

COUNCIL WORKSHOP ITEM

ITEM: **PUBLIC HEARING:** **MC-5-02** A Petition to Zone Property to the Village B-2, General Retail Business District. The properties are currently the subject of court orders. The properties are located on the east side of Main Street, approximately 385 feet south of the south line of Maple Avenue, commonly known as 5333 Main Street, Downers Grove, Illinois (PIN 09-08-314-056,-057) and 5337 Main Street, Downers Grove, Illinois (PIN 09-08-314-058); Joseph Kowalkowski, Owner of 5333 Main Street and American National Bank Trust #109351-04, Owner of 5337 Main Street, Lanphier & Kowalkowski, Ltd., Attorney/Petitioner

DATE: May 17, 2002

PREPARED BY: Kenneth J. Rathje, Director Planning Services

PURPOSE: Obtain approval for rezoning of property to B-2, General Retail Business

DISCUSSION:

At its April 24, 2002 meeting, the Zoning Board of Appeals made a unanimous recommendation to approve the petitioner's request to rezone the subject properties as B-2 zoning in order to replace the existing Court Order. The Board based its finding upon the belief that the proposed rezoning is consistent with the Village's Future Land Use Plan, and that the Court ordered zoning applied to the properties should be replaced with a specific zoning designation.

ATTACHMENT:

1. Letter to Mayor and Council dated May 17, 2002
2. Draft Minutes Dated April 24, 2002
3. Findings dated April 18, 2002 including Staff Findings, Zoning Board of Appeals Minutes and the Council Minutes for previous rezoning petitions on this property, MC-3-87 and MC-4-87

RECOMMENDATION:

Approval of an Ordinance rezoning the subject property to B-2, General Retail Business Zoning.



Village of
DOWNERS GROVE
ILLINOIS

Civic Center

801 Burlington Avenue

Downers Grove

Illinois 60515-4776

630.434.5500

TDD 630.434.5511

FAX 630.434.5571

CBD Redevelopment Office

1015 Curtiss Street

Downers Grove

Illinois 60515

630.434.5940

FAX 630.968.6346

Fire Department

Administration

3900 Highland Avenue

Downers Grove

Illinois 60515-1506

630.434.5980

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Police Department

825 Burlington Avenue

Downers Grove

Illinois 60515-4783

630.434.5600

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Public Works Department

5101 Walnut Avenue

Downers Grove

Illinois 60515-4074

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Department of

Social & Health Services

842 Curtiss Street

Downers Grove

Illinois 60515-4761

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Village of

Downers Grove Web site

<http://www.vil.downers-grove.il.us>

Info Line

630.434.6800

May 17, 2002

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

RE: MC-5-02 A Petition to Zone Property to the Village B-2, General Retail Business District. The properties are currently the subject of court orders. The properties are located on the east side of Main Street, approximately 385 feet south of the south line of Maple Avenue, commonly known as 5333 Main Street, Downers Grove, Illinois (PIN 09-08-314-056,-057) and 5337 Main Street, Downers Grove, Illinois (PIN 09-08-314-058); Joseph Kowalkowski, Owner of 5333 Main Street and American National Bank Trust #109351-04, Owner of 5337 Main Street, Lanphier & Kowalkowski, Ltd., Attorney/Petitioner.

Dear Mayor Krajewski and Village Council:

At its April 24, 2002 meeting, the Zoning Board of Appeals made the following recommendation in case MC-5-02:

Mr. Lukas moved with respect to Case MC-5-02 that the Board recommend that the Village Council approve the petitioners' request to zone the subject parcels B-2, General Retail Business, which would be consistent with the Village's Future Land Use Plan. The zoning designation of B-2, General Retail Business would replace the existing Court Orders. Mr. Gray seconded the Motion.

AYES: Mr. Lukas, Mr. Gray, Mr. Benes, Mr. Domijan, Mr. Sleeter, Chairman White

NAYS: None

Chairman White declared the Motion passed unanimously.

The Board members based their finding upon the belief that the proposed rezoning is consistent with Village's Future Land Use Plan, and that the Court Ordered zoning applied to the properties should be replaced with a specific zoning designation.

Sincerely,

VILLAGE OF DOWNERS GROVE

William White, Chairman
Zoning Board of Appeals
WW/tmh

1 Chairman White then asked Mr. Rathje to read the published public hearing notice for the first
2 petition.

3
4

5 **MC-5-02** A Petition to Zone Property to the Village B-2, General Retail Business District. The
6 properties are currently the subject of court orders. The properties are located on the east side of
7 Main Street, approximately 385 feet south of the south line of Maple Avenue, commonly known
8 as 5333 Main Street, Downers Grove, Illinois (PIN 09-08-314-056,-057) and 5337 Main Street,
9 Downers Grove, Illinois (PIN 09-08-314-058); Joseph Kowalkowski, Owner of 5333 Main Street
10 and American National Bank Trust #109351-04, Owner of 5337 Main Street, Lanphier &
11 Kowalkowski, Ltd., Attorney/Petitioner.

12
13 **LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING**

14 – Notice is hereby given that a public hearing will be held by the Zoning Board of Appeals at
15 7:30 p.m. on Wednesday, April 24, 2002 in the Council Chambers of the Village Hall, 801
16 Burlington Avenue, Downers Grove, Illinois to consider a petition seeking to zone property to
17 the Village’s B-2, General Retail Business Zoning District. The properties are currently the
18 subject of court orders. The properties are located on the east side of Main Street, approximately
19 385 feet south of the south line of Maple Avenue, commonly known as 5333 Main Street,
20 Downers Grove, Illinois (PIN 09-08-314-056,-057) and 5337 Main Street, Downers Grove,
21 Illinois (PIN 09-08-314-058) and are legally described as follows:

22 Parcel 1:

23 Part of Lot 31 in Curtiss Subdivision, being a subdivision of Lot 27 of Assessor’s
24 Subdivision of Sections 7 and 8, Township 38 North, Range 11 East of the Third
25 Principal Meridian, and more particularly described as follows: commencing at the
26 northwest corner of said Lot 31 for a place of beginning; thence southerly on said west
27 line 60 feet; thence easterly parallel with the south line of said Lot 31, 221.7 feet; thence
28 northerly parallel to the east line of said Lot 31 to the intersection of the south line of
29 School lot; thence westerly along the south line of School lot 57.28 feet; thence northerly
30 parallel to the east line of said Lot 31, 10 feet; thence westerly along the north line of Lot
31 31, 165 feet, to the place of beginning, according to the plat of said Curtiss Subdivision,
32 recorded September 13, 1881 as Document #29341, in DuPage County, Illinois

33 Together with

34 Parcel 2:

35 That part of Lot 31 described as follows: commencing 60 feet south of the northwest
36 corner of Lot 31, as measured along the east line of Main Street; thence east 250 feet to
37 the southeast corner of Edward Diener’s land as described in certain recorded as
38 Documents 141786 and 463205; thence south parallel to the east line of Lot 31 to the
39 south line of Lot 31; thence west along the south line of Lot 31 to the east line of Main
40 Street; thence north along the east line of Main Street to the point of beginning,
41 (excepting therefrom the easterly 25.02 feet, as measured along the northerly and
42 southerly lines thereof), in Curtiss Subdivision, being a resubdivision of Lot 27 of
43 Assessor’s Subdivision of Sections 7 and 8, Township 38 North, Range 11, East of the
44 Third Principal Meridian, according to the plat of said Curtiss Subdivision, recorded
45 September 13, 1881 as Document 29341 in DuPage County, Illinois.

46 Individuals with a disability requiring a reasonable accommodation in order to participate in any
47 meeting should contact the Community Information Officer (630) 434-5550 prior to the meeting.

1 Wheelchair access may be gained through the side (South) entrance of Village Hall. All
2 interested persons should attend this hearing and will be given an opportunity to be heard. Please
3 call (630) 434-5531 with questions regarding this rezoning petition. The hearing may be
4 continued from time to time without prior public notice. Zoning Board of Appeals, William
5 White, Chairman. Published in the Downers Grove Reporter Friday, April 5, 2002.
6

7 **Petitioner's Presentation:**
8

9 Mr. E. Paul Lanphier stated that he was representing Mr. Kowalkowski and Mr. Weller, who are
10 the petitioners in the case. He said that Mr. Kowalkowski owns the property designated as Parcel
11 -057 shown on the overhead projection, and Mr. Weller owns the property shown as Parcel -058.
12 The subject properties are currently under a Court Order regarding their zoning. This Court
13 Order was enacted some time in 1988, and it limited the use of the property to professional
14 offices.
15

16 Mr. Lanphier said that both petitioners have owned their parcels since at least 1988. Mr. Weller
17 is the sole owner and proprietor of the business establishment commonly known as the Pacific
18 General Insurance Agency, and he has operated that business since 1988. Since that time, Mr.
19 Weller has made substantial expenditures and improvements to the site. Mr. Lanphier said that
20 Mr. Kowalkowski is the principal owner of his Certified Public Accounting business, which he
21 has operated since 1986. He noted that Mr. Kowalkowski has also made substantial expenditures
22 and improvements to the property to fit its present professional office use.
23

24 Mr. Lanphier said the petitioners are requesting that the Zoning Board of Appeals make a
25 positive recommendation to the Village Council to rezone the subject property to B-2, General
26 Retail Business. The petitioners believe that B-2 is an appropriate zoning classification, and that
27 rezoning the property is the natural thing to do because the Downers Grove Future Land Use Plan
28 designates the parcels as B-2 zoning. Mr. Lanphier noted that if the rezoning is approved as
29 requested, the two subject parcels will be the last two properties on the Future Land Use Plan on
30 the east side of Main Street that will have B-2 zoning.
31

32 Mr. Lanphier said that the property immediately to the north of the subject property is zoned B-2.
33 For these reasons, the petitioners believe they should have the zoning which is called for on the
34 Future Land Use Plan. He added that both owners would like to have the flexibility that B-2
35 zoning would afford to them. Their present use is restricted to professional business use, and the
36 owners could be more flexible with respect to possible tenants if the properties were zoned B-2.
37

38 Mr. Lanphier stated that both owners have asked him to report that they have no immediate or
39 future plans to redevelop the properties. Both owners intend to maintain their professional
40 offices at the same locations, and neither owner has plans to sell the property to any other person.
41 The owners believe the uses are appropriate for their sites, and they respectfully request that the
42 Board recommend approval of this request.
43

44 Mr. Gray asked Mr. Lanphier how long the existing businesses have been active in the Village.
45 Mr. Lanphier responded that Mr. Kowalkowski has been at this location since 1986, and Mr.
46 Weller since at least 1988.
47

1 Mr. Benes asked about the Court Order which allowed the present uses on the property, and
2 which allowed the owners to make improvements to the buildings. He stated that there was no
3 mention in the Court Order other than that the buildings could be used for professional use;
4 however, the Court did not rule that the properties could be zoned to B-2. He said that the Court
5 Order only rules that they could be used for professional use.

6
7 Mr. Lanphier responded that it does not say one thing, or the other. The owners are seeking the
8 rezoning so they may have certainties regarding their use of the properties.

9
10 Mr. Benes asked whether the fact that the Court Order allows for professional use curtails the use
11 of the property. Mr. Lanphier said he believes that there is no direct zoning classification for the
12 property, and that is why they are requesting that the specific B-2 zoning classification be
13 assigned to the property.

14
15 Mr. Sleeter asked whether the language of the Court Order warrants a variance, or zoning for a
16 transitional type of use. Mr. Lanphier responded that he did not have a full copy of the Court
17 Order with him, but the relevant provision of the Order says the property will be used for
18 professional occupations only. He added that the Court Order was the result of litigation
19 instituted by Mr. Kowalkowski some years before.

20
21 Chairman White asked for clarification as to whether the Court Order was negotiated between
22 the Village and the owner for a specific use with a specific site plan. Mr. Lanphier said he did
23 not represent the parties at the time of the litigation, but he was told that it was negotiated as an
24 Agreed Order. Chairman White said that it appears from the copies of documents that he has
25 received that it was submitted as an Agreement.

26
27 Mr. Benes asked whether there had been any changes made to the site plan since the Court Order
28 was entered. Mr. Lanphier said that both properties have been altered somewhat, with the
29 approval of the Village. He said that Mr. Weller modified his structure by putting on an addition
30 to the building. He said that Mr. Kowalkowski has extensively modified the front of his
31 structure, and has also added a stairway to the second floor, as well as a two-story addition to the
32 back of the building. Both owners have expended a considerable amount of money in
33 improvements in the vicinity of \$130,000 each.

34
35 There being no further questions from the Board at this time, Chairman White called upon Mr.
36 Rathje to present the staff findings.

37
38 **Staff's Presentation:**

39
40 Mr. Kenneth Rathje, Director of Planning Services, said the petitioner is seeking rezoning of
41 property located at 5333 and 5337 Main Street. This petition proposes that the subject properties
42 be designated with B-2, General Retail Business zoning. He noted that he spoke with former
43 Village Attorney Daniel Blondin regarding this property, who said that essentially the property is
44 unzoned and its use as professional offices is based upon the decreed Court Order.

45
46 Mr. Rathje explained that both of these properties were the subjects of public hearings before the
47 Zoning Board of Appeals in 1987. The 5333 Main Street property was the subject of Case #MC-

1 3-87, and the 5337 Main Street property was the subject of Case #MC-4-87. The Zoning Board
2 reviewed the petitioners' previous rezoning requests and forwarded positive recommendations to
3 the Council for each case, with each recommendation receiving a vote of 4:1. The Village
4 Council, however, chose to deny each of the previous rezoning petitions. Each of the property
5 owners subsequently brought a legal complaint against the Village to the Circuit Court with each
6 of the suits resulting in Judgement Orders that directed the Village to permit the properties to be
7 utilized for office purposes.

8
9 Mr. Rathje said the northerly of the two properties is known as 5333 Main Street. This property
10 has a width of 60 feet for the westerly 165 feet of the property and a width of 50 feet for the
11 easterly 57.28 feet of the property. It has a depth ranging from 165 feet for the northerly 10 feet
12 of the property and a depth of 221.7 feet as measured along the south lot line for the remainder of
13 the property. He stated this property has an area of approximately 12,735 square feet and is
14 improved with a two-story wood frame structure that had originally been constructed as a house
15 but was subsequently converted for use as a business office.

16
17 Mr. Rathje then described the southerly of the two properties, which is known as 5337 Main
18 Street. This property has a width ranging from 66.72 feet as measured on the west to 65.60 feet
19 as measured on the east with a depth of 224.98 feet and a lot area of approximately 14,834 square
20 feet. This property is improved with a one-story house that also had originally been constructed
21 as a house but was also subsequently converted for use as a business office.

22
23 Regarding the zoning of the adjacent properties, Mr. Rathje said properties to the north are zoned
24 B-2, General Retail Business, and properties to the west, south and east are zoned R-4, Single
25 Family Residential. The B-2 zoned property to the north is occupied by the Morningside
26 condominiums, and the properties to the west, south and east are occupied by single family
27 residences.

28
29 Mr. Rathje explained that the Village's Future Land Use Plan designates both of the subject
30 properties as Commercial which is the land use category of the Future Land Use Plan that is
31 consistent with the B zoning districts including the proposed B-2, General Retail Business
32 district.

33
34 Mr. Rathje noted that as background information, copies of the 1987 petition, Staff reports,
35 Zoning Board of Appeals Minutes and the Judgment Orders resulting from the previous rezoning
36 petitions were included in the Board's packets for their review.

37
38 Mr. Rathje stated that the proposed rezoning of the subject properties to B-2, General Retail
39 Business would be consistent with the provisions of the Village's Future Land Use Plan and
40 would be consistent with the recommendation made by a majority of the Zoning Board of
41 Appeals when the petitions were previously reviewed in 1987.

42
43 Mr. Rathje said that professional offices are among the permitted uses within the B-2 zoning
44 district. He said that given some changes in the Village Council since the time this case was
45 litigated, the idea of formalizing the zoning of the property to be consistent with the Future Land
46 Use Plan may be reviewed by the Council in a new light as compared to 1987.

