

**MINUTES OF THE PLAN COMMISSION**  
**August 27, 2012**

The regular meeting of the Plan Commission was called to order by Acting Chairman William Cotey at 7:04 p.m. at the Village Hall.

Members present: Acting Chairman William Cotey, Scott Adams, Dan Donahue, Walter Oakley David Semmelman, and Kurt Schultz.

Members absent: Chairman Mark Moore.

A quorum was established.

Village Staff present: John Spoden, Director of Community Development; David Smith, Senior Planner; and Fred Chung, Senior Project Engineer.

Commissioner Schultz moved, seconded by Commissioner Semmelman, to approve the July 23, 2012, Plan Commission meeting minutes.

Motion carried 6 - 0.

**OLD BUSINESS:** None.

**NEW BUSINESS:**

**PC 12-12     Liberty Auto City, Applicant**  
**1000 East Park Avenue**

**Request is for a Site Plan Permit in order to construct a building addition for property located in an I-3 General Industrial District.**

Mr. David Smith, Senior Planner, introduced the petitioner's request for a Site Plan Permit. Mr. Smith stated that the applicant is requesting approval for a Site Plan Permit in order to construct a building addition for property located in an I-3, General Industrial District at 1000 East Park Avenue. Mr. Smith stated that if approved, the applicant will demolish the front 9,800 square foot section of the Liberty Auto City building and replace it with parking and landscaping. He stated that the proposal includes a building addition to the rear of the building approximately 29,453 square feet. Mr. Smith stated that when complete, the entire structure will be approximately 80,541 square feet with 427 parking spaces, most of which already exist.

Mr. Adam Lyons, Architect and Agent for the petitioner, stated that the improvements include a renovated show room and a car wash addition. He stated that they will agree to meet the maximum allowed two (2) footcandles at the property lines after the installation of new parking lot light standards.

Mr. Curtis Smithson, Engineer for the petitioner, stated that a portion of the work will be to demo the front portion of the existing building and saw cut the existing parking lot where

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needed. He stated that there is approximately 50 feet of pavement in the front portion of the site required to be removed. He stated that overall, approximately 3.3 acres of the site will be disturbed and approximately one-half acre of impervious surface will be reduced in the flood plain. He stated the portion of the building to be demolished will be replaced with asphalt and curbed landscaped islands. He stated that there will be some new asphalt on the north end of the site, but that there will be some cut back on the north end for compensatory storage and native plantings.

Mr. Smithson stated that they have submitted an application for approval to the Lake County Storm Water Management agency, but are currently waiting for their reply.

Mr. Smithson stated that they will install needed storm water drains to by-pass the rear building elevation. He stated that they will incorporate catch drains, also known as a “snout” system that complies with ‘Best Management Practice’ criteria.

Acting Chairman Cotey asked if the new drainage system will require extensive maintenance. Mr. Smithson stated that there will be a maintenance plan incorporated. He stated that they will comply with most of the Engineering Division comments and will not need to do any work within the Rt. 176 public right-of-way. He stated that there are aspects of the work that will require a variation from the S.M.C. regulations.

Acting Chairman Cotey asked the petitioner if they will comply with the Fire Department review comments. Mr. Lyons stated that they will comply with the Fire Department review comments.

Commissioner Oakley stated that it appears to be a good proposal.

Commissioner Adams asked if the proposed building changes will affect the Subaru dealership. Mr. Joseph Massarelli, petitioner, stated that it has been difficult to work with dealerships as they all have their own criteria for signage and branding. He stated that he will reduce the current sign area with three (3) separate signs. He stated that the existing Liberty Auto City sign will come down when he is ready to apply for permits for new signage. He stated that he intends to complete construction in about six (6) months.

Mr. Lyons stated that he anticipates an April 2013 completion date.

Commissioner Semmelman stated that it appears to be a good project.

Commissioner Schultz stated that he would encourage the petitioner to work closely with the Storm Water Management agency, the Army Corps of Engineers, and with Village Staff.

Acting Chairman Cotey asked for clarification for what appears to be a new fence along the rear portion of the property. Mr. Massarelli stated that the fence will not impact the project. He stated that they will be very cautious as they work around the native plantings towards the rear of the property.

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Mr. Smithson stated that there is no proposed changes to the existing fencing along the rear of the property.

Acting Chairman Cotey asked for clarification as to the extent of the necessary compensatory storage. Mr. Smithson stated that a certain amount of grading along the northern portion of the site will be necessary while avoiding any impact of a sewer line located in close proximity to that area.

Acting Chairman Cotey asked for clarification as to the ownership of the adjacent railroad line. Mr. Massarelli stated that he does not own it, but thought that the line was abandoned and no longer in use.

Mr. John Spoden, Director of Community Development, stated that Staff can research the ownership of the railroad line located on the adjacent lot.

Acting Chairman Cotey stated that it might be an opportunity to renovate the parcel of land containing the abandoned rail line so that Liberty Auto City can make use of it.

Acting Chairman Cotey asked the petitioner what action he would like for the Plan Commission to take tonight. Mr. Massarelli stated that he is ready for the Plan Commission to render their recommendation to the Village Board.

