



**MINUTES OF THE REGULAR MEETING OF THE
PLAN COMMISSION, VILLAGE OF TINLEY PARK,
COOK AND WILL COUNTIES, ILLINOIS**

November 18, 2021

The meeting of the Plan Commission, Village of Tinley Park, Illinois, was held in the Council Chambers located in the Village Hall of Tinley Park, 16250 Oak Park Avenue, Tinley Park, IL on November 18, 2021.

CALL TO ORDER – CHAIRMAN GRAY called to order the Regular Meeting of the Plan Commission for November 18, 2021 at 7:03 p.m.

Lori Kosmatka called the roll.

Present and responding to roll call were the following:

Chairman Garrett Gray
James Gaskill
Frank Loscuito
Ken Shaw
Kurt Truxal

Absent Plan Commissioners:

Angela Gatto
Eduardo Mani

Village Officials and Staff:

Kimberly Clarke, Community Development Director
Lori Kosmatka, Associate Planner

Petitioners:

None

Members of the Public:

William Foster

COMMUNICATIONS –

CHAIRMAN GRAY welcomed new Plan Commissioner Kurt Truxal.

There were no communications from Village Staff.

APPROVAL OF MINUTES - Minutes of the October 21, 2021 Regular Meeting of the Plan Commission were presented for approval. A motion was made by COMMISSIONER GASKILL. The motion was seconded by COMMISSIONER SHAW to approve the October 21, 2021 minutes. CHAIRMAN GRAY asked for a voice vote; all were in favor. He declared the motion carried.

TO: VILLAGE OF TINLEY PARK PRESIDENT AND BOARD OF TRUSTEES

FROM: VILLAGE OF TINLEY PARK PLAN COMMISSION

SUBJECT: MINUTES OF THE NOVEMBER 18, 2021 REGULAR MEETING

ITEM #1 PUBLIC HEARING – RESIDENCE AT BROOKSIDE GLEN/MAGNUSON APARTMENTS, SPECIAL USE FOR A PUD SUBSTANTIAL DEVIATION

Consider recommending that the Village Board grant the Petitioner, Karli Mayer on behalf of One Magnuson Lane, LLC, a Special Use Permit for a Substantial Deviation from the Brookside Glen Planned Unit Development (a.k.a. The Residence at Brookside Glen) to modify the elevations of the residential structures at the properties 19248-88 Magnuson Lane in the R-6 PD (Medium Density Residential) Zoning District.

Present Plan Commissioners: Chairman Garrett Gray
James Gaskill
Frank Loscuito
Ken Shaw
Kurt Truxal

Absent Plan Commissioners: Angela Gatto
Eduardo Mani

Village Officials and Staff: Kimberly Clarke, Community Development Director
Lori Kosmatka, Associate Planner

Petitioners: None

Members of the Public: None

CHAIRMAN GRAY noted that he was informed by Staff that the application submitted by the developer seeking the Substantial Deviation is incomplete and did not include a number of deviations from the original PUD ordinance. Therefore he asked for a motion to continue the public hearing for the Residence at Brookside Glen Magnuson Apartments Special Use for a PUD Substantial Deviation to December 16, 2021 so that a completed application may be completed and considered by the Commission.

A motion was made by COMMISSIONER GASKILL. The motion was seconded by COMMISSIONER TRUXAL.

CHAIRMAN GRAY asked for a voice vote; all were in favor. He declared the motion carried.

TO: VILLAGE OF TINLEY PARK PRESIDENT AND BOARD OF TRUSTEES
FROM: VILLAGE OF TINLEY PARK PLAN COMMISSION
SUBJECT: MINUTES OF THE NOVEMBER 18, 2021 REGULAR MEETING
ITEM #2 PUBLIC HEARING – TOBACCO AND NICOTINE-RELATED RETAIL USES – ZONING ORDINANCE TEXT AMENDMENT

Consider recommending that the Village Board adopt a proposed text amendment to the Tinley Park Zoning Ordinance amending Section II.B. (Definitions) and Section V.B. Schedule I (Schedule of Permitted Uses – By Use Type) regulating tobacco and nicotine-related retail uses.

Present Plan Commissioners: Chairman Garrett Gray
James Gaskill
Frank Loscuito
Ken Shaw
Kurt Truxal

Absent Plan Commissioners: Angela Gatto
Eduardo Mani

Village Officials and Staff: Kimberly Clarke, Community Development Director
Lori Kosmatka, Associate Planner

Petitioners: None

Members of the Public: William Foster

CHAIRMAN GRAY asked for a motion to open the Public Hearing. Motion made by COMMISSIONER SHAW, seconded by COMMISSIONER LOSCUITO. CHAIRMAN GRAY requested a voice vote asking if any were opposed to the motion; hearing none, he declared the motion carried.

CHAIRMAN GRAY stated he received proof of the Notice of Publication for this Public Hearing. He invited staff to start with the presentation of this item.

Lori Kosmatka, Associate Planner, summarized the Staff Report for the Commission.

CHAIRMAN GRAY asked the Commissioners for any comments.

COMMISSIONER LOSCUITO asked if this was an overreaction. We are looking at the exception compared to the rule. He noted the cluster in question is at the corner of Will and Cook Counties. He asked if this was an issue across the entire Village requiring the need to amend the zoning ordinance.

Lori Kosmatka responded that existing businesses under the same ownership would be allowed to continue. The concern is for additional businesses to come in creating a higher density of that use. She noted this issue is being raised in response to the Committee of the Whole's direction. Staff has also seen an increase in call volume for businesses interested in opening tobacco stores. She noted the Village of Orland Park's regulations only went into effect this year.

COMMISSIONER LOSCUITO expressed his concerns that this could potentially create a windfall for an entrepreneur in Will County versus Cook County. The stores often go to Will County to avoid the Cook County sales tax. He felt it seems like overregulation due to an overreaction. He could understand if there were multiple clusters or around schools.

CHAIRMAN GRAY noted that Will County could be attractive to tobacco store entrepreneurs. He noted staff's increase in call volume. He felt it would be good to have some sort of restrictions in place to avoid clusters. He asked staff if the callers identify where they are looking in the Village.

Lori Kosmatka responded that callers identify specific addresses so that staff can check the zoning. In the last few weeks staff has also explained the current amendment consideration to callers.

COMMISSIONER GASKILL had no comment.

COMMISSIONER TRUXAL asked a zoning lot would include an outlot such as at the current cluster.

Kimberly Clarke, Community Development Director responded the outlot is a separate zoning lot from the remainder of the surrounding part of the corner. She noted a multitenant building would have one lot.

CHAIRMAN GRAY noted the current cluster could stay as-is unless it changed ownership. He asked what would be permitted at the current cluster if the new regulations go into effect.

Lori Kosmatka responded Accessory would be permitted.

CHAIRMAN GRAY noted that there could be up to one primary use. He also noted the childcare was there before the tobacco stores. He felt this is a concern from a public health standpoint. He commented other communities have put in more restrictive distances. He felt it may be beneficial to have some sort of language for distances. He preferred to have a method of measurement from the building's portal, not the lot line because if it's a big lot, it might be excessive.

Kimberly Clarke responded that is why the amendment is proposed as a Special Use. Without getting into the details of measuring, the Special Use could better allow for someone to make an argument if it's a unique lot. Measuring from a building's portal also can be problematic because buildings can change.

COMMISSIONER GASKILL asked what the objection was to clustering.

Kimberly Clarke responded that there's no specific objection, but that there are uses that when clustered can affect the community and businesses in certain ways. There is also a desire to look at the use as other communities have moved ahead regulating more strictly. The Village is receiving the influx of businesses. When cannabis first came out, there were businesses that did not associate cannabis to be complementary and did not wish to be near that business use. Cash-for-gold and pawn shop type stores had this type of reputation as well. Spreading out a certain use helps avoid a superblock concentration.

COMMISSIONER GASKILL asked how many tobacco shops were at the cluster at 183rd and 80th Avenue.

Lori Kosmatka responded the front building holds six tenant spaces, four of which are tobacco or vaping. Immediately behind this building another building has an additional tobacco shop and liquor store which has accessory tobacco sales.

COMMISSIONER GASKILL asked if this was clustering.

Kimberly Clarke responded that many specific primary tobacco uses in one area seems high.

COMMISSIONER GASKILL asked what was wrong with this. We want businesses in the Village, and don't want to chase anyone out.

Kimberly Clarke responded that this is similar to how liquor is not by-right in most communities. Liquor comes with a public health concern, and requires licensing and review by liquor commission. For tobacco, staff did not want to go to the extent of licensing and that zoning would be a better way to address the concerns. Tobacco can be considered a necessary business, but having the option and choice to review them on a case-by-case basis allows us to avoid being inundated by them and help provide parameters for locating and regulating them.

CHAIRMAN GRAY noted that if this code allows them to still come in and be spread out, then this is even better. The business would not be next door to a competitor, although some of these may be complementary. He was not sure.

COMMISSIONER GASKILL noted he believed the building was owned by the same people.

Lori Kosmatka responded she believed that four spaces in the building had two competing owners.

COMMISSIONER TRUXAL noted it's a hot corner bordering Cook County but having Will County taxes. However, if there are citizens in the area questioning it going to the Village Board, they should be heard out.

