

# Village of Lombard

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



## Meeting Agenda

**Thursday, February 18, 2010**

**7:30 PM**

**Village Hall Board Room**

## **Village Board of Trustees**

*Village President: William J. Mueller*

*Village Clerk: Brigitte O'Brien*

*Trustees: Greg Gron, District One; Keith Giagnorio, District Two;*

*Zachary Wilson, District Three; Peter Breen, District Four;*

*Laura Fitzpatrick, District Five; and Bill Ware, District Six*

**I. Call to Order and Pledge of Allegiance****II. Roll Call****III. Public Hearings****IV. Public Participation****V. Approval of Minutes****VI. Committee Reports**

Community Relations Committee - Trustee Laura Fitzpatrick, Chairperson

Economic/Community Development Committee - Trustee Bill Ware, Chairperson

Environmental Concerns Committee - Trustee Dana Moreau, Chairperson

Finance Committee - Trustee Zachary Wilson, Chairperson

Public Works Committee - Trustee Greg Gron, Chairperson

Transportation & Safety Committee - Trustee Dick Tross, Chairperson

Board of Local Improvements - Trustee Richard J. Tross, President

Community Promotion & Tourism - President William J. Mueller, Chairperson

Lombard Historical Commission - Clerk Brigitte O'Brien

US Census Complete Count Ad Hoc Committee - Trustee Laura Fitzpatrick,  
Chairperson

**VII. Village Manager/Village Board Comments****VIII Consent Agenda**

.

**Payroll/Accounts Payable**

A. [100059](#) Approval of Village Payroll  
For the period ending January 30, 2010 in the amount of \$856,740.94.

B. [100060](#) Approval of Accounts Payable

For the period ending February 5, 2010 in the amount of \$173,922.29.

- C. [100070](#) Approval of Accounts Payable  
For the period ending February 12, 2010 in the amount of \$381,751.59.

### Ordinances on First Reading (Waiver of First Requested)

- D. [090025](#) ZBA 03-27: 25 E. North Avenue  
Granting a further time extension of Ordinances 5423, 5605, 5809, 5995, 6147, 6303 and 6443 relative to further extending the time period in which to start construction until December 31, 2012. (DISTRICT #4)

**Attachments:** [Ordinance 6303.pdf](#)  
[Ordinance 6443.pdf](#)  
[090025.pdf](#)  
[090025.pdf](#)  
[Cover Sheet Extension7.doc](#)  
[DAH 7th extension memo.doc](#)  
[090025.pdf](#)  
[Ordinance 6484.pdf](#)

- E. [100049](#) Oak Creek East of Springer  
Staff recommendation to prohibit parking on the north side of Oak Creek Drive east of Springer. Committee requests a waiver of first. (DISTRICT #2)

**Attachments:** [100049.pdf](#)  
[Ordinance 6444.pdf](#)

*Kalisik reviewed the item. Difino commented that they are just going to move elsewhere. Johnson replied that it will at least move them east where there are not as many loading docks. Snead suggested that both sides of the street be posted there. Chairperson Tross requested that this be put on the Board of Trustees agenda for February 18th requesting a waiver of first reading.*

- F. [100055](#) Liquor License Amendment - Adobo Grill Yorktown, 356 Yorktown  
Amending Title 11, Chapter 112 of the Village Code reflecting a decrease in the Class A/B-III liquor license category due to the closure of Adobo Grill Yorktown. (DISTRICT #3)

**Attachments:** [Ordinance 6445.pdf](#)  
[100055.pdf](#)

### Other Ordinances on First Reading

- G. [080693](#) PC 08-32: 215 and 220 S. Lincoln Street (St. John's Evangelical Lutheran Church & School/Creative Day Care)  
Granting a time extension of Ordinance 6306 extending the time period for construction of the conditional use for an additional 12 months. (DISTRICT #1)

**Attachments:** [PUBLICNOTICE.doc](#)  
[APO LETTER FOR 08-32.doc](#)  
[Cover Sheet.doc](#)  
[Cover Sheetremand.doc](#)  
[DAH referral memo contin.doc](#)  
[DAH referral memo PC 08-32 Remand.doc](#)  
[DAH referral memo PC 08-32.doc](#)  
[PC memo items 1-26-08 remand.doc](#)  
[Referral Letter 08-32.doc](#)  
[Remand Referral Letter 08-32.doc](#)  
[Report 08-32\(Final\).doc](#)  
[Ordinance 6306.pdf](#)  
[Extension.doc](#)  
[Ordinance 6449.pdf](#)  
[080693.pdf](#)  
[080693 memo.pdf](#)  
[080693.pdf](#)  
[080693 memo 12-4.pdf](#)  
[080693 memo 12-12.pdf](#)  
[080693.pdf](#)

*William Dennis, husband of Cheryl Holtz (owner and operator), 442 N. Park Ave., Lombard, presented the petition. He stated that he and his wife have been residents for twenty years. Creative Day Learning Center was opened in 1981 in Villa Park and has been operating for twenty-six years. An expansion of another program in Villa Park led them to seek another place to operate their business and they have been out of the Villa Park location since July actively looking for another space. He stated that they have always wanted to do business in Lombard and that they have not found an acceptable space other than the proposed space.*

*He stated that they wish to occupy the old school across the street from the new school building at St. John's. He stated that Creative Day approached St. John's looking for space rather than the other way around. A friend of theirs had mentioned that there was empty space in the old school. They had discussions with St. John's and afterward it was decided that they could take two rooms on the first floor. He stated that state agencies such as DCFS, the Health Department, and state Fire Marshal had inspected the areas they proposed to occupy. The state agencies were considerate of time constraints involved and after going through the school, it was determined they could occupy the first floor with some modifications. State regulations mandate that as of October 1st they have to conform to strict standards for kitchens similar to restaurants - it has to be a fully commercial kitchen and the heat and smoke detectors and strobes must run throughout the building. Creative Day plans to do this.*

*Mr. Dennis stated that Creative Day only plans to have 40 students. He mentioned concerns about bathrooms and sprinkling and stated that they could never expand to the third floor as it would require sprinkling and Creative Day*

couldn't absorb that cost. After talking to state agencies, they were told that if they stayed on the first floor, there would be adequate windows for egress.

They were informed about applying for the conditional use after coming to the Village. They had initial meetings with all the departments and staff told them what they needed to do. David Hulseberg and other heads of departments asked questions and they were answered. The answers seemed to be adequate. Recently, they were informed it was strictly a zoning issue of putting a for-profit business in a residentially zoned area. In order to address that issue, you have to look at that area and the property to understand that the area is not predominately residential in nature. He mentioned churches, the library, parking lots, condominiums and homes. He stated that he had received the letter of complaint sent by Ms. Ness. He stated that they were informed about the contentions concerning the new school so they walked the area on Ash Street and talked to residents including Mrs. Ness. Other than Mrs. Ness and one of her neighbors who had concerns about St. John's in general, no one had any concerns in the immediate area about the proposal. A few were actually glad.

Mr. Dennis asked how this could be a precedent. They found out about the decision to recommend denial earlier this week. He believes there are private day center centers in churches elsewhere in Lombard and mentioned The Growing Place on Madison. He stated that there are many large home day care facilities and mentioned websites that take groups within that area in homes. He also mentioned other facilities in other communities that have this situation.

Regarding the tax situation at the church, he stated that would be handled easily. The church will have an income from this which would be no different than them renting out their hall. From previous experience with churches, the church understands they have to pay tax on that and that has not been an issue. He stated that the request will not set an undue hardship or precedent for this community. This use is compatible with the area and what is across the street. He again stressed that Creative Day approached the church looking for space. This area has the green space that they require for the day care. He stated that they were asked to cap at forty children and are agreeable to that as Mrs. Holtz wants to keep it small. She likes to have a personal relationship with the kids and their parents. She is not an absentee director -she is always there. He mentioned that the church may have inadequacies but stated that he could not speak for the church.

Mr. Dennis then referred to an architect stamped building plan which shows the improvements they will be making. He indicated that the architect put the basement as the first floor. The kitchen will have a commercial grade triple sink, prep sink, convection oven, and freezer and refrigerator. The remainder of the kitchen would be used by St. John's. The lunchroom would be shared with other uses by the church. He stated that they do not need to have upgraded toilets right in the room which satisfies the state agencies. He referred to the removal of walls on the second floor and the doorways that would have to be cut to make way to the bathroom. The concern about going through load-bearing walls is non-existent. Creative Day will use classroom number one and over time would move into the second classroom as enrollment became bigger.

He stated that with regard to fire equipment there are pull stations and emergency lighting. Smoke detectors and strobes will be put in the gym and down each hallway. There will be one in each stairwell, one in each classroom, and one in bathroom. The windows are of sufficient diameter should they need egress. Air conditioning would also be put in each classroom.

Mr. Dennis indicated that a schedule could be worked out to use the playground in the back of the building. CDC has an active curriculum as mandated by DCFCS and the state. There is a library across the street which could be used. Mrs. Holtz also likes to take field trips on the train and would utilize some things in the area like the pool at Moran Water Park. He stated that the amenities in the area are conducive to her business. He mentioned Lilacia Park. He emphasized again the area is very conducive to the type of drop off and pick up they will be conducting. He mentioned the traffic study which came back favorably. St. John's has a very structured drop off and pick up and he explained the procedure. He mentioned their major drop off time would be from 7 a.m. to 8:15 a.m. with pick up time being after 4:00 p.m. resulting in minimal overlap. He mentioned that the eight spaces on Lincoln Avenue can't be counted toward parking but they can be used. He stated that there are more than enough spaces to accommodate both the school and the day care. He stated that staff has said there should be four spots reserved for Creative Day in the parking lot. He stated that the parish administrator said there would be no problem with this.

Mr. Dennis discussed the variation for parking. He stated that the church does not have uses that overlap with the day care times. There may be a rare funeral which might overlap. The parking spaces are not being used at the same time.

