

ORDINANCE NO. 17-18-34

An Ordinance Granting an Amendment to the Conditional Use Permit for Planned Development and Certain Zoning Exceptions and Approving the Final Plat for the Rose Resubdivision

WHEREAS, a written petition, executed by the legal owner of record of the territory hereinafter described, being identified as Richmond 2911 LLC, an Illinois limited liability corporation in good standing with the Illinois Secretary of State (the "Petitioner"), has been filed with the Village Clerk of the Village of Johnsburg, McHenry County, Illinois (the "Village"), requesting that the conditional or special use permit for a planned development and for the Rose Subdivision as set forth in Ordinance No. 13-14-01, entitled *An Ordinance Granting a Conditional Use Permit for Planned Development and Certain Zoning Exceptions and Approving the Final Plat for the Rose Subdivision*, be amended as set forth herein;

WHEREAS, the "Property" (as hereinafter defined) is commonly known as 2911 Richmond, consists of approximately 1.87 acres and is generally located on the west side of Illinois Route 31 approximately 3,500 feet south of the intersection of Illinois Route 31 and Johnsburg Road and approximately 280 feet south of the intersection of Illinois Route 31 and Running Brook Farm Boulevard and is legally described as follows:

PARCEL 1:

A PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 45 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, McHENRY COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 23; THENCE SOUTH 88 DEGREES 11 MINUTES 18 SECONDS WEST (BASIS OF BEARINGS - ILLINOIS STATE PLANE COORDINATES EAST ZONE - NAD 83) ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER 575.56 FEET TO THE NORTHWESTERN CORNER OF A 0.467 ACRE TRACT OF LAND CONVEYED TO THE ILLINOIS DEPARTMENT OF TRANSPORTATION, RECORDED NOVEMBER 2, 2007, AS DOCUMENT 2007R0073050 IN THE OFFICE OF THE McHENRY COUNTY RECORDER, (THE FOLLOWING TWO (2) COURSES ARE ALONG THE WESTERN LINE OF SAID 0.467 ACRE TRACT; 1) THENCE ALONG A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 3860.00 FEET, AN ARC LENGTH OF 308.24 FEET, A CHORD BEARING OF SOUTH 12 DEGREES 14 MINUTES 48 SECONDS EAST AND A CHORD LENGTH OF 308.16 FEET TO ITS POINT OF TANGENCY; 2) THENCE SOUTH 14 DEGREES 32 MINUTES 04 SECONDS EAST 204.58 FEET TO THE NORTHEASTERN CORNER OF THE