COMMISSIONER SHAW said he struggled with this proposal in that he tended to agree with Commissioner Loscuito on less government intervention, but there is also a balance that needs to be struck in terms of community in what makes it attractive versus unattractive. When looking at the standards for Special Use, one of them is "the extent to which a Special Use contributes directly or indirectly to the economic development of the community as a whole". You can look at this as the extent to which regulating tobacco use would detract from economic development. The cluster at 183rd & 80th is being used as an example only, and this regulation isn't intended to be aimed at those businesses. Under the proposal they would be allowed to continue until a change of ownership. Those businesses are perfectly legal in operating and following the rules. He asked if that didn't exist, then would we still design it that way as a community. The clustering sets off a certain flavor or presentation to the community and surrounding communities. He does not feel this is what the community overall would support. With respect to the Will and Cook County borders and their taxes, there could be a few other bordering areas that could follow this same path if left unchecked. It's important for us to get ahead of this. He pointed out it's legal now, but asked if this is this how we want it designed. He personally did not think that we would. Our Will County neighbors to the south are restrictive so it narrows the opportunity for these businesses and aims them at our Village. He is in support to the proposed amendment. He feels we should stay away from a specific distance. He feels that a maximum of one tobacco store per lot is reasonable. He agrees with the B-2 and B-3 zoning Special Use allowances, and that the Legacy District should remain as-is.

CHAIRMAN GRAY concurred with Commissioner Shaw that the distance should not be specified. He feels the retail use chart showing one primary tobacco store with accessory sales seems reasonable. This is a regulation to avoid design of a mini-mall having that many tobacco clusters. That cluster happened within the current rules and could happen somewhere else if it's not regulated in some form. He feels this is a step in the right direction. If there are people directed to Tinley Park because of the restrictive nature of other communities, then at least they have opportunities to move in within a spread out manner. He asked if Staff received enough information on the open items.

Lori Kosmatka responded yes.

CHAIRMAN GRAY asked if there was anyone from the public wishing to speak.

A member of the public in the audience noted it was a bad idea.

CHAIRMAN GRAY asked the member of the public to come up to the microphone and be sworn in.

William Foster, member of the public, was sworn in. He felt it was a bad idea to zone based on lot, that the resulting distance could range, only 50 feet from another lot, or 200 feet. If you want this to be a bedroom community, you are asking for trouble by bringing in all the tobacco stores. Your reputation is built on being that kind of community. He agrees he is against big government, but that we would be taking in whatever comes in.

CHAIRMAN GRAY clarified the proposed amendment is for restrictions on tobacco stores coming in.

William Foster noted he liked what Frankfort and Orland Park are doing. 1,000 feet distance is a great idea. When he was a surveyor, he had to measure from the door threshold of a tobacco shop to the storefront of the children's center. It had to be 1,000 feet. It was a measured distance. People will try to otherwise cut corners.

COMMISSIONER SHAW agreed with William Foster in principle. If you have two lots 50 feet away, they would both be Special Use. If one existed and was approved, and a second one came in, it would be likely not approved simply because the Plan Commission and Village Board would review it. Conversely, if the regulations were 1,000 feet and you have two locations 1,500 feet away and if the Village denied it, they could argue they meet the distance requirements.

William Foster noted he is referring to schools and daycares, not business to business. He commented that at the cluster you could have an additional tobacco shop at the bank outlot because it is a separate lot. He asked if we need that many tobacco shops in the Village.

COMMISSIONER SHAW responded no, the Village does not need that many.

William Foster noted there is a tobacco shop at Brookside Market. He asked how close and how many tobacco shops are needed.

COMMISSIONER SHAW asked if his objection was regarding the certain institutions like schools and daycares.

William Foster noted that there already is tobacco also being sold in gas stations. The Speedway is nearby. He asked how many more places are needed to sell tobacco.

COMMISSIONER SHAW asked William Foster if the Village should be more restrictive than currently proposed.

William Foster responded yes especially for children's centers, churches, and schools.

COMMISSIONER SHAW stated he is not dead-set against having a number.

CHAIRMAN GRAY noted the business to business would be regulated and within the rules but be next to a daycare or other certain institutions. The daycare and the tobacco clustering seems out of place. He asked if the Commission should look into distances from certain institutions.

COMMISSIONER LOSCUITO responded he would agree with that more than the clustering. He is for the free market as long as they are not near a school, park, church, or childcare facilities. He does not see the clustering around Tinley Park, only at that intersection.

COMMISSIONER GASKILL had no comment.

COMMISSIONER TRUXAL thinks setting a distance is a reasonable request.

CHAIRMAN GRAY agreed. He asked if there was any way to get distancing from certain institutions in the language. This would not include business to business but rather protect certain institutions.

Lori Kosmatka noted that Chapter 120 Comprehensive Regulation of Tobacco currently regulates a minimum of 100 feet from schools, childcare facilities or other buildings used for education/recreation programs for persons under 18. That does not fall within the zoning code. The concern is that it would create a conflict with other existing regulations.

COMMISSIONER SHAW noted the conflict would be that if we set a number that is less restrictive. If we said it needed to be 1,000 feet, it would be in conflict and would need to be reconciled in some way.

William Foster asked if the existing businesses could be grandfathered in.

CHAIRMAN GRAY noted it won't be an issue as proposed unless they change ownership. It should not affect current owners if they stay current owners.

Kimberly Clarke stated that it could be noted to Village Board so they could make the change to the Chapter 120 code. It's under a different code which is not under the Plan Commission's purview.

CHAIRMAN GRAY noted the intent to revisit this issue was in the interest of public health. The certain institutions are probably the target groups perhaps most vulnerable or susceptible being under 18. He felt it was reasonable to get that specified. He was OK with the remaining portions of what was presented tonight for the zoning code amendment. He acknowledged amending the distance to certain institutions is not under this umbrella of the zoning code amendment, but rather under a different authority. He requested that the distance to certain institutions be revisited to address public health concerns. He entertained greater distances such as 1,000 feet.

COMMISSIONER SHAW acknowledged he misunderstood the conflict of having the minimum distance in the zoning code. He noted the Commission's zoning amendment would not include a minimum, but would include a recommendation to the board to amend Chapter 120. He asked if this form of advising would be the appropriate way to only address the minimum distance in one code.

Kimberly Clarke responded yes.

CHAIRMAN GRAY asked if the motion should be modified.

Kimberly Clarke responded the Village Board could determine where the minimum distance to certain institutions could go.

COMMISSIONER LOSCUITO asked if Chapter 120 were amended to 1,000 feet, then would it necessitate the other motion to change the zoning. He asked if the proposed zoning amendment was just to address the clustering.

Kimberly Clarke responded that the proposed zoning amendment is to have all new tobacco stores as a Special Use to be reviewed on a case-by-case basis. Within those reviews, the Village would only consider one per zoning lot. It could be noted an additional distance requirement was discussed at Plan Commission, which is currently under Chapter 120 licensing.

CHAIRMAN GRAY felt 1,000 feet from the lot line is reasonable.

Kimberly Clarke noted that cannabis was regulated by measuring from the lot line.

COMMISSIONER LOSCUITO noted he was against the business to business same lot regulation. He felt it hindered landowners to lease their business, and provide adequate competition with a free market. He agreed that 1,000 feet from certain institutions would be reasonable.

COMMISSIONER GASKILL and COMMISSIONER SHAW agreed.

COMMISSIONER TRUXAL asked if we knew how it would impact existing tobacco shops if it were 500 feet.

Kimberly Clarke responded they would be nonconforming. They would be allowed to operate until change in ownership.

COMMISSIONER SHAW noted that between now and when this item goes to Village Board, staff could advise what the specific impact would be. The Board may want to scale it back to 500 feet.

COMMISSIONER TRUXAL noted his only concern would be code compliance issues, but if it doesn't impact businesses and a number such as 1,000 feet is set, that would be reasonable.

COMMISSIONER GASKILL felt it would be a detriment to the businesses. If you have a tobacco shop too close to a daycare center and it was allowed before, and they sell it, then it does not fit in the parameter and they can no

longer have a tobacco shop there. Generally, the new owner would want to buy the specific business use not the building. This would mean the current owner would not be able to sell his business.

CHAIRMAN GRAY agreed that would be an example. He acknowledged that there would be some unintended hardships for the owner selling his business.

Kimberly Clarke noted this is common. In the Legacy District, the mechanic shop on 171st Street kept their business open just to continue the nonconformity. At some point you want the change to happen or you do not.

COMMISSIONER SHAW noted it is a delicate balance free market versus bedroom community in how you design it. With the proposed amendment, only one could survive in a zoning lot as a special use, but if we enact a distance then perhaps none could survive. He asked if we design this by intent knowing there's a daycare center there, then is this what we want in the first place? He feels probably not. He noted Freddy Bear Sports has existed a long time but he cannot sell it. That type of business is not allowed in the Legacy District. He personally disagrees with it, but that is the code.

COMMISSIONER GASKILL noted this is detriment to the business where the owner cannot sell.

COMMISSIONER SHAW commented that the Plan Commission is an advisory board in this matter and this is a delicate balance.

COMMISSIONER LOSCUITO asked if 1,000 feet to certain institutions is passed, and a smoke shop opens up, and a daycare wants to open up in the strip mall, then are they prohibited in the stripmall because the business would place it in nonconformity. He is not referring to just daycares as a special use, but also for schools.

CHAIRMAN GRAY agreed that if it's a restriction then it should be a restriction both ways.

Kimberly Clarke noted if a tobacco store comes in first and a daycare wanted to come in then she believes the response would be that it would be too close to the tobacco store.

CHAIRMAN GRAY agreed this is a nuanced item not without casualties. It is a delicate balance, but we would not want to disservice an owner to not being able to sell.

COMMISSIONER SHAW noted if you wanted to change design of a building, you have to abide by the new code and it can be expensive. He explained this is why legal nonconformities exist.

William Foster asked why the existing business licenses cannot just be grandfathered in to that location until the business itself shuts down. He commented if one sells a tobacco shop they should be selling the license, carrying it over to the next person.

CHAIRMAN GRAY noted that the proposed amendment is to avoid licensing for tobacco stores.

Kimberly Clarke noted even if the owner sells their license, the new owner has to be in compliance which would trigger them to come forward to request the Special Use. The review would look at the number of businesses in the area. This code is created to eventually see some of these cease to exist, otherwise the use would not stop. Current owners wanting to sell would have a hard decision.

