

ORDINANCE NO. O-23-12

AN ORDINANCE AUTHORIZING A MAP AMENDMENT REZONING CERTAIN TERRITORY FROM B-3 COMMERCIAL, WHOLESALE AND GENERAL SERVICE DISTRICT TO B-5 COMMERCIAL INDUSTRIAL DISTRICT

WHEREAS, the City of Prospect Heights, Illinois, (the “City”) has enacted City Code regulations for the purpose of improving and protecting the public health, safety, comfort, convenience and general welfare of the people; and

WHEREAS, Daniel Peterson, the Director of Building & Development for the City of Prospect Heights, (hereinafter referred to as “the Petitioner”), on behalf of the City, is requesting the amendment with respect to 79 E. Palatine Rd. & 81 E. Palatine Rd., Prospect Heights, IL 60070 (hereinafter referred to as the “Subject Properties”) legally described and depicted in Exhibit A; and

WHEREAS, the Petitioner and has applied pursuant to the provisions of the Prospect Heights, Illinois Municipal Code for a map amendment rezoning certain territory from B-3 Commercial, Wholesale and General Service District to B-5 Commercial Industrial District; and

WHEREAS, the Planning and Zoning Commission of the City of Prospect Height, Illinois conducted a public hearings on March 16, 2023 and April 27, 2023 for the rezoning request and voted to recommend approval of the rezoning; and

WHEREAS, a notice of the aforesaid public hearing was made in the manner provided by law and was published in the *Journal & Topics*, a newspaper of general circulation within the City; and

WHEREAS, the Mayor and City Council of the City of Prospect Heights have reviewed the matter herein and have determined that the zoning map amendment is in the best interest of the City of Prospect Heights, and hereby adopts the finding of facts as set forth in Exhibit B.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Prospect Heights as follows:

SECTION 1: The recitals set forth above are incorporated herein.

SECTION 2: That the Subject Property described in Exhibit A is hereby rezoned from its current B-3 Commercial, Wholesale and General Service District to B-5 Commercial Industrial District. The zoning map of the City of Prospect Heights is hereby amended in accordance with the provisions of this Ordinance.

SECTION 3: That the City Clerk of the City of Prospect Heights be and is directed hereby to publish this Ordinance in pamphlet form, pursuant to the Statutes of the State of Illinois, made and provided.

DRAFT

SECTION 4: If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION 5: This Ordinance shall be in full force and effect upon its passage and approval as required by law.

PASSED and APPROVED this 12th day of June, 2023.



Patrick Ludvigsen, Mayor

ATTEST:



City Clerk Prisiajmiouk

AYES: Cameron, Anderson, Dolick, Dash

NAYS: None

ABSENT: Morgan-Adams

Published in pamphlet form: June 12, 2023



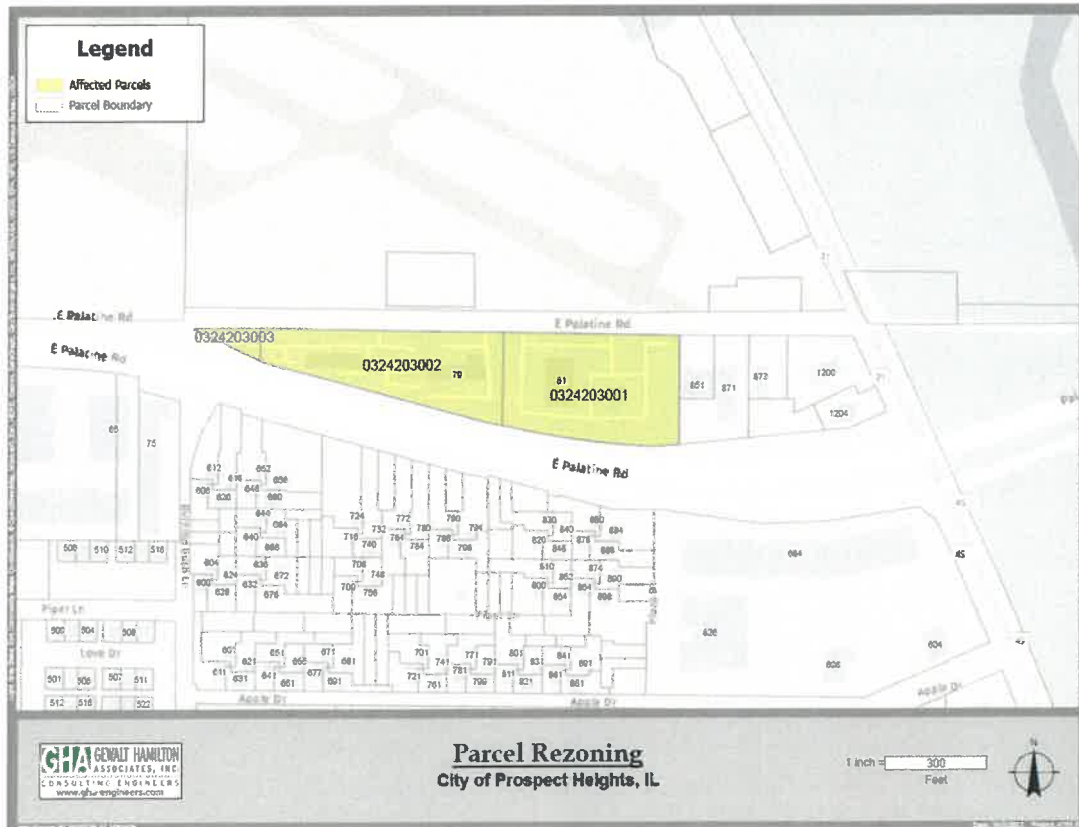
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EXHIBIT A
LEGAL DESCRIPTION

