

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: September 6, 2005 (BOT) Date: September 15, 2005

TITLE: PC 05-20: 509 and 515 W. Wilson

SUBMITTED BY: Department of Community Development *DLA*

BACKGROUND/POLICY IMPLICATIONS:

Your Plan Commission transmits for your consideration a petition requesting the following actions be taken on the subject property:

1. Approval of an Annexation Agreement; (2/3 of Corporate Authorities Vote Required)
2. Annexation to the Village of Lombard;
3. Approval of a minor plat of subdivision with the following variations:
 - a. For Lots 1 and 2, a variation from Section 155.405 (E) to reduce the required minimum lot width from seventy-five feet (75') to seventy feet (70').
 - b. For Lot 3, a variation from Section 155.405 (E) to reduce the required minimum lot width from seventy-five feet (75') to seventy-one feet (71').

(UNINCORPORATED)

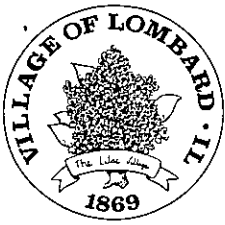
The Plan Commission recommended approval of this petition with conditions.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X <u>William T. Lichter</u>	Date <u>9/8/05</u>

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP, Director of Community Development *DCH*

DATE: September 6, 2005

SUBJECT: PC 05-20: 509 and 515 W. Wilson

Attached please find the following items for Village Board consideration as part of the September 15, 2005 Village Board meeting:

1. Plan Commission referral letter;
2. IDRC report for PC 05-20;
3. An Ordinance authorizing the execution of an Annexation Agreement;
4. An Ordinance authorizing the annexing the property;
5. An Ordinance granting variations to reduce the required minimum lot width in a R1 Single Family Residence District; and
6. Plans associated with the petition.



VILLAGE OF LOMBARD

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Lombard, IL 60148-3926
(630) 620-5700 FAX: (630) 620-8222
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Village President
William J. Mueller

Village Clerk
Brigitte O'Brien

Trustees
Greg Alan Gron, Dist. 1
Richard J. Tross, Dist. 2
John "Jack" T. O'Brien, Dist. 3
Steven D. Sebby, Dist. 4
Kenneth M. Florey, Dist. 5
Rick Soderstrom, Dist. 6

Village Manager
William T. Lichter

September 15, 2005

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

Subject: PC 05-20; 509 & 515 W. Wilson Avenue

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioners request that the Village take the following actions on the subject property.

1. Approval of an Annexation Agreement;
2. Annexation to the Village of Lombard;
3. Approval of a minor plat of subdivision with the following variations:
 - a. For Lots 1 and 2, a variation from Section 155.405 (E) to reduce the required minimum lot width from seventy-five feet (75') to seventy feet (70').
 - b. For Lot 3, a variation from Section 155.405 (E) to reduce the required minimum lot width from seventy-five feet (75') to seventy-one feet (71').

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

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

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on July 18, 2005. Mr. Mohammed Majeed, owner of 509 W. Wilson Avenue, presented the petition. Mr. Majeed read a prepared statement outlining the standards for variations. He stated that the proposed lots measure seventy-five feet at the front property lines. Mr. Majeed stated that the Village measures lot width thirty (30) feet beyond the building line causing the lots to not meet the minimum required width. He stated that each lot would meet both the 7,500 and 10,000 square foot area requirements. He stated that the lots are greater than 14,000 square feet each. Mr. Majeed stated that the variation is not based on financial gain. He stated that the subdivision had been prepared in good faith and believed that variations would not be necessary. He stated that surrounding properties would not be affected, as the lots would measure in excess of seventy-five feet at the front property lines.

Acting Chairperson Sweetser then opened the meeting for public comment. No one spoke for or against the petition.

Acting Chairperson Sweetser then requested the staff report.

Angela Clark, Planner II, presented the staff report. Ms. Clark stated that the petitioners' properties are located in the Flowerfield Subdivision in unincorporated DuPage County. The subject properties are located adjacent to Wilson Avenue. Wilson Avenue was vacated as a public street in the late 1950s by York Township. With approval of the vacation, the right-of-way was evenly divided between the abutting property owners. While the Village Board has deferred the construction of this roadway within the Capital Improvement Program (CIP), staff is working with the adjacent property owners to encourage them to approve the dedication of land for future street purposes. However, in order for this to occur, the Village will be required to annex portions of the vacated right-of-way. These actions will ultimately be taken by the Village Board.

Through these discussions, the property owners at 509 and 515 W. Wilson have inquired about redeveloping their existing residences and are proposing to resubdivide their properties from two lots into three buildable lots of record concurrent with their annexation request. As the proposed right-of-way rededication will result in the loss of land area for the subject properties, the proposed lots will not meet the minimum lot width for R1 zoned properties. The petitioners are requesting a reduction in the required minimum lot width in conjunction with the request for annexation. Ms. Clark stated that the lot frontage is measured sixty feet from the front property line. She stated that while the lots would appear to meet the minimum lot frontage at the property line, the lots actually measure seventy to seventy-one feet due to the dedication of the right-of-way.

Ms. Clark stated that as the land uses would not change, the proposed lots would be compatible with surrounding uses and the underlying zoning. She stated that staff was supportive of the petition.

Acting Chairperson Sweetser then opened the meeting for discussion among the Plan Commission members. There was no discussion amongst the members.

