

COUNCIL WORKSHOP ITEM

ITEM: Zoning Commission Case 2001-02, a proposed amendment to the Zoning Ordinance that would allow churches to request exceptions to the Lot and Bulk Regulations of Article XI of the Zoning Ordinance if strict compliance substantially burdens the exercise of religion; St. Mary's of Gostyn Church, Petitioner; James Russ Jr., Attorney and Agent.

DATE: July 3, 2001

PREPARED BY: Amanda G. Browne, Planner
Department of Planning Services

PURPOSE: To consider the recommendation of the Zoning Commission to approve the proposed Text Amendment to the Zoning Ordinance.

DISCUSSION:

The Zoning Commission conducted a public hearing on May 24, 2001 to consider a proposed text amendment that would allow churches to request consideration of exceptions from the strict compliance with the Lot and Bulk Regulations of Article XI of the Zoning Ordinance, if it is found that strict compliance would substantially burden the exercise of religion.

As outlined in the attached Staff Memorandum dated May 18, 2001, churches are listed as a Special Use within the residential zoning districts. The ability for churches to seek such relief is proposed to be structured under the provisions of the Special Use regulations, which require a public hearing before the Zoning Board of Appeals, and ultimate approval by the Village Council.

The Zoning Commission voted by a vote of 5:0:1 (with one abstention) to forward a positive recommendation with respect to the proposed amendment.

ATTACHMENTS:

Correspondence to Mayor and Council from Chairman Lawrence Musilak, dated July 3, 2001.
Staff Memorandum dated May 18, 2001 regarding the proposed amendment.
Minutes excerpt of the May 24, 2001 Zoning Commission public hearing.

RECOMMENDATION:

To place consideration of an Ordinance authorizing the proposed text amendment on a future Active Agenda.



Village of
DOWNERS GROVE
ILLINOIS

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801 Burlington Avenue
Downers Grove
Illinois 60515-4776
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CBD Redevelopment Office
1015 Curtiss Street
Downers Grove
Illinois 60515
630.434.5940
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3900 Highland Avenue
Downers Grove
Illinois 60515-1506
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Village of
Downers Grove Web site
<http://www.ci.downers-grove.il.us>

Info Line
630.434.6800

July 3, 2001

Mayor Brian Krajewski and Village Council
Village of Downers Grove
801 Burlington
Downers Grove, IL 60515

RE: File No. 2001-02: Regarding a proposed amendment to the Zoning Ordinance, Chapter 28 of the Downers Grove Municipal Code that would allow churches to request exceptions to the Lot and Bulk Regulations of the Zoning Ordinance if strict compliance substantially burdens the exercise of religion.

Dear Mayor Krajewski and Council Members:

At their May 24, 2001 meeting the Zoning Commission reviewed a proposed amendment to the Zoning Ordinance that would allow churches to request exceptions to the Lot and Bulk Regulations of the Zoning Ordinance if strict compliance substantially burdens the exercise of religion.

MR. SULLIVAN MOVED TO FORWARD A POSITIVE RECOMMENDATION TO THE VILLAGE COUNCIL REGARDING CASE 2001-02, A PROPOSED AMENDMENT TO THE ZONING ORDINANCE, TO ADD PROVISIONS THAT WOULD ALLOW CHURCHES TO REQUEST EXCEPTIONS TO THE LOT AND BULK REGULATIONS OF ARTICLE XI OF THE ZONING ORDINANCE IF STRICT COMPLIANCE SUBSTANTIALLY BURDENS THE EXERCISE OF RELIGION. MR. PAPPALARDO SECONDED THE MOTION.

VOTE: **Aye:** Mr. Sullivan, Mr. Pappalardo, Mr. Lukas, Ms. Rabatah, Chairman Musielak

Nay: None

Abstain: Mr. Steele

MOTION PASSED: **5:0:1**

Further discussion of this recommendation can be found on pages 2-7 of the May 24, 2001 minutes.