Lots 1, 2, and 3 in Peaster Subdivision, being a subdivision in the Northeast 1/4 of Section 24, Township 42 North, Range 11 East of the Third Principal Meridian, according to the plat thereof registered in the Office of the Registrar of Titles of Cook County, on October 30, 1987 as document 3663937, in Cook County, Illinois.

PIN #'s: 03-24-203-003-0000; 03-24-203-002-0000; 03-24-203-001-0000

Parcel map prepared by GEWALT HAMILTON ASSOCIATES, INC. dated 10/3/2022



DRAFT

EXHIBIT B

PZBA FINDINGS AND RECOMMENDATIONS



City of Prospect Heights

Department of Building & Zoning
8 North Elmhurst Road, Prospect Heights Illinois, 60070-6070
Office: 847/398-6070 x 211-FAX: 847/590-1854
www.prospect-heights.il.us

MEMORANDUM

Date: May 10, 2023

To: Mayor Ludvigsen and Aldermen

Cc: Joe Wade, City Administrator

From: Daniel A. Peterson, Director of Building & Development

Subject: PZBA Case #23-04 Map Amendment
Rezoning Certain Territory from B-3 Commercial, Wholesale and General Service District to B-5 Commercial Industrial District and deleting the O-1 Office Research Park District

PZBA Case 23-05 Text Amendment
Amending Title 5 Chapter 7 - Deleting Section 1: Office Research Park District in entirety
Amending Title 5 Chapter 7 - Adding Section 7: B-5 Commercial Industrial District

BACKGROUND:

At the January 19, 2023 City Council meeting, I made a presentation to the Council identifying the need for the City to amend the zoning map and zoning code text. In 2022, the City disconnected approximately 32 acres of territory as part of the IGA with the Village of Glenview over development of the Allstate property. The disconnected territory was located in the O-1 Office/Research Park District. A result of the disconnection was the loss of the only O-1 zoning district within the City and all the uses that were either permitted uses or permitted special uses allowed in the District. The O-1 zoning district text contained the requirements for the adult sexually oriented uses within the city. City Council directed staff to move forward with the appropriate applications.

The Plan Zoning Board of Appeals held a public hearing on both cases on March 16, 2023. Director Peterson provided testimony supporting the requested actions. PZBA members requested a comparison of the neighboring municipalities zoning codes address Adult Sexually Oriented uses. Members asked questions related to the limiting of content and lot size/area for specific uses. A request to have the City attorney present. As these requests needed additional research and legal involvement, the PZBA voted to table the public hearing until the April 27, 2023 regular meeting.

The PZBA reconvened the public hearings on April 27, 2023. Director Peterson testified to the requested information. Attorney Frenzer provided legal opinion to questions raised regarding limitations regarding content, location and potential risk of a first amendment lawsuit.

Upon completion of the public hearing and deliberation, the PZBA made the following recommendations:

1. PZBA Case #23-04 Map Amendment: Rezoning certain territory from B-3 Commercial, Wholesale and General Service District to B-5 Commercial Industrial District.

Vote: 5 yes – 1 no; to recommend the requested map amendments to City Council for approval.

2. PZBA Case #23-05 Text Amendments: Delete Title 5 Chapter 7 Section 1 in its entirety and to add Title 5 Chapter 7 Section 7 creating the B-5 Commercial Industrial District.

Vote: 6 yes – 0 no; to recommend the requested text amendments to the City Council for approval.