CHAIRMAN GRAY thanked William Foster for his input. He asked if the motion should be modified for the Village Board to discuss potential restrictions of lineal feet to protect certain institutions.

Kimberly Clarke noted the Legacy Code's prohibited uses section states that by the nature of codes being changed it's inevitable that uses will become nonconforming. She noted the code says any existing prohibited use such as a mechanic shop may change owners as long as no new prohibited use is created. The mechanic shop stayed open and never discontinued business so they could sell it. Once you discontinue the business, you are done. The Legacy Code says ownership is allowed to change with a prohibited use as long as no new prohibited use is created. This is

per the status quo meaning do not increase the use. Whatever the use is should remain as is. The use could continue but eventually phase out if a new redevelopment opportunity happens.

CHAIRMAN GRAY clarified as long as the owner runs the same business then they are protected. He asked if Commissioner Gaskill's example of an owner selling his business could continue as long as it is kept in operation, but only in the Legacy Code.

Kimberly Clarke noted that Special Uses are different. Special Uses run with the owner and not the land. The mechanic shop example was in the Legacy District where it was previously allowed then prohibited, not a Special Use. Thus this conversation is challenging because Special Uses run with the owner, and when the owner sells it needs to be reviewed. The Special Use review ensures that the use is being operated under the same standings as when it was initially granted. A business may change over time. The Special Use gives the Village the opportunity to review if there was a problem with the use. She noted Starbucks drive thrus have changed. Conditions may change. The Village may not want to allow a Special Use in a case where they did before. New conditions may occur.

CHAIRMAN GRAY acknowledged double drive thrus were not the standard 15 years ago. He asked for guidance on verbiage to add to the motion.

COMMISSIONER TRUXAL asked if we are moving to amend the text amendment as stated and come back with the distance separately as two separate motions.

CHAIRMAN GRAY noted this would be for the Village Board to consider. He feels there are salient points including Commissioner Gaskill's comment on an owner selling a business as well as Commissioner Loscutoff's comment on the reverse, if a tobacco store exists and a daycare wants to open. He noted that staff addressed the reverse.

COMMISSIONER GASKILL commented that someone wanting to buy a tobacco store would be able to buy it. It is an established business.

Kimberly Clarke responded then it would not be able to be a Special Use. She noted that's the difference between a permitted use and a non-permitted use and allowing a non-permitted use that became non-permitted because of a zoning change to continue. We are placing another level where that these have to be Special Uses. She noted if it wasn't a Special Use and we regulated these without a Special Use and put someone in nonconformity because of distance or a maximum of one per zoning lot and there was no Special Use, then she believed that nonconforming language could be permitted that similar to the Legacy Code that as long as the owner, but because of the layer of the Special Use, you cannot negate that process because of the owner. We are not dealing with a permitted versus a no longer prohibited use. It is going to be a Special Use.

COMMISSIONER GASKILL asked why it had to be Special Use and not stay the same with the exception of putting a distance on it.

Kimberly Clarke responded there was a desire to have a better review of these stores on a case-by-case basis. There are certain uses that by nature based on their location need further review of the surrounding area. Otherwise if there was no concern about this type of business and its potential effects, you would just consider it a permitted use.

COMMISSIONER GASKILL agreed with limiting them in the future if it falls within the specified distance. He clarified his concern is just with the established businesses becoming someone else's business regardless of the distances.

Kimberly Clarke responded a decision would either need to be made to make it not a Special Use and structure it based on one per zoning lot. The definitions would be created and either the Village Board through the Chapter 120 licensing would establish a distance requirement. She asked Lori Kosmatka to clarify if any districts are being opened up.

Lori Kosmatka responded tobacco stores have been permitted in B-2 and B-3 as a general retail use and would keep those zoning districts but as a Special Use.

Kimberly Clarke noted in that case the Special Use component would need to be removed and permit it with a footnote of one per zoning lot.

COMMISSIONER GASKILL asked then if that would affect an owner's ability to sell the business.

CHAIRMAN GRAY asked if it would remain status quo.

Kimberly Clarke agreed because there is no other overarching zoning that would come in to apply. In that case there would be no Special Use needed to review.

COMMISSIONER SHAW noted some Commissioners are not in favor of Special Use, but that there is some consensus on the definitions portion of the zoning text amendment, as well as distance under the Chapter 120 code. He proposed this be split into separate motions. This will help the Village Board understand where the split among the Commission lies.

COMMISSIONER LOSCUITO concurred.

CHAIRMAN GRAY agreed both sides have good points. He asked if there was a way to reconfigure the motion to take out the Special Use.

Kimberly Clarke responded the Commission could amend the motion to remove the Special Use requirement.

COMMISSIONER LOSCUITO noted that some of the Commissioners did agree on the Special Use.

COMMISSIONER SHAW noted that he would be in support of a Special Use.

COMMISSIONER TRUXAL asked if there would be a separate motion for distance.

COMMISSIONER SHAW confirmed and asked Commissioner Truxal if he would be in favor of a Special Use.

COMMISSIONER TRUXAL asked if the resident's concern with the distance could still be addressed.

CHAIRMAN GRAY stated that his understanding was that if the Special Use was removed, then an existing owner could sell his business, whereas the Special Use would come to the Plan Commission and would be subject to the rules we set.

COMMISSIONER TRUXAL asked if this meant once ownership changes hands then it has to conform to the one per zoning lot if regulated as such. He felt this did not seem reasonable.

Kimberly Clarke noted the protocol would be for a motion to be entertained and if the motion fails, then someone has to propose a new motion. If a motion fails, the dissenting Commissioners can note why they are not in support. This can be brought to Village Board. The Village Board will take the understandings of the yes and no votes to come to their own decision.

CHAIRMAN GRAY asked if there would be a need for a second motion.

COMMISSIONER SHAW suggested the second motion recommend the Village Board amend Chapter 120 to change the distance from 100 feet to 1,000 feet.

Motion made by COMMISSIONER LOSCUITO, seconded by COMMISSIONER SHAW. CHAIRMAN GRAY requested a voice vote asking if any were opposed to the motion; hearing none, he declared the motion carried.

CHAIRMAN GRAY asked for the standards.

Lori Kosmatka noted that Staff typically does not respond to the standards, but has drafted an ordinance.

There were two motions for this item.

Motion 1-:

COMMISSIONER SHAW made a motion to recommend the Village Board amend various sections of the Zoning Ordinance to as described in the November 18, 2021 Staff Report and drafted ordinance amending Section II.B. (Definitions), Section V.B. Schedule 1 (Schedule of Permitted Uses – By Use Type), and Section XII, Section 3.A, Table 3.A.2. (Legacy Code - Prohibited Uses) by defining and regulating tobacco and nicotine related retail uses to allow Tobacco Stores as a Special Use in the B-2 (Community Shopping) and B-3 (General Business & Commercial) zoning districts with a maximum of one per zoning lot, and to allow Accessory Tobacco Sales as a permitted use in the B-1 (Neighborhood Shopping), B-2 (Community Shopping), B-3 (General Business & Commercial), B-4 (Office and Service Business), and B-5 (Automotive Service Business) zoning districts.

Motion seconded by COMMISSIONER LOSCUITO. Vote taken by Roll Call; COMMISSIONERS GASKILL, LOSCUITO, TRUXAL voted nay. COMMISSIONER SHAW and CHAIRMAN GRAY vote aye. CHAIRMAN GRAY declared the motion failed.

Motion 2-:

COMMISSIONER SHAW made a motion to recommend that the Village Board amend Chapter 120 “Comprehensive Regulation of Tobacco Products” to change the minimum required distance from 100 feet to 1,000 feet to certain institutions (school, childcare facility or other building used for education or recreational programs for persons under the age of 18 years).

Motion seconded by COMMISSIONER GASKILL. Vote taken by Roll Call; all in favor. CHAIRMAN GRAY declared the motion carried.

CHAIRMAN GRAY asked staff what the next step was given the outcome of the split motions.

Kimberly Clarke responded staff would take the discussion to the Village Board. She will note there was not majority support for making it a Special Use, and that there was unanimous recommendation to increase the section with the distance. She also noted all other parts of the recommendation presented such as definitions was supported and that the maximum of one per zoning lot was discussed.

CHAIRMAN GRAY wished the Village Board good luck in their decisions. He asked which Village Board meeting it will be on.

Kimberly Clarke noted there may need to be additional consideration on when it can be brought to the Village Board.

GOOD OF THE ORDER –

Kimberly Clarke provided an update. She attended the Avocado theory ribbon cutting. It was good to hear their family story and why they chose Tinley Park. There is a different feel when they participate in this community. Staff is working with Papa's Gourmet Popcorn, and they are working on getting their plans approved. They would like to be open before the holidays. The 7 Eleven on 171st and Harlem had their grand opening. It is a beautiful store. She thanked Dan Ritter, Planning Manager, who worked this project. Staff knew there were concerns about traffic and access points and he did a great job. This project improves the intersection. South of this project, the proposed Starbucks is pending MWRD approval and should hopefully start construction in the coming weeks. It will be a great addition to the corridor. There is also positive activity on the former Tribes property. A Change of Use was submitted and it will be a similar entity.

CHAIRMAN GRAY commented it is a nice building in a good location.

Kimberly Clarke also noted that the Village will soon post for two vacancies for the Plan Commission. She noted in addition to Kehla West, Jennifer Vargas is also stepping down. She asked if the Commissioners know of any good candidates to please let the Village know, with the understanding on the time and dedication it takes to be on the Commission.

CHAIRMAN GRAY welcomed Kurt Truxal again to the Commission.

COMMENTS FROM THE PUBLIC – CHAIRMAN GRAY asked if there were comments from the public. Hearing none, he asked to adjourn the meeting.

CLOSE MEETING -

A Motion was made by COMMISSIONER GASKILL, seconded by COMMISSIONER LOSCUITO to adjourn the November 18, 2021 Plan Commission meeting.

