CITY OF WINTER PARK  
PLANNING AND ZONING BOARD  

Staff Report  
November 6, 2012  

REQUEST OF THE WINTER PARK YMCA TO: AMEND THE  
"COMPREHENSIVE PLAN" FUTURE LAND USE MAP SO AS CHANGE THE  
EXISTING DESIGNATION OF SINGLE FAMILY RESIDENTIAL TO  
INSTITUTIONAL ON THE PROPERTIES AT 1751 AND 1761 PALMER AVENUE.  

REQUEST OF THE WINTER PARK YMCA TO: AMEND THE OFFICIAL  
ZONING MAP SO AS CHANGE THE EXISTING ZONING DESIGNATION OF  
SINGLE FAMILY RESIDENTIAL (R-1A) DISTRICT TO PUBLIC, QUASI-PUBLIC  
(PQP) DISTRICT ON THE PROPERTIES AT 1751 AND 1761 PALMER AVENUE.  

REQUEST OF THE WINTER PARK YMCA FOR: CONDITIONAL USE  
APPROVAL TO CONSTRUCT AN ADDITIONAL ZERO DEPTH CHILDREN’S  
SWIMMING POOL AND TO EXPAND THE EXISTING YMCA PARKING LOT  
ONTO THE PROPERTIES AT 1751 AND 1761 PALMER AVENUE.  

This item is a request by the Winter Park YMCA for:  

1. Comprehensive Plan and Zoning Map Amendments to change from Single  
Family (R-1A) to Public Quasi-Public (PQP) and Future Land Use from Single  
Family Residential to Institutional on the properties located at 1751 and 1761  
Palmer Avenue to allow the expansion of the existing YMCA for a new zero  
depth swimming pool and parking lot onto those two properties.  

2. Conditional Use approval to add an additional zero-depth children’s pool and  
parking lot onto the expanded property.  

YMCA Proposal:  

The Winter Park YMCA has submitted their proposed site plans and architectural  
elevation drawings for these expansion requests. In terms of code compliance, the  
project would meet the setbacks, floor area ratio and other development standards for  
the PQP zoning (if approved). The existing YMCA is 33,450 square feet in size. The  
YMCA now has about 139 parking spaces.  

The YMCA owns and has owned since the 1960’s, the 35 feet of property south of the  
existing south wall of their swimming pool which appears to be visually part of the  
backyards of the two homes at 1751/1761 Palmer Avenue. No one knows for sure, why  
in 1967, the YMCA built their existing swimming pool privacy wall 35 feet from their  
property line. Perhaps it was to save the large oak tree in that area.
The proposed new swimming pool utilizes that 35 feet and about 20 more feet of the residential lots at 1751/1761 Palmer Avenue. Staff has requested that the YMCA submittal outline their perceived need for this new facility, however nothing has been provided. You will note on the site plan that the design preserves the existing large oak tree as an amenity for the combined swimming pool facilities. The balance of the residential lots are proposed for use as the expanded parking lot. Again, staff has requested that the YMCA submittal outline their perceived need for this parking but nothing has been provided. The plans would continue the buffer wall and landscape program that presently exists along Palmer Avenue, as a buffer for that expanded parking.

Background and Recent History:

The YMCA was approved for a major expansion in 1996. It was a very similar scenario of neighborhood opposition contrasted with the benefits to the citizenry that the YMCA provides. There was considerable discussion about the adequacy of parking, effect on the neighborhood, plans for any future expansions, etc.

On October 22, 1996 the City Commission approved the YMCA expansion which was conditioned upon and contingent upon the YMCA providing amongst other things a Development Agreement that: 1) There will be no further acquisition of property in the immediate area for expansion purposes; 2) There will be no further expansion of the building; and that 3) No second outdoor pool was to be constructed.

Pursuant to that approval a “Developer’s Agreement” was executed by the YMCA on January 7, 1997 and the agreement was recorded in the public records. One purpose of the “Developer’s Agreement” was to incorporate the ‘promises’ that were made at that time by the YMCA officials that there would not be any further expansions to the YMCA building (beyond what was approved in 1996) and no further expansions to their Property.

In March 2008, the YMCA purchased the two adjoining single family residential properties at 1751 and 1761 Palmer Avenue. This was done in violation of the “Developer’s Agreement” wherein the YMCA committed “not to acquire additional property adjacent to the YMCA for expansion purposes”.

In September 2009, the YMCA asked for these same approvals that are on this agenda now for the parking lot and swimming pool expansions. They also asked for approval to expand the locker rooms (3,115 sq. ft. expansion) which had been part of the 1996 approval but had not been constructed.

In September 2009, the locker room expansion was approved since it was part of the 1996 approvals. However, the parking lot and swimming pool expansions were recommended for denial by the Planning and Zoning Board (4-1 for denial on the swimming pool and 5-0 for denial on the parking lot). Based on those
recommendations for denial, the swimming pool and parking lot expansions were withdrawn and not voted on by the City Commission. (See minutes attached) At this time, the YMCA is making the same requests for the children's zero depth swimming pool and parking lot expansion.

Staff understands the opinion that the Development Agreement 'promise' should preclude the YMCA from asking for these expansions. However, it is not uncommon for property owners to ask the City to revisit Development Agreements and to revisit or reconsider terms of those Development Agreements. The City has revised and amended Development Agreements with Sydgan Corp. and for the Langford/Regent/JW Marriott/Alfond Inn hotel project. It is totally within the discretion of the City Commission, following a recommendation from the Planning Board, whether to entertain such a request.

Typically property owners do not violate and breach the terms of a Developer's Agreement prior to asking the City for reconsideration of the terms. The proper procedure for the YMCA in March 2008 was to put these two properties under contract contingent upon a due diligence period to obtain the City's approval. Instead the YMCA purchased the two properties with no notice to the City in violation of the Development Agreement. That is the major difference in this case versus the other scenarios outlined above.

The 1997 Development Agreement:

Development Agreements that are entered into as part of Conditional Use (Zoning – Article III) approvals, as was the case in 1996, are governed by the Conditional Use text part of the Zoning Code (Section 58-90). They are not governed by the part of the Comprehensive Plan – Article I text that deals with agreements entered into for State of Florida consents to make Comprehensive plan changes (Section 58-7). This has been discussed in detail with the YMCA representatives and the applicable code sections provided. None the less, the submittal by the YMCA makes the claim that the YMCA Development Agreement has expired after 10 years. The City Attorney as well has confirmed that this claim is erroneous.

Overview of the Opposition:

The planning staff has heard from many neighbors about this request just as we did in 1996 and in 2009. The problem for most of the neighbors in opposition (see the 15 letters submitted) is the question “When does the expansion of the YMCA ever stop?” In 1997 the City had a “Developer's Agreement” contract providing an answer to that question but that contract has not been honored by the YMCA. Now 15 years later the questions is still what future expansions are planned. The YMCA at this time is making no representations or promises that there will not be further expansions proposed. Thus, the neighbors ask “what is next ?”
Staff Analysis:

Swimming Pool Expansion: A new children’s zero depth swimming pool was part of the YMCA request in 1996 and 2009. The current proposal is for the same location as was proposed in 2009. The YMCA desires to revisit that request for a new zero-depth children’s pool because they believe it is critical to the mission of the Winter Park YMCA Family Center. There are many comparisons of the YMCA to a Bally’s or LA Fitness, which in many respects are accurate. However, one thing the YMCA does very well is their focus on swimming lessons for children or as they now refer to it as “drown-proofing” children. This then becomes another premier facility for swimming lessons and children’s swim recreation.

The current YMCA swimming pool is inadequate for use by small children. The shallow part of the pool is three feet deep and not conducive for small children. In addition, two-thirds of the swimming pool is typically used for lap swimming by adults. Small children have just one small corner of the swimming pool to use. That is what the zero depth children’s swimming pool will address. While there are other swimming pool options for small children and other options for swim lessons available this is a service the YMCA wants to offer and augment at this location.

The swimming pool facilities may add to the membership and use of the YMCA but that in and of itself does not seem to be a reason for denial, as long as there are minimal impacts to the surrounding neighborhood. Those impacts come in two forms, traffic and noise. In terms of traffic volume, any increase in traffic is tempered by the parking that is available.

The noise impact could be a concern. Adjacent to the new proposed children’s swimming pool is a vacant single family lot at 1741 Palmer Avenue and that property. It is staff’s understanding that the owner supports the new swimming pool and is not concerned with the noise from this facility but staff has not heard that directly or via email from the owner.

Parking Lot Expansion: This is the difficult part of the YMCA’s application given the Development Agreement commitments made in 1997. The parking lot expansion would add 40 additional parking spaces. It would be screened with the same type of wall and landscaping treatment that successfully screens the existing parking lot. That buffer wall and landscaping has become the ‘template’ upon which the city has not codified in the Land Development Code as the method to successfully buffer and screen parking from the view of adjacent residential neighbors. The parking lot expansion is proposed for the convenience of the existing membership but one cannot say that it would not also function as an amenity to increase membership.
Staff Recommendation:

The Planning Commission has three options:
1. Approve the entire request as submitted, or
2. Deny the entire request, or
3. Approve a portion of the request.

The Planning Staff is recommending APPROVAL of the new zero depth swimming pool because it would involve a minor diminimus rezoning of 20 feet of the rear yards of the 1751/1761 Palmer Avenue properties. The staff has prepared a graphic (attached) that shows how minimal this change would be and it still leaves ample land for the 1751/1761 Palmer Avenue properties to be used for one or two new houses under the single family land use and zoning. To the staff, providing the ability of the YMCA to provide better recreational opportunities for small children and a much enhanced swimming lesson environment trumps the minor diminimus zoning change. To the staff, the intent of the 1997 Development Agreement was not to control the rear 20 feet of these backyards but to control the primary use of these properties to be residential versus institutional.

The Planning Staff has difficulty with the parking lot component in two conflicting respects. First, the staff has difficulty providing any measurable negative impacts as to how this would be a significant negative effect upon the adjoining residential community. The proposed screen wall and landscaping is the template and example that the City uses to show how to successfully integrate a parking lot into a residential neighborhood. The wall and landscape buffer must successfully accomplish the intent because there are two new single family homes under construction directly across the street, another one ready to start right next door and others that has been significantly renovated. However, on the opposite side, the planning staff is faced with the same predicament as was faced in 2009. There is a 1997 Development Agreement contract that prohibits this approval. There is no alternate Development Agreement or Amendment that has been provided by the YMCA to consider that would be the basis for action. There are no representations of what the future plans are for the YMCA. What is the Master Plan for the YMCA? There has been no rationale presented for why the parking is needed. Absent that, the staff can’t recommend an approval that breaches and violates the Development Agreement without any amending document.

(As a matter of disclosure, the Planning Director, Jeff Briggs has been a member of Winter Park YMCA since 1995)
Parcel ID: 302205396800110
This map is for reference only and is not a survey.


October 31, 2012

VIA ELECTRONIC MAIL

Mr. Jeffrey Briggs
Planning Director
City of Winter Park
Planning Department
401 Park Avenue, South
Winter Park, Florida 32789

Re: YMCA Expansion Planning Materials

Dear Jeff,

Pursuant to our recent discussions, I am submitting some preliminary materials for inclusion in your materials that will go out from the planning department to the P&Z members to prepare for the meeting Tuesday, November 6, 2012 at 7:00 p.m.