Staff has prepared the following ordinances for Council consideration:

1. **ORDINANCE NO. 23-12 - AN ORDINANCE AUTHORIZING A MAP AMENDMENT REZONING CERTAIN TERRITORY FROM B-3 COMMERCIAL, WHOLESALE AND GENERAL SERVICE DISTRICT TO B-5 COMMERCIAL INDUSTRIAL DISTRICT**
2. **ORDINANCE NO. 23-13 - AN ORDINANCE AMENDING THE CITY CODE, TITLE 5 CHAPTER 7 OF THE CITY CODE REGARDING BUSINESS DISTRICTS**

Recommendation: Staff recommends approval of both the Map Amendment and the Text Amendment as presented.



City of Prospect Heights

Department of Building & Zoning
8 North Elmhurst Road, Prospect Heights Illinois, 60070-6070
Office: 847/398-6070 x 211-FAX: 847/590-1854
www.prospect-heights.il.us

MEMORANDUM

Date: March 10, 2023
To: Chairman Kempa and PZBA Members
Cc: Joe Wade, City Administrator
From: Daniel A. Peterson, Director of Building & Development
Subject: Proposed Map – PZBA #23-04 MA
Text Amendments – PZBA #23-05 TA

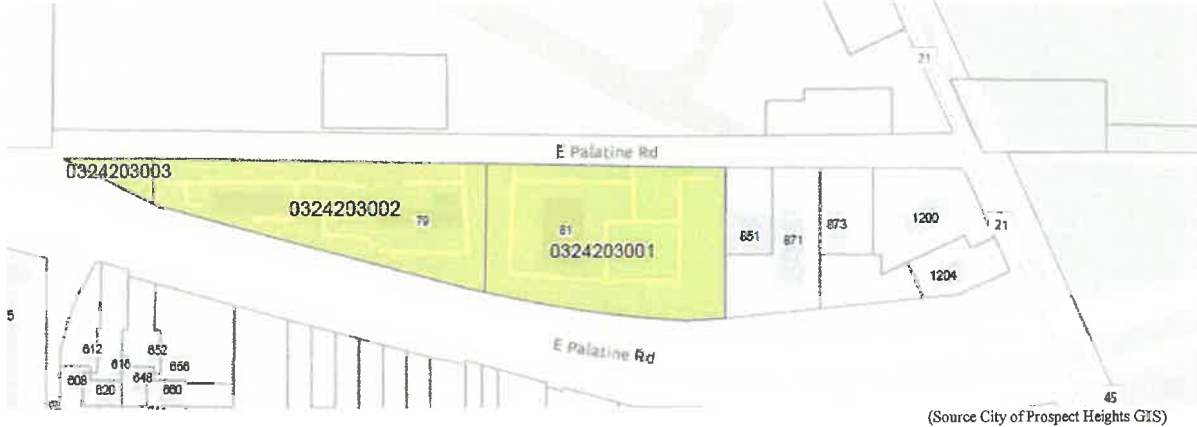
Please be advised that a public hearing is scheduled for the next regular meeting of the PZBA on Thursday March 16, 2023 at 7:00 pm to consider a map amendment for rezoning and text amendments.

BACKGROUND:

In 2022, the City disconnected approximately 32 acres of territory as part of the IGA with the Village of Glenview over development of the Allstate property. The disconnected territory was located in the O-1 Office/Research Park District. A result of the disconnection was the loss of the only O-1 zoning district within the City and all the uses that were either permitted uses or permitted special uses allowed in the District.

Municipalities, whether home rule or non-home rule may regulate the location of adult businesses in their respective communities.¹ The City's zoning code provided a location for adult use businesses in the O-1 District, due to the elimination of the district a map and text amendment is necessary. The staff has prepared the required applications for both the map and text amendments for public hearing at the regular meeting of the PZBA on March 16, 2023.

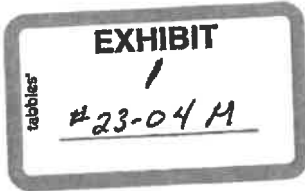
Staff has identified properties along Palatine road frontage near the airport for the rezoning. The proposed zoning district buffered by the Chicago Executive Airport and Palatine Road, a state of Illinois highway and the B-2 district. The closest residential properties south of Palatine Road and not readily accessible.



Staff met with the owners of the proposed properties as well as Jeff Miller and George Sakas, of the CEA to discuss the proposed amendments. Discussions were positive and all parties understood the issue. The concern was that rezoning was not going to impact current business operations. All current uses are included with in the proposed text amendments in addition to the text for the sexually oriented businesses. Staff provided copies of the proposed ordinances for review in advance of the public hearing.

Staff worked closely with the City attorney in the development of the proposed amendments.

There will be two public hearings. The first will be for the map amendment for rezoning. Followed by the public hearing on the proposed text amendments.