CHAIRMAN GRAY asked for a voice vote; all were in favor. He declared the motion carried and adjourned the meeting at 8:33 P.M.

PLAN COMMISSION STAFF REPORT

November 18, 2021 – PUBLIC HEARING

Petitioner

Karli Mayer, on behalf of
One Magnuson Lane LLC

Property Location

SW Corner of 191st Street
and Magnuson Lane

PINs

19-09-11-200-015-0000
19-09-11-200-013-0000

Zoning

R-6 PD

Approvals Sought

Special Use Permit for a
Substantial Deviation
from the Brookside Glen
Planned Unit
Development

Project Planners

Kimberly Clarke, AICP
Community Development
Director

Lori Kosmatka
Associate Planner

The Residence of Brookside Glen

Southwest corner of 191st Street and Magnuson Lane



EXECUTIVE SUMMARY

The Petitioner, Karli Mayer, on behalf of One Magnuson Lane LLC, seeks a Special Use Permit for a Substantial Deviation from the Brookside Glen Planned Unit Development (PUD) to permit design changes to the previously approved Residences at Magnuson multifamily residential development.

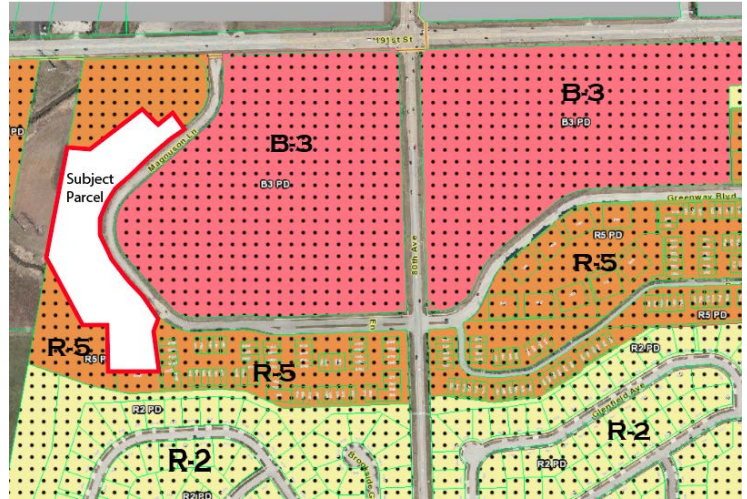
The Petitioner previously received approval in December 2017 to construct the Residences at Magnuson, which includes four (4) multi-family residential structures with thirty-six (36) dwelling units per building for a total of 144 dwelling units. This proposal also includes a 5,320± square foot club house, landscaping, and various amenities throughout the development. The Petitioner now proposes changes to the exterior architecture of the buildings which differ from the appearance of the previously approved plans.

EXISTING SITE & HISTORY

The subject site is a 7.65-acre parcel within the Brookside Glen Planned Unit Development (PUD). The Brookside Glen PUD was approved as part of an annexation of 828 acres in 1990. Since that time there have been amendments to the Agreement as well as several PUD modifications and rezonings. The subject property was originally planned for a mixture of commercial, office/restricted industrial, and residential uses (single-family detached, townhomes, and condo/apartments).

In February, 2016, the Village was approached by the Petitioner to develop the 7.65-acre parcel. Multiple meetings were held between July and October 2017 which included Staff, elected officials, the Petitioner, and representatives from the Brookside Glen subdivision.

The participants discussed plans that would address concerns about the scale of the buildings while maintaining valuable amenities and high-quality aesthetics.



Zoning Map

The site is bordered by the ComEd transmission lines to the west, B-3 PD (General Business and Commercial District) to the east, R-5 PD to the south and southeast and R-2 PD (Single-Family Residential) to the far south. The site is located within the Urban Design Overlay District (UD-1) that is intended to regulate non-residential buildings to “accommodate the automobile, but are primarily designed to promote non-motorized and public transportation movements to, within, and among properties”. UD-1 attempts to create a streetscape that is defined by buildings rather than parking lots. Although this is a residential building, it has some “commercial character” due to its scale, surface parking, and recreational component (club house). Additionally, there will eventually be commercial development to the east which will need to comply with the regulations for the UD-1 Overlay District.

Surrounding land uses include vacant property to the east that is planned and zoned for commercial uses. A municipal pumping station is located immediately to the south and a townhome development exists to the southeast with two-story structures housing 4-6 units per structure.

East of 80th Avenue there are other planned commercial uses that are vacant in addition to townhomes and 4-story multi-family condominium buildings of 16 units each. These multi-family structures are designed similarly to the proposed project in that they are effectively 5-story buildings due to the semi-underground parking garage. A detention pond is located to the north of the subject site and functions as a buffer to 191st Street. The Wolverine Pipeline traverses the site (east to west) just north of the pumping station.

As a Planned Unit Development, deviations from these requirements are considered ‘exceptions’ and are not reviewed as a ‘true’ variation from the Zoning Ordinance; instead, they are reviewed in context of the approved PUD. The Commission may wish to evaluate these deviations using the PUD Standards and Criteria for a PUD (Sections VII.C.1. and VII.C.3). As a Special Use, Staff will provide Findings of Fact at the Public Hearing consistent with the Special Use standards in Section X.J.5 of the Zoning Ordinance. Any exceptions that Staff has noted during the review are identified throughout this report.

SUBSTANTIAL DEVIATION REQUEST

The issue before the Plan Commission is approval of a Substantial Deviation from the Brookside Glen Planned Unit Development (PUD). The PUD was initially approved in 1990 with subsequent Substantial Deviations in 2000 and 2017. Over the years, this PUD has evolved; reacting to market demands and economics. See the attached timeline for specific references to approvals and ordinances related to this property. The original PUD of 828 acres provided for a mix of uses.

The Petitioner's request is to deviate from Ordinance 2017-O-072 (Substantial Deviation from the Brookside Glen PUD). The approved PUD included four (4) structures of thirty-six (36) dwelling units each for this property (total of 144 units) and a club house with a pool and other various residential amenities. The approved PUD contained Exceptions for building setback and building height. **The proposed Substantial Deviation will allow for design changes to the project. The current proposal will reduce the overall heights by 2'-0", increase the building lengths from 174'-10" to 188'-2", reconfigurations to the façade and materials, change the construction of the exterior wall and balconies, and allow for two sheds on the terraces.**

EXCEPTIONS

The previously approved Planned Unit Development ordinance included three Exceptions from the Zoning Ordinance. The Petitioner requests amending the following Exceptions from the Zoning Ordinance based on their revised elevations.

1. Building Height

A nine-foot (9') exception to the maximum building height requirement within Ordinance 2000-O-006 allowed the structures at a building height of 65' where 56' was the maximum height allowed. In the 2017 consideration of the project, Village staff noted that although the height of the buildings were approximately ten feet (10') taller at the highest point (the middle roof), the actual elevation would be consistent with Brookside Place since the elevation at the subject site is approximately ten feet (10') lower than the elevation at Brookside Place. The Maximum Overall Height of Building was noted as 72'-3.75", however staff noted the Mean Roof Height of 64'-11.75" as the "Building Height" (defined in Section II of the Zoning Ordinance). The Petitioner currently proposed plans will reduce the Exception's nonconformity of height by two feet (2').



Renderings of Building from The Residence of Brookside Glen and Building at Brookside Place

2. Building Setbacks

An exception to the Village requirement for the front yard setback allowed the residential structures to be set back about 18' to 27'. The Petitioner noted that the currently proposed setbacks will now be 17.1' to 27', which is a reduction of 0.9 feet.

3. Building Floor Area Ratio

An exception of 0.056 to the Village requirement for floor area ratio (FAR) allowed a FAR of 0.656 where 0.6 was the maximum FAR allowed. The Petitioner has noted that the currently proposed FAR will now be 0.655.

ARCHITECTURE

2017 Previously Approved PUD Plans

The previously approved plans consisted of four (4) architecturally identical proposed residential precast structures with precast balconies and a centrally located club house. The structures include a semi-underground parking garage and four (4) stories of residential dwellings. Terraces above the parking level were included to connect the structures. Access was provided to both the east and west sides of the residential buildings and club house. The approved building height was noted as approximately 65' as defined by "Building Height" in Section II of the Zoning Ordinance. The overall building height was noted as 72'-2 5/8" as measured from the parking level. The approved construction type was exterior walls constructed with precast concrete and thin embedded bricks, and standard brick and block construction.

Building Materials

The previously approved exterior cladding included a thin brick veneer precast into a panel with horizontal seams. The ground/parking level included a precast stained and stamped stone foundation material. The precast balconies were approved with steel railings and wire mesh infill panels

Architecture

The architecture included some aspects of a Prairie style with the slope of the roof and transom windows. The floor to ceiling windows added distinction reflective of loft type architecture. The roof line was varied to provide enhanced architectural interest helping to break up the expanse of the roof. Articulation was provided along all building facades to create visual interest and shadow lines. Landscaped berms were also shown at the base of the structures at varied heights to minimize exposure of the parking level. The approval also indicated the roof terraces would have green roofs with landscaping screening from Magnuson Lane. The club house's architecture also encompassed some aspects of Prairie architecture consistent with the residential buildings. The club house also included an expansive arrangement of windows with a canopy on the east side and an extension of cabanas and restrooms on the west side.

Proposed Plans

The Petitioner is currently proposing a new construction type with revised dwelling unit layouts, resulting in exterior design changes. The Petitioner has provided a letter itemizing these changes along with updated drawings. The drawings include line drawings for each façade of a typical residential building and the clubhouse, as well as a color elevation comparing the previously approved and currently proposed east façade facing Magnuson Lane. The Village consulted architectural firm Farnsworth Group to do an architectural design review comparing the previously approved and currently proposed east elevations. Farnsworth Group has provided a statement of findings which included opinions made upon their professional judgement based on their experience in the field of architecture (see *attached*).

