

Approved 5/22/03
VILLAGE OF DOWNERS GROVE ZONING COMMISSION
VILLAGE HALL, COUNCIL CHAMBERS
801 BURLINGTON AVENUE

Thursday February 20, 2003

Chairman Musielak called the meeting of the Zoning Commission to order at 7:30 p.m.

ROLL CALL

PRESENT: Mr. Baker, Mr. Griesbaum, Mr. Levin, Mr. Pappalardo, Ms. Rabatah, Mr. Steele, Chairman Musielak

ABSENT: None

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

OTHERS

PRESENT: James Russ, Mark Janis, Robert Bair

Chairman Musielak welcomed Mr. Baker as the Zoning Board of Appeals representative to the Zoning Commission.

Chairman Musielak said that the first order of business was consideration of the minutes of the August 22, 2002 Zoning Commission meeting. He asked if there were any corrections or additions to the minutes. Hearing none, he called for a motion.

MR. STEELE MOVED THAT THE MINUTES OF THE AUGUST 22, 2002 ZONING COMMISSION MEETING BE ACCEPTED AS PRESENTED. MR. PAPPALARDO SECONDED THE MOTION.

VOTE: **Aye:** Mr. Steele, Mr. Pappalardo, Mr. Levin, Ms. Rabatah, Chairman Musielak

Nay: None

Abstain: Mr. Baker, Mr. Griesbaum

MOTION CARRIED: 5:0:2

Chairman Musielak asked Ms. Browne to enter the legal notice into the record. Ms. Browne said the following legal notice was published in the Downers Grove Reporter on Wednesday, February 5, 2003:

Legal Notice: Village of Downers Grove Notice of Public Hearing - Notice is hereby given that a public hearing will be conducted by the Zoning Commission of the Village of Downers Grove on Thursday, February 20, 2003 at 7:30 p.m. in the Committee Room of the Village Hall, 801

Burlington Avenue, Downers Grove, IL. The purpose of the public hearing is to consider the following proposed text amendments to the Zoning Ordinance:

Case 2003-01, a request for a text amendment to allow the permanent outdoor display of merchandise as a Special Use in the B-3, General Services and Highway Business District.

Case 2003-02, a text amendment applicable only to those properties fronting on Douglas Road between Rogers Street on the north and Maple Avenue on the south to reduce the minimum front setback requirement from 35 feet to 10 feet; to allow parking facilities within the required front setback; and to allow chain link fences within the required front setback.

All interested parties should attend this hearing and will be given an opportunity to be heard. The hearing may be continued from time to time with no further public notice. Individuals with a disability requiring reasonable accommodations in order to participate should contact the community relations department at (630) 434-5550 prior to the meeting. Wheelchair access may be gained through the south (side) entrance of the Village Hall. Zoning Commission, Mr. Lawrence Musielak, Chairman. Published in the Downers Grove Reporter, Wednesday, February 5, 2003.

Case 2003-01

Chairman Musielak asked Mr. Russ to present the petition in this case. Mr. James Russ, of Wiedel, Hudzik, Russ and Phillip, introduced himself and Mr. Mark Janis of Heartland Industries. Mr. Russ said the petitioner is seeking a text amendment to Section 28-1005 of the Zoning Ordinance to create provisions that would allow a special use to be requested for the permanent outdoor display of non-moveable structures in the B-3 zoning district. Currently, the Ordinance allows outdoor displays as a special use in all of the business zoning districts, but limits such displays to the normal operating hours of the business. Mr. Russ said their petition proposes to allow permanent outdoor displays as a special use only in the B-3 zoning district. The petition would not affect the provisions of either the B-1 or B-2 districts.

Mr. Russ said by requiring a special use for permanent outdoor displays, all of the Village's special use requirements would apply to any such proposal resulting from this text amendment. This would include providing mail notice to surrounding property owners, conducting a public hearing before the Zoning Board Of Appeals, obtaining site plan approval for the outdoor display, with final approval by the Village Council, which could include any recommendations or restrictions imposed by the Zoning Board of Appeals and/or the Village Council.

Mr. Russ said that the safeguards in the special use process would ensure that the outdoor display is appropriate for the location of the business requesting it. By approving the text amendment, Mr. Russ said that the Zoning Commission and the Council would only be allowing petitioners to request this type special use; approval of the text amendment would not have any affect on granting this or any other special use that might be requested under this amendment, and it would not guarantee automatic approval of the petitioner's desired plans. Mr. Russ said the amendment would simply give businesses the right to go before the Zoning Board of Appeals with a petition for a special use for the permanent outdoor display of merchandise.

Mr. Russ reiterated that the only change resulting from the amendment would be the ability to request a

special use. The bulk requirements of the B-3 zoning district will remain in place and will need to be met with regard to setback, building lines, building densities, lot areas, engineering, storm water, etc.

Mr. Russ said his client, Heartland Industries, is new to Downers Grove and they would like to open a business on Ogden Avenue. They believe that Downers Grove is a growing, vibrant community with the traffic flow necessary to produce a profitable business for them. A major component of their business is the display of the products which they sell, including wooden play sets, gazebo-type structures, wooden sheds, etc. He explained that the permanent outdoor display of these items is an integral part of their business, without which they will not be able to locate in Downers Grove.