*In the matter of PC 12-12, Commissioner Oakley moved, seconded by Commissioner Adams, to recommend the Village Board of Trustees approve a Site Plan Permit in order to construct a building addition for property located in an I-3 General Industrial District, subject to the following conditions:*

- 1) *The project is classified as Major Development. Comply with Article IV.B.1 and Article IV.B.2 of the Watershed Development Ordinances.*
- 2) *An ALTA survey be submitted with the application.*
- 3) *Stormwater detention is required for the site. Provide all supporting documents and calculations. All documents must be signed and sealed by the Professional Engineer.*
- 4) *Item 3 above was based on the historic aerial photos as indicated as post 1992. Submit an exhibit indicating all improvements which took place after 1992. Submit supporting documentation, including aerial photographs of 1991 and 1992.*

*Motion carried 6 - 0.*

*Ayes: Cotey, Adams, Donahue, Oakley, Schultz, Semmelman*

*Nays: None*

*Absent: Moore*

**PC 12-13      Peter Tosto, Heritage Court Libertyville, LLC, Applicant**  
**339 N. Milwaukee Avenue**

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**Request is for a Map Amendment in order to rezone property located at 339 N. Milwaukee Avenue from C-1, Downtown Core Commercial District to C-2, Downtown Community Commercial District**

Mr. John Spoden, Director of Community Development, introduced the request for a Zoning Map Amendment. He stated that the property located at 339 N. Milwaukee Avenue is currently zoned C-1, Downtown Core Commercial District. He stated that it is the proposal from the petitioner to re-zone the subject property to C-2, Downtown Community Commercial District. He stated that the C-2 District is adjacent to the downtown. He stated that the petitioner was previously before the Zoning Board of Appeals at their February 13, 2012 meeting seeking two variations for the subject site. He stated that one variation was to allow an office to occupy the front 35 feet of the ground floor area fronting Milwaukee Avenue and the second was to exceed 25% of the ground floor area with an office for a tenant space that fronts Milwaukee Avenue. He stated that these requests were asked for as a result of an office locating in the front tenant space of the subject site without the benefit of an occupancy permit being requested or issued.

Mr. Spoden stated that the subject building was constructed in the early 1980's as an office building. He stated that a previous tenant was allowed in the subject space as a retail use. He stated that following the retail occupancy, the building then conformed to the current Code that did not allow office uses in the front 35 feet of the ground floor area. He stated that the Code would not allow the front space to revert back to an office use. He stated that another example of this situation is the corner building that was previously occupied by Coldwell Banker, a realtor, vacated and was replaced by the bakery as a permitted use. He stated that the Code would not allow an office use to go back and occupy the front 35 feet of the ground floor for the corner building.

Mr. Spoden stated that the petitioner is before the Plan Commission tonight requesting approval for the Map Amendment to re-zone his property to C-2 which does not have the office use restriction that the C-1 does.

Mr. Ray Gerard, attorney representing the petitioner, stated his client is seeking the Map Amendment to rezone his property located at 339 N. Milwaukee Avenue from C-1 to C-2. He stated that there is a distinct difference between the bakery on the corner and his client's property located at 339 N. Milwaukee Avenue. He stated that his client's property is on the edge of the C-1 District. He stated that they border on the C-2 District. He stated that the Map Amendment request should be granted in part because of the current location of the subject site.

Mr. Gerard stated that he will discuss the procedural history of the application. He stated that the petitioner was before the Zoning Board of Appeals last February for a use variation, but the Zoning Board of Appeals voted unanimously against it. He stated that in order for a variation to be granted, certain standards, including a hardship, should be demonstrated. He stated that the revised application before the Plan Commission tonight is not a variation request and therefore, does not require the same set of standards.

Mr. Gerard stated that the DRC Staff report indicated that several variations should also be requested in conjunction with the requested Map Amendment. He stated that Village Staff states

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that the Map Amendment would put the property into a nonconforming status, but he believes that they are conforming even after the Map Amendment to C-2 District. He stated that they have filed an application for an interpretation of the non-conforming rules found in the Zoning Code from the Village Administrator. He stated that the nonconformity does not apply as the subject building has been in existence since 1980. He stated that the application filed refers to Illinois law. He stated that the Village's position that the nonconformity will be created is because it is his client, the petitioner, who is asking for the Map Amendment. He stated that it is the Village Staff's position that if the petitioner is granted that Map Amendment, then he should not be granted the privileges of a legal nonconforming status. He stated that he disagrees with Village Staff's position and so did the Illinois Appellate Court. He stated that there was a similar case in 1976.

Mr. Gerard stated that the request before the Plan Commission tonight is for a Map Amendment to rezone the subject property located 339 N. Milwaukee Avenue from C-1 to C-2 so that an office use can remain occupied in the front tenant space in a building that fronts Milwaukee Avenue. He stated that consideration should be given to the fact that the subject building has been occupied by an office use for 26 of the last 31 years. He stated that the building was designed and built as an office building. He stated that the original building and occupancy permits were for an office building. He stated that in 1980 there was not C-1 District, but was classified as a B-1 District which allowed office uses and up until a few years ago, so did the C-1 District.