FOR OFFICE USE ONLY:
 FEE PAID _____
 DATE _____
 RECV'D BY _____
 CASE # 23-04 MA
 MEETING DATE 3-16-23

**PLAN/ZONING BOARD OF APPEALS
 APPLICATION**

Special use (\$400)
 Variation (\$150)
 Text Amendment (\$300)

Map Amendment (Refer to Ord. 0-03-18)
 Subdivision/PUD (Refer to Ord. 0-03-18)
 Lot Consolidation (Refer to Ord. 0-03-18)
 Appearance Review

In addition to the application fee a refundable deposit not <\$500 nor >\$5,000 shall be required for all zoning applications to offset the direct costs of the application incurred by the City. If costs exceed the available escrow balance applicant will be required to replenish account. If balance remains the money will be refunded or applied to any building permit cost. (Refer to Ord. O-18-06: 5-10-7(D))

APPLICANT: City of Prospect Heights, Daniel A. Peterson, Director of Building & Development
ADDRESS: 8 N. Elmhurst Rd
Prospect Heights, IL 60070
PHONE: 847-398-6070 Ext. 208
E-MAIL: dpeterson@prospect-heights.org

ADDRESS OF SUBJECT PROPERTY: 79 E. Palatine Rd. & 81 E. Palatine Rd., Prospect Heights, IL 60070

PROPERTY IS LOCATED IN THE B-3 **ZONING DISTRICT.**

APPLICABLE SECTION OF ORDINANCE: 5-10-10: Amendments

DESCRIPTION OF REQUEST: Map Amendment Rezoning Certain Territory from the B-3: Commercial, Wholesale, and General Service District to B-5: Commercial Industrial District.

Are there any covenants, conditions, restrictions or floodplain issues concerning type of improvements, setbacks, area or height requirements, occupancy or use limitations, etc. placed on the property and now of record: YES _____ NO X
 If yes, please describe: _____

Has the property been the subject of previous or pending administrative legislative or court action:
 YES _____ NO X If yes, give details: _____

The follow items **MUST** be submitted at time of filling:

1. Application (12 copies)
2. Plat of Survey (12 copies) – must be drawn to scale and indicate the location of the proposed addition or construction and must contain the legal description of the property, along with additional information to support the application. (12 copies) *Note - please include one copy for file no longer than 11x17.
3. Proof of Ownership (1 copy)
4. Letter indicating Hardship (for variations only 12 copies)
5. Application Fee (cash or check made payable to: City of Prospect Heights)
6. Notice to Property Owners (1 copy) – will be supplied to you by the City of Prospect Heights.
7. List of Property Owners (1 copy) for Notice to Property Owners mailing - will be supplied to you by the City of Prospect Heights.

February 16, 2023
 Date: _____

Signature of Applicant



Prospect Heights GIS Web Application

Developed by Gewalt Hamilton Associates, Inc. ▾

EXHIBIT

D 423-04
MTA



B3

Old Palatine Rd



B3

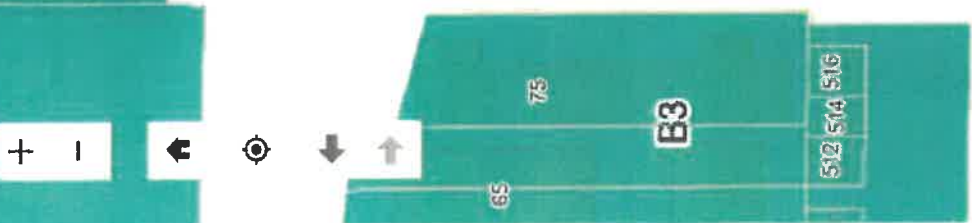
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B3