Construction Type of Exterior Walls & Balconies:

The construction type of the exterior walls is proposed to be noncombustible with brick/stone veneer with steel stud backup. The Petitioner proposes this change due to this construction type becoming an allowable option per a recent revision of the Tinley Park Building Code change.

Heights:

The overall heights will be reduced by approximately 2'-0", due to lowering the height of the semi-underground garage (ground/parking level). The Petitioner states the reason for this was to address concerns by the neighbors. The overall structure height is now proposed shorter at 70'-4 7/8" as measured from the parking level. The floor heights of the remaining stories are substantially similar (current 10'-1 3/4" versus approved 10'-0"). Note the description of the floor heights differ between the current elevations and the previously approved (the current "2nd floor" was previously referred to as "1st floor", etc.).

Lengths:

The building lengths will be increased from 174'-10" to 188'-2". However, the Petitioner notes the connector sections were modified to reduce the impact of the overall length. The diagonal dimension from the inside corners on the street side is currently proposed as 766'-7 5/8" versus the approved plan was 753'-5 5/8". The existing foundation reflects the current proposal. The Petitioner also notes the building lengths were increased to accommodate the increased foundation wall thickness, size of columns in garage, and maintaining the interior parking count, which are all a result of the new construction type.

Building Setbacks & Floor Area Ratio:

The Petitioner has noted the currently proposed building setbacks will change from a range of 18 to 27 feet to a range of 17.1' to 27 feet. The currently proposed floor area ratio will reduce from 0.656 to 0.655.

Façade Reconfiguration of Windows, Doors, Balconies, Bays, Canopies, and PTEC Units:

The façade will slightly be reconfigured. The Petitioner notes the currently proposed window arrangement is based on the refinement of unit layouts which included the coordination with the mechanical plans. Due to a modification in the building footprint, the proposed façade projections will somewhat change the layout of the windows, doors, balconies, and PTEC wall units. The balconies are proposed to be steel frame in lieu of precast due to the weight consideration of the new construction type. Stone piers have been provided as needed to support the balconies. The club house will have somewhat less window glazing on the two major facades, and will also have reduction of one doorway on the east, and a change of several windows to doors on the west. Additionally, the previously approved east facing canopy and restroom cabana structures have been removed from the current proposal. The Petitioner's architect noted a different type of cabana structure is being considered.

Green Roofs:

The Petitioner's architect noted that the size of green roofs on the terraces will be slightly increased, and will retain the heavy landscape screening from Magnuson Lane.

Cabanas:

The Petitioner's architect noted that the originally proposed cabanas will now be two tent-style cabanas to be located north of the pool along the retaining wall on the west (rear) side of the property. The architect noted that the proposed construction will include marine grade fabric and an aluminum frame and nine feet tall. The Petitioner has yet to determine what the size will be, as there are two options of either 8'x8' or 12'x12.

Exterior Facade Materials:

The currently proposed exterior facade materials include natural thin stone veneer along the ground/parking level and brick veneer on the upper levels, separated a continuous cut stone sill. The brick veneer will consist of Endicott Utility size bricks with a natural color mortar. The residential buildings will now also include a 13.35% architectural accent of Hardie Board siding on the side elevations to the north and south.

The two entries at the east elevation will each have a single door (previously approved as double doors) as part of a prefinished aluminum storefront glazing system (previous approval was double doors with a transom). The surrounding natural stone piers will be accented by a lower stone cap (previously shown as brick veneer).

Staff has requested that the Petitioner provide material samples with clarification on proposed colors for the residential buildings and club house.

Addition of Sheds on the Terrace:

Two brick sheds are proposed on the terraces in order to accommodate garage exhaust fans. The sheds will be placed between Buildings 1 and 2, and between Buildings 3 and 4. The sheds will be nine feet tall and 13.9' x 5'. The Petitioner notes that the mechanical code requires exhaust discharge to be ten feet above the adjoining grade.

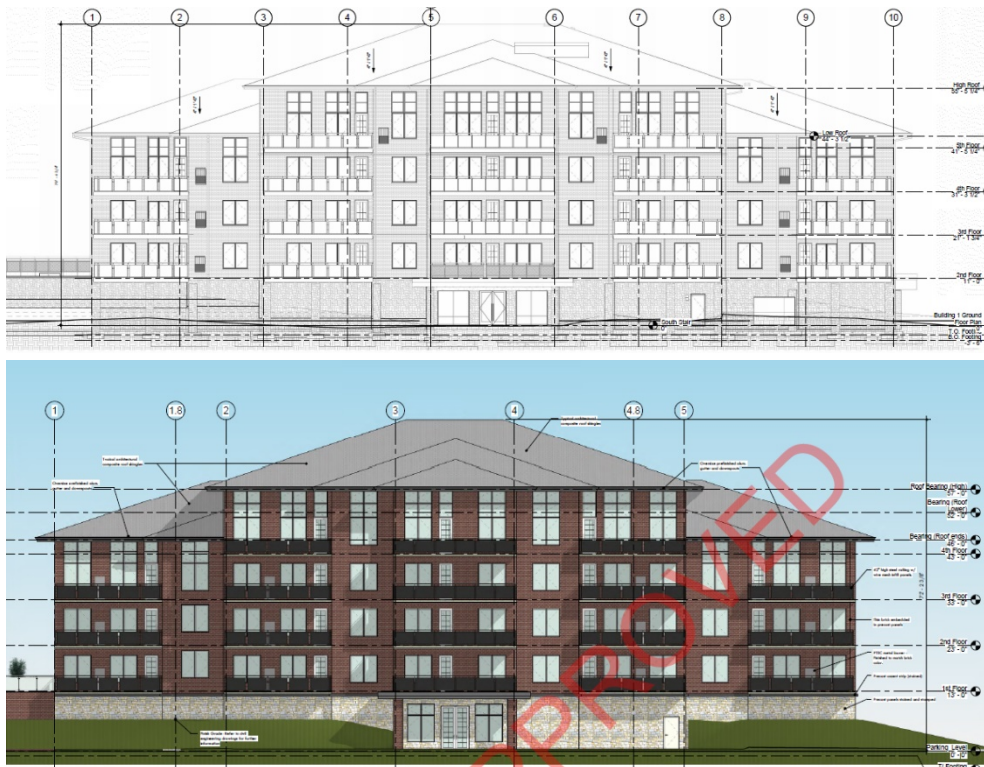
Key Design Elements Remaining:

Some key design elements will remain as previously approved. The roof slope and the Prairie-style four (4) foot deep eaves will remain consistent. Also, the club house will remain centrally located, and each building entry shown as a focal point with the center of the structure being the tallest. The windows on the top floor will still have a double transom which will provide a verticality to break up and accent the horizontal nature of the buildings.

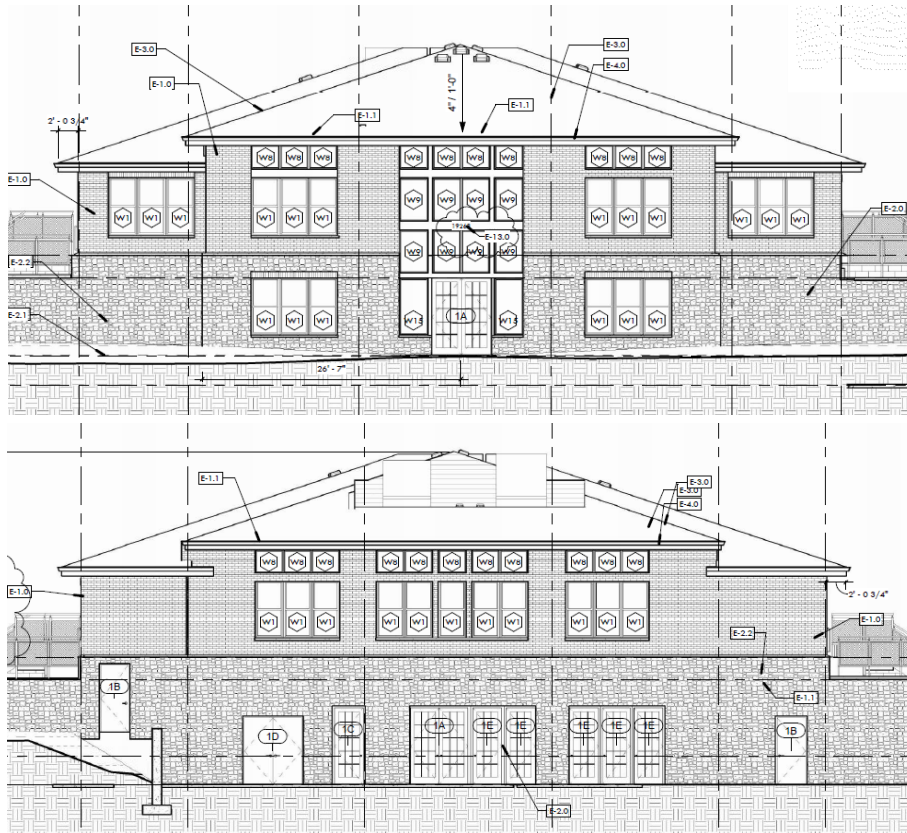
East Facade Comparison: Currently Proposed (top), Previously Approved (bottom) – Not to scale:



West Facade Comparison: Currently Proposed (top linework), Previously Approved (bottom color) – Not to scale:



Currently Proposed Club House: East (top), West (bottom):



Previously Approved Club House: East (above), West (below)



Analysis

In consideration of the Petitioner's letter dated November 1, 2021, east façade color elevation drawing comparison (*received by the Village October 28, 2021*), and line elevation drawings (*dated May 7, 2019 and received by the Village November 10, 2021*), Village Planning staff considers the exterior appearance of the proposed design changes to the project to be similar to the previously approved plans. The current proposal indicates a consistency in height, width, and massing, and similarity in material appearance, aside from the addition of the HardiBoard siding. Staff feels the window and door configurations, including a noticeable reduction of glazing on the club house facades, do vary from the previously approved plans, but not to an extensive degree. The only other salient difference of the club house is the removal of the east canopy and the permanent cabana and restroom structures, and that further clarification is needed on what the construction of the cabanas will now be. As the Petitioner's line elevation drawings are dated May 7, 2019, Staff requests the Petitioner confirm that the content of the line elevation drawings and all other associated drawings reflect the most recently proposed color façade elevation drawing comparison received by the Village October 28, 2021.