1 In regard to questions raised by the Board regarding modifications made to the properties, Mr.
2 Rathje said that when these modifications were proposed, the owners had to go back to the
3 Courts on more than one occasion for even relatively minor changes. If the properties were
4 zoned B-2 as proposed, the petitioners would be obligated to satisfy all the normal B-2 zoning
5 regulations and would also be able to enjoy what is permitted in the B-2 zoning district.
6

7 Mr. Rathje added that the rezoning would replace the Court Order, at which point the Zoning
8 Ordinance would be applicable to these properties in the same way as the neighboring
9 commercial properties. Mr. Rathje said that in the past the Village has had to use the Court
10 Order as the surrogate for the Village's Zoning Ordinance, and the petitioners have had to go
11 back to the Courts to negotiate those changes.
12

13 Chairman White said that it is his understanding that part of the Council's concern in 1987 was
14 that the Morningside site was not developed at that time, and that there was a possibility that
15 these subject parcels could be developed with other parcels in the area. Mr. Rathje agreed,
16 saying that the former grocery store site, which is now occupied by Morningside, was
17 significantly underused. He added that the Morningside development stabilized a piece of
18 property that had significant development opportunities. A further stabilization factor that has
19 taken place is the amount of investment that has gone into the upgrade of the subject properties
20 by their owners. It is his opinion that these properties are not speculative pieces of property,
21 rather, they provide a valued and worthwhile occupancy for their owners.
22

23 Mr. Benes asked about the zoning of the bank property across Main Street to the west, and Mr.
24 Rathje responded that it was B-2 zoning from the bank north to Maple Avenue, and using the
25 overhead projection, he showed the B-2 zoned properties on the west side of the street.
26

27 Chairman White asked about the homes that were acquired by the Village south of Maple
28 Avenue. Mr. Rathje showed the locations of those homes on the overhead, and noted that they
29 are located south of Summit Street in the area of the Fire Station and the Village's water tower.
30

31 Mr. Domijan asked for an elaboration of the B-2 requirements which would apply to the
32 properties. Mr. Rathje said the requirements would largely depend upon what the owners wanted
33 to modify, since there are specific setback regulations for the required front yard, as well as
34 specific greenspace requirements, and he briefly reviewed those requirements. Mr. Rathje added
35 that the parking requirements will depend upon any use which may be proposed to occupy the
36 site. He noted that building code and life safety requirements will apply, and that those
37 regulations are not limited to the B-2 district alone and that there was no question as to the
38 applicability of life safety and building code requirements.
39

40 There being no further questions from the Board, Chairman White called upon anyone who
41 wished to speak either in favor of or in opposition to the petition.
42

43 Ms. Laurel Bowen of 829 Clyde Drive, Downers Grove, asked that the Board not recommend
44 approval of the rezoning because she feels that there is an abundance of commercial property that
45 is vacant in Downers Grove. She asked the Board that if they continue to rezone properties in the
46 downtown, when will they stop the encroachment into residential areas, and when will they
47 consider the character of the residential neighborhood in making their decisions? Ms. Bowen

1 asked if the rezoning were granted, what would prevent the owners from changing the uses that
2 are there now? She said that she is concerned that no one considers what the future impact will
3 be on the surrounding residential areas. She said the Village officials speak about master plans
4 for businesses, yet they know the vacancies that already exist in the Village.
5

6 Mr. Benes asked Ms. Bowen if she was under the impression that the subject properties were
7 zoned residential. Ms. Bowen said that she did not think that, but she said that they are
8 surrounded by residential neighborhoods. She said that residences will soon have businesses as
9 their neighbors, which could greatly impact the residents who never imagined that they would
10 have a business adjacent to them. She said this happened when Morningside's development was
11 approved.
12

13 In further response to Mr. Benes, Ms. Bowen said her objection is a general objection. She said
14 that it appears to her that the Village is just approving a petition that comes forward because the
15 adjacent property is zoned for business use.
16

17 Mr. Benes asked Ms. Bowen if she believed that there should be a designated zoning
18 classification assigned to the property so that it could be controlled by the Village. Ms. Bowen
19 agreed with designating a zoning classification for protection.
20

21 Mr. Benes asked Ms. Bowen if she assumes that these properties will be disrupting the
22 neighboring residents if the B-2 zoning is granted. Ms. Bowen said it concerns her that when the
23 Village approves business zoning, there is less protection for the neighboring residents. She said
24 there is a history in the Village where rezoning decisions have impacted surrounding residents.
25

26 Mr. Gray commented that he did not see Ms. Bowen's name as one of the surrounding property
27 owners within 250 feet of the subject properties. Ms. Bowen responded that she is not an
28 adjacent property owner.
29

30 Mr. Gray said that it appears to him that Ms. Bowen is making a general statement rather than
31 one applied to this specific piece of property. Ms. Bowen replied that she is a resident and a
32 taxpayer of the Village. She said that she values her quality of life, and the reasons why she
33 chose to live in Downers Grove are impacted every day by the changes being made at this level.
34

35 Mr. Sleeter said that the petitioners have stated that there were no anticipated changes to the uses
36 or structures at this time or in the near future. He said that he is puzzled as to why the petitioners
37 were before the Board and asks why the petitioners are spending money on this petition if there
38 are no planned changes.
39

40 Mr. Lanphier responded to Mr. Sleeter, indicating that the petitioners properties are currently in a
41 "no-man's-land" because of the Court Order. The properties virtually have no zoning
42 designation. He added that the Future Land Use Plan indicates that these properties should be
43 zoned B-2, and that is what each owner petitioned for several years ago. They are doing so again
44 at this time so that they will not be required to have any future Court involvement if any changes
45 are subsequently desirable.
46

1 Mr. Sleeter asked if there was something in the Court Order that the petitioners felt to be
2 burdensome. Mr. Lanphier responded that if the owners wanted to lease some of their property
3 to a tenant for a use that would be permitted in B-2 but that does not fall under the category of
4 professional office, the Court Order would not allow them to do that.
5

6 There being no further questions or discussion, Chairman White closed the opportunity for
7 further public comment.
8

9 **Board's Deliberation:**
10

11 Mr. Lukas commented that the Future Land Use Plan is not just a document sitting in someone's
12 desk drawer or hanging on a wall in a room somewhere where nobody looks at it or refers to it.
13 He said that there was quite a bit of thought that went into creating and enacting that document,
14 including neighborhood involvement, expertise involvement, and Staff involvement that goes
15 back many years.
16

17 Mr. Lukas said that at a recent Council meeting regarding the Luxury Motors rezoning petition,
18 one of the Council members said that the Future Land Use Plan was not something that is
19 concrete. That statement concerned him, although he admitted that since he was watching the
20 meeting on television, there may have been distractions which caused him to miss part of the
21 statement, or that he may have misunderstood it or taken it out of context. What disturbed him
22 was that the term "not cast in concrete" was made because the Village has adopted the Future
23 Land Use Plan as an Ordinance, and in his opinion, it is as close to concrete as you can get until
24 it is modified.
25

26 Mr. Lukas said that it is not known how many people have that document in their possession. He
27 assumes that real estate professionals have it and use it in their dealings with clients; that lawyers
28 and loan officers use it; and that appraisers certainly look at the document and base some of their
29 decisions upon it. He said that he has a problem when people come before the Board and
30 question the document, speaking as though due diligence was not paid at the time the Future
31 Land Use Plan was adopted. He said that the plan is available to anyone, people come to the
32 Village Hall to talk to Staff about it, and people can view it at the Library. He said that the
33 Future Land Use Plan is exactly what its title says that it is.
34

35 Mr. Lukas added that in 1987 he was the only member of the present Zoning Board that was
36 seated on the Board at that time. This item came up as a petition then for rezoning to B-2 and at
37 that time he was in favor of the rezoning. He said that he still favors the rezoning today.
38

39 Mr. Rathje stated that in defense of the statement Mr. Lukas is referring to, at that Council
40 meeting the conversation was intending to clarify that there is a distinction between zoning as a
41 right to a particular piece of property, and the Future Land Use Plan, which is a very seriously
42 taken set of guidelines. He said that nothing in that statement was meant to be casual or flippant.
43 Mr. Rathje said that the Future Land Use Plan serves as a road map by giving ideas of how to get
44 from one place to another. He said that each zoning procedure is judged against the Future Land
45 Use Plan, which is a distinct plan that does not have the same place in the law as zoning. He said
46 that he does not believe that the statement that was made was a diminution of the value of the
47 plan.

1
2 Mr. Lukas admitted that he may have heard only a portion of what was said or that he may have
3 misinterpreted it; however, if he was confused by it and he is a member of the Zoning Board of
4 Appeals, he is sure that other people could have been confused by the statement as well.
5

6 Mr. Rathje added that the Council does take the Future Land Use Plan as seriously as Mr. Lukas
7 described it; however, there are departures that are made from time to time when warranted.
8

9 Mr. Benes commented that the property is presently controlled by a Court Order for professional
10 use. If the property is rezoned to B-2, he noted that there are 59 other types of uses that could be
11 allowed on the property.
12

13 Chairman White said he saw a distinction between 1987 and today. In 1987 there was much
14 more of a risk with the potential use of the neighboring property. Given the size of the subject
15 lots, the probability today is that the risk that an undesirable use may develop is considerably
16 smaller than it was at that time.
17

18 Mr. Benes said that there are possibilities, however, and that the two lots could potentially be
19 used together.
20

21 Mr. Lukas asked what would be the danger of that, and Mr. Benes responded that the type of
22 businesses could be unsatisfactory. Mr. Lukas asked what could be so terrible. He said that no
23 business is going to put something ridiculous in a location that won't realize any profit. Mr.
24 Benes responded that if B-2 zoning is allowed, anything that is allowable under B-2 zoning can
25 be placed at that location. Mr. Lukas said that was correct, and he understood that. Mr. Benes
26 said that B-2 could open the door to unsatisfactory uses, while under the Court Order this
27 property is restricted to one particular use.
28

29 Mr. Rathje said that zoning, by its nature, is categorical. The Village does not support
30 contractual zoning. If a municipality makes a decision that the Court cannot support, the Court
31 will replace the municipality's decision. The notion of having contractual zoning on a lot by lot
32 or use by use basis is not supported by any Court.
33

34 Mr. Benes responded that if this property is zoned B-2, that could happen. Chairman White said
35 that was correct and noted that the Village has the option of denying the request or keeping it as
36 the Court Order rules. Chairman White noted that if the property is kept as it is, the Courts will
37 decide what transpires there. Mr. Benes said he believes that has to be considered. He added
38 that there are people in the Village who do not like this zoning change. The Zoning Board
39 recommended in favor of the rezoning requests in 1987, and the Council denied the requests.
40

41 Mr. Rathje commented that the Future Land Use Plan was reviewed in early 1990 and again in
42 1995, and this portion of the plan was left the same as it was in 1987. The plan has gone through
43 scrutiny since that time, and these properties were maintained as being proper for B-2 zoning and
44 use.
45
46

1 Mr. Sleeter said that both Mr. Lukas and Mr. Benes have a point, and they do not want to rely on
2 the Courts for all zoning decisions regarding this site. He said it seems that this is an
3 intermediate or buffer-type of use which is often considered appropriate between residential and
4 business areas. Mr. Sleeter added that this is not a particularly easy decision, and that he is
5 surprised that there are not more neighbors present with objections to the request.

6
7 Mr. Lukas added that he was also surprised by the lack of residents in attendance. If the people
8 who live adjacent to the property are not present to speak, he has to question why. If they were
9 present, he would listen attentively to the residents who would be affected by this decision and
10 would have to look at the site every day.

11
12 Mr. Rathje informed the Board that a number of the neighbors did call Staff to ask for an
13 explanation of the proposed petition. They were given the history of the property with the
14 Courts, the type of zoning being requested, and an explanation that B-2 zoning is comparable to
15 what is in the downtown area. He said this is not an issue of the residents not trying to educate
16 themselves. He said Staff received about six phone calls. People who were interested and who
17 either received mail notice or saw the sign on the property made inquiries of the Staff. He
18 reiterated that efforts were made by residents to educate themselves as to the nature of the
19 proposed petition.

20
21 Mr. Sleeter asked if Mr. Rathje was suggesting that the conclusion he is reaching is that the
22 residents did not have strong objections to this petition. Mr. Rathje responded that he wanted the
23 Board to understand that the surrounding residential neighbors did understand what was going on
24 with this petition and sought out information from the Village.

25
26 Chairman White said that he would have to draw the conclusion, since there is no one present
27 from the neighborhood, that the residents did not have strong objections to the petition. Mr.
28 Rathje added that quite a number of public hearing notices were sent out, as is evidenced by the
29 number of pages in the Board packets listing the names of the residents who received those
30 notices.

31
32 Mr. Benes noted that if you walk the property, the houses on the north side of Summit back up to
33 the property, not that their back yards are restricted in any way by the subject property. He said
34 that to him it looks as though the people on Summit are not losing anything by this request, and
35 they have lived with the current uses since 1988.

36
37 Chairman White said that he sees a positive benefit to the request, as the Village will have
38 control of the property in that it is being put back under the regulations of the Zoning Ordinance.
39 He said that there may be some uses allowed in B-2 that are not right for this property, but it is
40 not the Board's right to make decisions that specific. He believes that B-2 is the classification
41 that is most appropriate, and that he would rather have the property identified with a specific
42 zoning classification and remove it from Court ordered control. He then asked, if B-2 zoning is
43 not appropriate, then what zoning designation is the appropriate one?

44
45 Mr. Sleeter said he supposed it could be zoned residential and that the uses could be
46 grandfathered-in. He said that the owners are here to try to supercede the Court Order.

47

1 Mr. Gray asked Mr. Rathje about the ten foot strip of property adjacent to the Park District
2 property referenced in Staff's Findings. Mr. Rathje explained that the property is an L-shaped
3 parcel, and he reviewed the dimensions of the site as shown on the overhead projection. Mr.
4 Rathje indicated that in relation to that ten foot strip of land, however, Mr. Gray was reading
5 from the 1987 Staff report regarding a conveyance of land between the Park District and the
6 petitioner at that time. He said that the report Mr. Gray is reading was provided for historical
7 background purposes.

8
9 Mr. Benes asked if the Board recommended approval for the request, would the petitioners have
10 to go before the Court to eliminate the Court Order. Mr. Rathje said he did not believe that
11 would be required. He said that he believes that the zoning decision would be treated as a
12 normal rezoning decision by the Council, and that it would make the provisions of the Court case
13 irrelevant and with no effect.

14
15 There being no further comments from the Board, Chairman White called for a Motion.

16
17 **Mr. Lukas moved with respect to Case MC-5-02 that the Board recommend that the**
18 **Village Council approve the petitioners' request to zone the subject parcels B-2, General**
19 **Retail Business, which would be consistent with the Village's Future Land Use Plan. The**
20 **zoning designation of B-2, General Retail Business would replace the existing Court**
21 **Orders. Mr. Gray seconded the Motion.**

22
23 **AYES: Mr. Lukas, Mr. Gray, Mr. Benes, Mr. Domijan, Mr. Sleeter,**
24 **Chairman White**
25 **NAYS: None**

26
27 **Chairman White declared the Motion passed unanimously.**

28
29
30

31 Mr. Rathje read the public hearing notice for the second petition.

32
33 **V-1-02** A petition seeking a variation to allow the reduction of the applicable front yard setback
34 for purposes of erecting a decorative fence on property located on the north side of Ogden
35 Avenue, approximately 200 feet east of Fairview Avenue, commonly known as 310 and 330
36 Ogden Avenue, Downers Grove, Illinois (PIN 09-04-110-024, -026,-027,-028,-029,-030), Joseph
37 Abbas, Owner; James F. Russ, Jr. Attorney/Petitioner

38
39 **LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING**

40 – Notice is hereby given that a public hearing will be held by the Zoning Board of Appeals at
41 7:30 p.m. on Wednesday, April 24, 2002 in the Council Chambers of the Village Hall, 801
42 Burlington Avenue, Downers Grove, Illinois to consider a petition seeking a variation to allow
43 the reduction of the applicable front yard setback for purposes of erecting a decorative fence on
44 property located on the north side of Ogden Avenue, approximately 200 feet east of Fairview
45 Avenue, commonly known as 310 and 330 Ogden Avenue, Downers Grove, Illinois (PIN Nos.
46 09-04-110-026,-027,-028,-029,-030) and is legally described as follows:
47

PUBLIC HEARING: MC-5-02 A Petition to Zone Property to the Village B-2, General Retail Business District. The properties are currently the subject of court orders. The properties are located on the east side of Main Street, approximately 385 feet south of the south line of Maple Avenue, commonly known as 5333 Main Street, Downers Grove, Illinois (PIN 09-08-314-056,-057) and 5337 Main Street, Downers Grove, Illinois (PIN 09-08-314-058); Joseph Kowalkowski, Owner of 5333 Main Street and American National Bank Trust #109351-04, Owner of 5337 Main Street, Lanphier & Kowalkowski, Ltd., Attorney/Petitioner

FINDINGS:

1. The petitioner is seeking rezoning of property located at 5333 and 5337 Main Street. This petition proposes that the subject properties be designated with B-2, General Retail Business zoning.
2. Both of these properties were the subjects of public hearings before the Zoning Board of Appeals in 1987. The 5333 Main Street property was the subject of Case #MC-3-87 and the 5337 Main Street property was the subject of Case #MC-4-87. The Board reviewed the petitioner's previous request and forwarded a positive recommendation each with a vote of 4:1 to the Village Council. The Village Council chose to deny each of the petitioner's previous rezoning petitions. The property owners each brought a legal complaint against the Village to the Circuit Court with each of the suits resulting in Judgement Orders that directed the Village to permit the properties to be utilized for office purposes.
3. The northerly of the two properties is known as 5333 Main Street. This property has a width of 60 feet for the westerly 165 feet of the property and a width of 50 feet for the easterly 57.28 feet of the property. It has a depth ranging from 165 feet for the northerly 10 feet of the property and a depth of 221.7 feet as measured along the south lot line for the remainder of the property. This property has an area of approximately 12,735 square feet. This property is improved with a two-story wood frame structure that had originally been constructed as a house but was subsequently converted for use as a business office.