As you can see below, this is largely a perspective on how we got to this point and what the YMCA of Central Florida (herein, the “Y”) is proposing for the Winter Park YMCA Family Center to continue to enhance its community service mission.

In general, two themes have arisen in my discussions with the community, the planning department and members of the Planning and Zoning and City Commissions: (1) the Y needs to approach this request with a degree of humility and acknowledgement that its past actions have not been in keeping with the community’s perception of how the Y should have proceeded in keeping with its promises concerning the 1997 Developer’s Agreement with the City and otherwise in a manner to promote community harmony and, (2) how this request somehow provides further assurance of limits on the Y’s ability to further expand and how this proposal is “different.” Each will be addressed below.

First, however, a brief history of the Y’s interaction with the City and community are in order.

HISTORY

The Y has been an integral part of the Winter Park community since its initial building campaign to build the downtown Orlando and the Winter Park facilities which raised $921,097 in 1965, a staggering sum in 1965 dollars and indicative of the community’s need for such facilities. Daniel Hunter (a YMCA director from 1962-66 who later became a city commissioner and later mayor in 1968) secured the present site after sites at Showalter Field and a site in Maitland on Horatio Avenue were rejected. The property was purchased, it was not a gift.
Groundbreaking for the current Winter Park YMCA Family Center was held on November 4, 1966. First named the Northeast Branch, it was originally 14,000 square feet and was constructed at a cost of $300,000. It opened and was formally dedicated in 1967.

It was not until 10 years later, in 1976, that the Y asked the City for consent to rezone 5 houses it had purchased on the north side of Palmer with a grant from the Edyth Bush Charitable Foundation. The plan was to use three of the houses for programs, raise the fourth house to add 45 parking spaces and use the fifth house as a caretaker's home. The neighbors objected and the commission approved the use of just three houses for programs.

It was not until some 12 years later in 1988 that Winter Park developed a $450,000 expansion plan to add 6,500 square feet of space to the facility.

Another decade goes by and, pursuant to the plans leading up to the 1997 Developer's Agreement, in 1998, a $2.5 million expansion led by Diane Thornton and Mary Rumberger added a wellness center, child watch area and a youth recreation room. Notably, although the original plans approved by the City and that became a part of the Developer's Agreement included expanded locker room facilities, it was not until some 12 years later, in 2010, after public notice and hearing of a revised proposal, that those facilities were added.

In 2010, a $2.9 million renovation, added a 3100 square feet women's locker room, spin room, lounge/clapel, hallways and renovated the existing men's locker room space and moved the front desk. Sought, but not granted, in this request was the addition of the zero-depth pool and additional parking along Palmer Avenue, the sole subjects of this request.

How have these facilities been used? Just a sample:

- The Y's membership includes 34% of the entire population of the City of Winter Park, an extraordinary number when the average community penetration of such facilities is only 12 – 14%
- Usage of the facility — over 6 million visits since 1997
- Scholarship dollars raised since 1997 - $2.2 million
- Subsidy provided since 2004 - $1.3 million
- Moreover, the Y has managed the Cady Way Pool, a City owned asset, for many years saving the city tens, if not hundreds, of thousands of dollars.
- Have provided free swim lessons and open swim for the residents of the town of Eatonville for the past 4 years
- Collaborated with Orange County Sports to offer 5 weeks of day camp for children with autism
Thus, contrary to what seems to be the popular impression of wild and unbridled expansion, in its soon-to-be 50 years in this location, the Y has only expanded 4 times, and each time, as here, such expansions were done to serve the needs of the community. The location of the Y is part of the total package that makes Winter Park unique: the placement of various recreational facilities, both public and private, throughout the city in its residential neighborhoods to provide opportunities for more than a passive park experience (Racquet Club, Interlachen Country Club, Azalea Lane tennis center, Mead Gardens, etc.) in all areas of the city.

The Y is thankful to have the opportunity to serve this community and be a part of its fabric. It is approaching this request with sincere humility and sees it as a request in every sense of the word. The Y has demonstrated that gratitude in its contributions to the community and the current effort to partner with the City to renovate and overhaul another community asset, the Cady Way pool.

I cannot speak to what happened years ago, but can only say I am sorry that there has been so much consternation over this and that the past actions of the Y have not done much to assuage peoples' hurt feelings or perception that they do not have a voice. With this request though, the Winter Park Y is doing everything it can to address those concerns. It would be short-sighted to punish the broader community (as of the writing of this letter, over 850 people have signed a petition in support of the expansion) because of hard feelings over past events.

**The Developer's Agreement**

The January 7, 1997 Developer's Agreement was the culmination of the City's October 22, 1996 approval of the Y's request for a Conditional Use Permit for what became the 1998 expansion of the facilities described above. (Exhibit "A") Simple in its size and verbiage, it has nonetheless become the touchstone of the opposition to the current expansion request.

Two promises of the Y have caused the most concern: that it obligated itself to not purchase adjacent properties for expansion nor expand the building beyond that contemplated in the application and approved in the conditional use permit.

The Y proceeded, in 2008, to purchase two properties at 1751 and 1761 Palmer Avenue. These are the properties sought to be used now, and that were sought to be used in the 2009 request, for additional parking in the southwest corner of the properties owned by the Y. Since its construction, the Y had always owned the back 35 feet of these lots and indeed owned them outright prior to 1977. Thus, the Y was always the natural purchaser of these lots and, when notified the lots were for sale, saw that there was going to be future need for expansion and took the opportunity as it arose to purchase them. They did not seek City approval. Had they sought such approval, it is very likely the price would have become far more onerous, as the opportunity to purchase these lots would have been open to all, thus likely driving up the price.
Additionally, the Agreement itself expired by 2008. Under the City of Winter Park Code of Ordinances, at Section 58-7(d), Development Agreements such as this expire after ten years:

(d) Duration of development agreement.

The duration of any development agreement entered into by and between the city and any person pursuant to the provisions of this section shall not exceed ten years. However, the term of any development agreement may be extended by mutual consent of the city commission and any party thereto subject to public hearings held in accordance with the provisions of subsection (b) above.

Why? For the same reasons a current City Commission cannot bind future City Commissions to certain actions. There is no fathomable way one can look into the future and know the needs of the City 5 years, 10 years or, as in this case, 15 years down the road. It also prevents political wrangling of one side or the other to lock the City and its residents into permanent agreements where circumstances may change.

Finally, it limits the ability of the City and its partners to make short-sighted decisions that forever bind future generations when circumstances change and merit change to those agreements. The Y's promises were made, there is no walking away from that. However, not one of us can say we have not made commitments that at the time seemed to be good ones (or that we were forced into making) that, on further reflection and changed circumstances, simply no longer make sense for the good of ourselves or others. To now use a 15-year-old agreement as the basis for failing to consider what changes need to be made now for the good of the community would be further short-sighted thinking.

Certainly, there may be argument that Section 58-90 of the Code may apply. However, that section only deals with whether development agreements pursuant to conditional use approvals must meet the requirements of Section 58-7:

(i) (1) Development agreements.

The approval of conditional uses may require the utilization of a development agreement. The development agreement incorporates the plan submissions, written application materials and verbal representations of the applicant as well as including any special conditions and restrictions imposed by the city commission, upon which the approval may be based. A development agreement may be approved by the city commission coincident with the final approval of the conditional use or may be executed at a later time. Unless specified in the development agreement, development agreements utilized pursuant to conditional use approvals do not have to conform to the
requirements of F.S. § 163.3221 et seq., or section 58-7 of the Land Development Code. Development agreements shall be prepared by the City of Winter Park pursuant to the terms and conditions outlined by the planning and zoning commission and the city commission or development agreements may be prepared by the applicant subject to review and approval by the city attorney. Applicants shall be required to reimburse the city for actual city staff and city attorney expenses. Development agreements provided as part of the submissions for a final approval shall be reviewed and approved by the planning commission.

However, the requirements of Section 58-7 have nothing to do with the duration of such agreements; indeed, it is a wholly separate subsection, (c):

(c) Requirements of development agreement.

A development agreement shall include the following:

1. A legal description of the land subject to the agreement and the names of its legal and equitable owners;
2. The duration of the agreement;
3. The development uses permitted on the land, including population densities, building intensities and height;
4. A description of public facilities that will service the development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development;
5. A description of any reservation or dedication of land for public purposes;
6. A description of all local development permits approved or needed to be approved for the development of the land;
7. A finding that the development permitted or proposed is consistent with the city's comprehensive plan and land development regulations;
8. A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the city for the public health, safety, or welfare of its citizens; and
9. A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing such permitting requirements, conditions, terms, or restrictions.

Nothing regarding the requirements affects the duration of such agreements. This agreement, like all others, expired at the 10 year point, January 7, 2007.
Nonetheless, the Y has abided by every other condition of the Agreement. It was obligated not to expand the building further. Not only did it not do so, it did not even expand to the limits permitted under the Agreement. It did not expand the locker rooms even though permitted to do so under the 1997 conditional use permit. It sought no further expansion until it sought City approval in 2009 to confirm the additional locker room space approval and add the pool and parking that are again sought here.

The 1997 development agreement contained promises that, in the long run, were short-sighted on the part of both parties. It came at a time of controversy and was not the best solution for either entity. As has actually been the case, the City has, in the past, needed the Y to assist in the City's health initiatives and support its programs; the Cady Way Pool is a perfect example. Say those requests had required the Y to expand to accommodate the City's perceived need in the community. The agreement would certainly not be an impediment at that point (similar to the changes to past Developer's Agreements regarding Sydgan and the JW Marriott at the Langford location as just a few examples) and it should not be now. Y membership in this location is 34% of the residents, more than double the typical penetration of 12-14%. Additionally, although the Y had the right to expand the locker room at that time of the Agreement, it did not, demonstrating that it is not simply trying to grow just to grow.

**Further Assurances**

What is different now? Not that anything has to be; however, the scope of the community's need has changed. Audobon Park and Lake Mont Elementary Schools have seen unprecedented growth. The new Brookshire Elementary is under construction, not because the population is getting smaller, but because the population that is in the area containing one of the core group of Y users is growing.

And the population is growing not only in numbers, but in size and age. The new facilities will benefit the influx of young and old that we have seen in the community and will be an additional weapon in the fight against what is now recognized as a chronic obesity epidemic in our children.

How practically is the proposal different:

a. The fear of a continued ability to expand further on Palmer is eliminated. The property just west of the 2 properties owned by the Y has recently been purchased and a modern and luxurious home is being built on it. The people who own this lot, and the ones most affected by it, whole-heartedly support the expansion. *(Exhibit “B”)*

b. To offer further assurance, the Y is willing to grant the City an easement in the boundary between its property and the adjoining Schmaltz property on Palmer for 15 years, subject to continuance upon agreement of the City and the Y. This will
completely surround the Y with City-owned property, thus eliminating entirely the ability to expand further in any direction. While not "new" or different, there seems to be some unfounded concern that the Y can expand into the Pine Avenue properties. As shown on Exhibit "C", that is simply not possible.

c. Also, in support of the broader community mission, the Y will contribute what it is now paying in property taxes on the 2 residential properties into the Cady Way Pool project over the next 10 years, adding over $70,000.00 to this project fund.

d. The Y will hold quarterly community outreach meetings at the Y to address any citizen or city concerns.