Mr. Gerard stated that Mr. Tosto allowed his wife to open a retail business in the front tenant space unknowingly waiving certain legal rights. He stated that if his client would have known what the repercussions were, he would not have done that. He stated that they are now asking for a resolution that would allow the building to function as it was originally intended to do. He stated that a prior office occupant in the subject building was the current Mayor Weppler.

Mr. Gerard stated that immediately to the north of the subject site is a vacant office space which has been vacant for the last three (3) years. He stated that within the immediate vicinity there has been office uses. He stated that past retail occupants have not been successful. He presented a letter from Sunshine Real Estate Company which indicates that the retail market within the immediate vicinity has been slow and it has been difficult to find tenants.

Mr. Gerard stated that the DRC Staff report indicates that the zoning change would disrupt the facade continuity that that C-1 District is zoned for. He stated that the continuity is already interrupted by a parking lot and trash dumpsters adjacent to Milwaukee Avenue and north of the subject site. He stated that this parking lot already causes his client's property at 339 N. Milwaukee Avenue to be disconnected from the C-1 District. He stated that there is another parking lot abutting Milwaukee Avenue directly across the street from his client's property which is also a break from the C-1 front facade continuity. He stated that his client would not ask for this Map Amendment if they were located in the center of the downtown and not on the edge of the C-1 as they currently are.

Mr. Gerard stated that the uses around his clients property at 339 N. Milwaukee Avenue include a bank to the immediate south which is a C-2 use, on the other side of the street north of the

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parking lot is another bank, just south of that bank are a number of personal service establishments, and to the immediate north of his client's site is the Edward Jones Investment professional service. He stated the subject site fits in the area as an office use.

Mr. Gerard presented his responses to the Standards for an Amendment. He stated that a comparison should be made between what the burden is being placed on his client versus the benefit to the Village. He stated that the burden placed upon his client is the fact that he couldn't find a retail tenant to occupy the front tenant space of the subject building and be able to pay the market rate rent. He stated that the benefit to the Village would be no disruption to the downtown continuity if he were to remain in the space as an office use. He stated that there is no plan to build a new structure that would not fit into the area aesthetically.

Mr. Gerard stated that it is the Village Staff's position that the subject property does not fit into the C-2 model, that non-conformities would be created as a C-2 lot. He stated that most of the C-2 criteria will be complied with. He stated back in 1980 when the building was first constructed it was not anticipated that there would be this issue in front of the Plan Commission today in 2012. He stated that it was built properly as an office building at the time it was constructed.

Mr. Gerard stated that the dimensional standards imposed upon the subject site as a C-2 District are not as applicable as a land use is when determining the proper zoning district. He stated that the potential need for variations if the property were to be rezoned should not impact the decision by the Plan Commission in tonight's public hearing and request for the Map Amendment. He stated he recently filed an amendment to the Map Amendment request to condition the approval to a favorable ruling on the request for the Zoning Interpretation on the non-conforming issue. Even if the Map Amendment were to be granted, it would not take effect unless the outcome of the other process regarding the request for interpretation resulted in the petitioner's favor. He stated that if the ruling on the interpretation is not in his client's favor, then they will ask for the variations for the non-conformities that would be created by the Map Amendment from C-1 to C-2.

Mr. Gerard stated that his client has been in the Village for over 40 years. He stated that most of his client's customers reside in the Village of Libertyville. He stated that he has had his business in the subject building for 30 years. He stated that his client has been involved in the local Rotary and the local Lions. He stated that his client has his own charitable organization that has helped thousands of disabled kids and adults in Lake County and surrounding areas. He stated that his client has never come to the Village to ask for help before.

Mr. John McCuddy, unincorporated Lake County, stated that he operated a gun shop business on Peterson Road in Libertyville for many years. He stated that he brought Pete Tosto into the Rotary Club and stated that Mr. Tosto has never hurt anyone.

Mr. John Shea, 942 Terra Drive, stated that he has known Pete Tosto for 30 years. He stated that he was one of the original founders of MainStreet Libertyville and during those early years, the downtown was considered to be bounded by the railroad tracks on the north and the church on the south.

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Mr. James Moran, 1264 Deer Trail, stated that he has been in business with Pete Tosto for 44 years. He stated that it is a mistake to require an office use to vacate the space at 339 N. Milwaukee Avenue. He stated that Mr. Tosto has unmistakable integrity.

Ms. Betty Moran, 1264 Deer Trail, stated that she is concerned that Mr. Tosto's office may be required to close when there are other retail spaces that have already closed.

Mr. Moran stated the Mr. Tosto operates a nice business.

Mrs. Helen Tosto, 6882 RFD, Long Grove, IL, stated that she has been an employee of State Farm for 23 years. She stated that she opened up her "Tell Two Friends" retail shop in the front tenant space at 339 N. Milwaukee Avenue in 2004 after looking at other options. She stated that the front space became available after the previous real estate office moved out. She stated that they did not intend to jeopardize their situation, but opened "Tell Two Friends" in that space because they thought that it would be safe and because they own the building. She stated that they were not going to be able to get a tenant in the space that could pay a high enough rent to cover their mortgage on the building. She stated that it would be impractical to move the Costas Coin business currently in the rear tenant space to the front because of the custom made coin cases they installed into the rear tenant space.