The southerly of the two properties is known as 5337 Main Street. This property has a width ranging from 66.72 feet as measured on the west to 65.60 feet as measured on the east with a depth of 224.98 feet and a lot area of approximately 14,834 square feet. This property is improved with a one-story house that also had originally been constructed as a house but was also subsequently converted for use as a business office.

4. The zoning of the adjacent properties includes B-2, general retail business district to the north and R-4, single family residential to the west, south and east. The property to the north is occupied by the Morningside condominiums, and the properties to the east, west and north are occupied by single family residences.
4. The Village's Future Land Use Plan has both of the subject properties designated as Commercial which is the land use category of the Future Land Use Plan consistent with the B zoning districts including the proposed B-2, General Retail Business zoning district.
5. As background information, the Planning Staff is forwarding copies of the 1987 petition, staff reports, Zoning Board of Appeals Minutes and the judgment orders resulting from the previous rezoning petitions.

CONCLUSION:

The proposed rezoning of the subject properties to B-2, general retail business zoning would be consistent with the provisions of the Village's Future Land Use Plan and would be consistent with the recommendation made by a majority of the Zoning Board of Appeals when the petitions were reviewed in 1987.

KJR:amd
Attachments
04/18/02

MC-5-02

GRAVE

MAIN ST

MAPLE AVE

RANDALL

SUBJECT PARCELS

SUMMIT

SUMMIT

MAIN

WEBSTER

DP35

305

306

310

315

313

317

312

321

322

320

R-6

B-2

KK

B

R-4

R-5

B-2

R-4

B-2

B-2

B-2

R-4

R-4

R-5

B-2

SUBJECT PARCELS

R-4

R-4

R-4

R-4

R-3

BB PT * 2

BB PT * 2

197.04

72.7

277.18

52

2021

024

008

013

204.08

028

277.18

377.2

021

026

009

023

288.77

11.64

110.24

231

026

025

166

193.87

73.9

024

119.2

018

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10-017

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018

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10-018

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10-031

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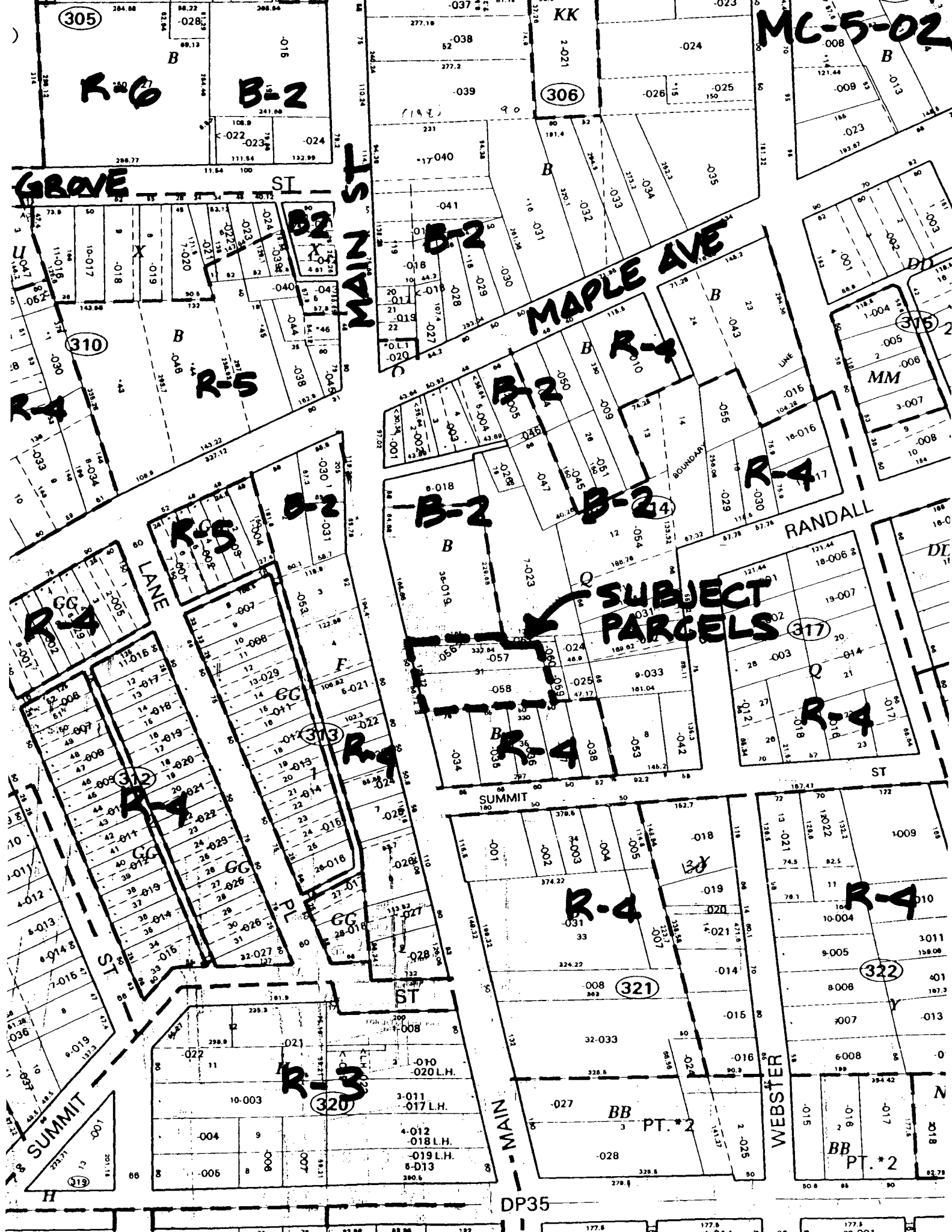
018

032

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001

1003



PLAT OF SURVEY

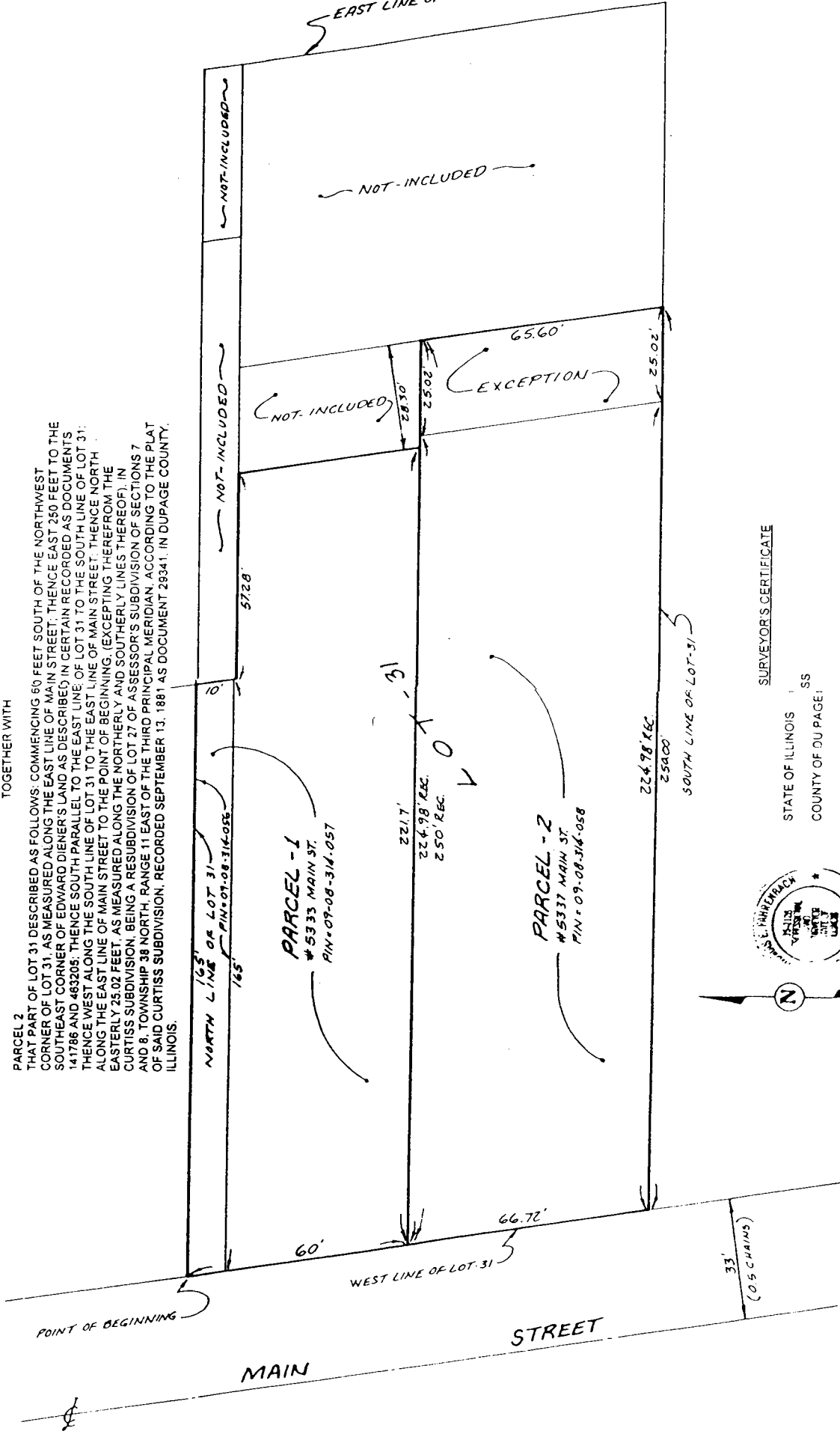
PARCEL 1

PART OF LOT 31 IN CURTISS SUBDIVISION, BEING A SUBDIVISION OF LOT 27 OF ASSESSOR'S SUBDIVISION OF SECTIONS 7 AND 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 31 FOR A PLACE OF BEGINNING; THENCE SOUTHERLY ON SAID WEST LINE 60 FEET; THENCE EASTERLY PARALLEL WITH THE SOUTH LINE OF SAID LOT 31, 221.7 FEET; THENCE NORTHERLY PARALLEL TO THE EAST LINE OF SAID LOT 31 TO THE INTERSECTION OF THE SOUTH LINE OF SCHOOL LOT; THENCE WESTERLY ALONG THE SOUTH LINE OF SCHOOL LOT 57.28 FEET; THENCE NORTHERLY PARALLEL TO THE EAST LINE OF SAID LOT 31, 10 FEET; THENCE WESTERLY ALONG THE NORTH LINE OF LOT 31, 165 FEET, TO THE PLACE OF BEGINNING, ACCORDING TO THE PLAT OF SAID CURTISS SUBDIVISION, RECORDED SEPTEMBER 13, 1881 AS DOCUMENT #29341, IN DUPAGE COUNTY, ILLINOIS.

TOGETHER WITH

PARCEL 2

THAT PART OF LOT 31 DESCRIBED AS FOLLOWS: COMMENCING 50 FEET SOUTH OF THE NORTHWEST CORNER OF LOT 31, AS MEASURED ALONG THE EAST LINE OF MAIN STREET; THENCE EAST 250 FEET TO THE SOUTHEAST CORNER OF EDWARD DIENER'S LAND AS DESCRIBED IN CERTAIN RECORDED AS DOCUMENTS 141786 AND 483205; THENCE SOUTH PARALLEL TO THE EAST LINE OF LOT 31 TO THE SOUTH LINE OF LOT 31; THENCE WEST ALONG THE SOUTH LINE OF LOT 31 TO THE EAST LINE OF MAIN STREET; THENCE NORTH ALONG THE EAST LINE OF MAIN STREET TO THE POINT OF BEGINNING, (EXCEPTING THEREFROM THE EASTERLY 25.02 FEET, AS MEASURED ALONG THE NORTHERLY AND SOUTHERLY LINES THEREOF), IN CURTISS SUBDIVISION, BEING A RESUBDIVISION OF LOT 27 OF ASSESSOR'S SUBDIVISION OF SECTIONS 7 AND 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID CURTISS SUBDIVISION, RECORDED SEPTEMBER 13, 1881 AS DOCUMENT 29341, IN DUPAGE COUNTY, ILLINOIS.



SURVEYOR'S CERTIFICATE

STATE OF ILLINOIS
COUNTY OF DU PAGE

I, THOMAS E. FAHRENBACH, ILLINOIS PROFESSIONAL LAND SURVEYOR #35-2126, HEREBY STATE THAT I HAVE PREPARED THE ANNEXED PLAT FROM EXISTING PLATS AND RECORDS.

DOWNERS GROVE, THIS 26th DAY OF August, A. D. 2000
BY: Thomas E. Fahrenbach

SCALE: 1" = 20'
NOTE: IMPROVEMENTS NOT INDICATED

AJK
September 29, 1989
with attached
Exhibits
A, B, & C

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

5333 MAIN

JOSEPH A. KOWALKOWSKI,)
)
Plaintiff,)
)
v.)
)
VILLAGE OF DOWNERS GROVE,)
)
Defendant.)

No. 87 CH 0309

AMENDED JUDGMENT ORDER AND DECREE

This cause coming to be heard upon the Motion of the Plaintiff, Joseph A. Kowalkowski, to Amend the Judgment Order and Decree entered on May 9, 1988, and the Court being advised that the Plaintiff and the Defendant, VILLAGE OF DOWNERS GROVE, have agreed to amend that Judgment Order and Decree; and the Court being further advised that the parties agree to abide by the Order of this Court as Amended,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Judgment Order and Decree dated May 9, 1988, be further amended so as to permit Plaintiff to construct an addition to the existing residential structure on the Office Property which is the subject of this action, provided that the development, construction, operation and use of such addition shall be in accordance with the following conditions:

1. Such addition shall be in accordance with the Site Plan and Elevation Drawings approved by the Village and attached hereto and made a part hereof as Exhibits A, B, and C.
2. Any lighting used to illuminate off-street parking areas shall be directed away from adjacent properties. Such lighting shall be shielded to assure that adjacent properties are protected from glare and from any direct view of the light from the fixtures.

3. In all other respects the construction and use of the addition shall be in accordance with the conditions set forth in the Judgment Order and Decree dated May 9, 1988.

4. Plaintiff shall not seek to utilize the existing residential structure or the addition thereto for any use other than those specifically permitted under the provisions of the Judgment Order and Decree dated May 9, 1988, provided that if properties on either side of Main Street, between Summit Street and Maple Avenue, which are not currently zoned for business use, are rezoned by the Village for other business or retail uses, Plaintiff may petition the Village for rezoning of the Office Property in conformance with such surrounding rezoned properties.

IT IS FURTHER ORDERED that the Judgment Order and Decree entered May 9, 1988, shall remain in full force and effect, except as modified herein; and that this Court shall retain jurisdiction of the above-entitled action for the purpose of affording the parties hereto an opportunity at any future time to apply to this Court for such further orders and directions as may be necessary for the construction and implementation of this Judgment Order and Decree.

Entered this 29th day of September, 1989.