Architectural consultant Farnsworth Group has provided a statement of findings analyzing the two design schemes of the east residential façade only. They found that the elevations on this portion of the development were essentially identical with only a few minor differences. The overall proportions were very similar (3% height decrease, 7% width increase) and the roof slopes and eaves remained consistent. The massing components (central area under high roof, flanked area under low roof, and bands of stone veneer and grade at the base appeared nearly identical, and considered a visual difference would be marginal once constructed. The vertical dimensions of floor-to-floor heights were observed as essentially identical with exception that the currently lowest level is two feet less. The window sizes, mullions, and pattern were also noted essentially identical, with exception that there is a different horizontal rhythm of windows under the high roof. They noted this is likely caused by the plan changes in the unit layouts. The exterior materials appeared to be the same.

STANDARDS FOR A SPECIAL USE

Section X.J.5. of the Zoning Ordinance lists standards that need to be considered by the Plan Commission. The Plan Commission is encouraged to consider these standards (listed below) when analyzing a Special Use request. Staff provided draft Findings in the Staff Report below for the Plan Commission's consideration.

X.J.5. Standards: No Special Use shall be recommended by the Plan Commission unless said Commission shall find:

- a. That the establishment, maintenance, or operation of the Special Use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;
 - *The proposed design changes are largely aesthetic with no major changes to the site plan, thus will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. Additional factors were considered in the previous PUD approval.*
- b. That the Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;
 - *The proposed design changes include a proposed architectural façade primarily of brick and stone veneer with double transom windows. These architectural features, along with the reduction in two feet of building height will not be injurious to the use and enjoyment of other property in the immediate vicinity nor substantially diminish and impair property values in the neighborhood.*

- c. That the establishment of the Special Use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;
 - *The proposed design changes are largely aesthetic with no major changes in the site plan, thus will not impede the normal and orderly development and improvement of surrounding property.*
- d. That adequate utilities, access roads, drainage, and/or other necessary facilities have been or are being provided;
 - *The proposed design changes do not affect changes to utilities, access roads, drainage and/or other necessary facilities.*
- e. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
 - *The proposal will not change the previously approved ingress and egress. The density has not changed from the previous approval within Ordinance 2017-O-072.*
- f. That the Special Use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the Village Board pursuant to the recommendation of the Plan Commission. The Village Board shall impose such conditions and restrictions upon the premises benefited by a Special Use Permit as may be necessary to ensure compliance with the above standards, to reduce or minimize the effect of such permit upon other properties in the neighborhood, and to better carry out the general intent of this Ordinance. Failure to comply with such conditions or restrictions shall constitute a violation of this Ordinance.
 - *The proposal will increase the currently approved exception of 18-27 foot building setbacks to allow 17.1' to 27' building setbacks, a 0.9' reduction. Other previously approved exceptions which will remain are building height and floor area ratio.*
- g. The extent to which the Special Use contributes directly or indirectly to the economic development of the community as a whole.
 - *The proposed design changes are largely aesthetic. The scale of the project remains the same from the previous approval per Ordinance 2017-O-072, which contributes to the economic development of the community as a whole.*

MOTION TO CONSIDER

If the Plan Commission wishes to act on the Petitioner's requests, the appropriate wording of the motions is listed below. The protocol for the writing of a motion is to write it in the affirmative so that a positive or negative recommendation correlates to the Petitioner's proposal. By making a motion, it does not indicate a specific recommendation in support or against the plan.

"... make a motion to recommend that the Village Board grant the Petitioner, Karli Mayer on behalf of One Magnuson Lane LLC, a Special Use Permit for a Substantial Deviation from the Brookside Glen Planned Unit Development with Exceptions from the Zoning Ordinance to permit exterior design changes in accordance with the plans submitted and adopt Findings of Fact as proposed by Village Staff in the November 18, 2021 Staff Report."

[any conditions that the Commissioners would like to add]

ATTACHMENTS

1. Previously Approved PUD Plan Set Ordinance 2017-O-072
2. Architectural Line Elevation Drawings of Current Proposal, dated May 7, 2019
3. Color Façade Elevations Comparing Current Proposal to Previously Approved, received by the Village October 28, 2021
4. Letter from Architectural Studio, Ltd. (Petitioner's Architect) Noting Proposed Changes to the PUD, dated November 1, 2021

LIST OF REVIEWED PLANS

Submitted Sheet Name		Prepared By	Date On Sheet
	Previously Approved PUD Plan Set – Ordinance 2017-O-072	ASL	12/5/2017
	Architectural Line Elevation Drawings of Current Proposal	ASL	5/7/2019
	Color Façade Elevations Comparing Current Proposal to Previously Approved	ASL	Received by Village 10/28/2021
	Letter from Petitioner's Architect Noting Proposed Changes to the PUD	ASL	11/1/2021
	Statement of Findings from Architectural Design Review (<i>East Façade Elevation Only</i>)	Farnsworth	11/11/2021

ASL – Architectural Studio, Ltd.



Petitioner

Village of Tinley Park

Code Section

Section II (Definitions),
Section V (District
Regulations), and
Section XII, Section 3.A,
Table 3.A.2
of Zoning Ordinance

Approvals Sought

Text Amendment

Project Planner

Lori Kosmatka
Associate Planner

PLAN COMMISSION STAFF REPORT

November 18, 2021 – Public Hearing

Zoning Code Text Amendment - Tobacco and Nicotine-Related Retail Uses

EXECUTIVE SUMMARY

Planning staff periodically reviews the appropriateness and adequacy of various Zoning Ordinance regulations for any potential issues or inconsistencies. A lack of specific regulations related to tobacco and nicotine related uses (vaping, e-cig, hookah, nicotine products, etc.) was noticed as a potential concern.

Staff notes that tobacco and nicotine related uses are not specifically defined or regulated in the Zoning Ordinance. Since the adoption of the current Zoning Ordinance in 1978 tobacco-related uses have been regulated under a generic "*Retail Stores*" definition. Generic "*Retail Stores*" are permitted in the B-2 (Community Shopping) and B-3 (General Business and Commercial) zoning districts and prohibited in all others. Tobacco-related retail establishments have grown in popularity and evolved significantly over the years. These uses may pose some unique concerns related to their locations and overall regulation, as compared to other types of "*retail stores*". Additionally, in recent years, a clustering of tobacco-related stores has been observed in the Village.

On September 7, 2021 at the Village Committee of the Whole meeting, Village staff sought direction on how to address tobacco-related uses. The Committee's recommendations included making a specific tobacco-related use definition and requiring them to be special uses in the primary business districts. The Special Use process would be used to analyze how they fit into the proposed area and existing concentration of similar uses. The Committee recommended researching and presenting the changes for the Plan Commission to provide them with a recommendation.

Staff has researched and drafted potential amendment options for the Commission's discussion. Staff is proposing a text amendment to provide specific definitions for tobacco and nicotine-related uses and product types, and to regulate accordingly per zoning districts. Retail sales of tobacco and nicotine-related products are generally differentiated by primary and secondary (accessory) business use levels of retail within an establishment. Staff recommends regulating the more intense primary business level as a Special Use in the B-2 and B-3 zoning districts with additional restrictions, while permitting the accessory use level (products are typically sold at retail/convenience stores, gas stations, etc.) in the B-1, B-2, B-3, B-4, and B-5 zoning districts. Staff also recommends clarifying language in the Legacy District's use table but maintaining it as a prohibited use.

BACKGROUND

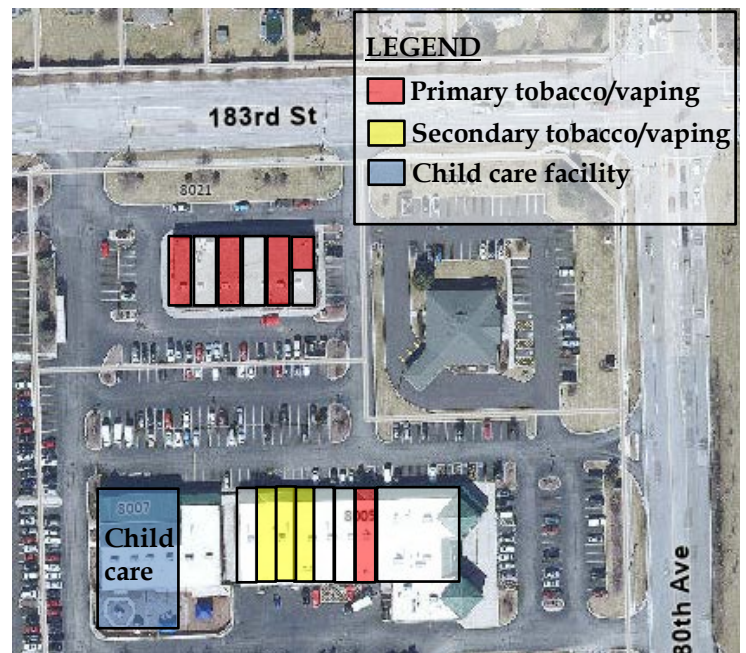
Since the adoption of the Zoning Ordinance in 1978, tobacco and nicotine-related (vaping, e-cig, hookah, nicotine products) uses have been regulated under a generic *"Retail Stores"* definition, which are permitted in the B-2 (Community Shopping) and B-3 (General Business and Commercial) zoning districts and prohibited in all others. There are no definitions in the Zoning Ordinance specific to tobacco-related uses.

