

Village of Lombard

*Village Hall
255 East Wilson Ave.
Lombard, IL 60148
villageoflombard.org*



Meeting Minutes

Monday, July 20, 2009

7:30 PM

Village Hall

Plan Commission

*Donald F. Ryan, Chairperson
Commissioners: Martin Burke,
Stephen Flint, Ronald Olbrysh,
Ruth Sweetser, Andrea Cooper and Richard Nelson
Staff Liaison: Christopher Stilling*

Call to Order

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Chairperson Ryan called the meeting to order at 7:30 p.m.

Roll Call of Members

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Present: Chairperson Donald F. Ryan, Commissioner Ronald Olbrysh, Commissioner Ruth Sweetser, Commissioner Richard Nelson and Commissioner Andrea Cooper

Absent: Commissioner Stephen Flint and Commissioner Martin Burke

Also present: William Heniff, AICP, Director of Community Development; Christopher Stilling, Assistant Director of Community Development; Michael Toth, Planner I; Stuart Moynihan, Associate Planner; and George Wagner, legal counsel to the Plan Commission.

Chairperson Ryan called the order of the agenda.

Christopher Stilling read the Rules of Procedures as written in the Plan Commission By-Laws.

Public Hearings

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PC 09-10: 404 East North Avenue

Requests that the Village grant a conditional use pursuant to Section 155.416(C)(4) and (5) of the Lombard Zoning Ordinance to allow automobile service and automobile repair in the B4 Corridor Commercial Shopping District. (DISTRICT #4)

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Robert Labno, 404 E. North Avenue, presented the petition. He stated that they are currently trying to improve their business by adding a service area. He is present to ask for permission to open a service area. He stated that he did not have much else to say but that he would answer any questions.

Chairperson Ryan asked if anyone was present to speak in favor or against the petition.

Suzanne Gagliano, 2N130 LaLonde Avenue, stated that since the two dealerships opened up they use her street as drag strip. She has seen cars going more than 25 mph and has called the police. She is concerned about the safety of children in the neighborhood. They don't have sidewalks because they are unincorporated. She stated that she has asked the dealerships to stop but they have not. A few weeks ago, the police caught one employee driving without a driver's license. She stated that she would like the block capped off if necessary. She is worried that a service area would bring more traffic. She stated that she is just asking that they don't test drive cars in the neighborhood anymore.

Charles Marston, 2N040 LaLonde Avenue, stated that he had basically the same things to say. He stated that he has been down to confront them and has gotten no satisfaction. He stated that he lives close to the place and that they fix racing cars and the cars have no mufflers. At 10 p.m., they are firing them up and this wakes him up.

He has called the Sherriff's Office and because it's a low priority call they are shut down by the time they arrive. He asked if the Plan Commission had received their letters.

Chairperson Ryan stated yes.

Mr. Labno responded to their concerns. Regarding driving in the street, they do not have a problem with the street being blocked. It is an open street, but he admits the issues with fast cars in the area in the past. He stated that they are now under new management so he can't be sure what happened before. However, the issue has been addressed. He also mentioned that another dealership is across the street so there could be traffic generated from the other shop. He admitted that it is a small street with no sidewalks. He has heard that people have gone over the speed limit. He mentioned that the service area would be entered from Grace Street so there would be no need for anyone to go up the street.

Mr. Labno stated that the noise from the shop would be the same as any mechanic shop when working on cars. He stated that those living by North Avenue hear heavy traffic with loud trucks. He stated that they will try to limit such noise to before 9 p.m. and try to minimize other noise.

Chairperson Ryan ask if the business hours were until 9 p.m. Mr. Lando stated that the business closes at 9 p.m. but occasionally there could be a customer finalizing a deal. However, there is no need for them to race cars up and down the block. Most customers would want to go on North Avenue or the expressway and take a faster route.

Chairperson Ryan asked if the shop is under new ownership. Mr. Lando stated that the ownership is the same but they are under new management.

Chairperson Ryan then requested the staff report.

Stuart Moynihan, Associate Planner, presented the staff report. The petitioner is currently the operator of an automobile dealership at 404 E. North Avenue. The motor vehicle sales use was approved as a conditional use by Ordinance 6161 (PC 08-05) in October 2008. In a letter submitted during the staff review of PC 08-05, European Auto Exchange stated that no oil changes or major mechanical work would occur on the premises and that all major repair and body work would be done at another facility. Since that time, European Auto Exchange has performed some automotive service and minor repairs at the 404 E. North Avenue facility. To perform these services a vehicle lift has been installed within the building on the subject property. Therefore, staff informed the petitioner that conditional uses for automobile service and automobile repair would be necessary.

Conditional uses for the subject property were approved in March 1999 (PC 99-06 Ordinance 4599) and in November 2000 (PC 00-46, Ordinance 4907) for motor vehicle sales. However, since the approval was not acted upon within twelve months, the conditional use became null and void. In October of 2008, the current occupant of the property received a conditional use through PC 08-05 for motor vehicle sales.

On March 19, 2009, a Bureau of Inspection Services (BIS) inspector discovered that a vehicle lift had been installed inside the garage door at the northern side of building. The inspector was informed that the lift was being used for oil changes and minor vehicle service. As no permit had been issued, BIS notified European Auto Exchange that a permit was necessary for the lift.

Following the inspection, BIS notified Planning Services staff of the use of the lift. As the

Zoning Ordinance lists automobile service and automobile repair as conditional uses in the B4 District, staff contacted the petitioner informing them that a conditional use for automobile service is required. The petitioner also acknowledged that some minor vehicle repairs were being performed at the facility. Staff informed the petitioner that this would require a second conditional use for automobile repair. The petitioner has since applied for a permit for the lift.

The petitioner is proposing to service vehicles which are for sale on the lot and to service vehicles which have been sold and are under warranty. In addition, the petitioner has requested that they be permitted to service race cars which are sponsored by European Auto Exchange and are a hobby of the business owner.

