

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager *DAH*

DATE: August 3, 2009 (BOT) Date: August 20, 2009

TITLE: PC 09-17: Text Amendments to the Zoning Ordinance and
PC 09-18: 1221 S. Main (Lux Chateau)

SUBMITTED BY: Department of Community Development *JMB*

BACKGROUND/POLICY IMPLICATIONS:

Your Plan Commission transmits for your consideration its recommendation relative to the above-mentioned petitions:

PC 09-17: The petitioner (Lux Chateau) requests text amendments to Section 155.417(G)(2) and Section 155.802 of the Lombard Zoning Ordinance (and other sections where needed for consistency within the Zoning Ordinance, clarity with the Smoke Free Illinois Act or as deemed appropriate) to allow for "Smoking Establishments" to be listed as a conditional use within the B4A - Roosevelt Road Corridor District.

Recommendation: The Plan Commission recommended approval.

PC 09-18: Requests that the Village grant a conditional use, pursuant to amended Section 155.417(G)(2) of the Zoning Ordinance to allow a "Smoking Establishment" within the B4A - Roosevelt Road Corridor District. (DISTRICT #6)

Recommendation: The Plan Commission recommended approval with conditions.

Please place these items on the August 20, 2009 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X *David A. Hulseberg* _____ Date 8/9/09

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: David A. Hulseberg, Village Manager

FROM: William Heniff, AICP
Director of Community Development *WH*

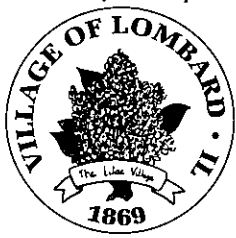
DATE: August 20, 2009

SUBJECT: PC 09-17 & PC 09-18; 1221 S. Main (Lux Chateau)

Attached please find the following items for Village Board consideration as part of the August 20, 2009 Village Board meeting:

1. Plan Commission referral letter;
2. IDRC report for PC 09-17;
3. IDRC report for PC 09-18;
4. An Ordinance granting approval of text Amendments to the Zoning Ordinance to allow "Smoking Establishment" to be listed as a conditional use within the B4A – Roosevelt Road Corridor District; and,
5. An Ordinance granting conditional use approval to allow a Smoking Establishment on the subject property.

As both petitions are directly related to one another, the Plan Commission decided to hear both petitions as one. The Plan Commission recommended approval of the zoning actions associated with both petitions.



VILLAGE OF LOMBARD

255 E. Wilson Ave.
Lombard, Illinois 60148-3931
(630) 620-5700 Fax (630) 620-8222
www.villageoflombard.org

Village President
William J. Mueller

Village Clerk
Brigitte O'Brien

Trustees
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Richard J. Tross, Dist. 2
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Dana L. Moreau, Dist. 4
Laura A. Fitzpatrick, Dist. 5
William "Bill" Ware, Dist. 6

Village Manager
David A. Hulseberg

"Our shared Vision for Lombard is a community of excellence exemplified by its government working together with residents and businesses to create a distinctive sense of spirit and an outstanding quality of life."

"The Mission of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

August 20, 2009

Mr. William J. Mueller,
Village President, and
Board of Trustees
Village of Lombard

**Subject: PC 09-17: Text Amendments to the Lombard Zoning Ordinance
PC 09-18: 1221 S. Main (Lux Chateau)**

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petitions. Relative to PC 09-17, the petitioner requests a text amendment to Section 155.417(G)(2) of the Lombard Zoning Ordinance (and other sections where needed for clarity) allowing "Smoking Establishments" to be listed as a conditional use within the B4A – Roosevelt Road Corridor District. Relative to PC 09-18, the petitioner requests that the Village grant a conditional use, pursuant to Section 155.417(G)(2) of the Zoning Ordinance to allow a Smoking Establishment within the B4A – Roosevelt Road Corridor District.

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on July 20, 2009.

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.

They brought a hookah and the tobacco that is used with the hookah (shishah). He discussed the hookah in detail while the shishah was passed around to the Commissioner 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 in 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 not 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 it's 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.

After due consideration of the petition and the testimony presented, the Plan Commission found that the proposal complies with the standards required by the Lombard Zoning Ordinance and therefore moved that the Plan Commission find that the findings included as part of the Inter-departmental Review Report be the findings of the Plan Commission and therefore by a roll call vote of 4 to 0 recommends to the Corporate Authorities approval of **PC 09-17**.

After due consideration of the petition and the testimony presented, the Plan Commission found that the proposal complies with the standards required by the Lombard Zoning Ordinance; and, therefore, moved that the Plan Commission find that the findings included as part of the Inter-departmental Review Report be the findings of the Plan Commission and therefore, by a roll call vote of 4 to 0, recommends to the Corporate Authorities approval of the zoning actions associated with **PC 09-18** subject to the following conditions:

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.

Respectfully,

VILLAGE OF LOMBARD



Donald Ryan, Chairperson
Lombard Plan Commission

c. Petitioner
Lombard Plan Commission

VILLAGE OF LOMBARD
INTER-DEPARTMENTAL REVIEW GROUP REPORT

TO: Lombard Plan Commission

HEARING DATE: July 20, 2009

FROM: Department of
Community Development

PREPARED BY: Michael S. Toth
Planner I

TITLE

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 Establishments" to be listed as a conditional use within the B4A – Roosevelt Road Corridor District.