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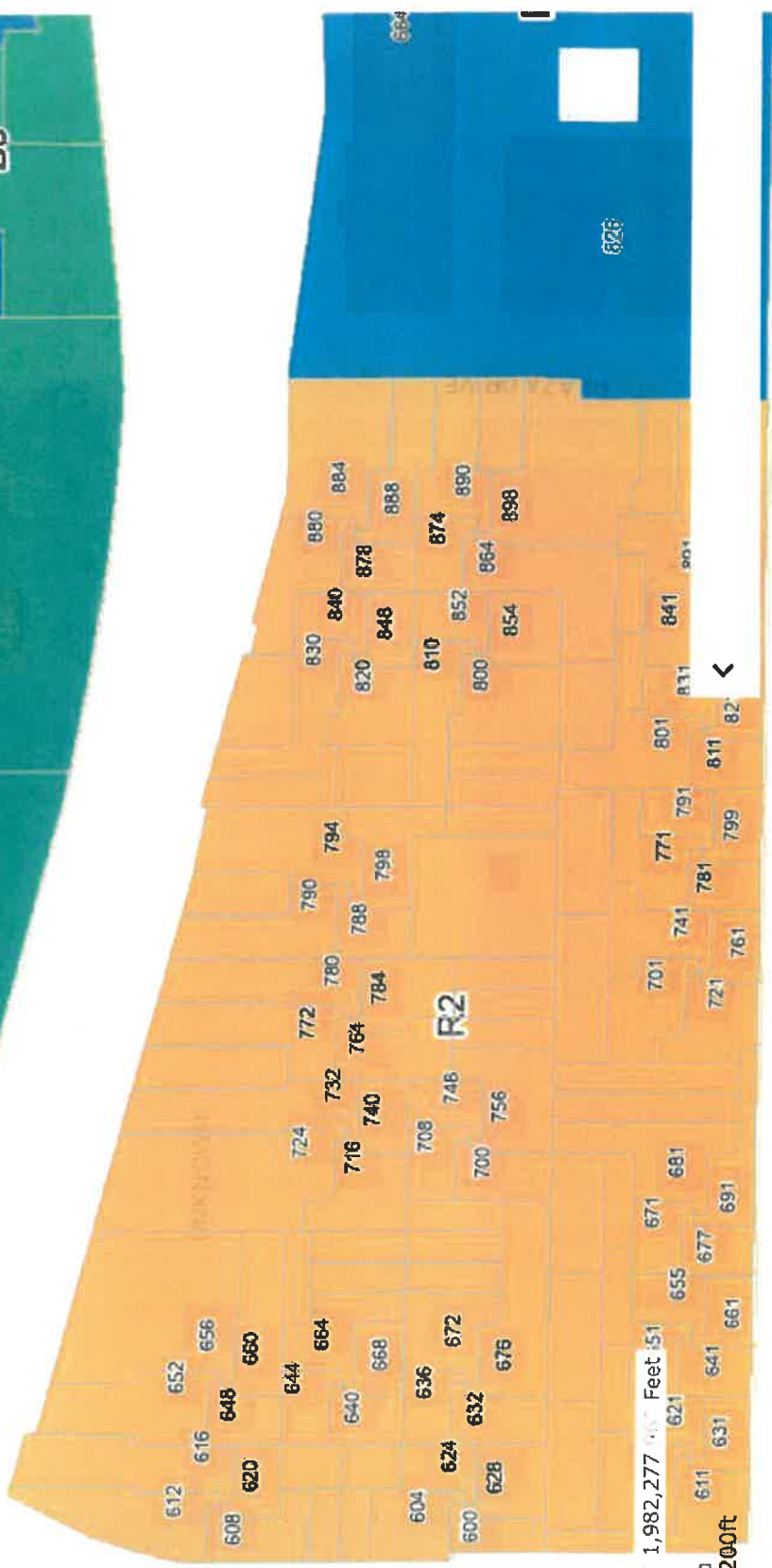
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506 510