As part of PC 08-05, the petitioner submitted a site plan and landscape plan which did not accurately reflect the features and dimensions of the property. The inaccuracies included a depiction of greater parkway width along North Avenue than is present at the site and a strip of grass approximately twelve feet (12') in width located along the northern property line that is not present at the site. Approximately one hundred feet (100') of this strip, beginning at the northeastern corner of the property and extending westward, is in fact asphalt parking. As a corrective measure, the petitioner has submitted a new landscape plan which accurately depicts the property.

The Comprehensive Plan recommends Community Commercial at this location. As the use on the property will remain commercial retail with an added service component, the proposed use complies with the recommendation of the Comprehensive Plan.

Staff notes that the service and repair of race cars is not representative of a commercial operation on the property. It is the opinion of staff that service and repair of automobiles should be limited to vehicles for sale by European Auto Exchange and the personal automobiles of their customers. Therefore, staff is not supportive of the petitioner's request to service and repair race cars on the subject property.

The proposed use is compatible with the surrounding land uses. The properties to the east, south, and west are zoned B4 or B4PD and are development for commercial purposes. The residential properties north of the site are screened by an eight-foot (8') board on board fence and will be further screened by the plantings to be installed by the petitioner along the northern property line.

As a condition of PC 08-05, the petitioner was required to install a "no left turn" sign on the LaLonde Avenue driveway, in order to prevent vehicles from being test driven within the adjacent residential neighborhood to the north. This sign has been installed on the property. Still, staff has received two letters from property owners to the north which express concern about test drives occurring within the residential neighborhood. It is the opinion of staff that should the Plan Commission make a motion for approval of this petition it should include a condition which expressly prohibits test drives in the residential neighborhood to the north.

As a condition of PC 08-05, the petitioner was required to submit a Plat of Consolidation to make the subject property a single lot of record. The petitioner has submitted the plat and received comments for revisions. To date, the petitioner has not submitted a final copy of the plat for recording.

The conditions in PC 08-05 also required the petitioner to install sidewalks along all surrounding public rights-of-way for the length of the property. The Subdivision and Development Ordinance requires that these sidewalks be installed. Currently, only one sidewalk exists along North Avenue. Grace Street and LaLonde Avenue currently have no improved sidewalks. Staff is working with the petitioner to develop plans for the

installation of the remaining sidewalks.

Staff is recommending approval of the petition subject to the conditions in the staff report.

Chairperson Ryan then opened the meeting for comments among the Commissioners.

Commissioner Olbrysh stated that the big issue is the vehicles being driven for testing purposes. He stated that one of the conditions in the staff report prohibits this. He mentioned that test driving in the parking lot should also be considered. However, this will only partially resolve the issue because of the other dealership across the street. He stated that there is nothing we can do with the other dealership. He stated that he assumed that both dealerships are using that circle to test cars. He stated that the neighborhood won't be free of this issue unless speed bumps are installed on LaLonde.

Commissioner Sweetser stated that she agreed and that the issue needs to be dealt with.

Christopher Stilling stated that the area to the north is unincorporated.

Commissioner Sweetser asked if the street could be blocked off or if this would be up to the County.

Mr. Stilling stated that the street and properties to the north are not within our ultimate planning jurisdiction. He stated that it was unlikely that the Village could initiate speed bumps being installed. Residents would need to approach the township but the Village cannot perform the work.

Commissioner Sweetser stated that 9 p.m. sounds reasonable for noise and there should be no repairs sounds after 9 p.m.

Chairperson Ryan suggested adding a ninth condition.

Commissioner Olbrysh stated that condition 3 should include the parking lot as part of the condition.

Commissioner Sweetser stated that she would like to direct staff to work with the County or Township. She asked how they would monitor the impact on the neighborhood.

Mr. Stilling stated that condition 5 states that the conditional use can be revoked if the conditions of approval are not followed. The residents will let us know so we can be proactive.

It was moved by Commissioner Olbrysh, seconded by Commissioner Sweetser, that this matter be Recommended for approval to the Corporate Authorities subject to the amended condition(s). The motion carried by the following vote:

Aye: 4 - Olbrysh, Sweetser, Nelson and Cooper

Absent: 2 - Flint and Burke

1. The subject property shall be developed in substantial compliance with the site and landscape plans prepared by KB Partnership, dated May 19, 2009 and submitted as part of this petition, except as they may be changed to conform with to Village codes and the following conditions below.

2. The petitioner shall submit for final approval a Plat of Consolidation to consolidate the

five (5) lots and the vacated alley into one lot no later than three (3) months from the approval of the ordinance.

3. Vehicles from the subject property which are for sale, being serviced, or being repaired shall not be driven for testing purposes in the residential neighborhood north of the subject property or within the parking lot on the subject property.

4. The conditional uses for automobile service and automobile repair shall be limited to vehicles for sale by European Auto Exchange and the personal automobiles of their customers.

5. Any violation of the provisions set forth within the approved conditional use may result in a revocation of the Conditional Use for the property.

6. As part of the approval, the petitioner shall also address all comments included within the IDRC Report.

7. The petitioner shall address all Private Engineering Services punch list items as outlined in the May 13, 2009 letter including the installation of the sidewalk along Grace Street and Lalonde Avenue in a manner acceptable to the Director of Community Development no later than three (3) months from the approval of the ordinance.

8. All conditions associated with Ordinance 6161 (PC 08-05) shall remain in full force and effect.

9. No automobile service or automobile repair shall occur on the subject property later than 9 p.m.

PC 09-17: Text Amendments to the Zoning Ordinance

The petitioner (Lux Chateau) requests a text amendment to Section 155.417(G)(2) of the Lombard Zoning Ordinance (and other sections where needed for clarity) allowing "Smoking Lounge" to be listed as a conditional use within the B4A - Roosevelt Road Corridor District.

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Chairperson Ryan noted that PC 09-17 will be combined with PC 09-18, but will have two separate votes.

Russell Rasche, 638 Olesen Drive, Naperville, IL, attorney for the petitioner, presented the petitions. Mr. Rasche stated that the testimony is appropriate for both so he is glad to see both petitions together. The legal issues are covered adequately in the paperwork that each Commissioner has. He added that there are two letters - one with his opinion on the compliance of the request, one with the process and also staff's comments. He will give the history of the business in order to bring some perspective to what this is all about.