GENERAL INFORMATION

Petitioner: Lux Chateau
Attn: Azeem Syed
1221 S. Main Street
Lombard, IL 60148

Petitioner Attorney: Mr. Russell P. Rasche
638 Olesen Drive
Naperville, IL 60540

Property Owner: Oxford Corners Inc
1259 S. Main St.
Lombard, IL 60148

ANALYSIS

SUBMITTALS

This report is based on the following documents filed with the Department of Community Development on May 28, 2009:

1. Public Hearing Application.
2. Response to Standards for Text Amendments, prepared by the petitioner's attorney.

DESCRIPTION

The petitioner has been utilizing an interior tenant space within the Oxford Corners shopping center located on the subject property as a hookah lounge. There are currently no uses (permitted or conditional) that would allow such an activity in the B4A – Roosevelt Road Corridor District; as such, the petitioner is requesting text amendments to the Zoning Ordinance to allow “Smoking Establishments” as a conditional use in the B4A – Roosevelt Road Corridor District. The petitioner has also filed for a companion conditional use approval for a Smoking Establishments (PC 09-18) to allow the hookah lounge to continue to operate on the subject property.

In order to provide greater clarity to the Zoning Ordinance, specifically as it relates to the Smoke Free Illinois Act, staff is also proposing companion amendments as well.

INTER-DEPARTMENTAL REVIEW COMMENTS

PUBLIC WORKS

Public Works Engineering has no comments at this time.

PRIVATE ENGINEERING SERVICES

The Private Engineering Services Division of Community Development has no comments.

BUILDING & FIRE

Upon review of the request for text amendment to allow smoking establishments a conditional use in the B4A District, the Fire Department/Bureau of Inspectional Services has the following comments:

1. The text amendment would have to clearly define the establishment’s exclusive use as an assembly type of use for the sole purpose of smoking with the aid of hookahs. No food or drink can be served in this type of environment and the lounge would still need to comply with any or all sections of the Smoke Free Illinois Act.

PLANNING

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.

Background/History

The petitioner's business establishment is named "Lux Chateau" and is currently operating within a tenant space within the Oxford Corners Shopping Center. Previous to Lux Chateau's operation, Sahara Café was the previous business use within the subject tenant space. Sahara Café applied for and received a Certificate of Occupancy/Zoning Certificate (CO/ZC) for the tenant space for a restaurant (actually a coffee shop) in 2006. Their CO/ZC application did denote tobacco as part of their business operations. Their Zoning Certificate does not mention references to "hookah". However, the previous proprietor was informed that if the business was a restaurant, the use would be permissible. If the principal use was hookah consumption, it is not listed as a permitted or conditional use and a Zoning Ordinance text amendment would be required. At that time, there was nothing within State Statutes that would restrict the tobacco use – customers could have just as easily consumed tobacco products when they drank coffee or consumed their food.

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.

Smoke Free Illinois Act

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.

Director Interpretation

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.

While the petitioner asserted that the Zoning Ordinance provides for their business establishment, as tobacco shops are listed as a permitted use, the Director made the interpretation that the petitioner's use is separate and distinct from the retail tobacco shop listing. The petitioner was given the option of changing the nature of their business, appealing the decision of the Director of Community Development or applying for a text amendment to allow for the use. The petitioner filed an appeal of the Director's interpretation to the Zoning Board of Appeals, which was heard in April, 2009, and was continued to allow for the petitioner to also file for a text amendment to the Zoning Ordinance.

Compliance with the Zoning Ordinance

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 amendment would need to provide for the use (either as a permitted use or a conditional use) and the amendment can only be approved by a majority vote of the Village Board after a public hearing is held by the Lombard Plan Commission.

In consideration of the business activity, the Director notes that the term "tobacco shop" is not specifically listed within the definitions within the Lombard Zoning Ordinance. As such, the Zoning Ordinance sets forth two provisions for the Director to apply in consideration of this request:

Section 155.801 WORD USAGE

In the construction of this ordinance the rules and definitions contained in this article shall be observed and applied, except when the context clearly indicates otherwise. In further amplification and for clarity of interpretation of the context, the following definitions of word use shall apply:

F. Words contained in this ordinance and not defined hereinafter shall assume definitions as prescribed in Webster's unabridged dictionary (1976 edition).

1. The dictionary defines "retail" as "to sell in small quantities to the consumer".
2. The dictionary defines "tobacco" as "the leaves of cultivated tobacco prepared for use in smoking or chewing or as snuff".
3. The dictionary defines "shop" as "a building or room stocked with merchandise for sale".

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. Hookah pipes are

placed in the center of the table. According to the proprietor, individuals wishing to partake in hookah would pay a service fee to sit at one of the tables and consume the product on the premises. Individuals may visit with other patrons, watch television, listen to music or other like activities. The proprietor's hours have typically been in the evening and night time (i.e., 6:00 p.m. to 2:00 a.m.).

In consideration of this business activity and model, 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. As the petitioner recognizes, the primary function of the premises is the consumption of hookah on the premises and as part of an assembly gathering function. Staff notes that this is functionally different than a tobacco stop, as tobacco shops are characterized by individuals purchasing tobacco products, typically pre-packaged goods in a mercantile format. 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). In the B4A District, restaurants are permitted uses, while taverns are conditional uses in other selected B business districts.
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. Since the appellant recognizes that a gathering function is a primary function of his business model, one could state that it may be more consistent with the uses listed in #2 above.

In consideration of the arguments espoused above, the petitioner is seeking approval of zoning actions to allow for the existing business establishment to remain.

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. Therefore, the proposed text amendment is proposing to create the broader use definition of Smoking Establishments in the Zoning Ordinance.

Conditional Use Requirement

The proposed text amendment seeks to specifically add smoking establishments within the B4A District. 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. However, as the proposed use would be classified as a conditional use in the B4A District, each case would be viewed on its own merit and the surrounding land uses would then be taken into consideration.

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.

Standards for Text Amendments

For any change to the Zoning Ordinance, the standards for text amendments must be affirmed. Staff's response to Standards for Text Amendments are noted below:

1. *The degree to which the proposed amendment has general applicability within the Village at large and not intended to benefit specific property;*

The proposed amendments would be uniformly applied to the B4A District as a conditional use. All similar use proposals in the B4A District would automatically be subject to the discretion of the Village Board. From a land use perspective, there are uses in the B4A District that are similar to the proposed use, such as taverns and meeting halls.