Mr. Russ said they believe that with the requirements of the special use procedures, this amendment will provide a tool which Downers Grove can use to attract quality businesses such as Heartland Industries that could not previously locate in Downers Grove. Mr. Russ emphasized that they are not asking the Zoning Commission to make a recommendation regarding a special use at a specific location, they are only asking to amend the Ordinance so that businesses will be allowed to request a special use, which would be subject to all special use provisions and would be processed by the appropriate zoning bodies. Mr. Russ concluded by asking the Zoning Commission to make a positive recommendation to the Village Council with regard to this petition.

Mr. Levin asked if Heartland Industries has already chosen a location. Mr. Russ said they are considering the property on Ogden Avenue formerly known as Mr. B's Restaurant.

Chairman Musielak reminded the Commission that the proposed text amendment would affect all B-3 zoned properties throughout the Village, not just the specific location that Heartland Industries is considering.

Chairman Musielak asked Ms. Browne to present the staff report in this case. Ms. Browne said that as the petitioner has indicated, the amendment being proposed in this case would afford businesses the right to request a special use for the permanent outdoor display of merchandise in the B-3 zoning district.

Ms. Browne noted that the outdoor storage of materials is currently allowed as a special use in the B-2 and B-3 districts, but is limited to the normal business operating hours of the owner. Ms. Browne said the proposed amendment would not alleviate special use permitting requirements, and that petitioners would be required to go before the Zoning Board Of Appeals for a public hearing, a legal notice would be published in the newspaper, property owners within 250 feet would be notified, and a sign would be posted on the property. The Zoning Board Of Appeals would make a recommendation to the Village Council based upon the specific site plan, the design and location of the outdoor display area, the items being displayed, etc.

Ms. Browne reviewed the staff report, noting that all of the requirements provided for in Section 28-1005 of the Zoning Ordinance would remain in effect, the exception being that in the B-3 District, if items are proposed to be displayed outdoors on a permanent basis, a special use would be able to be requested in order to do so.

Before moving on to additional information she wished to present to the Commission, Ms. Browne asked if there were any questions regarding the staff report.

Mr. Griesbaum asked where B-3 zoning is located in Downers Grove. Ms. Browne said the Ogden Avenue corridor and the area at Butterfield and Finley are the major B-3 zoning areas in Downers Grove. She clarified that the B-3 district is the General Services and Highway Business, which has a fair component of semi-manufacturing type uses associated with it such as automobile repair related uses, contractor shops, limited process and assembly related uses, etc. Ms. Browne said there is also another small area of B-3 zoning on 75th Street near Fairview, which was developed as a Planned Development.

Mr. Griesbaum asked how Heartland's outdoor display differs from Wannamaker's and other outdoor displays along Ogden Avenue. Ms. Browne said that although Wannamaker's is on Ogden Avenue, its underlying zoning is M-1, Light Manufacturing. Outdoor displays may therefore be subject to different regulations. Ms. Browne conceded that there are some existing outdoor displays which are not being regulated or enforced. However, the petitioner in this case has been forthright in expressing their business desires, and has taken the steps necessary to be able to seek the appropriate reviews and approvals of their proposal.

Mr. Baker asked for a definition of "permanent". Ms. Browne said that with regard to this amendment, "permanent" means 24 hours a day, 7 days a week; items that will be on display outside of the principal structure even when the business is closed. Currently the Ordinance restricts outdoor displays to the business's hours of operation, therefore, items being displayed outdoors are required to be moved indoors when the business is not open. It is the nature of the items sold by the petitioner that make it impractical if not impossible to move the items indoors and outdoors on a daily basis.

Chairman Musielak asked how permanent outdoor displays would impact parking. Ms. Browne said it would have no impact on parking requirements. The property would still have to be able to support the minimum number of required parking spaces based on the gross floor area of the building; however, the square footage of the outdoor display area would not increase the parking space requirement.

Mr. Pappalardo asked if the amendment would have any affect on the setback requirements. Ms. Browne replied no, and said that the outdoor storage areas would be required to conform with the applicable setback requirements as would any fencing, signs, etc. Ms. Browne added that the minimum landscaped greenspace requirements would also have to be met.

Mr. Baker asked if the petitioner would have to present each specific display to the Zoning Board of Appeals for approval. Ms. Browne said Zoning Board Of Appeals would consider the general site plan of the property, including a delineation of the outdoor display area, applicable setbacks, parking space layout, etc., similar to any other special use petition. She added that the Zoning Board of Appeals would approve the general location and type of the display area, however, if Mr. Baker was asking if the owner would have to resubmit for a special use each time the displays were changed, for instance if one item were no longer to be carried and was replaced by another item, the answer is no. An expansion of the outdoor display area would require re-submittal, but an exchange of materials within the approved area would not.

Chairman Musielak asked how this type of outdoor display differed from a used car lot. Ms. Browne said the Ordinance is structured in such a way that within each zoning district, the lists of permitted and special uses are provided. The permitted use lists may make allocations for specific businesses which can be conducted out of doors. With respect to automobile sales related uses, the B-2 zoning district permits automobile sales facilities but limits them to indoor sales facilities only. The B-3 district permits

automobile sales facilities and specifically includes open sales lots where vehicles are displayed out of doors.

Chairman Musielak asked if adoption of this amendment would help the Village go after establishments which currently have outdoor displays in violation of the Ordinance. Ms. Browne agreed that it might help in that if a business were cited for a violation and then approached the Village with a request for a special use, the Village would have the opportunity to review the proposal, and then could potentially deny the requested Special Use or impose conditions to ensure the outdoor storage was done in an appropriate manner.