The petitioner actually has been in business in this community for some time - a couple of years now - and there was a similar type of establishment there prior to that. What has brought this all about is the Illinois Clean Air Act, which became effective 1/1/08. At that point the requirements for smoking establishments changed. The State said smoking is prohibited everywhere except a couple of exempt locations, one of which is a retail tobacco shop. The Act said as of that date, any new shops had to be freestanding/single-use facilities. A lot of those establishments could be grandfathered in; this is one of those facilities.

Prior to the Act they served prepared food. One of the requirements for smoking in a

tobacco shop is that you can neither prepare food nor serve alcohol. So at that time, while they were operating under a food service license, they stopped the preparation of food. They never did serve alcohol. They maintained themselves strictly as a tobacco location and offer soft drinks for their customers, but it is primarily a hookah lounge. Staff felt that the current statutory provisions were not proficient and felt that this is a different sort of operation, therefore, a special use and text amendment are required to cover this sort of activity. This is the purpose for us being here today. We're looking to work with the Village. To a large extent this use is similar to a cigar lounge, which is somewhat popular.

Mr. Rasche then described the cigar lounge experience. He gave his experience of how he went to a hookah lounge to check to see what his son was doing and he found it to be a gathering place for college kids. They come in groups; everyone is carded; there is adult supervision; and, as a parent, found this to be a fairly benign activity. It was an attractive place because of the supervision. They are popular on college campuses. Everyone is carded and has to be 18 to come in. It is supervised to make sure that nobody is bringing in alcoholic beverages. This establishment has operated for several years with absolutely no problems with the police, any arrests, or accusations or charges against them. It is a nice establishment with a lot of repeat customers.

Matthew Rasche, who was seated in the audience, displayed a hookah and the shishah that is used with the hookah. Russell Rasche discussed the hookah in detail while the shishah was passed around to the Commissioners so they could see and smell it. He stated that the shishah is very fruity and sweet - not what you'd expect from a tobacco product. The hookah is shared by 2 - 4 people, each with their own mouthpiece and hose for hygiene. If you have ever tried one of these, they are very light and are nothing like cigars or cigarettes. It is not inhaled and is a very sweet experience. The establishment attracts groups and gets a lot of people in visiting. It's a social experience.

The Village felt they needed to encapsulate this use into the statutes. Since the new State law passed and no other businesses can operate outside of a freestanding facility, it is his opinion that you won't see a bunch of these springing up. The financial aspects of the business are such that it is not financially feasible to have a stand alone building nor is it a high volume business. The chances of having another business such as this are fairly remote. It is more likely you might see a cigar lounge rather than another hookah lounge. It's a gathering place, it's safe, it's supervised and everyone is carded. This is not creating legions of hookah smokers it is really just a trendy thing.

Chairperson Ryan then opened the meeting for public comment.

There was no one to speak in favor or against the petition.

Bill Hall, 12 E 13th Street, stated he lives behind the business. Mr. Hall asked if the address is going to be Unit 1235. Mr. Rasche replied, no.

Mr. Hall asked what the hours of operation are. Chairperson Ryan requested that the petitioner address the Commission and the petitioner will answer the questions at the end.

Mr. Hall asked if liquor and prepared food would be provided. Mr. Rasche replied, no.

Mr. Hall asked if people would be carded. Mr. Rasche replied, yes.

Mr. Hall asked if liquids could be brought in. Mr. Rasche stated that liquids cannot be brought in and alcohol is not permitted on the premises.

Mr. Hall asked if drinks are served inside. Mr. Rasche stated that soft drinks, such as orange soda, grape crush, red bull and other standard types of soft drinks found in the supermarket would be available.

Mr. Hall asked if people would be allowed to go out the back door and smoke or have conversations. Mr. Rasche stated that they don't have tables out back nor is there an outdoor patio. He added that people don't enter or exit through the rear. The entrance is through the front. Mr. Rasche then stated that they won't allow people to walk out back with a hookah.

Mr. Hall asked if people can go out back to smoke a regular cigarette. Mr. Rasche stated that the whole point of the business is to be inside.

Referring to the actual hookah, Mr. Hall asked about the top part where the tobacco sits. He asked if it is made of clay or plastic. Matthew Rasche, 638 Olesen Drive, Naperville, IL, who was seated in the audience, stated that the top part is ceramic.

Mr. Hall stated that the obvious concern here is someone mixing hashish with the tobacco. Russell Rasche stated that won't happen because there is always adult supervision and they are in business to sell their own product. He added that if people wanted to do illicit drugs, they would buy them and do it in their own home. Mr. Rasche stated that it has tobacco in it and it consists of mostly fruits and sweeteners. He added that there is some tar in it, but it is minimal and that it wouldn't have the same results as hashish. He added that their primary business is a gathering place - something exotic and trendy where kids who are not old enough to drink will visit.

Mr. Hall stated that the only reason he mentioned the hashish is because he was in North Africa in Tripoli and hashish was very convenient there. Mr. Rasche stated that they won't be allowed to do that there because they don't want their business destroyed. He added that this establishment has been there for several years and there has never been a complaint or any police action there so it is a very clean shop.

Chairperson Ryan asked the petitioner to address the hours of operation. Matthew Rasche stated that the hours are from 6 p.m. to 2 a.m. on weekends and from 6 p.m. to 12 a.m. on weekdays. Mr. Hall stated that he objects to these hours and asked if they could close at 10 p.m. Russell Rasche stated that won't happen.

Chairperson Ryan then requested the staff report.

William Heniff, Director of Community Development, indicated that staff has drafted the following IDRC reports to submit to the public record in their entirety.

PC 09-17

Mr. Heniff stated that the subject property is located at 1221 S. Main Street, within the Oxford Corners Shopping Center, within the B4A Roosevelt Road Corridor District. The petitioner is requesting that the Village Board, through the Plan Commission public hearing process, approve a text amendment to allow for smoking establishments (as described in the amendment) in the B4A District. As a companion to this request, the petitioner is also seeking conditional use approval for such an establishment). Should this petition be approved, the companion petition can be considered for approval as well.