2. *The consistency of the proposed amendment with the objectives of this ordinance and the intent of the applicable zoning district regulations;*

The B4A District is intended to address the unique and specific land use issues within the Roosevelt Road Corridor. Permissible uses provide a wide variety of uses and activities on a community-wide

basis, with an emphasis upon retail business establishments. In staff's opinion, the types of activities associated with the proposed use may be more suitable for the B4A District.

3. *The degree to which the proposed amendment would create nonconformity;*

The proposed text amendment would not create any non-conforming situations as the proposed use has previously not existed as a permitted or conditional use within the B4A District.

4. *The degree to which the proposed amendment would make this ordinance more permissive;*

The proposed amendment will not make the ordinance more permissive by right; however, the amendments will allow any similar use proposals to petition for a conditional use without requiring the companion text amendment approval.

5. *The consistency of the proposed amendment with the Comprehensive Plan;*

This type of use would function similar in nature to restaurants and other congregation-gathering establishments. Many of these use types are already permitted within the B4A District and the proposed use would not be dissimilar.

6. *The degree to which the proposed amendment is consistent with village policy as established in previous rulings on petitions involving similar circumstances.*

The Village has a history of amending its Zoning Ordinance to address evolving circumstances presented by petition or to clarify the intent of the Ordinance provisions. The Smoke Free Illinois Act functionally created the need to establish new classification of land use and staff notes that other municipalities are reviewing this use and in some cases, amending their ordinances accordingly.

PROPOSED TEXT AMENDMENTS

The proposed text amendments to the Lombard Zoning Ordinance are listed below. Any new additions and/or changes are underlined while any information that is to be removed is marked with a strikethrough.

SECTION 4: DISTRICTS

155.417 "Roosevelt Road Corridor B4A District Requirements"

2. Conditional Uses. The following uses are considered conditional uses and shall be subject to the provisions set forth in Section 155.103 (F) of this Ordinance.

a. Retail Uses

1. Amusement establishments, outdoor

2. Gasoline sales (or any expansion of a principal, secondary or ancillary use on the same lot as a gasoline sales establishment)

3. Motor vehicle sales

4. Outside display and sales of products the sale of which is a permitted or conditional use in this district

5. Outside service areas for other permitted or conditional uses in this district

6. Restaurants, which include entertainment, dancing, and/or amusement devices

7. Recreational vehicle sales

b. Service Uses

1. Animal hospitals and kennels

2. Banks and financial institutions

3. Clubs and lodges, nonprofit and fraternal

4. Collection Center, Attendant

5. Day Care Center

6. Drive-through and drive-in establishments/services

7. Learning Centers, with outdoor component

8. Motor vehicle repair

9. Motor vehicle service

10. Photographic processing business

11. Therapeutic massage establishments (as defined and regulated by Chapter 12, Section 122 of the Code of Ordinances)

12. Recreational vehicle sales

13. Religious Institutions

14. Smoking Establishments (in conformance with Illinois Smoke Free Act, 410 ILCS 82/1 et seq)

c. Other Uses and Activities

1. Dwelling Units, located above the first floor, where all the requirements of Section 155.412(B)(1) of this Code are not met.
2. Off-site parking, in conformance with Section 155.602(A)(3)(b) of this Ordinance
3. Parking lots and structures, as the principal use of the property
4. Planned developments in conformance with Section 155.500 of this Ordinance
5. Public utility and service uses
6. Four (4) story buildings and buildings which are forty feet (40') to forty-five feet (45') in height.
7. Shopping centers, consisting of more than one principal business on a zoning lot
8. More than one principal building on a zoning lot
9. Accessory uses and buildings, incidental to and on the same zoning lot as the conditional use, which are constructed and operated in conformance with Section 155.210 of this Ordinance

SECTION 8: RULES AND DEFINITIONS

155.802 "Rules and Definitions"

"Smoking Establishment" is an establishment, which, as its principal business purpose, is dedicated to the on-premises smoking of tobacco products or other legal substances and is regulated through the Illinois Smoke Free Act, 410 ILCS 82/1 et seq.

"Tobacco Shop" is a retail establishment that sells pipes, pipe tobacco, cigars and cigarettes, which does not include the tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food or restaurant license and is regulated through the Illinois Smoke Free Act, 410 ILCS 82/1 et seq.

FINDINGS AND RECOMMENDATIONS

Based on the above findings, the Inter-Departmental Review Committee recommends that the petition as presented does meet the standards set forth in the Zoning Ordinance and recommends that Plan Commission make the following motion recommending **approval** of this petition:

Based on the submitted petition and the testimony presented, the requested text amendments and conditional uses **comply** with the standards required by the Lombard Zoning Ordinance; and, therefore, I move that the Plan Commission accept the findings and recommendations of the Inter-Departmental Report as the findings of the Plan Commission and I recommend to the Corporate Authorities **approval** of PC 09-17.

Inter-Departmental Review Group Report Approved By:



William J. Heniff, AICP
Director of Community Development



Law Office of Russell P. Rasche

Corporate, Securities, Commercial and Complex Transactions

638 Olesen Drive
Naperville, IL 60540
Phone: (630) 219-3569
Fax: (630) 219-3568
russell@raschelaw.com

Tuesday, June 02, 2009

Village of Lombard
Mr. William J. Heniff, AICP
255 E. Wilson Avenue
Lombard, IL 60148

RE: Request of Plan Commission for Conditional Use Permit and Text Amendment

Dear Mr. Heniff:

Enclosed please find the executed Petitioner's Request for Public Hearing and Completed fee schedule. I assume we can use the same attachments include with the appeal before the Zoning Board.

I offer the following comments on the published Standards for Conditional Use.