Tobacco-related uses are referred to elsewhere in the Village Code of Ordinances within Title XI: Business Regulations. The references include Chapter 120 "Comprehensive Regulation of Tobacco Products", Chapter 124 "Other Businesses: Tobacco Dealers", and within the fee schedules of Sec. 110.25. Chapter 120 defines *"Tobacco Shop"* as *"a retail establishment which derives at least 65% of its gross revenue from the sale of tobacco products"*. The Village's fee schedules break down *"Tobacco dealer"* into either *"primary business"* or *"secondary business"*, but no further distinction is provided. These Village ordinances relate to the licensing and legal requirements for these establishments. They are not related to zoning requirements. However, when possible, the Village tries to keep consistency across different regulations to avoid confusion.

According to Village records, there are currently 27 Tobacco dealer locations who pay an annual fee to the Village (see attachment). These locations include both tobacco as a primary and an accessory (secondary) use. The Clerk's office does not inspect for completeness and accuracy of the locations listed, and there may be some additional or new locations not on the list. However, it provides a sense of the total number of locations operating in the village. In addition to these stores, two hookah/cigar lounges exist in the Village (Habano/Pink Hookah and Cigar at 7615 159th Street and Hollywood Smokes at 6857 159th St). Additionally, at least 2 other businesses have current change of use applications submitted for primary tobacco-related store uses.

Existing conditions include a clustering of tobacco-related uses within the Village. The southwest corner of 183rd Street and 80th Avenue currently has several tobacco dealers. These locations are within the M-1 (General Manufacturing) zoning district but allows for business uses similar to the B-3 district at this intersection through the PUD regulations. The outlot building at 8021 183rd Street is a six-tenant building, four of which have tobacco or nicotine related uses. The multi-tenant building 185 feet to the south currently has six tenant units, including Will Tobacco and CD Liquors. The Tutor Time child-care facility is approximately 175 feet west of CD Liquors. This area has attracted a high concentration of these uses because of the location in Will County and bordering Cook County, which has significantly higher tobacco taxes. Additionally, there are a higher number of tobacco-related uses along the 159th Street corridor.

Currently, the only zoning-related restriction the Village has for tobacco uses is a minimum distance to youth-oriented facilities. This is regulated in Sec. 120.10 "Proximity to Certain Institutions" restricting sale or delivery of tobacco products within 100 feet of any school, child care facility or other building used for education or recreational programs for persons under the age of 18 years.



Existing Clustering of Tobacco/Vaping (Nicotine) Uses at 183rd St. & 80th Ave.

In order to align with the other Village Code sections and address the varied intensity of use, Staff recommends the Village looks at addressing other Chapters of the Village Code as necessary. This may include defining primary and secondary Tobacco dealers, and providing contemporary definitions of products.

EVOLUTION OF USES AND DEFINITIONS

Over the years, products relating to tobacco use have expanded while the retail nature of tobacco establishments have grown and evolved. In addition to traditional tobacco products, e-cigarettes and alternative nicotine products are available to the consumer. These uses and products may pose some unique concerns related to their locations and overall regulation, as compared to other types of “retail stores”.

Definitions

The State of Illinois state statutes Sec. 410 ILCS 82/1 and Sec. 720 ILCS 675 provide comprehensive definitions for these contemporary uses. The state statutes define tobacco product, e-cigarette, alternative nicotine products, and retail tobacco stores. Local municipalities provide definitions with varying scope, and are regulated in varying manners.

Some definitions are more or less quantitative and specific to allow additional flexibility as products continue to change, and some provide exclusions. For example, the Village of Orland Park’s recent tobacco ordinance enacted earlier this year defines tobacco products in a similar manner to the state statutes, and excludes marijuana and any products specifically approved by the U.S. Food and Drug Administration for use in reducing, treating, or eliminating nicotine or tobacco dependence or for other medical purposes. Tobacco dealers are usually defined as primary and secondary (accessory) types for licensing and zoning regulation. Some municipalities differentiate this by identifying those who derive a minimum percentage of product gross revenue and/or devoting a minimum percentage of gross floor area to the display, advertising, merchandising, or stock of products, while noting that the sale of other products is merely incidental. The percentages vary substantially among municipalities anywhere from 10% to 80%. In the licensing regulations of Chapter 120, the Village currently defines *“Tobacco Shop” as “a retail establishment which derives at least 65% of its gross revenue from the sale of tobacco products”*.

Limitations on Location and Density

Regulations can include limitations on locations relative to certain institutions, and density of tobacco stores. Minimum distances from youth-oriented facilities typically reflect the Village’s 100-foot current regulation, though some municipalities increase the distance and include more institutions such as playgrounds, parks, and libraries. A community may choose to increase the minimum distance, and provide the option to apply for reduction of the distance requirement. The City of Aurora requires a 250-foot minimum distance, but allows reduction based upon a submitting a plan of conduct and fee, and receiving approval via an administrative hearing officer’s findings. Beyond the minimum distance, effects on surrounding uses and properties are an aspect of the special use process that is reviewable.

Minimum distances to other tobacco stores are sometimes established in order to limit the density of tobacco stores in a community, such as at the corner of a typical intersection. Generally, this applies to primary uses and excludes secondary (accessory) uses. In nearby communities, Village of Frankfort restrictively regulates that licensed tobacco stores not be located within 2,000 feet of each other, meanwhile Village of Orland Park regulates that licensed primary tobacco or alternative nicotine product retailers and distributors not be within 1,000 feet of each other. Other Chicagoland communities are not as restrictive. One concern of tobacco retailers concentrating in a particular geographic area may include a chance of market conditions potentially leading to an additional impact on community health and safety. High competition between retailers could lead to lowering of prices, which in turn could increase a community’s smoking rates.

Regulations can include limitations on quantity as well. A maximum quantity (cap) of dealers may be established within municipal licensing requirements, typically broken down into primary and secondary uses. This is not recommended by staff as a zoning regulation. If a total cap is desired, it would be better controlled by licensing requirements, similar to liquor licenses.

One additional regulation to consider is the method of measurement when calculating use distances. Some municipalities measure from the property lines of the lots or parcels on which the business locations are situated. Others may measure to the building line or the nearest portal of the building or structure.

Special Use and Zoning Districts

Zoning controls, including a Special Use, would allow the Village discretion to authorize and regulate the location and operation of tobacco and nicotine related dealers as appropriate for the Village, while not unduly burdening legitimate business activities of the dealers. Special Uses may be related to a particular intensity or use type. Village of Frankfort is one neighboring community requiring Special Use for tobacco stores. The Special Use may be more specific. For example, the Village of Antioch's zoning code does not specifically regulate tobacco, but does regulate vaping as a Special Use within their B-1 Business Convenience District. Zoning allowances may also differ based on zoning district. A greater allowance for secondary (accessory) uses of tobacco or nicotine related products could be provided based on the nature of the primary use. In other words, supermarkets may provide accessory sales, which would be permitted in more zoning districts than a primary tobacco store. The City of Aurora only has one use classification of "Cigarette or tobacco shops" but the allowances differ as being permitted in the business and manufacturing districts, and only as an accessory use in their office restricted industrial district.

When considering a Special Use the Commission has the ability to consider certain conditions where there is a rational nexus between the condition and the perceived impact of the proposed use; the conditions must be "specifically and uniquely attributable" to the proposal under review. Further the Zoning Ordinance provides Standards (Section X.J.5.) for consideration by the Plan Commission. Below please find the Standards outlined in the Zoning Ordinance.

X.J.5. Standards: *No Special Use shall be recommended by the Plan Commission unless said Commission shall find:*

- a. That the establishment, maintenance, or operation of the Special Use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;*
- b. That the Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;*
- c. That the establishment of the Special Use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;*
- d. That adequate utilities, access roads, drainage, and/or other necessary facilities have been or are being provided;*
- e. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;*
- f. That the Special Use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the Village Board pursuant to the recommendation of the Plan Commission. The Village Board shall impose such conditions and restrictions upon the premises benefited by a Special Use Permit as may be necessary to ensure compliance with the above standards, to reduce or minimize the effect of such permit upon other properties in the neighborhood, and to better carry out the general intent of this Ordinance. Failure to comply with such conditions or restrictions shall constitute a violation of this Ordinance; and*
- g. The extent to which the Special Use contributes directly or indirectly to the economic development of the community as a whole.*

Additional Regulations

Indoor smoking or sampling of tobacco and nicotine related products may also be regulated. Current state smoking regulations (410 ILCS 82/ Smoke Free Illinois Act) already prohibits indoor smoking of tobacco and nicotine-related products at any locations that are in a shared or multi-tenant building (unless established prior to the law's passage). Additional regulations could prohibit indoor smoking in all buildings which would include hookah or cigar lounges. Village of Frankfort currently prohibits smoking and/or sampling of tobacco and tobacco related products within the indoor area of any licensed tobacco store.

PROPOSED CHANGES

Zoning Code Definitions

Staff proposes the following definitions to the Zoning Ordinance which helps capture the scope of contemporary tobacco and nicotine related uses and products, while aligning with the gross revenue percentage currently identified in the Village's Chapter 120 "Comprehensive Regulation of Tobacco Products":

Tobacco Store: A retail establishment that derives 65% or more of its gross revenue from the sale of Tobacco Products and Alternative Nicotine Products, and in which the sale of other products is merely incidental.

Accessory Tobacco Sales: A retail establishment that derives less than 65% of its gross revenue from the sale of Tobacco Products and Alternative Nicotine Products, and in which the sale of other non-tobacco-related products is the primary function.