TRACT OF LAND CONVEYED TO WAYNE HUMMER TRUST COMPANY ("TRUST"), RECORDED OCTOBER 1, 2002, AS DOCUMENT 2002R0087539 IN THE OFFICE OF THE McHENRY COUNTY RECORDER; THENCE SOUTH 75 DEGREES 27 MINUTES 56 SECONDS WEST ALONG THE NORTHERN LINE OF SAID "TRUST" TRACT 194.03 FEET TO ITS NORTHWESTERN CORNER; THENCE SOUTH 06 DEGREES 31 MINUTES 06 SECONDS EAST ALONG THE WESTERN LINE OF SAID "TRUST" TRACT AND ALONG THE WESTERN LINE OF THE TRACT OF LAND CONVEYED TO D.R.W. DEVELOPMENT CORPORATION ("DRW"), RECORDED JUNE 28, 2002, AS DOCUMENT 2002R0056771 IN THE OFFICE OF THE McHENRY COUNTY RECORDER, A DISTANCE OF 210.74 FEET TO THE NORTHWESTERN CORNER OF SAID "DRW" TRACT TO THE POINT OF BEGINNING; THENCE NORTH 75 DEGREES 27 MINUTES 56 SECONDS EAST ALONG THE NORTH LINE OF SAID "DRW" TRACT 203.42 FEET TO THE WEST LINE OF A 20 FOOT WIDE TRACT OF LAND CONVEYED TO THE VILLAGE OF JOHNSBURG PER DOCUMENT NUMBER 2003R0028260; THENCE SOUTH 14 DEGREES 32 MINUTES 04 SECONDS EAST ALONG SAID WEST LINE 351.08 FEET; THENCE SOUTH 75 DEGREES 27 MINUTES 56 SECONDS WEST 252.86 FEET TO THE WEST LINE OF SAID "DRW" TRACT; THENCE NORTH 06 DEGREES 31 MINUTES 06 SECONDS WEST ALONG SAID WEST LINE 354.54 FEET TO THE POINT OF BEGINNING; (EXCEPTING THEREFROM THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE NORTH 75 DEGREES 27 MINUTES 56 SECONDS EAST (BASIS OF BEARINGS - ILLINOIS STATE PLANE COORDINATES - EAST ZONE - NAD 83) ALONG THE NORTH LINE OF SAID "DRW" TRACT 203.42 FEET TO THE WEST LINE OF A 20 FOOT WIDE TRACT OF LAND CONVEYED TO THE VILLAGE OF JOHNSBURG PER DOCUMENT NUMBER 2003R0028260; THENCE SOUTH 14 DEGREES 32 MINUTES 04 SECONDS EAST ALONG SAID WEST LINE 34.00 FEET; THENCE SOUTH 75 DEGREES 27 MINUTES 56 SECONDS WEST 208.21 FEET TO THE WEST LINE OF SAID "DRW" TRACT; THENCE NORTH 06 DEGREES 31 MINUTES 06 SECONDS WEST ALONG SAID WEST LINE 34.34 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 45 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, McHENRY COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 23; THENCE SOUTH 88 DEGREES 11 MINUTES 18 SECONDS WEST (BASIS OF BEARINGS - ILLINOIS STATE PLANE COORDINATES - EAST ZONE - NAD 83) ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER 575.56 FEET TO THE NORTHWESTERN CORNER OF A 0.467 ACRE TRACT OF LAND CONVEYED TO THE ILLINOIS

DEPARTMENT OF TRANSPORTATION, RECORDED NOVEMBER 2, 2007, AS DOCUMENT 2007R0073050 IN THE OFFICE OF THE McHENRY COUNTY RECORDER, (THE FOLLOWING TWO (2) COURSES ARE ALONG THE WESTERN LINE OF SAID 0.467 ACRE TRACT; 1) THENCE ALONG A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 3860.00 FEET, AN ARC LENGTH OF 308.24 FEET, A CHORD BEARING OF SOUTH 12 DEGREES 14 MINUTES 48 SECONDS EAST AND A CHORD LENGTH OF 308.16 FEET TO ITS POINT OF TANGENCY; 2) THENCE SOUTH 14 DEGREES 32 MINUTES 04 SECONDS EAST 204.58 FEET TO THE NORTHEASTERN CORNER OF THE TRACT OF LAND CONVEYED TO WAYNE HUMMER TRUST COMPANY ("TRUST"), RECORDED OCTOBER 1, 2002, AS DOCUMENT 2002R0087539 IN THE OFFICE OF THE McHENRY COUNTY RECORDER; THENCE SOUTH 75 DEGREES 27 MINUTES 56 SECONDS WEST ALONG THE NORTHERN LINE OF SAID "TRUST" TRACT 194.03 FEET TO ITS NORTHWESTERN CORNER; THENCE SOUTH 06 DEGREES 31 MINUTES 06 SECONDS EAST ALONG THE WESTERN LINE OF SAID "TRUST" TRACT AND ALONG THE WESTERN LINE OF THE TRACT OF LAND CONVEYED TO D.R.W. DEVELOPMENT CORPORATION ("DRW"), RECORDED JUNE 28, 2002, AS DOCUMENT 2002R0056771 IN THE OFFICE OF THE McHENRY COUNTY RECORDER, A DISTANCE OF 565.28 FEET TO THE SOUTHWESTERN CORNER OF SAID "DRW" TRACT TO THE POINT OF BEGINNING; THENCE NORTH 75 DEGREES 27 MINUTES 56 SECONDS EAST ALONG THE SOUTH LINE OF SAID "DRW" TRACT 252.86 FEET TO THE WESTERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 31 AS CONVEYED TO THE STATE OF ILLINOIS PER DOCUMENT NUMBER 2007R0073050; THENCE SOUTH 14 DEGREES 32 MINUTES 04 SECONDS EAST ALONG SAID WESTERLY RIGHT OF WAY LINE 34.00 FEET; THENCE SOUTH 75 DEGREES 27 MINUTES 56 SECONDS WEST 257.65 FEET; THENCE NORTH 06 DEGREES 31 MINUTES 06 SECONDS WEST ALONG SAID WEST LINE 34.34 FEET TO THE POINT OF BEGINNING (together, the "Property").