1. The requested conditional use merely codifies what is already provided for in State Law. The change is to provide for gathering on the premises of a retail tobacco store. Patrons of a retail tobacco store are already permitted to smoke on the premises. The requested conditional use does not in itself create any of the issues presented in paragraph 1.
2. Since the Petitioner and its predecessor have operated this business on the premises for several years without complaint or incident, there is no apparent injury or diminishment to other property owners or tenants in the vicinity of the premises.
3. Since any new retail tobacco establishments are required by State Law to be in free standing buildings, this conditional use will not impact other development in the area.
4. Existing support amenities are already sufficient for this use.
5. The Petitioner's business does not attract a high volume of patrons and current measures for ingress and egress are more than sufficient to minimize any traffic congestion. Moreover, Petitioner's business hours are in off hours for other businesses in the area.
6. The proposed conditional use is not contrary to the other objectives of the Village as set forth in the Comprehensive Plan.
7. The requested conditional use will in all other respects comply with and be compatible with applicable regulations.

I also offer the following comments on the published Standards for Text Amendments.

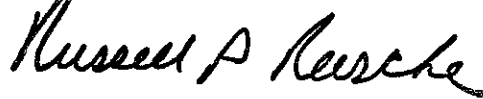
1. The requested text amendment will enable the Village to accommodate public demand for tobacco related gathering places such as hookah lounges and cigar bars. These establishments generally attract a desirable class of patrons and have not provided any negative impact on the other villages and cities where they are located. Therefore the requested text amendment will benefit a new class of business within the Village and is not intended to only benefit Petitioner.
2. The ordinance already provides for retail tobacco locations and for businesses based upon patrons gathering (ie. Restaurants and bars). Therefore, the proposed text amendment merely combines other concepts already contained in the ordinance and zoning district regulations and is consistent therewith.

3. There is no perceived non-conformity that will result from the text amendment.
4. The requested text amendment provides for patrons of specific retail tobacco establishments to gather and smoke on the premises consistent with State Laws and applicable regulations.
5. The requested amendment is not inconsistent with the Comprehensive Plan as it merely combines concepts already contained therein.
6. There are no inconsistencies with Village Policy as the Petitioner has already been granted business licenses and previous rulings do not contain similar factual circumstances.

Petitioner will provide a check directly to you for this requested action.

Thank you for your kind assistance in this matter. Please do not hesitate to contact me if need anything further.

Respectfully,

A handwritten signature in black ink that reads "Russell P. Rasche". The signature is written in a cursive style with a large, prominent initial 'R'.

Russell P. Rasche

VILLAGE OF LOMBARD
INTER-DEPARTMENTAL REVIEW GROUP REPORT

TO: Lombard Plan Commission

HEARING DATE: July 20, 2009

FROM: Department of
Community Development

PREPARED BY: Michael S. Toth
Planner I

TITLE

PC 09-18; 1221 S. Main (Lux Chateau): The petitioner requests that the Village grant a conditional use, pursuant to Section 155.417(G)(2) of the Zoning Ordinance to allow a “Smoking Establishment” within the B4A – Roosevelt Road Corridor District.

GENERAL INFORMATION

Petitioner: Lux Chateau
Attn: Azeem Syed
1221 S. Main Street
Lombard, IL 60148

Petitioner Attorney: Mr. Russell P. Rasche
638 Olesen Drive
Naperville, IL 60540

Property Owner: Oxford Corners Inc
1259 S. Main St.
Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning: B4A – Roosevelt Road Corridor District

Existing Land Use: Multi-Tenant Strip Mall

Size of Property: Approximately 2.06 acres

Comprehensive Plan: Community Commercial Development

SURROUNDING ZONING AND LAND USE

North: B4A Roosevelt Road Corridor District, developed as Jiffy Lube automotive service facility (abutting the subject property); and B4APD Community Shopping District, Planned Development, developed as the Lombard Pines Shopping Center.

South: B3 Community Shopping District; developed as a Village owned/operated pump station); and unincorporated property zoned R4 Single Family District (DuPage County), developed as single family residences.

East: B4A Roosevelt Road Corridor District, developed as a commercial strip retail center; and R3 Attached Single Family Residence District, developed as townhouses.

West: B4A Roosevelt Road Corridor District, developed as a bank, offices and a strip commercial center.

ANALYSIS

SUBMITTALS

This report is based on the following documents filed with the Department of Community Development on May 28, 2009:

1. Public Hearing Application.
2. Response to Standards for Conditional Uses.

DESCRIPTION

The petitioner has been utilizing an interior tenant space within the Oxford Corners shopping center located on the subject property as a hookah lounge. Such a use is currently not permissible as a permitted or conditional use in the B4A – Roosevelt Road Corridor District; however, the companion text amendment filed in association with this petition (PC 09-17) would allow the aforementioned use to be subject to conditional use approval. Therefore, the petitioner is requesting conditional use approval to allow a “Smoking Establishments” in the B4A – Roosevelt Road Corridor District. As such, granting the conditional use for a Smoking Establishments for the subject property would allow the petitioner to continue to operate their hookah lounge business.

Special Note: This petition assumes approval of PC 09-17. If PC 09-17 is not approved, this petition cannot be considered as it is currently proposed.

INTER-DEPARTMENTAL REVIEW COMMENTS

PUBLIC WORKS

Public Works Engineering has no comments at this time.

PRIVATE ENGINEERING SERVICES

Private Engineering has no comments at this time.

BUILDING & FIRE

Upon review of the request for text amendment to allow for a conditional use, smoking establishment (hookah lounge) at Oxford Corners Retail Strip, the Fire Department/Bureau of Inspectional Services has the following comments:

1. In review of the Illinois Smoke Free Act, secondhand smoke cannot be eliminated through "indoor air cleaning units" that are usually suspended from ceilings. These units only eliminate particulate matters and odors, but do not eliminate carcinogens and other toxins. One possible method of total secondhand smoke elimination would be to install a 100%ventilation system and make up air system that would take the smoke directly outside and introduce fresh air back into the premises, thus avoiding any negative air pressure. This would also aid in keeping the smoke odors from possibly migrating into adjacent tenant spaces of the retail strip.