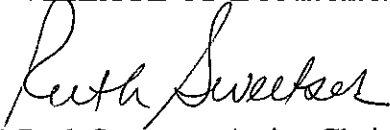
After due consideration of the petition and the testimony presented, the Plan Commission found that the proposed variations comply with the standards of the Zoning Ordinance. Therefore, the Plan Commission, by a roll call vote of 4 to 0, recommended to the Corporate Authorities, **approval** of the relief associated with PC 05-20, subject to the following conditions:

1. That the proposed resubdivision shall be in conformance with the Plat of Resubdivision, Prepared by Gentile and Associates, Inc., and made as part of this request, except as amended as part of the final right-of-way dedication alignment.

2. That the resubdivision shall not be considered approved until such time that the Village approves the dedication of the proposed Wilson Avenue right-of-way alignment and annexation request prior to consideration of the resubdivision request.
3. That the variation request shall be contingent upon the Village and the developer entering into an Annexation Agreement, with the Agreement being an Exhibit to the Ordinance approving the variation request.

Respectfully,

VILLAGE OF LOMBARD



Ruth Sweetser, Acting Chairperson
Lombard Plan Commission

att-

c. Petitioner
Lombard Plan Commission

Comprehensive Plan: Recommends estate residential

Surrounding Zoning and Land Use:

North: CR Conservation/Recreation District; developed as Sunset Knoll Park and the Lombard Park District Maintenance Facility

South: Unincorporated DuPage County zoned R-3 Single-Family Residential; developed as Single-Family Residences

East: R2 Single-Family Residence District; Single-Family Residences

West: Unincorporated DuPage County zoned R-3 Single-Family Residential; developed as Single-Family Residences

ANALYSIS

SUBMITTALS

This report is based on the following documents:

1. Public Hearing Application, dated June 17, 2005.
2. Plat of Annexation, Prepared by Gentile and Associates, Inc., dated October 25, 2004.
3. Preliminary Plat of Resubdivision, Prepared by Gentile and Associates, Inc., undated

DESCRIPTION

The petitioners' properties are located in the Flowerfield Subdivision in unincorporated DuPage County. The subject properties are located adjacent to Wilson Avenue. Wilson Avenue was vacated as a public street in the late 1950s by York Township. With approval of the vacation, the right-of-way was evenly divided between the abutting property owners.

While the street pavement surface has remained, albeit in poor condition, the former right-of-way continues to serve as a transportation link between Finley Road and Highmoor Avenue. Recognizing the value of the former right-of-way to the adjacent property owners, Park District visitors and Glenbard East students (the gravel parking lot north of the subject property is used by students), the Village has undertaken preliminary engineering studies to improve the vacated right-of-way and is seeking to establish a new Wilson Avenue right-of-way as depicted on the petitioner's

site plan. Its alignment is proposed to the area north of the vacated right-of-way and would connect Finley Road to Highmoor Avenue. While the Village Board has deferred the construction of this roadway within the Capital Improvement Program (CIP), staff is working with the adjacent property owners to encourage them to approve the dedication of land for future street purposes. However, in order for this to occur, the Village will be required to annex portions of the vacated right-of-way. These actions will ultimately be taken by the Village Board.

Through these discussions, the property owners at 509 and 515 W. Wilson have inquired about redeveloping their existing residences and are proposing to resubdivide their properties from two lots into three buildable lots of record concurrent with their annexation request. As the proposed right-of-way rededication will result in the loss of land area for the subject properties, the proposed lots will not meet the minimum lot width for R1 zoned properties. The petitioners are requesting a reduction in the required minimum lot width in conjunction with the request for annexation.

INTER-DEPARTMENTAL REVIEW COMMENTS

ENGINEERING

The Private Engineering Services Division notes that should the overall redevelopment be less than one acre in size, storm water detention shall not be required for the proposed resubdivision. However, it shall be a requirement that future houses shall discharge their sump pumps to the Wilson Road right-of-way in order to minimize impact to the neighboring properties to the south.

PUBLIC WORKS

The Engineering Division of the Public Works Department has no comments at this time.

The Utilities Division of the Dept of Public Works has reviewed the above mentioned subject and has the following comments:

Properly seal all wells and septic systems if located on the property according to DuPage County requirements.

The exiting residences are connected to public watermain and sewer systems. Any redevelopment will require connection to Village water and public sewer as well.

BUILDING AND FIRE

The Fire Department/Bureau of Inspectional Services have no comments at this time.

PLANNING

Compliance with the Comprehensive Plan

The Comprehensive Plan recommends estate residential. The proposed single family uses and lot sizes are consistent with this recommendation.

Compliance with the Zoning Ordinance

Newly annexed properties are given R1 Single Family Residential zoning by default. The minimum required lot width for R1 properties is seventy-five feet (75') and the minimum lot area is 7,500 square feet. The proposed lots will meet the minimum lot area as required by the Zoning Ordinance. Per the Zoning Ordinance, lot width is measured at the narrowest width within the first thirty (30) feet of lot depth immediately in back of the required front yard. As the required front yard area is thirty feet, the lot width is actually measured thirty feet beyond this point for the proposed lots (or in other words sixty feet from the front lot line). While the proposed lots measure approximately seventy-five feet (75') at the property line, Lots 1 and 2 measure seventy feet (70') in width and Lot 3 measures seventy-one feet (71') in width at the narrowest points identified by the Ordinance.

Staff can support the requested variations as the reduction in lot width occurred due to the proposed street dedication. There is adequate space on the lots to construct residences within the requirements of the Zoning Ordinance despite the reduced lot width. As the properties measure approximately seventy-five feet (75') in width at the front property lines, the visual appearance of the lots will be comparable to that of neighboring lots and will not alter the overall character of the neighborhood. Moreover, as the variation request is the direct result of their request to dedicate a portion of their property for right-of-way purposes, as opposed to their desire to get more developable lots out of the subject properties, staff can support this request as well.

Each of the proposed lots will comply with all other aspects of the Zoning Ordinance.