Mr. Griesbaum noted that with the amendment each establishment would have to come before the Village to obtain the special use. Ms. Browne replied yes. However, she added that does not mean that the current Ordinance should not be enforced with regard to unauthorized permanent outdoor displays.

Chairman Musielak asked about Home Depot's permanent outdoor displays at Butterfield and Finley. Ms. Browne said if they have permanent outdoor displays of merchandise that they do not bring indoors when the business closes each evening, they are not in conformance with the Ordinance, as that property is located in the B-3 district and to her knowledge, no special use has been issued for such displays on that property.

Mr. Steele expressed concern that there is nothing in the Ordinance or the amendment to tie in the display area as retail area to meet parking requirements. Mr. Steele said approval of an outdoor display area would provide more retail space without an additional parking requirement. Ms. Browne said that for all commercial uses, the parking requirement is based on the gross square footage of the building. For instance, the parking requirement for a car dealer is based upon the square footage of the building, not the square footage of the site used for displaying their product. Mr. Steele said in addition to this text amendment, perhaps parking requirements should also be amended for permanent outdoor displays. Chairman Musielak said that he would tend to agree.

Mr. Russ said he felt that parking requirements would be reviewed when a specific special use petition is considered. If the display area is much larger than the building on-site and if it is going to generate additional parking requirements, he believes it would be considered under the purview of the special use hearing and decided on a case-by-case basis. Mr. Russ said in this case, the building on-site is substantially larger than Heartland needs. However, with respect to the structure, there are legal non-conformities present which would have to be remedied, which discourages them from tearing the building down and replacing it with a new structure. Mr. Russ said in this case, he believes that the display would not generate additional parking requirements, and that he feels the parking requirements would be handled as a condition of the special use. Ms. Browne agreed with Mr. Russ' statements.

Ms. Rabatah said the Commission could limit the square footage of outdoor display area, or could including a requirement that limits the ratio between the building and the permitted outdoor display area. Mr. Baker said he felt that the special use hearing for a specific proposal would be the appropriate time to make such determinations.

Ms. Rabatah asked if fencing would be required around outdoor displays. Ms. Browne said the Ordinance would not require it, unless it were required as screening from an adjacent residential use. Mr. Russ added that in this case, there might be some fencing or screening requirement based upon the

surrounding uses. He pointed out that the parcel Heartland is interested in abuts a residential lot, and the Ordinance requires a 6-foot solid screen to separate the commercial use from the residential use. In addition, Mr. Russ said most likely business owners would do whatever is necessary to minimize their liability, and that if there were a hazard involved, it would also be addressed at the special use hearing.

Ms. Browne then distributed copies of the Ogden Avenue Master Plan, as well as a document prepared by the Economic Development Commission regarding their recommendations to the Council to adopt the Ogden Avenue Master Plan. Ms. Browne explained that because much of the Village's B-3 zoning is located along the Ogden Avenue corridor, she wanted to review various sections of the Ogden Avenue Master Plan and its companion document from the Economic Development Commission. In reviewing the documents, she called the Commission's attention to recommendations concerning streetscape, aesthetics, landscaping, traffic patterns, access, unified design framework, future public and private improvements, land use and beautification.

Ms. Browne said at this time, the Planning Department does not see a direct conflict between the Ogden Avenue Master Plan and the proposed text amendment. It is arguable that a proposal may or may not be in conformance with the goals and objectives of the Master Plan. However, staff feels that any argument as to whether a specific proposal for the permanent outdoor display of merchandise conforms or interferes with the goals of the Master Plan should be made as part of the review of a proposed special use.

Mr. Levin agreed, and said he did not see anything wrong with permitting individuals to apply for a special use for a permanent outdoor display.

Ms. Browne said that after the staff report was distributed, she also reviewed the ordinance provisions from 27 other DuPage County municipalities and the Ordinance for unincorporated DuPage County regarding outdoor storage. Ms. Browne said that seven ordinances did not contain any strict provisions either permitting or prohibiting outdoor storage or display, so in the essence of time, she discounted those Ordinances. Of the remaining 21 ordinances, four were similar to the Village's current ordinance in that they prohibited permanent outdoor storage/display. However, of the remaining 17 ordinances, 16 ordinances permitted some type of outdoor storage, outdoor display, etc. as a special use, and one ordinance allowed it as a permitted use.

Ms. Browne acknowledged that it is difficult to make direct comparisons between our ordinance and that of other municipalities because the characteristics of the municipalities can differ so greatly, as can the make-up of the various zoning districts. Not every municipality has an Ogden Avenue Corridor or a Butterfield and Finley shopping area. Therefore, she noted that the adjacent communities of Westmont and Lisle both allow the permanent outdoor display of merchandise for sale as a special use in their commercial districts located along the Ogden Avenue corridor.

Mr. Griesbaum asked how the situation is handled in Naperville. Ms. Browne said Naperville's ordinance did not contain a provision for permanent outdoor display and storage in their B-3 zoning district.

Mr. Steele asked how other members of the Commission felt about adding a provision to the amendment concerning parking requirements to ensure that it would be discussed as part of the special use public hearing. Mr. Steele restated his opinion that if a business wants to have an outdoor display area, they should have to provide the necessary parking based upon the size of that display area. Ms.