PLANNING

As noted in PC 09-17, the petitioner is seeking approval of zoning actions to allow for his existing establishment to be legally permissible at its existing location. The petitioner's 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. Hookah pipes are placed in the center of the table. According to the proprietor, individuals wishing to partake in hookah would pay a service fee to sit at one of the tables and consume the product on the premises. Patrons could also consume other tobacco products as well. Individuals may visit with other patrons, watch television, listen to music or other like activities. The proprietor's hours have typically been in the evening and night time (i.e., 6:00 p.m. to 2:00 a.m.). The use will be operated completely within the confines of the existing building's tenant space. Staff notes that the use will be similar in function to other types of gathering uses.

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.

Compatibility with the Comprehensive Plan

The 2007 Comprehensive Plan identified the subject property as part of the Roosevelt Road corridor. Uses are intended to be primary intended to serve the retail shopping needs and automotive related uses of the community. The petitioner's use as it has been operated and as is proposed is compatible with and similar to other types of permissible uses within the B4A District. Based upon the above information, staff finds that the proposed use meets the objectives of the Comprehensive Plan.

Compatibility with Surrounding Land Uses

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.

Standards for Conditional Uses

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.

FINDINGS AND RECOMMENDATIONS


Based on the above findings, the Inter-Departmental Review Committee recommends that the petition as presented does meet the standards set forth in the Zoning Ordinance and recommends that Plan Commission make the following motion recommending **approval** of this petition:

Based on the submitted petition and the testimony presented, the conditional use complies with the standards required by the Lombard Zoning Ordinance; and, therefore, I move that the Plan Commission accept the findings and recommendations of the Inter-Departmental

Report as the findings of the Plan Commission and I recommend to the Corporate Authorities **approval** of PC 09-18; subject to the following conditions:

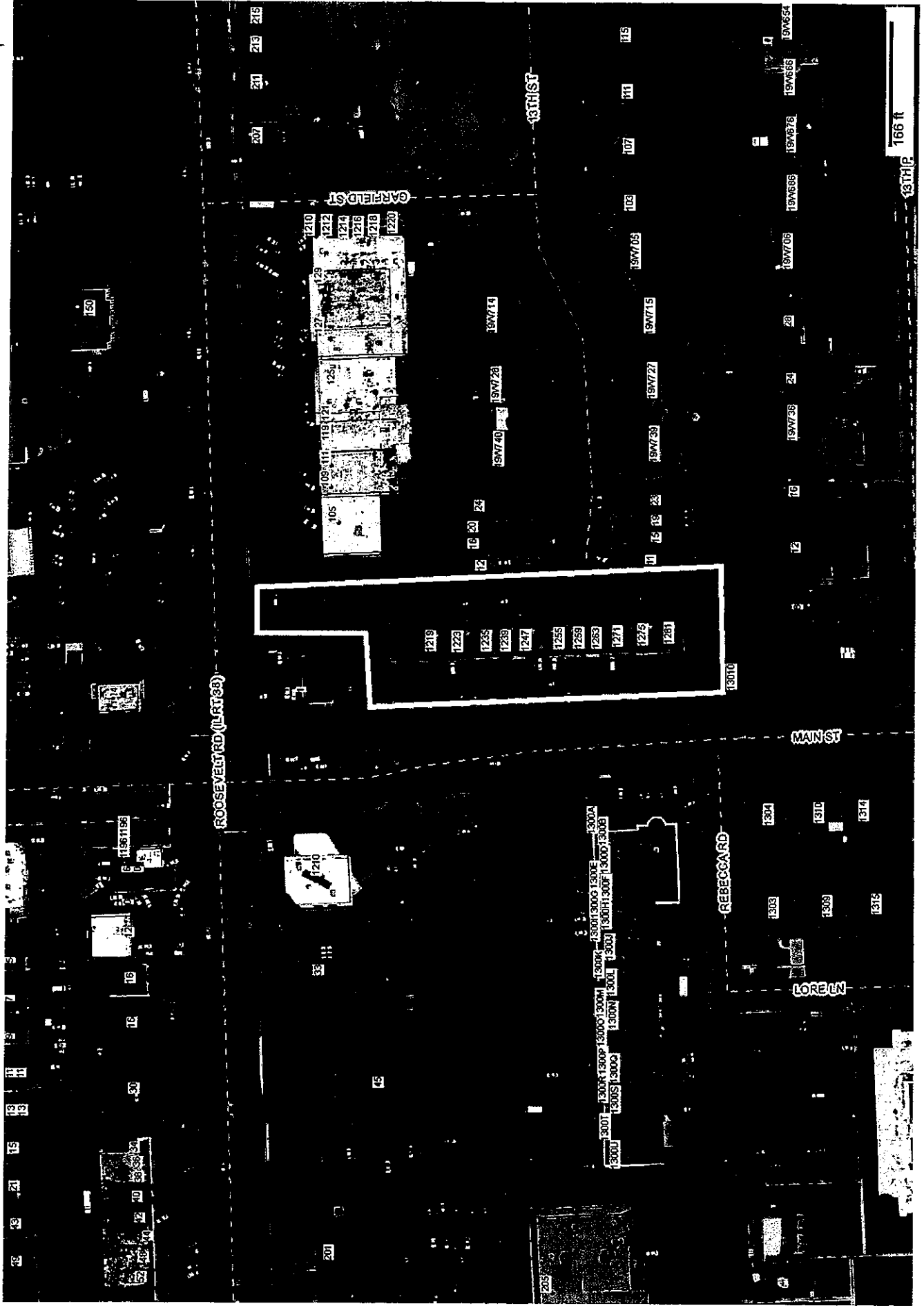
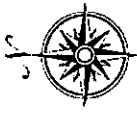
1. The petitioner shall apply for and receive a Certificate of Occupancy/Zoning Certificate for the proposed business establishment.
2. The conditional use approval is solely and exclusively for the tenant space located at 1221 S. Main Street within the Oxford Corners Shopping Center.
3. The business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

Inter-Departmental Review Group Report Approved By:



William J. Heniff, AICP
Director of Community Development

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





Law Office of Russell P. Rasche

Corporate, Securities, Commercial and Complex Transactions

638 Olesen Drive
Naperville, IL 60540
Phone: (630) 219-3569
Fax: (630) 219-3568
russell@raschelaw.com

Tuesday, June 02, 2009

Village of Lombard
Mr. William J. Heniff, AICP
255 E. Wilson Avenue
Lombard, IL 60148

RE: Request of Plan Commission for Conditional Use Permit and Text Amendment

Dear Mr. Heniff:

Enclosed please find the executed Petitioner's Request for Public Hearing and Completed fee schedule. I assume we can use the same attachments include with the appeal before the Zoning Board.