Sincerely,

Lawrence Musielak

Lawrence Musielak, Chairman
Zoning Commission

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**VILLAGE OF DOWNERS GROVE
DEPARTMENTAL CORRESPONDENCE**

TO: Zoning Commission Members

FROM: Amanda G. Browne, Planner
Department of Planning Services

DATE: May 18, 2001

RE: **Case 2001-02, Proposed amendment to the Zoning Ordinance regarding churches; St. Mary's of Gostyn Church, Petitioner; James Russ, Jr., Attorney and Agent.**

Introduction:

The petitioner, St. Mary's of Gostyn Church, is seeking approval of a text amendment to the Zoning Ordinance that would allow churches to request consideration of exceptions to the strict compliance of the Lot and Bulk regulations of Article XI of the Ordinance if it is found that strict compliance would substantially burden the exercise of religion.

The ability for churches to seek relief is being proposed to be structured under the provisions of the Special Use regulations as opposed to the variation provisions, and is being proposed in this manner due to recent judicial decisions which have granted special status to religious institutions. In particular, the Illinois Religious Freedom Restoration Act provides that "*Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.*" (775 ILCS 35/15).

Currently, the Zoning Ordinance does not allow the Zoning Board of Appeals or the Village Council to grant any relief from the Lot and Bulk regulations of Article XI of the Zoning Ordinance under the provisions of Special Use permit requests. Rather, the only way to seek such relief would be to apply for variance separate and apart from a request for a Special Use. However, Section 28-1802 of the Zoning Ordinance limits variations that can be granted by the Zoning Board of Appeals to a very specific list, and further, certain variations are limited in terms of their magnitude of deviation from the applicable regulations.

For example, Section 28-1802(b) stipulates that setback variations can only be granted up to a 50% reduction from the district requirement, and Section 28-1802(c) stipulates that height variations can only be granted up to a 10% increase from the district requirement. As applied to religious institutions and in light of the aforementioned judicial decisions regarding the exercise of religion, the inability to seek relief from the strict application of the Zoning Ordinance could potentially be considered an undue burden placed by the Village regarding the exercise of religion.

The petitioners are considering possible additions to their sanctuary at their church facilities located at the intersection of Prairie and Wilson west of Fairview. In planning and designing their facilities, the petitioners have determined that they may not be able to undertake expansions of the church's sanctuary area, and that the relief which they may require is greater than what may be granted under the variation provisions.

The petitioners therefore propose to add provisions to the Zoning Ordinance that would allow religious institutions within residential zoning districts to request exceptions to the Lot and Bulk regulations of Article XI of the Zoning Ordinance as part of the Special Use process, if it is found that strict compliance with those regulations would burden their exercise of religion. Although the proposed amendment is being presented by St. Mary's Church, amending this provision of the Ordinance should be viewed to be applicable to all religious institutions.

"Churches, church schools and other places of worship" are listed as authorized Special Uses within the R-1 through R-5A zoning districts, subject to certain conditions contained in Section 28-502(a). This section requires that churches front on an arterial or collector street or be contiguous to a Business, Manufacturing, or Office-Research Manufacturing Zoning District. Additionally, this section establishes a 2 acre minimum lot area requirement and a lot coverage limitation ranging from 40% within 1,000 feet of the Concentrated Business District to 30% for all other churches. In the R-6, Multiple Family Residential Zoning District, churches are listed as a Special Use but without any specific conditions as required in the other residential districts.

These specific provisions regarding churches in the residential districts have been contained in the Zoning Ordinance since it was adopted in its current form in April of 1965, with the exception of the maximum lot coverage percentage for churches within 1,000 feet of the Concentrated Business District, which was increased from 30% to 40% in January of 2001 as the result of a request from the First Baptist Church of Downers Grove.

In addition to these specific conditions, churches are also required to maintain the minimum requirements of the underlying zoning district with respect to items such as front, side and rear yard setbacks as well as Floor Area Ratio, all of which are found under Article XI of the Zoning Ordinance.

The proposed amendment would allow churches to request exceptions only from the regulations of the underlying zoning district which are contained in Article XI. The proposed amendment will not, however, allow churches to request exceptions to the specific provisions contained in Section 28-502(a) regarding the 2 acre minimum lot area, the locational requirement, or the lot coverage requirements. The Village Attorney is of the opinion that the specific provisions of Section 28-502(a) are reasonable limitations in excess of the requirements of the underlying zoning district that are intended to help ensure that the scale of churches within residential districts is limited so as to mitigate potential negative impacts on the surrounding residential area.

Proposed Amendment:

The petitioners propose to add a new section to Article X, Use Regulations, that would allow churches to seek exceptions to the Lot and Bulk regulations of Article XI as part of the Special Use process as follows (double underlined text is proposed to be added):

28-1020. Churches.