Tobacco Product: (1) Any product which contains, is made, or derived from tobacco or used to deliver nicotine or other substances intended for human consumption, whether smoked, heated, chewed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, bidis, snus, mints, hand gels, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cutting, and sweepings of tobacco; (2) electronic smoking devices; (3) notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, accessory, or associated tobacco paraphernalia of a tobacco product whether or not sold separately. Excluded from this definition is any product that contains marijuana and any products specifically approved by the U.S. Food and Drug Administration for use in reducing, treating, or eliminating nicotine or tobacco dependence or for other medical purposes when these products are being marketed and sold solely for such approved purpose.

Alternative Nicotine Products: As defined in the Illinois Compiled Statutes, 720 ILCS 675/1.5, a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. This definition excludes cigarettes, smokeless tobacco, or other tobacco products and any product approved by the United States Food and Drug Administration as a non-tobacco product for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Open Item #1: Discuss scope of definitions for two use types: Tobacco Store (primary), and Accessory Tobacco Sales (secondary).

Open Item #2: Discuss scope of definitions for product types of tobacco products (which includes electronic smoking devices), and alternative nicotine products.

Zoning Code Use Chart

Staff recommends the below specific use classifications, retaining the presence in the B-2 and B-3 zoning districts, but limiting Tobacco Stores to require a Special Use. Additionally, clarifying the allowance of Accessory Tobacco Sales in the B-1, B-2, B-3, B-4, and B-5 zoning districts. All other districts would be prohibited. A footnote can be added to accommodate any supplementary regulations the Commission believes should be implemented.

RETAIL USES	R-1 thru R-7	B-1	B-2	B-3	B-4	B-5	ORI	M-1	MU-1
Tobacco Store	X	X	S ^x	S ^x	X	X	X	X	X
Accessory Tobacco Sales	X	A	A	A	A	A	X	X	X

^x: Maximum of one (1) Tobacco Store per zoning lot. Must comply with other Village regulations of tobacco and nicotine related products and dealers as outlined in Chapter 120 and Chapter 124.

Legacy Code Use Chart

The Legacy Code prohibits “Retail sales of tobacco, hookah, cigarette, cigar, e-cigarette, and vapor products as a principal use”, and provides a Special Use for “Cigar lounge as a principal use (with or without retail sales as an accessory use”. Staff proposes to change the language to identify Tobacco Stores. Staff notes that the lounge use is currently limited to cigars. Staff does not propose to expand the lounge use beyond cigars to include hookahs or vaping, but the Village may consider it.

Legacy Code Use	Legacy Code Allowance
Tobacco Store	Prohibited
Cigar lounge as a principal use (with or without retail sales as an accessory)	Special Use

Open items for Discussion

Open Item #3: Discuss proposed allowances to permit Accessory Tobacco Sales, require Special Use for Tobacco Stores in the B-2 and B-3 zoning districts, and prohibit Tobacco Stores elsewhere, including the Legacy District. Discuss any other recommended supplementary requirements.

Open Item #4: Discuss if a maximum of one Tobacco Store per zoning lot is preferred.

Open Item #5: Discuss if a minimum distance between Tobacco Stores is preferred or else left open to consider as part of the Special Use review process. If preferred, discuss the method of measurement to determine distances.

Nonconforming Uses

Existing primary businesses selling tobacco and nicotine-related products will be affected by this proposal. If they become nonconforming upon the adoption of the ordinance, they would be subject to Section VI “Nonconforming Uses” of the Zoning Ordinance. This section will allow any existing businesses to continue operation as they exist and further are permitted to seek a Special Use to come into conformance with code requirements. However, the requirements for a special use and any other supplementary regulations will need to be met by any future businesses. Additionally, any sale or transfer of the business to a different owner would require the business to come into conformance with the current regulations, including obtaining a Special Use Permit. Staff does not propose any unique grandfathering clause nor changes to the nonconforming use allowances. In certain instances, this would mean the eventual elimination of the use if located in a way that does not permit a new owner to obtain a Special Use. Staff plans on notifying existing businesses of any changes so they are aware of any new requirements going forward.

WORKSHOP FOLLOW-UP

Commissioners discussed the proposed definitions and restrictions. Commissioners noted that this amendment is in contrast to Village cannabis regulations which were originally restrictive but recently opened up. Commissioners asked what the rationale is for this consideration, and what public good is being advanced and/or protected.

Staff clarified that this topic was raised by the Village Board for discussion at the September 7th Committee of the Whole meeting. Many communities define tobacco as a zoning use, and that limiting the use helps address it from a public health concern. Staff also noted there has been some business feedback questioning as to why so many tobacco shops can be in one area. The Village does not have any tobacco-related zoning definitions or regulations, nor specific tobacco business licensing limitations. The Village's Chapter 120 "Comprehensive Regulation of Tobacco Products" was most recently amended in 2019 as Ordinance 2019-O-038. The Village's recently approved "Adult-Use Cannabis Dispensaries" zoning text amendment (Ordinance 2021-O-054) did loosen regulations, however still remains still very highly regulated. The currently proposed tobacco and nicotine related retail use regulations will still be much looser than the current adult-use cannabis regulations.

Overall, the Commissioners felt the proposed definitions look clear and well-stated. They have logical exclusions such as marijuana and cessation products, align with Chapter 120's percentages, and have a basis in state statute. A Commissioner questioned if there is a fundamental need at all for this amendment, but also commented that based on Village Board direction and interest, the restrictions seem reasonable. The Commissioner noted Village Board could have direction based on consistency in regulations or for a public health statement.

Business performance was also discussed. One Commissioner opined if a tobacco business is otherwise conforming to the Village Ordinances, licensing, being clean, and is in a clustering which they find profitable, then he did not see an overwhelming need to step in and overregulate. Another member noted if this is a one stop shop and business is good, and there's no empty units, then that is a good thing.

Commissioners also discussed neighboring communities. One member commented on the consideration of whether the Village wishes to regulate comparatively to nearby municipalities either in a similar manner for consistency in regulations, or choose to differentiate in order to draw business in.

Nearby Communities

Currently, the surrounding municipalities regulate tobacco and nicotine-related uses via zoning and or licensing regulations, with Village of Orland Park and Village of Frankfort considerably more restrictive than the Village's current regulations (*see attachment*). Other neighboring communities like Mokena, Oak Forest, and New Lenox also have zoning use regulations that are more restrictive than Tinley Park's current ordinance. Thus, the result of all neighboring towns having stricter regulations is that more tobacco store businesses have located in Tinley Park and have concentrated in certain areas (Will County/183rd St. & 80th Ave.) and neighboring corridors (159th Street with Orland Park). Having a high concentration of this type of business is a public health concern and also can affect the quality of other businesses within multi-tenant properties.

In addition to minimum distances previously discussed, Village of Orland Park's licensing regulations adopted earlier this year include a maximum cap of 24 Accessory Tobacco Sales licenses and 12 Tobacco Store licenses. Their additional specific regulations stipulate that no signage or business identifying markers or storefront can face certain institutions if the minimum distance is due to public right-of-way width. Additionally, their method of measurement is from property lines of the lots or parcels. The Village of Frankfort has a special use requirement and increased minimum distances (2,000 ft from other tobacco stores and 1,000 ft from certain institutions, but also considers more facilities as "certain institutions". "Certain institutions" in both Frankfort and Orland Park's regulations include schools, child care facilities, a business providing education or recreational programs to those under 18 or 21, libraries, playgrounds, recreational facilities, parks, youth-oriented facilities, and any facility in which 25% or more persons are under age 21 or if there are products or services for those under 21. Village of Frankfort only allows up to 9 Accessory Tobacco Sales and 1 Tobacco Store. They also have more restrictive definition thresholds distinguishing between

Tobacco Stores versus Accessory Tobacco Sales (more than 10% gross revenue or more than 10% gross floor area and which sale of other products is merely incidental).

Existing Uses and Distance Requirements

Commissioners also considered existing tobacco business conformity. Existing businesses would be allowed to continue while under the same ownership prior to adoption of the amendment. Existing businesses do not need to apply to complete any process to continue operation. However, per section X.J.6. of the Zoning Ordinance, Special Uses run with a specific business and not with the land. If the business transfers ownership, they would need to seek a Special Use approval at that time.

Under the proposed amendment of Special Use is a requirement to only permit a maximum of one per zoning lot, If there is an existing Special Use or tobacco store on a zoning lot, then a new business would not be able to apply for another Special Use in that zoning lot. This will avoid high concentrations of tobacco stores in one shopping center or building in the future. Staff also noted that distance requirements from tobacco stores or other uses, while present in other communities, is not currently proposed as a regulation. However, these distances may be a point of consideration in the Special Use review process depending on the context. There may be other tobacco stores, churches, schools, or other sensitive uses nearby. Having Special Use standards can help analyze the surrounding conditions and how the proposed use would impact the area.

MOTION TO CONSIDER

If the Plan Commission wishes to act on the proposed Text Amendment, the appropriate wording of the motion is listed below:

“...make a motion to recommend the Village Board amend various sections of the Zoning Ordinance to as described in the November 18, 2021 Staff Report and drafted ordinance amending Section II.B. (Definitions), Section V.B. Schedule 1 (Schedule of Permitted Uses – By Use Type), and Section XII, Section 3.A, Table 3.A.2. (Legacy Code - Prohibited Uses) by defining and regulating tobacco and nicotine related retail uses to allow Tobacco Stores as a Special Use in the B-2 (Community Shopping) and B-3 (General Business & Commercial) zoning districts with a maximum of one per zoning lot, and to allow Accessory Tobacco Sales as a permitted use in the B-1 (Neighborhood Shopping), B-2 (Community Shopping), B-3 (General Business & Commercial), B-4 (Office and Service Business), and B-5 (Automotive Service Business) zoning districts.”

ATTACHMENTS

	Description	Prepared By
1	List of Tobacco Dealers with Business License	Village Staff
2	Tobacco/Nicotine Neighboring Communities Comparison	Village Staff