WHEREAS, a public hearing on such proposed amendment was held by the Village's Planning and Zoning Commission (the "Commission") on December 19, 2017, after due notice in the manner provided by law by the Petitioner; and

WHEREAS, the Commission, after deliberation, receiving testimony, comment and evidence, recommended that such conditional or special use permit be amended, as described herein; and

WHEREAS, pursuant to the Johnsburg Subdivision Ordinance, the Commission has also considered a revised final plat of the Rose resubdivision (the "Revised Final Plat") that was also submitted to the Village by the Petitioner for approval and the Commission has recommended approval of the Final Plat to the Village's Board of Trustees; and

WHEREAS, the Village Board of Trustees has considered the evidence presented at the public hearing and the recommendations made by the Commission; and

WHEREAS, in addition, the Village Board of Trustees makes the following findings of fact relative to the petition for a special use permit for a planned development and the requested exceptions:

1. With respect to the existing uses and zoning classifications of nearby property, the proposed amendment to the conditional use permit for planned development for the Property is compatible with the existing uses and zoning classifications of nearby property. The Wal-Mart parcel is adjacent to the Property and the parcel to the north is an apartment building that includes 19 units. Parcels located to the east of the Property on the east side of Illinois Route 31, are zoned SD and B-3 and include retail and commercial uses. The parcels located to the south of the Property are located within the corporate boundary of the City of McHenry and are zoned C-5 and include retail or commercial uses. The parcel to the west of the Property is zoned SD and is used for agriculture. Finally, the parcels located further north of the Property are zoned R-4 PD and B-3 PD. The R-4 PD district to the far north of the Property is buffered from any negative impact from the proposed development.

2. With respect to the issue as to what extent property values may be diminished by the particular zoning restrictions, the property values will not be diminished by the proposed special use permit for planned development amendment. The proposed special use permit amendment is compatible with the existing zoning districts and existing uses in the vicinity of the Property. The Village has planned the creation of a retail corridor along Illinois Route 31 for many years and the proposed development is merely the next step toward the completion of that goal. The addition of the subject commercial development on Illinois Route 31 will enhance property values of the existing and planned for retail and commercial developments in the surrounding area and will act as a stimulus for additional retail and commercial development in the future.

3. As to the extent, if any, to which the destruction of property values by the Petitioner promotes the health, safety, morals and general welfare of the public, the proposed special use permit amendment will enhance the Petitioner's property value and is expected to enhance the value of surrounding properties by increasing the demand for retail and commercial uses in the area.

4. With respect to the issue of the relative gain to the public as compared to the hardship imposed upon the individual property owner, the proposed development of the Property will provide substantial benefits to the public. The proposed development will enhance the Village's real estate and sales tax bases, and will create demand for additional retail and commercial uses in the area.

5. As to the suitability of the Property for the zoned purposes, the proposed uses for the Property are suitable for the proposed special use permit for planned development, as amended. The Petitioner intends to construct a retail facility. Such a use is appropriate for such a special use permit. Furthermore, the Village's Comprehensive Plan calls for a retail corridor along this section of Illinois Route 31 and specifically identifies the Property as one that should include retail and commercial uses.

6. With respect to the length of time the Property has been vacant as zoned as is, considered in the context of land development in the area in the vicinity of the Property, the Property has been unimproved, rather than vacant, for decades. The Property was originally annexed to the Village in 1997. The original annexation agreement contemplated retail and commercial uses on the Property and planned for associated utilities and infrastructure. The proposed special use permit for planned development, as amended, complies with the Village Comprehensive Plan and fulfills the Village's goal of creating a retail corridor along Illinois Route 31.