(a) Where permitted as a special use, and except as provided herein, churches shall be constructed, maintained and operated in conformance with applicable zoning regulations. Provided, and except as otherwise expressly set forth in this Zoning Code, the Lot and Bulk regulations set forth in Article XI may be modified in the event, but only to the extent that, the Council determines that strict compliance substantially burdens the exercise of religion. Provided, no modification shall be permitted to the extent that the Council determines that application of the burden (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

(b) In the event such a substantial burden is claimed, the applicant for a church special use shall submit materials and evidence as to the following:

(1) Describe the alleged burden in detail, including why such burden is of such a substantial nature so as to justify modification of the zoning regulations.

(2) Describe efforts employed by the applicant to avoid or reduce the burden.

(3) Describe the minimal modification requested to avoid or reduce the burden.

(4) Describe any adverse impacts of the requested modification on the area involved and efforts to reduce such impact.

(5) Such other items relevant as the applicant may deem relevant or as requested by the Director, the Board or the Council related to the alleged burden or requested modification.

(c) In the event it is determined that there is a substantial burden, and that the regulation at issue is not in furtherance of a compelling governmental interest or is not the least restrictive means of furthering that compelling governmental interest, the Board may recommend and the Council may authorize modification of the Lot and Bulk provisions of Article XI, subject to the following:

(1) The modification shall be the minimal adjustment needed to the so that the regulation no longer substantially burdens the exercise of religion. Provided, the regulation shall not be modified to the extent that it is in furtherance of a compelling governmental interest and is also the least restrictive means of furthering that compelling governmental interest.

(2) The modification shall be permitted only to the extent that and for the period of time that, the structure is used for a church. A covenant shall be recorded with the Office of the DuPage County Recorder of Deeds, in a form acceptable to Village Attorney, providing that the modification will be brought into compliance with the affected regulation in the event the property ceases to be used as a church. The Village shall have the right to refuse to issue, or to revoke an occupancy permit for the structure in the event it is not used as a church unless and until such compliance is achieved.

(3) Such conditions and restrictions may be imposed as appropriate to mitigate any adverse impact of the modification.

The following definitions are proposed to be added to Section 28-201 of the Zoning Ordinance in conjunction with the above provisions:

Church. *Wherever the term "church" is used, it shall include any church, synagogue, temple or other structure designed, intended and used primarily for religious worship or ceremony by an assembled group.*

Church School. *A school affiliated with and conducted on the same zoning lot or contiguous zoning lots as the Church to which it is affiliated.*

Exercise of religion. *Exercise of religion means an act or refusal to act that is substantially motivated by religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief.*

The Village Attorney has reviewed the proposed language in relation to the aforementioned judicial decisions regarding religious institutions, and has found that seeking relief from Article XI as part of the Special Use process is an appropriate method for religious institutions to utilize where the limitations associated with requests for variations might limit their right to exercise their religion.

Staff Recommendation:

Staff supports the proposed amendment and recommends that it be forwarded to Council with a recommendation of approval. Staff concurs with the petitioners' position that many churches would not be able to expand their facilities in reasonable ways in accordance with the regulations of Article XI. Additionally, the specific conditions required for churches in residential districts enumerated in Section 28-502(a) regarding location, lot area, and maximum lot coverage will not be allowed to be excepted.

The proposed amendment has been purposely designed to apply very narrowly to religious institutions only, and will not relieve them from seeking Special Use authorization when they are developed or significantly modified within residential zoning districts. The amendment will only allow religious institutions to request relief beyond what would be allowed as a variation from the provisions of Article XI through the Special Use process. Such requests for relief must further be found to meet the necessary standards establishing that the strict application of the regulations of Article XI would burden the exercise of religion, and will also be subject to the continued use of the facility as a religious institution.

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**VILLAGE OF DOWNERS GROVE ZONING COMMISSION
VILLAGE HALL, COMMITTEE ROOM
801 BURLINGTON AVENUE**

Thursday, May 24, 2001

Chairman Musielak called the meeting of the Zoning Commission to order at 7:31 p.m.

