

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

 X Resolution or Ordinance (Blue) X *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: December 9, 2015 (B of T) Date: December 17, 2015

TITLE: Amendment to Chapter 151 of the Village Code – Lien Provisions for Stormwater Variances

SUBMITTED BY: Department of Community Development *Wb*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration an Ordinance that amends Ordinance 5211 which granted a variation from Section 151.55 relative to required stormwater detention requirements for the property at 451 E. North Avenue and would allow for a lien in lieu of escrow payment of funds associated with the past driveway variation.

Staff recommends a waiver of first reading.


Fiscal Impact/Funding Source:

Review (as necessary):
Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ 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 

DATE: December 17, 2015

SUBJECT: **Ordinance Amendment to Chapter 151 of the Village Code – Lien Provisions for Stormwater Variances**

At the December 3, 2015 Village Board meeting, the Board unanimously approved an Ordinance amending Section 151.57 of the Lombard Village Code to provide for a lien option in cases of temporary variances from the Village's Stormwater Detention requirements. With this approval, a companion amendment specifically related to the vacant Casey's Restaurant property at 451 E. North Avenue is being requested by the property owner.

BACKGROUND

In October, 2002, the Lombard Village Board adopted Ordinance No. 5211 approving a variation from the stormwater detention provisions for property located at 451 E. North Avenue. The variation was granted to allow Casey's Restaurant to have a temporary driveway access to the restaurant from Joyce Street, as their access that was being removed as part of the North Avenue widening project. The variation granted allowed the temporary driveway to be built without having the owner compensate for additional stormwater impacts. As part of the variation ordinance, the Village required the property owner to pay \$14,408.18 into an escrow account. Per the ordinance, the escrow funds were to be held until the driveway was removed or until 2005, when they would be used to remove the driveway. However, given construction delays with the North Avenue project, the initial ordinance was extended to 2010. A further five-year time extension to December 31, 2015 was offered, given the downturn in the market at that time.

Casey's ownership approached the Village to determine if the funds could be released while keeping the existing driveway access to Joyce Avenue. Through these discussions, the option of establishing a lien on the vacant 451 E. North Avenue property is being requested. The aforementioned ordinance approved the ability of the Village Board to consider such requests. Village Counsel has prepared the attached draft ordinance which provides for the lien option for the 451 E. North Avenue property. The funds currently held by the Village would be released and a corresponding lien would be placed upon the property in the same amount. If the required stormwater detention improvements associated with the driveway are not constructed by December 31, 2020, or the driveway is not removed by that date, the lien would be payable to the Village. The lien will also be required to be repaid if the property is sold.

ACTION REQUESTED

Please place this item on the December 17, 2015 Village Board agenda for approval. The attached ordinance provides and amends Ordinance 5211 which granted a variation from Section 151.55 relative to required stormwater detention requirements for the property at 451 E. North Avenue and would allow for a lien in lieu of escrow payment of funds associated with the past driveway variation.

To be consistent with the time periods expressed in past actions and to ensure that no time gaps will occur relative to the previously approved actions, staff recommends a waiver of first reading.

ORDINANCE NO. _____

**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**

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

SECTION 1: That Section 3.C. of Ordinance No. 5211, adopted November 7, 2002, is amended to read in its entirety as follows:

“C. Pursuant to Section 151.57(J) of the Lombard Village Code, a lien, in the form attached hereto as Exhibit A and made part hereof, in the amount of \$14,408.18 shall be recorded by the Village, in lieu of the payment of the applicable detention variance fee. The amount of said lien is based on the Village’s Detention Variance Fee Program (Section 151.57 of the Lombard Village Code). Said lien shall guarantee that either:

- (i) the driveway pavement 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 property referenced in Section 2 above (the “Subject Property”) are provided, so as to eliminate the need for the variance; or
- (iii) the variance fee of \$14,408.18 is 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. Notwithstanding the foregoing, a sale of the Subject Property, prior to December 31, 2020, shall require that one of the actions set forth in subsections (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.”

SECTION 2: That Section 3 of Ordinance No. 5211, adopted November 7, 2002, is amended by adding a new subsection E. thereto, which shall read in its entirety as follows:

“E. For purposes of subsection C. above, the other property, served by the structure (the paved driveway) on the property described in Section 2 above, is legally described as follows:

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;

PIN: 06-05-200-015;

Common Address: 415 E. North Avenue, Lombard, Illinois 60148.”

SECTION 3: That Ordinance No. 5211, adopted November 7, 2002, is hereby amended by attaching an Exhibit A thereto, which shall read the same as Exhibit A attached hereto and made part hereof.

SECTION 4: That upon the recording of the lien referenced in Section 1 above, and attached hereto as Exhibit A, the \$14,408.18 currently on deposit with the Village, representing the stormwater detention variance fee previously paid relative to Ordinance No. 5211, adopted November 7, 2002, shall be returned to the individual or entity that previously paid said amount to the Village.

SECTION 5: That all other provisions of Ordinance No. 5211, adopted November 7, 2002, not amended hereby, shall remain in full force and effect.

SECTION 6: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form, as provided by law.

Passed on first reading this _____ day of _____, 2015.

First reading waived by action of the Board of Trustees this 17th day of December, 2015.

Passed on second reading this 17th day of December, 2015.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this 19th day of December, 2015.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Deputy Village Clerk

Published by me in pamphlet form this 18th day of December, 2015.

Sharon Kuderna, Deputy Village Clerk

Exhibit A

Stormwater Detention Variance Fee Lien

(attached)

STORMWATER DETENTION VARIANCE FEE LIEN

I, Scott Niehaus, Village Manager for the Village of Lombard, DuPage County, Illinois (the "Village"), hereby certify that, pursuant to Section 151.57(J) of the Lombard Village Code, and Village of Lombard Ordinance No. 5211, adopted November 7, 2002, as amended by Village of Lombard Ordinance No. _____, adopted December 17, 2015, (the "Legal Requirements"), the Village has granted a stormwater detention variance (the "Detention Variation") to the owner of the below-described property, Oxford Bank & Trust, as Trustee under Trust Agreement dated March 21, 1997, and known as Trust #550 (the "Property Owner"), relative to the below-described 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;

PIN: 06-05-200-014;

Common Address: 451 E. North Avenue, Lombard, Illinois 60148;

(the "Subject Property").

That, by reason of the foregoing, and pursuant to the provisions of the Legal Requirements, a lien in the amount of Fourteen Thousand Four Hundred Eight and 18/100 Dollars (\$14,408.18), on behalf of the Village, is hereby declared against the Subject Property; said dollar amount representing the stormwater detention variance fee required by Section 151.57 of the Lombard Village Code (the "Lien").

In regard to said Lien:

- A. Upon the payment of the amount of said Lien to the Village, the removal of the structure (the paved driveway) necessitating the Detention Variation from the Subject Property, or the providing of the required site stormwater runoff storage requirements for the Subject Property, the Lien will be released.
- B. In the event that the Property Owner fails to remove the structure (the paved driveway) necessitating the Detention Variation from the Subject Property, so as to eliminate the need for the Detention Variation, or fails to provide the site stormwater runoff storage requirements for the Subject Property, by December 31, 2020, the amount of the Lien shall be due and payable to the Village, and no further building or other permits will be issued relative to said Subject Property, or

in relation to the adjacent property served by the structure (the paved driveway) on the Subject Property, until the amount of the Lien is paid. Said adjacent property, which is also owned by the Property Owner, is described as follows:

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;

PIN: 06-05-200-015;

Common Address: 415 E. North Avenue, Lombard, Illinois 60148;

(the "Adjacent Property").

- C. A sale of the Subject Property, prior to December 31, 2020, shall require the payment of the amount of the Lien, the removal of the structure (the paved driveway) necessitating the Detention Variation from the Subject Property, or the provision of the required site stormwater runoff storage requirements for the Subject Property, before any building or other permits are issued by the Village relative to the Subject Property or the Adjacent Property.

Dated this _____ day of _____, 201_____.

VILLAGE OF LOMBARD

Scott Niehaus
Village Manager

CERTIFICATION

STATE OF ILLINOIS)
)SS
COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Scott Niehaus, personally known to me to be the Village Manager of the Village of Lombard, Illinois (the "Village"), and also known to me to be the same person whose name is subscribed to the foregoing instrument as such Village Manager, appeared before me this day in person and acknowledged that, as such Village Manager, he signed and delivered the signed instrument, pursuant to authority given by said Village, as his free and voluntary act, and as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 201__.

Notary Public