Mrs. Tosto stated that had they known that the ordinance had changed, it would have been dropped back into their laps, but they were not aware of it. She stated that if she had known, they may have chosen the option of putting the office in the front and the store in the back before it was too late. She stated that they take good care of the building and they pay taxes on it and a large mortgage on it. She stated that it doesn't make sense to move out of the building that they own. She stated that she loved that business and that she cannot believe it has become this problem. She stated that now they have the agency in the front space and it has provided some visibility for them. She stated that now they are being told that this isn't a good thing. She stated that she understands the legalities of it all, but had they known maybe Peter and she would have done something different. She stated that they are not trying to cause trouble. She stated that she has made donations to St. Joseph's Church, to the Rotary, and to the Lions. She stated that they are not trouble makers and that the office is her husband's livelihood. She stated that they work very hard, as long as 17 hours per day and have not gone home to their kids until very late. She stated that she had the store to do something nice, make designs for weddings. She stated that their office is beautiful and that she designed it and that people tell her it is beautiful. She stated that now they are being told that it won't work. She stated that she apologizes if they did not do the right thing. She stated that had they known, they would have tried to work with the Village.

Commissioner Oakley asked Mrs. Tosto if she was informed by the Village of the change in the ordinance prior to moving her "Tell Two Friends" store out of the subject tenant space then an office could not re-occupy the same space. Mrs. Tosto said that she had not been told. She stated that she was happy decorating trees and won awards for that.

Commissioner Oakley stated that there was a change in the rules and that Mrs. Tosto did not know about the change in the rules of the zoning.

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Mrs. Tosto stated that she did not know about the change and that she and Peter Tosto discuss everything. She stated that Peter built the building and the building means everything to them. She stated that they created another off-shoot with "Tell Two Friends" and she does not understand what the problem is. She stated that she is sorry.

Mr. Jeff Warkathien, 26399 Middleton Parkway, Mundelein, IL., stated that Peter Tosto is a generous guy. He stated that Mr. Tosto's office is not part of the downtown. He stated that the Long Grove downtown is dead and it would benefit to have Mr. Tosto's business.

Mr. Costos Ropas, 339 N. Milwaukee Avenue, stated that he gained occupancy in the rear tenant space in the subject building approximately 10 months ago. He stated that the space that he moved into was the most feasible for him. He stated that his coin cases were custom designed for installation into the rear tenant space. He stated that he cannot move into the front tenant space next door. He stated that having the State Farm Insurance Agency next to him has been good for his business.

Ms. Mindy Tosto, 1301 Madison Street, Chicago, IL. stated that she is Peter Tosto's daughter. She stated that she had worked in the "Tell Two Friends" retail store in the past. She stated that the store did not work because that space is better suited for an office use. She stated that people did not want to walk to that location. She stated that the front tenant space is ideal for office use.

Mr. Warren Nicholas, 2298 Ashbrook Lane, Grayslake, IL., stated that his grandfather was a former mayor who used common sense in such situations.

Mr. Don Anderson, 616 Bridle Court, stated that he has been a Libertyville resident for over 22 years. He stated that the subject property has been zoned C-1 since 2005. He stated that he did not know when Mayor Weppler was a tenant at the subject site. He stated the Mr. Tosto is well connected into the community. He stated that he cannot believe that a major zoning change can happen in the community without Mr. Tosto knowing about it. He stated that Mr. Oakley asked the question of Mrs. Tosto if she had any knowledge of this. He stated that Village Staff has evidence that Mrs. Tosto was given a copy of the Zoning Ordinance before the State Farm Insurance moved into its current occupancy and before Costos opened up and that is a matter of record. He stated that this has been an ongoing issue since July 2011. He stated that it has been an illegal occupancy. He stated that it has been a conundrum because the tenant in the forward part of the first floor is asking the Village to unwind a mistake that they had made. He stated that it is his understanding that Costa is a legal occupancy and they do not have to re-locate at all. He stated that he is not here to question the integrity of Mr. Tosto. He stated that Mr. Tosto has been a long term resident of the community and has performed well. He stated that his integrity is not in question, but his intent to follow the law is in question and that is why he is at the meeting tonight. He stated that he expects the Commission to follow the ordinance it has put in place. He stated that it may have not been the current sitting Commission who voted for the ordinance in 2005, but a prior Commission looked at the Zoning Ordinance and decided where the end ought to be and there always must be an end somewhere on the map and just because a particular lot is on a corner shouldn't be justification to change from C-1 to C-2. He stated that it may set a precedent and encourage Lovin Oven to request a Map Amendment as well. He stated

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that he hopes that the Plan Commission give serious consideration to the requested Map Amendment and that it is not a question about Mr. Tosto's integrity, but rather it is a question about the law.