The Y needs the additional parking and the pool. Not only the Y, but the community as a whole. Except for a few vocal opponents (many of whom do not even live in the immediate vicinity of the Y) there is broad universal support for the proposal, led largely by those 34% of community members who are also members of the Y and who will be the first to reap the benefits of these enhanced facilities.

I appreciate your support for this request.

Sincerely,

Frank A. Hamner

FAH/aew

Enelosure
DEVELOPER'S AGREEMENT

This agreement made this 7th day of January, 1998, by and between THE CITY OF WINTER PARK, a Florida municipal corporation ("City"), and the CENTRAL FLORIDA YOUNG MEN'S CHRISTIAN ASSOCIATION, a Florida not-for-profit corporation ("Owner").

RECITALS:

WHEREAS, Owner warrants that it is the owner of that certain land situated in Orange County, Florida comprising 3.2 acres, more or less, being more particularly described in Exhibit "A" hereto, said land to be hereinafter sometimes referred to as the "Property" on which Owner operates the Winter Park Family YMCA; and

WHEREAS, Owner applied to the City for a Conditional Use Permit (the "Permit") to allow it to further improve the Property as described in the application (the "Application"), and

WHEREAS, on October 22, 1996, the City approved the Application for the Permit with the exception of the request to build a teaching pool, and

WHEREAS, said approval was conditioned upon the Owner's agreement to abide by certain terms and covenants, and

WHEREAS, it is the purpose of this agreement to set forth clearly the understanding and agreement of the parties with respect to all the foregoing matters.

NOW, THEREFORE, the parties agree as follows:

1. The recitals above are true and correct.

2. Owner will not acquire additional property in the City of Winter Park adjacent to the Property for expansion purposes.
3. There will be no further expansion of the building on the property after the expansion contemplated by the Application and Permit.

4. All new landscaping and walls will be maintained in their original condition, normal wear and tear excepted.

5. Construction of the parking lot and landscaping (Alternate B in the Application) will be completed without interruption prior to the commencement of expansion of the building.

6. Operation of the outdoor pool will be restricted as provided by the Permit.

7. Wheel stops will be placed on all parking spaces that immediately adjoin landscaped areas.

8. Owner, upon the execution of this agreement, shall pay to the City the cost of recording this agreement in the public records of Orange County, Florida.

THIS AGREEMENT shall be binding upon and shall inure to the benefit of the successors or assigns of the parties and shall run with the property and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the Property.

IF ANY SENTENCE, phrase, paragraph, provision or portion of this agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate and distinct and such holding shall not affect the validity of the remaining portion hereof.
IN WITNESS WHEREOF, the parties have caused these presents to be signed all as of the date and year first above written.

CITY OF WINTER PARK,
a municipal corporation

By: _____________________________
    Print Name: MARY A. BREWER
    Title: Mayor, City of Winter Park

(CITY SEAL)

ATTORNEY:

Joyce M. Swain
Print Name: Joyce M. Swain
Title: City Clerk

Approved as to form and legality.

City Attorney,
City of Winter Park

Date: December 16, 1996.

Signed, sealed and delivered in the presence of:

Jerry M. Herman
David B. Hollowell
Print Name: James W. Ferrero
Print Name: David B. Hollowell
Title: President, Central Florida YMCA

CENTRAL FLORIDA YOUNG MEN'S
CHRISTIAN ASSOCIATION,
a Florida not-for-profit corporation

By: _____________________________
    Print Name: JAMES W. FERREREA
    Title: President, Central Florida YMCA
October 5, 2012

Brian McGratty
Winter Park Family Center Board Chair
1201 N Lakemont Avenue
Winter Park, Fl. 32792

Dear Mr. McGratty,

My wife and I recently purchased 1741 Palmer Avenue, adjacent to Phelps Park and the Lakemont YMCA. In addition, we own and live at 1570 Palmer, just up the street on the other side of Phelps Avenue. We were both very influenced by both lots’ proximity to these extraordinary recreational facilities, which we consider to greatly enhance the quality of life for Winter Park residents.

We would like to express our very strong support for any and all Lakemont Avenue YMCA enhancement plans presented by Executive Director Bud Oliver. This facility is clearly very popular, and we feel that accommodating this demand to the fullest extent possible is enormously beneficial to the health and welfare of our community, and, as the closest (and likely most impacted) neighbor, we do not see the enhancements as having a negative impact to us or the surrounding properties.

We will attend any public reviews and community meetings concerning this situation to further convey our support, and welcome any suggestions you may have.

Kindest regards,

[Signature]

Martin Schmaltz

Cc Bud Oliver
This map is for reference only and is not a survey.

Created on 10/30/2012, Copyright 2007. Orange County Property Appraiser.

http://paaregis.ocpfl.org/Webmap3/Print_Map_Only.aspx?&pin=ba7571da4b4

10/30/2012
Applicant: YMCA
Address: 1201 N. Lakemont Ave.
         Winter Park, FL

Owner: Same
Address:

This is to advise that on October 22, 1996, the City Commission of Winter Park granted your request for a conditional use to allow:

CU 1:96 Request of the Winter Park Y.M.C.A. for Conditional Use approval to expand their building facilities at 1201 N. Lakemont Avenue with an addition of 7,610 square feet onto the existing 25,840 square-foot building and an expansion of their parking area adjacent to Palmer Avenue to provide 34 additional paved parking spaces.

This approval is subject to the following condition(s):

contingent upon the YMCA providing a written agreement, subject to review and approval by the City Attorney, specifying that: 1) There will be no further acquisition of property in the immediate area for expansion purposes; 2) There will be no further expansion of the building; 3) All new landscaping and walls will be maintained in their original condition with allowance for normal wear and tear; 4) Construction of the parking lot and landscaping will be completed, without interruption, prior to the commencement of expansion of the building; 5) Operation of the outdoor pools will be restricted to 7:30 a.m. to 7:30 p.m.; 6) Wheel stops will be placed on all parking spaces that immediately adjoin landscaped area; and 7) No second outdoor pool to be constructed.

VIOLATION OF THESE CONDITION(S) SHALL BE GROUNDS FOR REVOKING THIS PERMIT

This permit shall become invalid 12 months following the date of approval unless the subject property is being used for the conditional use requested. The above approval is also subject to Section 31-24.6, Par. 2 of the Zoning Regulations of the City of Winter Park which states:

"Should a conditional use be discontinued or abandoned, inactive for a period of six (6) consecutive months, or violate any of the requirements or restrictions of record, then the use shall no longer be permitted and the structure, or structures and premises in combination, shall only be used in conformity with the regulations of the district in which it is located."

Jeffrey Briggs
City Planner
Hi,

I live at 1701 Palmer Avenue and my house backs up to Phelps Park. I know some of my neighbors are AGAINST the amendment of the YMCS Comprehensive plan BUT I am in favor of it. I am tired of seeing those two empty, unattractive houses when I could be seeing a nice wall and good landscaping. The Y has always maintained a lovely appearance that enhances our neighborhood.

I doubt I can make the meeting on 11/6 but I wanted my voice heard.

So I say YES to the YMCA ...

Thanks!

Joann Marks
Cosmetic Promotions, CEO

888-644-9916
Fax: 407-644-9189

"Some cause happiness wherever they go; others, whenever they go." Oscar Wilde

Click here to see our 10 finalists - voting opens on 10/15
http://www.glamcamp.com/model-search/

Check out our website: www.cosmeticpromotions.com
Thinking of doing some demo's? Compare us to other agencies: http://blog.cosproagency.com/2010/06/21/choosing-your-model/
We are WBENC Certified: www.wbenc.org
City of Winter Park Planning and Zoning
401 South Park Avenue
Winter Park, Florida 32789

Regarding: Request to Expand the Winter Park YMCA

I would like you to carefully consider the YMCA expansion that is currently being proposed. This is the second attempt for the YMCA to repurpose the property at 1751 and 1761 Palmer Avenue. I find this request completely inappropriate and offensive to the community of Winter Park. As a property owner, I will support whatever means possible to block this action either through the Planning and Zoning Board or other Community legal action.

I have a residence on Palmer Avenue and I am very concerned about the increased traffic and noise the expansion will cause. The YMCA has a large draw outside of Winter Park and brings a lot of traffic into our area from outside the city. Winter Park has an increasing issue with traffic and the current YMCA location has certainly contributed. If you don’t believe me, you should come out on Saturday morning or any day during the morning or evening. It is interesting (and insulting) that the YMCA continues its attempts to defy their current Agreement; first by purchasing the two Palmer properties, then advertising the expansion to YMCA members in advance of their City approval in their initial request to rezone, and now resubmitting the request to rezone a second time.

I believe the YMCA has outgrown their current facility and should be required to move. Rezoning Residential Property for their financial gain is WRONG. The property should be turned over to the city and Phelps Park should be expanded. This is a much better alternative to preserving Winter Park and our outstanding neighborhood. If the YMCA truly cared about the Winter Park community and the dexterity of our neighborhood, they would donate the land to the City of Winter Park for expanded community use.

The sole purpose of the request is to rezone is for financial gain of the YMCA. The request to rezone these two properties must be denied. It is bad for the neighborhood and bad for the community of Winter Park.

Frustrated and Fed Up with the YMCA

Dan Alf

Cc: P&Z Board Members
To: Winter Park Planning and Zoning via hand delivery 10/31/12

I am absolutely opposed to any further expansion by the Winter Park YMCA. I believe that this is against the city’s Comprehensive Plan and it should be remembered that this is a residential neighborhood not commercial. Also, the extra traffic will also cause congestion to an area that is already unsafely congested. It is nearly impossible for me to exit my own driveway as it is without adding more parking. Also, I see by the plans that there is no additional entrance/exit.

I am opposed to any expansion and to any agreement to rezone the properties at 1751 and 1761 Palmer Avenue.

Sincerely,

Linda Gail Turner

1040 North Lakemont Avenue
Kay Zimmerman  
1040 N. Lakemont Ave  
Winter Park, Fl, 32792

Nov 30, 2012

Winter Park Planning & Zoning Commission  
Winter Park, Florida 32792

Dear Jeff Briggs and Planning and Zoning,

As you know, the YMCA sits in, an all residential area of Winter Park, And as you also know they are seeking approval for further expansion of the two properties directly adjacent to their existing property on Palmer Ave.  
As a resident of Winter Park and a direct neighbor of the YMCA, I strongly disagree with any future expansion of this facility.

Sincerely,

[Signature]
Winter Park Planning & Zoning Commission
401 South Park Ave
Winter Park, Florida 32792

October 30, 2012

Jeff Briggs
Director—Planning and Zoning Commission

Dear Jeff & Fellow Board Members,

In recent weeks there has been another push by the YMCA to encroach on the two properties adjacent to the YMCA. Properties which should not have been purchased in accordance with previous agreements and future development of the YMCA.

The YMCA has not abided by its cap on membership and has become a neighborhood nuisance. No where on Palmer Ave is there a parking lot, nor are there any commercial establishments. Palmer Ave is one of Winter Park’s most influential an affluent areas of this city. Removing these two properties from the tax role adds a greater tax burden to all of the existing residents of this community and reduces the property values of the existing homes in the immediate area of said “future” parking lot, and or swimming pool, if these “New” plans are approved.

Winter Park’s governing body prides themselves on initiatives for the “Preservation” of this wonderful city. Please DO NOT allow the YMCA to “swallow up” this end of Palmer Ave… for something they knew years ago, they could not have, according to the original development plans.