Compatibility with Surrounding Zoning

The subject properties are bordered by residential properties to the south, east, and west. The Lombard Park District maintenance facility borders the property on the north. The subject properties are currently utilized as single family residences, therefore there is no change in the properties' compatibility with existing land uses.

Compatibility with the Subdivision and Development Ordinance

The site currently consists of two lots. The petitioners plan to resubdivide the two lots into three lots. Each proposed lot meets the minimum lot area requirements and the proposed variations for width have been noted above. The proposed resubdivision is considered a minor development as the construction of a detached single-family homes is excluded from the requirements of major developments identified by the Subdivision and Development Ordinance. Therefore, the petitioner will be required to meet the provisions of Section 154.305. This includes, but is not limited to the

provision of sewer and water distribution systems to the proposed residences, sidewalks, and parkway trees. However, given that the new Wilson Avenue alignment will not be approved or constructed for a number of years, staff will be incorporating modified provisions within the Annexation Agreement to address the subdivision requirements. These include:

1. That the petitioner shall provide an easement over the existing Wilson Avenue street pavement area for roadway purposes until the new Wilson Avenue is constructed.
2. That the developer shall provide a grind and overlay of the existing Wilson Avenue street surface, and
3. That the future property owners shall not object to a future special service or special assessment which will finance the reconstruction of the new Wilson Avenue right-of-way.

Annexation Agreement

The petitioner will be preparing a companion annexation agreement for the subject property. This agreement will be considered by the Village Board in conjunction with the final consideration of Ordinances.

FINDINGS AND RECOMMENDATIONS

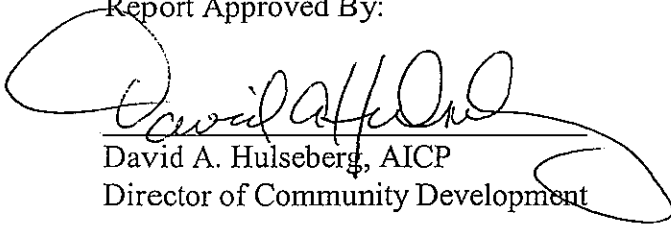
The proposed annexation and companion variations are compatible with the surrounding land uses and zoning. Based on the above, the Inter-Departmental Review Committee recommends that the Plan Commission make the following motion recommending approval of this petition:

Based on the submitted petition and the testimony presented, the proposal does comply with the standards required by the Lombard Zoning and Subdivision and Development Ordinances; and, therefore, I move that the Plan Commission find that the findings included as part of the Inter-departmental Review Report be the findings of the Plan Commission and therefore, I recommend to the Corporate Authorities **approval** of the zoning actions associated with PC 05-20 for the subject properties, subject to the following conditions:

1. That the proposed resubdivision shall be in conformance with the Plat of Resubdivision, Prepared by Gentile and Associates, Inc., and made as part of this request, except as amended as part of the final right-of-way dedication alignment.
2. That the resubdivision shall not be considered approved until such time that the Village approves the dedication of the proposed Wilson Avenue right-of-way alignment and annexation request prior to consideration of the resubdivision request.
3. That the variation request shall be contingent upon the Village and the developer entering into an Annexation Agreement, with the Agreement being an Exhibit to the Ordinance approving the variation request.

Plan Commission
Re: PC 05-20
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Report Approved By:



David A. Hulseberg, AICP
Director of Community Development

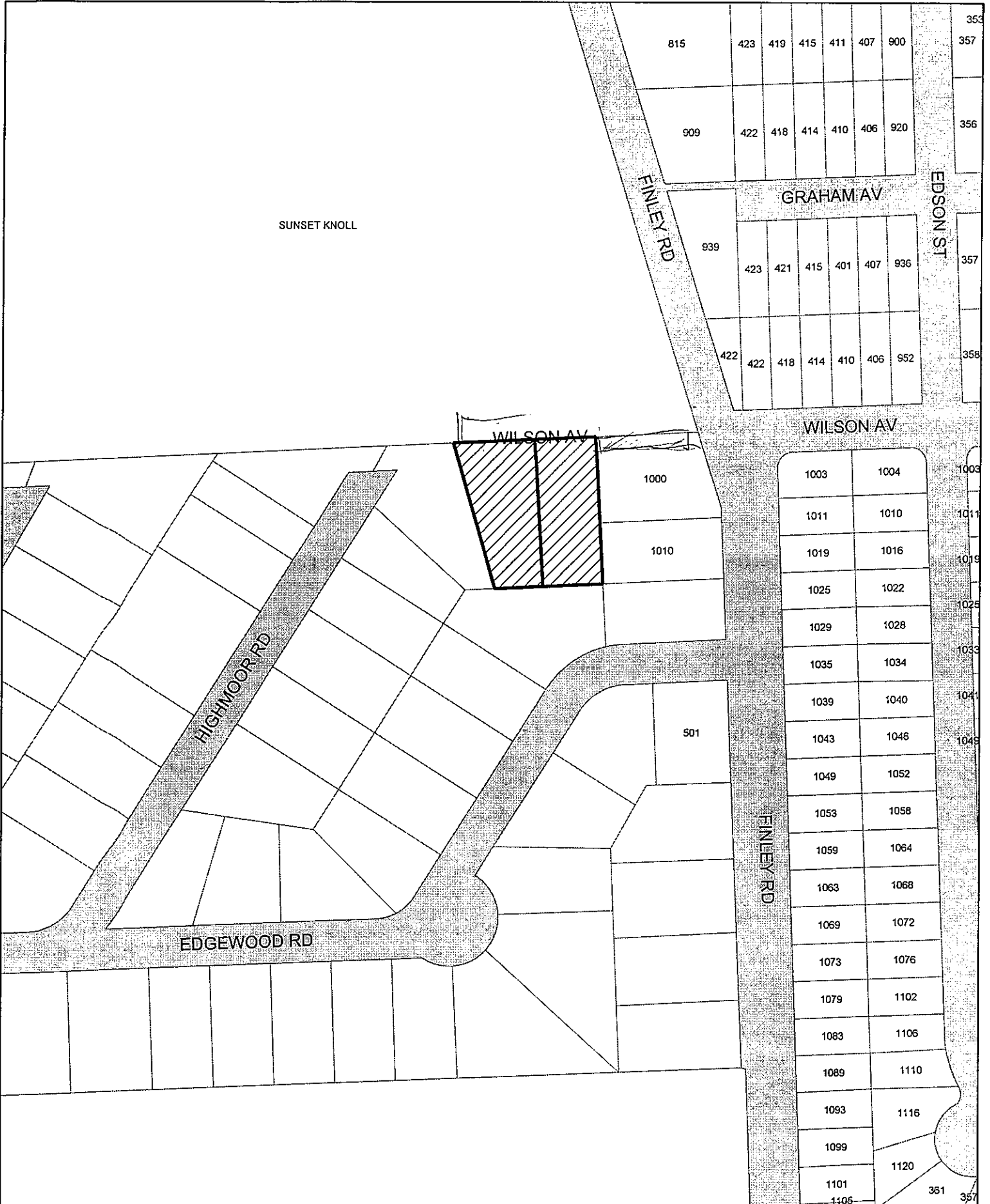
ADC:
att-

c. Petitioner

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Location Map

509 & 515 W. Wilson Ave



PETITION FOR VARIATION

Petitioners are hereby seeking relief from the strict (customary) interpretation of Section 155.405 (E) of the Village of Lombard Zoning Ordinances, which states as follows:

All uses located within this district (R1 Single Family) shall have a minimum lot width of 75 feet.

Background:

Inasmuch as the Ordinance is silent as to the point at which the width of a parcel is to be measured, Petitioners had assumed that such measurements would be taken along the front lines of each the parcels. Therefore, when Petitioners prepared their proposed Plats of Annexation and Subdivision they assumed that there would be no need to seek any variances whatsoever. This would still be the case, if the minimum lot widths for the three proposed new lots were to be measured along the front lines thereof.

The Village of Lombard Staff has subsequently advised Petitioners that the Village has customarily measured minimum lot width at the point of the Building Line (30 feet from the Front Line, in this instance) as opposed to measuring the width of the property along the Front Line itself.

On that interpretation of the Ordinance, a Variation of the minimum lot width would be required inasmuch as due to the unique nature of the property (the rear lines being shorter than the front lines) the widths of the 3 proposed lots (when measured at the point of the 30 foot building lines) would each be slightly less than 75 feet.

Petitioners therefore request that the Board Members consider the following:

1. It is only because of the peculiar nature of the particular physical surroundings (in this case the fact that Highmoor Road runs at an angle, as opposed to running North-South, causing an irregular shape in the adjacent property to the West of the subject property) beyond the control of Petitioners that the rear lines of the proposed 3 lots are necessarily less than the 75 foot frontages for each of the 3 lots (and therefore the width of the 3 proposed new lots is slightly less than 75 feet, when measured at the point of the 30 foot Building Line). However, each of the 3 parcels nonetheless meet the 10,000 square foot Minimum Lot Area per section (D) of the Ordinance.
2. The conditions upon which the application for variation is based (essentially being the irregular shape of the property to the West) are unique to the subject property and would therefore not be generally applicable to other property within the same zoning classification.
3. The purpose of the requested is not based primarily upon a desire on the part of Petitioners to increase financial gain. The Petitions for Annexation and Subdivision were prepared on the good faith assumption by Petitioners that no

Variations whatsoever would be necessary. This would, in fact, be the case, were the Village to allow the width of the 3 proposed Lots to be measured along the front lines of the 3 proposed parcels.

4. The unique circumstances of this situation were not caused by any of the Petitioners herein. (Petitioners did not have anything to do with the establishment of the shape of the Lot located to the West of the subject premises, *e.g.*).
5. The granting of the requested variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located. Each of the 3 Lots in the resulting 3 Lot Subdivision will still meet the minimum 10,000 square foot requirement and each will have in excess of 75 foot frontages.
6. The granting of the requested variation will not alter the essential character of the neighborhood. Each of the 3 Lots in the resulting 3 Lot Subdivision will still meet the minimum 10,000 square foot requirement and each will have in excess of 75 foot frontages.
7. The granting of the proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood. The foregoing situations will not be affected one way or another inasmuch as the Front Lines of each of the proposed Lots would each be in excess of 75 feet and each of the 3 Lots would nonetheless meet the minimum 10,000 square foot requirement.

ORDINANCE _____

**AN ORDINANCE AUTHORIZING THE
EXECUTION OF AN ANNEXATION AGREEMENT**

(PC 05-20: 509 & 515 W. Wilson Avenue)

(See also Ordinance No.(s) _____)

WHEREAS, it is in the best interest of the Village of Lombard, DuPage County, Illinois that a certain Annexation Agreement (hereinafter the "Agreement") pertaining to the properties located at 509 and 515 W. Wilson, Lombard, Illinois to be entered into; and,

WHEREAS, the Agreement has been drafted and a copy is attached hereto and incorporated herein as Exhibit "A"; and,

WHEREAS, the developer and the legal owners of the lots of record, which are the subject of said Agreement, are ready, willing and able to enter into said Agreement and to perform the obligations as required thereunder; and,

WHEREAS, the statutory procedures provided in Chapter 65 ILCS 5/11-15.1-1 through 5/11-15.1-5, as amended, for the execution of said Agreement have been complied with; a hearing on said Agreement having been held, pursuant to proper notice, by the President and Board of Trustees on August 18, 2005.