ROLL CALL

PRESENT: Mr. Lukas, Mr. Pappalardo, Ms. Rabatah, Mr. Steele, Mr. Sullivan, Chairman Musielak

ABSENT: Mr. Griesbaum

STAFF: Amanda Browne, Planner, Department of Planning Services
Karen Mudra, Recording Secretary

OTHERS

PRESENT: James Russ, Jr., Mark Daniel, Greg Gauze

Chairman Musielak stated that the first order of business was consideration of approval of the minutes of the March 22, 2001 meeting. He asked if there were any additions or corrections to the minutes. Hearing none, he asked for a motion to accept the minutes as presented.

MR. SULLIVAN MOVED THAT THE MINUTES OF THE MARCH 22, 2001 ZONING COMMISSION MEETING BE ACCEPTED AS PRESENTED. MR. STEELE SECONDED THE MOTION.

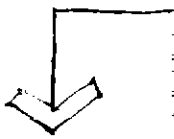
VOTE: **Aye:** Mr. Sullivan, Mr. Steele, Mr. Lukas, Mr. Pappalardo, Chairman Musielak

Nay: None

Abstain: Ms. Rabatah

MOTION CARRIED: 5:0:1

Chairman Musielak asked Ms. Browne to enter the legal notice into the record. She said the following legal notice was published in the Downers Grove Reporter on Wednesday, May 9, 2001.



LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING – Notice is hereby given that a Public Hearing will be conducted by the Downers Grove Zoning Commission on Thursday, May 24, 2001 at 7:30 p.m. in the Committee Room of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois. The purpose of the public hearing is to consider Case 2001-02, a

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proposed amendment to the Zoning Ordinance that would allow churches to request exceptions to the Lot and Bulk Regulations of the Zoning Ordinance if strict compliance substantially burdens the exercise of religion.

All interested parties should attend this hearing and will be given opportunity to be heard. The hearing may be continued from time to time with no further public notice. Individuals with a disability requiring reasonable accommodations in order to participate in any meeting should contact the Community Relations Department at (630) 434-5560 prior to the meeting. Wheelchair access may be gained through the south (side) entrance of the Village Hall. Zoning Commission, Mr. Lawrence Musielak, Chairman, published in the Downers Grove Reporter, Wednesday, May 9, 2001.

Mr. James Russ, Jr., of the law firm of Wiedel, Hudzik and Russ, Downers Grove, said he is representing the St. Mary of Gostyn Church which is located at the intersection of Prairie and Douglas Avenues in the Village. He explained that they are petitioning to allow churches to request consideration of exceptions from the strict application of the Zoning Ordinance's lot and bulk regulations, if strict compliance substantially burdens the exercise of religion.

Mr. Russ said that this petition originated because St. Mary's would like to add a small addition to their existing church sanctuary. When discussing the project with Village staff, it was determined that it would not be possible for St. Mary's to expand the church as desired and still meet current setback requirements or the maximum setback that would be allowed by a variation.

In discussing the issue with the Village Attorney and with Planning staff, it was determined that the current provisions of the Zoning Ordinance as they apply to churches may not meet the criteria of the Illinois Religious Freedom Restoration Act or Federal Religious Land Use and Institutionalized Persons Act of 2000. Those acts basically state that zoning regulations must have a compelling governmental interest before they may burden the exercise of religion. Mr. Russ explained that this is a relatively new area in zoning, but one that has been quite active in the courts over the last few years.

Mr. Russ said that in reviewing the current Village Ordinances, the Village Attorney determined that there is a possibility that the existing ordinances could be construed as burdening the exercise of religion. Therefore, Mr. Russ said that this petition seeks to bring the Village Zoning Ordinance into alignment with the Illinois Religious Freedom Restitution Act, the Federal Religious Land Use and Institutionalized Persons Act and other related recent judicial decisions.

Mr. Russ said that the language in the proposed ordinance was drafted in conjunction with the Village Attorney to mirror the State and Federal acts and recent judicial decisions. He said they have established a set of criteria which will bring the Zoning Ordinance into compliance with State and Federal requirements regarding the application of lot and bulk regulations to religious institutions. Although St. Mary's is submitting this petition, Mr. Russ pointed out that the proposed amendment would be applicable to all churches in the community. However, he added that the proposed amendment was not drafted to favor St. Mary's, and it remains to be seen if their proposal will meet the criteria.