The YMCA has consistently shown in the past, that they hold little or no concern for their immediate neighbors. This area is a residential area and should stay that way. If the YMCA Board members feel that the existing property needs improving and or future expansion, they should look elsewhere for property that would better suit their needs. Palmer Ave is not the place.

Sincerely, a concerned resident of Winter Park.

Mark G Zimmerman

[Signature]
To: Winter Park Planning and Zoning via hand delivery 10/31/12

Dear Mr Briggs,

I would like to go on record that I oppose any expansion of the YMCA and that I further oppose any changes in zoning to the properties at 1751 & 1761 Palmer Avenue.

Traffic is already unsafe due to the traffic caused by the YMCA and I'm concerned that any more congestion could cause accidents or injuries.

Tessa Turner

1040 North Lakemont Avenue
Mr. Briggs:

This email is offered in opposition to the petition which was apparently recently submitted by the Lakemont YMCA to the City Planning and Zoning Commission. I only became aware of the request late this afternoon. As I understand it the YMCA is once again seeking approval to expand their operations. Frankly, I am shocked as it seems that my neighborhood just endured an extended process on a similar or identical request which resulted in the City’s denial.

As I testified before the City Council at the hearing on the YMCA’s last request, I have lived in Winter Park since 1964, and I have lived on Place Picardy since August of 1975. I built my current home and have lived in it since March of 1983. One of the great amenities of my community historically was Lakemont Park. Unfortunately that Park as I knew it no longer exists. The City granted use of what was previously Park property to the YMCA. The Park is now referred to as “ Phelps Park”, as the Park no longer enjoys frontage on Lakemont Avenue, and uses the Phelps Avenue name as it’s own. I did not then nor do I now agree with the City’s decision to grant what is truly a commercial use to what was intended to be a community Park. While it may be a bit late to complain about such a long standing use as a “neighborhood” YMCA, it is certainly not too late to express my opinion that an expansion of what is truly a commercial use in a residential area is totally inappropriate. I do not have the time this late evening to reiterate my testimony before the City Council which is on the City’s records. The traffic and other negative neighborhood impacts that will result from expansion are simply unacceptable. Many of the users of that YMCA I suspect are from areas not in the “neighborhood” intended by the YMCA’s original plan. As I said to the City Council, if the YMCA truly wishes to expand its operation beyond its current state, the YMCA needs to explain and justify its service to “the neighborhood”, or relocate to a more appropriate location in a commercial zone, such as Alooma Avenue.

I did not expect the YMCA to return to its expansion strategies so quickly or I would have been more prepared, but it is my intention to encourage the City Council to require the YMCA to make its records transparent. As an example, the City should know how many users they have at that location, where those users live, how much revenue is produced by that property, and where any surplus revenues are used. If the Winter Park YMCA is an “exporter” of revenue to YMCA operations not in Winter Park, our citizens should be made aware of that fact.

During the last process I performed some research related to the deeds of land transactions over the past century in the area. I have no time this evening to review those records, but my recollection is that there are original deed covenants and restrictions requiring any purchaser of residential properties in the Park area to obtain the permission of a majority of the property owners in the area for anything other than residential use. If that is indeed the case, I fully intend to join with those property owners to enforce such a provision. Any research that goes back several decades, or that relies upon interpretations of current City subdivision rules may be insufficient as the original deed covenants may be enforceable in Civil Court, so I suggest a complete and transparent vetting of the original rights granted to purchasers of property in the area.

In summary, as a result of negative impacts to the community, I am in opposition to any expansion of the YMCA operations.

Respectfully submitted,

Tom Ackert
1570 Place Picardy
Winter Park.
City of Winter Park Planning and Zoning  
401 South Park Avenue  
Winter Park, Florida 32789

Regarding: Request to Expand the Winter Park YMCA

I would like you to carefully consider the YMCA expansion that is currently being proposed. This is the second attempt for the YMCA to repurpose the property at 1751 and 1761 Palmer Avenue. I find this request completely inappropriate and offensive to the community of Winter Park. As a property owner, I will support whatever means possible to block this action either through the Planning and Zoning Board or other Community legal action.

I have a residence on Palmer Avenue and I am very concerned about the increased traffic and noise the expansion will cause. The YMCA has a large draw outside of Winter Park and brings a lot of traffic into our area from outside the city. Winter Park has an increasing issue with traffic and the current YMCA location has certainly contributed. If you don’t believe me, you should come out on Saturday morning or any day during the morning or evening. It is interesting (and insulting) that the YMCA continues its attempts to defy their current Agreement; first by purchasing the two Palmer properties, then advertising the expansion to YMCA members in advance of their City approval in their initial request to rezone, and now resubmitting the request to rezone a second time.

I believe the YMCA has outgrown their current facility and should be required to move. Rezoning Residential Property for their financial gain is WRONG. The property should be turned over to the city and Phelps Park should be expanded. This is a much better alternative to preserving Winter Park and our outstanding neighborhood. If the YMCA truly cared about the Winter Park community and the dexterity of our neighborhood, they would donate the land to the City of Winter Park for expanded community use.

The sole purpose of the request is to rezone is for financial gain of the YMCA. The request to rezone these two properties must be denied. It is bad for the neighborhood and bad for the community of Winter Park.

Frustrated and Fed Up with the YMCA

Dan Alf

Cc: P&Z Board Members
October 25, 2012

P&Z Board Members
City of Winter Park

Re: Y Proposal for Expansion

My name is Lildred Reynolds and I have lived at 1708 Pine Avenue for 47 years.

I am totally opposed to any expansion by the Winter Park Y, period. The Y is far too big now for this location. I want the Y and the City to comply with the Developer’s Agreement signed in 1996 stating no expansion of building, property, or second outdoor pool.

The only reason the expansion was permitted in 1997-98 was because of the Developer’s Agreement. That should have stopped any expansion forever more; at least that’s what Phelps Park neighbors were led to believe.

It is not fair for us neighbors to have to come before P&Z and Commission to defend our properties every few years. Enough is enough! Please help us put a stop to this constant harassment by the Winter Park Y.

Thank you very much.

Lildred Reynolds
1708 Pine Avenue

Cc: Jeff Briggs, Director
   Planning & Zoning
Subject: Winter Park YMCA – again going against the Development Agreement

We ask that you reject any requests by the YMCA ("Y") to continue expand or develop the properties they acquired in violation of the Developers Agreement dated January 1997. This was decided once, and we should not have to keep a watchful eye to ensure that the Y comply with the requirements of Developer's Agreement. As a responsible entity, they ought to simply comply with what was agreed in the Developer’s Agreement, discard their continued expansion plans on Lakemont, sell the 2 residential properties they purchased (or relinquish ownership of the properties either to the City) or, and instead go develop other property to which the Y already has access.

We do not condone or in any way encourage the behavior of the Y in its continued actions against the Developers Agreement. The Developer’s Agreement was drafted for the purpose of limiting the Y’s continued expansion – why don’t they have to comply with it? The Y is supposed to represent values, and yet the Y has already breached the Developer’s Agreement without a care and certainly without remorse.

We want you to enforce the Developer’s Agreement – we know there was no consequence for the Y breaching the Developer’s Agreement thus far, and we think that is a serious injustice. Lack of remedial action required of the Y by the City to correct the Y’s violation of the Developer’s Agreement only encourages the Y to pursue their agenda further because they have not had to answer for their actions. We don’t want the Y to continue to pressure the Planning and Zoning Committee or the City Commissioners by repeatedly pursuing expansion plans that would violate the Developer’s Agreement. We don’t want the Y to continue badger the neighbors or to further encroach on Phelps Park. We want the Y to be responsible for what they committed in the Developer’s Agreement and uphold the values once thought to have been associated with the Y.

We ask that you please not let our neighborhood become an amusement park for the commercial benefit of the Y and their membership to the detriment of the neighboring community. Our neighborhood is a community despite the presence of the commercial operation of the Y. The place where we all can come together as a community or a neighborhood is Phelps Park – without having to pay admission or a membership fee. We want to retain our community and our park by rejecting any requests by the Y to expand its footprint, its facility, and its membership. Please stop the Y now from this and any future attempts to ignore or violate the Developer’s Agreement yet again.

Sincerely,

Richard and Rebekkah Wilson
October 28, 2012

Planning and Zoning Board Members
City of Winter Park, Florida

Re: YMCA Expansion

To All:

My name is Tom Campbell and I have been a resident of Winter Park since 1986. My wife Anne and I reside at 1740 Palmer Avenue (since 1987) so my experience with the YMCA expansion goes back to the last time they expanded in 1996.

I am opposed to any further expansion of the YMCA as are the majority of my neighbors who live in the Phelps park area, many of whom have voiced their opposition through letters and emails. I think that the Neighbors have done an outstanding job of outlining our objections, so I would like to offer further points to consider.

The main point of consideration lies with the Developers Agreement from 1996. The Conditional Use Permit (dated 10/22/1996) and Developers Agreement (dated 12/16/1996), between the YMCA and the City of Winter Park clearly states that terms of the agreement SHALL be revoked if any of the conditions were violated including purchasing the properties at 1751 and 1761 Palmer Avenue. The agreement was formed to protect the Winter Park Residents of the surrounding neighborhood from further encroachment into our neighborhood.

It is evident that there are some legal issues involved with this matter. The issues include the following:

- The YMCA has **VIOLATED** the agreement by purchasing the aforementioned properties and has given up its rights to further expansion or remedies they may pursue to circumvent the agreement.

- The City of Winter Park has **FAILED to ENFORCE** the agreement. Note that the terms of the agreement specifically make use of the word “SHALL” which, in legal/regulatory language, means it is mandatory the Developers Agreement and it terms be enforced.

The YMCA has violated the Agreement by purchasing the properties and pursuing further expansion. The City has failed its Residents by choosing to ignore the Agreement and give the YMCA the opportunity to approach this Board again and again.
Furthermore, the City continues to allow the YMCA to:

- Violate the agreement by allowing the use of employee parking of up to two vehicles. Why is this when the YMCA was denied the rezoning for parking the last time? The parking of YMCA employees at 1751 and 1761 Palmer Avenue is a business use and is should not be allowed on the properties. I have had to complain to Code Enforcement on numerous occasions about over parking by employees and members.

- During construction, the YMCA attempted to use the property located at 1751 and 1761 as a construction entrance, until I complained to the City. Finally, the YMCA employees use the property as a right of way to enter the complex through a back gate instead of walking around by way of the sidewalk. I am tired of this whole thing.

I have serious concerns about how this whole thing has been handled by City Staff and possible influence by City Officials.

I have retained counsel to consider legal action to stop any and all future expansions.

The Residents of Winter Park and the Phelps Park Neighborhood come first, not special interest groups like the YMCA.

I ask that you do the right thing and disallow the YMCA proposal and end this matter once and for all.

Respectfully submitted,

**Thomas J. Campbell**

Thomas J. Campbell

Cc: John Gilroy, Esq.
    Phelps Park Neighborhood Association
    File
John Kurash III  
1050 North Lakemont Avenue  
Winter Park, Florida 32792  
407-671-0500

City of Winter Park Planning and Zoning  
401 South Park Avenue  
Winter Park, Florida 32789

10/19/12

Re: YMCA parking expansion and zero depth pool

I have been the home owner at 1050 North Lakemont Avenue since 1991. My property is directly across the street from the YMCA and, I am the Secretary Treasurer for The Phelps Park Neighborhood Association.