/s/ Parrah
Judge

Approved:

JOSEPH A. KOWALKOWSKI

BY: /s/ W.C. North
William C. North
Attorney for Plaintiff

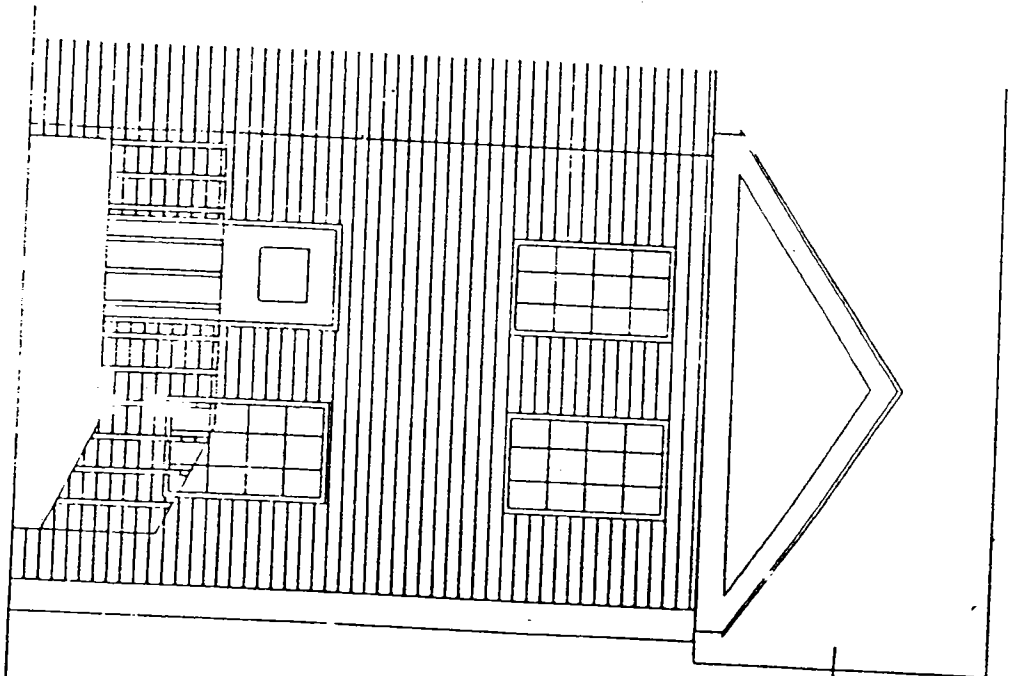
VILLAGE OF DOWNERS GROVE
BY: /s/ Barbara J. Gosselaj
Barbara J. Gosselaj
Village Attorney

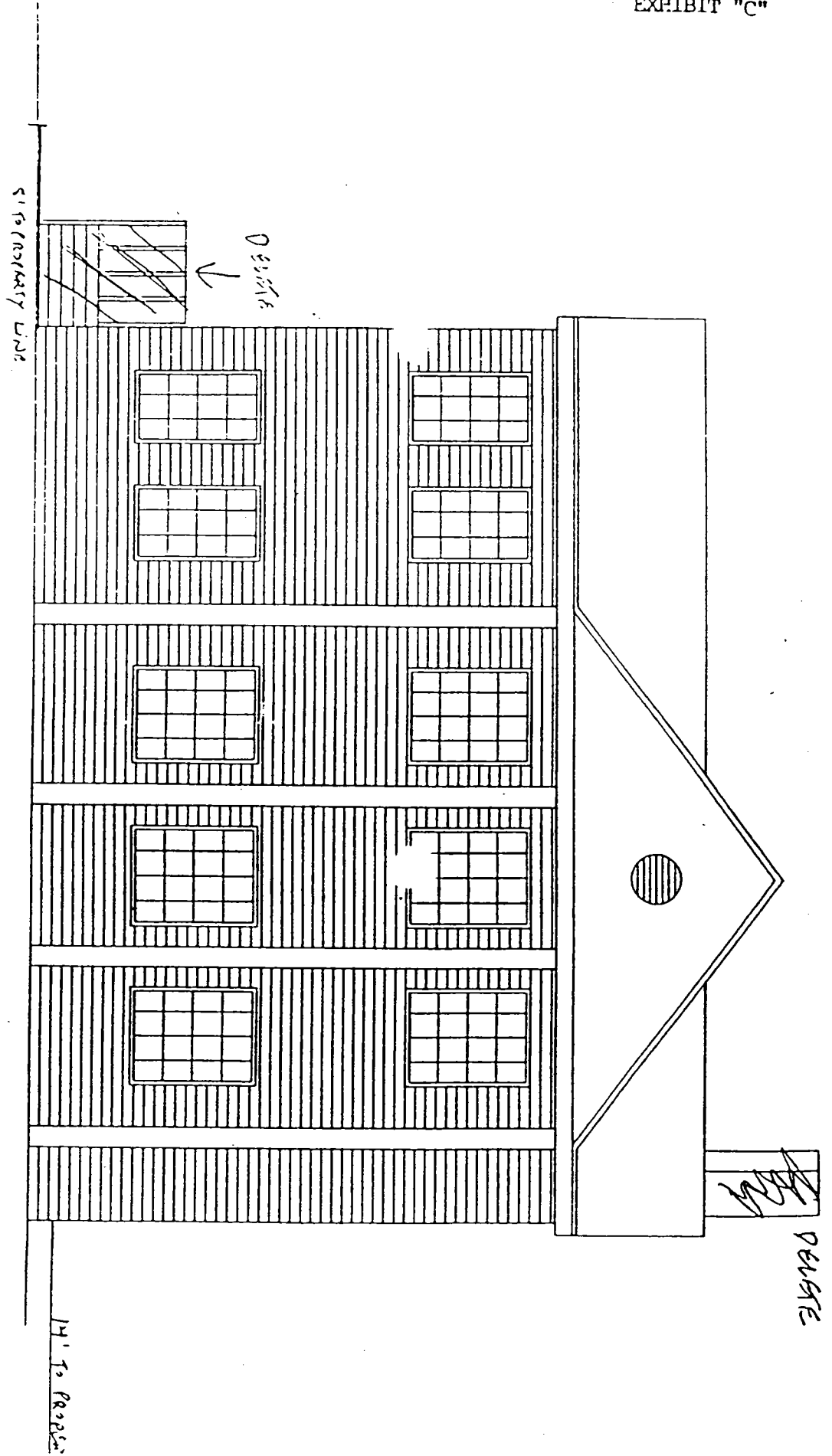
EXHIBIT "B"

~~SOUTH~~ NORTH
ELEVATION

SCALE 1/4" = 1'-0"

DRAWN
BY
FACING EAST INTO 3'6" WING OF ADDITION
SEE 1ST FLOOR PLAN





EAST ELEVATION

SCALE 1/4" = 1'-0"

SIPROCKERY LINE

DEWATE

DEWATE

14' TO ROOF

EXHIBIT "A"

IN THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

RICHARD D. CONN)
and)
PETER J. TEPLER,)
)
Plaintiffs,)
)
v.)
)
VILLAGE OF DOWNERS GROVE)
)
Defendant.)

No. 87 CH 0839

JUDGMENT ORDER AND DECREE

This cause coming on for hearing upon the Complaint for Injunctive and Other Relief, filed by the Plaintiffs, Richard D. Conn and Peter J. Tepler, and the parties having agreed to the facts as set forth in the Stipulation of Facts, attached hereto and made a part hereof as Exhibit "I", and the Court being fully advised in the premises finds:

1. That the facts are as set forth in the Stipulation of Facts attached hereto and made a part of this Judgment Order and Decree as Exhibit "I".
2. That this Court has jurisdiction of the subject matter hereof and the parties hereto.
3. That the parties have agreed to amend the legal description of the property which is the subject of the Complaint for Injunctive and Other Relief to be that real property described as follows and now owned by Plaintiff herein, to wit:

Commencing at a point 60 feet southerly of the northwesterly corner of Lot 31, as measured along the easterly line of Main Street; thence easterly 250 feet to the southeasterly corner of Edward Diener's land as described in certain deeds recorded as documents 141786 and 463205;

thence southerly along a line parallel with the easterly line of said Lot 31 to the southerly line of said Lot 31; thence westerly along the southerly line of said Lot 31 to the easterly line of said Main Street; thence northerly along the easterly line of said Main Street to the place of beginning, all in Curtiss Subdivision, being a resubdivision of Lot 27 of the Assessor's subdivision of Sections 7 and 8, Township 38 North, Range 11, east of the Third Principal Meridian, according to the plat of said Curtiss Subdivision recorded September 13, 1881 as document 29341 (except the easterly 25.02 feet, as measured along the northerly and southerly lines thereof) in DuPage County, Illinois,

(hereinafter the "Office Property"), and

4. That the Comprehensive Zoning Ordinance of the Village of Downers Grove, passed and approved April 19, 1965, as amended, (hereinafter referred to as the "Zoning Ordinance"), as it relates to the Office Property is confiscatory, unreasonable, and has no substantial relationship to the public welfare, health or safety, and is, therefore unconstitutional to the extent that it prohibits use of the Office Property for professional offices.

And the Court being advised that prior to trial, negotiations were entered into between the Plaintiffs and the Defendant as to restrictions to be placed upon the further use of the Office Property; being further advised that the Defendant has agreed that it would abide by the findings of the Court and not appeal therefrom, provided that the Plaintiffs would agree to place certain restrictions and conditions upon the further use of the Office Property hereinafter set forth in the terms of this Judgment Order and Decree; and being further advised that the Plaintiffs have agreed to the placement of such restrictions and conditions upon the further use of the Office Property;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the Complaint for Injunctive and Other Relief in this case is hereby amended by adding a new par. 22 thereto as follows:

19. That Plaintiffs have deeded certain property to the Downers Grove Park District and now own a parcel which is legally described below and to which all previous allegations as to the effect of the Zoning Ordinance on the property are applicable:

Commencing at a point 60 feet southerly of the northwesterly corner of Lot 31, as measured along the easterly line of Main Street; thence easterly 250 feet to the southeasterly corner of Edward Diener's land as described in certain deeds recorded as documents 141786 and 463205; thence southerly along a line parallel with the easterly line of said Lot 31 to the southerly line of said Lot 31; thence westerly along the southerly line of said Lot 31 to the easterly line of said Main Street; thence northerly along the easterly line of said Main Street to the place of beginning, all in Curtiss Subdivision, being a resubdivision of Lot 27 of the Assessor's subdivision of Sections 7 and 8, Township 38 North, Range 11, east of the Third Principal Meridian, according to the plat of said Curtiss Subdivision recorded September 13, 1881 as document 29341 (except the easterly 25.02 feet, as measured along the northerly and southerly lines thereof) in DuPage County, Illinois,

(hereinafter the "Office Property"), and

2. That the Zoning Ordinance is unconstitutional, void and of no force or effect to the extent that it prohibits development and use of the Office Property as hereafter set forth; and, except as provided below, the Defendant, VILLAGE OF DOWNERS GROVE, and its officers, agents and employees be enjoined and restrained from enforcing the provisions thereof in any manner that interferes with such development and use.

3. That the Plaintiffs and their successors in title may use the Office Property for professional offices, together with an accessory off-street parking area, subject to the following restrictions, to wit:

(a) The development and use of the Office Property shall be for professional offices in the existing residential structure, as permitted in Section 2.1-8 of Article X of the Zoning Ordinance.

(b) The development and use of the Office Property for professional offices as provided herein shall be in accordance with the Site Plan approved by the Village and attached hereto as Exhibit "II", and with four photographs dated May 13, 1988, which are on file in the Department of Code Enforcement of the Village, which photographs depict the permitted elevations of the single-family residence on the Office Property in which such use is to be conducted.

(c) Parking shall be provided for professional office use at a rate of one space per 400 square feet of gross floor area. All accessory off-street automobile parking areas shall be on site and shall be effectively screened on each side adjoining or fronting on any property zoned for residential use by a wall or fence or densely planted compact hedge not less than four feet, nor more than six feet in height.

(d) Any lighting used to illuminate off-street parking areas shall be directed away from residential properties in such a manner as shall not create a nuisance.

(e) Storage of such vehicles and equipment as may be associated with the professional offices shall comply with all requirements of §2.10 of Article VIII of the Zoning Ordinance as the same may from time to time be amended.

(f) Signs on the subject property shall be subject to the requirements of the Zoning Ordinance for signs accessory to a permitted non-residential use in a residential zoning district. Freestanding signs, if any, shall not exceed six (6) feet in height and twenty (20) square feet in surface area.

4. That no further action by the Village shall be required to permit the use of the Office Property as described herein.

5. That this Court shall retain jurisdiction of the above-entitled action for the purpose of affording the parties hereto an opportunity at any future time to apply to this Court for such further orders and directions as may be necessary for the construction and implementation of this Judgment Order and Decree.

Entered at Wheaton, Illinois, this ____ day of _____, 1988.

Judge

Approved: RICHARD D. CONN and PETER J. TEPLER

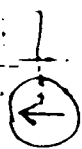
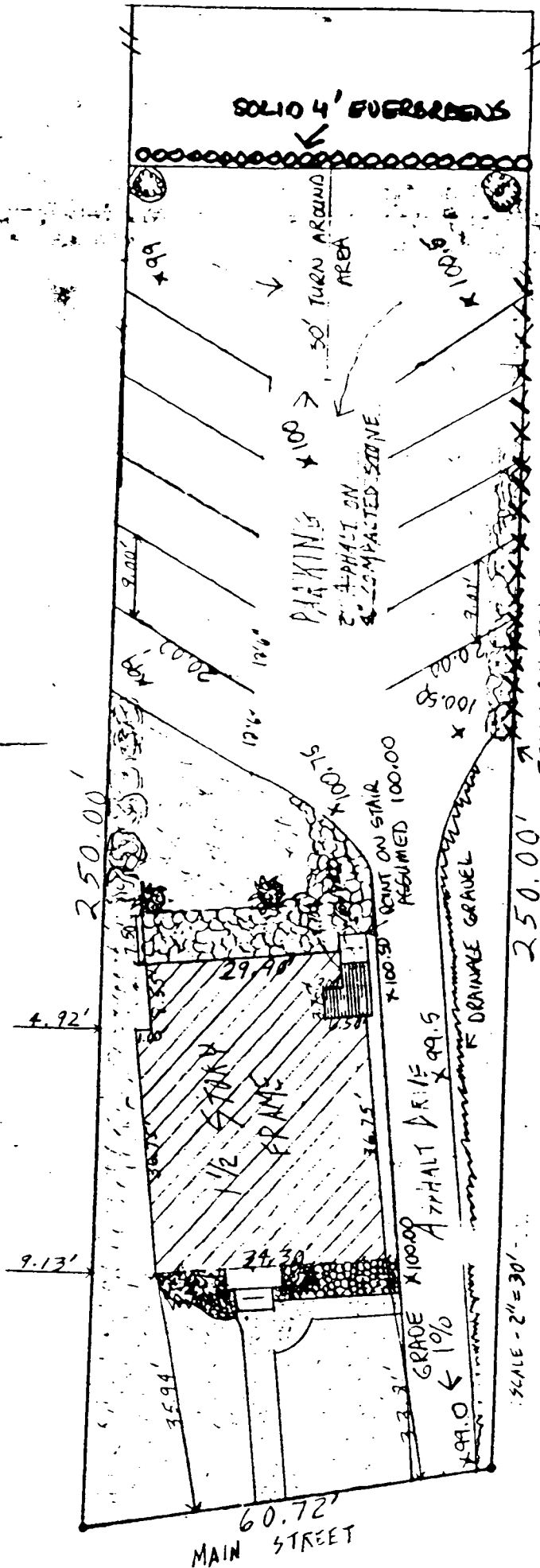
By: 

Peter T. Woods, No. 6720
Attorney for the Plaintiffs
123 W. Madison Street
14th Floor
Chicago, IL 60602
(312) 836-5337

VILLAGE OF DOWNERS GROVE

By: 

Barbara J. Gosselar, No. 31483
Attorney for the Defendant
Village of Downers Grove
Civic Center
Downers Grove, IL 60515
(312) 964-0300, Ext. 231



GENERAL GUIDE
 SLOPE OF FINISH
 GRADE = 1/10

STORAGE FENCE
 5' HIGH MINIMUM

PROPOSED SITE IMPROVEMENTS, LANDSCAPING
 AND PARKING FOR 5337 MAIN STREET
 RICHARD CONN. OWNER 768-6500

AMENDED 5-88

- ✓ GRADE
- ✓ TURN AROUND
- ✓ SCREEN

EXHIBIT "A"

IN THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS

RICHARD D. CONN)	
and)	
PETER J. TEPLER,)	
)	
Plaintiffs,)	
)	
v.)	No. 87 CH 0839
)	
VILLAGE OF DOWNERS GROVE)	
)	
Defendant.)	