I offer the following comments on the published Standards for Conditional Use.

1. The requested conditional use merely codifies what is already provided for in State Law. The change is to provide for gathering on the premises of a retail tobacco store. Patrons of a retail tobacco store are already permitted to smoke on the premises. The requested conditional use does not in itself create any of the issues presented in paragraph 1.
2. Since the Petitioner and its predecessor have operated this business on the premises for several years without complaint or incident, there is no apparent injury or diminishment to other property owners or tenants in the vicinity of the premises.
3. Since any new retail tobacco establishments are required by State Law to be in free standing buildings, this conditional use will not impact other development in the area.
4. Existing support amenities are already sufficient for this use.
5. The Petitioner's business does not attract a high volume of patrons and current measures for ingress and egress are more than sufficient to minimize any traffic congestion. Moreover, Petitioner's business hours are in off hours for other businesses in the area.
6. The proposed conditional use is not contrary to the other objectives of the Village as set forth in the Comprehensive Plan.
7. The requested conditional use will in all other respects comply with and be compatible with applicable regulations.

I also offer the following comments on the published Standards for Text Amendments.

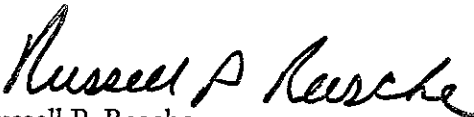
1. The requested text amendment will enable the Village to accommodate public demand for tobacco related gathering places such as hookah lounges and cigar bars. These establishments generally attract a desirable class of patrons and have not provided any negative impact on the other villages and cities where they are located. Therefore the requested text amendment will benefit a new class of business within the Village and is not intended to only benefit Petitioner.
2. The ordinance already provides for retail tobacco locations and for businesses based upon patrons gathering (ie. Restaurants and bars). Therefore, the proposed text amendment merely combines other concepts already contained in the ordinance and zoning district regulations and is consistent therewith.

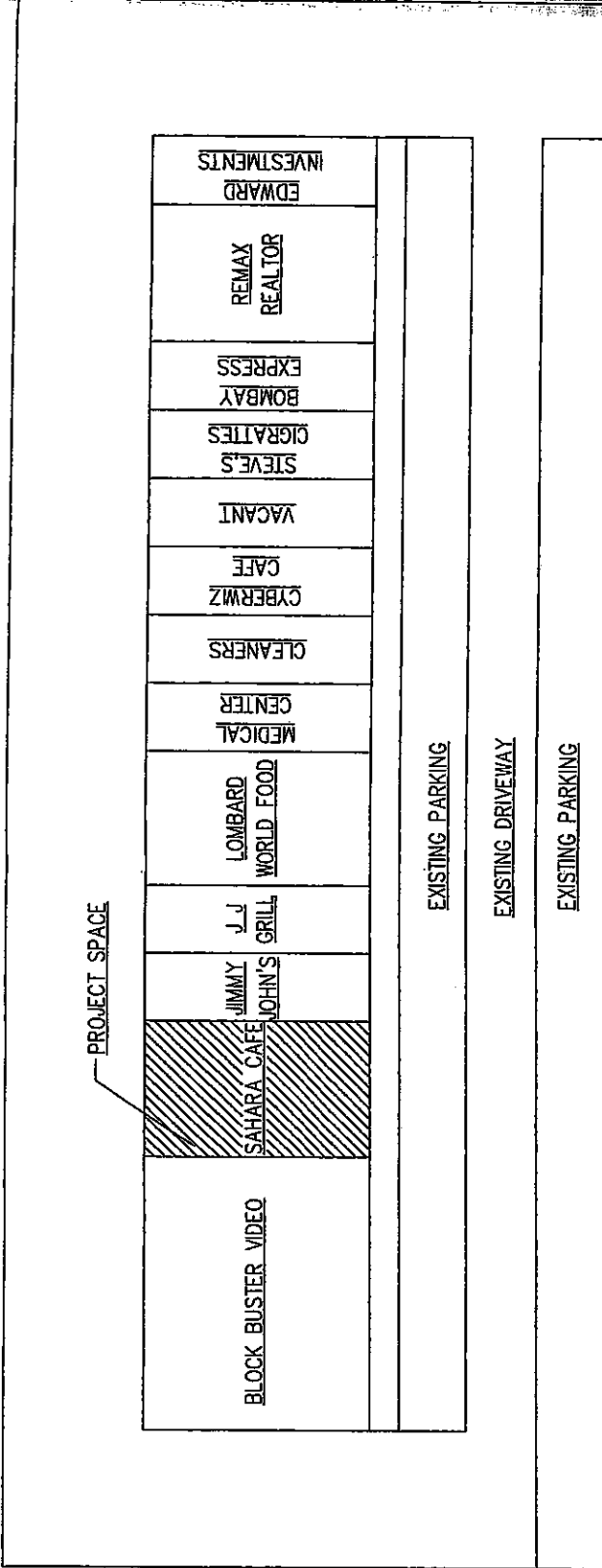
3. There is no perceived non-conformity that will result from the text amendment.
4. The requested text amendment provides for patrons of specific retail tobacco establishments to gather and smoke on the premises consistent with State Laws and applicable regulations.
5. The requested amendment is not inconsistent with the Comprehensive Plan as it merely combines concepts already contained therein.
6. There are no inconsistencies with Village Policy as the Petitioner has already been granted business licenses and previous rulings do not contain similar factual circumstances.