1,982,277 Feet :51

507 511 100 200ft



R2

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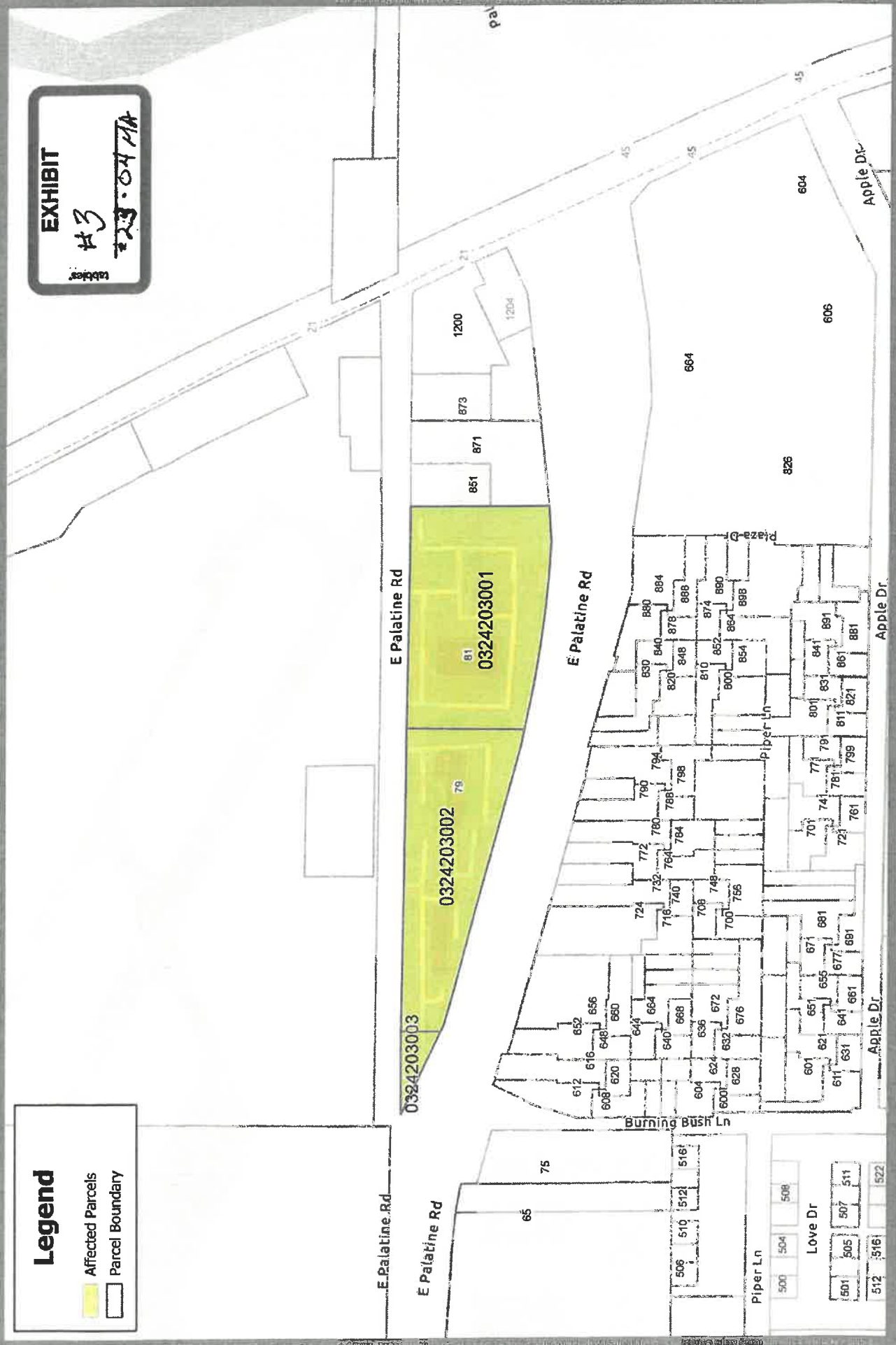
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EXHIBIT

#3
#23-041A

Legend

-  Affected Parcels
-  Parcel Boundary



1 inch = 300 Feet

Parcel Rezoning
City of Prospect Heights, IL

Zoning Review



Date: March 10, 2023
Reviewer: Daniel A. Peterson, Director of Building & Development
Applicant: City of Prospect Heights
Subject Property: 79 and 81 E. Palatine Roads
Application: PZBA Case #23-05 MA - Map Amendment to Re-zone property from B-3 to B-5
PZBA Case #23-05 TA – Text Amendment Amending Title 5 Chapter 7 of the Zoning Code

Documents Reviewed:

- A. Plat of Annexation, prepared by Dietz Surveying, Inc. dated April 27, 2019
- B. Final Plat of Consolidation, Prepared by Dietz Surveying, Inc., dated May 16, 2019

Applicable Zoning Code Sections: Amendments: 5-10-10

Current Zoning: 79 E. Palatine Rd. B-3
81 E. Palatine Rd. B-3
Proposed: B-3
Current Use: Commercial, Wholesale and General Service District
Proposed: Commercial Industrial District
Lot Area ±: 6.95 acres ±

5-10-10: AMENDMENTS:

B. Initiation Of Map And Text Amendments: Text amendments may be proposed in writing by the city council, the plan/zoning board of appeals, by any person having proprietary interest in the property in the city, or by any interested citizen of the city.

Map amendments may be proposed by the owner of the property involved, by the city council, by the plan/zoning board of appeals, or by other city officials.

Response: The City of Prospect Heights is the applicant.

C. Standards For Map And Text Amendments: No map or text amendments shall be recommended by the plan/zoning board of appeals unless said board shall find: (Ord. 0-77-27, 7-18-1977; amd. Ord. 0-03-35, 9-15-2003)

1. That the net impact of the proposed amendment, if granted, will be beneficial to the entire community and will not be harmful to the local area in particular.

Response: The proposed amendments will not be harmful to the local area. The amendments provide locations for sexually oriented business that will not impact the residential uses within the community.

2. That a need exists for the general type of use proposed and that the specific proposal will indeed satisfy it more closely than the other possible uses.

Response: The rezoning will provide the correct zoning for the uses being provided on the property.

3. That the use proposed is compatible with the current comprehensive land use plan of the city of Prospect Heights, in effect on the date of the application.