Rabatah said it would be a control factor.

Chairman Musielak said he would be inclined to go along with ordinances that treat outdoor displays in the same manner as used car lots, which are required to provide a certain number of parking spaces for customer parking. Ms. Browne agreed that auto dealerships are required to provide a certain number of visitor and employee parking spaces separate and apart from vehicle display spaces, but reiterated that the parking requirement is based upon the square footage of the building on the site, not of the outdoor display area. Car dealerships can have as many vehicle display spaces as they can legally fit onto their property, and the Ordinance does not require parking for that outdoor area.

Mr. Pappalardo said he feels that Mr. Steele is concerned about the possibility of a business owner having a large outdoor display area and a small building, which would require very few parking spaces, which he believes the Village would want to avoid. Ms. Browne agreed that could happen, and that it does happen when you look at Mr. Steele's analogy in relation to a car dealer. She noted that one car dealer on Ogden Avenue has over 17 acres of cars, but the required parking is based upon the size of the building.

Ms. Browne said she believes that creating a parking requirement based on the size of an outdoor display area would be unduly burdensome. She also noted that many businesses along Ogden Avenue are already nonconforming with respect to their on-site parking spaces, and may not have sufficient area to accommodate any outdoor display area, and most likely would not be able to accommodate additional parking without creating some other type of nonconformity such as reducing greenspace or setbacks. So, by the nature of the conditions along Ogden Avenue, many properties will not even be eligible to request this type of special use.

Mr. Pappalardo asked if Heartland Industries only sells outdoor equipment, i.e. backyard storage buildings, play sets, gazebos, etc. Mr. Janis replied yes. Mr. Janis said he did not intend to use the building on site for retail merchandise. It would serve as an administrative and sales office.

Chairman Musielak noted that the Commission's discussions regarding parking would be included in the minutes for Council's review of this item. Thus, he felt the subject of parking requirements would not be overlooked.

Mr. Baker said that although developers sometimes do not want to set aside land for parking, retailers are usually anxious to provide adequate parking for their customers, and he did not feel parking would be an issue.

Chairman Musielak said that he feels that parking requirements should be addressed as part of the special use process if this amendment were approved.

Ms. Rabatah asked Ms. Browne if she could give some examples of minimum parking requirements. Ms. Browne said that with the exception of churches and hospitals, parking is based on the size of the building on the site. For general retail, one parking space is required for every 300 square feet of gross floor building area. For offices, one parking space is required for every 400 square feet of gross floor building area.

Mr. Pappalardo expressed concern that if a business does not provide adequate customer parking, the customers will park out on the surrounding streets. Mr. Griesbaum noted that parking is permitted on

many side streets, but not on Ogden Avenue.

Ms. Rabatah asked about the parking requirements for car dealerships. Ms. Browne said they are required to provide parking at the same rate as automobile repair facilities, which is one parking space for every 600 square feet of gross floor building area. This requirement is exactly half the requirement as compared to the one space per 300 square feet of building area for general retail.

Mr. Pappalardo said it is his opinion that car dealerships seem to have a lot of parking spaces. Ms. Browne said that as Mr. Baker pointed out, it is in a business owner's best interest to provide adequate customer parking. Mr. Griesbaum agreed.

Chairman Musielak noted that the FIM store on Ogden Avenue has outdoor displays and customer parking; however, at Christmas time the parking is not adequate and customers park on the street. Chairman Musielak said he feels that providing for parking is a concern with this amendment. Ms. Browne said she did not want to compare permanent outdoor displays with temporary outdoor sales for items such as Christmas trees, which are conducted under a temporary use permit. Additionally, parking is typically less available during the holiday shopping season due to the peak in the numbers of shoppers.

Mr. Steele said he would like to add an amendment to the proposed text to address the parking issue. However, he wondered if the Village Council could waive such a parking requirement when considering the special use application. Mr. Steele said his main concern is to bring the issue of parking "front and center" before it goes to the special use hearing.

Ms. Browne commented that if the amendment includes a strictly worded condition regarding parking that can not be satisfied by a particular business, it could not be waived as part of the special use. In addition, the petitioner for the special use could not apply for or obtain a variance for parking because one of the requirements of a special use approval is that the proposal must meet all applicable Ordinance requirements.

Mr. Baker said it appears that Mr. Steele is looking for some way to ensure that the issue of parking will be addressed when considering a special use petition. Mr. Steele cited conditions on Butterfield Road and said an increase in retail display space would only exacerbate the problem. Mr. Steele agreed that he wants to bring up the issue of parking and added that he also has a problem with increasing retail area without providing additional parking.

Ms. Browne said that with respect to automobile sales related uses, the Ordinance already permits outdoor sales without creating an additional parking requirement. She said in the same way that it is unreasonable to expect a car dealer to provide parking based upon the size of the vehicle display area, she feels that it is unreasonable to impose a blanket requirement as part of this text amendment that would be applicable to all other uses which may propose permanent outdoor storage, especially since parking can and should be considered as part of a special use proposal.

Mr. Steele disagreed and said he does not see the similarity. Ms. Browne explained the similarity is that automobile-related uses are one of the few permitted retail uses that are authorized to take place outdoors; all other retail uses must be conducted wholly within an enclosed building. Parking for auto sales lots is based upon the size of the building and not the size of the outdoor area where the product, ie: vehicles, is stored or displayed for sale.

