

ORDINANCE NO. O-2018-10

ORDINANCE DENYING A TEXT AMENDMENT AND SPECIAL USE PERMIT IN THE C-5 PLANNED COMMERCIAL DISTRICT TO ALLOW AN IN-PATIENT TREATMENT FACILITY FOR A PROPERTY LOCATED AT 140 EAST LOOP ROAD (ZONING APPLICATION #17-26)

WHEREAS, an application has been submitted by McDermott Center, d/b/a Haymarket Center, 932 West Washington Boulevard, Chicago, Illinois, on behalf of the property owner 140 East Loop Road, LLC, 16 Court Street, Suite 800, Brooklyn, New York 11241, to amend Article 20.3 of the Wheaton Zoning Ordinance to add (in-patient) treatment facilities to the list of uses requiring a special use permit in the C-5 Planned Commercial District (“C-5 District”) and requesting a special use permit to allow a 16-bed residential (in-patient) treatment facility at 140 East Loop Road, Wheaton, Illinois; and

WHEREAS, the property subject to the application is legally described in Exhibit 1, which is attached hereto and incorporated herein as if fully set forth (hereinafter 140 East Loop Road); and

WHEREAS, 140 East Loop Road is located exclusively in the C-5 District of the City; and

WHEREAS, the Planning & Zoning Board of the City of Wheaton conducted public hearings on November 14, 2017, December 12, 2017 and January 9, 2018, to consider evidence and receive public comment regarding the proposed Application; and

WHEREAS, on January 23, 2018, the Planning & Zoning Board recommended to the Wheaton City Council that the text amendment proposed in the Application be denied because the Planning & Zoning Board “was concerned with the fundamental change the Text Amendment would have on permitted and special uses in the C-5 District;” “which the Planning & Zoning Board did not believe was warranted;” and

WHEREAS, the purpose and the character of the C-5 District set forth in Article XX, C-5 District, Section 20.1, Purpose, of the Wheaton Zoning Ordinance, which states as follows:

The intent of the C-5 Planned Commercial District is to accommodate retail and service businesses whose service area is not confined to any one neighborhood but from a wider trade area. Structures located in this district vary from free standing buildings to large shopping centers. Shopping centers and developments which minimize access points and signage while maximizing aesthetics of the preferred type of development. In most instances, the C-5 Planned Commercial District is located along or at the convergence of arterial thoroughfares; and

WHEREAS, commercial objectives of the Wheaton Comprehensive Plan state:

Commercial land use policy objective: the objective of the commercial element of the plan is to maintain and expand the range of business and shopping center activities to meet the needs of Wheaton residents and to diversify the City’s tax

base in attractive and convenient locations designed to minimize impact on residential areas; and

WHEREAS, the C-5 District has been: an economic engine for the City; is intended as such, and from a general zoning standpoint is important in supporting the City's overall revenue generation; and

WHEREAS, revenue generation is essential to the overall public health safety and welfare and has become more challenging for municipalities in light of political and market trends; and

WHEREAS, maximizing the probability that the character and purpose of the C-5 District will promote economic vibrancy by protecting the investment of the retail and service businesses that have sustained the C-5 District without the introduction of residential uses into the C-5 District is a policy goal of the Corporate Authorities; and

WHEREAS, the policies behind the C-5 District establishing its purpose and character and the commercial objectives of the Wheaton Comprehensive Plan are hereby reaffirmed; and

WHEREAS, Section 20.2, Permitted Uses, and Section 20.3, Special Use Permit Required, of Article XX of the Wheaton Zoning Code, do not allow residential uses in the C-5 District; and

WHEREAS, the Corporate Authorities find in their legislative policy making role that a Text Amendment to allow a residential use in the C-5 District, is contrary to the general purpose and character of the C-5 District; and

WHEREAS, the Corporate Authorities recognize that persons in treatment for drug addictions are handicapped or disabled under Federal law; and

WHEREAS, the Corporate Authorities disclaim and disregard any and all public comment, as well as correspondence, in all forms, from members of the public objecting to the proposed Text Amendment on the grounds of unsubstantiated stereotyping and unlawful discrimination against those disabled by drug addiction including any and all potential clients of the Applicant, as wrong and immaterial to the reasons for this denial; and

WHEREAS, the City allows out-patient treatment on an equal basis in the C-5 District for all people seeking treatment for any condition including persons disabled by drug addiction; and

WHEREAS, an out-patient treatment and residential in-patient treatment within the C-5 District is not a question of "treatment" but instead a question of non-residential use versus residential use; and

WHEREAS, the Applicant has not applied for an occupancy permit, special use permit, or requested reasonable accommodations in any existing zoning district in the City allowing residential uses; and

WHEREAS, the denial of residential uses in the C-5 District treats equally anyone seeking a residential use in the C-5 District; and

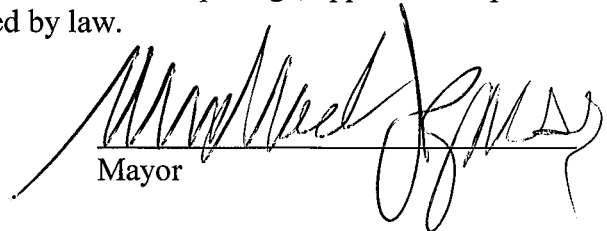
WHEREAS, the denial of the Text Amendment and special use in Zoning Application 17-26, is based solely upon the Corporate Authorities' intent to maintain the purpose and the character of the C-5 District; and

WHEREAS, this denial is consistent a Joint Statement of the Department of Housing and Urban Development and the U.S. Department of Justice on state and local land use laws and practices, and case law which state in pertinent part:

“If a requested modification...creates a fundamental alteration in a local government's land use and zoning scheme it is not a reasonable accommodation”, HUD/DOJ, and “a municipality has the legal authority to retard the erosion of its land use plans by being chintzy about permitting departures from existing zoning, so far as it has nothing to do with hostility to handicapped people. Hemisphere Building Corporation vs. The Village of Richton Park, 171 Fed.3d 437 (1999);” and

NOW THEREFORE BE IT ORDAINED, by the Mayor and the Corporate Authorities of the City of Wheaton, pursuant to its Home Rule Authority, as follows:

- 1) The foregoing recitals are incorporated herein as the legislative policy judgments and conclusions of the Corporate Authorities as related to the question of whether residential uses should be allowed in the City's C-5 District.
- 2) Pursuant to the foregoing findings of legislative policy, a Text Amendment to allow a residential use in the City's C-5 Planned Commercial District is hereby denied.
- 3) That because the Text Amendment is denied the Applicant's request for a special use permit is denied.
- 4) All ordinances or parts of ordinances in conflict with this ordinance are repealed to the extent of such inconsistency.
- 5) This ordinance shall become effective from and after its passage, approval and publication in pamphlet form in the manner prescribed by law.


Mayor

ATTEST:


City Clerk

Roll Call Vote:

Ayes: Councilman Scalzo
Councilman Barbier
Councilwoman Fitch
Mayor Gresk

Nays: None
Absent: Councilman Prendiville
Councilman Rutledge
Councilman Sues

Passed: February 20, 2018
Published: February 21, 2018