7. As to the community need for the proposed use, the community needs and desires the proposed retail and commercial uses. The proposed use will provide the community with an expansion of the Village's sales and real estate tax bases and will provide additional jobs and additional demand for retail and commercial uses.

8. Relative to the care toward which the legislative body planned and zoned its land use, the Village Board annexed the Property in 1997 and contemplated retail, commercial and other compatible uses on the Property in the annexation agreement. The Village Board has adopted a Comprehensive Plan that calls for retail and commercial uses on the Property.

9. The proposed special use permit for planned development, as amended, will comply with the regulations and conditions specified in the Johnsburg Zoning Ordinance for such use, and with the stipulations and conditions made a part of the authorization granted by the Village Board. The "Development Plan" (as hereinafter defined) complies with the regulations and conditions specified in the Johnsburg Zoning Ordinance for a special use permit for a planned development and the following deviations and exceptions are appropriate for incorporation into the conditional use permit for a planned development: i) minimum lot size of 41,023 square feet for Lot 1 and 40,752 square feet for Lot 2 in accordance with the Final Plat; ii) a minimum parking stall depth of eighteen feet (18'); iii) a waiver of the requirement for a three foot (3') high buffer along parking areas that are adjacent to IL Route 31; iv) a reduction of the minimum lot area requirement to allow Lot 2 and Lot 1 on the Final Plat to each have a monument sign; v) to permit a monument sign with a height of 8'4" on Lot 1 as shown on the "Monument Sign Schematic" as defined below to accommodate cornice detailing consistent with that utilized on the anticipated building; vi) a minimum lot width at property line of 184.42 feet for Lot 1 and 165.58 feet for Lot 2; vii) minimum front, rear and side yards abutting a residential lot of forty feet (40'), twenty feet (20') and twenty feet (20') respectively; viii) trash enclosures for Lot 2 and Lot 1 as set forth on the Final Plat within the year yard and ix) landscaping in accordance with the submitted "Landscape Plan" as defined herein.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Johnsburg, McHenry County, Illinois, as follows:

SECTION 1: Subject to compliance with the terms and conditions herein, including the Development Plan, the Property is hereby granted following exceptions from the Village's Zoning Ordinance:

- (a) a minimum lot size of 41,023 square feet for Lot 1 and 40,752 square feet for Lot 2 in accordance with the "Revised Final Plat," as defined herein; and

- (b) a minimum lot width at the property line of 184.42 feet for Lot 1 and 165.58 feet for Lot 2.

SECTION 2: Such approval of the amendment to the conditional or special use permit for planned development for the Property is contingent and conditioned upon the Petitioner, and any other subsequent owner of all or any portion of the Property, complying with, and obtaining all necessary approvals under, those Village ordinances requiring architectural review as well as those ordinances requiring the posting of security in accordance with the Village's subdivision ordinance. An amendment to the conditional use permit for the Property is hereby granted subject to compliance with the following conditions:

- (a) The final plat of the Rose Subdivision of Johnsburg prepared by Spaceco Inc., consisting of two (2) pages, assigned job no. 6612, dated May 17, 2012 with a latest revision date of January 17, 2013, is hereby replaced, repealed and superceded by the final plat of the Rose Resubdivision, consisting of two pages, job no. 6612 dated 11/02/17 with a most recent revision date of 12/22/17, file name 6612 RESUB-01, prepared by Spaceco, Inc. (the "Revised Final Plat"), is hereby approved. Development of the Property shall be in strict accordance with the Revised Final Plat.
- (b) That Lot 1 of the Property shall be developed strict accordance with the Geometric Plan captioned "Lot 1 – Rose Plaza Retail Center" prepared by Spaceco Inc. consisting of one (1) page, file number 6612 CMO1, job no. 6612, dated 11/05/12, with a most recent revision date of 12/27/17, file name 6612 GM01;
- (c) That Lot 1 of the Property shall be developed in strict accordance with the dimensioned site plan prepared by raSmith, assigned sheet number C200, job no. 3170305, dated 11/30/2017, consisting of one sheet, with a reference to Exhibit C in the lower right hand corner;
- (d) That Lot 2 shall be developed in strict accordance with the conceptual floor plan labeled sheets A.1 (building model ALT-1R, dated 11/03/17, project no. 2017090280); conceptual elevations labeled A.2 (building model ALT-1R.A, revision #1-11.07.17, dated 11.03.17, project no. 2017090280); and the colored elevations labeled A.3 (building model ALT-1R.A, revision #1-11.07.17, dated 11.03.17, project no. 2017090280) prepared by Ei Design Inc. consisting of three pages in total;
- (e) The utilities to be installed on Lot 2 shall be in accordance with the Site Utility Plan prepared by raSmith dated 11/30/17, job no. 3170305, sheet no. C400, with a reference to Exhibit B in the lower right hand corner;
- (f) That Lots 1 and 2 of the Property shall be landscaped in accordance with the Landscape Plan prepared by raSmith dated 11/30/2017, job no. 3170305, sheet number L100, consisting of one page, rather than the Landscape Plan, prepared by Soos & Associates, Inc., consisting of two (2) sheets, assigned job no. 07 LF 025, dated March 30, 2007 with a latest revision date of January 7, 2013. The obligation of the additional, enhanced landscaping to the south and east sides of Lot 2 referenced in Section 4(i) of Ordinance No. 13-14-01 shall remain in effect and is not repealed;

- (g) The sign for Lot 2 of the Property shall be in accordance with the sign package by Walton, consisting of four sheets, dated 1.12.18, and assigned job no. CID159097-GND; and
- (h) That the Revised Final Plat set forth in subsection 4(a-i) Ordinance No. 13-14-01 plus the plans, elevations and schematics set forth herein in subparagraphs (a) through (h) shall constitute the Development Plan. To the extent of any inconsistency or conflict between the plans, elevations or schematics set forth herein and those in Ordinance No. 13-14-01, the more recent and specific plans, elevations and schematics set forth in this ordinance shall control, govern and prevail relative to any inconsistency or conflict with the plans, elevations or schematics in Ordinance No. 13-14-01.

SECTION 3: Under no circumstance shall any lot depicted on the Final Plat be subdivided in the future.

SECTION 4: That all requirements set forth in the Johnsburg Zoning Ordinance, as would be required by any owner of property zoned in the same manner as the Property, shall be complied with, except as otherwise expressly and specifically provided in this Ordinance.

SECTION 5: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 6: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Voting Aye: Trustees Hutchinson, McEvoy, Curry, Frost, Hagen and Klemstein

Voting Nay: None

Abstain: None

Absent: None

APPROVED:

Village President Edwin P. Hettermann

(SEAL)

ATTEST: _____
Village Administrator Claudett E. Peters

Passed: February 6, 2018
Approved: February 6, 2018
Published: February 6, 2018

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CERTIFICATION

I, CLAUDETT E. PETERS, do hereby certify that I am the duly appointed, acting and qualified Administrator and Village Clerk of the Village of Johnsburg, McHenry County, Illinois, and that as such Clerk and Administrator, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village of Johnsburg.

I do hereby further certify that at a duly scheduled meeting of the President and Board of Trustees of the Village of Johnsburg, held on the 6th day of February, 2018, the foregoing Ordinance entitled *An Ordinance Granting an Amendment to the Conditional Use Permit for Planned Development and Certain Zoning Exceptions and Approving the Final Plat for the Rose Resubdivision*, was duly passed by the President and Board of Trustees of the Village of Johnsburg.

The pamphlet form of Ordinance No. 17-18-34, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the Village Hall, commencing on the 6th day of February, 2018, and will continue for at least 10 days thereafter. Copies of such Ordinance are available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Administrator of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and the seal of the Village of Johnsburg, Illinois, and this 6th day of February, 2018.

Claudett E. Peters, Village Administrator
Village of Johnsburg,
McHenry County, Illinois

(SEAL)