In 2007, Lux Chateau applied for and received a Restaurant Food Handlers Business License and a Tobacco Dealer Business License. The petitioner applied for a CO/ZC for retail, restaurant and lounge. The text "hookah" or any reference to tobacco is not present in the application. Staff later received word from the property owner they are not going to open. Given this directive, the CO/ZC is no longer processed and it was

presumed that the previous CO/ZC (for Sahara) was still in effect and no further actions were taken by staff until staff learned of the new business use.

In January, 2008, the Smoke Free Illinois Act provisions are enacted. Key elements of the Act are:

- 1. The State Statute sets significant limitations regarding tobacco use and consumption and prohibits smoking associated with any business with a food handler's license.*
- 2. The State Statute allows for tobacco establishments (businesses in which 80% of their operating revenue is derived from the sale of tobacco products) to provide for smoking within their premises, provided that the operator meets the provisions set forth within the State Statute.*
- 3. New retail tobacco stores must be within free-standing stores.*

Staff notes that individuals may have been able to smoke in various establishments prior to January 1, 2008. Staff recognizes that the Smoke Free Illinois Act functionally created a new land use category, as the use could not be considered a coffee shop or a restaurant use. Therefore, if hookah use or other smoking activities was going to be the only activity on the premises, then it would be a principal use and function. Even if the petitioner's business establishment met the provisions set forth within the State Statute, the use would still be subject to the additional provisions included within the Lombard Zoning Ordinance, in order to legally operate.

With the Act provisions in place, the petitioner was informed by DuPage County of the requirement to cease serving food as part of their business activity. In subsequent discussions with the petitioner in later 2008 and early 2009, staff noted that restaurants and coffee establishments are listed as permitted uses within the Zoning Ordinance, hookah establishments as the principal use of the property (or for that matter any smoking establishments) are not listed as permitted or conditional uses. The Director made the interpretation that the petitioner's use is separate and distinct from the retail tobacco shop listing.

Staff notes that the principal use of the premises as a hookah establishment (a type of smoking establishment) is a use that is not expressly permitted or permitted through the conditional use process within the B4A District. Approval of the use can only be achieved through a text amendment to the Lombard Zoning Ordinance. The Director notes that the term "tobacco shop" is not specifically listed within the definitions within the Lombard Zoning Ordinance.

The petitioner states that the use is primarily a gathering place for people at least 18 years of age to enjoy the hookah experience. Based upon a visual inspection of the property and in review of the most recent building plans for the site, the business operation and floor plan consists of several tables and chairs arranged in a manner similar to a coffee house or restaurant.

The Director reviewed the B4A District provisions and noted that the Zoning Ordinance does make a distinction in the use lists regarding uses that are associated with purchasing products and consuming products. The following examples are offered:

- 1. Food stores, grocery stores, meat markets and delicatessens (the purchase of edible goods for consumption elsewhere) are listed and treated differently than restaurants (a business establishment within which food is offered for sale for consumption only within the structure on the premises).*

2. *Liquor stores, packaged goods is listed as one type of business establishment, while a bar/tavern use (an establishment where alcoholic liquor is sold to be generally consumed on the premises) is listed as a separate type of use.*

3. *Clubs and lodges, meeting halls recreation and community centers are also listed as separate and distinct land uses.*

These analogous examples can also be applied to the application of the hookah use, a cigar bar or any other like establishment and as part of an assembly gathering function.

Staff has made the interpretation that the hookah use being operated by the proprietor is not clearly compatible with the listed uses (tobacco shop) in the following respects:

1. *The use has much more in common with a restaurant or tavern use (congregations of individuals assembling for the purpose of consuming products on the premises).*

2. *If the principal function is to provide for the congregation of individuals, such a use is more similar to the aforementioned taverns, clubs and lodges and meeting halls and the like, which are listed as conditional uses, not permitted uses.*

3. *Given this listing, a conservative but fair interpretation can be made that the intent of the Zoning Ordinance is to distinguish between traditional mercantile and assembly uses.*

In the crafting of the proposed text amendment and in applying the Zoning Ordinance, if a business was specifically for the consumption of cigarettes or cigars (a smoking lounge), a similar assertion that it is not the same as the retail sales of tobacco products would be presented by the Director.

Staff notes that the smoking establishment use is not dissimilar to other types of conditional uses listed in the existing Zoning Ordinance, such as taverns and meeting halls. Therefore, staff recommends that the use be listed as a conditional use as well, for consistency.

It is important to note that should this text amendment be approved it would allow the existing establishment to continue its operation. It would also allow the use on all other B4A properties, provided that conditional use approval is granted by the Village. However, pursuant to the Smoke Free Illinois Act, future establishments would have to be located within single-occupant freestanding stores only. The references to the Smoke Free Illinois Act are referenced in the proposed definitions for tobacco shops and smoking establishments.

Staff finds that the standards for text amendments have been met. Furthermore, staff is recommending approval of PC 09-17.

PC 09-18

Mr. Heniff stated that the Smoke Free Illinois Act prohibits the establishment or operation of smoking establishments within strip centers. This provision was established to minimize impacts of second-hand smoke on employees and patrons of other establishments. However, in this case, an argument can be made that as the petitioner's establishment was operating on the premises prior to January 1, 2008 (albeit not legally established). Therefore, if the text amendment and the conditional use are approved, staff would be able to sign off on the Zoning Certificate.

The property is surrounded by commercial uses to the north, west and northeast. Residential uses are located to the southeast and south. The building is oriented toward

the commercial properties to the west. The use operates completely within the confines of the existing strip-center building. The past operation of the use finds that the use has not presented a negative impact on adjacent properties, in the following respects:

- 1. The use operates outside the hours of many other uses within the retail center.*
- 2. The use does not generate noise beyond levels associated with other types of retail establishments.*
- 3. The use will not generate traffic levels at levels greater than other types of like uses.*
- 4. The use will not generate excessive waste or deliveries.*

For a conditional use to be approved, the standards for conditional uses must be met. The petitioner has provided a response to the standards for conditional uses and staff states that the use as proposed would meet the standards for conditional uses.