JUDGMENT ORDER AND DECREE

This cause coming on for hearing upon the Complaint for Injunctive and Other Relief, filed by the Plaintiffs, Richard D. Conn and Peter J. Tepler, and the parties having agreed to the facts as set forth in the Stipulation of Facts, attached hereto and made a part hereof as Exhibit "I", and the Court being fully advised in the premises finds:

1. That the facts are as set forth in the Stipulation of Facts attached hereto and made a part of this Judgment Order and Decree as Exhibit "I".
2. That this Court has jurisdiction of the subject matter hereof and the parties hereto.
3. That the parties have agreed to amend the legal description of the property which is the subject of the Complaint for Injunctive and Other Relief to be that real property described as follows and now owned by Plaintiff herein, to wit:

Commencing at a point 60 feet southerly of the northwesterly corner of Lot 31, as measured along the easterly line of Main Street; thence easterly 250 feet to the southeasterly corner of Edward Diener's land as described in certain deeds recorded as documents 141786 and 463205;

thence southerly along a line parallel with the easterly line of said Lot 31 to the southerly line of said Lot 31; thence westerly along the southerly line of said Lot 31 to the easterly line of said Main Street; thence northerly along the easterly line of said Main Street to the place of beginning, all in Curtiss Subdivision, being a resubdivision of Lot 27 of the Assessor's subdivision of Sections 7 and 8, Township 38 North, Range 11, east of the Third Principal Meridian, according to the plat of said Curtiss Subdivision recorded September 13, 1881 as document 29341 (except the easterly 25.02 feet, as measured along the northerly and southerly lines thereof) in DuPage County, Illinois,

(hereinafter the "Office Property"), and

4. That the Comprehensive Zoning Ordinance of the Village of Downers Grove, passed and approved April 19, 1965, as amended, (hereinafter referred to as the "Zoning Ordinance"), as it relates to the Office Property is confiscatory, unreasonable, and has no substantial relationship to the public welfare, health or safety, and is, therefore unconstitutional to the extent that it prohibits use of the Office Property for professional offices.

And the Court being advised that prior to trial, negotiations were entered into between the Plaintiffs and the Defendant as to restrictions to be placed upon the further use of the Office Property; being further advised that the Defendant has agreed that it would abide by the findings of the Court and not appeal therefrom, provided that the Plaintiffs would agree to place certain restrictions and conditions upon the further use of the Office Property hereinafter set forth in the terms of this Judgment Order and Decree; and being further advised that the Plaintiffs have agreed to the placement of such restrictions and conditions upon the further use of the Office Property;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the Complaint for Injunctive and Other Relief in this case is hereby amended by adding a new par. 22 thereto as follows:

19. That Plaintiffs have deeded certain property to the Downers Grove Park District and now own a parcel which is legally described below and to which all previous allegations as to the effect of the Zoning Ordinance on the property are applicable:

Commencing at a point 60 feet southerly of the northwesterly corner of Lot 31, as measured along the easterly line of Main Street; thence easterly 250 feet to the southeasterly corner of Edward Diener's land as described in certain deeds recorded as documents 141786 and 463205; thence southerly along a line parallel with the easterly line of said Lot 31 to the southerly line of said Lot 31; thence westerly along the southerly line of said Lot 31 to the easterly line of said Main Street; thence northerly along the easterly line of said Main Street to the place of beginning, all in Curtiss Subdivision, being a resubdivision of Lot 27 of the Assessor's subdivision of Sections 7 and 8, Township 38 North, Range 11, east of the Third Principal Meridian, according to the plat of said Curtiss Subdivision recorded September 13, 1881 as document 29341 (except the easterly 25.02 feet, as measured along the northerly and southerly lines thereof) in DuPage County, Illinois,

(hereinafter the "Office Property"), and

2. That the Zoning Ordinance is unconstitutional, void and of no force or effect to the extent that it prohibits development and use of the Office Property as hereafter set forth; and, except as provided below, the Defendant, VILLAGE OF DOWNERS GROVE, and its officers, agents and employees be enjoined and restrained from enforcing the provisions thereof in any manner that interferes with such development and use.

3. That the Plaintiffs and their successors in title may use the Office Property for professional offices, together with an accessory off-street parking area, subject to the following restrictions, to wit:

(a) The development and use of the Office Property shall be for professional offices in the existing residential structure, as permitted in Section 2.1-8 of Article X of the Zoning Ordinance.

(b) The development and use of the Office Property for professional offices as provided herein shall be in accordance with the Site Plan approved by the Village and attached hereto as Exhibit "II", and with four photographs dated May 13, 1988, which are on file in the Department of Code Enforcement of the Village, which photographs depict the permitted elevations of the single-family residence on the Office Property in which such use is to be conducted.

(c) Parking shall be provided for professional office use at a rate of one space per 400 square feet of gross floor area. All accessory off-street automobile parking areas shall be on site and shall be effectively screened on each side adjoining or fronting on any property zoned for residential use by a wall or fence or densely planted compact hedge not less than four feet, nor more than six feet in height.

(d) Any lighting used to illuminate off-street parking areas shall be directed away from residential properties in such a manner as shall not create a nuisance.

(e) Storage of such vehicles and equipment as may be associated with the professional offices shall comply with all requirements of §2.10 of Article VIII of the Zoning Ordinance as the same may from time to time be amended.

(f) Signs on the subject property shall be subject to the requirements of the Zoning Ordinance for signs accessory to a permitted non-residential use in a residential zoning district. Freestanding signs, if any, shall not exceed six (6) feet in height and twenty (20) square feet in surface area.

4. That no further action by the Village shall be required to permit the use of the Office Property as described herein.

5. That this Court shall retain jurisdiction of the above-entitled action for the purpose of affording the parties hereto an opportunity at any future time to apply to this Court for such further orders and directions as may be necessary for the construction and implementation of this Judgment Order and Decree.

Entered at Wheaton, Illinois, this _____ day of _____, 1988.

Judge

Approved: RICHARD D. CONN and PETER J. TEPLER

By: 

Peter T. Woods, No. 6720
Attorney for the Plaintiffs
123 W. Madison Street
14th Floor
Chicago, IL 60602
(312) 836-5337

VILLAGE OF DOWNERS GROVE

By: 

Barbara J. Gosselar, No. 31483
Attorney for the Defendant
Village of Downers Grove
Civic Center
Downers Grove, IL 60515
(312) 964-0300, Ext. 231

LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING - Notice is hereby given that a public hearing will be held by the Zoning Board of Appeals at 7:30 p.m. on Wednesday, April 24, 2002 in the Council Chambers of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois to consider a petition seeking to zone property to the Village's B-2, General Retail Business Zoning District. The properties are currently the subject of court orders. The properties are located on the east side of Main Street, approximately 385 feet south of the south line of Maple Avenue, commonly known as 5333 Main Street, Downers Grove, Illinois (PIN 09-08-314-056,-057) and 5337 Main Street, Downers Grove, Illinois (PIN 09-08-314-058) and are legally described as follows:

Parcel 1:

Part of Lot 31 in Curtiss Subdivision, being a subdivision of Lot 27 of Assessor's Subdivision of Sections 7 and 8, Township 38 North, Range 11 East of the Third Principal Meridian, and more particularly described as follows: commencing at the northwest corner of said Lot 31 for a place of beginning; thence southerly on said west line 60 feet; thence easterly parallel with the south line of said Lot 31, 221.7 feet; thence northerly parallel to the east line of said Lot 31 to the intersection of the south line of School lot; thence westerly along the south line of School lot 57.28 feet; thence northerly parallel to the east line of said Lot 31, 10 feet; thence westerly along the north line of Lot 31, 165 feet, to the place of beginning, according to the plat of said Curtiss Subdivision, recorded September 13, 1881 as Document #29341, in DuPage County, Illinois

Together with

Parcel 2:

That part of Lot 31 described as follows: commencing 60 feet south of the northwest corner of Lot 31, as measured along the east line of Main Street; thence east 250 feet to the southeast corner of Edward Diener's land as described in certain recorded as Documents 141786 and 463205; thence south parallel to the east line of Lot 31 to the south line of Lot 31; thence west along the south line of Lot 31 to the east line of Main Street; thence north along the east line of Main Street to the point of beginning, (excepting therefrom the easterly 25.02 feet, as measured along the northerly and southerly lines thereof), in Curtiss Subdivision, being a resubdivision of Lot 27 of Assessor's Subdivision of Sections 7 and 8, Township 38 North, Range 11, East of the Third Principal Meridian, according to the

plat of said Curtiss Subdivision, recorded September 13, 1881 as Document 29341 in DuPage County, Illinois. Individuals with a disability requiring a reasonable accommodation in order to participate in any meeting should contact the Community Information Officer (630) 434-5550 prior to the meeting. Wheelchair access may be gained through the side (South) entrance of Village Hall.

All interested persons should attend this hearing and will be given an opportunity to be heard. Please call (630) 434-5531 with questions regarding this rezoning petition. The hearing may be continued from time to time without prior public notice. Zoning Board of Appeals, William White, Chairman. Published in the Downers Grove Reporter Friday, April 5, 2002.

MC-5-02

09-08-328-28
Zbigniew O. Uzarowicz
7205 Blackburn Ave.
Downers Grove, IL 60516

09-08-328-29, 59
Betty Uzarowicz
7205 Blackburn Ave.
Downers Grove, IL 60516

09-08-328-30, 68
Gigi & Camfield Ip
5329 main St. #501
Downers Grove, IL 60515

09-08-328-31, 41
Eric Krumdick
5329 Main St. #502
Downers Grove, IL 60515

09-08-328-32, 79
Thomas Hamernik
5329 Main St. #503
Downers Grove, IL 60515

09-08-328-33, 69, 62
Lyle & Nancy Campbell
5329 Main St. #504
Downers Grove, IL 60515

09-08-328-34, 76
Ro Cher Realty
1740 Ogden Ave.
Downers Grove, IL 60515

09-08-328-35, 50
Rita Ann Dollard
5329 Main St. #506
Downers Grove, IL 60515

09-08-328-36, 49, 78, 80
Linda M. Dockendorff
5329 Main St. #508
Downers Grove, IL 60515

09-08-328-37, 63
Steven Freimuth
5329 Main St. #509
Downers Grove, IL 60515

09-08-328-38, 67
Daniel & Kathleen Dooley
5329 Main St. #510
Downers Grove, IL 60515

09-08-328-44
Cecille Eng
4329 Main St. #310
Downers Grove, IL 60515

09-08-328-53
Charles & Martha Stark
5329 Main St. #206
Downers Grove, IL 60515

09-08-313-053
West Suburban Bank
Attn: Duane Debbs
2800 S. Finley Rd.
Downers Grove, IL 60515

09-08-313-026
Darcie Carlson
5400 S. Main St.
Downers Grove, IL 60515

09-08-313-001
Downers Grove Natl. Bank
trust 97-061
5140 S. Main St.
Downers Grove, IL 60515

09-08-313-002
Christian & Judith Taus
1043 Maple Ave.
Downers Grove, IL 60515

09-08-313-07
Phyllis LePeau trust
5313 Lane Place
Downers Grove, IL 60515

09-08-313-11
Terry & Mary Rempert
5329 Lane Place
Downers Grove, IL 60515

09-08-313-013
Robert & Nadia Boyd
5337 Lane Place
Downers Grove, IL 60515

09-08-313-15
Herman & Mary Jackson
5434 Lane Place
Downers Grove, IL 60515

09-08-313-21
Mark Harris
5334 Main St.
Downers Grove, IL 60515

09-08-313-23
Beverly Jacobs
5342 Main St.
Downers Grove, IL 60515

09-08-313-29
Nancy Stevens
5321 Lane Place
Downers Grove, IL 60515

09-08-313-008
Ann Bowen
5317 Lane Place
Downers Grove, IL 60515

09-08-313-012
Myra Alkire
5333 Lane Place
Downers Grove, IL 60515

09-08-313-014
E. Dunne & M. Harris
5341 Lane Place
Downers Grove, IL 60515

09-08-313-016
H. William Matter
3909 Wolf Road
Western Springs, IL 60558

09-08-313-022
J. Patterson & K. Terdik
5338 Main St.
Downers Grove, IL 60515

09-08-313-024, 025
Margaret M. Morello
5350 main St.
Downers Grove, IL 60515

09-08-313-031
Mary Leto
412 Rogers
Downers Grove, IL 60515

09-08-314-023, 024, 26, 032, 033, 045, 047, 054
Downers Grove Park District
2455 Warrenville Road
Downers Grove, IL 60515

09-08-314-34
Yost & Susan Smith
1012 Summit
Downers Grove, IL 60515

09-08-314-35, ~~036~~
David & Janice Deal
950 Summit
Downers Grove, IL 60515

09-08-314-42
Arthur & Jane Langland
930 Summit
Downers Grove, IL 60515

09-08-314-056, 057
Joseph Kowalkowski
5333 Main St.
Downers Grove, IL 60515

09-08-314-059, 060, 061
Downers Grove Park District
2455 Warrenville Road
Downers Grove, IL 60515

09-08-321-02
Herbert & Gladys Voss
949 Summit Street
Downers Grove, IL 60515

09-08-321-~~03~~, 003, 004
Charles R. Poch
941 Summit
Downers Grove, IL 60515

09-08-314-025, 038
John Spitzer
942 Summit
Downers Grove, IL 60515

09-08-328-01, 83
R & S Ramkumar Dharmer
5329 Main St. #201
Downers Grove, IL 60515

09-08-328-02, 65
Robert Anderson
5329 Main St. #202
Downers Grove, IL 60515

~~09-08-328-03
5329 Inversters LP
223 W. Erie St. No. 3rd Floor
Chicago, IL 60610~~

09-08-328-05, 45
Roland & Pricilla Lonser
224 N. Washington Square
Hinsdale, IL 60521

09-08-328-09, 86
Marie Kloos
5329 Main St. #209
Downers Grove, IL 60515

09-08-328-10, 60
Julie Ellis
5329 Main St. #210
Downers Grove, IL 60515

09-08-328-11, 66
Timothy Smith
5329 Main St. #301
Downers Grove, IL 60515

09-08-328-12, 40
Algirdas Saulis
371 Coe Road
Clarendon Hills, 60514

09-08-328-14, 52, 72
Barry & Julia Miller
5329 Main St. #304
Downers Grove, IL 60515

09-08-328-05, 55
Richard Eberhart
5329 Main St. #305
Downers Grove, IL 60515

09-08-328-16, 70
Betty Jean Mann
5329 Main St. #306
Downers Grove, IL 60515

09-08-328-17, 51, 74
Andrew Gammuto
5329 Main St. #307
Downers Grove, IL 60515

09-08-328-19, 64
Norene and Dan Glitto
5329 Main St. #309
Downers Grove, IL 60515

09-08-328-20, -044
Deanna Cecile ~~Glitto~~ ENG
5329 Main St. #310
Downers Grove, IL 60515

09-08-328-21, 43
Joan M. Sylvester
5329 Main St. #401
Downers Grove, IL 60515

09-08-328-22, 57
Kathleen M. Looney
5329 Main St. #402
Downers Grove, IL 60515

09-08-328-24, 47, 48
Philip Miller
5329 Main St. #404
Downers Grove, IL 60515

09-08-328-25
Anthony Thomas
5329 Main St. #405
Downers Grove, IL 60515

09-08-328-26, 71
Philip & Joy Crifase
5329 Main St. #406
Downers Grove, IL 60515

09-08-328-27, 75, 81, 82
Gerald A. Kolshowsky
722 Midwest Club
Oak Brook, IL 60523

09-08-314-035
Paul & Jane Callahan
954 Summit
Downers Grove, IL 60515

09-08-328-03,04,06,07,08,13,18,23
09-08-328-42,54,56,58,61,73,77,84,85
5329 Investors LP
223 W. Erie St. No. 3rd Fl.
Chicago, IL 60610

09-08-314-037
Paul & Diane Erickson
946 Summit
Downers Grove, IL 60515

09-08-314-053
Lisa & Miles Boone
938 Summit
Downers Grove, IL 60515

09-08-314-058
LaSalle A7710935104
135 LaSalle St. # 2500
Chicago, IL 60603

09-08-321-001
Carl Peterson
3035 Scenicwood Lane
Woodridge, IL 6017

09-08-321-003
Jack Smith
945 Summit
Downers Grove, IL 60515

09-08-321-005
William Miller #4-15489-6
937 Summit
Downers Grove, IL 60515

09-08-321-018
Dale Koelling
5400 Webster
Downers Grove, IL 60515

**Village of Downers Grove
Correspondence**

TO: Zoning Board of Appeals Members
FROM: Kenneth J. Rathje, Director of Planning Services
DATE: April 19, 2002
RE: Rezoning Case MC-5-02, 5333 and 5337 Main Street

For the information and consideration of the Board Members regarding the proposed rezoning of 5333 and 5337 Main Street, attached please find materials relating to the previous rezoning petitions concerning these properties: MC-3-87 and MC-4-87.