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Mr. Russ explained that the proposed amendment would still require churches as petitioners to go through the Special Use application and public hearing process. If a church needs to request an exception to the lot and bulk regulations, it would do so within the framework of a Special Use request as opposed to a separate variation request. The Special Use case would go before the Zoning Board of Appeals for review and recommendation to the Village Council in the same manner as the current requirement for Special Uses, except that it will be able to have an associated request for a lot or bulk exception. Mr. Russ clarified that in this process as proposed, the Zoning Board of Appeals will continue to be a recommendation making body for the Special Use and for any requested exceptions, and final authority for approval will rest with the Village Council.

Mr. Russ said in consideration of any requested exceptions as part of a Special Use request, applicants would be required to submit material and evidence showing that they meet the following criteria as stated in Section 28-1020 (b) of the draft ordinance: "(1) Describe the alleged burden in detail, including why such burden is of such a substantial nature so as to justify modification of the zoning regulations; (2) Describe efforts employed by the applicant to avoid or reduce the burden; (3) Describe the minimal modification requested to avoid or reduce the burden; (4) Describe any adverse impacts of the requested modification on the area involved and efforts to reduce such impact; and (5) Such other items relevant as the applicant may deem relevant or as requested by the Director, the Board or the Council related to the alleged burden or requested modification."

Mr. Russ added that if it is found that the proposal meets the criteria in subsection (b), there is a second set of criteria that must be considered which are outlined in subsection (c) of the draft ordinance: "... the Council may authorize modification of the Lot and Bulk provisions of Article XI, subject to the following: 1) The modification shall be the minimal adjustment needed so that the regulation no longer substantially burdens the exercise of religion. Provided, the regulation shall not be modified to the extent that it is in furtherance of a compelling governmental interest and is also the least restrictive means of furthering that compelling governmental interest; (2) The modification shall be permitted only to the extent that and for the period of time that, the structure is used for a church. A covenant shall be recorded with the Office of the DuPage County Recorder of Deeds, in a form acceptable to the Village Attorney, providing that the modification will be brought into compliance with the affected regulation in the event the property ceases to be used as a church. The Village shall have the right to refuse to issue, or to revoke an occupancy permit for the structure in the event it is not used as a church unless and until such compliance is achieved; and (3) Such conditions and restrictions may be imposed as appropriate to mitigate any adverse impact of the modification."

Mr. Russ said that although the proposed amendment would provide extraordinary relief from the Zoning Ordinance, it is relief that will be limited and restricted only to religious institutions, and the exceptions would only be granted after they are found to meet a strict set of criteria as determined by the Zoning Board of Appeals and the Village Council.

Mr. Russ said that he worked closely with the Village staff and Village Attorney when drafting the language for this amendment. The goal of the amendment was to minimize the number of properties and uses that could benefit from this request, but still meet the needs of the churches as they grow. The typical uses of churches have changed over the years, and now include other

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associated uses such as nurseries and schools. Additionally, many churches have been located in established neighborhoods for many years, and their membership and usage have increased over time. These churches may not have the option to acquire additional property for expansion, especially in established neighborhoods.

Mr. Russ said this amendment would allow churches to maximize the use of their property while remaining compatible with the surrounding community. He added that the amendment also allows the Village to control the expansion of churches, as it provides a hearing process for public input, it meets the current legislation and case law regarding zoning and religious uses, and it brings the Village Ordinances more in line with such case law.

Ms. Browne presented the Staff findings for Case 2001-02. She agreed with Mr. Russ that although the petition is being presented by St. Mary's, the amendment will apply to all religious institutions in residential zoning districts throughout community. However, she said that this amendment has been constructed to apply very narrowly, and it contains a set of checks and balances that will further limit its applicability in terms of determining if in fact a burden on the exercise of religion is present when our zoning laws are applied.

Ms. Browne said the intent of the amendment is to allow churches to request relief from the Lot and Bulk regulations of Article XI of the Zoning Ordinance through the Special Use permit process, rather than through the variation process.

Ms. Browne pointed out that churches are currently listed as a Special Use within the residential zoning districts. The amendment will still require churches to apply for a Special Use permit when significant expansions to existing facilities are proposed, or when new facilities are developed within a residential district. She said that in order to seek relief from the Lot and Bulk regulations beyond what is permitted by way of a variation, churches must establish that the strict application of the regulations of Article XI burden their exercise of religion. Ms. Browne said that if the criteria in subsection (b) have been satisfied to establish that a burden exists, the church must then satisfy the criteria in subsection (c) concerning the requested exception.