Staff finds that the standards for conditional uses have been met. Furthermore, staff is recommending approval of PC 09-18 subject to the 3 conditions noted in the staff report.

Mr. Hall asked if there would be entertainment that would be conducted at the business or if a television would be the only source of entertainment. Russell Rasche stated that there would be sporting events on television and music.

Mr. Hall asked if there would be belly dancing. Mr. Rasche stated that belly dancing is not a regular part of their business. He added that he can't speak to the future but belly dancing is not a regular part of their business.

Mr. Hall asked if the noise level was going to be monitored. Mr. Rasche asked Mr. Hall if he has ever heard them before. Mr. Hall replied that he has heard them. Mr. Rasche asked when. Mr. Hall replied that he heard them when it was the Sahara. Mr. Rasche responded by stating that was a different owner. He added that you won't have a problem with these guys because they won't have bands or anything else of the sort. People are just sitting there talking, which is why people go there. He stated that all the business activities are to the front of the building and there are other businesses in the strip center that could generate noise.

Chairperson Ryan then opened the meeting for comments among the Commissioners.

Commissioner Sweetser stated that when a motion is made to pass or approve, it includes the IDRC comments. She stated Fire and BIS IDRC comments are subjunctive. In regard to the ventilation system outlined in the IDRC Report, she asked if they are saying something has to be there or might be there. Mr. Heniff stated that the business is in compliance with the Smoke Free Act and the second comment was items that could be done to clean the air. One reason the Illinois Smoke Free Act doesn't allow smoking establishments in multi-tenant buildings is because they can sometimes share ventilation systems. The comments made in the report were recommended as ways or mechanics so that the smoke from the business establishment could be mitigated on the site itself. It was not mandated but rather offered as a comment. It is good information to have so if an abutting property owner has an issue, they could reconcile the ventilation issue.

Commissioner Nelson asked if the minimum age is 21. Russell Rasche replied that the minimum age is 18; however, there are individuals over 21 who still come here for the experience. He again added that the minimum age is 18.

Referring to the hookah device, Commissioner Nelson asked if you would get a separate mouthpiece. Mr. Rasche stated that there are units with multiple hoses. He added that the plastic mouthpiece fits into the wooden end and everyone has their own.

Commissioner Cooper wanted clarification as to why its okay for this establishment to be in a multi-tenant building but a new business could not. Russell Rasche explained that they are grandfathered in.

Commissioner Cooper asked if this was a hookah bar before that. Russell Rasche stated that this was a hookah bar before that. Mr. Heniff stated that for clarification purposes, staff did have counsel review this issue. The language states that any business established operating prior to 1/1/08 could continue to operate. Mr. Heniff stated that they do not have a Certificate of Occupancy. He added that they did receive a license prior to the Act and it says that anyone operating prior to the deadline, it doesn't say that it has to be "lawfully established". He added that if the zoning comes through, it can be considered as a legal nonconforming tenant space.

Commissioner Cooper questioned the ventilation asking if the use was approved would it cover a future tobacco use, such as a cigar lounge. Mr. Heniff replied that the approval would apply only to this particular location.

Commissioner Cooper asked if the ventilation would have to be changed. Mr. Heniff replied that the issue would have to be reviewed by the tenant/landlord. George Wagner, Village Attorney, mentioned that any new smoking use would have to be located in a freestanding building.

Chairperson Ryan confirmed that if another business wanted to open up a cigar shop in one of the other tenant spaces it couldn't because of the State law which states it has to be in a freestanding building. Mr. Rasche and Mr. Heniff both responded, yes.

Chairperson Ryan then stated they would take two separate votes, one for each petition. The first vote would be for PC 09-17 text amendments to the Lombard Zoning Ordinance to allow "Smoking Lounge" to be listed as a conditional use within the B4A-Roosevelt Road Corridor District.

It was moved by Commissioner Sweetser, seconded by Commissioner Olbrysh, that this matter be recommended to the Corporate Authorities for approval. The motion carried by the following vote:

Aye: 4 - Olbrysh, Sweetser, Nelson and Cooper

Absent: 2 - Flint and Burke

PC 09-18: 1221 S. Main (Lux Chateau)

Requests that the Village grant a conditional use, pursuant to Section 155.417(G)(2) of the Zoning Ordinance to allow a "Smoking Lounge" within the B4A - Roosevelt Road Corridor District. (DISTRICT #6)

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It was moved by Commissioner Olbrysh, seconded by Commissioner Nelson, that this matter be recommended to the Corporate Authorities for approval subject to conditions. The motion carried by the following vote:

Aye: 4 - Olbrysh, Sweetser, Nelson and Cooper

Absent: 2 - Flint and Burke

1. *The petitioner shall apply for and receive a Certificate of Occupancy/Zoning Certificate for the proposed business establishment.*
2. *The conditional use approval is solely and exclusively for the tenant space located at 1221 S. Main Street within the Oxford Corners Shopping Center.*
3. *The business shall operate pursuant to the provisions set forth within Smoke Free Illinois Act and applicable Village, County and state statutes.*

PC 09-22: 555 E. Butterfield Road (Comar Offices Planned Development)

Requests that Village grant approval of the following actions for the subject property located within the O-Office District:

1. A conditional use to establish the subject property as a planned development, pursuant to Section 155.502(F)(3), with the following deviations:
 - a. A deviation from Section 153.502(B)(5)(b) of the Sign Ordinance to increase the maximum allowable area of a freestanding sign from thirty (30) square feet to ninety-eight (98) square feet.
 - b. A deviation from Section 153.502(B)(5)(c) of the Sign Ordinance to increase the maximum allowable height of a freestanding sign from six (6) feet to twenty (20) feet.
 - c. A deviation from Section 153.502(B)(5)(f) of the Sign Ordinance to decrease the minimum allowable distance of a freestanding sign from a property line from ten (10) feet to two (2) feet. (DISTRICT #3)

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George Kourafas, 1S660 Midwest Road, Oakbrook Terrace, presented the petition. He stated that he is asking for permission to take down a multi-tenant sign at 555 E. Butterfield Road and replace it. The original sign was built in 1984 and times have changed. He stated that they are looking to have a modern sign, upgrade it, and give a face lift. He thinks that the sign is too large right now and they want to reduce it to 96 square feet. Granting this variation would be significant to other businesses in the nearby area. He stated that they will be building this sign with a stone base bottom and stone columns to match the building more closely. Times in the office/retail markets are tough and landlords need to make sure things are fresh. The new sign will not interfere with any property values or create obstructions to vehicles driving on Butterfield Road.