The Staff Findings, the Zoning Board of Appeals Minutes, and the Council Meeting Minutes regarding each of these cases are attached.

Please feel free to contact me if you are in need of any additional information.

DESCRIPTION **MC-3-87** Petition seeking rezoning from R-4 Single-Family Residence District to B-2 Business District - General Retail. The property in question is located at 5333 Main Street in Downers Grove, Illinois. William C. North, Petitioner.

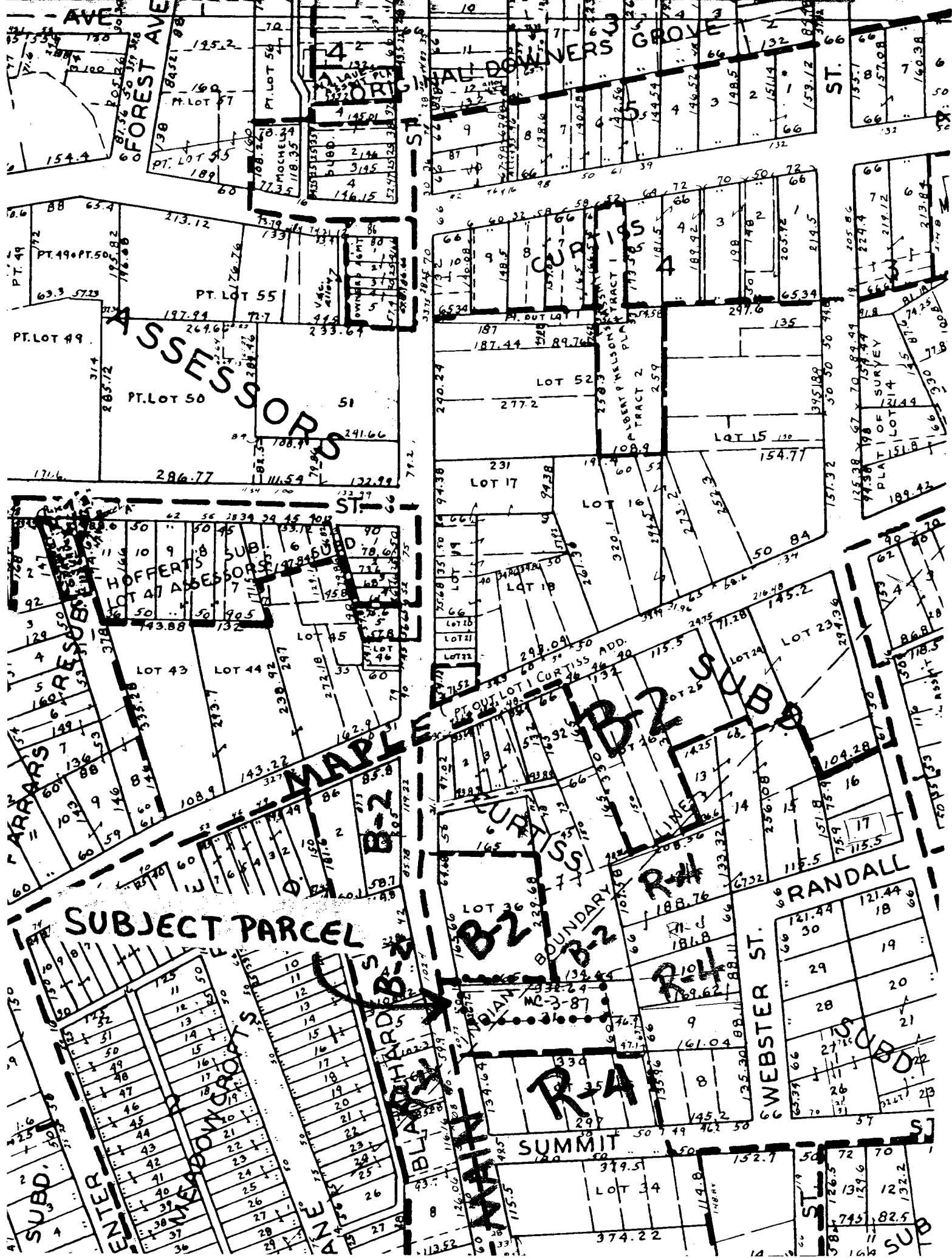
FINDINGS

1. The petitioner is requesting a rezoning of the subject properties which are located on the east side of Main Street approximately 405 feet south of Maple Avenue. The petition requests that the subject property be rezoned from R-4 single-family residential to B-2 General Retail.
2. Over the years, several parties have shown interest in having the southerly 50' wide parcel of the subject property rezoned to a commercial designation as is anticipated by the Village's Future Land Use Plan. However, because the Downers Grove Park District owned a 10 foot wide strip of land which is zoned R-4 and which is located between the subject property and the B-2 zoning district to the north (the Village's Central Business District), the provisions of Section 7 of Article IV which requires a minimum of 4 acres for a separate or detached B-2 zoning district to be established could not be satisfied. The owner of the southerly parcel, Mr. Kowalkowski, approached the Downers Grove Park District with a request to participate in a rezoning petition (especially as virtually all of the Lincoln Center property, except this 10' x 165' strip of land is already zoned B-2), and the Park District agreed to cooperate as necessary to have this property considered for a rezoning, but the Park District would not advocate the rezoning.
3. As previously noted, the subject property is made up of two parcels of land. The northerly parcel, owned by the Park District, has a width of 10 feet, a depth of 165 feet, and an area of 1650 square feet. The southerly parcel owned by Mr. Kowalkowski, which is somewhat irregularly shaped, has a width which ranges from 50' at the west to 60 feet at the east, a depth as measured on the south of 250 feet and an area of approximately 12,780 square feet. The total area of both parcels is approximately 14,430 square feet.
4. The subject property and the property which is the subject of case #MC-4-87 are the two southerly most parcels of land which have been anticipated commercial by the Village's Future Land Use Plan as appropriate for the extension of the central business area of the Village.
5. The zoning of the adjacent area to the subject property is as follows: to the north B-2 and to the east, south and west, R-4.

CONCLUSION

The proposed rezoning is one which has been anticipated by the Village's Future Land Use Plan as being appropriate and would be consistent with the existing zoning north of the subject property.

The southerly 50 feet of this property has an existing two story single-family residence on it which the owner is presently rehabilitating with aluminum siding. It appears that if this petition is approved he intends to use the existing building as an office.



SUBJECT PARCEL

MAPLE ST

B-2

R-4

WEBSTER ST

SUMMIT

FOREST AVE

ST. 6

S-5

ALL DOWNERS

LOT 17

LOT 52

LOT 15

LOT 23

LOT 17

LOT 19

LOT 20

LOT 21

LOT 22

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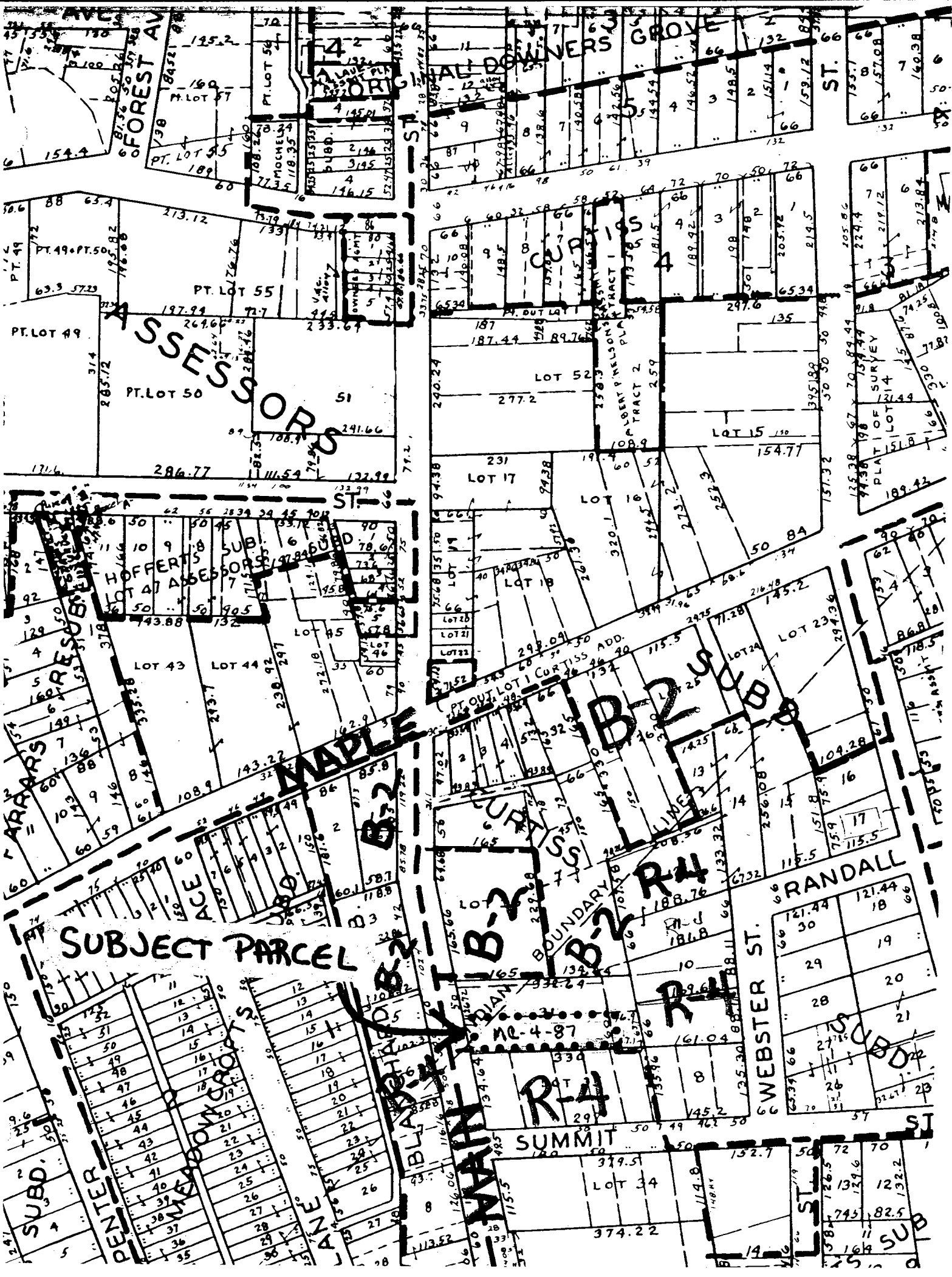
DESCRIPTION **MC-4-87** Petition seeking rezoning from R-4 Single-Family Residence District to B-2 Business District - General Retail. The property in question is located at 5337 Main Street in Downers Grove, Illinois. Patrick and Dolores Ford, Petitioners.

FINDINGS

1. The petitioners are requesting the rezoning of the subject property which is located on the east side of Main Street, approximately 465 feet south of Maple Avenue, from R-4 single-family to B-2 General Retail. The subject petition is being made at this time for the same basic reasons as have been recited in paragraph #2 of the findings of case MC-3-87. The success of this case is directly tied to the outcome of the requested rezoning of the land to the north of it and without a positive action on the neighboring land the petitioner is unable to satisfy the requirements of Section 7 of Article IV of the Zoning Ordinance.
2. The subject property has a width of 66.64 feet on the west (65.60 on the east), an average depth of 249.1 feet and an area of approximately 16,471.2 square feet. The subject property is presently improved with a one story stucco and frame residence.
3. The zoning of the surrounding land is R-4 in all directions, however, as previously noted, case MC-3-87 is requesting a rezoning to B-2 for the land immediately to the north of the subject property.
4. The Village's Future Land Use Plan shows that the subject area has been anticipated as being an appropriate extension of the central business area, and is the southerly most property in the central area of the Village to be designated on the plan for commercial consideration.

CONCLUSION

The proposed rezoning is one which has been anticipated by the Village's Future Land Use Plan. This petition is directly dependent upon the action taken on Case #MC-3-87. If a positive action is recommended for case MC-3-87, then a positive action may be recommended for this case. If a negative recommendation is made for case MC-3-87, then only a negative recommendation may be given to this petition because of the inability to satisfy Section 7 of Article IV of the Zoning Ordinance.



SSMSS
CORP

MAPLE ST

LIBRARY

SUBJECT PARCEL

QENTER

WEBSTER ST

WEBSTER ST

SUMMIT

WEBSTER ST

ST

PT. LOT 49

PT. LOT 50

PT. LOT 55

LOT 17

LOT 52

LOT 15

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PT. LOT 148

PT. LOT 149

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PT. LOT 208

LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING - Notice is hereby given that a Public Hearing will be held by the Zoning Board of Appeals at 7:30 p.m. on Wednesday, February 25, 1987 in the Council Chambers of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois, on a petition seeking rezoning from R-4 Single-Family Residence District to B-2 Business District - General Retail. The property in question is located at 5333 Main Street in Downers Grove, Illinois, and is legally described as follows:

Part of Lot 31 in Curtiss Subdivision being a subdivision of Lot 27 of Assessor's subdivision of Section 7 and 8, Township 38 North, Range 11, east of the Third Principal Meridian, and more particularly described as follows: Commencing at the northwest corner of said Lot 31, 10 feet south on the west line for a place of beginning; thence southerly on said west line 50 feet; thence easterly parallel with the south line of said Lot 31, 250 feet; thence northerly parallel to the east line of said Lot 31 to the intersection of the south line of school lot; thence westerly along the south line of school lot to the place of beginning, according to the plat of said Curtiss subdivision, recorded September 13, 1881 as Document 29341, in DuPage County, Illinois

Together With

That part of Lot 31 in Curtiss Subdivision, being a resubdivision of Lot 27 of Assessor's Subdivision of Sections 7 and 8, Township 38 North, Range 11, east of the Third Principal Meridian, according to the plat of said Curtiss subdivision recorded September 13, 1881 as Document #29341, in DuPage County, Illinois described as follows: Beginning at the northwest corner of said Lot 31; thence southerly on the west line of said Lot 31, a distance of 10.00 feet; thence easterly parallel with the south line of said Lot 31, a distance of 165.00 feet; thence northerly parallel with the west line of said Lot 31; a distance of 10.00 feet to the north line of said Lot 31; thence westerly along the north line of said Lot 31, a distance of 165.00 feet to the point of beginning, all in DuPage County, Illinois.

All interested persons should attend this hearing and will be given an opportunity to be heard. The hearing may be continued from time to time without further public notice. Zoning Board of Appeals, Harold J. Slagter, Chairman. Published in the Downers Grove Reporter February 11, 1987.

Mr. William C. North advised that he was the attorney representing Joseph Kowalkowski, the owner of the subject property located at 5333 Main Street. Since the petitioner is requesting rezoning from R-4 to B-2, Mr. North explained that it was necessary to obtain the consent of the Downers Grove Park District to include their 10' strip of property in this petition. This strip separates the subject property from the B-2 zoning district to the north. Including this parcel in the petition was necessitated by the zoning restrictions which prohibit a detached B-2 zoning district of less than 4 acres. In exchange for this consent, Mr. Kowalkowski will convey a 50' x 85' parcel of land on the east of the subject property to the Park District.

Mr. Kowalkowski, a Certified Public Accountant, stated that he has been a resident of Downers Grove for eleven years. He purchased this property with the specific intention of remodeling it to use as an office for his accounting business. He has already given up the lease on his present office and has begun renovation of the building. Use of the building will be light, since he has only one part-time secretary and a part-time associate. Most of the business is conducted in the homes of clients. Mr. Kowalkowski stressed that there is no intention to place a retail business on the premises. He plans to remain in this location until his retirement, and feels that the improvements and rehabilitation already made, as well as those which are in the planning stages will add considerably to the appearance of the neighborhood and value of neighboring properties. He added this is a much better use of the property than having an outside landlord rent it to tenants who probably would not maintain it.

Mr. Beggs asked whether Mr. Kowalkowski had investigated the zoning when he acquired the property, and whether there was any other way it could be used as a business if the B-2 zoning were not allowed.

Mr. Kowalkowski stated that the B-2 zoning is the only alternative. If not allowed, it would have to remain residential. Since he has already given up his leased office, this would be both a personal and financial hardship if not allowed, although he realized that there was a risk involved when he began this venture. He added, in response to Mr. Beggs question concerning how the property was represented to him at the time of purchase, that he was informed of the zoning requirements, and that he would probably need the approval of the Park District before he could approach the Zoning Board of Appeals.

Chairman Slagter asked Mr. Rathje to present the staff findings regarding this petition.

Mr. Rathje stated that the petitioner is seeking rezoning from R-4 single family residential to B-2 General Retail. Mr. Rathje explained that in the past several years, staff has been contacted by several potential owners of this property to rezone from R-4 to B-2. This was stimulated primarily by the Future Land Use Plan developed in 1979, which anticipated the property along Main Street for commercial zoning. The property, by itself, could not be considered for B-2 zoning because Sec. 7 Art. IV requires a minimum of 4 acres for a detached B-2 zoning designation, to avoid spot zoning throughout the Village. Therefore, it was necessary for the petitioner to obtain the approval of the Downers Grove Park District to include the 10' wide strip which is zoned R-4, adjacent to the subject property, and which served as a buffer between the residential and commercial districts. The zoning surrounding the subject property is B-2 to the north and R-4 to the east, south and west. The significance of this petition is that the Park District has agreed to allow the 10' strip of land to be included in the petition, although they are not advocating the zoning change. The two parcels of land include the Park District strip which is 10' x 165', and the adjacent property which is 50-60' wide with a depth of 250' and an overall area of 12,780 square feet. The combined area of the two parcels is 14,430 square feet.

The Future Land Use Plan designates this property as part of the commercial district. Mr. Rathje displayed the Land Use Map showing where the Park District strip is located, and that the two subject properties of this petition are shown as being anticipated to be an appropriate extension of the Central Business District commercial area. He indicated that the petitioner would participate in a land swap with the Downers Grove Park District in order to include the strip in the zoning change, thereby removing the buffer to the existing commercial area to the north, and making it possible for the petitioner to request the change to B-2.

Mr. Rathje, in response to an earlier question from Mr. Lukas regarding the difference between B-2 and B-1 quoted from the Zoning Ordinance for B-1: "This district should be located on a major street, should not be less than 2 acres nor more than 5 acres in size." According to the regulations the subject property does not satisfy B-1 acreage requirements as it would be an adjunct to the Village's central business district which considerably exceeds 5 acres. As Mr. Kowalkowski indicated, he has already begun some renovation work on the property, which he decided to begin based solely on the Future Land Use Plan's anticipated designation. Mr. Rathje clarified that the work was started at the discretion of the petitioner and not because he has received any guarantee concerning the approval of his request. None of the work he has undertaken would be applicable for use exclusively to a commercial user.

Chairman Slagter asked Mr. Rathje to review for the audience, the background of the Village's Future Land Use Plan and its meaning to the Village.

Mr. Rathje stated that the Plan was adopted by ordinance as the most important guideline in making land use decisions. The Village did not want to be in a position of having to make land use decisions on a case by case basis, but wanted to have a well thought out set of guidelines to use. Starting in 1971 or so, through 1979, the Planning Commission, Village Council, and staff undertook a comprehensive update of the Land Use Plan. The Council felt that the previous consultants did not have a feeling for the Village and instead assigned the task of preparing a plan to the Plan Commission. At that point the commission took the Land Use Plan on the road and met with 25 or 30 different homeowners groups, and had a series of public hearings regarding the development of the Plan. Monthly committee meetings were held with the goal of developing a total picture of where the Village wanted to be in the future. There is no timetable on this plan. It depends on the needs of the property owner, and it anticipates what the trends are to be. For instance, in the northwest territory, the Village felt it was appropriate for the area to develop with Office/Manufacturing/Commercial land uses in light of the anticipated North/South Tollway. Other elements of the plan have similar conditions. The implementation of the plan through rezonings and development activities are pretty much up to the property owners.

Chairman Slagter asked if there was anyone in the audience who wished to speak either in favor of or in opposition to this petition.

Mr. Steve Adams, attorney with Fawell, James and Brooks, representing the Downers Grove Park District, stated that he had been instructed to inform the Board that the Park District had approved an agreement to authorize the change, if the zoning is appropriate. The exchange of property would give the Park District a parcel of land which is much more useable than the 10' strip. The Park District's agreement is contingent upon the Village's approval that this proposed rezoning is appropriate.

Mr. Tom Smith of 1012 Summit spoke. He explained that he lives on the northwest corner of the intersection of Summit and Main. He objects to the requested rezoning change because when he purchased the property it was with the idea that they were in a residential neighborhood. He feels that a residential zoning is most important to the feel of a residential area.

While B-2 is not, in itself, a great threat, this particular parcel combined with the neighboring lot would make a large enough parcel to create a very undesirable development in his back yard. He was very concerned about the broad range of businesses that could be established under the B-2 classifications.

Mrs. Susan Smith, also of 1012 Summit, stated that she was also opposed for the same reasons as stated by her husband.

Margaret Morello of 5350 Main Street stated that the area was zoned residential when they purchased the property. Her fear is the continuing crawl of business up Main Street. This could change from the proposed accounting business to something like an Army Surplus Store and she was opposed to that alternative being made available.

Mr. Dale Winwood of 945 Summit wanted to reinforce the statements of Tom Smith, because he felt that the residential area was being infiltrated by commercial zoning.

Bob Carten of 954 Summit, stated he purchased his home in 1978 to use as a residence, and is opposed to having commercial zoning in that area. He added that the house which is the subject of the next petition is not being used as a residence now, but as an office.

Mr. Rathje replied that if that home is being used as an office, other than as a home occupation, it is being done extra legally. He added that the village staff had not been informed of any illegal use of the property for business use.

Mr. Davis of 916 Summit stated he would like to see the area remain residential.

Mr. Herbert Voss of 949 Summit has lived there for 33 years and he stated that the business district was supposed to stop at Maple Avenue. Now the Village is gradually trying to bring one lot after another up the street. He feels it should stop, because that's is what the Village said would happen 10 or 15 years ago.

Pat Miller of 937 Summit has been a resident since September 1979. She stated she would like the area to stay residential. Although the zoning designation may be fine now regarding an accounting business, she wondered what would prohibit it from being knocked down later and having a 10 story office building constructed there instead?

Mary Barry of 5400 South Main Street came forward in favor of the change. She has lived at that location since 1970. She discussed the excessive traffic on Main Street, and Maple, and the fact that there are buses on Main Street. People are commuting on Main street and traffic has increased. The property is no longer residential and already has a business character to it. The proposed businesses would not hurt the neighborhood and she cannot understand why these residents are opposed to this request.

Mr. Kowalkowski replied to these objections by stating that he is well aware of the concerns and that he sent a letter to all of the neighbors offering to see them. He stated that he loves the building, that it has historic value to the community and he is planning on a long term commitment. He will be refurbishing the property which will add to the value of the neighborhood and that his intention is to retire there. He added that the property was in a bad state when he purchased it. He discussed what his plans are for the exterior, and anticipated improvements to the landscaping. He added that this property was a very personal thing with him, not solely a business decision.

Mr. Beggs asked Mr. Kowalkowski whether alternatives had been investigated should the zoning change request be denied.

He replied that the only alternative would be to establish a home occupation. However, if the zoning request is denied, he would abandon the interior repairs, complete the exterior repairs to which he is committed, and sell the property. He added that in the two months he has been there he has been a good neighbor. To sell the property would hurt him financially.

Mr. Beggs asked Mr. Rathje if the only zoning possible was B-2 to which Mr. Rathje replied yes, to the extent of using the whole building. Otherwise there is the possibility of rezoning the property to R-6 with a conditional use for a business/professional office can. The problem with this approach is that there is no guarantee that the property wouldn't be converted to multi-family. According to the Land Use Plan, the property was anticipated as commercial and the petitioner pursued it. There are problems with the other alternatives.

There being no further discussion, Chairman Slagter closed the public portion of the meeting.

Mrs. Kucera stated that what is really relevant here is whether B-2 zoning is appropriate for the subject property. To delve into whether the structure is likely to stay there is not the point. The point is whether B-2 zoning is appropriate, and looking at it as it is now, she could not see that the property is going to stay residential, and given that, she believed that B-2 zoning is appropriate.

Mr. Lukas stated that he agreed with Mrs. Kucera's statement. He felt that the lot configurations lend themselves to commercial applications, and he thought once the supermarket (the present Lanier building) came into the area, that established the direction in which the area would move. He felt that this is an appropriate application of the Land Use Plan and he would recommend approval for both this lot and the lot which is the subject of the following petition.

Mrs. Kucera added that perhaps others on the Board would have been happier if there was some kind of transitional zoning designation which would allow the transition between the supermarket building and residential looking buildings. As long as this doesn't exist, the appropriateness of B-2 is obvious. However, she would have liked to see a more subtle transition between the R-4 and B-2 zoning.

Mr. Beggs stated he was opposed to this request. He could not help but listen to the comments and recognize that B-2 is not appropriate. What we are talking about is a list of various businesses in B-2 which could be applied to this property once the zoning designation were made, and he didn't feel that the two properties in question are appropriate for that entire list of various businesses. This problem makes him come to grips with the Future Land Use Plan, which he is aware, was the subject of many hearings, but when dealing with a Plan, it is very difficult to look at the whole plan in terms of specific properties. What really happens is a confusing kaleidoscope to work with. As he looks at Main Street, he really does not believe B-2 was properly projected for that area. The Board came to grips with it with the bank building, (proposed Citizens National Bank facility at 55th Street and Main Street). He doesn't think it is necessary to apply B-2 to this property just because the Master Plan says "we planned to do it that way at one time." He thinks there must be ways to accommodate both sides and B-2 is not necessarily the way to do it. Mr. Beggs stated that he does not oppose the types of uses they want there, and pointed out that there have been no objections to the type of business these men are running. The primary concern seems to be the future and what effect this zoning designation would have on that neighborhood. He realizes that if the petitioners are turned down here, they can go to court and make it a more expensive proposition, which is unfair to the petitioners. He would hope to find some area of agreement short of that. Although he agrees with everybody here that the uses are acceptable, the proposed B-2 zoning is not.

Mr. Tandaric stated that the increased traffic volume on Main Street, plus the encroachment of B-2 to the north mandates commercial use of this property. He approves of the petitioners' efforts to improve the properties and, in effect, beautify Main Street. Because of the way the properties on Summit are set, they would act as a buffer, and the commercial zoning would stop with these two parcels.

Chairman Slagter stated that he certainly agrees with the points Mr. Beggs made, and thinks it is unfortunate that provisions of the Zoning Ordinance do not permit addressing specific uses, and that it has to be done in categories. B-2 would permit many things that one might consider to be unacceptable, but also, as you look at the list, many of the things that

people would point to as unacceptable are not the kinds of uses that would be appropriate or even possible on the subject property. He added that he lives on the north side of the downtown area and is more familiar with the development that has been happening on the north of the tracks, and how house after house has been turned into an office facility or professional building and doesn't think it has been a detriment. Many of the properties have been better maintained, and he doesn't see it as a wholesale bowing to commercial development. Main Street is what it is. It is a business street and these two pieces of property fall within that business atmosphere.

There being no additional comments, Chairman Slagter called for a motion.

MRS. KUCERA MOVED THAT IN CASE MC-3-87 THE BOARD RECOMMEND TO THE VILLAGE COUNCIL THAT THE PETITION SEEKING REZONING FROM R-4 TO B-2 BE APPROVED.

MRS. TANDARIC SECONDED.

VOTE: YEA: Mrs. Kucera, Mr. Tandaric, Mr. Lukas, Chairman Slagter

NAY: Mr. Beggs

MOTION CARRIED: 4:1

MC-4-87 Petition seeking rezoning from R-4 Single-Family Residence District to B-2 Business District - General Retail. The property in question is located at 5337 Main Street in Downers Grove, Illinois. Patrick and Dolores Ford, Petitioners.

Chairman Slagter asked Mr. Rathje to read the public hearing notice for this petition.

LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING - Notice is hereby given that a Public Hearing will be held by the Zoning Board of Appeals at 7:30 p.m. on Wednesday, February 25, 1987 in the Council Chambers of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois, on a petition seeking rezoning from R-4 Single-Family Residence District to B-2 Business District - General Retail. The property in question is located at 5337 Main Street in Downers Grove, Illinois, and is legally described as follows:

Part of Lot 31 of Curtiss Subdivision being a resubdivision of Lot 27 of Assessor's subdivision of Sections 7 and 8, Township 38 North, Range 11, east of the Third Principal Meridian, according to the plat of said Curtiss subdivision, recorded September 13, 1881 as Document 29311, described as follows: Commencing 60 feet south of the northwest corner of Lot 31, measured along the east line of Main Street, thence east 250' to the southeast corner of Edward Diener's land as described in certain deeds recorded as documents 141786 and 463205; thence south parallel to the last line of Lot 31 to the south line of Lot 31; thence west along the south line of Lot 31 to the east line of Main Street; thence north along the east line of Main Street to the point of beginning all in DuPage County, Illinois.

All interested persons should attend this hearing and will be given an opportunity to be heard. The hearing may be continued from time to time without further public notice. Zoning Board of Appeals, Harold J. Slagter, Chairman. Published in the Downers Grove Reporter February 11, 1987.

Chairman Slagter added that the Board should note that this particular petition is dependent solely on whether the first case is recommended for approval, and to that extent the two petitions are tied together.

Mr. Timothy McJoynt introduced himself as the attorney for Patrick Ford, owner of the property in question located at 5337 Main Street, which is adjacent to the property in the previous petition. Mr. Ford is the owner and operator of a commercial insurance business. The subject property is a single-story frame residence. To the north is Mr. Kowalkowski's property, to the east is the Park District with B-2 zoning, and to the south is a corner single-family residence facing south which is zoned R-4. To the west, across Main street is R-4 and B-2 zoning. Mr. McJoynt stated that when Mr. Ford acquired the property, he immediately made improvements to the interior and exterior in excess of \$24,000. The Board should consider both applications in concert.

Mr. McJoynt referred to a color map which he handed out to the Board outlining the three properties involved in the two petitions for the zoning change. If the first petition were approved, it would make the subject property contiguous to a B-2 zoning district which would then make the subject property eligible for the requested zoning change. Mr. Ford wants to use the property for his insurance business. He feels the reconfiguration of the property, including the land exchange between the first petitioner and the Park District, would benefit both the applicants and the Park District and would certainly be a more logical land use plan. Mr. McJoynt stated that he has to differ with the position being taken regarding the Future Land Use Plan being incorrectly designated. These parcels are at the end or edge of the downtown area. If both applicants continue with their plans to renovate the existing structures, it would be a good buffer between the larger commercial structures and the residential. Because the applicants have indicated that the existing structures would be maintained, it would retain the residential flavor of the area. He agreed with the point taken by Mrs. Barry that since there are commercial properties on both sides of the street, trying to maintain a totally residential character is not practical. The applicant intends to maintain the property as before. He stated that there have been no complaints to date, and there are no plans to unite the two parcels of property or demolish and replace them with a commercial structure. It is intended strictly as a business use. Both petitioners have spent considerable money on the buildings and would not be demolishing what they have already improved. The subject parcel is the last parcel fronting on Main Street and is a logical point to stop the business district from proceeding further south down Main Street.

Mr. Beggs directed a question to both Mr. McJoynt and Mr. Rathje concerning whether there was such a thing in changing from R-4 to B-2, that the owner of the property would agree to keep the property as a certain use.

Mr. Rathje replied that basically, the question is one of contract zoning. Generally, it is not permitted by the state statutes. There have been several unusual occurrences when petitioners have volunteered to place a covenant on their property, such as the small office building south of 67th Street on the west side of Main Street. In the case at hand, however, neither petitioner has voluntarily provided any such restrictions. That has not taken place on this petition. Appropriate action would be to consider the zoning for all of the uses in a B-2 district.

Mr. Beggs asked if the petitioners could now voluntarily place such a restriction on the petition.

Mr. Rathje replied that voluntary restrictions have been accepted in the past.

Mr. McJoynt responded by stating that the legal impact of such a covenant or restriction is suspect. The petitioner in this case, however, is open to that suggestion and is closing no doors here. By making that commitment the petitioner would be limiting what he could do with the property, but he is certainly willing to handle any suggestions.

There being no further discussion, Chairman Slagter asked Mr. Rathje to present the staff findings for this petition.

Mr. Rathje advised that the same conditions exist with this case as with the previous case with respect to the petitioner's eligibility to rezone. The subject property is located at 5337 Main Street, and has a frontage of 66.64 feet narrowing to 65.60 on the east, a depth of 249.1 feet and an area of approximately 16,471.2 square feet, and is presently improved with a one story stucco and frame residence. The surrounding zoning is R-4 all around. It can only be developed as a business if the Zoning Board of Appeals makes a positive recommendation on the previous request, and the Council acts favorably on it. As shown on the Future Land Use Plan, the subject property is the southerly most parcel which would be considered as B-2 commercial use, as part of the Village's Central Business District. Should the Board make a positive recommendation to the Village Council, the Village Council can accept or ignore that recommendation. Although the petition is anticipated by the Future Land Use Plan, it is dependent upon a positive recommendation and approval on the Kowalkowski property.

There being no further discussion, Chairman Slagter asked for anyone either in favor of or opposition to the petition to state their feelings.

Mr. Tom Smith of 1012 Summit spoke again, explaining that this petition is of even more concern than the first, since it is adjacent to his back yard. He understands that the petitioners in both cases have made improvements, however, he has plans for his property and is hesitant to sink thousands of dollars into the property, only to have everything change in the future by the petitioners selling either of the pieces of property. He also expressed concern because Summit is at the top of the hill, and any potential uses later could severely restrict or ruin his view of downtown Downers Grove. Finally, he expressed concern regarding what effect it could have on the already existing traffic problem on Main Street. Speed limits are already being ignored, and any additional traffic to the area would have to be monitored for violations. He added that there are enough vacancies in the downtown area, and could not see that businesses would have to extend this far out of the immediate business district.

Mr. Lukas asked Mr. Smith to point out on the overhead map the exact location of his property, and whether there were anything, short of not granting the petition that he could accept as a buffer.

Mr. Smith replied that if it would be guaranteed that the property in question would remain residential looking in appearance and would not destroy the residential flavor of the community it would make him feel much better. But without that guarantee he would remain adamantly opposed to this petition.

Mrs. Susan Smith, also of 1012 Summit, stated that she was opposed for the same reasons as stated by her husband, adding that the issue of privacy was also important to her. She said that she never received a letter from the first petitioner concerning his plans for the property, and since they are new to the area, they are totally unfamiliar with the people they are dealing with.

Mr. Ed Saccoccia of 912 Summit, said he also opposes the petition and asked if the petitioners agreed to some conditions, would those conditions transfer to any new owner who might purchase the property at a later date.

Chairman Slagter stated that he was not qualified to answer that question in a specific way. Any kind of restrictive covenant is probably not well founded in the law. There could be an attempt to place a covenant on the petition but it probably would not stand up to the law.

Mr. Rathje stated that if a restrictive covenant was enforced, a subsequent owner could test this through the courts and it would probably default very rapidly.

Mr. Saccoccia added that he welcomed the improvements to the property. These renovations will improve the value and he has no problem with the insurance business or accounting business, but they need some way to guarantee that the owners won't eventually surround it with a parking lot, or that some other structure like a car wash won't show up. The property at the southwest corner of Main and Maple was improved and greatly improved the appearance of the area. He asked if there was an historical marker there, or could some type of historical designation be given to the subject properties, or are they just fighting some Master Plan?

Mr. Anthony Morello of 5350 Main Street has been a resident since 1951. He stated when he came to Main Street in 1951, it was a truly residential area and the only business was at Main and Maple. He has seen the creeping of the business district up Main Street. In this case, the first petitioner is making it possible for the second petitioner. Across the street is the bank, and eventually the commercial zoning will move up the west side of the street. He doesn't feel it is fair to the people who have been there all of these years, because of the accommodations by the Park District, and the petitioners, to jeopardize their investments, and the investments of the young people by allowing this business to come up the hill.

Mr. Dale Winwood of 945 Summit repeated his earlier statement regarding the first petition and stated that he is adamantly opposed to the change of zoning since these buildings serve as a great buffer to the residential area.

Bob Carten, who lives adjacent to Tom Smith, stated Mr. Ford has definitely improved the building. As long as it continues to be used the way it is now, it would be ok. But he is afraid of what could come because B-2 is too general of a designation, and the range of businesses which could qualify is incredible. He is concerned because there seems to be no alternative other than the B-2 designation, which is injurious to the neighborhood. He feels it is extremely important for the neighborhood to be kept residential.

Mary Barry of 5400 South Main street came forward again to state that the area has had a business flavor for some time. New people moving in should have been able to see that when they moved into the area.

Mr. McJoynt responded by adding that the traffic problem on Main Street has been considerable for a long time. He doesn't think there would be a monetary loss to property owners, but the improvements should enhance the property values. He understands the concerns regarding the business area creeping into the residential, but the Future Land Use Plan shows this as a stopping point, and many hours were placed into the development of that Plan.

Mr. Rathje added, regarding the Plan, in that neighborhood in the late 60s or very early 70's there was a very active effort to extend the commercial district all the way to 55th and Main. There were opportunities many years ago to commercialize more of Main Street than what is shown now, and the Village Council took a very firm stand on that. The Future Land Use Plan is not a "plan-of-the-month" or a revolving door plan. It was given a lot of consideration. The question at this time is simply to consider whether this is an appropriate petition.

Mr. Pat Ford, owner of the property in question for this petition, asked to address his comments to his neighbors. He stated that they came in good faith because they are concerned about where they live, the way they live, and the lifestyle they want to maintain and enjoy. This has been his first opportunity to appear in front of the Board and request the rezoning of the property in question. For the last six and a half years he has been able to work quietly and peacefully in the building with no detriment to his neighbors. He is aware that the term "what if" is the primary problem here. Because their concerns were raised in good faith, he would give them a good faith response and state that he has no plan to do anything with the building other than maintain it and improve upon it. The only plan is to remove some trees, add some shutters, etcetera. He added that he appreciates what it is that they may be afraid of, but the use of that small house is best served by having someone like him in it who can afford to maintain it and who is not interested in letting it deteriorate. This could not be said about the previous owner of the property.

There being no further discussion, Chairman Slagter closed the public portion of the meeting.

Mrs. Kucera stated that the comments she made in the previous case are the same in this case, with the same reservations, although she believes it is best suited for B-2 zoning. She realizes that this rezoning does move the commercial zone further south to just north of the house on Summit, however she would still be in favor of this petition.

Hearing no further comments, Chairman Slagter called for a motion.

MRS. KUCERA MOVED THAT IN CASE MC-4-87 THE BOARD RECOMMEND TO THE VILLAGE COUNCIL THAT THE PETITION SEEKING REZONING FROM R-4 TO B-2 BE APPROVED. MR. TANDARIC SECONDED.

VOTE: YEA: Mrs. Kucera, Mr. Tandaric, Mr. Lukas, Chairman Slagter

NAY: Mr. Beggs

MOTION CARRIED: 4:1

C-2-87 Petition for a conditional use for a parking lot accessory to an adjacent business on residentially zoned property. The property in question is located at 4126 Sterling Road, Downers Grove, Illinois. Kenneth Knudson, Petitioner for the Sybaris Inn.

Chairman Slagter asked Mr. Rathje to read the public hearing notice for this petition.

LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING - Notice is hereby given that a Public Hearing will be held by the Zoning Board of Appeals at 7:30 p.m. on Wednesday, February 25, 1987, at 7:30 PM in the Council Chambers of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois, on a petition for a conditional use for a parking lot accessory to an adjacent business on residentially zoned property. The property in question is located at 4126 Sterling Road, Downers Grove, Illinois, and is legally described as follows:

Lot 4 in Block 22 in Arthur T. McIntosh and Company's Fairview Avenue Subdivision in the east 1/2 of Section 5, Township 38 North, Range 11 East of the Third Principal Meridian and in the southeast 1/4 of Section 32, Township 39 North, Range 11 East of the Third Principal Meridian according to the plat thereof recorded September 7, 1923 as Document No. 169326 in DuPage County, Illinois.

All interested persons should attend this hearing and will be given an opportunity to be heard. The hearing may be continued from time to time without further public notice. Zoning Board of Appeals, Harold J. Slagter, Chairman. Published in the Downers Grove Reporter February 11, 1987.

Mr. Kenneth Knudson, owner and operator of the subject property and business, explained that he has acquired ownership of the residence adjacent to the Sybaris on the north. His petition is intended to improve the traffic flow and eliminate any congestion on Ogden Avenue from his premises, as well as improving the aesthetics of the area. Presently, there is employee and guest parking on his premises, however, it is located at the front of the building and he believes that it is a safety hazard. By placing the parking area in back of the business it would promote better traffic control. He has had an architect study the site and has redesigned the parking facility to meet their needs.

Commissioner Glas moved to approve the resolution as read. Commissioner Kopis seconded.

VOTE: YEA - Commissioners Glas, Kopis, Fulgaro, Mayor Cheever
NAY - None

Mayor Cheever declared the motion carried.

Index: **ELECTIONS - CANVASS**

D. Ordinance: Supplemental Appropriation. Mayor Cheever explained this ordinance does the following: a) Transfers \$15,000.00 from the Corporate Fund to the Transportation Fund as a temporary loan; b) Makes supplemental appropriations totalling \$1,010,000.00 in the Automotive Equipment Account and the Improvements-Other than Buildings Account.

The Clerk read the proposed ordinance:

AN ORDINANCE TRANSFERRING FUNDS AND MAKING A
SUPPLEMENTAL APPROPRIATION FOR THE VILLAGE OF DOWNERS GROVE

Ordinance No. 3054

Commissioner Kopis moved to pass the ordinance as read. Commissioner Glas seconded.

VOTE: YEA - Commissioners Kopis, Glas, Fulgaro, Mayor Cheever
NAY - None

Mayor Cheever declared the motion carried.

Index: **APPROPRIATION SUPPLEMENT**

FAIRVIEW AVENUE PROJECT - 55TH TO 63RD

BUS REHABILITATION

E. Motion: Petition for Rezoning 5333 Main Street. Mayor Cheever said at its February 25, 1987, the Zoning Board of Appeals recommended, by a 4:1 vote, that the property located at 5333 Main Street be rezoned from the R-4 Single-Family classification to the B-2 General Retail zoning classification.

Commissioner Fulgaro moved to deny a petition to rezone the property located at 5333 Main Street to the B-2 zoning classification. Commissioner Glas seconded.

Commissioner Kopis stated he agreed with the Zoning Board of Appeals recommendation and was in favor of rezoning the subject property from R-4 to B-2, and further stated that he felt it was consistent with the future land use plan.

Mayor Cheever stated that the future land use plan was viewed by Council to be used as an indication of what might occur in the future, but was not a mandate; and in her opinion was not appropriate in this case.

VOTE: YEA - Commissioners Fulgaro, Glas, Mayor Cheever
NAY - Kopis

Mayor Cheever declared the motion carried.

Index: **REZONE - 5333 MAIN**

F. Motion: Petition for Rezoning 5337 Main Street. Mayor Cheever said at its February 25, 1987 meeting, the Zoning Board of Appeals recommended, by a 4:1 vote, that the property located at 5337 Main Street be rezoned from the R-4 Single-Family classification to the B-2 General Retail zoning classification.

Commissioner Glas moved to deny a petition to rezone the property located at 5337 Main Street to the B-2 zoning classification. Commissioner Fulgaro seconded.

VOTE: YEA - Commissioners Glas, Fulgaro, Mayor Cheever
NAY - Kopis

Mayor Cheever declared the motion carried.

Index: **REZONE - 5337 MAIN**

FUTURE AGENDA

Mayor Cheever said on April 20 Council expects to adopt the 1987-88 budget and will consider an ordinance regarding parking restrictions on Curtiss, Washington to Belden, and a resolution regarding the annual Water Bond Reserve transfer.

On the Future Agenda without date is an ordinance annexing 117 parcels bounded by Ogden Avenue, Cumnor Road, Maple Avenue and Williams Street.

Mayor Cheever stated a Public Hearing on Revenue Sharing and the 1987-88 Budget Plan would be held immediately following adjournment of the Council meeting.

UNFINISHED BUSINESS AND NEW BUSINESS

A. Proclamations: Mayor Cheever proclaimed the week of April 20, 1987 to be Downers Grove Oratoria Society Week, and the week of April 20, 1987 to be Artists Showcase West in the Village of Downers Grove.

Mayor Cheever said Coffee With The Council will be Saturday, April 18 at the new

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE
OF THE VILLAGE OF DOWNERS GROVE, ILLINOIS, CODIFIED AS
CHAPTER 28 OF THE DOWNERS GROVE MUNICIPAL CODE, AS AMENDED
TO REZONE 5333 & 5337 MAIN STREET**

WHEREAS, the real estate commonly known as 5333 & 5337 Main Street and hereinafter described has been regulated for zoning purposes under Court Order; and,

WHEREAS, the owner or owners of said real estate have requested that such property be rezoned as hereinafter provided; and

WHEREAS, it appears that the Zoning Board of Appeals of the Village of Downers Grove has given the required public notice, and has conducted a public hearing respecting said requested rezoning in accordance with applicable law; and

WHEREAS, making due allowance for existing conditions, the conservation of property values, the development of the property in conformance to the official Comprehensive Plan of the Village of Downers Grove, and the current uses of the property affected, the Council has determined that the proposed rezoning is for the public good.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows:

SECTION 1. The Comprehensive Zoning Ordinance of the Village of Downers Grove, Illinois, codified as Chapter 28 of the Downers Grove Municipal Code (which ordinance as heretofore amended, is hereinafter referred to as the "Zoning Ordinance"), is hereby further amended by changing to "B-2, General Retail Business" the zoning classification of the following described real estate, to wit:

Parcel 1:

Part of Lot 31 in Curtiss Subdivision, being a subdivision of Lot 27 of Assessor's Subdivision of Sections 7 and 8, Township 38 North, Range 11 East of the Third Principal Meridian, and more particularly described as follows: commencing at the northwest corner of said Lot 31 for a place of beginning; thence southerly on said west line 60 feet; thence easterly parallel with the south line of said Lot 31, 221.7 feet; thence northerly parallel to the east line of said Lot 31 to the intersection of the south line of School lot; thence westerly along the south line of School lot 57.28 feet; thence northerly parallel to the east line of said Lot 31, 10 feet; thence westerly along the north line of Lot 31, 165 feet, to the place of beginning, according to the plat of said Curtiss Subdivision, recorded September 13, 1881 as Document #29341, in DuPage County, Illinois

Together with

Parcel 2:

That part of Lot 31 described as follows: commencing 60 feet south of the northwest corner of Lot 31, as measured along the east line of Main Street; thence east 250 feet to the southeast corner of Edward Diener's land as described in certain recorded as Documents 141786 and 463205; thence south parallel to the east line of Lot 31 to the south line of Lot 31; thence west along the south line of Lot 31 to the east line of Main Street; thence north along the east line of Main Street to the point of beginning, (excepting therefrom the easterly 25.02 feet, as measured along the northerly and southerly lines thereof), in Curtiss Subdivision, being a resubdivision of Lot 27 of Assessor's Subdivision of Sections 7 and 8, Township 38 North, Range 11, East of the Third Principal Meridian, according to the plat of said Curtiss Subdivision, recorded September

13, 1881 as Document 29341 in DuPage County, Illinois

Commonly known as 5333 & 5337 Main Street, Downers Grove, Illinois

SECTION 2. The official zoning map shall be amended to reflect the change in zoning classification effected by Section 1 of this ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

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

Mayor

Passed:

Published:

Attest: _____

Village Clerk

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