors, the Zoning Map which is attached to and forms a part of the City Zoning Ordinance is amended by removing Property 7 (seems excluded) and 8 from the C-2 Retail Core Business District Zoning classification and rezoning them to C-4 CBD Perimeter Commercial District and adding them to the Zoning Map as part of the C-4 CBD Perimeter Commercial District to the C-4 CBD Perimeter Commercial District Zoning classification on the following-described real estate:

Property 8 is commonly known as 204 W. Liberty Drive, Wheaton, IL 60187.

THE NORTH 99 FEET (EXCEPT THE WEST 12 FEET THEREOF) OF LOT 1 IN BLOCK 4 IN J. C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST 1/2

OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 7, 1855 AS DOCUMENT NUMBER 9567, IN DUPAGE COUNTY, ILLINOIS.

05-16-314-008

Property 9 is commonly known as 208 S. Hale Street, Wheaton, IL 60187.

PARCEL 1: THE SOUTH 49.5 FEET OF LOTS 1 AND 2 IN BLOCK 4 IN J.C. WHEATON'S ADDITION TO THE TOWN ON WHEATON, A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF

SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2: LOT 2 AND THAT PART OF LOT 1, LYING NORTH OF THE SOUTH LINE OF SAID LOT 2 EXTENDED WESTERLY TO THE WEST LINE OF SAID LOT 1 IN THE FARRAR'S ASSESSMENT PLAT OF THE WEST 40 FEET OF LOT 11, THE NORTH 48 FEET (EXCEPT THE WEST 40 FEET THEREOF) OF LOT 11 AND THE NORTH 48 FEET OF LOT 12, ALL IN BLOCK 4 IN J.C. WHEATON'S ADDITION TO THE TOWN OF WHEATON, A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO SAID ASSESSMENT PLAT RECORDED AUGUST 17, 1960 AS DOCUMENT NUMBER 976280, IN DUPAGE COUNTY, ILLINOIS.

05-16-314-009; -020

The Subject Property is commonly known as the block bounded by Liberty Drive on the north, Hale Street on the east, Willow Avenue on the south, and Wheaton Avenue on the west, Wheaton, IL 60187.

**Section 4:** Pursuant to the findings of fact and legislative determinations made by the Wheaton City Council, a Special Use Permit for a Planned Unit Development to allow the construction and use of a mixed-use building on the Subject Property following the demolition of the existing structures is hereby granted for the proposed with 334 units, 7-stories, 438 parking spaces, and 4,502 square feet of first-floor commercial space and shall be in full compliance with the following plans:

"Site and Tabulation, Site Plan, Ground Level Before, Ground Level, Level 2, Level 3, Levels 4-7, Section, Perspectives, Elevations, Material Board, Wall Section with Balcony, prepared by BKV Group, dated July 20, 2022, sheets 1-20; "Preliminary Engineering Plans", prepared by CAGE Civil Engineering, Lisle, IL, dated June 6, 2022, sheets C1.0, C2.0, C3.0, and C4.0; and Landscape Plans", prepared by BKV Group, dated March 22, 2022, sheets L000, L101, L201, L301, L302, and L303 are incorporated herein as fully set forth in Exhibit A.

**Section 5:** The Special Use Permit shall be subject to the following conditions and requirements:

- A. The façade shall be face brick or masonry material equivalent in appearance in the areas designated that is consistent with the most recent elevation submitted by the owner at the Wheaton City Council Meeting on July 18, 2022, with appropriate architectural panels to an overall aesthetic balance. City staff shall make this determination.
- B. The height of the building shall not exceed 79.33 feet from the average grade to the highest point of the roof.
- C. The preliminary engineering plan shall be subject to further staff review and engineering staff's determination of City ordinance's compliance and regulation prior to the issuance of a site development permit.
- D. The landscape plan shall be revised to provide streetscape improvements along Willow Avenue in a similar design to the new streetscape landscaping along Liberty Drive and Hale Street. The landscape plan shall be subject to the City Planner's approval.