The residents nearby the YMCA or those who use Lakemont Avenue for travel are desperately seeking your assistance with this newest application from the Y to expand their parking and add a zero depth pool. In short, the YMCA has already breached the Developer’s Agreement of 1996 by purchasing the two properties at 1751 and 1761 Palmer Avenue and now, they again seek to re-zone those two properties for this expansion when they initially said the property purchases were for investment purposes.

When I purchased my home there was a small family YMCA across the street. Now, the Y has grown causing constant traffic, one entrance/exit had been removed in the last “improvement” in 1996 which leaves only 2 entrances/exits. No new exit/entrances are planned.

Myself and many of my neighbors want Planning and Zoning to keep to the Comprehensive Plan and keep our residential area just that, a residential area. Please do not even consider the re-zoning of the properties at 1751 and 1761 Palmer.

I often wonder why the City of Winter Park has never held the YMCA accountable for breaching the Developer’s Agreement, i.e., “Owner” (YMCA) “will not acquire additional property in the City of Winter Park adjacent to the property for expansion purposes” and “There will be no further expansion of the building on the property after the expansion contemplated by the Application and Permit” (of 1996). I just don’t understand why we must revisit this matter periodically when this agreement is already in place.
In regards to their requesting a hearing so that Comprehensive Plan and Zoning can be amended and a new pool can be considered I suggest that considering the way that the YMCA has dishonored and circumvented the existing Developer’s Agreement, what would lead anyone to believe that they would honor any new agreements?

I do believe that it will take strength from P & Z to stand up to the YMCA and deny their requests despite whatever facade and pleas they try to use to rezone and obtain a conditional use permit. Stand strong and please realize that you represent the homeowners in and around The Phelps Park Neighborhood Association. It’s up to you to. I remind you of “GOAL 1-1: MAINTAIN INDIVIDUAL IDENTITY, CHARACTER, NATURAL ENVIRONMENT, AND SOCIO-ECONOMIC AND ETHNIC DIVERSITY. Winter Park will ensure that the character and location of land uses incorporate the following: (a) resource conservation; (b) smooth and orderly land use transition; (c) aesthetics; (d) avoidance of incompatible land uses threatening health, safety and welfare; and (e) avoidance of environmental degradation, hazards and nuisances. Although Winter Park lies within a rapidly urbanizing metropolitan area, the City will maintain its individual identity and character by allowing new growth and redevelopment which (i) enhances the City’s attractive environment; (ii) preserves the City’s economic, socio-economic and ethnic diversity; (iii) strengthens the City’s excellence, character and reputation by promoting quality infill development conducive to the most efficient provision of services; and (iv) protects the City’s natural resources and environmental assets”

Our neighborhood is already swelling from the YMCA’s traffic. The Y breached their agreement with the City of Winter Park by purchasing the properties at 1751 & 1761 Palmer. Why should they be rewarded for this breach by granting them amendments to properties they shouldn’t own in the first place?

I thank you for your time and consideration in this matter. Myself and many of my neighbors will be present for the meeting on November 6th. Please keep our neighborhood residential by not granting these amendments or the new pool. Lakemont and Phelps is residential, not commercial.

Sincerely,

John Kurash III

cc: (Hand Delivery) Jeff Briggs, Lindsey Hayes, Stacey Hectus, Caleena Shirley, Drew Krecieki, Sara Whiting, George Livingston, James Johnston, Peter Gottfried, Thomas Sacha, Randall Slocum and Robert Hahn.
Dear Winter Park Planning and Zoning,

We support the Y. We also support smart growth. Changing the new Comprehensive Plan and rezoning the residential community for a Y expansion for parking and yet another pool is not good urban planning and definitely does not align with the Comprehensive Plan. If you agree to this change, how will you stop the next business from wanting to covert a neighborhood for capital gain? Protecting the residential character of Phelps Park neighborhood is important for the health and public safety in our residential neighborhoods. Even if the city would like to forget about the "original" developer’s agreement, how can it forget the comprehensive plan and rezone?

Briefly, neighbors have three main areas of concern:

1. **Buffer.** We appreciate the Y doesn't have much space left on their property. But that doesn't mean they should get a free pass when it comes to growth and can squeeze huge projects like parking and another pool into the heart of a residential neighborhood without a critical look at their impact on surrounding neighbors.

2. **Traffic & Usage.** More memberships, more traffic. We’re not talking a minor inconvenience for a few extra parking spaces. The Y wants to grow membership and plans to keep the “facility” busy with a variety of memberships, which will cause major traffic, parking and noise disruptions for our neighbors. How would you like another pool in your backyard filled with the fun and excitement of a water park?

3. **Developer’s Agreement, Comprehensive Plan & Zoning.** The Developer’s Agreement was put in place and should be upheld to protect the residential neighborhood. Earlier, the Y said they bought these adjacent properties for an investment; however given the fact this is the second time that they have tried to use these properties to EXPAND their commercial footprint, it is now a fact what their intentions are. It is important to consider this because the Y’s current plans conflict with the City’s new and improved Comprehensive Plan designed to preserve the low-density village character, environment and neighborhoods of our unique city. Do not let all of the hard work that the city of Winter Park has done on the Comprehensive Plan and Zoning code go to waste. This is a true test of your vision and commitment to good planning, so I ask you to act with integrity and uphold the plan equally for all Winter Park residents and businesses.

This project needs scrutiny, your support to uphold the Comprehensive Plan and Residential Zoning to ensure it does not become the poster child for urban residential blight of our generation. I respectfully ask for your support and look forward to witnessing true leadership and commitment to our community.

Regards,

Margaret deBoer
President, Phelps Park Neighborhood Association.

Regards,
Dear Winter Park City Commissioners,

Once again we have received a citywide Public Notice regarding the request of the Winter Park YMCA to expand their commercial development further into our residential neighborhood.

We live on Palmer Avenue and are long time residents of Winter Park. We strongly oppose the expansion.

It is essential that we maintain the integrity of our residential zoning.

We are already overburdened with non-local and non-residential traffic. And we believe the additional parking area requested will only serve to encourage the expansion of their membership and add even more traffic to Palmer Avenue.

The YMCA signed a Developer's Agreement with the City in which they agreed they would not ask for any additional zoning compromise.

We strongly object to the further erosion of our residential zoning by their proposed parking expansion down Palmer Avenue.

We respectfully request that the Commission decline the YMCA request and require them to honor their Development Agreement.

Mr. and Mrs. R. Jeffrey Hale

1640 Palmer Avenue

Winter Park, Florida 32789

Tele. (407) 644-7854
Oct. 12, 2012
To: Planning and Zoning Board, City of Winter Park
From: Kathleen M. Kiely, 1800 Oneceo Ave.

Dear Board members,

Here we go again. The Winter Park YMCA is back before you with the same requests the Board denied three years ago. It wants to downgrade our residential zoning to replace homes with a parking lot; and it wants yet another swimming pool, this one a children’s splash pool with fountains and toys, right in our backyards.

Three years is a short time. Absolutely nothing has changed to make these requests any more legitimate than they were when the Board denied them before. Please review the YMCA’s request from 2009, and the extensive neighborhood objection to it then. Also please review the YMCA’s pledge to the city in 1996 never to expand again — a legal document the YMCA unilaterally tore up when it bought adjacent property for expansion. And please review the petition signed in 2009 by almost 100 neighbors in opposition to the YMCA’s expansion. Nothing has changed since that time.

The YMCA is overbuilt at this location. The Board saw fit to allow another expansion three years ago, with the understanding that an extra parking lot and pool would not be built. It is time for the YMCA to look elsewhere for expansion, and for the Board to make this clear.

Rezoning prime residential property for a parking lot is not the norm in Winter Park. Palmer Ave. is a highly desirable residential location. Right now Arlington Homes is building two nearly million-dollar homes directly across from the YMCA property, and both have been sold before completion. The YMCA property would attract the same caliber of homes (and property-tax income for the city). Rezoning this property for a parking lot would be socially unacceptable, as well as an unsound business decision by the city.

Amend the city’s Comprehensive Plan so the YMCA can have more paying members? I cannot believe this is seriously being proposed.

As for the swimming pool, please keep in mind that the city of Winter Park has its own brand-new zero-depth-entry splash pool at our new community center. The city is not in need of one owned by the YMCA.

In the three years since its last request, the YMCA has made no effort to talk to the neighbors who were so opposed to its plans. No outreach to explain its goals or to ask how it could better fit our neighborhood. No communication with us at all.

On its website (http://www.ymca.net/about-us) the YMCA of the USA states: “Every day, we work side-by-side with our neighbors. ... For nearly 160 years, we’ve been listening and responding to our communities.” The YMCA’s neighbors have seen nothing of the sort in Winter Park. Instead we are being steamrolled by the YMCA as it goes straight to city hall.

So, as I began: Here we go again. For how many years do we have to continue fighting the YMCA on something we thought we’d settled in 1996? We are not going to give up and go away. Please help us close this chapter by denying this YMCA rezoning request once and for all.

Sincerely,

Kathy Kiely
October 9, 2012

P&Z Board Members
City of Winter Park

Re: Y Proposal for Expansion

My name is Jean McIntosh and I have lived at 1756 Pine Avenue for 51 years. Probably all of you are familiar with the history of the Winter Park Y, but I will elaborate on some of it for you.

When first built, the Y was a small community Y with a place for kids to hang out, swim, play basketball, ping pong, etc. Then in 1996, a large expansion of 3,000 sq.ft. was approved after months of objections from and deliberations with the neighbors. When it was finally approved, the City Commission required the Y (Jim Ferber) to sign a Developer’s Agreement prohibiting the Y from expanding the building, acquisition of adjacent properties, and second outdoor pool. Incidentally, at that time, a motion was made to have the Y limit membership to 2,700 but the motion was denied.

In 2008, the Y violated the Agreement by purchasing two properties adjacent to their existing property and doing so against the advice of the P&Z staff.

Then in 2009, a proposal was presented asking for building expansion for men’s locker rooms, a mini water park (zero depth pool), and a parking lot where their two houses are standing. The locker rooms expansion was allowed because in 1996 the Y had not used up the approved 3,000 sq. ft.

In all of these past negotiations, the Y has maintained it did not intend to increase membership but just to provide more amenities for the existing membership. Today, with 8,000 + members, the Y is once more proposing the addition of the denied parking lot and mini water park.

Folks, this Y is far too large for our neighborhood; traffic is horrendous, noise, car horns, car alarms, traffic accidents are a constant nuisance to live with for the surrounding neighbors. It is just like having a huge Bally Fitness Center smack in the middle of our formerly quiet neighborhood. This is wrong, wrong, wrong.

We neighbors want the City to enforce the Developer’s Agreement and put a stop to any future proposals for expansion - forever.

We want the City to respect its residents and stop giving preference to the large commercial, so-called non-profit organization.

We want the Y to:

Cap its membership at half what it is now.

Replace the two little ugly houses with a landscaped mini park for its members to enjoy while waiting for the machines, one similar to the park at Oaks Blvd. and N. Park Avenue. That would be a nice buffer between the residential homes and huge commerciality of the Y.
We want the Y to be honest and up front with neighbors — tell the truth about the so called zero depth pool: it is not a teaching pool. Put a teaching pool over at Cady Way or a mini water park if that’s the most desired. Cady Way would be the best place for family activities.

Put in extra parking spaces where it now wants to put the pool.

