

**VILLAGE OF LOMBARD**  
**INTER-DEPARTMENTAL REVIEW GROUP REPORT**

TO: Lombard Plan Commission

HEARING DATE: July 20, 2009

FROM: Department of  
Community Development

PREPARED BY: Michael S. Toth  
Planner I

**TITLE**

**PC 09-17; Text Amendments to the Zoning Ordinance:** The petitioner (Lux Chateau) requests a text amendment to Section 155.417(G)(2) of the Lombard Zoning Ordinance (and other sections where needed for clarity) allowing “Smoking Establishments” to be listed as a conditional use within the B4A – Roosevelt Road Corridor District.

**GENERAL INFORMATION**

Petitioner:	Lux Chateau Attn: Azeem Syed 1221 S. Main Street Lombard, IL 60148
Petitioner Attorney:	Mr. Russell P. Rasche 638 Olesen Drive Naperville, IL 60540
Property Owner:	Oxford Corners Inc 1259 S. Main St. Lombard, IL 60148

**ANALYSIS**

**SUBMITTALS**

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

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

## **DESCRIPTION**

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

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

## **INTER-DEPARTMENTAL REVIEW COMMENTS**

### **PUBLIC WORKS**

Public Works Engineering has no comments at this time.

### **PRIVATE ENGINEERING SERVICES**

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

### **BUILDING & FIRE**

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

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

### **PLANNING**

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

### **Background/History**

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

In 2007, Lux Chateau applied for and received a Restaurant Food Handlers Business License and a Tobacco Dealer Business License. The petitioner applied for a CO/ZC for retail, restaurant and lounge. The text "hookah" or any reference to tobacco is not present in the application. Staff later received word from the property owner they are not going to open. Given this directive, the CO/ZC is no longer processed and it was presumed that the previous CO/ZC (for Sahara) was still in effect and no further actions were taken by staff until staff learned of the new business use.

### **Smoke Free Illinois Act**

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

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

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

### **Director Interpretation**

With the Act provisions in place, the petitioner was informed by DuPage County of the requirement to cease serving food as part of their business activity. In subsequent discussions with the petitioner in later 2008 and early 2009, staff noted that restaurants and coffee establishments are listed as

permitted uses within the Zoning Ordinance, hookah establishments as the principal use of the property (or for that matter any smoking establishments) are not listed as permitted or conditional uses.

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

### **Compliance with the Zoning Ordinance**

Staff notes that the principal use of the premises as a hookah establishment (a type of smoking establishment) is a use that is not expressly permitted or permitted through the conditional use process within the B4A District. Approval of the use can only be achieved through a text amendment to the Lombard Zoning Ordinance. The amendment would need to provide for the use (either as a permitted use or a conditional use) and the amendment can only be approved by a majority vote of the Village Board after a public hearing is held by the Lombard Plan Commission.

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

#### ***Section 155.801 WORD USAGE***

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

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

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

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

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

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

1. Food stores, grocery stores, meat markets and delicatessens (the purchase of edible goods for consumption elsewhere) are listed and treated differently than restaurants (a business establishment within which food is offered for sale for consumption only within the structure on the premises).
2. Liquor stores, packaged goods is listed as one type of business establishment, while a bar/tavern use (an establishment where alcoholic liquor is sold to be generally consumed on the premises) is listed as a separate type of use.
3. Clubs and lodges, meeting halls recreation and community centers are also listed as separate and distinct land uses.

These analogous examples can also be applied to the application of the hookah use, a cigar bar or any other like establishment. As the petitioner recognizes, the primary function of the premises is the consumption of hookah on the premises and as part of an assembly gathering function. Staff notes that this is functionally different than a tobacco stop, as tobacco shops are characterized by individuals purchasing tobacco products, typically pre-packaged goods in a mercantile format. Staff has made the interpretation that the hookah use being operated by the proprietor is not clearly compatible with the listed uses (tobacco shop) in the following respects:

1. The use has much more in common with a restaurant or tavern use (congregations of individuals assembling for the purpose of consuming products on the premises). In the B4A District, restaurants are permitted uses, while taverns are conditional uses in other selected B business districts.
2. If the principal function is to provide for the congregation of individuals, such a use is more similar to the aforementioned taverns, clubs and lodges and meeting halls and the like, which are listed as conditional uses, not permitted uses.
3. Given this listing, a conservative but fair interpretation can be made that the intent of the Zoning Ordinance is to distinguish between traditional mercantile and assembly uses. Since the appellant recognizes that a gathering function is a primary function of his business model, one could state that it may be more consistent with the uses listed in #2 above.

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

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

### **Conditional Use Requirement**

The proposed text amendment seeks to specifically add smoking establishments within the B4A District. Staff notes that the smoking establishment use is not dissimilar to other types of conditional uses listed in the existing Zoning Ordinance, such as taverns and meeting halls. Therefore, staff recommends that the use be listed as a conditional use as well, for consistency. However, as the proposed use would be classified as a conditional use in the B4A District, each case would be viewed on its own merit and the surrounding land uses would then be taken into consideration.

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

### **Standards for Text Amendments**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **PROPOSED TEXT AMENDMENTS**

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

### **SECTION 4: DISTRICTS**

#### **155.417 "Roosevelt Road Corridor B4A District Requirements"**

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

a. Retail Uses

1. Amusement establishments, outdoor
2. Gasoline sales (or any expansion of a principal, secondary or ancillary use on the same lot as a gasoline sales establishment)
3. Motor vehicle sales
4. Outside display and sales of products the sale of which is a permitted or conditional use in this district
5. Outside service areas for other permitted or conditional uses in this district
6. Restaurants, which include entertainment, dancing, and/or amusement devices
7. Recreational vehicle sales

b. Service Uses

1. Animal hospitals and kennels
2. Banks and financial institutions
3. Clubs and lodges, nonprofit and fraternal
4. Collection Center, Attendant
5. Day Care Center
6. Drive-through and drive-in establishments/services
7. Learning Centers, with outdoor component
8. Motor vehicle repair
9. Motor vehicle service
10. Photographic processing business
11. Therapeutic massage establishments (as defined and regulated by Chapter 12, Section 122 of the Code of Ordinances)



12. Recreational vehicle sales

13. Religious Institutions

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

c. Other Uses and Activities

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

## **SECTION 8: RULES AND DEFINITIONS**

### **155.802 “Rules and Definitions”**

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

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

## **FINDINGS AND RECOMMENDATIONS**

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

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

Inter-Departmental Review Group Report Approved By:

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William J. Heniff, AICP  
Director of Community Development