Mr. Steele noted that the parking requirements for automobile dealerships are different from those for general retail. Ms. Browne agreed, noting again that the parking requirement for automobile dealers is one space per 600 square feet of gross floor area; which is half the requirement of one space per 300 feet of gross floor area required for retail uses. The gross floor area in both cases includes indoor storage areas, garage areas, prep areas, etc.

There being no other comments regarding parking at this time, Ms. Browne said that she would like to discuss the history of the provisions regarding outdoor display. She distributed a chart showing the changes that have been made to Section 28-1005 of the Zoning Ordinance over the years. Ms. Browne said the provisions of this section, which establish the requirements for outdoor display areas, were adopted in 1977. The provisions were amended in 1981 and again during a comprehensive re-write of the Business and Manufacturing District provisions of the Ordinance in 1998.

Ms. Browne said in 1977, the outdoor display of merchandise was allowed as a conditional use in the B-2 and B-3 zoning district subject to four conditions: that it be conducted only on private property; that the applicant had to be the owner and/or lessee of the property; that the applicant had to submit a sketch showing the exact location of the outdoor display; and that the applicant had to specify the items that were going to be displayed outdoors. She also noted that when the provisions were adopted in 1977, there was no prohibition against the permanent outdoor display of materials in the B-2 or the B-3 zoning districts.

Ms. Browne said that in 1981, a fifth condition was added prohibiting permanent outdoor display of merchandise within the Concentrated Central Area. It stated that "Within the Concentrated Central Area, such outdoor display shall be limited to portable displays of flowers, plants, other live vegetation, fruits and vegetables, and other similar displays and shall be limited to display only during normal business hours of the applicant." However, even after that provision was added, the permanent outdoor display of merchandise was still permitted as a conditional use in other areas of the B-2 zoning district and in the B-3 zoning district.

Ms. Browne said when the Zoning Ordinance was reformatted in 1998, the Business and Manufacturing sections were re-written, and the wording in above provision was essentially flip-flopped to read as follows: "Outdoor display shall be limited to portable displays and shall be limited to display only during normal business hours of the owner. Provided, within the Concentrated Central Area, such outdoor displays shall be limited to portable displays of flowers, plants, other live vegetation, fruits and vegetables and other similar displays and shall be limited to display only during normal business hours of the owner."

Ms. Browne said that she reviewed the file from the 1998 re-write, and it is unclear whether the language change was made to intentionally prohibit the permanent outdoor display of merchandise by limiting such displays to the normal business hours of the owner, or if the prohibition was the unintentional result of a language change that was intended only to clean up the existing language. Ms. Browne said she did not find any discussion of the item in the minutes of the Zoning Commission meetings held at the time of the rewrite. However, regardless of the intent, Ms. Browne said the effect was that the permanent outdoor display of merchandise was effectively prohibited. She added that she views Heartland's amendments as a proposal to restore the original provision allowing the permanent outdoor display of merchandise as a special use back into the Ordinance.

Chairman Musielak said that the subject of outdoor displays has come up in the past. He recalled that when a petitioner on Fairview Avenue wanted to have an outdoor display, the Fairview Concentrated Business District was created. Mr. Russ agreed, and noted that particular business owner who sells garden ornaments and prompted that amendment is now located on Ogden Avenue.

Ms. Browne then distributed a copy of the history of the General Provisions of the B-2 and B-3 Business Districts. She said that this language is sometimes referred to as the "preamble" of the provisions of a particular zoning district, and the historical language of the business district preambles may also shed some light in this issue.

Ms. Browne compared the language of the B-2 and the B-3 District preambles. In the B-2 District, since 1975, the preamble language has stated that unless a use is specifically exempted, all businesses must be conducted completely within an enclosed in a building. In 1995 and in 1998 the language of the B-2 preamble was revised slightly, but still stated that unless there was a special use for the outdoor display of merchandise or unless it was specifically exempted in the Ordinance, everything had to be indoors in the B-2 Zoning District. This language is reinforced in the permitted and special use lists in the B-2 District, which do not make provisions for outdoor displays of merchandise.

However, as compared to the B-3 district preamble language, the preamble is worded differently because of the nature of the uses that are permitted in the B-3 district which include semi-manufacturing uses with large storage areas and activities that go beyond traditional retail activities. Prior to 1995, the preamble language of the B-3 District did not require that all uses be conducted indoors. Rather it required that certain aspects of uses had to be conducted indoors, such as repairs, production, processing, etc. However, it did not specifically prohibit outdoor storage.

In conclusion, Ms. Browne said in staff's opinion, prior to the mid-1990's, the permanent outdoor display of merchandise could be requested as a special use in the B-3 Zoning District as is now being requested in this case. However, in the mid-1990's the provisions of the Ordinance changed in ways that resulted in the prohibition of outdoor displays in the B-3 Zoning District. It is this provision that the petitioner is proposing to restore into the Ordinance.

Mr. Levin asked why permission to request a special use must to be written into the Ordinance. Ms. Browne explained that the Zoning Ordinance is structured to be inclusive, in that for each zoning district, there is a list of uses that are permitted as of right, meaning that approval to occupy a site or to build a particular structure is administrative. In addition, there is a list of uses that are permitted only as special uses. The idea being that these uses may be determined on a case-by-case basis to be compatible with the uses in that zoning district. It is the special use process that determines whether a particular use is desirable at a particular location. The process requires a public hearing at which the Village makes those determinations, and the process itself is established by state statute.