Lastly, the Y has taken over the east end of Phelps Park for its child care programs which take place 7 days a week. Does the Y pay the City for the use of the Park which is supposed to be for residents? I am sure the Y charges the parents a goodly sum for these programs and should properly pay for the use of the Park.

We ask this P&Z Board to protect us from further encroachment by the Y.

Thank you.

Jean McIntosh
PPNA (Phelps Park Neighborhood Association)

Cc: Jeff Briggs, Director
Planning & Zoning
City of Winter Park
October 25, 2012

P&Z Board Members
City of Winter Park

Re: Y Proposal for Expansion

The Y never had any intention of complying with the Developer’s Agreement as evidenced by the attached copy of my letter dated October 20, 1998.

It blatantly violated the Agreement by buying those properties on Palmer.

Now the Y is proposing to donate a 5 foot strip of land to the City of Winter Park to ensure there would be no more expansions by the Y.

Do you think the Phelps Park neighbors are stupid enough to buy this deal! PLEASE! That is truly a joke; the Y has never complied with the Agreement and certainly a little 5 foot strip of land would do nothing to prevent further expansions as money permits.

Next it will be Phelps Park the Y will have its eyes on.

Please, Board Members, help us to put a permanent stop to any expansions by the Winter Park Y. It is past time for the Y to move on to other locations, preferably in the middle of commercial properties, not quiet residential neighborhoods.

Thank you.

Jean McIntosh

Cc: Jeff Briggs, Director
    Planning and Zoning
1756 Pine Avenue  
Winter Park, FL  32789  
October 20, 1998

Commissioners Rachel Murrah,  
Kip Marchman, Doug Storer  
City Commission of Winter Park  
401 Park Avenue South  
Winter Park, FL 32789

Re: Winter Park YMCA

Dear Commissioners:

Last week the Winter Park YMCA celebrated the grand opening of their new expansion. The new facility is most attractive and the landscaping on the north end of the parking lot is just what the neighbors wanted.

However ----- a quote in the Orlando Sentinel by new director, Richard Tolle, makes us somewhat uneasy, but not really surprised. The quote is: "If we had more land and more room, we would expand some more, but we’re landlocked on this site right now". According to Developer’s Agreement dated January 7, 1997, “Owner (YMCA) will not acquire additional property in the City of Winter Park adjacent to the Property for expansion purposes”. Is this agreement in effect just until the YMCA decides it is financially able to buy more property and presents that to the Planning and Zoning Board in the next year or two? Must we neighbors be forever on guard to keep this so-called non-profit organization from gobbling us up??

We might add that two years ago when the Y wanted to expand, it was primarily to get more parking spaces, and they declared they did not want to increase membership. They gained very few parking spacing in this new expansion and as a matter of fact, a YMCA staff member is still parking in front of our house (with our permission) because there are no spaces for the staff to park.

The purpose of this letter is to let you know that the “Y Watchers” are watching and as in the past, we do not want any more of our homes nor Phelps Park purchased or donated to the Winter Park YMCA.

Sincerely

Jean and Don McIntosh  
jlm
1771 Chestnut Ave.
Winter Park, FL 32789
October 23, 2012

Dear Planning and Zoning Board members:

Re: Winter Park YMCA expansion

I have been told the YMCA is considering a new strategy to win expansion approval. As a condition of approval, it would give the city a strip of property along the Y's borders. This supposedly would guarantee no future expansions.

We nearby neighbors don't buy that deal, nor should you.

The Y doesn't keep its promises even when it signs a binding agreement - as it did in 1997 - to *not* expand its building again, to *not* buy residential property for the purposes of expansion and to *not* build a second pool. It just plows ahead with what it wants: It came back with expansion plans in 2007, 2009 and now 2012. It also brazenly acquired the two residential lots in 2008, clearly *for* the purposes of expansion.

Your board rejected the Y's 2007 plans. Two years later, even though you stood firm against a second pool and the conversion of two home lots into a parking lot, you endorsed its building expansion. You gave the Y an inch, and now it wants a whole mile - everything it didn't get three years ago!

I have a copy of the Y's 1997 developer's agreement, which specifically says it is to "run with the property." The Y now would toss aside the document's key provisions so it can keep growing, as it always intended. As a Y official said 3 years ago in a hearing, the Y only signed that document "because it was the only way to get approval" for that expansion stage. Amazing!

If a binding legal agreement isn't stopping the Y now, how would a city-owned strip of land on its borders stop it in the future? The Y could always make yet another empty promise in exchange for the city selling it back the strip. It would find other ways to muscle further onto Palmer Avenue or Pine Avenue or even Phelps Park.

The two lots on Palmer have sat in dismal condition since the Y acquired them. Meanwhile high-end new homes are being constructed on that block and in the neighborhoods surrounding the Y. The Y's actions are thwarting residential-redevelopment trends in this area.

Please, do something to stop this imposition on us homeowners. We ask you to deny this major land-use change. Accommodating a private, members-only facility should never take priority over an established single-family area of Winter Park. The need is greater than ever to protect the valuable residential land the Y wants to turn into a parking lot.

Sincerely,

Geri Throne
Re: YMCA application, Planning & Zoning hearing, 11/06/12

Dear Planning and Zoning Board members:

We residents of northeast Winter Park need your help. Only three years have passed since the City turned down part of the Central Florida YMCA’s last request to expand in Winter Park, and here it is again – aiming to obtain everything it failed to obtain the last time.

We neighbors are counting on the Planning and Zoning Commission and the City Commission to draw a firm line this time. Winter Park has a history of strong commitment to its homeowners. The Central Florida YMCA needs to understand that Winter Park values the stability of its neighborhoods more than the perceived expansion needs of a commercialized operation. It needs to understand that in Winter Park, a binding agreement to protect homes sites is just that – binding. It needs to understand that the city values the future integrity of its park land -- Phelps Park.

When city leaders in 2009 approved the Y’s request for more square footage, they wisely rejected a second pool and parking on two residential lots on Palmer Avenue. They told the Y to fix its unsightly landscaping and improve traffic flow. The Y now has a grand interior, prettier landscaping and a new parking lot. But it still isn’t satisfied. It still wants a kiddie pool. It still wants to tear down the two homes it acquired, contrary to its 1996 agreement, to allow parking for even more cars. It still wants to grow bigger and bigger.

The Y may again claim: "But this facility is not growing! It's losing members because of limited parking! Our members are city residents who desperately want a kiddie pool!" Please don't buy that. This facility is part of a large chain of YMCAs in Central Florida; if this not-for-profit is losing members, who come from a broad geographic area, it is because it charges substantially more than nearby for-profit fitness clubs.

We neighbors of the Y have the same position we had three years ago:

1) Non-profit or not, the Winter Park YMCA Family Center is already too huge, too traffic-generating and too noisy for a quiet residential neighborhood.

2) The YMCA’s development plan is a direct violation of its 1996 binding agreement with the city, which was approved specifically to protect the surrounding neighborhood from just this kind of maneuver.

Thank you so much for your attention to this matter.

Sincerely,

Geri Throne
The meeting was called to order by Mr. Krecicki at 7:00 p.m. in the Commission Chambers of the Winter Park City Hall.

Present: Chairman Drew Krecicki, Vice-Chairman Rick Swisher, Michael Dick, Sarah Whiting and Carolyn Cooper. City Attorney Catherine Reischmann was also present. Staff: Planning Director Jeffrey Briggs, Sr. Planner Stacey Scowden, Planning Technician Caleena Shirley, and Recording Secretary Lisa M. Clark.

Public Hearings

Request of the Winter Park YMCA at 1201 N. Lakemont Avenue for Conditional Use Approval and Comprehensive Plan and Zoning Map changes for the following expansions to the existing YMCA:

- Conditional Use request for a 3,115 sq. ft. expansion to the existing building for new locker rooms; and
- Conditional Use request to add an additional zero-depth children’s pool and recreation area on the existing property; and
- Comprehensive Plan and Zoning Map Amendment to change from Single Family (R-1A) to Public Quasi-Public (PQP) and Future Land Use from Single Family Residential to Institutional on the properties located at 1751 and 1761 Palmer Avenue. This change would allow the expansion of the existing YMCA parking lot onto those two properties adding 53 more spaces.

Planning Director Jeffrey Briggs presented the staff report. He reviewed in detail the history of the YMCA expansion, the contents of the original development agreement, the proposal submitted by the Winter Park YMCA which included their proposed site plan, floor plan, perspective architectural elevation drawings, exterior wall plan, landscape plan and traffic study for these expansion requests. He said that in terms of code compliance, the project would meet the setbacks, floor area ratio and other development standards for the PQP zoning (if approved). The existing YMCA is 30,335 square feet in size. The YMCA has 139 parking spaces. With the 3,115 square foot locker room expansion, the total size would be 33,450 square feet. The code requires one parking space for each 250 square feet which equates to 134 spaces.

Mr. Briggs reviewed each of the three separate requests by the YMCA that staff will critique individually:

**Locker Room Expansion:**

Mr. Briggs noted that the locker room expansion was approved in 1996 but not constructed. He said that staff does not believe that locker rooms in and of themselves add to the membership or increase traffic.

The complication concerning the locker room expansion is that the “dirt” area where the locker rooms are to be built has been and is being used as an employee parking lot. Typically there are about 10-12 employee cars in that dirt area. So when the new locker rooms are built, those employee cars will be displaced to the main
paved parking lot thus providing less parking for the membership. The solution is to extend the existing parking lot to the west, replacing the existing storm water retention area by converting that retention area to underground storm water exfiltration. The expansion of the parking lot would add about 14-15 parking spaces bringing the site back to its current parking volume. Staff will propose this as a condition of approval.

Swimming Pool Expansion:

Mr. Briggs stated that new children’s swimming pool was part of the YMCA request in 1996. It was proposed for the area that now holds the child care playground. That component was denied at that time. He said that the YMCA desires to re-visit that request but in an alternate location south of the existing swimming pool. They believe that this new zero-depth children’s pool is critical to the mission of the Winter Park YMCA Family Center. He said that staff recognizes the criticism that there are plenty of swim lessons options available now and it is doubtful that any children are currently missing out on swimming lessons due to a lack of swimming pool facilities. He noted that Winter Park has the existing YMCA pool, Cady Way pool, Crosby Center pool and in two years the new zero-depth children’s swimming pool planned for the Winter Park Community Center.

He noted that staff is also aware of the criticism that the children’s swimming pool is all about selling more memberships to families. That may well be true and the swimming pool facilities may add to the membership and use of the YMCA. However, this does not seem to be a reason for denial, as long as there are minimal impacts to the surrounding neighborhood. He detailed staff concerns with the impacts of traffic and noise. Adjacent to the new proposed children’s swimming pool is a vacant single family lot at 1741 Palmer Avenue and that property (as well as maybe 1751/1761 Palmer) is ground zero for the noise impact. Some people may love the sound of children laughing and yelling. But to compound the noise impact, the plans show a ten foot tall water slide proposed right next to the adjacent single family homes. Staff recommended approval of the swimming pool with the elimination of the water slide.

Parking Lot Expansion:

Mr. Briggs stated that this is the most difficult part of the YMCA’s application to rationalize given the promises made in 1996, the “Developer’s Agreement” contract that was executed then the subsequent action to ignore the contract and acquire additional property for expansion anyway. The parking lot expansion would add 53 additional parking spaces. It would be screened with the same type of wall and landscaping treatment that successfully screens the existing parking lot. There would be a significant upgrade to the landscaping both in the new parking lot as well as the existing lot. The parking lot expansion is proposed for the convenience of the existing membership but it would also function as a way to increase membership.