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

SECTION 1: That the Village President and Village Clerk be and hereby are authorized to sign and attest to the Agreement attached hereto and marked Exhibit "A", by and between the Village of Lombard; and,

SECTION 2: This ordinance is limited and restricted to the property generally located at 509 & 515 W. Wilson Avenue, Lombard, Illinois containing .99 acres more or less and legally described as follows:

LOTS 18 AND 19 IN BLOCK 1 IN FLOWERFIELD ACRES, BEING A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 11 EAST

Ordinance No. _____

Re: PC 05-20

Page 2

OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 9, 1946 AS DOCUMENT 501719, AND CERTIFICATES OF CORRECTION FILED JULY 25, 1946 AS DOCUMENT 502990, AND MARCH 20, 1947 AS DOCUMENT 514615, TOGETHER WITH THAT PART OF VACATED WILSON AVENUE (PER DOCUMENT 983459) NORTH OF AND ADJACENT TO SAID LOTS 18 AND 19, ALL IN DUPAGE COUNTY, ILLINOIS.

PIN: 06-18-302-021 & 06-18-302-022

SECTION 3: This ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed on first reading this ____ day of _____, 2005.

First reading waived by action of the Board of Trustees this ____ day of _____, 2005.

Passed on second reading this ____ day of _____, 2005.

Ayes: _____

Nays: _____

Absent: _____

Approved this ____ day of _____, 2005.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

ANNEXATION AGREEMENT

THIS AGREEMENT made and entered into this _____ day of September, 2005, by and between the Village of Lombard, a municipal corporation (hereinafter referred to as "Village"); Marek Niedbalec, Mohammed A. and Fareeda A. Majeed, (hereinafter collectively referred to as "Owner" .

WITNESSETH:

WHEREAS, the Owner is the record owner of the property legally described in EXHIBIT A, attached hereto and made a part hereof (hereinafter referred to as the "Subject Property"); and

WHEREAS, Owner proposes to develop the Subject Property; and

WHEREAS, the Subject Property is adjacent to and contiguous to the existing corporate boundaries of the Village; and

WHEREAS, the Village desires to annex and the Owner desires to have the Subject Property annexed to the Village and each of the parties desires to obtain assurances from the other as to certain provisions of the zoning and other ordinances of the Village for the Subject Property when the same has been annexed and to other matters covered by this Agreement for a period of twenty (20) years from and after the execution of this Agreement; and

WHEREAS, the Subject Property is an approximately one acre parcel of land and there is one (1) electors residing thereon; and

WHEREAS, all owner(s) of record of the Subject Property, and at least fifty-one percent (51%) of the electors residing thereon have signed a Petition for Annexation of the Subject Property to the Village, which Petition is hereinafter referred to as the "Annexation Petition"; and

WHEREAS, an application has heretofore been filed with the Village Clerk for Zoning of the Subject Property; and

WHEREAS, said application was forwarded to the Plan Commission of the Village; and

WHEREAS, a public hearing was held on July 18, 2005 for the purpose of considering whether the Subject Property should be zoned, upon its annexation to the R-1 Single Family Residence District under the Lombard Zoning Ordinance (Chapter 155 of the Lombard Village Code hereinafter the "Zoning Ordinance"), with approval of a minor plat of subdivision creating three (3) lots, and with variations from Section 155.405 (E) of the Zoning Ordinance to reduce the required minimum lot width for two (2) of the lots from seventy-five feet (75') to seventy (70') and for one (1) of the lots seventy-one feet (71'), from seventy-five feet (75') to all as more fully set forth within this Agreement, and the Plan Commission has submitted to the Corporate Authorities of the Village (hereinafter referred to as the "Corporate Authorities") their findings of fact and recommendations with respect to said application; and

WHEREAS, a public hearing on this Annexation Agreement ("Agreement") has been held by the Corporate Authorities on the 18th day of August, 2005 and the 15th day of September, 2005; and

WHEREAS, the parties wish to enter into a binding agreement with respect to the said annexation, zoning and development and for other related matters pursuant to the provisions of

Division 15.1 of Article 11 of Act 5 of Chapter 65 of the Illinois Compiled Statutes, and upon the terms and conditions contained in this Agreement; and

WHEREAS, all public hearings and other actions required to be held or taken prior to the adoption and execution of this Agreement, in order to make the same effective, have been held or taken, including all hearings and actions required in connection with amendments to and classifications under the Zoning Ordinance, such public hearings and other actions having been held pursuant to public notice as required by law and in accordance with all requirements of law prior to adoption and execution of this Agreement; and

WHEREAS, the Corporate Authorities of the Village and the deem it to the mutual advantage of the parties and in the public interest that the Subject Property be annexed to and developed as a part of the Village as hereinafter provided; and

WHEREAS, the development of the Subject Property as provided herein will promote the sound planning and development of the Village as a balanced community and will be beneficial to the Village; and

WHEREAS, the Corporate Authorities of the Village have examined the proposed uses by Owner and have determined that said uses and the development of the Subject Property in accordance with this Agreement comply with the Comprehensive Plan of the Village; and

WHEREAS, the Plan Commission has recommended that certain variances be granted from the Section 155.405 (E) of the Zoning Ordinance to reduce the required minimum lot width in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual promises herein set forth, the parties hereto agree as follows:

1. **Incorporation of Recitals**: The Village, Owner agree that the foregoing recitals are incorporated in this Agreement as if fully recited herein.