Chairperson Ryan asked if anyone was present to speak in favor or against the petition. No one spoke in favor or against.

Chairperson Ryan then requested the staff report.

Stuart Moynihan, Associate Planner, presented the staff report. The petitioner, Comar Properties, is proposing to replace a freestanding sign near the northeastern corner of the property located at 555 E. Butterfield Road. The proposed new sign will replace the larger existing sign in the same location. The Zoning Ordinance limits freestanding signs located in the O - Office District to thirty (30) square feet in area and six (6) feet in height. The proposed sign is ninety-eight (98) square feet in area and is twenty (20) feet in height. Therefore, deviations for sign height and area are required.

The petitioner had originally proposed to install the new sign in the same location as the existing sign which is setback two feet (2') from the northern property line. The Zoning Ordinance requires a minimum setback of ten feet (10') from all property lines. Since

the submittal, the petitioner has agreed to meet the required setback of ten feet (10'). Therefore, the third deviation is not necessary.

Staff has researched the history of the subject property and has found no records of zoning relief granted to the property. Therefore, any structures, uses, or other situations on the subject property which are not in compliance with the Zoning Ordinance and which were lawfully established at the time can be considered legal non-conforming. The petitioner has decided not to apply for additional zoning relief on the subject property as part of this petition. However, future development activity may require that any such items be brought into compliance or granted the requisite zoning relief.

Section 155.503(F)(3) of the Zoning Ordinance requires that a planned development be established with any variation request on a property which is zoned O - Office District and meets the minimum requirements for lot area and frontage for a planned development. In the O District, the minimum lot area is 45,000 square feet and the minimum frontage is three hundred feet (300'). The subject property is approximately 78,000 square feet and has approximately five hundred thirty-six feet (536') of frontage. Therefore, the petitioner is requesting approval of a planned development on the property.

The Zoning Ordinance encourages and/or requires the establishment of planned developments for large-scale developments. Staff believes establishing a planned development will provide the Village Board with an instrument for managing the multiple uses on the property and encouraging high quality development. Office District Planned Developments have been established on many nearby properties south of Butterfield Road, including the two properties directly east of the subject property. Staff supports the establishment of a planned development on the subject property.

The petitioner is proposing to install a new freestanding sign on the subject property. At ninety-eight (98) square feet in area, the proposed sign would exceed the maximum of thirty (30) square feet permitted by the Zoning Ordinance.

The petitioner and the sign contractor have cited several reasons for the size of the proposed sign. The size of the sign is necessary to provide sufficient room to advertise each of the tenants which occupy the building on the subject property. In addition, each sign cabinet must be large enough to be visible from Butterfield Road.

At twenty feet (20') in height, the sign would exceed the maximum of six feet (6') permitted by the Zoning Ordinance. Arguments similar to those made for the sign's area can be made for the sign's height. The additional sign height will allow the petitioner to provide advertising space for each tenant. The height is also requested to allow for a stone base and a decorative roof.

Staff notes that if the property were zoned B3, B4, or B4A no deviations for the proposed signage would be needed. As the property fronts on a state right-of-way (Illinois 56), the Sign Ordinance would allow a freestanding sign up to one hundred twenty-five (125) square feet in area and up to twenty-five feet (25') in height. As the building contains multiple tenants, including a bank which draws customers to the site, it is reasonable to consider that the property may have similar signage needs to those in the B3, B4, or B4A zoning districts.

The existing freestanding sign on the property, permitted in 1984, is larger in both height and area than the proposed sign. Staff estimates the area of the existing sign to be two hundred two and one-half (202.5) square feet. The estimated height of the sign is twenty-two and one-half feet (22.5').

Staff supports the requested signage deviations, with the exception of a reduced setback, due to site considerations, multiple uses on the property, aesthetic enhancements, and size reductions from the existing sign which brings it into closer compliance with Village code.

Chairperson Ryan then opened the meeting for comments among the Commissioners.

Commissioner Olbrysh stated that the new sign is being reduced in overall size and is much more attractive. He stated that he noticed that the old sign has the address and the new proposal does not. He asked if they will rely on the address being on the building.

Mr. Kourafas stated that they have not ruled out putting the address on the new sign. He stated that right now they are in talks with the designer and architect to remodel the building. So the address would be on the building if not on the pylon.

It was moved by Commissioner Cooper, seconded by Commissioner Sweetser, that this matter be recommended to the Corporate Authorities for approval subject to conditions. The motion carried by the following vote:

Aye: 4 - Olbrysh, Sweetser, Nelson and Cooper

Absent: 2 - Flint and Burke

- 1. The proposed sign shall be constructed in accordance with the plans prepared by Grate Signs, Inc., dated May 26, 2004, revised March 25, 2009 and as depicted in Exhibit A, and made a part of this petition, except as they may be changed to conform with Village code and the conditions below.*
- 2. The proposed freestanding sign shall have a setback of no less than ten feet (10') from all property lines.*
- 3. The existing retaining wall surrounding the sign shall be removed from the public right-of-way and shall be sufficiently set back from all property lines so as to not conflict with public utilities. All disturbed areas shall be restored with topsoil and sod in a manner acceptable to the Director of Community Development.*
- 4. The petitioner shall submit a Plat of Resubdivision to establish a Lot of Record on the subject property.*
- 5. As part of the approval, the petitioner shall also address the comments included within the IDRC Report.*

Prior to the public hearing for PC 09-23, Commissioner Cooper stated that she wanted to disclose that her employer has provided services to the property owner of the petition but are unrelated to PC 09-23. She stated that she stands to receive no personal gain from her opinions and vote here tonight.

