

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

Resolution or Ordinance (Blue) Waiver of First Requested
 Recommendations of Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO : PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott R. Niehaus, Village Manager

DATE : September 8, 2020 (BOT) **Date:** September 17, 2020

SUBJECT: Stormwater Detention/Retention Variance Fee Escrow Agreement –
415 E. North Avenue (Former Casey's Restaurant Property)

SUBMITTED BY: William J. Heniff, AICP, Director of Community Development *WJH*

BACKGROUND/POLICY IMPLICATIONS:

A First Amendment is being requested by the property owner as the driveway has not been removed and the required stormwater improvements have not completed, due to Covid-19. The extension is thru December 31, 2021. Attached is an Ordinance authorizing a First Amendment to the Stormwater Detention/Retention Variation Fee Escrow Agreement at 415 E. North Avenue.

Please place this item on the September 17, 2020 Board of Trustees agenda for consideration. The applicant is requesting that the Village Board approve a First Amendment to the Stormwater Detention/Retention Variation Fee Escrow Agreement for the property at 415 East North Avenue. Staff is requesting a waiver of first reading.

Fiscal Impact/Funding Source:

Review (as necessary):

Finance Director _____ Date _____
Village Manager _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the agenda distribution.



MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development

MEETING DATE: September 17, 2020

SUBJECT: **Stormwater Detention/Retention Variance Fee Escrow Agreement - 415 E. North Avenue (Former Casey's Restaurant Property)**

In October, 2002, the Village of Lombard adopted Ordinance No. 5211 approving a variation from the stormwater detention provisions for property located at 415 E. North Avenue. The variation was granted to the owner of the former Casey's Restaurant to build driveway access to the restaurant from Joyce Street due to access that was being removed as part of the widening of North Avenue. As part of the variation ordinance, the Village required the property owner to pay \$14,408.18 into an escrow account in order to provide the Village with the ability to account for the requisite fee in-lieu of detention requirement and /or remove the driveway at a later date if necessary. The matter was extended in 2005 and 2010. In December 2015, Ordinance 7159 was adopted which established a Stormwater Retention Variance Fee Lien, to allow the Village to disperse the previously held escrow funds. In 2018, the property sold to the current owner. In 2019, a new Escrow Agreement was established, with the caveat that if the stormwater detention improvements were not constructed by December 31, 2020, or the driveway is not removed, or the property is sold, the lien would be payable to Village.

A First Amendment is being requested by the property owner as the driveway has not been removed and the required stormwater improvements have not completed, due to Covid-19. The extension is thru December 31, 2021. Attached is an Ordinance authorizing a First Amendment to the Stormwater Detention/Retention Variation Fee Escrow Agreement at 415 E. North Avenue.

ACTION REQUESTED

Please place this item on the September 17, 2020 Board of Trustees agenda for consideration. The applicant is requesting that the Village Board approve a First Amendment to the Stormwater Detention/Retention Variation Fee Escrow Agreement for the property at 415 East North Avenue. Staff is requesting a waiver of first reading.

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A FIRST AMENDMENT TO
STORMWATER DETENTION/RETENTION VARIATION FEE ESCROW AGREEMENT
(415 EAST NORTH AVENUE)**

WHEREAS, pursuant to Village of Lombard (the “Village”) Ordinance No. 7159, adopted December 17, 2015, entitled, “An Ordinance Amending Ordinance No. 5211, Adopted November 7, 2002, in Regard to Granting a Variation From the Provisions of Chapter 151, Section 151.55 of the Lombard Village Code in Regard to the Stormwater Detention/Retention Basin Requirement,” (the “Ordinance”), and the Stormwater Detention Variance Fee Lien (the “Variance Fee Lien”) relative thereto, both recorded on March 3, 2016 as document number R2016-020102 with the DuPage County Recorder’s Office, the issuance of building permits relative to the property commonly known as 415 East North Avenue was made subject to certain conditions; and

WHEREAS, the owners of 415 East North Avenue (the “Property Owners”) desired to move forward with applying for, and obtaining, building permits relative to certain improvements to 415 East North Avenue, without full compliance with the provisions of the aforementioned Ordinance and Variance Fee Lien, and, in relation thereto, entered into a Stormwater Detention/Retention Variation Fee Escrow Agreement with the Village, dated February 25, 2019 (the “Escrow Agreement”), pursuant to which the Property Owners made a monetary deposit of \$14,408.18, in escrow with the Village, to secure full compliance with the provisions of the Ordinance and the Variance Fee Lien, with said compliance to occur on or before December 31, 2020, so as to cause the Village to process said building permits application without full compliance with the provisions of the Ordinance and the Variance Fee Lien; and

WHEREAS, in light of the COVID-19 pandemic, the Property Owners have indicated that they will be unable to come into full compliance with the Ordinance and the Variance Fee Lien by December 31, 2020, as provided for in the Escrow Agreement, and have requested that the Escrow Agreement be amended, to provide for a compliance date of December 31, 2021, as more fully set forth in the “First Amendment to Stormwater Detention/Retention Variation Fee Escrow Agreement (415 East North Avenue)”, attached hereto as Exhibit 1 and made part hereof (the “First Amendment”); and

WHEREAS, the President and Board of Trustees find said First Amendment to be acceptable, and in the best interests of the Village;

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

SECTION 1: That the First Amendment is hereby approved, and the Village President and Village Clerk are hereby authorized and directed to execute same on behalf of the Village.

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage and approval, as required by law.

Passed on first reading this ____ day of _____, 2020.

First reading waived by action of the Board of Trustees this ____ day of _____, 2020.

Passed on second reading this ____ day of _____, 2020, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2020.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Exhibit 1

**First Amendment to
Stormwater Detention/Retention Variation Fee Escrow Agreement
(415 East North Avenue)**

(attached)

**FIRST AMENDMENT TO
STORMWATER DETENTION/RETENTION
VARIATION FEE ESCROW AGREEMENT
(415 EAST NORTH AVENUE)**

This STORMWATER DETENTION/RETENTION VARIATION FEE ESCROW AGREEMENT (415 EAST NORTH AVENUE) (the "Agreement") is made and entered into as of this ____ day of _____, 2020, by and between LOMBARD REAL ESTATE, LLC and LOMBARD HOTELS GROUP, LLC of 191 Ashfield Court, Bloomingdale, Illinois 60108 (the "Companies"), and the VILLAGE OF LOMBARD, Illinois (the "Village").

RECITALS

- A. The Companies are the owners of the property commonly known as 415 East North Avenue, Lombard, Illinois, as legally described on Exhibit A attached hereto and made part hereof (the "Subject Property"), having acquired the Subject Property during 2018.
- B. Pursuant to Village Ordinance No. 7159, adopted December 17, 2015, entitled, "An Ordinance Amending Ordinance No. 5211, Adopted November 7, 2002, in Regard to the Granting of a Variation From the Provisions of Chapter 151, Section 151.55 of the Lombard Village Code in regard to the Stormwater Detention/Retention Basin Requirement" (the "Ordinance") and the Stormwater Detention Variance Fee Lien (the "Variation Fee Lien"), both recorded on March 3, 2016 as document number R2016-020102, the Subject Property was made subject to a lien to guarantee that either:
- (i) the driveway pavement on a portion of the Subject Property and at least 4½ inches of base stone shall be removed, and the area restored with 6 inches of topsoil and seed, so as to eliminate the need for the variance; or
 - (ii) proper site stormwater runoff storage requirements for the Subject Property are provided, so as to eliminate the need for the variance; or
 - (iii) a variance fee of \$14,408.18 (the "Variation Fee") be paid to the Village by the owner of the Subject Property, which shall be a non-refundable deposit into the Village's Salt Creek Watershed Improvements Account;

on or before December 31, 2020, or no further building or other permits will be issued by the Village relative to the Subject Property, or in relation to any other property served by the structure (the paved driveway) on the Subject Property (the aforementioned requirements of the Ordinance and the Variation Fee Lien being hereinafter referred to as the "Variation Fee Guarantee").

- C. The Variation Fee Guarantee also provided that, notwithstanding what is set forth in B. above, a sale of the Subject Property, prior to December 31, 2020, shall require that one of the actions set forth in subsections B.(i), (ii) or (iii) above take place, before any building or other permits are issued by the Village relative to the Subject Property, or in relation to any other property served by the structure (the paved driveway) on the Subject Property.

- D. The Companies desired to go forward with their plans to improve the Subject Property and to apply for and obtain building permits to commence work in relation to said improvements.
- E. Pursuant to the provisions of the Variation Fee Guarantee, as the Companies acquired title to the Subject Property subsequent to the approval and recording of the Variation Fee Lien, the Companies could not be issued building permits to commence work on the improvements on the Subject Property until such time as one of the actions set forth in subsections B.(i), (ii) or (iii) above had taken place.
- F. The Companies offered to deposit the Variation Fee with the Village, in order to cause the issuance of the building permits relative to the proposed improvements on the Subject Property, but wanted the option of having the Variation Fee returned to them in the event that one of the actions set forth in subsections B.(i) or (ii) above (the "Required Work") occurred on or before December 31, 2020.
- G. The Companies and the Village desired to reach an understanding, regarding the ability for the Village to issue said building permits to the Companies while at the same time addressing the requirements of the Variation Fee Guarantee.
- H. The Companies and the Village entered into a Stormwater Detention/Retention Variation Fee Escrow Agreement (415 East North Avenue), dated February 25, 2019 (the "Escrow Agreement"), as approved by Village Ordinance No. 7636, adopted March 7, 2019, pursuant to which the Companies deposited \$14,408.18 into escrow with the Village (the "Escrow Deposit"), with the understanding that, if the Required Work was completed on or before December 31, 2020, the Village would return the Escrow Deposit to the Companies.
- I. In light of the COVID-19 pandemic, although the Companies have begun work on the improvements to the Subject Property, the Companies will be unable to complete the Required Work by December 31, 2020, and have requested that the Village agree to an extension of the time period, for completion of the Required Work, pursuant to the terms of the Escrow Agreement, until December 31, 2021.
- J. In light of the COVID-19 pandemic, the Village is agreeable to amending the Escrow Agreement to provide for a December 31, 2021 completion date for the Required Work.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which the Companies and the Village hereby acknowledge, the Companies and the Village agree as follows:

1. The Recitals, as set forth above, are hereby incorporated herein by reference.
2. That the references to "December 31, 2020", as contained in Sections 5, 6 and 7 of the Escrow Agreement, are hereby revised to read "December 31, 2021".
3. That all other provisions of the Escrow Agreement, not amended hereby, shall remain in full force and effect.

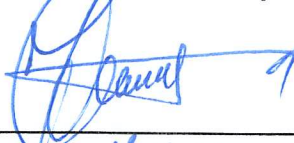
This Agreement shall be in full force and effect from and after the date set forth above, which shall be the date that this Agreement is approved by the Lombard Village Board.

Lombard Real Estate, LLC

By: 
Name: MOHAMMAD KAMRAN
Title: Manager

Date: 8-18-2020

Lombard Hotels Group, LLC

By: 
Name: MOHAMMAD KAMRAN
Title: Manager

Date: 8-18-2020

Village of Lombard

By: _____
Keith Giagnorio
Village President

Date: _____

Attest: _____
Sharon Kuderna
Village Clerk

Date: _____

**FIRST AMENDMENT TO
STORMWATER DETENTION/RETENTION
VARIATION FEE ESCROW AGREEMENT
(415 EAST NORTH AVENUE)**

This STORMWATER DETENTION/RETENTION VARIATION FEE ESCROW AGREEMENT (415 EAST NORTH AVENUE) (the "Agreement") is made and entered into as of this ____ day of _____, 2020, by and between LOMBARD REAL ESTATE, LLC and LOMBARD HOTELS GROUP, LLC of 191 Ashfield Court, Bloomingdale, Illinois 60108 (the "Companies"), and the VILLAGE OF LOMBARD, Illinois (the "Village").

RECITALS

- A. The Companies are the owners of the property commonly known as 415 East North Avenue, Lombard, Illinois, as legally described on Exhibit A attached hereto and made part hereof (the "Subject Property"), having acquired the Subject Property during 2018.
- B. Pursuant to Village Ordinance No. 7159, adopted December 17, 2015, entitled, "An Ordinance Amending Ordinance No. 5211, Adopted November 7, 2002, in Regard to the Granting of a Variation From the Provisions of Chapter 151, Section 151.55 of the Lombard Village Code in regard to the Stormwater Detention/Retention Basin Requirement" (the "Ordinance") and the Stormwater Detention Variance Fee Lien (the "Variation Fee Lien"), both recorded on March 3, 2016 as document number R2016-020102, the Subject Property was made subject to a lien to guarantee that either:
- (i) the driveway pavement on a portion of the Subject Property and at least 4½ inches of base stone shall be removed, and the area restored with 6 inches of topsoil and seed, so as to eliminate the need for the variance; or
 - (ii) proper site stormwater runoff storage requirements for the Subject Property are provided, so as to eliminate the need for the variance; or
 - (iii) a variance fee of \$14,408.18 (the "Variation Fee") be paid to the Village by the owner of the Subject Property, which shall be a non-refundable deposit into the Village's Salt Creek Watershed Improvements Account;

on or before December 31, 2020, or no further building or other permits will be issued by the Village relative to the Subject Property, or in relation to any other property served by the structure (the paved driveway) on the Subject Property (the aforementioned requirements of the Ordinance and the Variation Fee Lien being hereinafter referred to as the "Variation Fee Guarantee").

- C. The Variation Fee Guarantee also provided that, notwithstanding what is set forth in B. above, a sale of the Subject Property, prior to December 31, 2020, shall require that one of the actions set forth in subsections B.(i), (ii) or (iii) above take place, before any building or other permits are issued by the Village relative to the Subject Property, or in relation to any other property served by the structure (the paved driveway) on the Subject Property.

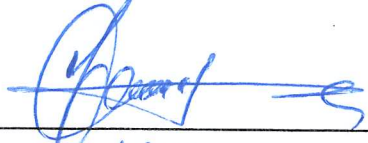
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Title: Manager

Date: 8-18-2020

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Village of Lombard

By: _____
Keith Giagnorio
Village President

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Attest: _____
Sharon Kuderna
Village Clerk

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Name: MOHAMMAD KAMRAN
Title: Manager

Date: 8-18-2020

Lombard Hotels Group, LLC

By: 
Name: MOHAMMAD KAMRAN
Title: Manager

Date: 8-18-2020

Village of Lombard

By: _____
Keith Giagnorio
Village President

Date: _____

Attest: _____
Sharon Kuderna
Village Clerk

Date: _____

Exhibit A

**Legal Description of
the Subject Property**

Lot 1 in Hughes' Resubdivision of Lots 1, 2, 3, 4, 5 and 6 (except the East 20.0 feet of said Lot 6) in Block 1 in "Lombard Heights," a Subdivision of part of the Northeast quarter of Section 5, Township 39 North, Range 11, East of the Third Principal Meridian, lying North of the North line of the Subdivision entitled Lombard Vista, as Document 243024, according to the plat of said "Lombard Heights" recorded December 28, 1953 as Document 704195 and Certificate of Correction recorded June 9, 1955 as Document 760296, in DuPage County, Illinois.

Along with:

The East 20 feet of Lot 6 and all of Lots 7, 8, 9 and 10 in Block 1 in Lombard Heights, being a Subdivision of part of the Northeast 1/4 of Section 5, Township 39 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded December 28, 1953 as Document 704195 and Certificate of Correction filed June 9, 1955 as Document 760296, in DuPage County, Illinois.

P.I.N.s: 06-05-200-014 and -015.