Response: The proposed use is compatible with the comprehensive land use plan and provides regulation of location for sexually oriented businesses so as to prevent the deleterious location and concentration of sexually oriented businesses within the City.

4. That the proposed use is compatible and harmonious with uses in the surrounding general area. (Ord. 0-77-27, 7-18-1977)

Response: The use is compatible and harmonious. The existing use remains.

5. That the area described in the petition does not lie wholly or partly in the floodplain as defined by the Illinois department of transportation, division of water resources, or, if it does lie wholly or partly within the floodplain, that adequate provisions for storage, runoff control and floodwater retention, as appropriate, have been made or can be made. (Ord. 0-89-25, 6-5-1989)

Response: The subject property is within the flood plain and the property has been designed to meet storm water demands.

D. Notice Of Hearing: Public notice of such hearing shall be published at least once, not less than fifteen (15) days nor more than thirty (30) days before such hearing, in a newspaper published within the city of Prospect Heights. Such notice shall contain the date, time and place of the hearing, the street address or common description of the property involved, legal description of the property involved, and a brief description of the proposed amendment. The board may give such additional notice as it may, from time to time, by rule provide. Any party in interest may appear and be heard at the hearing in person, by agent, or by attorney. (Ord. 0-77-27, 7-18-1977)

Response: Notice has been published and has met the notice requirements

E. Notice To Property Owners: The petitioner for a map amendment shall notify all property owners within three hundred fifty feet (350'), excluding public land and rights of way, but in no event more than four hundred fifty feet (450'), in each direction of the petitioner's property lines, by certified mail or individual notice executed by said property owners, of the date, hour and location of the public hearing and the map amendment requested. Such notice shall be in the same form as the published public notice and shall be mailed or delivered and executed not less than fifteen (15) and not more than thirty (30) days prior to the date of the public hearing. The owners to be notified are such persons or entities which appear in the authentic tax records of Cook County. Proof of notification shall be submitted by the petitioner to the plan/zoning board of appeals no later than the day of the public hearing. (Ord. 0-06-35, 8-21-2006)

Response: Notice has been mailed to property owners within three hundred fifty feet (350') of the subject property as required.

Memorandum

To: Mayor Ludvigsen and City Council
From: Maciej Kempa – Chairman
Plan / Zoning Board of Appeals
Date: May 9, 2023
Subject: Recommendation for Map Amendment & Text Amendments

- A. **Case No. PZBA -23-04 Map Amendment**
Applicant: City of Prospect Heights, Daniel A. Peterson, Director of Building & Development
Property Address: 79 & 81 E. Palatine Rd.
Hearing Dates: March 16, 2023 and April 27, 2023

- B. **Case No. PZBA -23-05 Text Amendment**
Applicant: City of Prospect Heights, Daniel A. Peterson, Director of Building & Development
Property Address: 8 N. Elmhurst Rd.
Hearing Dates: March 16, 2023 and April 27, 2023

I. Purpose

Conduct public hearings to consider map amendment/rezoning of properties to the official Zoning Map, and Text Amendments to Title 5 Chapter 7 of the City's Zoning Code.

1. Delete in entirety the O-1 Office Research Park District
2. Rezoning of 79 & 81 E. Palatine Rd. from B-3 Commercial, Wholesale and General Service District to B-5 Commercial Industrial District
3. Delete entirety Title 5 Chapter 7 Section 1 Office Research Park District text
4. Add new Title 5 Chapter 7 Section 7 creating the text for the new B-5 Commercial Industrial District.

II. Comments and Testimonies

Director Peterson asked that the PZBA open both cases at the same time, as the testimony will support both cases. The PZBA will deliberate and act on each case separately. The PZBA opened both public hearings.

Director Peterson, applicant, testified that in June of 2022, the City Council approved Ordinance #O-22-18 disconnecting approximately 32 acres of City territory. The disconnected territory was the only territory within the City's O-1 Office Research Park District. Therefore, the zoning map amendment is necessary to depict the new City boundaries. He also stated that the regulations for Adult Sexually Oriented uses were contained in the O-1 District. Without the proper zoning map or text for Adult Sexually Oriented businesses, the City is exposed to a first amendment free speech challenge potential lawsuit.

Director Peterson presented an exhibit that identified 79 & 81 E. Palatine Rd. as the recommended location for the proposed new B-5 Commercial Industrial District. This location was identified after months of research of other possible locations within the city for rezoning. The proposed location is

bordered by the Chicago Executive Airport (CEA), Milwaukee Ave. to the east, Palatine Rd./Willow Rd. to the south. There are R-2 multi-family rental properties south of the highway. Palatine Rd. exits to the highway to the west and Milwaukee Ave. to the east limiting access to other areas of the City.