The problem for most of the neighbors that are in opposition is the question “When does the expansion of the YMCA ever stop?” In 1996 the City had a promise and a “Developer’s Agreement” contract. Now thirteen years later the City has a request to re-write or throw away the “Developer’s Agreement” contract and no promise that there will be no more future expansions. So the neighbors are justified to ask “How far down Palmer Avenue does the YMCA propose to expand?”

Staff recommendation was as follows: (P&Z needs to have three separate votes)

1. Approval of the Conditional Use request for the Locker Room expansion conditioned upon:
   a. Expansion of the existing parking lot over the existing storm water retention area to compensate for the loss of employee parking, and
   b. Incorporation of the plans submitted such that any change to those plans (including the internal floor plan) would require approval of the City.
2. Approval of the expansion for the new zero depth children’s swimming pool and recreation area excluding the swimming pool slide component.
3. Denial of the Comprehensive Plan future land use map change and the rezoning request to expand the YMCA parking lot onto the properties at 1751/1761 Palmer Avenue.
Bud Oliver, 433 South Lakemont Avenue, introduced the members of the development team. Mr. Oliver gave the Board a general overview of the YMCA’s request.

George Powell, Powell Design Group, used a power point and 3D presentation to provide an in-depth overview of the request. This included proposed landscaping enhancements, the proposal to complete the final build-out of the original conditional use approval from 1996 (the family locker rooms); the zero depth teaching pool; and the request to expand the parking lot. He also reviewed language from the 1997 development agreement. With regard to the locker room expansion, he noted that this was approved in 1996 as a part of a multi-phase project and that due to funding issues was never completed. He said that this request does not expand the building beyond what was approved in 1996. He stressed that the parking for the 3,000 square foot addition is already in place. With regard to the zero entry swimming pool he noted that this portion of the request was originally approved by the Planning Commission in 1996, but later revoked by the City Commission. He stated that this request is a new request that falls within the boundaries of the property and is independent from the locker room expansion and parking requests, and requested that the Board grant this request. With regard to the parking request, he said that the YMCA reacquired the two residential lots that they previously owned in the 1980s and that they have no interest in purchasing additional properties in the neighborhood. He said that expanding the parking lot will not alter the existing traffic pattern that currently exists around the YMCA and proper lighting and landscaping will be installed. He added that they do not feel that an expansion of the parking lot as an extension of the YMCA. They do not feel that they are in violation of the original developer’s agreement.

Steve Shelling, 2883 Oakcastle, YMCA Board Chair, said that one of the things that the Board hears from members is the need for additional parking.

Mike Sullivan, 1331 Magnolia Bay, Maitland, stated that he also owns a home on Palmer Avenue stated that he is a member of the YMCA and is a Board member of the YMCA Central Florida. He said that he feels that the City should consider a public/private partnership with the YMCA. He said that he does not feel that the improvements that were outlined by Mr. Powell as an encroachment into the residential neighborhood. He requested rebuttal time for the applicant at the end of the public comment section.

The City attorney requested that the Board members disclosed ex-parte communication with the applicant. Mr. Krecicki noted that he is a YMCA member and that he went to one of the community meetings held by the applicant. Mrs. Cooper stated that she holds a family membership and that she has met with Mr. Oliver and others and that she has met with the McIntoshes. Mr. Swisher said that he is not a member, but that he met with Mr. Oliver and representatives and acknowledged the emails that he has received. Mrs. Whiting stated that she is not a member and acknowledged the emails that she has received and that she has met with Mr. Oliver and representatives of the YMCA. Mr. Dick stated that he is not a member and has met with Mr. Oliver and representatives.

The following people addressed the Board in favor of the request: Jim Yarborough, 720 North Phelps, Tiffany Polito, 694 Selkirk Drive, Heidi Farber, Glenridge Way, Lisa Wilcox, 1727 Palmer Avenue, Mary Rumberger, 1234 Palmer Avenue, Lou Nimkoff, 740 Williams Drive, Brad Hester, 1906 Whitehall Drive, and Peter Weldon, 700 Via Lombardy,

The following former Mayors also addressed the Board concerning the request. They acknowledged that they were members of the Board when the original request came forward and provided insight as to the discussion that took place at original public hearings:

Terry Hotard, 1461 Palmer Avenue, said that he thinks the Board should look at what is best for the community and that he feels that the needs of the community have changed. He said that he feels that the YMCA has proved to be a good neighbor.
Kip Marchman, 1641 Palm Avenue, explained that at that time there were concerns with the campus expanding into the residential community. He said that it was the Commission’s intent at that time to work diligently to protect the residential property in the City. Further, the YMCA was not forced into the agreement in 1996.

Joe Terranova, 700 Melrose Avenue, agreed with Mr. Marchman and said that he feels that the YMCA should follow the terms of the original agreement.

The following people spoke in opposition to the request: Jean McIntosh, 1756 Pine Avenue, Terry Roen, 1620 Elm Avenue, Rebekka Wilson, 1724 Pine Avenue (submitted a petition with 92 signatures opposed to the request), Julie Swinarski, 1740 Pine Avenue, Margaret Zbor (presented a Power Point presentation on behalf of the neighborhood that detailed neighborhood concerns), Kay Zimmerman, 1040 North Lakemont Avenue, Davon Deboer, 1748 Pine Avenue, Kevin Robillard, 1616 Palmer Avenue, Byron McIntosh, Mark Enriguez, 1760 Palmer Avenue, Gail Turner, 1040 North Lakemont Avenue, Ann Kubisak, 1040 North Lakemont Avenue, John Kurash, 1050 North Lakemont Avenue, Kathy Kiely, 1800 Oneco Avenue, Mark Salia, 1757 Pine Avenue, Geri Throne, 1771 Chestnut Avenue, Tom Akert, 1570 Place Piccardy.

Mr. Shelling readressed the Board on behalf of the applicant. He said that development agreements are modified constantly. He said that it is regrettable that there is a perception that they have breached agreement, but that circumstances have changed. He said that their patrons are requesting the changes. Further, the requested parking is to address the peak demand levels and that they do not feel that what they are asking for will increase trips. He said that he feels that will reduce daily trips. He added that they will accept the condition of no slide on the zero depth pool and the condition of parking over the retention area.

Chairman Krecicki recessed the meeting at 9:17 p.m. and reconvened at 9:24 p.m.

Following the recess, Mr. Briggs and Attorney Reischmann had a question and answer session with the Board members. The Board members also posed questions to the YMCA representatives. Following the question and answer session, Chairman Krecicki opened up the item for discussion amongst the board members.

Mr. Krecicki stated he is a YMCA supporter, but that he does not support changing the development agreement at all that it should stay in place as is. He said that he could support granting approval of the conditional use for the locker room expansion with staff recommendations. In addition he encouraged the YMCA to consider remote parking for staff and installing additional bike racks to alleviate the parking situation. He did not support the comp plan amendment. With regard to the pool, he supported the zero depth pool with the exclusion of the slide. In addition, he added that he feels that the hours for the children’s pool hours be more limiting than the adult pool.

Mr. Dick said that he did not have issue with the acquisition of the lots because that could be considered an investment, but once the application was made incorporating those lots, that became a violation of the development agreement. He stated that he can support the conditional use for the locker room expansion. He asked the applicant if the number of lockers would increase or remain the same. The applicant stated that there would be no new lockers and the existing half lockers would be converted into full lockers. He said that he feels that there should be some degree of self-regulation with parking. As for additional parking, he said that he would rather see the parking go within the 35 foot area behind the lots, to accommodate no more than 15 additional parking spaces. He did not support the comp plan amendment, and feels that residential lots should remain residential. With regard to the pool, he did not support it and stated that he feels that there are enough alternatives throughout the city for the pool.

Mrs. Whiting said that she supports the YMCA being in the City. She supported the conditional use request for locker room expansion. She said that she feels that it completes the original expansion plans. In favor of the pool, but how can noise (i.e. buffering, planting, walls, etc.) from the pool be alleviated. She said that she could not support the comp plan amendment.
Mrs. Cooper explained that she is comfortable with granting the additional square footage because it was a part of the original conditional use approval. She did express concern with the impact that she feels the proposed expansion would have on the existing parking situation. She agreed with staff recommendations in this regard. Mrs. Cooper stated that she does not support the pool as presented. She said that it looks like a water park and further that it would be a violation to the peace of the surrounding residential neighborhood. She did not support the comp plan amendment. She said that she is concerned with additional traffic on Lakemont Avenue. She said that she is a proponent of R-1A zoning and feels very strongly that the single-family neighborhood must be protected. Mrs. Cooper also discussed her concerns with how this request ties into the newly adopted comprehensive plan. She also said that she feels that the two existing residences need to be brought up to code and look like a fair representation of the YMCA’s ownership.

Mr. Swisher said that he agrees with the previous comments. He discussed his recollection of the previous public hearing with regard to landscape buffering. He stated that he supports the conditional use for locker room expansion. He added that he would be all for the zero depth pool if it were in a different location. He said that he cannot support the comprehensive plan amendment changing R-1A lots for use as a parking lot.

**Locker Room Expansion**

Motion made by Mr. Krecicki, seconded by Mrs. Whiting to approve the conditional use request for a 3,115 sq. ft. expansion to the existing building for new locker rooms with the following conditions:

1. Expansion of the existing parking lot over the existing storm water retention area with no more than up to 15 spaces.
2. Any changes to the approved plans, including internal floor plans, will require approval from the City.
3. The YMCA is to research areas of remote parking for employees and more adding more bike racks to promote more bike ridership with their members.

Mr. Dick requested to amend the motion to add that final landscape plans and updated lighting plan come back to the Board for final approval. Mr. Krecicki and Mrs. Whiting accepted the amendment. Motion carried with a 5-0 vote.

**Swimming Pool Expansion**

Motion made by Mrs. Cooper, seconded by Mr. Dick to deny the request for the swimming pool.

The Board entered into a discussion with regard to whether it would be appropriate in another location. Mr. Krecicki requested to amend the motion giving the applicant the option to return to the Board with revised plans for a smaller pool or to relocate the pool to another location on the property. Mrs. Cooper and Mr. Dick accepted the amendment. Motion carried with a 4-1 vote. Mrs. Whiting voted against the motion.

**Comprehensive Plan Amendment**

Motion made by Mr. Krecicki, seconded by Mrs. Cooper to deny the request for a Comprehensive Plan and Zoning Map Amendment to change from Single Family (R-1A) to Public Quasi-Public (PQP) and Future Land Use from Single Family Residential to Institutional on the properties located at 1751 and 1781 Palmer Avenue. Motion carried unanimously with a 5-0 vote.

**Site Plan Reviews**

SPR 3:09 M/M Zwirn request lakefront site plan approval for a new single-family residence at 600 Via Lugano on Lake Maitland
Motion made by Commissioner Dillaha to adopt the ordinance; seconded by Commissioner Bridges. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha and Bridges voted yes. Commissioner Diebel was away from the dais for this item. The motion carried unanimously with a 4-0 vote.