Ms. Browne said that under these provisions, the burden of proof lies with the petitioner who must satisfy the criteria concerning the existence of a burden to the exercise of religion. Additionally, the petitioner must then prove that they meet the criteria which establish that the relief being sought under the exception is the minimum relief necessary. Further, the Village may impose conditions it deems necessary to minimize the impact of a requested exception. And lastly, this amendment stipulates that any modification will be permitted only as long as the structure is used as a religious institution. If the use as a religious institution ceases, the relief is no longer applicable and the structure must be brought into compliance with the regulations.

Ms. Browne noted that Staff is of the opinion that processing such requests for relief through the Special Use permit process is appropriate due to the limitations associated with variations under the framework of the current Ordinance. Ms. Browne explained that the types of variations that the Zoning Board is able to grant are limited to a specific list within Section 28-1802 of the Ordinance. In addition, the variations listed in that section are often limited in scope and magnitude. For instance, setback variations are limited to a 50% reduction; anything greater can not be considered.

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Ms. Browne said that Staff agrees that the list of permitted variations and the limitations associated with certain variations may not be flexible enough to withstand a claim of a burden on the exercise of religion. The Special Use permit process was found to be the most appropriate process under which a church could request an exception to the lot and bulk requirements beyond what could be granted by way of a variation.

Ms. Browne pointed out that this amendment will only allow churches to seek relief from the lot and bulk regulations in Article XI of the Ordinance. The provisions for churches as special uses in residential districts contained in Section 28-502(a) will not be permitted to be varied. This section establishes additional criteria for churches in residential districts, in that they are required to be located on an arterial or collector street or must be contiguous on at least one side to a business, office research, or manufacturing district. Under this section, churches are also required to have a minimum lot area of two acres, and they are required to comply with a maximum lot area coverage requirement of 40% within 1,000 feet of the Concentrated Business District and 30% for all other churches in residential districts. Ms. Browne said the provisions of Section 28-502(a) are intended to limit the scope and intensity of churches in residential areas, and therefore, will not be permitted to be varied.

Mr. Steele asked if Mr. Russ and the Village Attorney discussed defining "compelling governmental interests". Mr. Russ replied no, and that the phrase would be left open to interpretation by the courts on a case by case basis.

Mr. Steele said he would abstain from voting on this proposed amendment because he is a member of the finance committee of another church in Downers Grove and he wished to avoid the appearance of a conflict of interest.

Mr. Steele said that he is somewhat concerned about changes in the use of church facilities in residential districts. He pointed out that churches are now used as daycare facilities, schools, gymnasiums, etc. and he asked if the Village Ordinance regulates the types of uses for which churches can be used in residential districts. Mr. Russ said that the proposed amendment does include the definitions of "church", "church school" and "exercise of religion".

Mr. Lukas asked about the parking requirement for churches. Ms. Browne explained that churches have a minimum parking requirement based upon the seating capacity of the sanctuary, and churches in or within 1,000 feet of the Concentrated Business District have a reduced requirement. Mr. Lukas asked what would happen if a church expands their building and in doing so eliminates some parking. Ms. Browne said churches would still be required to meet their off-street parking obligations as required by the Zoning Ordinance. Those provisions are contained in a separate Article within the Zoning Ordinance, and are not proposed to be able to be requested as an exception. Mr. Lukas asked if the church could argue that the Village parking requirements were burdening their exercise of religion. Ms. Browne said that a church could still seek a variation with respect to parking, but not under the provisions of an exception as part of the Special Use process as is being proposed. It would have to be a separate request apart from the Special Use.

Mr. Russ added that St. Mary's currently has a legal non-conformity in their parking and any

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addition to the church cannot increase the non-conformity that currently exists. Thus, if St. Mary's does not maintain the required percentage of parking spaces, Mr. Russ said that the Village could deny their request for expansion of their special use.

Mr. Lukas asked how the Special Use permit process would work. Ms. Browne said that a church would make an application for a Special Use permit, providing an outline of how they feel their petition meets the criteria for a Special Use, the criteria as they relate to the burden of the exercise of religion, and the criteria as they relate to the minimum exception being requested. The request would be noticed as any other request before the Zoning Board, who would hold a public hearing regarding the request. The ZBA would then make determinations as to the three sets of criteria, and would make a recommendation to the Village Council, who would make the final determination as to the request for the Special Use and the requested exception.