Mr. Levin said he feels that the word "special" indicates something that is completely foreign and not included in the Ordinance. Ms. Browne said these uses were previously referred to as "conditional uses." She said that in the context of zoning, the terms "special use" and "conditional use" are used interchangeably. They are simply terms that categorize uses that are not permitted as of right. One cannot approach the Code Services counter and administratively receive approval for a special use as they can for a use that is permitted as of right. The public hearing process must be adhered to for a special use request.

Mr. Levin clarified that this text amendment only gives a petitioner the opportunity to request a special use, it does not grant the special use. Ms. Browne agreed. Mr. Levin said he has no objection to the amendment.

Chairman Musielak asked if there is any further discussion. Hearing none, he called for a motion.

MR. GRIESBAUM MOVED TO FORWARD A POSITIVE RECOMMENDATION TO THE VILLAGE COUNCIL WITH RESPECT TO CASE 2003-01: A TEXT AMENDMENT TO SECTION 28-1005 OF THE ZONING ORDINANCE CONCERNING THE PERMANENT OUTDOOR DISPLAY OF MERCHANDISE IN THE B-3 ZONING DISTRICT. MR. LEVIN SECONDED MR. GRIESBAUM'S MOTION.

MR. STEELE MOVED TO AMEND THE RECOMMENDED TEXT CHANGE AS FOLLOWS: RE-LETTER THE CURRENT SECTION 28-1005 (e) AS 28-1005 (f) AND INSERT THE FOLLOWING LANGUAGE AS SECTION 28-1005 (e): "THE OWNER SHALL BE REQUIRED TO INCREASE ON-SITE PARKING AT A LEVEL COMENSURATE WITH THE PARKING REQUIREMENTS APPLICABLE TO THE STRUCTURE UNDER THE PROPOSED USE." MR. PAPPALARDO SECONDED MR. STEELE'S MOTION.

Mr. Russ asked the intent and the effect of Mr. Steele's amendment.

Mr. Steele said the owner would be required to provide parking based on the additional outdoor display area.

Ms. Browne clarified that through his amendment, Mr. Steele did not want to leave the determination as to any increase in parking requirements to the Zoning Board of Appeals. Rather he wanted to require anyone who is proposing an outdoor display area to provide parking at a ratio based on the square footage of the structure and the square footage of the outdoor display area. Mr. Steele replied yes.

Chairman Musielak asked the Commission if they wanted the amendment to be that specific or if they would prefer to send their recommendation to the Village Council with a more loosely worded provision that parking be addressed.

Mr. Griesbaum said that under the current Zoning Ordinance, an owner could set up an outdoor display everyday and take it in each night at the close of business, and there is no increase in the parking requirement for that property. Ms. Browne agreed, but noted that it could be done now as a special use.

Mr. Griesbaum then said there are parking provisions in place today to accommodate such a display. He said he did not understand why allowing a permanent display would create an issue with parking. Mr. Griesbaum felt that a retail business owner would want to provide adequate parking for his customers. He repeated that he did not understand why a permanent, 24-hour per day, outdoor display would or should require any more parking than an outdoor display that was only set up during normal business hours.

Mr. Pappalardo said his concern is that the parking will overflow into the streets. Mr. Baker noted that most B-3 zoning is located along Butterfield Road or along Ogden Avenue, and there is no parking on

those streets.

Chairman Musielak said there is an establishment on Ogden Avenue with outdoor displays and inadequate parking and customers are backing out on to the street. Mr. Baker noted that the overflow parking is occurring on the side streets rather than on Ogden Avenue, and parking is permitted on those side streets. Mr. Baker said he does not feel that this is the typical situation in B-3 districts. He added that he believes that the retailer in question would increase on-site parking if he could, and that the establishment is no doubt losing business because of the parking shortage.

Chairman Musielak said he is not sure that the amendment needs to be as specific as Mr. Steele's amendment. He said he feels that the petitioner's amendment with the inclusion of a provision that parking be addressed during the special use process would be adequate. Ms. Rabatah and Mr. Griesbaum agreed. Mr. Levin also agreed and said whether an outdoor display is in place 24 hours a day or just during business hours does not affect the parking requirement.

Ms. Rabatah said she agrees with Ms. Browne in that permanent outdoor displays are no different than an auto dealership displaying vehicles outdoors, and parking should not be required based upon the size of the outdoor area.

Rather than be as specific as Mr. Steele was in his amendment, Chairman Musielak suggested amending Mr. Griesbaum's motion to state that parking be given consideration in the request for the special use permit. The Commission agreed.

Mr. Russ said he agreed that Chairman Musielak's idea was reasonable. He added that part of the special use public hearing is to review what the proposed use is and how the property is going to be used. In the case of Heartland Industries, they have an 8,000 square foot building. Based on the size of the building, the Ordinance requires that they provide one parking space for every 400 square feet, or approximately 20 parking spaces. Mr. Russ said if the display area was included in that parking calculation, Heartland might be required to provide 40 parking spaces for a business that may only need 10. Mr. Russ said he felt a parking requirement based on the structure and the outdoor display area would be burdensome.

As a point of order, Mr. Russ asked if Mr. Steele's amendment, which has been motioned and seconded, should be withdrawn or if a vote should be taken.