PC 09-23: Text Amendments to the Lombard Zoning Ordinance (218 E. St. Charles)

Next Stop Thrift Shop, requests a text amendment to Section 155.414(B) of the Lombard Zoning Ordinance allowing "Secondhand stores and rummage shops" to be listed as a permitted use within the B2 - General Neighborhood Shopping District.

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Kathryn Nelson, 21W131 Everest Road, Lombard, presented the petition. She

introduced her daughter, Marcy and then stated that they want to open a resale store. She stated that it would be a small store and it will also be their first business.

Michael Toth, Planner I, presented the staff report. The petitioner, Next Stop Thrift Shop, intends to utilize the vacant freestanding building located on the subject property for the sale of secondhand goods in the B2 - General Neighborhood Shopping District. There are currently no uses (permitted or conditional) that would allow such an activity in the B2 District; as such, the petitioner is requesting text amendments to the Zoning Ordinance to allow 'Secondhand stores and rummage shops' as a permitted use in the B2 District.

Mr. Toth stated that the proposed use is prohibited in the B2 - General Neighborhood Shopping District; however, if someone wanted to establish a secondhand store or rummage shop, this could be done in the B3, B4, B5 & B5A Districts as a permitted use. From a land use perspective, it is staff's opinion that the proposed use is suitable for the B2 - General Neighborhood Shopping District. The Zoning Ordinance describes the B2 - General Neighborhood Shopping District as an area intended to provide convenience shopping to adjacent residential areas, but allows for a wider range of uses than permitted in the B1 District. As such, the proposed use is consistent with the intent of the B2 - General Neighborhood Shopping District.

Mr. Toth stated that in 2002, the Village took action on a portion of the Comprehensive Plan that deals with long-term commercial plans, which recommends that the Central Business District encompass a much larger area. To accommodate such recommendation, the Village expanded upon the downtown by rezoning a number of properties adjacent to the downtown. As a result, the B5A - Downtown Perimeter District was created.

Mr. Toth then mentioned the fact that the subject property is located in close proximity to the downtown. As such, if the subject property were to be reclassified to the B5A - Downtown Perimeter District per the recommendation of the Comprehensive Plan, secondhand stores and rummage shops would become a permitted use.

Mr. Toth stated that the Comprehensive Plan recommends Neighborhood Commercial for all properties located in the B2 - General Neighborhood Shopping District. As the proposed business provides convenience goods to the daily needs of nearby residents, staff believes that the proposed amendment is consistent with the Comprehensive Plan.

Mr. Toth then added that it would be required that the donated goods used for secondhand stores in the B2 District be dropped off within the confines of the building. Any outdoor collection centers in the B2 District are prohibited.

Staff finds that the standards set forth in the Zoning Ordinance have been met. Furthermore, staff is recommending approval of PC 09-23.

Kathryn Nelson questioned the staff report. She questioned the drop off of items being required within the confines in the building. She asked what would happen if someone left something at night. She then asked if they could have a receptacle. Mr. Toth responded by stating that in 2007, the Village did a text amendment that created 'collection centers' as a separate use. He noted that these receptacles are only allowed in certain districts, which he named, and must be attended. He then stated that if you wanted drop off you will have to establish drop off times during business hours. Mr. Toth stated that there could be an impact on adjacent properties, which could be a nuisance, if people dropped off items in an area that was unattended. Mr. Toth used an item such as a refrigerator as an example. Ms. Nelson stated that she won't have those types of appliances because they don't have enough room. She also stated that she will put that

in writing that there will be no outside drop-offs.

Chairperson Ryan opened the meeting for discussion and questions by the Plan Commission. The Commissioners had no comments.

It was moved by Commissioner Olbrysh, seconded by Commissioner Sweetser, that this matter be recommended to the Board of Trustees for approval. The motion carried by the following vote:

Aye: 4 - Olbrysh, Sweetser, Nelson and Cooper

Absent: 2 - Flint and Burke

PC 09-19: Text Amendments to the Zoning Ordinance

The Village of Lombard is proposing text amendments to the Lombard Zoning Ordinance, amending Section 155.212 to establish replacement central air-conditioning systems as permitted obstructions in certain required yards.

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Chairperson Ryan stated that this petition has been brought forward by the Village and will be presented by staff.

Michael Toth, Planner I, presented the staff report. The Planning Services Division is proposing code amendments to address the issue of replacement central air-conditioning systems located within the interior side yard.

Mr. Toth stated that the Zoning Ordinance requires central air-conditioning systems meet the required interior side yard setback. There have been a number of permits that have come in over the years for the replacement of nonconforming central air-conditioning systems in the interior side yard. As air conditioning units are not a permitted encroachment in the side yard, they would therefore need to conform to the required setback for structures within the applicable zoning district. Per Section 155.303 of the Zoning Ordinance, once a nonconforming structure is removed, the rights to the nonconforming location are lost and the structure would need to come into compliance with Code. This would mean that any time a central air-conditioning system was to be replaced in a location that was not permitted by Code, a variation would be required.

Mr. Toth stated that unlike a structure, such as a fence or shed, there are more critical elements involved with the piping and electrical components of a home that make the replacement of the a/c unit more complicated. He added that staff wishes to continue to prohibit central air-conditioning systems units as a permitted encroachment in the front and corner side yard. In addition, any new (or additional) air-conditioning units would have to meet the minimum interior side yard requirement.

Mr. Toth stated that the proposed amendments have been drafted to prohibit any replacement central air-conditioning systems to further encroach into the interior side yard. The rationale for allowing a four foot (4') encroachment in the interior side yard assumes the six foot (6') setback required of most single-family residences, takes into consideration the required clearance from the house and the width of the unit.