Mrs. Helen Tosto stated that Mr. Anderson's testimony is very insulting to her and her husband. She stated that Mr. Anderson should not state that these issues are not a question of integrity because everything that he said is a question of integrity. She stated that Mr. Anderson stated that it is a question of her integrity meaning that she knew this was going on and that she could have done something different. She stated that she did not know it was going on that Mr. Anderson is assuming a lot and that is actually slanderous. She stated that if her husband does have good integrity then he has good integrity throughout, not on selective days. She stated that Mr. Anderson is talking out of two sides of his mouth. She stated that they are being very honest and legitimate and they have been in the community for a very long time. She stated that they have 7,000 clients and you can ask them how honest they are. She stated that she is not trying to pull the wool over anybody's eyes and that she finds it very insulting and it slanderous and she stated that he had better be quiet about that.

Ms. Alana Albert, 206 West Maple, stated that Mr. Anderson does not have all of the facts. She stated that she does not understand how the application for a Map Amendment should affect Mr. Anderson. She stated that she has a sister that works at ClearBrook, a not for profit agency, and Mr. Tosto contributes to this organization. She stated that where Mr. Tosto's office is located affects many people in a positive way.

Ms. Mindy Tosto stated that the Village of Libertyville is her home. She stated that she cannot understand why a successful business should be shut down.

Acting Chairman Cotey asked for clarification from the Village Attorney regarding the case law referred to by the petitioner. Mr. David Pardys, Village Attorney, stated that the applicant has submitted a case entitled *City of Des Plaines vs. City Bank* which is a 1976 decision that talks about when a nonconforming use can continue to exist. He stated that in that case, an office building petitioner had filed for a rezoning to residential. He stated that one of the conditions that the petitioner had asked for in that case was that if the rezoning was granted, then the one story office building could remain as a nonconforming use. He stated that the city in this case granted the rezoning to residential and that they continued to try to utilize the office building. He stated that it had tenants in and out. He stated that the ordinance in that case stated that once the nonconforming use discontinued, it would then be classified as abandoned and the prior nonconforming use could not go back and re-occupy the property.

Mr. Pardys stated that the Des Plaines case is a little different than the Map Amendment case regarding 339 N. Milwaukee Avenue in that the Des Plaines case discusses what happens after abandonment. He stated that the Map Amendment case before the Plan Commission case is more about Zoning Code Section 14-2.7 which states that when a nonconforming use has been changed to a permitted or specially permitted use, it shall not thereafter be changed back to a nonconforming use.

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Mr. Spoden stated that the referral was to a Land Use Application filed on August 21, 2012, entitled Zoning Interpretation. He stated that it is a request for a written interpretation as to whether or not a rezoning would require variations. He stated that the Zoning Code Administrator is actually the Village Administrator and he or those he may designate are the administrators of the Zoning Code. He stated that it would be the Village Administrator who responds in writing to such a request a formal interpretation of the Zoning Code.

Mr. Pardys stated that it would be the Village Administrator who provides his opinion as to whether or not a Map Amendment in this case would create any legal or non legal conformities. He stated that it would then provide for an opportunity for the petitioner to appeal the Village Administrator's opinion, if they should disagree, to the Zoning Board of Appeals. He stated that this process would stop at the Zoning Board of Appeals once they rule on the appeal of the Village Administrator's interpretation. He stated that the petitioner is requesting that the Map Amendment be conditioned upon a favorable interpretation. He stated that the petitioner is proposing that they do not want the Map Amendment if the ruling on the interpretation is not favorable to them. He stated that this is a condition that could be placed on this request, if approved. He stated that Mr. Anderson is requesting that the whole matter be deferred until the interpretation is brought to bear.

Acting Chairman Cotey asked for clarification from the petitioner's attorney, Mr. Gerard, as to the case law referred to. Mr. Gerard stated that in the Des Plaines case, the property owner didn't waive his nonconforming status. He stated that the case hinged on whether or not the office building owner intended to abandon his nonconforming use and agrees that this aspect does not apply to the current situation for 339 N. Milwaukee Avenue. He stated that where it does apply is that the owner of the office building did apply for a map amendment. He stated that the reason he became nonconforming was due to the map amendment that he applied for which is very similar to Mr. Tosto's case.

Mr. Gerard stated that it is the position of the Village Staff that because it is the property owner who is applying for the Map Amendment, therefore he is self-creating the nonconformities and therefore should not be entitled to the nonconforming status and the nonconforming privileges. He stated that they are only the applicant and that it will be up to the Village as to whether the Map Amendment is granted or not. He stated that in the Des Plaines case, the office building owner applied for the rezoning to residential, but did not want to lose the office status for his office building. He stated that the court found that the office building owner did not abandon his intent in that particular case and this is where these two cases are very similar. He stated that the only reason that the Village of Libertyville Staff has argued that the petitioner is not entitled to the privileges of a nonconforming status is because it is the petitioner who is making the application for the Map Amendment and in the 1976 Des Plaines case, the exact same thing happened. He stated that this issue is not before the Plan Commission tonight, but may become before them in the near future. He stated that even if the Plan Commission should decide on the Map Amendment request, it does not take effect until there is a decision on the nonconforming status.