2. **Development of Subject Property**: Village, Owner agree that the Subject Property shall be developed in accordance with the terms of this Agreement.

3. **Annexation**: Subject to the provisions of Article 7 of Act 5 of Chapter 65 of the Illinois Compiled Statutes, the parties agree to do all things necessary or appropriate to cause the Subject Property to be duly and validly annexed to the Village as promptly as practicable after the execution of this Agreement. The parties shall cause such annexation to be effected pursuant to the provisions of Section 5/7-1-8 of Act 5 of Chapter 65 of the Illinois Compiled Statutes.

4. **Zoning**: Upon annexation of the Subject Property to the Village as set forth herein, the Subject Property shall be classified by operation of law under the R-1 Single Family Residence District as provided by the Zoning Ordinance. In addition, the Corporate Authorities agree to approve the following lot width variations as depicted on the preliminary plat of resubdivision entitled "Wilson Resubdivision" attached hereto as EXHIBIT B and made a part hereof:

- a. For Lots 1 and 2 of the proposed subdivision, a variation from Section 155.405 (E) to reduce the required minimum lot width from seventy-five feet (75') to seventy feet (70').
- b. For Lot 3 of the proposed subdivision, a variation from Section 155.405 (E) to reduce the required minimum lot width from seventy-five feet (75') to seventy-one feet (71').

5. **Fees:** In consideration of the impact of the development of Subject Property on the Village, Owner agrees to pay the following fees to the Village in connection with the annexation, zoning and development of the Subject Property:

A. Annexation and public hearing fees in the amount of \$535 (said fee already paid by the petitioner at the time of application to the Village for annexation and approval of lot-width variations).

B. Transportation improvements fee in the amount of \$25,000, as set forth in Sections 7B and 7C below.

In addition to these fees, the Owner agrees to pay all applicable permit (including, but not limited to building permit) and utility connection fees as required by Village Ordinances at the time of application for the respective permits. Owner further agrees that the connection charges and fees required by this Agreement are reasonable in amount, where applicable, and are reasonably related to and made necessary by the development of the Subject Property.

6. **Annexation to Lombard Park District:** The Owner agrees to petition the Lombard Park District to have the Subject Property annexed to the Lombard Park District upon its annexation to the Village.

7. **Special Conditions:** Owner shall comply with the following special conditions which shall be applicable to the development and use of the Subject Property:

- A. The Owner shall dedicate a portion of the Subject Property for public right of purposes as depicted in EXHIBIT C attached hereto and made a part hereof.
- B. Associated with the development of the Subject Property, the Owner shall grant an easement for public roadway purposes as depicted on EXHIBIT D attached hereto and made a part hereof. The Village agrees to abrogate/release the easement for public roadway purposes upon completion of construction of a new roadway within the dedicated Wilson Avenue right-of-way depicted in EXHIBIT C.
- C. In lieu of constructing additional roadway improvements for the existing Wilson Avenue roadway and/or the proposed Wilson Avenue right of way dedication, Owner shall deposit with the Village the sum of twenty-five thousand and no/100 dollars (\$25,000) for roadway resurfacing purposes. Said deposit shall be made prior to or concurrent with the issuance of a building permit for the first single-family residence proposed to be constructed on the Subject Property. The Village hereby agrees to utilize the said funds to pay for a grind and overlay of the existing Wilson Avenue roadway surface from Finley Road to Highmoor Road. The Village, at its sole discretion, shall determine the appropriate time to complete the grind and overlay activities. However, provided that said grind and overlay activities shall occur within twelve (12) months from the date of the issuance of a certificate of occupancy is issued for the third residence to be constructed on the

Subject Property. The Village further agrees to refund to Owner and any of said funds that are not spent in relation to the grind and overlay activities.

- D. Owner shall not be required to construct any watermain extensions to service the Subject Property, but agree, not to object to any Special Assessment or Special Service Area initiated by the Village, for the construction of any such watermain extensions or any other public improvements, or for the provision of any other purpose for which a Special Assessment or Special Service Area may be initiated.

8. General Provisions:

A. **Notices:** Notice or other writings which either party is required to, or may wish to, serve upon the other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

- (1) If to the Village or
Corporate Authorities:

President and Board of Trustees
VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148

With a copy to:

Village Manager

VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148

Director of Community Development
VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148

Thomas P. Bayer
KLEIN, THORPE AND JENKINS, LTD.
20 North Wacker Drive
Suite 1660
Chicago, Illinois 60606

(2) If to the Owner:

Marek Niedbalec
515 W. Wilson
Lombard, IL 60148

With a copy to:

Mohammed A. Majeed
4708 E. Beaubien Ln
Lisle, IL 60532

or to such other address as any party may from time to time designate in a written notice to the other parties.

B. Binding Agreement This Agreement shall insure to the benefit of and shall be binding upon Owner and successors in any manner in title, and shall be binding upon the Village and the successor Corporate Authorities of the Village and any successor municipality.

C. Court Contest: In the event the annexation of the Subject Property, the classification of the Subject Property for zoning purposes or any other terms of this Agreement are challenged in any court proceeding, the period of time during which such litigation is pending, including (without limitation) the appeal time therefor, shall not be included, if allowed by law, in calculating the twenty (20) year period mentioned in subsection 8R below.

D. Remedies: The Village and Owner, and their respective successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by either party, or their respective successors or assigns, which default exists uncorrected for a period of ten (10) days after written notice to the party to such default, the party seeking to enforce said provision shall have the right of specific performance and if said party prevails in a court of law, it shall be entitled to specific performance. It is further expressly agreed by and between the parties hereto that the remedy of specific performance herein given shall not be exclusive of any other remedy afforded by law to the parties, or their respective successor or successors in title.