Chairman Musielak asked for a roll call to vote to withdraw Mr. Steele's amendment.

Mr. Steele said before his amendment is withdrawn, he would like to hear the language that would replace his amendment if it were to be withdrawn. Mr. Steele said that if the Commission is suggesting that parking should be considered in detail in the special use hearing, perhaps some reference should be made to the actual amount of the retail space on the site.

Mr. Baker said he believes that the proposed amendment would bring those issues up for discussion.

Ms. Browne suggested the following language as a replacement for Mr. Steele's amendment: "The petitioner shall demonstrate that on-site parking will be satisfactorily addressed in relation to the amount of area utilized for the outdoor display of merchandise." She asked if Mr. Steele if that were agreeable. Mr. Steele suggested adding language that would take the type of merchandise being displayed into

account.

Ms. Browne suggested adding, "as well as the merchandise being displayed." in the event that the outdoor merchandise is different from the indoor merchandise. Mr. Steele agreed.

Ms. Browne re-read the following language to replace Mr. Steele's amendment: "The petitioner shall demonstrate that on-site parking will be satisfactorily addressed in relation to the amount of area utilized for the outdoor display of merchandise, as well as the type of merchandise being displayed."

Chairman Musielak called for a vote to withdraw Mr. Steele's motion to amend Mr. Griesbaum's motion.

VOTE: **Aye: Mr. Steele, Mr. Pappalardo, Mr. Baker, Mr. Griesbaum, Mr. Levin, Ms. Rabatah, Chairman Musielak**

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

Chairman Musielak asked Ms. Browne to read the amendment proposed by the Commission once again. Ms. Browne noted that the amendment would be added as the last sentence to the new subparagraph (f) of Section 28-1005. It would read: "The petitioner shall demonstrate that on-site parking will be satisfactorily addressed in relation to the amount of area utilized for the outdoor display of merchandise, as well as the type of merchandise being displayed."

Chairman Musielak asked for a motion on the above amendment.

MR. LEVIN MOVED TO AMEND THE MOTION TO INCLUDE THE FOLLOWING TO SECTION 28-1005(e): "THE PETITIONER SHALL DEMONSTRATE THAT ON-SITE PARKING WILL BE SATISFACTORILY ADDRESSED IN RELATION TO THE AMOUNT OF AREA UTILIZED FOR THE OUTDOOR DISPLAY OF MERCHANDISE, AS WELL AS THE TYPE OF MERCHANDISE BEING DISPLAYED." MR. GRIESBAUM SECONDED THE MOTION.

VOTE: **Aye: Mr. Levin, Mr. Griesbaum, Mr. Baker, Mr. Pappalardo, Ms. Rabatah, Mr. Steele, Chairman Musielak**

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

Chairman Musielak asked for a roll call on the amended motion.

VOTE: **Aye: Mr. Griesbaum, Mr. Levin, Mr. Baker, Mr. Pappalardo, Ms. Rabatah, Mr. Steele, Chairman Musielak**

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

Case 2003-02

Chairman Musielak called the next public hearing to order, Case 2003-02, a request to amend the Zoning Ordinance as applicable only to those properties fronting on the Douglas Road right-of-way between Rogers Street on the north and Maple Avenue on the south, to reduce the minimum front setback requirement to 10 feet; to allow parking facilities within the required front setback; and to allow chain link fences within the required front setback. Mr. Robert Bair of Bair Plumbing and Heating, Petitioner.

Mr. Robert Bair of Bair Plumbing and Heating located at 447 Rogers Street, said that he is proposing a series of three text amendments, which are intended to apply to a very small area within the Village in order to be able to move his existing chain link fence out about 30 feet to accommodate additional parking areas on his property.

Mr. Bair explained that his business is growing and he has trucks and equipment which he would like to protect by parking them within a fenced-in area. He said that there is a chain link fence currently located along the Douglas Road frontage of his property, and that he would like to move the fence out to a ten-foot setback in order to provide more space in which to store his trucks and equipment. Mr. Bair indicated that the existing fence is approximately 40 to 45 feet from the lot line along Douglas Road, and he would like to move it out about 30 feet, or approximately 10 feet from that property line.

Mr. Bair added that his business is located in an area zoned for manufacturing, and most of the other businesses in the area are manufacturing businesses. Mr. Bair said Douglas Road is a dedicated road that has not been maintained by the Village.

Chairman Musielak asked for clarification as to whether Douglas Road is a dedicated right-of-way, but is unimproved for typical street purposes. Mr. Bair replied yes, and said that he and his neighbor plow the area and generally keep it clean. There are no curbs or sidewalks within the right-of-way.

Ms. Browne presented the staff report, reviewing the amendments being proposed in this case. Ms. Browne briefly reviewed the history of the petitioner's initial proposal to vacate the subject right-of-way. She explained that the Council has asked that staff work with the petitioner to find an alternate means of allowing the petitioner to better utilize the private property in lieu of vacating the right-of-way. The result is the three text amendments being proposed in this case.

In order to illustrate the effects of the text amendments being proposed in this case, Ms. Browne distributed a partial plat of survey for the 447 Rogers Street property. She illustrated the property lines, the existing setback requirements, and the proposed setback requirements.