Acting Chairman Cotey asked for further clarification regarding the amendment to the petition request. Mr. Gerard stated that the Zoning Code has a provision that states that if a building is

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lawful at the time it was constructed, but then the Zoning Code changes afterwards, one does not have to change the building to make it conform to the new standards. He stated that they have an occupancy permit and the proper building permit application was made and it was lawful when the building was constructed.

Commissioner Schultz asked for clarification of the history of the C-1 ordinance that regulates office uses. Mr. Spoden stated that the major change to the Zoning Code was made in 1995. He stated that was when the zoning district classification changes included the change from the (B) classifications to the (C) classifications, business to commercial. He stated that the regulation created at that time stipulated that not more than 10% of the C-1 uses could be office uses that fronted on streets, but that it was difficult to enforce as it became a moving target. He stated that the Village worked with MainStreet Libertyville to limit the proliferation of office uses where those spaces could be used for retail uses in the downtown. He stated that the reason for these restrictions was to promote a good pedestrian friendly mix of uses in the downtown. He stated that there was an evolving trend whereby a number of retail spaces were being turned over to office spaces.

Mr. Spoden stated that the Village's Economic Development Commission, Plan Commission, and MainStreet Libertyville talked about how to revise the office regulation for the downtown. He stated that the research included on site measurements and there appeared to be a typical retail space depth of 35 feet. He stated that further study by the group, especially the Economic Development Commission, lead to the opinion that up to 25% of ground floor area may be allowed for office space in order to encourage some office space in the back which may further encourage the double frontages of the downtown buildings along Milwaukee Avenue. He stated that when the ordinance changed in 2005 and there were office or financial institutions within the front 35 feet, they would be grandfathered in, but Staff was restricted from issuing new occupancy permits for office or financial institution uses than what had already existed in the downtown along Milwaukee Avenue.

Mr. Spoden stated that in the case before the Plan Commission tonight for 339 N. Milwaukee Avenue is that what was once an office use became a retail use and then back to an office use again.

Commissioner Schultz stated that it sounds like the petitioner was in conformance then became out of conformance. He asked how the subject site became zoned C-1. Mr. Spoden stated that the zoning classifications evolved with the help of the Planning Consultant Camiros. He stated that the Libertyville downtown is the town within a town and the Zoning Code and Zoning Map attempted to accommodate that.

Commissioner Schultz stated that he is sympathetic to the applicant's predicament and wants to see him succeed. He stated that they are not looking to close any business and they are not looking to punish anyone. He stated that they are not looking to question anyone's honesty or integrity. He stated that it is difficult to give a recommendation for a request such as this when there are a number of people very passionate about it. He stated that no one wants to see any

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empty store fronts and everyone wants to see the downtown succeed. He stated that recommendations cannot be made on anyone's integrity, but that they are looking for the facts of the matter.

Commissioner Schultz stated that he is concerned about the possible setting of a precedent. He stated that the proposed Map Amendment request may not solve the petitioner's problem.

Commissioner Donahue stated that it may be useful to wait for the Village Administrator's interpretation.

Mr. Gerard stated that he understands that the Plan Commission may make a recommendation on the Map Amendment tonight or they can defer their Map Amendment request until the Village Administrator provides an interpretation on the Zoning Code.

Mr. Gerard stated that the Map Amendment alone will not solve the problem. He stated that they would get the Map Amendment to then be followed by either a nonconforming status or be forced to apply for the variations.

Commissioner Semmelman asked for clarification of the aerial exhibit and the correct location of the zoning lines. He stated that assuming that the submitted aerial exhibit is accurate, the request for the Map Amendment appears to affect more than just Mr. Tosto's building.

Mr. Gerard stated that the aerial may be accurate in terms of giving a photo representation of the buildings. He stated that the superimposed lot lines on the aerial may not be accurate. He stated that there is a Plat of Survey that reflects the accurate location of the property lines.

Commissioner Semmelman stated that he would be concerned about making a recommendation on a Map Amendment for property that does not belong to the petitioner.

Mr. Spoden stated that a Map Amendment would rely on the survey.

Commissioner Semmelman requested clarification as to what the nonconformities are. Mr. Gerard stated that when the ordinance changed in 2005, the then current office occupant became nonconforming. He stated that when "Tell Two Friends" occupied, it complied with Code. He stated that when "Tell Two Friends" left, it became nonconforming again. He stated that there is a second nonconformity issue if the Map Amendment were to be granted then with obtaining a nonconforming status then there may be setback issues that the C-2 would typically require.

Commissioner Adams asked for clarification as to the communication that Village Staff had with the Tostos back in July of 2011. Mr. Spoden stated that he would have to review the files regarding the communication that Commissioner Adams inquired about.

Mr. Pardys stated the Tostos have indicated that they were not aware of the initial Zoning Code change in 2005 when it took place. He stated that more recently there were some email exchanges between Village Staff Heather Rowe and Mrs. Tosto during the time Mrs. Tosto was

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planning on giving up her “Tell Two Friends” retail space, she was informed that once the retail space is vacated it cannot be subsequently occupied by an office use.

Commissioner Adams asked that prior to the Zoning Code change in 2005 should there have been a public notice. Mr. Spoden stated that there was a general notice in the newspaper as the proposed change was district wide. He stated that certified mailings would not have gone out to individual property owners.