E. Conveyances: Nothing contained in this Agreement shall be construed to restrict or limit the right of Owner and sell or convey all or any portion of the Subject Property, whether improved or unimproved.

F. Survival of Representations: Both of the parties agrees that the representations, warranties and recitals set forth in the preambles to this Agreement are material to this Agreement and the parties hereby confirm and admit their truth and validity and hereby

incorporate such representations, warranties and recitals into this Agreement and the same shall continue during the period of this Agreement.

G. Captions and Paragraph Headings: The captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

H. Reimbursement of Village for Legal and Other Fees and Expenses:

(1) To Effective Date of Agreement: The Owner concurrently with annexation and zoning of the Subject Property or so much thereof as required, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (a) the costs incurred by the Village for engineering services;
- (b) all reasonable attorneys' fees incurred by the Village in connection with this Agreement and the annexation and zoning of the Subject Property; and
- (c) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.

(2) From and After Effective Date of Agreement: Except as provided in this subsection upon demand by Village made by and through its Director of Community Development, Owner, from time to time shall promptly reimburse Village for all reasonable expenses and costs incurred by Village in the administration of this Agreement, including engineering fees, attorneys' fees and out-of-pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents

required hereunder, and the negotiation and preparation of letters of credit and escrow agreements to be entered into as security for the completion of public improvements.

Such costs and expenses incurred by Village in the administration of the Agreement shall be evidenced to the Owner upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Owner at either's option from additional documents designated from time to time by the Owner relevant to determining such costs and expenses.

Notwithstanding the foregoing, Owner shall in no event be required to reimburse Village or pay for any expenses or costs of Village as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

(3) In the event that any third party or parties institute any legal proceedings against the Owner and/or the Village, which relate to the terms of this Agreement, then, in that event, the Owner, on notice from Village, shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- (a) Owner shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.
- (b) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and Owner, on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Owner shall reimburse the Village, from time to time on written demand from the Director of Community Development and notice of the amount due, for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the Village in connection therewith.

(4) In the event the Village institutes legal proceedings against Owner for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against Owner all expenses of such legal proceedings incurred by Village, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred by the Village in connection therewith (and any appeal thereof). Owner may, in its sole discretion, appeal any such judgment rendered in favor of the Village against Owner.

I. No Waiver or Relinquishment of Right to Enforce Agreement:

Failure of either party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

J. Village Approval or Direction: Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

K. Recording: A copy of this Agreement and any amendments thereto shall be recorded by the Village at the expense of the Owner.

L. **Authorization to Execute:** The individuals constituting the lawful authority of Owner and executing this Agreement warrant that they have to execute this Agreement as Owner. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. The Owner and Village shall deliver to each other upon request copies of all bylaws, joint venture agreements, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective parties.

M. **Amendment:** This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Owner and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

N. **Counterparts:** This Agreement may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.

O. **Conflict Between the Text and Exhibits:** In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

P. Definition of Village: When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

Q. Execution of Agreement: This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he/she signs this Agreement on Page 1 hereof, which date shall be the effective date of this Agreement.

R. Term of Agreement: This Agreement shall be in full force and effect for a term of twenty (20) years from and after the date of execution of this Agreement.

S. Venue: The parties hereto agree that for purposes of any lawsuit(s) between them concerning this Agreement, its enforcement, or the subject matter thereof, venue shall be in DuPage County, Illinois, and the laws of the State of Illinois shall govern the cause of action.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to this Agreement on the day and year first above written.

VILLAGE OF LOMBARD

ATTEST:

By: _____
Village President

Village Clerk

DATED: _____

OWNER:

By: _____
Its _____

OWNER

By: _____
Its _____

OWNER

By: _____
Its _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that William J. Mueller, personally known to me to be the President of the Village of Lombard, and Brigitte O' Brien, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, _____.

Commission expires _____, 20____.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Mohammad and Fareeda Majeed, personally known to me to be the Owner of 509 W. Wilson, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as Owners, they signed and delivered the said instrument as the free and voluntary act and deed of said mortgagee, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, _____.

Commission expires _____, 20__.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Marek Niedbalec, personally known to me to be the Owner of 515 W. Wilson, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as Owners, they signed and delivered the said instrument as the free and voluntary act and deed of said mortgagee, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, _____.

Commission expires _____, 20_____.

Notary Public

EXHIBIT A – LEGAL DESCRIPTION

LOTS 18 AND 19 IN BLOCK 1 IN FLOWERFIELD ACRES, BEING A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 9, 1946 AS DOCUMENT 501719, AND CERTIFICATES OF CORRECTION FILED JULY 25, 1946 AS DOCUMENT 502990, AND MARCH 20, 1947 AS DOCUMENT 514615, TOGETHER WITH THAT PART OF VACATED WILSON AVENUE (PER DOCUMENT 983459) NORTH OF AND ADJACENT TO SAID LOTS 18 AND 19, ALL IN DUPAGE COUNTY, ILLINOIS.

Parcel Numbers: 06-18-302-021 & 022

Annexation Agreement 509 & 515 W. Wilson
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EXHIBIT B – PRELIMINARY PLAT OF SUBDIVISION

EXHIBIT C – WILSON AVENUE RIGHT OF WAY DEDICATION

Annexation Agreement 509 & 515 W. Wilson
Page 22

EXHIBIT D – EASEMENT FOR PUBLIC ROADWAY PURPOSES

ORDINANCE _____

**AN ORDINANCE ANNEXING CERTAIN TERRITORY
TO THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS**

(PC 05-20: 509 & 515 W. Wilson Avenue)

(See also Ordinance No.(s) _____)

WHEREAS, a written petition, signed by the legal owners and electors of record of all land within the territory hereinafter described, has been filed with the Village Clerk of the Village of Lombard, DuPage County, Illinois, requesting that said territory be annexed to the Village of Lombard; and,

WHEREAS, the said territory is not within the corporate limits of any municipality, but is contiguous to the Village of Lombard; and,

WHEREAS, all notices of said annexation, as required by (Chapter 65 ILCS 5/7-1-1), have been given to the appropriate parties in a timely manner as required by Statute (copies of said Notices being attached hereto as Exhibit "A", and made part hereof).