Ms. Browne explained that due to the shallowness of properties in this area which abut Maple Avenue or the Burlington Northern right-of-way, the Ordinance provides certain modified front yard setbacks. She noted that there is currently a 10-foot setback requirement as measured from the northerly property line on Rogers Street, as well as a 10-foot setback requirement as measured from the southerly property line along Maple Avenue.

Ms. Browne pointed out that the longest portion of Mr. Bair's existing fence is approximately 35 feet from the westerly front property line along the Douglas Road right-of-way. Ms. Browne said Mr. Bair's proposal is to reduce the 35-foot setback along Douglas Road to a 10-foot setback, and to allow parking areas and chain link fences within the required setback.

Ms. Browne explained that if these text amendments were to be approved, the required setback would be reduced to 10 feet for buildings; however, fences and parking would be allowed to be located within the required 10-foot setback. Ms. Browne said the amendment is intended to treat the Douglas Road front property lines of the two affected properties in the same manner as the Rogers Street and Maple Avenue front property lines of the properties. Ms. Browne added that the two affected properties are also unusual in that each of them has three frontages, and therefore has three front setback obligations.

Ms. Browne pointed out that this section of Douglas Road is a semi-improved right-of-way that has not been and can be assumed to never be used as a north-south thoroughfare between Rogers and Maple due to the grade differential of approximately 6 to 8 feet between Douglas Road and Maple Avenue.

Ms. Browne also outlined the process which Mr. Bair has undertaken in attempts to resolve this issue, including a proposal to vacate the subject right-of-way along Douglas Road. She explained that his original vacation petition filed and reviewed by the Plan Commission in 2000, who recommended approval of the vacation. However, the recommendation was put on hold at the Village Council level while engineers for the Village and the Burlington Northern Santa Fe Railroad investigated the possibility of an underpass at the Maple Avenue crossing just west of the area in question. Although the engineers determined that this vacation of the right-of-way should not impact that potential grade separation, the Village Council was still concerned that at some time in the future the plans could potentially change. The Council did not object to what the petitioner was trying to achieve in trying to better utilize his private property.

Ms. Browne said the Council requested that staff work with the petitioner to try to find another way to achieve his goal without having to vacate the Douglas Road right-of-way. The result is the text amendments being proposed in this case, which represent the culmination of all the processes that the petitioner has gone through over the years.

Ms. Browne concluded that staff views these amendments as very narrow in scope, in that they apply only to Mr. Bair's property and the property directly across from him on Douglas Road. Additionally, the amendments would leave the public right-of-way intact for any future public purpose, which was the request of the Council.

Mr. Griesbaum asked if the right-of-way is not vacated, could it be used for an underpass or for other purposes. Ms. Browne said she did not believe that pavement in the Douglas Road right-of-way would ever be physically connected to the pavement of Maple Avenue due to the significant change in grade between the two pavements. However, she explained that the Council was concerned that the Maple Avenue right-of-way may have to be widened in the future to accommodate an underpass. Rather than

vacating the Douglas Road right of way north of Maple and potentially having to acquire it back at some point in the future in order to widen the Maple Avenue right-of-way, the Council wanted to be able to accommodate the petitioner without having to vacate the right-of-way.

Ms. Browne added that the Village Council has currently instituted a 6-month moratorium on vacations, and that they are considering amending their policy to require compensation for vacated rights-of-way.

Chairman Musielak asked if the other abutting property owner is aware of Mr. Bair's petition. Ms. Browne replied yes, and added that at the time of the vacation petition, the other owner actually signed the petition for the vacation.

Chairman Musielak asked Mr. Bair if moving his fence out to a ten-foot setback would affect the access or egress of his neighbors. Mr. Bair replied no.

Mr. Levin add that there are only two properties involved, Mr. Bair's and the Perma Seal building across Douglas Avenue.

Mr. Baker asked Ms. Browne if Mr. Bair or a future owner could expand the building on the site out to the ten-foot setback. Ms. Browne replied yes, although it is not part of Mr. Bair's current proposal. She explained that staff felt it would be reasonable to treat the Douglas Road frontages of these two properties similar to the Rogers Street and Maple Avenue frontages, essentially treating the Douglas front property line as a side property line, in that the side setback in the M-1 District is 10 feet.

Mr. Baker asked if the property owners on both sides of this section of Douglas Road expanded their buildings out to the ten-foot setback would it present a problem if the road were reinstated as a true road. He wondered if the proximity of the buildings would present a fire hazard or make it difficult for fire equipment to access the area.

Ms. Browne said no, indicating that even if both buildings on either side were to have 10-foot front setbacks, given the 66-foot wide right-of-way, there would still be approximately 86 feet of space separating the two buildings. If fences were constructed on the front property lines, there would still be 66 feet of separation between the two fences.

Ms. Rabatah asked if anyone knew how long the current grade separation has been in place. The consensus of the Commission was that the grade separation has always been there. Before the sanitary line was installed within the Maple Avenue right-of-way, the grade separation was a grassy hill, and the current retaining wall has been in place at least for two years.

Chairman Musielak asked if Mr. Bair's trucks are visible from Maple Avenue when they are parked against the embankment. Mr. Bair said he does not park trucks close to the embankment; however, the large trucks are visible from Maple Avenue.

Chairman Musielak asked for a motion on the amendments.

Mr. Griesbaum thanked Mr. Bair for his patience over the last several years, indicating that although the vacation proposal has not worked out, he hopes these text amendments afford him enough flexibility to better utilize his property.