Mr. Pappalardo asked Ms. Browne what prompted this proposed amendment. Ms. Browne said that St. Mary's was exploring the idea of expanding their sanctuary, however, in doing so they found that they would be unable to meet the setback requirements of their zoning district. It was also determined that the planned expansion would require a setback variation to a greater degree than is permitted under the current ordinance. As there was no other way for a religious institution to seek relief from the Zoning Ordinance requirements outside of the variation provisions, which in this case were limited in such a way that the relief needed exceeded what was permitted to be granted by the ZBA, the Village Attorney and Mr. Russ worked together to structure this proposed amendment.

Mr. Russ explained that St. Mary's plans to expand their sanctuary out to the support pillars of the covered walkway surrounding the existing sanctuary. He said the setback requirement is 25 feet, and the church currently has a 14-foot setback as measured to the wall of the structure, and a 7-foot setback as measured to the covered walkway. If they enclosed the walkway, the 7-foot setback is greater than the 50% variation from the 25 foot setback that can be granted by the ZBA under the variation provisions.

Mr. Pappalardo said it seems rather high-powered to bring in legislation from the State and the Federal government to request relief from a setback requirement. Mr. Russ explained that the Village Attorney saw the problems faced by St. Mary's as an opportunity to bring the Village Zoning Ordinance into compliance with the recent State and Federal legislation regarding the application of zoning regulations to religious institutions.

Chairman Musielak asked if the criteria in subsections (b) and (c) of the proposed ordinance might be considered to burden the exercise of religion. Mr. Russ said he did not believe they would because the language in the proposed amendment mirrors State and Federal regulations.

Mr. Steele asked if the Federal regulations have been tested in the Supreme Court. Mr. Russ said that as he understands it, the Federal regulations have gone to the Supreme Court, although there are some outstanding issues that have yet to be decided.

Mr. Sullivan noted that the problem of inadequate space for expansion is one that is faced by many

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churches in the community, and although they could relocate, their congregations and their facilities are here. He added that while he has been on the Zoning Commission, they have made every attempt to facilitate churches and their needs. Mr. Sullivan said he feels that the Commission should recommend approval of this amendment in order to facilitate St. Mary's and other churches that may face similar problems with proposed expansions.

Chairman Musielak said that although he is inclined to oppose over-liberalization of the Zoning Ordinance, he agrees with Mr. Sullivan and is in favor of this amendment. Chairman Musielak called for a motion.

MR. SULLIVAN MOVED TO FORWARD A POSITIVE RECOMMENDATION TO THE VILLAGE COUNCIL REGARDING CASE 2001-02, A PROPOSED AMENDMENT TO THE ZONING ORDINANCE TO ADD PROVISIONS THAT WOULD ALLOW RELIGIOUS INSTITUTIONS TO REQUEST EXCEPTIONS TO THE LOT AND BULK REGULATIONS OF ARTICLE XI OF THE ZONING ORDINANCE IF STRICT COMPLIANCE SUBSTANTIALLY BURDENS THE EXERCISE OF RELIGION. MR. PAPPALARDO SECONDED THE MOTION.

VOTE:	Aye:	Mr. Sullivan, Mr. Pappalardo, Mr. Lukas, Ms. Rabatah, Chairman Musielak
	Nay:	None
	Abstain:	Mr. Steele



MOTION PASSED: 5:0:1

Chairman Musielak asked Ms. Browne to enter the legal notice for Case 2001-03 into the record. She said the following legal notice was published in the Downers Grove Reporter on Wednesday, May 9, 2001.

LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING – Notice is hereby given that a Public Hearing will be conducted by the Downers Grove Zoning Commission on Thursday, May 24, 2001 at 7:30 p.m. in the Committee Room of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois. The purpose of the public hearing is to review Case 2001-03, a proposed amendment to the Zoning Ordinance regarding freestanding signs for colleges and universities.

All interested parties should attend this hearing and will be given opportunity to be heard. The hearing may be continued from time to time with no further public notice. Individuals with a disability requiring reasonable accommodations in order to participate in any meeting should contact the Community Relations Department at (630) 434-5560 prior to the meeting. Wheelchair access may be gained through the south (side) entrance of the Village Hall. Zoning Commission,