WHEREAS, it is in the best interest of the Village of Lombard that said territory be annexed thereto.

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

SECTION 1: That the territory described in Section 2 below be and the same is hereby annexed to the Village of Lombard, DuPage County, Illinois, pursuant to (Chapter 65 ILCS 5/7-1-8).

SECTION 2: This ordinance is limited and restricted to the property indicated on the attached Plat of Annexation attached hereto as Exhibit "B", and generally located generally at 509 & 515 W. Wilson Avenue, Lombard, Illinois containing 0.99 acres more or less and legally described as follows:

Ordinance No. _____
Re: PC 05-20
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LOTS 18 AND 19 IN BLOCK 1 IN FLOWERFIELD ACRES, BEING A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 9, 1946 AS DOCUMENT 501719, AND CERTIFICATES OF CORRECTION FILED JULY 25, 1946 AS DOCUMENT 502990, AND MARCH 20, 1947 AS DOCUMENT 514615, TOGETHER WITH THAT PART OF VACATED WILSON AVENUE (PER DOCUMENT 983459) NORTH OF AND ADJACENT TO SAID LOTS 18 AND 19, ALL IN DUPAGE COUNTY, ILLINOIS.

PIN: 06-18-302-021 & 06-18-302-022

SECTION 3: The new boundary of the Village of Lombard shall extend to the far side of any adjacent rights-of-way, and shall include all of every right-of-way within the area annexed hereby.

SECTION 4: The Village Clerk is hereby directed to record with the Recorder of Deeds and to file with the County Clerk, a certified copy of this Ordinance, and the original Plat of Annexation.

SECTION 5: This ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed on first reading this ____ day of _____, 2005.

First reading waived by action of the Board of Trustees this ____ day of _____, 2005.

Passed on second reading this ____ day of _____, 2005.

Ayes: _____

Nays: _____

Absent: _____

Approved this ____ day of _____, 2005.

Ordinance No. _____
Re: PC 05-20
Page 3

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

ORDINANCE NO. _____

**AN ORDINANCE GRANTING VARIATIONS FROM SECTION 155.405 (E) OF
THE LOMBARD ZONING ORDINANCE TO REDUCE THE
REQUIRED MINIMUM LOT WIDTH IN A R1
SINGLE FAMILY RESIDENCE DISTRICT**

(PC 05-20: 509 & 515 W. Wilson Avenue)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title 15, Chapter 155.408 of the Code of Lombard, Illinois; and,

WHEREAS, concurrent with a request for annexation into the Village of Lombard, an application has heretofore been filed requesting approval of variations reducing the minimum lot width in an R1 Single Family Residence District from seventy-five (75) feet to seventy (70) feet for Lots 1 and 2 on the subject properties and a reduction to seventy-one (71) feet for Lot 3; and,

WHEREAS, a public hearing on such application has been conducted by the Village of Lombard Plan Commission on July 18, 2005 pursuant to appropriate and legal notice; and,

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

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

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

SECTION 1: That the following variations are hereby granted for the Subject properties described in Section 2 below, subject to the conditions set forth in Section 3 below:

- A. For Lots 1 and 2, a variation from Section 155.405 (E) to reduce the required minimum lot width from seventy-five feet (75') to seventy feet (70').
- B. For Lot 3, a variation from Section 155.405 (E) to reduce the required minimum lot width from seventy-five feet (75') to seventy-one feet (71').

SECTION 2: That this ordinance is limited and restricted to the properties generally located at 509 & 515 W. Wilson Avenue , Lombard, Illinois and legally described as follows:

LOTS 18 AND 19 IN BLOCK 1 IN FLOWERFIELD ACRES, BEING A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 9, 1946 AS DOCUMENT 501719, AND CERTIFICATES OF CORRECTION FILED JULY 25, 1946 AS DOCUMENT 502990, AND MARCH 20, 1947 AS DOCUMENT 514615, TOGETHER WITH THAT PART OF VACATED WILSON AVENUE (PER DOCUMENT 983459) NORTH OF AND ADJACENT TO SAID LOTS 18 AND 19, ALL IN DUPAGE COUNTY, ILLINOIS.

PIN: 06-18-302-021 & 06-18-302-022

SECTION 3: The conditional use set forth in Section 1 above shall be granted subject to compliance with the following conditions:

1. That the proposed resubdivision shall be in conformance with the Plat of Resubdivision, Prepared by Gentile and Associates, Inc., and made as part of this request, except as amended as part of the final right-of-way dedication alignment.
2. That the resubdivision shall not be considered approved until such time that the Village approves the dedication of the proposed Wilson Avenue right-of-way alignment and annexation request prior to consideration of the resubdivision request.
3. That the variation request shall be contingent upon the Village and the developer entering into an Annexation Agreement, with the Agreement being an Exhibit to the Ordinance approving the variation request.

Ordinance No. _____
Re: PC 05-20
Page 3

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

Passed on first reading this ____ day of _____, 2005.

First reading waived by action of the Board of Trustees this ____ day of _____, 2005.

Passed on second reading this ____ day of _____, 2005.

Ayes: _____

Nayes: _____

Absent: _____

Approved this _____, day of _____, 2005.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk