

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 Niehaus, Village Manager

DATE : March 6, 2018 (BOT) Date: March 15, 2018

SUBJECT: Scrivener's Error; Conditional Uses within the B5 Zoning District

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

BACKGROUND/POLICY IMPLICATIONS:

It has been discovered that "Drive-through/drive-in services and facilities" was not listed as a conditional use in the B5 Zoning District of the most recent zoning code. After researching why "Drive-through/drive-in services and facilities" was removed, it was found that a scrivener's error had occurred as part of Ordinance 3520, back on February 20, 1992.

Staff recommends approval of the attached Ordinance correcting a 1992 scrivener's error as it pertains to the drive-through/drive-in establishments.

Staff also requests a waiver of first reading of the Ordinance.

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: March 15, 2018

SUBJECT: **Scrivener's Error; Conditional Uses within the B5 Zoning District**

Please find the following ordinance for Village Board consideration as part of the March 15, 2018, Board meeting.

It was recently discovered that "Drive-through/drive-in services and facilities" was not listed as a conditional use in the B5 Zoning District of the most recent zoning code. After researching when and why "Drive-through/drive-in services and facilities" was removed, it was found that a scrivener's error had occurred.

According to Ordinance 2151 approved on February 14, 1978, "Drive-in banks and other financial institutions" were listed as permitted uses [Section 8, Part B.6-1(1)]. A comprehensive update to the entire zoning code was under taken with the result of Ordinance 3274 being adopted on July, 26, 1990. Notes and staff reports contained in the corresponding PC 90-7 of Ordinance 3274 and subsequent Plan Commission case files through April, 16 1992 were reviewed. It appears that "Drive-through and Drive-in establishments" was discussed and decided that it should be moved from permitted uses to conditional uses in business districts to address stacking concerns.

In 1992, a repeal of a prohibition of non-retail businesses in the downtown was the topic of workshops, downtown neighborhood meetings and two Plan Commission petitions for a text amendment to the B5 Zoning District code. The end result was the approval of Ordinance 3520 (PC 92-3) in which Section 7.F.9.c. was to be deleted. However Ordinance 3520 improperly made reference to Section 7.F.9.b. instead which included "drive-through/drive-in services may be allowed as conditional uses." A proposed policy or discussion to prohibit drive-through/drive-in services from the B5 Zoning District was not found and it is believed that it was removed from the B5 Zoning District by mistake.

ACTION REQUESTED

Please place this ordinance on the March 15, 2018 Board of Trustees agenda. Staff recommends approval of the attached Ordinance correcting a 1992 scrivener's error as it pertains to the drive-through/drive-in establishments. Staff also requests a waiver of first reading of the Ordinance.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE NO. 3520,
ADOPTED FEBRUARY 20, 1992, NUNC PRO TUNC,
TO CORRECT A SCRIVENER'S ERROR CONTAINED THEREIN,
IN REGARD TO THE B-5 CENTRAL BUSINESS DISTRICT REGULATIONS**

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

SECTION 1: The President and Board of Trustees (the "Village Board") of the Village of Lombard (the "Village") find as follows:

- A. On February 12, 1992, pursuant to proper notice, the Lombard Plan Commission held a public hearing relative to amending the B-5 Central Business District zoning regulations, as set forth in the Lombard Zoning Ordinance, to delete the prohibition of non-retail uses on the first floor of buildings (the "Non-Retail Prohibition"); said Non-Retail Prohibition being located in Section 7.F.9.c. of the Lombard Zoning Ordinance.
- B. On February 12, 1992, the Lombard Plan Commission recommended the deletion of the Non-Retail Prohibition to the Village Board.
- C. On February 20, 1992, the Village Board approved Ordinance No. 3520, to delete the Non-Retail Prohibition from the Lombard Zoning Ordinance ("Ordinance No. 3520").
- D. That Ordinance No. 3520 improperly made reference to Section 7.F.9.b. of the Lombard Zoning Ordinance, when Section 7.F.9.c., which actually contained the Non-Retail Prohibition, should have been referenced therein (the "Scrivener's Error").

- E. That Section 7.F.9.b. of the Lombard Zoning Ordinance covered drive-through/drive-in services and facilities in the B-5 Central Business District; a topic which was not the subject of the aforementioned Plan Commission public hearing and recommendation, and which was not the subject matter before the Village Board at the February 20, 1992 Village Board meeting.
- F. That it is in the best interests of the Village to amend Ordinance No. 3520, so as to correct the aforementioned Scrivener's Error in said Ordinance No. 3520, nunc pro tunc, so that said correction relates back to the adoption of Ordinance No. 3520.

SECTION 2: That, based on the foregoing, Ordinance No. 3520 is hereby amended to correct the Scrivener's Error as contained therein, nunc pro tunc, by amending Section 1 thereof to read in its entirety as follows:

Section 1: That Section 7.F.9.c. of the Lombard Zoning Ordinance is hereby deleted."

SECTION 3: That, in light of SECTION 2 above, the language of Section 7.F.9.b. of the Lombard Zoning Ordinance, which was improperly deleted as a result of Ordinance No. 3520, shall be reinserted in the current Lombard Zoning Ordinance (Chapter 155 of the Lombard Village Code), as Section 155.418(C)(7) of the Lombard Village Code, to read as follows: "Drive-through/drive-in services and facilities", with the current provisions of Sections 155.418(C)(7) through (23) of the Lombard Village Code being renumbered as Sections 155.418(C)(8) through (24), respectively.

SECTION 4: That all other provisions of Ordinance No. 3520, not corrected hereby, shall remain in full force and effect.

SECTION 5: 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 _____, 2018.

First reading waived by action of the Board of Trustees this ____ day of _____, 2018.

Passed on second reading this ____ day of _____, 2018, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2018.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Published by me in pamphlet form this ____ day of _____, 2018.

Sharon Kuderna, Village Clerk