Commissioner Adams stated that Mr. Gerard may be aware of the commercial space next door to the subject site is subject to a significant change and that this change will have a dramatic impact on the area. He stated that he is talking about the tenant build out for Mickey Finn’s. He stated that the original intent of identifying the Heritage District included the railroad tracks to the north to Broadway to the south. He stated that the parcel where the current PNC Bank is located was excluded because of the T.I.F. He stated that the purpose of the downtown area at that time was to go up to St. Joseph’s Church. He stated that there are more viable businesses in the downtown now than there were in 2005. He stated that there is the Harris Bank across the street which is grandfathered in, but there are several retail outlets south of the bank. He stated that the petitioner’s argument as to the lack of retail across the street from the subject site is not true.

Commissioner Adams stated that tonight’s case is not about Mr. Tosto’s integrity, but it is about the change of use when it should not have happened. He stated that the Plan Commission should wait to hear back from the Village Administrator regarding his Zoning Code interpretation. He stated that it is a case tied to a lot of emotion, but a decision should wait until a determination on the Zoning Code interpretation is made.

Mr. Gerard stated that he was aware of the adjacent property was vacant. He stated that he acknowledges that the Mickey Finn’s relocation is going to take place and something similar could happen to the subject site, but there is still a vacant parking lot that separates the properties.

Commissioner Adams stated that there is a parking lot there, but will also include an outdoor patio.

Mr. Gerard stated that immediately to the south is the PNC Bank. He stated that years ago when the line was drawn, they did it on the best evidence that they had at that time. He stated that the surrounding uses are consistent enough that should allow the existing office at 339 N. Milwaukee Avenue to remain there. He stated that if the subject property were forced to be there, walking traffic would not be forced to travel further south.

Commissioner Adams stated that further to the south is more retail.

Mr. Gerard stated that further to the south will not be a downtown walking type of community. He stated that testimony given so far indicates that people have preferred to drive to the subject site. He stated that there is not a walkable continuity. He stated that people will not want to walk south of the subject property.

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Commissioner Adams stated that there is viable retail across the street and further south.

Mr. Gerard stated that across the street is not adjacent to his client's property. He stated that south of his client's property where the bank is located will not change.

Commissioner Adams stated that it will change south of 339 N. Milwaukee Avenue.

Commissioner Oakley stated that he was supportive of the original variation requests back in February, 2012. He stated that he would recommend that the Plan Commission wait for the Zoning Code interpretation before making a recommendation on the Map Amendment.

Mr. Pardys stated that the issue of the nonconformity is only one factor to be considered out of other factors. He stated that the other standards that should be reviewed are relative to whether or not the re-zoning is appropriate or not. He stated that he understands that the petitioner is concerned that if the interpretation is not favorable to him then that means that they would then have to ask for variations if the Map Amendment is approved.

Acting Chairman Cotey stated that he concurs that the Plan Commission should wait to hear what the interpretation of the Zoning Code is before they make a motion on the Map Amendment request. He stated that the petitioner should give consideration to the use of his property. He stated that the petitioner's property may benefit by remaining C-1 once Mickey Finn's makes its transition to the neighboring property. He stated that he has seen other properties have their zoning classification change and then fail over time. He stated that it was hoped that pedestrian traffic would walk south of the subject property to the retail center where the Five Guys restaurant is located, but this has not happened in a substantial way yet. He stated that he believes that the build out of Mickey Finn's will have a substantial impact on the subject site. He stated that the petitioner should consider the value of his building in response to the anticipated changes. He stated that the Plan Commission should wait to hear what the interpretation of the Zoning Code is before they make a motion on the Map Amendment request. He stated that he would like to see more detailed plat information on the area.

Acting Chairman Cotey asked Mr. Gerard if they would like for this matter to be continued to a future Plan Commission meeting. Mr. Gerard stated he would like for the matter to be continued.

*In the matter of PC 12-13, Board Member Adams moved, seconded by Board Member Semmelman, to continue this item to the September 24, 2012, Plan Commission meeting.*

*Motion carried 6 - 0.*

*Ayes: Cotey, Adams, Donahue, Oakley, Schultz, Semmelman*  
*Nays: None*  
*Absent: Moore*

**PC 12-14 StreetScape Development, LLC, Applicant  
154 School Street**

**Request is for a Major Adjustment to the Planned Development Final Plan in order to allow the option to build either a surface level parking lot or a multi-level parking deck to serve the School Building, subject to the residential re-use; allow the option to install or not install patios or balconies on a unit by unit basis for the School Building, subject to the residential re-use; have the option of either building out the third floor of the School Building or not; have the option to re-design the interior configurations of the School Building dwelling units; and have the option of keeping the landscape plan as originally approved in May 2010 for property located in an R-8, Multiple Family Residential District.**

Mr. David Smith, Senior Planner, introduced the request for a Major Adjustment to the Planned Development Final Plan. Mr. Smith stated that in October of 2010, the Village Board approved an Amendment to a Special Use Permit for a Planned Development and a Major Adjustment to a Planned Development Final Plan in order to re-hab the school building into 15 dwelling units and construct 26 single family homes as part of the School Street redevelopment project. Mr. Smith stated that on August 9, 2011, the Village Board approved a request for a Major Adjustment to the Planned Development Final Plan in order to make further changes to the approved plans by constructing a parking structure adjacent to the Central School building and changes to exterior renovations for the Central School building located in an R-8, Multiple Family Residential District at 154 School Street. Mr. Smith stated that these additional renovations include adding a second level to the previously approved parking lot so that the number of parking spaces shall increase from 20 spaces up to 38 spaces. Mr. Smith stated that the proposal also includes the additions of exterior terraces and balconies to the school building units.