Director Peterson and Administrator Wade met with the CEA Executive Director Miller and Economic Development Director Sakas regarding the proposed location and both indicated no objections. Notification was sent to the apartment owners. Director Peterson testified that he met with the property owners of the properties proposed for rezoning who had no objection as long as it did not negatively impact their current operations. Only two of the multi-family building owners called and stated that there was no impact to their properties.

Director Peterson stated that he reviewed the current zoning map and major business corridors locate other potential areas. These areas zoned either B-1 Retail Business District, B-2 General Commercial and B-2A General Commercial Districts. These districts are located in close proximities to single-family residential properties, churches and schools. Not preferred locations for Adult Sexually Oriented businesses.

Director Peterson testified that the proposed map and text amendments were initiated by the City and not any property owner or applicant and was for the purpose to protect the City from potential risk of being forced to accept the use in any district and a potential federal lawsuit.

III. Board and Staff Comments

During the March 16, 2023 public hearing, Commissioner Saewert raised a number of concerns and asked for additional information. She also had a number of questions for the City attorney. Director Peterson indicated that information and the attorney would be available for the next regular meeting. The PZBA voted to table the hearings to the April 27, 2023 regular meeting date.

The PZBA reopened the public hearings on April 27, 2023. Director Peterson summarized the events of the March 16, 2023 hearing. He presented a survey of the neighboring communities and how they address the Adult Sexually Oriented uses in their municipalities.

Commissioner Saewert requested the attorney address the following items: Minimum lot sizes, Can there be a limit on the types of Adult Sexually Oriented businesses, risk if the City doesn't zone for these types of uses. Attorney Frenzer provided the legal opinion that the City can control the location of the uses. The City can not limit or restrict content and the ordinance can not be so restrictive as to effectively zone the use out. The risk would be a first amendment constitutional challenge.

Commissioner Patel asked if the existing business would continue to operate and potentially redevelop as currently zoned. Director Peterson stated yes.

Commissioner Patel stated that the location isolated the use from more sensitive area within the City. They commented on the restrictions about the proximity to other similar uses is provided in the text of the proposed amendment.

IV. Decisions and Findings

Chairman Kempa asked for a motion to accept into the record that the application, staff reports and testimony as finding of fact of compliance with the standards for Map and Text Amendments. Unanimously approved by 6-0 vote.

PZBA Case #23-04 MA: Chairman Kempa asked for a motion recommend approval of a Map Amendment deleting the O-1 Office Research Park in its entirety; and rezone the properties located at 79 & 81 E. Palatine Rd. from B-3 Commercial, Wholesale, and General Service District to B-5 Commercial Industrial District. The motion was made, seconded and approved by a 5-1 vote.

PZBA Case #23-05 TA: Chairman Kempa asked for a motion to recommend approval of a Text Amendment to Title 5 Chapter 7 deleting Section 1 deleting the O-1 Office Research Park in its entirety; and add Section 7: B-5 Commercial Industrial District. The motion was made, seconded and approved by a 6-0 vote.

Respectfully Submitted

City of Prospect Heights

Basis for Computing Total Approved Compensation and Offer to Purchase

Route: Wolf Road Sidewalks
Section: Palatine Rd to Old Willow
County: Cook

Project: 19-00054-00-SW
Job No. R-90-028-22
Parcel 0003TE

Owner(s) of Real Property: Lumigarnet USA, INC.

Location of Property: 1301 S. Wolf Rd., Prospect Heights, Illinois 60070

Pursuant to 735 ILCS 30/10-5-15, the following has been prepared in order to fully inform you of the details of the acquisition of a portion of your property as right of way for the proposed improvement of replace the sidewalks on Wolf Road from Palatine Road to Old Willow Road in Prospect Heights, IL. The legal description of the parcel to be acquired is found in the attached package of documents.

The amounts shown below are the full amounts of the approved values and are based on fair market value of the property. The fair market value of the part to be acquired is estimated without regard for any decrease or increase in the fair market value caused by the project for which the property is being acquired; however, the damage to the remaining property, if any, is estimated with full consideration of the effect of the proposed improvement.

1. Existing Property:

Total area 0.591 acres, more or less

Highest and best use: Office Building

2. Land to be Acquired in Fee Simple:

New right of way _____ acres

Existing right of way (when applicable) _____ acres

Total right of way _____ acres

3. Improvements and/or Fixtures to be Acquired:

None.

On behalf of the City of Prospect Heights, and as outlined in the above summary, I hereby offer you the sum of \$500.00 for the property described on the attached instruments free and clear of all claims of other parties, liens, taxes and encumbrances.



Realty Specialist

04 - 03 - 2023

Date