- E. To promote sustainability, the applicant shall describe any green initiatives in the design and construction of the building which are aligned with the standards of the National Green Building Standard (NGBS), Leadership in Energy and Environmental Design (LEED) rating system or other similar design or building certifications. Prior to the issuance of a Certificate of Occupancy for the building, the owner of the Subject Property shall submit a report to the City, detailing the initiatives undertaken by the owner prior to the issuance of occupancy permits.
- F. The owner of the Subject Property shall, at all times, provide and designate, with signage, no less than 17 parking spaces within the building that are available to employees of the commercial tenant in the building.
- G. The owners of the Subject Property shall, at all times, provide and designate with signage no less than 10 guest parking spaces within the building.
- H. A tree preservation plan, prepared in compliance with the requirements of Article VI of the Wheaton Zoning Ordinance, shall be submitted with the demolition permit.
- I. Prior to the issuance of a building permit for the Development, the owner shall comply with all requirements of the "Ordinance Vacating a Public Alley Right-of-Way and Abrogating Existing Easements Willow Avenue Apartments LLC," for the vacation of the public alley commonly known as the 16.5 foot public alley (6.532 square feet) that runs east-west between Wheaton Avenue and Hale Street and two streetlight easements. The alley shall not be closed for public use until demolition for the Development commences. If the Development Project is not substantially commenced and diligently prosecuted within three (3) years from the date of the adoption of this Ordinance in conformance with Section 4.4 "Granted Special Uses and Variations", Article IV "Scope of Regulations" of the Wheaton Zoning Ordinance, as it exists on the date of adoption of this Ordinance, the Owner shall , upon the City's demand, rededicate the Public Alley Right of way and easements to the City, as they existed at the time of vacation. The City shall refund the Owner its payment for the vacation, without interest or, other monies, if it elects to require the rededication. The City may enforce this provision by specific performance. This provision shall run with the land.
- J. Prior to the issuance of the building permit of the Development, the owner shall submit evidence, subject to the City Attorney's approval, that the Development is under unified ownership.

**Section 6:** The Plat entitled "Final Plat of Subdivision of Willow Avenue Subdivision" prepared by Cage Civil Engineering, Lisle, IL is hereby approved subject to the approval of the Director of Engineering, and thereafter the Mayor is hereby authorized to sign, and the City Clerk is directed to attest to, the Plat of Consolidation.

**Section 7:** The demolition of the existing structures located on the Subject Property is hereby authorized by this ordinance. It shall be carried out in conformance with Wheaton City Code Chapter

22, Article XIV, with the exception that the owner shall not be required to wait 30 days prior to commencing demolition from the date of submitting a demolition permit application to the Building and Code Enforcement Department and shall not be required to hold a "neighbor meeting" at least 30 days prior to submitting an application for building demolition. The owner shall provide written notice to adjacent property owners prior to the building demolition.

**Section 8:** In consequence of the Special Use Permit for a Planned Unit Development, the following exceptions to the Wheaton Zoning Ordinance are granted:

1. Per Article 19.5A – A proposed height of seven stories, in lieu of the maximum four stories or 50 feet, whichever is greater; and
2. Per Article 19.5B – A proposed lot area of 338 square feet per dwelling unit, in lieu of the minimum 2,000 – 3,000 square feet per dwelling unit; and
3. Per Article 19.5Da – A building setback on Liberty Drive ranging from 0.75 to 4.6 feet, in lieu of the required 5.0 feet.

**Section 9:** All ordinances or parts of ordinances in conflict with these provisions are repealed.

**Section 10:** This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

  
Mayor

ATTEST:

  
City Clerk

	<u>Roll Call Vote</u>
Ayes:	Councilman Barbier Councilwoman Bray-Parker Councilman Brown Mayor Suess Councilwoman Fitch Councilman Weller
Nays:	Councilwoman Robbins
Absent:	None
	<u>Motion Carried</u>

Passed: August 1, 2022  
Published: August 2, 2022