Petitioner will provide a check directly to you for this requested action.

Thank you for your kind assistance in this matter. Please do not hesitate to contact me if need anything further.

Respectfully,


Russell P. Rasche



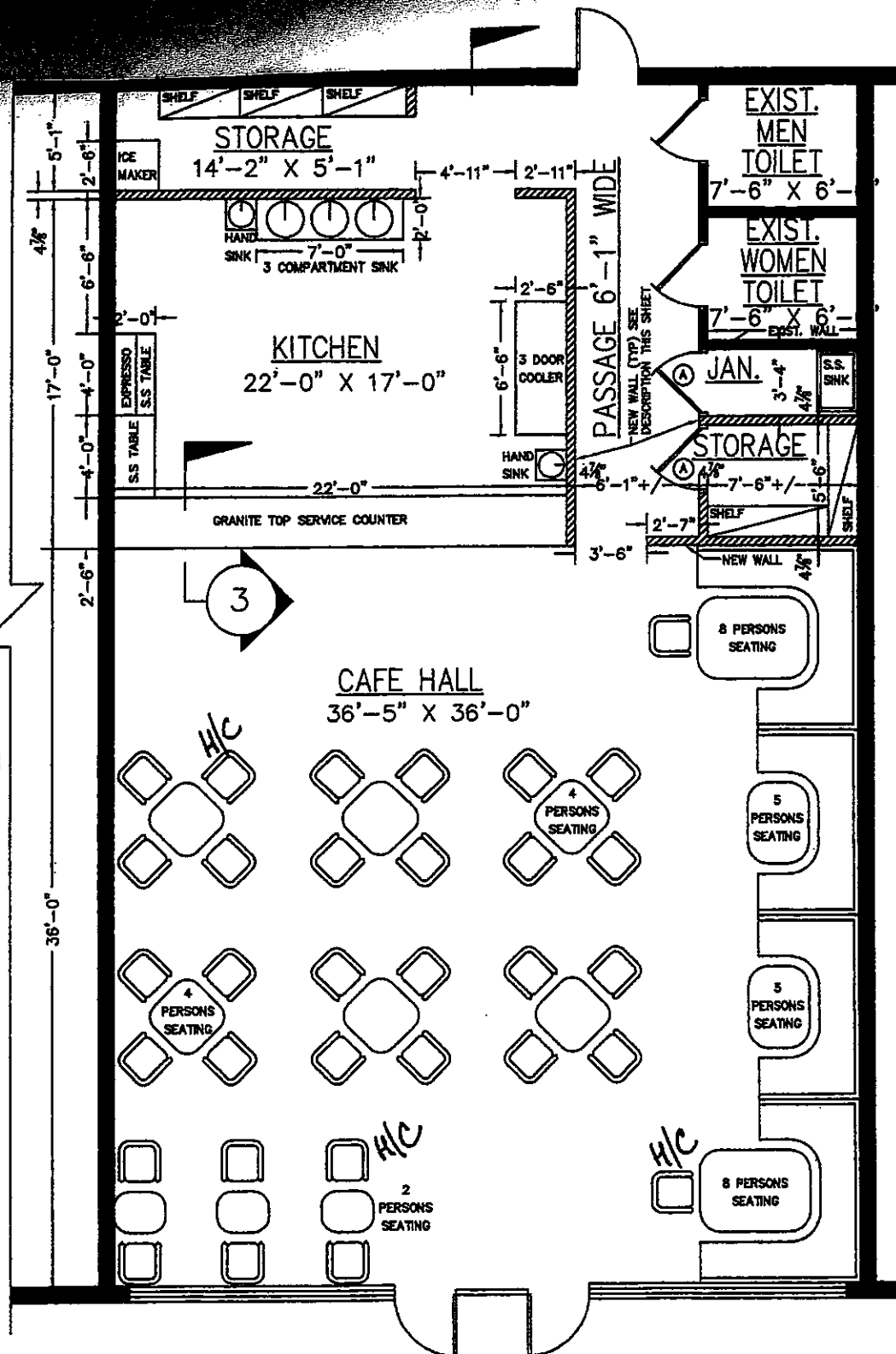
JEFF LUBE

MAIN STREET (LOMBARD)

KEY PLAN & LOCATION PLAN

0 SCALE

REQUIRED



3 SEATS NEED'D FOR
H/C SEATING.
(SUGGESTED SHOW)

ROOM FINISH:

FLOORING: CERAMIC TILES "SIENNA" MODEL 12"x12" SIZE.

WALLS: (1) COAT PRIME PAINT + (1) COAT SIMI GLOSS WASHABLE.

CEILING : @ KITCHEN VINYL COATED ACCOUSTICAL TILES AND
OTHER AREAS ACCOUSTICAL TILES

WALL BASE: CERAMIC TILE.

PARTIAL FIRST FLOOR PLAN

ORDINANCE _____

**AN ORDINANCE APPROVING TEXT AMENDMENTS
TO THE LOMBARD ZONING ORDINANCE
TITLE 15, CHAPTER 155 OF THE CODE OF LOMBARD, ILLINOIS**

(PC 09-17: Allowing “Smoking Establishment” to be listed as a conditional use within the B4A – Roosevelt Road Corridor District.)