Creative Day will use two classrooms and will have four teachers. He mentioned the things they have already done to improve the space. They painted one of the rooms and kitchen at a cost of about \$4,000. They have received estimates from Fox Valley for fire equipment. He had contacted a carpenter and plumber for the kitchen and wall break outs. They have had the locks changed on doors. They have paid for a traffic study and the application. He estimated they have spent \$10,000 to get to this point of preparing to occupy the space. He stated that he hopes the Commissioners look at all the issues and the nature of the immediate neighborhood. He felt that this use would not adversely affect the residential neighborhood as this proposal will not set a precedent as The Growing Place has been there for 30 years. He stated that several home day cares are within the vicinity. Unless staff has done research, there are these types of small businesses in homes or in churches that have the same impact on the community.

Chairperson Ryan then opened the meeting for public comment.

Tracy Bingham declined to speak.

Kenneth Bohl, 213 W. Ash St., stated that he lives three homes west of Lincoln on Ash. He stated that as a neighbor, his impression of Creative Day is that it is a fine organization. He has met and was very impressed with William and Cheryl and wishes them the best. He indicated that he takes exception that this is the place for their business and had three concerns.

Mr. Bohl believes the old building to be inadequate. He believes the proposal is lacking handicap accessibility and does not see it addressed in the proposal. This is the law. This is a new use proposed for the building and therefore, should be brought up to compliance. There are also issues with fire escape. It was stated two years ago that this was inadequate. Escaping from the window would mean taking a flying leap out of the windows and he felt that should not be part of the plan. He asked if St. John's tax advantages as a religious institution had been addressed as this represents an unfair competitive

*advantage over day cares in private facilities. He stated that if they are to have forty children there is an overlap with the school regarding parking. He stated that he has seen the review group report that some study has been done and that the parking is adequate. He indicated that as a neighbor, he has tried to get out in time of traffic congestion and has been totally frustrated. The reality is that people are stopped waiting blocking the street.*

*Chairperson Ryan asked if anyone would speak in favor of the petition.*

*Janet Imbrogno, 14 Lincoln Court, stated that she had come in support of the petition and that she would like to read a letter of support from another woman that could not attend. The letter was from Alice Glennon, 331 W. Brookfield Street. She stated that she has lived in Lombard for thirteen years and is raising three children. She has known the petitioners for ten years, they have lived in Lombard for twenty-one years, and have been on many committees. She understands the concerns about the proposal but asked how many other businesses are in that area? Creative Day is unique and gives a personal touch. It gives the young children a home away from home feeling with a great environment. Mrs. Holtz's business will bring in more revenue while they will use other community facilities. It will be a great asset. The letter stated that she had witnessed the owners and their relationships with kids who used to go there.*

*Ms. Imbrogno stated that she has knows both of the petitioners and that they were looking for a place in Lombard. She said she was trying to help and it was her idea that they approach St. John's. She stated that Cheryl is Lutheran and a thoughtful person and she knows how thoughtful St. John's has been in Lombard. She stated that she thought it was the perfect fit, and she hopes that it can be worked out.*

*Karen Ness, 219 W. Ash St., stated that she had submitted a letter with complete objections. She stated that this is a for-profit business wanting to operate in a non-profit, non-commercial area. She asked if a request like this one was ever approved before. She asked should the action be approved could any owner be allowed to operate a commercial business on their property. She mentioned the parking plan that St. John's has and stated that she wished they would use it. She mentioned how she used to live in a residential area before St. John's decided to expand. She stated that property values continue to drop because of St. John's intrusion.*

*Mr. Dennis offered to respond to the comments made. With regard to the ADA, the petitioners had not heard back from them. However, they had talked to state agencies and it was not deemed necessary to be handicap accessible to operate in that building. With regard to the windows, the egress is for firemen to get to the children and get them out. If they had to one could hold a child's arm and lower them to the ground. With regard to parking overlap, there will be four spaces taken all day. The rest is used for drop off and pick up. All forty kids will not be dropped off or picked up at one time. Part of the problem with Ash Street is that the parking on Ash is from the condos across the street who also park in St. John's. With regard to tax advantages, he stated that Creative Day will pay rent just like anywhere else and that St. John's is looking into property taxes. There is no competitive advantage; it's just that this space is open and there are no other sufficient green spaces in Lombard. Creative Day will have four dedicated parking spaces with signs within the parking lot of St. John's. With regard to this being a residential area, he stated that while Creative Day is a business, it is also a school. The Village of Lombard chooses to zone churches as residential and this is like a campus. There are more parking*

spaces than there are buildings on that block. He stated that to say this is a purely residential zoned area is a misnomer.

Chairperson Ryan then requested the staff report.

Stuart Moynihan, Associate Planner, presented the staff report. Staff has prepared a report and is submitting it to the public record in its entirety. Additionally, staff has received from the petitioner: a letter from the petitioner, five letters of support, and an interior plan to be submitted to the record.

The petitioner, Creative Day Learning Center, is proposing a private, commercial day care center at the former site of the St. John's Lutheran School, 215 S. Lincoln Avenue. The petitioner wishes to occupy two classrooms and an office within the "old school" building on the east side of Lincoln Avenue. The petitioner will also use the kitchen, gymnasium, and outdoor play areas at the old school building. The petitioner states that the Illinois Department of Children and Family Services has reviewed Creative Day Learning Center's proposal to accommodate forty (40) children with four (4) employees. Pursuant to Ordinance 5665, which established the planned development, a conditional use amendment, use exception and parking variation are required.

Both public and private schools are listed as conditional uses within all residential zoning districts in the Village. Day care centers have not been established by the Zoning Ordinance as appropriate uses within residential zoning districts as they are listed neither as permitted uses nor conditional uses. Day care centers, being commercial enterprises are listed only as conditional uses, only within commercial zoning districts.

In 2005, the Board of Trustees approved Ordinance 5665 granting a conditional use for a planned development along with a parking variation to allow the construction of a new private elementary school at 220 S. Lincoln Street, located directly west of the subject property. During the public hearing process, the property owner indicated that the old school building was outdated and generally an inadequate learning facility for children. Due to this testimony, one of the conditions of Ordinance 5665 required that any proposed day care facilities, pre-school activities, or elementary school activities within the old school building proceed as an amendment to the conditional use for a planned development. Therefore, the Village would have the opportunity to review proposals for any such uses. In addition, since day care centers are not listed as a permitted or conditional use within the underlying R2 Single-Family Residence District zoning on the subject property, a use exception is necessary as well.

Creative Day Learning Center plans to lease space from St. John's Lutheran Church within the old school building. Staff has concerns that these facilities remain outdated and inadequate for educational uses as was represented during the previous public hearing.

Staff notes that during a comprehensive review of the property, an item of concern has arisen. According to the property owner, a second church has been meeting within the old school gymnasium. The parish administrator has indicated that this church meets on Sunday from 2:00 p.m. until 5:00 p.m. The church, Rehoboth Empowerment Christian Church, is not affiliated with St. John's Lutheran but is allowed to use the gymnasium space for free. As this use is not consistent with the conditions of approval of Ordinance 5665, the property owner has been informed that a conditional use amendment would be



*necessary to allow the church to continue its current operation within the old school building. In the alternative, the second church could move its worship service into the church building without the need for zoning relief.*

*Ordinance 5665 also granted a variation from the required number of parking spaces on the subject property. As the proposed day care center would be a new use not providing any new parking spaces on the property, a further parking variation is necessary.*

*The Zoning Ordinance considers each use within the overall development as a separate and distinct use for which parking would need to be provided. Although the existing parking lot serves both the church and school, primary parking demand on weekdays is generated from the school activities and not the church.*

*The Zoning Ordinance requires that a day care center provide two (2) spaces per one thousand (1000) square feet of floor area. As the two classrooms and office proposed to be occupied by Creative Days total 2011 square feet in area, the petitioner would need to provide four (4) additional parking spaces.*

*The Village's traffic consultant KLOA has conducted a review and has indicated that a day care center of this size would have a peak parking demand of seven (7) spaces including a constant demand of four (4) parking spaces for employees. KLOA finds that these spaces could be accommodated within the parking area in the adjacent right-of-way or the southern parking lot.*

*Staff has reviewed the operations of the proposed day care center for compatibility with surrounding land uses. As part of this review, staff has considered that the area surrounding St. John's Lutheran Church/School site is particularly sensitive to intensified uses as many of the properties are residential.*

*The petitioner has stated that the proposed use would operate in a manner similar to the school which previously occupied the building but on a smaller scale. It is staff's opinion that although a private day care facility may operate in a similar manner, the use is inherently different as a commercial entity. It is the goal of most commercial businesses to grow into larger, more profitable businesses. Staff believes that the St. John's campus has reached its usage capacity and that an introduction of new uses may adversely affect the neighborhood.*

*KLOA reviewed the proposed development and visited the site to determine the impacts of the proposed use.*

*The petitioner proposes to conduct drop-off and pickup activities within eight public parking spaces on the eastern side Lincoln Avenue. During drop-off and pickup activities, parents will enter the old school building to bring their children to or retrieve them from the classrooms. According to the petitioner, the primary times for drop-off will be between 7:00 and 8:00 a.m. and for pickup between 4:00 and 5:30 p.m.*

*KLOA finds that the existing drop-off and pickup procedures currently utilized by St. John's work well, causing little conflict on adjacent rights-of-way.*

*KLOA has recommended that some spaces within the southern parking lot be allocated for Creative Day drop-off and pickup as an alternative to the public*

*spaces located Lincoln Avenue should those spaces be occupied.*

*The proposed use is contrary to the objectives of the current Comprehensive Plan. As previously stated, the Comprehensive Plan identifies the property for public and institutional uses. The introduction of a commercial entity onto a property which is intended to be used for public and institutional uses sets a precedent not only for that property but other such properties as well. It is staff's concern that the old school building will eventually begin to serve a truly commercial function through the proposed day care use, its future growth, or the introduction of other business entities.*

*Staff is not supportive the conditional use amendment to the planned development and use exception as the request does not meets the following standards as required by the Zoning Ordinance:*

*A. Standards for Conditional Uses*

*2. That the conditional use will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, not substantially diminish and impair property values within the neighborhood in which it is to be located.*

*As the subject property is located in a primarily residential area, the establishment of additional entities, commercial or otherwise, does have the potential to be injurious to the enjoyment of other property in the immediate vicinity and to diminish property values. Staff believes that as the subject property, which currently supports multiple uses, nears its operational capacity, this potential becomes greater.*

*6. That the proposed conditional use in not contrary to the objectives of the current Comprehensive Plan for the Village of Lombard. The Comprehensive Plan identifies the property for public and institutional uses. Staff finds that, from a land use perspective, a commercial day care center as proposed would be not compatible with the religious/institutional uses on the property.*

*B. Standards for Planned Developments*

*General Standards*

*4. That the proposed planned development is in the public interest and is consistent with the purposes of this Zoning Ordinance.*

*Staff finds that the petitioner's proposal is not within the public interest as the potential for incompatibility with surrounding land uses outweighs the potential public benefit.*

*Standards for Planned Developments with Use Exceptions*

*1. The proposed use exceptions enhance the quality of the planned development and are compatible with the primary uses.*

*Staff finds that the proposed use may diminish the overall quality of the planned development as the proposed use has the potential to interfere with the operations of the existing uses. The addition of the proposed use is not expected to benefit the existing uses (other than financially).*

2. *Proposed use exceptions are not of a nature, nor are located, so as to create a detrimental influence in the surrounding properties.*

*For the reasons stated above, staff finds that the use will potentially have a detrimental influence to the surrounding properties.*

*Staff does not believe that the Standards for Planned Developments and Standards for Conditional Uses have been met. However, in the event that the Plan Commission finds that the standards required by the Zoning Ordinance have been met and that the proposed use will enhance the planned development, it is staff's opinion that a recommendation for any favorable action should include the five conditions in the staff report.*

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

*Commissioner Sweetser stated that the staff report and testimony equate "private" with "for profit" which is inaccurate and hampers an accurate analysis of this petition. Some of the daycare centers referred to in the staff report may be commercial enterprises, such as KinderCare, but other are 501(c)(3)s. We should look at the kind of operation, regardless of how it may be classified. This petition, being capped at 40 by mutual agreement, is not growing, so it is not truly commercial as the staff report states.*

*Commissioner Olbrysh stated that the petitioner had addressed a lot of his concerns. The history of this site goes back several years. He recalled that when he questioned the petitioner a few years ago as to what was wrong with the old building, St. John's replied that it would be better than trying to correct an old, old building. He stated that one of his concerns, as set forth in staff report, is about code enforcement and life safety issues in the old building. He stated that he must go back to the church and why they couldn't use the old existing building. He indicated that he does not think they should force anything new on the neighborhood. He has driven down that block in the afternoon and the traffic is a disaster. He mentioned all the amenities and they are private uses. He has major concerns about it being a commercial endeavor as well as the life safety issues.*

*Commissioner Cooper stated that she was not part of the new school discussion and what the future intention for the old school was.*

*Chairperson Ryan answered that one of the things discussed at great lengths at that time was that the old building could only be used for storage and meeting rooms and that it would not be used for anything for kids. He asked staff to look at the previous discussions.*

*Mr. Moynihan read condition #2 of Ordinance 5665:*

*That upon the opening of the new school, the existing school building shall be used exclusively for capital plant, storage purposes, offices and/or meeting space. Should the petitioner or any subsequent property owners seek to operate uses such as, but not limited to, day care facilities, pre-school activities or elementary school activities within the old school building, a conditional use amendment will be required.*

*Commissioner Flint stated that his initial thought was that this use would be*

*similar to First Church where there is a day care and nursery co-op. One of his concerns is the life safety issue which needs to be dealt with. ADA compliance is also an issue and that should be brought up to code.*

*Commissioner Sweetser stated they should give credence to the state agencies. She asked if that was something that the Plan Commissioners should accept or if it was their responsibility to question them and find out additional information.*

*Mr. Heniff stated that a building permit and a Certificate of Occupancy would be necessary. This would force the petitioner to bring these issues up to code. The applicability of ADA requirements would be determined.*

*Commissioner Sweetser stated that there should be no question one way or another. She asked if they would have to meet these requirements and if they should condition it or not. Mr. Heniff stated that this was accurate.*

*Commissioner Sweetser said the ordinance speaks about St. John's intention to have a day care center. She asked if that was the case. Mr. Moynihan stated that St. John's has stated that they have no plans to start their own day care center.*

*Mr. Heniff stated that the request is for a conditional use amendment to the planned development. The provision applies to the property and that is why the term "St. John's or any subsequent property owner" was included.*

*Chairperson Ryan asked if that could be why ADA doesn't have to be brought up to code. Commissioner Sweetser stated that we can't assume that. She stated whatever needs to be done, needs to be done.*

*Chairperson Ryan indicated that if the ownership still reflects St. John's that could be the reason why the ADA requirements would be grandfathered.*

*Mr. Heniff stated that if it is determined they need to meet ADA requirements then they will have to.*

*George Wagner stated that it could be added as a condition of approval.*

*Commissioner Flint stated that they could condition accessible toilets, getting to the classrooms, etc.*

*Mr. Wagner stated that the ADA applies where there is new construction or repairs over a certain amount. He stated he doesn't think it is related to the owner.*

*Chairperson Ryan stated that he believed that the number is over fifty percent of the cost of the building. That is why it becomes an important point. It says it's fifty percent of the cost of the value of the building. The petitioner is talking about two classrooms; their remodeling could be waived if correct. He asked staff if that was their understanding.*

*Mr. Heniff stated that he did not know the full provisions. If they are obligated to make those changes through the IAC and ADA requirements for new businesses, then they will complete the improvement prior to occupancy.*

*Chairperson Ryan stated that using the fifty percent rule they will never be required to make those improvements.*

*Commission Cooper stated that in looking at the land use plan, the comments from the staff report indicate that this is a residential area. She stated that to the north is all green space and to the east of property it's residential and institutional. Three blocks south it's multifamily. She would beg to differ with the comment that this is primarily a residential area. There are a lot of synergies with the land uses. She stated that when she personally thinks of safety, you want eyes on the street. Bringing people to this vacant building could make it a safer more welcoming community.*

*Commission Sweetser suggested that they add one extra condition to require that the areas being used by the petitioner be brought into compliance with full ADA standards. Specifically, she indicated the two classroom spaces, the kitchen, bathrooms, and entrance and exit.*

*Bill Dennis, 442 N. Park, stated he was speaking on behalf of his wife Cheryl Dennis who was the owner of Creative Daycare and had owned the business since 1981. He stated his wife wanted to expand her business and had been looking for the right location with no success until the opportunity at St. John's became available. He stated they have to receive certification from the State, the Department of Children and Family Services and the fire marshals and building inspectors. He indicated he, by marriage, inherits part of the responsibility of the daycare. He noted that Sacred Heart and St. John have a close working relationship and help each other out. He had heard through a friend of this possible location at St. John's. He reported that the daycare must have 100 square feet of space for each child which is required and has been difficult to find. St. John's has a couple of rooms that could be utilized and each agency has approved the proposed day care to allow 20 children per room. He indicated St. John's old school was not adequate for the student population of 200, but that the rooms are adequate for the daycare. He noted the bathroom by the office can be utilized for daycare as well. He noted it was difficult to find a place with all the amenities, and the size of the daycare business would make this location feasible. He stated the Methodist Church next door has a daycare and the Growing Place Daycare on Madison is also privately owned. He asked the Village Board if they had any suggestions for another location with the amenities and stated it was difficult to find such a place. He felt this business was consistent with the use of the facility by St. John's. He indicated their daycare will not have over 40 kids. He reported he had spoken to neighbors in the area and most had no problem with the daycare proposal. He was aware of the residential area, but also noted the proximity to downtown. He did not feel that approving this proposal would set any precedent. He did indicate that window air conditioners could be used in the two rooms. He also spoke regarding the ADA compliance and felt there was a considerable expense in complying with handicapped accessibility. He noted that in 26 years, they have not had one handicapped child in the daycare. He did state that ADA compliance was not a life safety issue. He spoke about the lock-down procedure and not wanting to keep people out of the building, but keep people from roaming. They will provide a security system and buzz people in after viewing them on the monitor. He felt there would be a minimal increase in traffic as St. John's School is already there. He stated parents will drop off their kids early and go on to work and return later in the day to pick up their children. He felt there was ample parking on Lincoln for this and it would be a small price to pay for someone if they had a few minute delay. He felt there were two issues - the zoning amendment and the ADA compliance. He reminded the Board that the school, library and Historical Society were all located in close proximity. He encouraged the Village Board to approve this proposal. Cheryl Dennis declined to speak at this time.*

*John Eggersdorfer, architect, declined to speak at this time.*

*Janet Imbrogno, 14 Lincoln Court, felt the empty building at St. John's was more of a safety problem and felt allowing the daycare proposal for the site was a better solution. She praised Ms. Ness as an eloquent speaker and stated she understood how people do not like change. She stated as a child, the prairie located behind the house where she lived was developed into multi-family housing. At the time, she was against the change, but felt in the long run, it was good as now looking back, the prairie was dangerous for children. She felt the space at St. John's could not be used for anything better and more appropriate than the daycare center and was an extension of taking care of children. She also felt this was beneficial to St. John's as far as upkeep and costs. She noted that Main and Ash is commercial and this area was not truly just a residential area.*

*President Mueller indicated the public participation was concluded and asked for questions and comments from the Village Board members.*

*Trustee Gron stated there were many issues associated with this petition and going back 3-1/2 years ago when St. John's indicated they would use this space for meetings and storage. He felt there was an issue having a for-profit daycare using a not-for-profit location for business. He felt there were issues that were not resolved including 5 points from the Plan Commission. He felt this proposal was diluting the area with things that did not belong there. He also noted that it was not the job of the Village Board to find a location for the daycare and felt there were other choices for the daycare.*

*President Mueller suggested referring this petition back to the Plan Commission.*

*Trustee Tross also felt this should be referred back to the Plan Commission for further review and recommendation on all the issues.*

*Attorney Bayer indicated that Board could continue to discuss the item until a motion was made to refer the petition back to the Plan Commission and then discussion would not be allowed.*

*Trustee Gron noted the following issues regarding the proposal. Please see attached.*

*Trustee Tross stated there are daycare providers located in residential homes. He noted that as a home occupation, there are only 8 children allowed. He felt there were problems with conditions and changes to conditions that had already been granted to St. John's such as the use of the building was to be office space, storage and meetings. He inquired about the hours of operation for the daycare. He asked if the drop-off hours would be 7-8:30 am and the pick-up hours 4-5:30 pm. He felt more information was needed and asked about structured hours. He felt the regimen was not at 8 am to 4 pm routine. He also felt the Plan Commission needed additional information. He questioned if the owner of the property, St. John's, had recanted its previous position and agreement regarding the building and stated the Village Board had not heard from the property owner. He indicated the property owner had said one thing and now wants to do something else. He was not in favor of the proposal.*

*Trustee Moreau questioned the 2005 statement and potential for available change.*

*Director of Community Development Bill Heniff stated that part of the statement was that any changes would need to go through the process.*

*Trustee Fitzpatrick stated there are a number of older buildings in town and felt the ADA restrictions should be checked regarding daycare. She felt this was an excellent use for and liked the idea of using old school buildings for schools.*

*Trustee Gron felt this item should be referred back to the Plan Commission for further review of the five items he had noted plus the two additional items and the comments from the neighbors.*

*Village Manager Hulseberg indicated the next Plan Commission meeting would*

be January 26.

Stuart Moynihan, Associate Planner, presented the staff report. At the December 18 Village Board Meeting, the Village Board discussed PC 08-32 related to the evidence presented and the testimony given at the November 17, 2008 Plan Commission hearing. The Village Board determined that a complete evaluation of the petition requires further discussion regarding specific land use considerations.

As the Village Board has determined that additional testimony is necessary and that any new information should be reviewed with the Commissioners as part of the public hearing process, this petition was remanded back to the Plan Commission.

In the Village Board's remand back to the Plan Commission, the Board specifically directed the Plan Commissioners to review only seven items which will be reviewed following the meeting format.

The format of the Plan Commission meeting will be as follows:

Staff Presentation - staff will outline the reason for the Special Meeting and will note the actions to be considered as part of the meeting. Staff will provide a very brief history of the petition and will summarize the zoning actions and development regulations associated with the petition. Once completed, an opportunity to cross-examine staff by anyone in the public will be provided. The cross-examination will be limited to the items as set forth by the Village Board.

The petitioner (Creative Day Learning Center) will be given an opportunity to review their petition to the Village as it specifically relates to the Village Board remand. Once completed, an opportunity to cross-examine the petitioner by anyone in the public will be provided. The cross-examination will be limited to the items as set forth by the Village Board and shall relate specifically to the petitioner's presentation.

Upon completion of petitioner's cross-examination, the public will be offered the opportunity to speak. Once completed, an opportunity to cross-examine by anyone in the public will be provided. The cross-examination will be limited to the items as set forth by the Village Board and shall relate specifically to the presentation.

After completion of the cross-examination, the public participation period will be closed. The Plan Commissioners shall then be given an opportunity to discuss the petition. Questions may be asked to staff, objectors or the petitioner. The Plan Commission should provide a response to each of the seven questions raised by the Village Board.

The Plan Commissioners shall then vote to deny, approve or approve the petition subject to conditions. The Commissioners do have the ability to add any conditions they deem appropriate should they recommend approval. However, these conditions should be related to the items that were remanded back.

The recommendation will be forwarded to the Village Board for consideration at their February 5, 2009 meeting.

Staff has reviewed each of the items identified by the Village Board and offers the following corresponding comments:

1. *The introduction of a commercial enterprise in a residentially zoned district;*

*Staff expressed their initial concerns regarding this item within the staff report. The majority of parcels near the subject property are residentially zoned. With the exception of some properties to the east and the northeast, these properties are residential in use as well. Residential properties are particularly sensitive to other uses that draw additional traffic and activity to the vicinity. It is staff's opinion that the introduction of a commercial entity at the subject property does have the potential to adversely affect residential properties within the neighborhood. As stated within the Comprehensive Plan, "Commercial operations, including traffic, parking, loading, and business activities should not be allowed to affect neighborhood quality."*

*If the Plan Commission deems that this commercial use is appropriate and compatible with the adjacent residential zoning districts, it should make a finding as to how it is compatible.*

2. *The impacts of providing for a use exception for a separate commercial establishment within the confines of an institutional planned development;*

*But for the granting of a use exception, the proposed use is prohibited in the R2PD zoning district. The Comprehensive Plan identifies the subject property for Public and Institutional uses. The establishment of a commercial entity on the property would be contrary to the intended usage for the property established by the Comprehensive Plan.*

*The Plan Commission should make a statement noting how the commercial use is compatible with an institutional planned development.*

3. *How establishing the commercial use will enhance the previously approved planned development and would be within the public interest;*

*Staff stated that the proposed use may diminish the overall quality of the planned development as the proposed use has the potential to interfere with the operations of the existing uses. The petitioner and St. John's have stated there will be areas shared by Creative Day and other uses on the property including indoor/outdoor play areas, the gymnasium, the kitchen, lunchroom, and a downstairs bathroom. St. John's has stated that the school use on the property would take precedence over the day care center should overlapping use of these areas arise.*

*If the Plan Commission deems that this commercial use would be beneficial to the public interest, it should make a finding as to how it is within the public interest.*

4. *Consideration of precedent this action could have, for other commercial entities or uses not associated with St. John's, if they were to seek to operate on the premises;*

*If the requested relief is granted, another commercial day care operator could make use of the relief in the future, provided that they operate under the conditions of approval. The Village may have little control over who this operator might be. Further, the presence of this relief would strengthen the arguments of other commercial entities wishing to occupy space within the old*



*school building.*

*Staff has researched day care operations within Lombard that are registered with the Department of Children and Family Services. Of the ten such operations in Lombard, seven were given Conditional Uses. One operation, The Growing Place, was issued a Certificate of Occupancy as a legal non-conforming use. Another operation, Creative Montessori Learning Center, was issued a Certificate of Occupancy for a school and day care center as a continuation of the previously established Edgewood School use. Lombard Park District Kiddie Campus has not been issued a Certificate of Occupancy as a day care center. As it operates as a state licensed preschool, it would not fall under the Zoning Ordinance definition of a day care center.*

*Of the ten day care centers, three are located within residentially zoned districts. Creative Montessori Learning Center and The Growing Place were issued Certificates of Occupancy for the reasons stated above. The Nursery School of Congregation Etz Chaim was established following the approval of a Conditional Use for a Religious Institution including an associated nursery/day school operated by the religious institution itself as an ancillary use.*

5. *How can further parking variations be granted and how traffic flow can be adequately handled between the various use operations;*

*The Village's traffic consultant, KLOA, prepared a report detailing an analysis of parking and traffic circulation between the existing and proposed uses on the subject property. Within that report, KLOA stated that they did not foresee a problem with the drop off and pick-up plan proposed by Creative Day. They also suggested that the provision of some parking spaces on the south lot will ensure that no additional vehicles queue on Ash Street.*

*At this point, I would like to give Chris Stilling an opportunity to discuss his own observations.*

*Chris Stilling stated he went out that morning to observe drop off at 7:45 a.m. He indicated that stacking was occurring along Lincoln Avenue and the eastbound leg of Ash. The queue extended approximately for one half of the block between Lincoln and Main Street.*

*Stuart Moynihan continued, if the Plan Commission deems that additional traffic flow and parking demand can be adequately managed, it should make a finding that this additional demand will not adversely affect the subject property and the surrounding properties.*

6. *Additional discussion regarding day care operations throughout the day, in addition to the drop off and pick up periods noted by the petitioner; and*

*Creative Day's daily activities would be within the scope of normal day care operations and would include: teaching and educational activities, indoor and outdoor play, lunch preparation and service, and occasional field trips to nearby establishments.*

*The petitioner is present to further discuss the operation of the day care center and the trip generation throughout the day.*

7. *Additional discussion and testimony by St. John's as to why they are authorizing a request to amend their planned development, contrary to the*

conditions or limitations set forth in the 2005 approval.

A representative from St. John's is present to provide testimony regarding this item.

Chairperson Ryan asked if there were any questions or comments of the staff report. Hearing none, he called upon the petitioner.

William Dennis, husband of Cheryl Holtz-Dennis (owner and operator), 442 N Park Ave., Lombard, discussed the petition. He stated that most of this was previously discussed and he would go number by number. He stated that with respect to the concern about commercial enterprise it has preschool credentials and is considered a day care center. He stated that any operation with three kids that aren't of the same parentage would be considered day care. The proposed use would be regulated by state and county entities. He stated that with respect to the residential zoning of the area, the area is not what you would traditionally think of a residential area. You have 2 homes across the street. He stated that across from the property in question are a library, churches, the new school that acts as a buffer and the condos across the street. The only true residential area is west of the property in question. He mentioned traffic concerns at Parkview School as well as traffic problems in other areas caused by school drop-off and pick up. He stated that with St. John's there might be some slight overlap but there will not be forty kids dropped off at the same time. The parents bring them as they go to work as other schools would do. That is a red herring in that you won't have a concentrated mass. The parents will drop off and pick up with little conflict once traffic patterns are learned. The only people that park are staff and volunteers, only a few spaces by Creative Day staff during working hours. The pick up in the afternoon is after St. John's has let out. He asked the Plan Commission take into consideration what the old building was used for. It is a school and they teach kids there and it is a compatible use. St. John's doesn't have day care and cannot accommodate all children and families. They are compatible uses in that they both teach kids.

With regard to item two, he stated that it's the same use, teaching kids and having kids stay for the day. Number one and two are tied in together.

With regard to item three, he stated that if you go by the church, the parking lot it is not fully used all the time. It is only full for special gatherings and Sunday services. He stated that Creative Day will not be operating during those times. It wouldn't be in competition with peak uses. He stated that he takes exception to the statement that it would not be an enhancement. He thinks a daycare and a school can be compatible and complement each other. So, it will enhance the serviceability of the school. He noted that staff said it was a "potential" conflict. He questioned if staff had hard evidence of conflict. He mentioned again that other schools have traffic issues and referenced Glen Westlake. He stated that Creative Day will not add to this.

He stated that this would not set a precedent. Staff already mentioned other entities that are already in residential areas. He made the distinction between a commercial endeavor and the use of the building and use across the street. Several daycares are already in operation and he doesn't see any difference. He mentioned the Growing Place. He stated that they are using the same parameters and operate in an area with more houses across the street than this area.

He stated that with regard to the parking variation, the parking area would see

*no more use than a typical time. The traffic study states that St. John's traffic works well as a whole. St. John's and Creative Day will not be adverse to each other. Creative Day will rely on four spaces in the parking lot. KLOA stated that even if they used the front spaces they would have the ability to back in and out of those spaces. So it shouldn't tie up traffic any more than it is.*

*With regard to item six, he stated that use of shared spaces is flexible. There have been meetings between St. John's and Creative Day about scheduling, and there is no problem. Creative Day can utilize other areas to do what they need to do. He indicated it has been worked out and that it seems like micromanagement for the Village to state something about that. Creative Day has worked out times and schedules and has been doing so for twenty six years. He questioned why couldn't they do it now. The gym and outside play area are the only areas that might cause conflict. However, you can be creative to get around that by using nearby parks within walking distance and other options.*

*Mr. Dennis stated that he had no comments regarding item seven. He stated that he has looked over the document that was the 2005 agreement and believes St. John's is not doing anything contrary to their agreement. They told us we needed to go through the process and that is what we are doing. He stated that he did not think the church was deliberately going against the agreement.*

*He stated that he thinks Creative Day will be a valuable asset and a good use of the building. Having children in the building might not be deterrence to crime. However, if there are people around and activities, it is less likely there will be graffiti or damage to the building if someone knows its being used. He also referred to previous discussions why the building is good enough for kids. He felt that the building is outdated but they have talked with Fire Marshall and Building Department about the necessary upgrades. What needs to be updated for the first floor and for fire prevention in the entire building are two different issues. Creative Day would only need to install strobes and warning lights. If anyone were to occupy the third floor, the whole building would have to be sprinkled. The cost would be several hundred thousand dollars and they would also need bathroom access.*

*Chairperson Ryan asked if there were any questions of the petitioners.*

*William Heniff asked if the petitioner could clarify some issues related to item six. He asked if they could make clear for the record about midday activities or trips as how it relates to traffic.*

*Mr. Dennis indicated that most of the drop-offs and pick ups would occur during the morning and evening hours indicated. However, if a child needs to be picked up for a doctor's appointment or another reason, a parent could do that. As for field trips, the students would walk to the train station which would take them to the aquarium. This would create no additional traffic.*

*Mr. Heniff asked if there would be morning and afternoon classes which might cause a midday rush.*

*Mr. Dennis stated that some children may do half days. However, some may come directly from St. John's and would simply walk across the street. If the students come from another school, there may be some small number of additional vehicles.*

*Commissioner Cooper asked if there would be any food delivery.*

*Mr. Dennis stated that there may be food delivery for a short period until the kitchen is fully functioning. However, all meals would be prepared onsite.*

*Mr. Heniff asked for a representative from St. Johns to provide testimony related to item seven.*

*Dave Freese, 569 Brewster Avenue, stated that he is the Chairman of the Congregation at St. John's. He then introduced Joe Jaruseski as the former Chairman. Mr. Freese stated that Creative Day came to the church looking for space to rent. He stated that the church never hung out a for rent sign. St. John's council met on the issues and decided that because it was a daycare center it would be compatible with what they were doing as it fits on their campus. The church indicated to them that they would have to go through the process with the Village. He addressed what has changed since 2005 and indicated that it is the economy that has changed. He stated that the church thought that if this is an opportunity to have income and if it fits into that campus, then why not.*

*Commissioner Olbrysh stated that in 2005 the church agreed to use the old school for storage and office space due to a substandard building. He had taken a look at the website calendar. He stated that for January, every Tuesday at 9 a.m. and 6 p.m. there is a quilter meeting. He asked if there are any other meetings like that.*

*Mr. Freese mentioned a room for Boy Scouts once a month. The lady quilters do use a room on the third floor on a regular basis and there is a room being used as storage for the food pantry.*

*Joe Jaruseski, 1107 Michelle Lane, stated that he wanted to clarify some items. He mentioned the traffic concerns and asked that be taken into consideration that the weather is bad right now. It takes longer to get out of the car and drop off children than normally. He also stated that food delivery should not interfere with traffic as there is an area at the rear of the old school building where such deliveries have taken place in the past.*

*Chairperson Ryan asked what other commercial interests would fit into St. John's.*

*Mr. Freese stated that he didn't think any would. This was a unique situation and he thought that God brought Creative Day to them as it was such a good fit. He stated that he doesn't see any other commercial use that would fit in, and they don't want an outside commercial use in that building especially with all the children nearby.*

*Chairperson Ryan referred back to what they said in 2005 when it was agreed to it couldn't be used for kids.*

*Mr. Freese indicated that the building was not adequate for 233 students which would require retrofitting the entire building. Creative Day would only have to retrofit certain areas. He stated that he did not see anything within the wording of the 2005 Conditional Use that would prohibit St. John's from making a petition for a daycare center. There was discussion about a daycare related to whether St. John's wanted to open up its own day care. Again, the opportunity came before them and they thought it was a good fit.*

*Commissioner Olbrysh asked if there were plans for the old school building beyond two years.*

*Mr. Freese stated that there were not, in part because of economy. They found that groups within the congregation like to use it for storage, the second gym is used for occasional basketball practice, and the stage might be used for the fall play. He estimated that they use about fifty percent of the facility.*

*Chairperson Ryan asked for the general public to ask questions or comments related to the seven items remanded back.*

*Janet Imbrogno, 14 Lincoln Court, referred to the seven items and wanted to comment on them. She stated that numbers one and two interact and contradict each other. With regard to commercial enterprises in residential districts and having commercial in an institutional planned development, she thought it is a commercial establishment that fits into an institutional development. A daycare is like a preschool and would fit into education of children. She did not think it's truly a residential area. With regard to item four, it is obvious that other uses would be put under the same scrutiny and that everything would be considered. With regard to items five and six, she mentioned that the traffic study found everything acceptable. As far as traffic and children, she doesn't think that is an issue. She stated that items three and seven complemented each other. With regard to item seven, she stated that she did not think the intent was to shut down the building completely. It would be such a waste to let it sit and rot. With regard to item three, she did not know any better use for the property than to have children in it.*

*Karen Ness, 219 W Ash St., recapped her letter that she sent to the Village. She stated that this is a for profit business that would be paying rent to St. John's, a not for profit institution. She also stated that there should not be children in a building with such inadequacies as were previously represented. She stated that St. John's has been violating the previous planned development ordinance by allowing other users to use the old school building.*

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

*Commissioner Sweetser stated that she wanted to lay groundwork in terms of terminology and its importance this time. The word commercial has a broad interpretation and broad scope and gives the sense that there is a lot of activity, that there may be lights, action, and anticipation of growth. It is unfortunate that commercial casts this type of designation. We have to address that and what it really means. It has been pointed out that commercial can mean a lot of things other than what the staff report indicates. Staff has indicated that of ten operations in item four, seven were given conditional uses. It strikes me that when 70 percent of something has to be given a conditional use that the definitions might not be characterized the best they can be.*

*William Heniff referred to the table included in the packet. He stated that for clarity, where there are conditional uses most are located within business districts.*

*Commissioner Sweetser stated that was not her point, it was that there were conditional uses needed for 70 percent of the institutions.*

*Commissioner Cooper added that do we want our children in the middle of a*

strip mall. As Commissioner Sweetser was indicating, the way our codes and ordinances are set up they aren't keeping our children in the forefront. She indicated that she has comments in response to the seven items.

*PLAN COMMISSION RESPONSE TO THE SEVEN (7) ITEMS*

Chairperson Ryan mentioned that they should go through the points one by one. He requested that Commissioner Cooper begin by discussing item one.

Commissioner Cooper stated that this item requires consideration of the type of operation in this church. It is different than a car wash or auto body shop and this is a service provided to families for children. However, it has different connotations for the type of entity that it is. The day care has agreed to limit growth to forty students. In this case, the owner of the day care is willing and wants to cap growth. So, that might be one of the ways to decipher this as a separate approval and reject something in the future. Caring for children is compatible with neighborhoods and that is where children are. That is a wonderful part of Lombard's community and a marketable and unique quality. This type of use is conducive to residentially zoned district. As mentioned, there was a school in the building before and it had worked for many years. There is synergy between the two and the other uses in the area. Lastly, looking at an aerial at what the physical build out looks like, some of the adjacent land is zoned residential, this an R2PD. To the north is recreational and includes a library. Where else do you want your children to go? The historical museum is nearby. When you look at the land how it is developed the uses are synergistic to this business.

Commissioner Sweetser asked if this is a commercial business then what commercial area would we want that in. Commercial areas are strip areas. Is that something we would say as a community, that is where a daycare center should be? Or in a quasi-residential area?

Commissioner Olbrysh stated that he realizes that day care facilities are part of society today because of both parents and single family parents working and there is a need for them. They have a place in the proper environment. After listening to all this today, he is still opposed to this petition because granting it would set a precedent for setting a commercial, for profit business into an residentially zoned residential area. He believes it would set a horrendous example for the Village. As an extreme example of this, East Central Avenue is one block south of where we sit. Central is a short distance from the Roosevelt Road Corridor. Does that mean we could establish commercial endeavors on Central? You don't only have to look at proximity to residential areas but how it is zoned. If St. John's wanted its own daycare center, we would still have to look at it. A substandard building would be an issue but the major concern is establishing a for-profit in a residential area.

Commissioner Sweetser stated that she had thoughts along the same line but these issues are very interrelated and woven. This is where terminology doesn't serve us well. As far as precedent, St. John's would not be forced to accept any other if they are sought out. She asked if because this is a planned development it would not set a precedent as each planned development is different.

Mr. Heniff stated that it is not automatic.

Commissioner Flint stated that he had the same thought as Commissioner Sweetser. A precedent would not be set because this is a Conditional Use. He understands Commissioner Olbrysh's comments but this petition should be

*evaluated on its own merits and if something else came along we would have to look at it.*

*Commissioner Burke stated that he lives in the area. He stated that he does not believe it is a quasi-residential neighborhood. We think it's a nice residential neighborhood. He stated that he did not know how you can say it wouldn't set a precedent. Churches are looking for ways to increase funding because of the economy and change of demographics. This would have an effect on other opportunities for this to occur in other planned developments in Lombard. It would be hard to stop that trend. Part of the issue is that the language is getting in our way and without changing that, it's difficult to address the situation.*

*Chairperson Ryan asked that the Commissioners begin discussion of item two.*

*Commissioner Cooper stated that there is compatibility with the school and the institutional planned development. So, the daycare doesn't fall under institutional heading.*

*Mr. Heniff stated that she is correct; it's a separate entity.*

*Commissioner Cooper stated that with the similarity of the educational focus we might want to look at those issues in the future.*

*Chairperson Ryan cautioned the Commissioners to stick to the present and not worry about the future at this point.*

*Chairperson Ryan asked that the Commissioners begin discussion of item three.*

*Commissioner Cooper stated that safety is increased by having people in the building and eyes on streets. She also stated that there is the financial contribution made in updating the building so it doesn't go into disrepair with the benefits of safety to public and entrances and sidewalks being cared for. She stated that working families need safe, loving environments to take children to. She mentioned that there is proven clientele relying on them. She noted that with all of the physical resources within this complex, they have something most do not have. Physical activity is so hard to come by and finding a place for physical activity is a challenge. This is a service for our community.*

*Commissioner Cooper also mentioned the location of the property and its proximity to transit and biking opportunities. She mentioned the Prairie Path, transit for commuting parents, and York theater. Also, no new construction would be required with having the old building. There would be no new buildings impacting the neighborhood. Bringing people to our downtown and enlivening the downtown and farmer's market is a benefit. We need people to patronize our downtown businesses and by having people coming into the downtown corridor it will be easier for people to access downtown.*

*Commissioner Olbrysh stated that he agreed with Commissioner Cooper as to the benefits. However, the issue is talking about a for profit organization in a residentially zoned area. He cannot get past that point. All the other points are great but the question is what organization is running the business. That is what bothers him.*

*Chairperson Ryan asked that the Commissioners begin discussion of item four.*

*Commissioner Flint stated the Plan Commission looks at each petition on its*

own merit. There is not a car dealership coming in here, it's something compatible with the area. We should look at it on a per case basis and this is a conditional use.

Commissioner Sweetser stated that she wished to reiterate the points she made before.

Chairperson Ryan asked that the Commissioners begin discussion of item five.

Commissioner Cooper stated that she would defer to KLOA regarding this item. The traffic study was completed and said this is one of the most efficient traffic flows they have seen. With the provision of the parking spaces, additional queuing should not be an issue.

Commission Sweetser stated that drop off times would only occasionally conflict with St. John's so she was not sure why an example was given about the queuing.

Mr. Heniff stated that it was meant to clarify discussion from the November meeting about traffic being delayed by queuing. It was given for reference purposes.

Commissioner Sweetser stated that she doesn't see the relevance.

Commissioner Burke stated that the petitioner acknowledged that there would be some overlap in traffic, particularly during morning drop off. He stated that he thinks there will be some overlap and will verify that Ash has a lot of cars waiting to get onto Lincoln. The petitioner's testimony comparing other schools traffic concerns is understandable but Westlake and Parkview are public schools and they are obligated to take that traffic. They are not asking to add to that traffic. If there is already a problem do we need to add to it?

Commissioner Sweetser stated that she did not think they would be adding to a problem because you mentioned it's an occasional overlap due to the time the center is open.

Commissioner Burke asked that the petitioner clarify the testimony.

The petitioner stated that pickup in the afternoon is usually after work, after the school is closed. In the morning, there will be some overlap for drop off times. However, the Creative Day parents will not be in the same queue and are not adding to any lines on Ash.

Chairperson Ryan indicated that item six has been discussed by the petitioner and Plan Commission. He asked that the Commissioners begin discussion of item seven.

Commissioner Cooper stated that St. John's has indicated that their decision has a lot to do with the economy.

Commissioner Sweetser stated that it serves a cause or it doesn't but to point to something and say you were going to do this and do that. Circumstances change and things come up not of our own doing and that is the issue here. She stated she is concerned that this opportunity came along and St. John's looked into it and it is coming across as a violation. Ultimately, it is more technical in nature and does not constitute premeditation or intent.



*Chairperson Ryan asked for any other discussion.*

*Commissioner Flint asked staff if by approving this, would it set a precedent in their mind.*

*Mr. Heniff stated that there are two things to look at. We have a planned development in place. As information indicates that we have noted in the staff report, we haven't approved a use exception of a commercial day care in a residentially zoned R2 property. If approved, it could set a precedent. Day care centers are not listed as permitted or conditional use in residential districts. They can only be brought forward through use exception through their planned development. The Plan Commission gets to review every use exception on its own merit. One of the challenges is that we look at each case on own merits, but we have many institutional uses in the Village. The question comes up, they did it why can't we?*

*Commissioner Olbrysh stated that his background is in law and lawyers look at precedent. We can't ignore that. That is why he has his opinion. He has nothing against daycare centers and they help the working family. However, it is where it is located and the precedent that is being set and where does all this stop. That is the concern.*

*Mr. Heniff stated that counsel has given additional direction as to a finding they should make prior to any final consideration in this matter. Now that additional information has been included as public testimony, the Plan Commission will be asked to make findings related to the items presented this evening.*

*Mr. Moynihan stated that in addition to the findings to be made regarding the seven items identified by the Board, counsel has added an eighth finding to be made:*

*The petition complies with the Standards of Planned Developments, Standards for Planned Development with Use Exceptions, and Variation Standards for not requiring additional parking spaces as set forth in the petitioner's Responses to those Standards attached to the November 17, 2008 staff report.*

*George Wagner explained that in the staff report there is a summary of two possible options. In the event the Plan Commission wishes to approve, there should be along with those findings of fact, an eighth finding that provides that part of the motion of the Plan Commission is adopting their previous findings that the petition has complied with the Standard for Planned Developments, Use Exceptions and Variations. If there is a motion for denial, he pointed out the recommended language should include the acceptance of the Inter-departmental Review Reports from both November 17, 2008 and January 26, 2009.*

*Commissioner Sweetser stated that she would like attention paid to terminology as it hasn't served us well in this case.*

*Commissioner Burke agreed with that. He said that looking at the seven items there are some that are problematic and some that are non-issues. The precedence is something we need to consider and that could be problematic. He asked staff is it only two options: either we approve with all eight findings or deny altogether.*

*Mr. Heniff stated that with the seven findings the Board of Trustees wanted,*

*ultimately, with the additional testimony, we come back to a favorable or unfavorable recommendation from the Plan Commission. Within those seven provisions there may be one response you may or may not feel comfortable with but it does meet the Standards required. The seven items should give clarity for final recommendation.*

*Commissioner Sweetser stated that they have observed the letter of the law but the terminology doesn't begin to help us understand how they fit or don't fit. The spirit of the law should be in play and she will use that in her vote.*

*Commissioner Olbrysh asked that if he made motion, will he get a second?*

*Mr. Wagner suggested making a motion.*

*Village Manager Hulseberg indicated the Village Board had remanded this item back to the Plan Commission for further review and it was now coming back to the Board.*

*Director of Community Development Bill Heniff stated the Plan Commission reviewed the request at the January 26 meeting. The request was coming to the Village Board without a recommendation as the Plan Commission vote was three to three.*

*Bill Dennis, 442 N. Park Avenue, the pensioner indicated Creative Daycare had been in business for twenty-six years. He was asking the Village Board for a resolution to this matter. All inspections of the property have been made. He spoke of other daycare facilities in the area including Growing Place and Montessori that are located in residential areas. He stated that they are attempting to use an existing property that is vacant and can be put to good use. He advised he had walked the neighborhood and talked with the residents. Eight of the ten residents had no objection. The property has been there for forty or fifty years and had been used as a church and a school. He noted the area was not strictly residential as in house after house after house. He stated they have invested a lot of time and money into trying to make this work and they have taken this seriously. They have worked to cooperate with the school, the church, the neighbors and the Village. The traffic study did not show any additional traffic issue. He indicated he met with the St. John's school and church administrators. He felt this would be a great addition to the community. He reported the Village had inspected the property and an estimate of \$27,000 was given for ADA compliance. A contractor who does these improvements, indicated the cost would be double. He felt the building can comply with ADA without additional changes. He stated they have never had a handicapped child in their school.*

*Trustee Tross stated he felt the petitioner was giving testimony in the case.*

*Bill Dennis stated he was just trying to convey that the building can comply with ADA requirements without following the recommendation of the Plan Commission.*

*President Mueller indicated that legal council has advised this was part of the original petition and can be heard.*

*Attorney Bayer stated that the petitioner can speak on anything related to the original request.*

*Cheryl Dennis, 442 N. Park, owner and operator of Creative Daycare, stated that her husband has spoken on behalf of their request and felt the Board needed to meet her. She indicated she has lived in Lombard for 21 years and been in business since 1981. Her business is small and intimate in nature and is licensed by the DCFS. She provides quality service preparing pre-school children for kindergarten. She stated she has done volunteer work in the community over the years. She learned of the vacant St. John building through a friend. She advised that this location is centrally located. They were totally*

unaware of the issues with the St. John building when they started their petition. She thanked the Village Board and staff for their time. She felt this was a needed service in the community.

Alice Glennon, 331 Brookfield, stated she had known the Dennis family for many years and felt this would be a great asset for the community.

Janet Imbrogna, 14 Lincoln Court, stated she supported the petition and felt it was a good thing for the community.

Joe Jaruseski, 1107 Michelle Lane, past chairman of St. John's and chair of the board of education, felt Creative Daycare was a good fit for the location. He felt St. John's was following Ordinance 5665 as passed in 2005. He stated Creative Daycare has cared for thousands of children in their 26 years. He felt the traffic was not a problem with the additional parking. He felt the daycare would fill a clear need.

Jeanne Johnson, 1005 E. Maple, supported Creative Daycare and said they had a solid reputation, the owners live in Lombard and are active in the community. She noted there were other daycare facilities in residential areas and was not familiar with the zoning issues. She felt they would be a great asset and give quality daycare and were very reputable. She felt this was an asset to the community in these economic times. She thanked the Village Board.

Karen Ness, 219 W. Ash, stated she lives 250 feet away from St. John's. She reminded the Board that when the new school was built, St. John's agreed to use the building for storage and an occasional event. She felt that any revenue generated would be a violation of the agreement and talked about commercial use in a residential area. She stated the property values of the homes have been de-valued. She spoke about the drivers from St. John's going the wrong way on a one-way street and not adhering to the laws of the community. She stated she new times were tough, but felt that this was in violation of the conditional use. Susan Tepper, 335 S. Grace, spoke in favor of Creative Daycare. She indicated Ms. Dennis was a respected business woman and daycare provider and was hard working and dedicated. She indicated she had known her for 17 years and that her children were enrolled in her daycare in Villa Park. She felt the St. John location was a good fit for the daycare.

Trustee Gron stated he had no issue with the daycare, but had an issue with the conditional use and St. John indicating they would use the old building for storage and some youth activities. They had indicated that upgrading the school was too costly and that was the reason for the new school. He understood with the economic times, the daycare would be beneficial to St. John. He reported he had spoken to the neighbors and hoped the area would stay historic in nature. Trustee Soderstrom felt there were two major issues. The first issue was that of resident concern. It appeared that there was no major resident concern as there was only one person speaking against the daycare. He felt that issue was resolved. The second issue was that St. John had assured the Village that the old school was not in good condition and that was the reason they had petitioned the Village to build the new school. St. John had also stated the old school would only be used for storage and meetings, now there is a request before the Board for a for-profit daycare to occupy the building. He stated he did not like being duped. He felt the daycare was a viable and upstanding business and there was a need in the community. He stated he would swallow the pill for the benefit of the community and support the daycare.

Trustee Moreau questioned the zoning in the Comprehensive Plan for that area. She questioned how a daycare could be commercial. She wanted children to have security and green space and not take them to a strip mall for daycare.

Director Heniff stated daycare facilities were allowed in B Districts not allowed in R Districts, so therefore it is considered a commercial business.

Trustee Tross stated that he felt it was never an issue of the daycare as an ancillary use at St. John. He stated a conditional use was necessary for the

daycare unless it had been grandfathered in, which was not the case. He felt anyone opening a business should have review and conditions placed on them. He noted that in 2005 St. John secured a conditional use to build a new school and at that time indicated the old school was not safe; would be too costly to upgrade and had concern about safety. That was the selling point for building the new school across the street. He was surprised that St. John was not the petitioner in this case. He questioned if the building was not safe, how they had used it for basketball games. He indicated that this petition may not be palatable, but agreed to support the November 17 Plan Commission recommendation with conditions.

Trustee Fitzpatrick stated she had concerns about the vacant building. She felt an elementary school was different than a daycare. She appreciated the comments made this evening. She felt this was not a large chain coming into the building like an Arby's or a Walgreens. She did not feel congestion was an issue as she noted that St. John's was not up to capacity and that due to the economy, some of the students at St. John may be going to public schools. She stated she would support the petition.

Trustee O'Brien indicated as long as the standards were met, he would support. He felt taking care of children was important.

Trustee Gron felt there will always be issues. He asked Bill Dennis if he needed two weeks to assess the ADA compliance issues.

Bill Dennis stated that he never said they would not accept the ADA requirements, but questioned what complies with ADA and what does not. He felt the daycare would be compliant with the State of Illinois and that there was confusion over ADA requirements and Life Safety Codes.

Trustee Tross felt the ADA compliance was an important issue. He stated the Village Board will take action on the item tonight. He questioned waiving first reading and passing on second reading as the matter would then be out of the Village Board's hands and the petitioner may not want a condition as required. Bill Dennis stated they will accept the conditions, but felt there was some confusion.

Trustee Tross felt it was important for the petitioner to have definite answers on required conditions. He suggested passing on first reading only so the petitioner and staff had two weeks to review the conditions and there would be no misunderstandings.

Director Heniff stated the November and December packets did explain the ADA requirements. He indicated a full level of compliance was not required by the State.

Bill Dennis stated they will accommodate the Village and questioned staging the costs as they were quite high.

Trustee Gron moved waiver of first and passed on second reading and acceptance of the conditions as set up by PC 08-32.

President Mueller questioned the waiver of first reading.

Trustee Tross felt time was not an issue.

Director Heniff stated the Community Development staff will work with the petitioner.

Fire Chief Seagraves questioned if all the ADA issues needed to be met before an occupancy permit be issued.

Attorney Bayer questioned the ADA minimum requirements for this use. He stated based on their use, the Village may be asking the petitioner to go beyond what is required. He stated the daycare needed to be ADA compliant. He stated if the Plan Commission included other requirements, it may preclude the entire facility being ADA compliant.

Director Heniff stated the area used for the daycare and the bathroom needed to be ADA compliant.

Attorney Bayer felt because of the money and space being utilized, that only the

smaller area being used would need to be ADA compliant. Trustee Tross questioned if the Plan Commission recommendations were different than the petitioner's request. He felt the petitioner should have time to research what is needed. He did not want the petitioner have to come back to the Board after the request was passed. He stated he supported the November 17 Plan Commission recommendation. He felt the petitioner needed to research the impact of the requirements so that if an elevator was required, they knew that ahead of time.

President Mueller suggested not waiving first reading to allow time for the petitioner and staff to review the petition and requirements.

Trustee Fitzpatrick felt the Village should not impose stronger regulations on the petitioner than are required. She indicated this was a school environment for daycare and not a physical therapy business.

Chief Seagraves felt there were two issues. One is the issue of the State Building Codes and the other is all of the Codes and recommendation from the Plan Commission. He felt the Board had established that all Codes be met. The Chief stated that when he left tonight he wanted to know what requirements his staff would have to assure had been accomplished before the daycare was allowed to open. He felt it was a more complex situation going from a school, to a vacant school to a daycare. He stated there were requirements for a chair lift or ramp that needed to be addressed as well as all accessibility standards. He noted that although the daycare had not had any handicapped children that did not mean they would not in the future have a handicapped child and that handicapped accessibility had to be provided for a parent or visitor to the daycare.

President Mueller felt the Board should not interpret the law and that the petitioner and staff should meet to review the requirements.

Trustee Soderstrom requested the waiver of first be removed from the motion.

Trustee Gron removed the waiver of first reading from the motion.

Trustee Tross suggested staff meet with Trustee Gron before the next meeting of the Village Board and before this item is passed on second reading.

Village Manager David Hulseberg referred to a memo dated February 5 from the Community Development Department indicating the petitioner had met with staff and agreement had been reached.

Trustee Gron indicated he was in the meeting with the petitioner and all issues had been resolved and agreed upon.

- H. [100024](#) Liquor License Amendment - Lombard Grill, 1300 S. Main St. Amending Title 11, Chapter 112 of the Alcoholic Liquor Code reducing the Class A/B-I liquor license category previously assigned to Lombard Grill, Inc. (DISTRICT #2)

Attachments: [Ordinance 6450.pdf](#)  
[100024.pdf](#)

### Ordinances on Second Reading

- I. [100032](#) Liquor License Amendment - RockinBurger, 1000 N. Rohlwing Road (Tabled February 18, 2010) Amending Title 11, Chapter 112 of the Alcoholic Liquor Code reflecting an increase in the Class A/B-II liquor license category granting a liquor license to SBBL, LLC. (DISTRICT #1)

Attachments: [Ordinance 6460.pdf](#)  
[100032.pdf](#)

**Resolutions**

- J. [100064](#) Resolution for Three Cruise Nights Parking License Agreements  
Resolution authorizing signatures of the President and Village Clerk on three license agreements authorizing the Village use of parking lots at 118, 126 and 211 W. St. Charles Road for 2010 Cruise Nights parking. (DISTRICT #1)  
**Attachments:** [R 64-10.pdf](#)  
[License Agreement- Cruise Night.pdf](#)  
[100064.pdf](#)
- K. [100065](#) Resolution for Cruise Nights Temporary Parking Restrictions  
Resolution temporarily limiting parking along St. Charles Road between Main Street and Lincoln Avenue and along Park Avenue between Orchard Terrace and Michael McGuire Drive for 2010 Cruise Nights. (DISTRICT #1)  
**Attachments:** [R 65-10.pdf](#)  
[100065.pdf](#)
- L. [100067](#) Legislative Action Program  
Adopting the DuPage Mayors and Managers Legislative Action Program and Municipal Legislative Positions and Priorities for 2010.  
**Attachments:** [dmmclegactionprogrammemo.doc](#)  
[resdmmclegaction2010.doc](#)  
[SUBMIT3.doc](#)  
[R 66-10.pdf](#)  
[2010 Legislative Action Program.pdf](#)  
[100067.pdf](#)
- M. [100072](#) 725 W. Roosevelt Road - License Agreement  
Authorizing signatures of the Village President and Village Clerk on a License Agreement allowing Village entry signage to be placed on private property at 725 W. Roosevelt Road. (DISTRICT #2)  
**Attachments:** [R 67-10.pdf](#)  
[License Agreement-725 W.pdf](#)  
[100072.pdf](#)
- N. [100073](#) St. Charles LAPP, Local Agency Agreement  
Authorizing the Village President to sign an Agreement with the Illinois Department of Transportation. (DISTRICTS #1 & #4)  
**Attachments:** [100073.pdf](#)  
[R 68-10.pdf](#)  
[Agreement with IDOT & VP.pdf](#)

**Other Matters**

- O. [100068](#) Purchase of Backhoe  
Request for a waiver of bids and award of a contract to West Side Tractor in the amount of \$59,986.00; and approving an ordinance authorizing the trade-in of Village Unit #WT472. Staff is requesting a waiver of first. Public Act 85-1295 does not apply.  
**Attachments:** [100068.pdf](#)  
[Ordinance 6447.pdf](#)
- P. [090637](#) Foxworth and Valley  
Recommendation of the Transportation & Safety Committee to deny the request for a speed limit reduction. (DISTRICT #2)  
**Attachments:** [090637.pdf](#)  
*Chairperson Tross commented that he did not think a speed reduction was warranted. He felt that it's more of a perception issue than an actual speed problem.*
- Q. [100071](#) Lombard Park District Temporary Sign  
Request approval to place a temporary sign on Village-owned property located at the southeast corner of Main Street and Wilson Avenue for purposes of promoting their Gold Medal Celebration. (DISTRICT #6)  
**Attachments:** [100071.pdf](#)

**IX. Items for Separate Action****Ordinances on First Reading (Waiver of First Requested)****Other Ordinances on First Reading**

- A. [100027](#) ZBA 10-01: 41 S. 2nd Avenue  
Requests that the Village take the following actions for the subject property located within the R2 Single-Family Residence District:
1. A variation from Section 155.407(F)(2) of the Lombard Zoning Ordinance to reduce the required corner side yard setback from twenty feet (20') to sixteen and eight-tenths feet (16.8').
  2. A variation from Section 155.407(F)(3) of the Lombard Zoning Ordinance to reduce the required interior side yard setback from six feet (6') to three and ninety-five one-hundredths feet (3.95').
  3. A variation from Section 155.407(F)(4) of the Lombard Zoning Ordinance to reduce the required rear yard setback from thirty-five feet (35') to six feet (6'). (DISTRICT #6)

**Attachments:** [PUBLICNOTICE 10-01.doc](#)  
[apoletter 10-01.doc](#)  
[Report 10-01.doc](#)  
[Referral Letter 10-01.doc](#)  
[Cover Sheet.doc](#)  
[Ordinance 6448.pdf](#)  
[100027.pdf](#)

*Dustin Smith, 41 S. 2nd Avenue, presented the petition. He stated that the main reasons for his request were that he had a fire about five months ago and now the house has to be brought up to code. He said that in order to do this the setback variations would be necessary. He stated the insurance company will only reimburse him for the damages to the home, not to rebuild completely. He stated that there are other reasons. He is a landscape architect and would like to maintain the character of the site and some large trees on the property. Also, he would have to remove the detached garage to rebuild.*

*Chairperson DeFalco opened the meeting for public comment. No one spoke for or against the petition.*

*Chairperson DeFalco then requested the staff report.*

*Stuart Moynihan, Associate Planner, present the staff report. The subject property is located at the southeast corner of 2nd Avenue and Kenilworth Avenue and is improved with a one-story residence built in 1907. The existing home is non-conforming in the following respects:*

- \* A setback of 0.42 from the rear (western) property line where a thirty-five foot (35') rear yard setback is required.*
- \* A corner side yard setback of sixteen and eight-tenths feet (16.8') where twenty feet (20') is required.*
- \* An interior side yard setback of three and ninety-two one-hundredths feet (3.92') where six feet (6') is required.*

*Following a July 25, 2009 house fire at the property, the Fire Department made a determination that the structure had been destroyed to greater than fifty percent (50%) of its value. As a non-conforming structure, the Zoning Ordinance requires that the structure be brought into full compliance with code. Rather than demolish the home, the owner has developed a new plan to construct a two-story residence on nearly the same footprint as the existing home. The plan would increase the rear yard setback to six feet (6') from the existing 0.42' and increase the interior side yard setback to 3.95' from 3.92'. The existing corner side yard setback of sixteen and eight-tenths feet (16.8') would remain the same. With the new plan, the petitioner has requested variations to reduce the required setbacks to the indicated measurements. The proposed plan, labeled "Site Plan", is included within the petitioner's submitted packet.*

*The new plan involves removal of the master bedroom and an office which are located at the far eastern side of the residence. The removed square footage will be made up for on the proposed second floor. The petitioner has indicated that replacing these areas on the western side of the home is undesirable. This would require the removal of two large trees that the petitioner would prefer to maintain. The petitioner has also indicated that placing the bedroom on the*



*eastern side of the home is undesirable due to the proximity of the laundry area and utilities as well as distance from the bathroom and other living areas.*

*The Building Division comments on this petition indicate that improvements and repairs to the foundation will be necessary. This applies should the residence remain as a single-story structure or be expanded to two stories. The Building Division has indicated that the exterior walls appear to be structurally intact following an initial inspection. However, further evaluation will be necessary during the remodeling process.*

*Although the requested zoning relief is significant, staff is supportive of the proposed variations as the "Standards for Variations" have been met in the following respects:*

*1. Staff finds that both the configuration of the improvements on the lot and the existence of a few large trees would require the site to be completely redeveloped in order to construct a new residence of comparable size to the existing residence. Redevelopment would include removal of the residence, the detached garage, and most likely the large trees which are located in the buildable area of the lot. The plan that the petitioner has proposed would bring the property into closer compliance with code than the current layout of the property. Please see the attached Exhibit B which depicts the existing residence and garage, the proposed footprint, and the applicable required setbacks.*

*2. Staff finds that the conditions on the subject property are uncommon. It is rare within the Village for a property to contain a single-family residence which is located exclusively in the rear yard setback area. The degree of non-conformity regarding the rear yard setback is extreme and the petitioner is proposing to improve this condition by bringing it into closer compliance with the Zoning Ordinance. The petitioner has proposed to maintain the current corner side yard setback while increasing the interior side yard setback slightly.*

*Staff notes that the location of the garage is also non-conforming as Section 155.210(A)(2)(b) of the Zoning Ordinance requires that all detached accessory buildings be located behind the front wall of the principal building. However, staff has determined that no relief for the garage is necessary as no changes to the garage are proposed.*

*3. The petitioner does not stand to profit from the requested variations. The petitioner plans to utilize as much of the existing residence as possible and they plan to live in the residence following restoration.*

*4. The degree of non-conformity on the property is due to the selected location for the residence, constructed in 1907 according to the petitioner, and the manner in which the lot was subdivided in 1908.*

*5. It is staff's opinion that the requested variations will not have a detrimental effect on the public or the improvements on neighboring properties. In fact, the proposed plan is likely to improve safety over the current design of the property. The principal residence and the detached garage on the neighboring property to the east, 44 S. 3rd Avenue, are currently separated by approximately seven feet (7'). The new plan would create a separation of approximately twelve and one-half feet (12.5') meeting the minimum requirements of the Zoning Ordinance.*

*As the petitioner indicated within his submitted statement, the new plan will*

also provide a clear path completely around the home. The Fire Department has indicated that this is desirable for firefighting and access purposes.

Staff believes that the additional height of the proposed second story is unlikely to have a negative impact on any of the adjacent residences. Each of the principal structures on the adjacent properties would be more than sixty (60') feet from the proposed house on the subject property. Please see the attached Exhibit C which depicts the proximity of the residences on adjacent properties.

6. Although the location of the residence, both currently and as proposed, is unusual within the neighborhood, the residence has occupied the same location for more than one hundred years. Further, the layout of 45 S. 3rd Avenue is similar to the subject property in that the detach garage is located closer to the front lot line than the principal residence.

7. As stated above, the proposed plan is unlikely to have any adverse effect on the neighborhood or the general public.

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

Mr. Tap asked the petitioner if the house is habitable.

Mr. Smith stated that it is not. The fire was in the roof and holes were cut in the roof. There is no electricity. He stated that code upgrades are necessary even if the house is rebuilt as it was.

Mr. Young asked where the project was in the process and if there are architectural drawings.

Mr. Smith stated that he did not want to invest his limited funds in that if it might not be approved.

Mr. Young asked if the proposed project will be economically feasible.

Mr. Smith stated that he is asking for the second story because the roof will have to be rebuilt in any case. He stated that he could use some of his own resources for the second floor.

Mr. Young asked if these variations would expire in twelve months if the project was not completed.

Mr. Moynihan stated that construction would have to begin within twelve months. However, this could be extended by the Board of Trustees.

Mr. Smith stated that he plans to begin the project as soon as he is approved and permits can be issued.

Chairperson DeFalco asked if the variations were not granted would insurance cover a new home within ordinance requirements.

Mr. Smith stated that he has had trouble getting a straight answer. However, the insurance company has indicated that they do not consider the home a total loss and will only pay for repairs. He stated that he would probably have to hire an attorney.

*Chairperson DeFalco stated that the Zoning Board usually include a condition that states if a property has been destroyed greater than 50% of its value, it will have to meet code. Chairperson DeFalco felt that granting this variation could set a precedent.*

*Mr. Young stated that he did not think it was a precedent because he said that he is applying for the necessary relief and that this has been done for other non-conforming structures.*

*Chairperson DeFalco asked if the 2nd story addition was part of the variation request. Mr. Moynihan stated that is was included in their request.*

*Chairperson DeFalco asked if the property had a cinder block foundation.*

*Mr. Smith stated that it is a cinder block foundation.*

## **Ordinances on Second Reading**

### **Resolutions**

### **Other Matters**

## **X. Agenda Items for Discussion**

## **XI. Executive Session**

## **XII. Reconvene**

## **XIII Adjournment**

.