Mr. Toth stated that staff recognizes the costs associated with the relocation of a central air conditioning unit and also does not wish to punish residents who try to obtain a permit for the replacement of the air conditioning unit. Therefore, staff finds that allowing replacement air conditioning systems to be listing as a permitted encroachment in the interior side yard (with provisions) would reduce the number of variation requests, encourage residents to obtain a permit, eliminate relocation costs and maintain the existing character of residential properties throughout the Village.

Mr. Toth stated that in order to address the demand for the replacement of central air conditioning systems in the side yard, Section 155.212 "Permitted Obstructions in Required Yards" will now recognize "Replacement central air-conditioning systems" as a permitted encroachment in the side yard, with exceptions.

Referring to the standards for text amendments, Mr. Toth stated that the proposed amendments would not create additional nonconformity, but rather allow existing nonconforming central air-conditioning systems to be replaced, without requiring a variation. He then stated that this amendment would be consistent with staff and Board policies. The Village has adopted previous amendments regulating the location of certain accessory structures within required yards. Mr. Toth then referred to the list of past Board approvals for a/c units in the side yard.

Chairperson Ryan opened the meeting for discussion and questions by the Plan Commission. The Commissioners had no comments.

It was moved by Commissioner Sweetser, seconded by Commissioner Olbrysh, that this matter be recommended to the Board of Trustees for approval. The motion carried by the following vote:

Aye: 4 - Olbrysh, Sweetser, Nelson and Cooper

Absent: 2 - Flint and Burke

PC 09-21: Text Amendments to the Lombard Zoning Ordinance

The Village of Lombard is proposing text amendments to Section 155.205 (A) (1) (c) of the Lombard Zoning Ordinance to allow fences in residential districts to be up to eight (8') in height along property lines that adjoin and parallel railroad right-of-way. (DISTRICTS #1 and #4)

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Chairperson Ryan stated that this petition has been brought forward by the Village and will be presented by staff.

Christopher Stilling, Assistant Director, presented the staff report. The Planning Services Division is proposing text amendments to Section 155.205 (A) (1) (c) of the Lombard Zoning Ordinance to allow fences in residential districts to be up to eight (8') in height along property lines that adjoin and parallel railroad right-of-way.

Mr. Stilling stated that the Zoning Ordinance already allows residential fences that abut commercially-zoned properties (those in a B, O, or I District) to be up to eight feet in height. Staff believes that the same logic that allows for a higher fence adjacent to a commercial property (presumably to screen the residence from noise and an undesirable view) would justify the need for a higher fence adjacent to a railroad.

Referring to the standards for text amendments, Mr. Stilling stated that the proposed amendments would not create additional nonconformity, but rather allow existing nonconforming fences to be replaced, without requiring a variation. He then stated that this amendment would be consistent with staff and Board policies.

Chairperson Ryan opened the meeting for discussion and questions by the Plan Commission.

Commissioner Olbrysh asked if the code addresses using a specific type of fence. Mr. Stilling answered that the code is not material specific but it does specify that fences cannot cause bodily injury so nothing that is dangerous or sharp can be used.

It was moved by Commissioner Olbrysh, seconded by Commissioner Nelson, that this matter be recommended to the Board of Trustees for approval. The motion carried by the following vote:

Aye: 4 - Olbrysh, Sweetser, Nelson and Cooper

Absent: 2 - Flint and Burke

Business Meeting

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The business meeting convened at 9:10 p.m.

Approval of Minutes

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On a motion by Olbrysh and seconded by Sweetser the minutes from the June 8 and the June 15, 2009 meetings were unanimously approved by the members present with the following amendments to the June 8 minutes:

Village Attorney Wagner referred to page 16, 5th paragraph, 2nd line, strike the words "and deny" so the sentence reads:

"Village Attorney Wagner clarified that the recommendation is to provide the variation for the height and then to approve the variation for the open space as to the 25 percent."

He also noted that there were a few minor, nonsubstantive typographical errors that he would give to staff to correct.

Public Participation

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There was no public participation.

DuPage County Hearings

[Play Video](#)

There were no DuPage County hearings.

Chairperson's Report

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The Chairperson deferred to the Assistant Director of Community Development.

Planner's Report

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Assistant Director Stilling indicated that the next meeting will have two items on the agenda:

- 1. 701-747 22nd Street. He explained how each building is being sold and there are issues related to parking. Though the agenda is short this petition might be complex and detailed.*
- 2. Workshop discussing signage regulations for temporary signs.*

Chairperson Ryan indicated that he would not be attending the meeting .

Mr. Stilling then referenced the Main Street signage and CPSA cases that were heard at the June 8 Plan Commission meeting. He indicated that they were both approved by the Village Board as recommended by the Plan Commission.

Unfinished Business

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There was no unfinished business.

New Business

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There was no new business.

Subdivision Reports

[Play Video](#)

SUB 09-01: 1799 S. Fairfield Ave.

Requests approval of a one-lot major plat of subdivision. (DISTRICT #3)

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Michael Toth, Planner I, referenced the companion staff report. The petitioner is requesting approval of a plat of resubdivision for a 0.926 acre tract of land located at 1799 S. Fairfield Ave. As public right-of-way is to be officially dedicated to the Village, the subject plat would be classified as a major plat of subdivision. All major plats of subdivision must be reviewed and approved by the Plan Commission and Board of Trustees. This subdivision meets all of the requirements of the Zoning Ordinance and Subdivision and Development Ordinance.

No one in the audience had comments about the proposed plat.

Chairperson Ryan opened the meeting for discussion and questions by the Plan Commission. The Commissioners had no comments.

It was moved by Commissioner Nelson, seconded by Commissioner Cooper, that this matter be recommended to the Corporate Authorities for approval. The motion carried by the following vote:

Aye: 4 - Olbrysh, Sweetser, Nelson and Cooper

Absent: 2 - Flint and Burke

Site Plan Approvals

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There were no site plan approvals.

Workshops

[Play Video](#)

There were no workshops.

Adjournment

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The meeting was adjourned at 9:16 p.m.

*Donald F. Ryan, Chairperson
Lombard Plan Commission*

*Christopher Stilling, Secretary
Lombard Plan Commission*