WHEREAS, the Village of Lombard maintains a Zoning Ordinance which is found in Title 15, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, Section 155.102 (E)(13) of the Zoning Ordinance directs the Director of Community Development to initiate a review of the provisions established within the Zoning Ordinance; and

WHEREAS, the Board of Trustees deem it reasonable to periodically review said Zoning Ordinance and make necessary changes; and

WHEREAS, as the Director has identified and recommends text amendments to the Zoning Ordinance as set forth herein; and

WHEREAS, a public hearing to consider text amendments to the Zoning Ordinance has been conducted by the Village of Lombard Plan Commission on July 20, 2009 pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the text amendments described herein; and,

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That Title 15, Chapter 155, Section 400, of the Code of Lombard, Illinois is hereby amended to read in part, as follows:

SECTION 4: DISTRICTS

155.417 “Roosevelt Road Corridor B4A District Requirements”

Ordinance No. _____

Re: PC 09-17

Page 2

2. Conditional Uses. The following uses are considered conditional uses and shall be subject to the provisions set forth in Section 155.103 (F) of this Ordinance.

a. Retail Uses

1. Amusement establishments, outdoor

2. Gasoline sales (or any expansion of a principal, secondary or ancillary use on the same lot as a gasoline sales establishment)

3. Motor vehicle sales

4. Outside display and sales of products the sale of which is a permitted or conditional use in this district

5. Outside service areas for other permitted or conditional uses in this district

6. Restaurants, which include entertainment, dancing, and/or amusement devices

7. Recreational vehicle sales

b. Service Uses

1. Animal hospitals and kennels

2. Banks and financial institutions

3. Clubs and lodges, nonprofit and fraternal

4. Collection Center, Attendant

5. Day Care Center

6. Drive-through and drive-in establishments/services

7. Learning Centers, with outdoor component

8. Motor vehicle repair

9. Motor vehicle service

10. Photographic processing business

Ordinance No. _____

Re: PC 09-17

Page 3

11. Therapeutic massage establishments (as defined and regulated by Chapter 12, Section 122 of the Code of Ordinances)

12. Recreational vehicle sales

13. Religious Institutions

14. Smoking Establishments (in conformance with Illinois Smoke Free Act, 410 ILCS 82/1 et seq)

c. Other Uses and Activities

1. Dwelling Units, located above the first floor, where all the requirements of Section 155.412(B)(1) of this Code are not met.

2. Off-site parking, in conformance with Section 155.602(A)(3)(b) of this Ordinance

3. Parking lots and structures, as the principal use of the property

4. Planned developments in conformance with Section 155.500 of this Ordinance

5. Public utility and service uses

6. Four (4) story buildings and buildings which are forty feet (40') to forty-five feet (45') in height.

7. Shopping centers, consisting of more than one principal business on a zoning lot

8. More than one principal building on a zoning lot

9. Accessory uses and buildings, incidental to and on the same zoning lot as the conditional use, which are constructed and operated in conformance with Section 155.210 of this Ordinance.

SECTION 2: That Title 15, Chapter 155, Section 802, of the Code of Lombard, Illinois is hereby amended to read in part, as follows:

SECTION 8: RULES AND DEFINITIONS

155.802 "Rules and Definitions"

"Smoking Establishment" is an establishment, which, as its principal business purpose, is dedicated to the on-premises smoking of tobacco products or other legal substances and is regulated through the Illinois Smoke Free Act, 410 ILCS 82/1 et seq.

Ordinance No. _____

Re: PC 09-17

Page 4

“Tobacco Shop” is a retail establishment that sells pipes, pipe tobacco, cigars and cigarettes, which does not include the tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food or restaurant license and is regulated through the Illinois Smoke Free Act, 410 ILCS 82/1 et seq.

SECTION 3: 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 _____, 2009.

First reading waived by action of the Board of Trustees this ____ day of _____, 2009.

Passed on second reading this ____ day of _____, 2009.

Ayes: _____

Nays: _____

Absent: _____

Approved this ____ day of _____, 2009.

William J. Mueller, Village President

ORDINANCE NO. _____

**AN ORDINANCE GRANTING A CONDITIONAL USE
PURSUANT TO TITLE 15, CHAPTER 155, SECTION 155.417
(G)(2)(b)(14) OF THE LOMBARD ZONING ORDINANCE**

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

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title 15, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, the Subject Properties as defined below is zoned B4A – Roosevelt Road Corridor District; and,

WHEREAS, an application has been filed requesting approval of a conditional use, pursuant to Section 155.417 (G)(2)(b)(14) of the Zoning Ordinance, to allow a “Smoking Establishment” at the property described below in Section 2; and

WHEREAS, a public hearing on the forgoing application were conducted by the Village of Lombard Plan Commission on July 20, 2009 pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the conditional use described herein, subject to conditions; and,

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That a conditional use from Section 155.417 (G)(2)(b)(14) of the Zoning Ordinance, to allow a Smoking Establishment is hereby granted for the Property, as described in Section 2 below and subject to the conditions set forth in Section 3 below.

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SECTION 2: The approval granted in Section 1 above shall be limited and restricted to the property located at 1221 S. Main Street, Lombard, Illinois and legally described as follows:

THE WEST 220 FEET OF THE NORTH 660 FEET (EXCEPT THAT PART OF THE EAST 70 FEET WHICH IS THE ROOSEVELT ROAD RIGHT OF WAY AND EXCEPT THE WEST 150 FEET OF THE NORTH 190 FEET AND EXCEPT THE WEST 50 FEET OF THE SOUTH 470 FEET THEREOF) OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

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SECTION 3: The conditional use, as provided for in Sections 1 of this Ordinance shall be granted subject to compliance with the following conditions:

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.

SECTION 4: This Ordinance, upon approval, shall be recorded by the Village with the Office of County Recorder.

SECTION 5: 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 _____, 2009.

First reading waived by action of the Board of Trustees this ____ day of _____, 2009.

Passed on second reading this ____ day of _____, 2009, pursuant to a roll call vote as follows:

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Ayes: _____

Nayes: _____

Absent: _____

Approved by me this _____ day of _____, 2009.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Published in pamphlet from this _____ day of _____, 2009

Brigitte O'Brien, Village Clerk