Mr. Smith stated that the petitioner is now requesting a Major Adjustment to the Planned Development Final Plan in order to provide flexibility in the future renovation of the school building. He stated that they are seeking approval to allow the option to build either a surface level parking lot or a multi-level parking deck to serve the School Building, subject to the residential re-use; allow the option to install or not install patios or balconies on a unit by unit basis for the School Building, subject to the residential re-use; have the option of either building out the third floor of the School Building or not; have the option to re-design the interior configurations of the School Building dwelling units; and have the option of keeping the landscape plan as originally approved in May 2010 for property located in an R-8, Multiple Family Residential District at 154 School Street.

Mr. John McLinden, petitioner, stated that they are scaling back to the original form of the School building. He stated that tonight's request is a result of a revenue issue due to not getting the contracts for certain purchases of condominiums that they had hoped for. He stated that it is the market forces that are causing them to scale back from the original plans. He stated that they are hard pressed to get the necessary financing.

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Mr. McLinden stated that they are proposing to scale the school building back to the original three levels. He stated that they are requesting approval for the right to build the parking structure as an option in the future and to retain the right to construct terraces and balconies as an option. He stated that they are requesting approval for the right to build the penthouse with dormers as an option in the future. He stated that they are requesting approval for the right to reconfigure the interior as an option in the future.

Mr. McLinden stated that they will comply with the Planning Division review comments in the DRC Staff report.

Mr. George McGann, 171 School Street, stated that he is concerned about the lack of parking and the increase in density. He stated that he is concerned about the close proximity to the street and sidewalks.

Mr. McLinden stated that this project is a Planned Development and was approved for 15 dwelling units for the school building with 22 parking spaces. He stated that the last approval for 38 spaces for the parking structure was a subsequent approval, not part of the original approval. He stated that street parking is only for the north side of School Street. He stated that School Street is intended to be speed limit restricted and enforced.

Commissioner Adams stated that the street parking does not permit overnight parking.

Commissioner Schultz asked for clarification of the current ordinance regarding parking regulations for multiple family parking. Mr. John Spoden, Director of Community Development, stated that the current Code requires 2-1/2 parking spaces per dwelling unit. He stated that the School Street is a Planned Development and that some relief from the current Code was sought by the previous developer and approved.

Commissioner Schultz stated that it seems that the current developer has been back before the Plan Commission multiple times seeking various amendments, and this has caused a certain amount of frustration for the Plan Commission and Staff.

Commissioner Semmelman stated that he is concerned about numerous times that the petitioner has been before the Plan Commission requesting amendments, but acknowledges that the current petition before the Plan Commission is a request to go back to the original design for the School building.

Commissioner Adams asked how many bedrooms do the units have. Mr. McLinden stated that there is approximately one parking space per bedroom in the School building.

Commissioner Oakley asked the petitioner what would trigger the intent to construct the two level parking deck. Mr. McLinden stated that if they were to sell a penthouse, it would then trigger the developer to consider requesting approval to construct the parking deck.

Mrs. Margaret McGann, 171 School Street, stated she is concerned about the lack of parking and that the petitioner's plan does not take into consideration the real world.

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Mr. McLinden stated that he has done a substantial amount of research in the subject area of transit oriented development, public transportation, and the needs of the young professional demographic and believes that the proposed changes to the School building and the associated parking will meet those needs in the market place. He stated that he would like for the Plan Commission to render their recommendation to the Village Board.

*In the matter of PC 12-14, Commissioner Adams moved, seconded by Commissioner Semmelman, to recommend the Village Board of Trustees approve a Major Adjustment to the Planned Development Final Plan in order to allow the option to build either a surface level parking lot or a multi-level parking deck to serve the School Building, subject to the residential re-use; allow the option to install or not install patios or balconies on a unit by unit basis for the School Building, subject to the residential re-use; have the option of either building out the third floor of the School Building or not; have the option to re-design the interior configurations of the School Building dwelling units; and have the option of keeping the landscape plan as originally approved in May 2010 for property located in an R-8, Multiple Family Residential District, in accordance with the plans submitted.*

*Motion failed 3 - 3.*

*Ayes: Adams, Oakley, Semmelman*

*Nays: Cotey, Donahue, Schultz*

*Absent: Moore*

**COMMUNICATIONS AND DISCUSSION:**

Commissioner Semmelman moved, seconded by Commissioner Schultz, to adjourn the Plan Commission meeting.

Motion carried 6 - 0.

Meeting adjourned at 10:22 p.m.