Mayor Bradley turned the Chair over to Vice Mayor Diebel.

d) Request of the Winter Park YMCA at 1201 N. Lakemont Avenue:

Planning Director Jeff Briggs addressed the conditional use request from the Winter Park YMCA for a 3,115 square foot expansion to the existing building for new locker rooms. He stated that the original request started off with the conditional use request for an additional zero-depth children’s pool and an expansion to the parking lot but have since then withdrawn those two requests and will not be part of the public hearing tonight. He emphasized that the approval is only for the locker room expansion.

Mr. Briggs gave background information on the YMCA and their approval in 1996 to build the facilities there today. He stated that the locker room expansion was approved in 1996 but not constructed at that time. He explained that conditional uses expire after two years and that approval is no longer valid. He stated the YMCA is asking the City Commission to reestablish what they previously approved in 1996 and to let them finish the locker room expansion.

He addressed the discussion at the P&Z meeting concerning the locker room expansion because of the “dirt” area where the locker rooms are to be built has been and is being used as an employee parking lot and those cars being displaced to the main paved parking lot. He suggested a solution to extend the existing parking lot to the west, replacing the existing stormwater retention area by converting that retention area to underground stormwater exfiltration. The expansion of the parking lot would add about 14-15 parking spaces and bring the site back to its current parking volume. He stated that there was a condition to that effect relating to the recommendation from the P&Z for approval and since that time the YMCA has adjusted their site plan. He added that the P&Z gave a unanimous recommendation for approval which reestablishes the approvals that were granted by the City Commission in 1996.

William “Bud” Oliver, Executive Director of the YMCA, provided a PowerPoint presentation and spoke in detail regarding the history of the YMCA, the process to meeting growing needs within the community, and understanding YMCA membership and their goals. He also submitted a petition in support of the YMCA.

George Powell, Powell Design Group, provided a PowerPoint presentation on the landscaping enhancements and the proposal to complete the final build-out of the original conditional use approval from 1996 (family locker rooms). With regard to the locker room expansion, he noted that this was approved in 1996 as part of a multi-phase project and that due to funding issues was never completed and this request does not expand the building beyond what was approved in 1996. He emphasized that the parking for the 3,115 square foot addition is already in place.

Steve Shelling, YMCA Board Chair, stated that they need to continue to invest in the YMCA to ensure it is here for future generations.

The following people spoke in opposition to the request:
Tom Ackert, 1570 Place Picard
Jean McIntosh, 1755 Pine Avenue. (Submitted a petition opposing the expansion of the YMCA)
John Kurash, 1050 N. Lakemont Avenue
Margaret deBoer, 1748 Pine Avenue
Kay Zimmerman, 1040 N. Lakemont Avenue
Geri Throne, 1771 Chestnut Avenue
Bryan McIntosh, 4105 Bibb Lane
Kathy Kiely, 1800 Oneco Avenue

The following people spoke in favor of the request:

Joe Terranova, 700 Melrose Avenue
Lou Nimkoff, 740 Williams Drive
Mary Rumberger, 1234 Palmer Avenue

Attorney Reischmann explained that they are considering the request for a conditional use and was not an extension of one. He stated that this was a quasi-judicial hearing and that they are applying policy to specific facts that they hear this evening. He answered questions.

Mr. Briggs listed the P8Z's conditions to approving the conditional use as follows: 1) Expansion of the existing parking lot over the exiting stormwater retention area with no more than up to 15 spaces; 2) Any changes to the approved plans, including internal floor plans, will require approval from the City; 3) The YMCA is to research areas of remote parking for employees and adding more bike racks to promote more bike ridership with their members; and 4) The final landscape plans and updated lighting plan come back to the board for final approval.

Commissioner Dillaha asked how many lockers would be added. Mr. Powell stated it will increase from 75 to about 118 for the men's lockers and increase from 44 to about 120 for the women's lockers. He added that this was a conceptual plan. Mr. Powell answered questions.

Commissioner Anderson asked if they double the number of women's lockers if there would be parking available for times when the YMCA is more utilized. Commissioner Dillaha questioned since there is no swimming pool or parking lot now being requested, what the impact would be on cars and parking. Mr. Powell commented that increasing the number of lockers does not necessarily mean they will increase the usage but could extend the members stay to shower and change because of the convenience. He explained that this was an effort to service the existing clientele.

Mayor Bradley declared an email sent to him suggesting that he had conflicts because the hospital does business with the YMCA. He explained that they rent space from the Crosby YMCA and did not believe that precluded him from voting on this matter.

Motion made by Mayor Bradley to adopt the recommendations of the Planning and Zoning Commission as presented; seconded by Vice Mayor Diebel for discussion. Attorney Reischmann answered further questions.

Commissioner Anderson commented that in order for him to support the expansion he wanted to know a specific locker count and if there should be a condition that includes a modification to the existing development agreement. Attorney Reischmann commented that a development agreement will have to be agreed to by the applicant as opposed to conditions being stipulated
which can be imposed on the applicant. He stated that in 1996 and 1997 the City and the
YMCA reached an accommodation and memorialized that in the developer’s agreement. He
stated that the developer’s agreements can be amended.

Commissioner Anderson commented that the developer’s agreement is material to how he
views the conditional use. Commissioner Dillaha agreed and believed that if there is no clarity
about some of the provisions in this conditional use permit then she wants a new developer’s
agreement or a new conditional use permit that cleared up any misconceptions regarding further
acquisition of property, further expansion of a building, and no second outdoor pool to be
constructed.

Vice Mayor Diebel commented that they are being asked to either consider or not consider the
approval of the conditional use that was unanimously approved by the P&Z with the four
conditions. There was further discussion regarding the need for a locker count. Commissioner
Anderson stated that he was not comfortable voting without this number and wanted to hear
from staff or the applicant as to the appropriate number of lockers that would regulate the
membership and utilization of the facility. He also wanted to know what the peak parking load
for this facility is and how it relates to the population that is using that facility at the time. Vice
Mayor Diebel asked Mr. Knight to take those back to the applicant. Mr. Knight agreed.

Mayor Bradley commented that there is a motion on the floor but, made a motion for the
continuance of this discussion until the October 12 meeting; seconded by Vice Mayor
Diebel. Mr. Briggs clarified that they had their public hearings and when this comes back in two
weeks they will continue and decide on the motion.

There was recess taken from 8:31 p.m.-8:41 p.m.

**Millage and Budget Public Hearings:** (started at 5:10 p.m.)

Mayor Bradley opened the public hearing and read into the record the following: "The millage
rate needed for Fiscal Year 2010 to generate the same property tax revenue for the City as in
2009, based on the Property Appraiser's certification, is 4.4051 mills. The budget proposed by
the staff with amendments generally agreed to by the City Commission requires a millage of
4.0923 mills. This proposed millage of 4.0923 mills would represent a decrease in property
taxes not counting new construction and the City's dedicated increment value payment to the
Community Redevelopment Agency of 7.10%. In addition, a .2144 mill voted debt service is
levied to cover the debt service of the General Obligation Bonds, Series 2001 approved by the
citizens of Winter Park at the May 16, 2000 bond referendum, and a .0913 mill voted debt
service is levied to cover the debt service of the General Obligation Bonds, Series 1996
approved by the citizens of Winter Park at the June 4, 1996 bond referendum."

Mayor Bradley commented that this would be a simultaneous public hearing on both these
ordinances.

a) **ORDINANCE NO. 2782-09:** AN ORDINANCE OF THE CITY OF WINTER PARK,
FLORIDA ADOPTING A 4.0923 MILL AD VALOREM TAX LEVY UPON ALL REAL AND
PERSONAL PROPERTY FOR APPROPRIATION TO THE GENERAL OPERATING
EXPENSES OF THE CITY, A .2144 MILL VOTED DEBT SERVICE LEVY UPON ALL
REAL AND PERSONAL PROPERTY FOR APPROPRIATION TO THE CITY OF
WINTER PARK, FLORIDA GENERAL OBLIGATION BONDS, SERIES 2001, AND A
Public Hearings:

a) Conditional use request of the Winter Park YMCA at 1201 N. Lakemont Avenue for a 3,115 sq. ft. expansion to the existing building for new locker rooms (Continued from the 9/28/09 meeting).

Mayor Bradley commented that this was continued from the last Commission meeting and that there is an active motion on the floor with a second and that can be amended. The standing motion was as follows: Motion made by Mayor Bradley to adopt the recommendations of the Planning and Zoning Commission as presented; seconded by Vice Mayor Diebel for discussion. He stated that they were very explicit from their last conversation that they would not be taking public comment and would continue from where they left off.

Planning Director Jeff Briggs addressed the original three requests from the YMCA and that they have withdrawn the additional zero-depth children's pool and an expansion to the parking lot. He stated that the only request before the Commission was the conditional use for the locker room expansion.

Attorney Brown reminded the Commission to disclose if they had any unilateral communications outside the Sunshine Law from anyone regarding the issue of the expansion of the lockers. Mayor Bradley and the Commissioners disclosed that they each had meetings with YMCA representatives and they explained that their emails have come through the City email.

Commissioner Anderson commented that after having extended conversations with both its representatives from the YMCA and its neighbors, he believed there are more conditions that should be considered for a conditional use approval of the 3,115 square foot addition.

Motion made by Commission Anderson to amend the original motion with three conditions: 1) provide equal locker counts for the men's and women's locker rooms, not to exceed 150 lockers each; 2) continue to provide a need based scholarship program and, at least annually, disseminate information on the scholarship program at an open house; and 3) provide a documented restriction that runs with the land along the property line between the YMCA parcel and the residential lots that prevents any covered building structure from crossing the line. The motion failed for lack of a second.

Motion made by Commission Anderson to amend the original motion to provide equal locker counts for the men's and women's locker rooms, not to exceed 150 lockers each; seconded by Mayor Bradley. Commissioner Anderson spoke about the purpose of the locker count and explained that he was trying to respond to neighbors concerns about making sure that this expansion is about serving the needs of the existing membership and not so much an expansion of the overall service pattern of the facility. Commissioner Bridges stated that she shared his concern about the neighborhood and the immediate expansion that is being contemplated by the YMCA. She wondered if they could allow that expanded footprint for the purpose of the locker rooms and then with agreement with the YMCA go back to the 1996 permit and honor the obligations that were agreed upon then, that they would not do any further expansions.

Attorney Brown commented that the existing agreement is still in effect. Mayor Bradley clarified that the conditional use request is not a continuance from 1996; it is a new conditional use request. Attorney Brown agreed.
Upon a roll call vote, Mayor Bradley and Commissioners Anderson and Diebel voted yes. Commissioner Bridges voted no. The motion carried with a 3-1 vote. Commissioner Dillaha was absent.

Commissioner Anderson commented that he would let #2) lapse and move on to #3).

Commissioner Anderson amended the motion to provide a documented restriction that runs with the land along the property line between the YMCA parcel and the residential lots that prevents any covered building structure from crossing the line; seconded by Mayor Bradley. He stated that this was a comment directed at some of the public discussions about what would keep additional barriers to the growth and further intrusion into the neighborhood. Mr. Briggs showed the site plan. Mayor Bradley asked for clarification whether this is an easement or condition of a conditional use which would affect how he votes. Commissioner Anderson clarified that this be a condition of the conditional use.

Commissioner Diebel addressed being unsure of the purpose of this since there is nothing in the conditional use for this to be viable and that he was putting a restriction against something that does not exist on the application. Commissioner Anderson explained his intent to keep the building from creeping beyond this line at any point in the future and to give some assurance to the residents in the area. Attorney Brown stated that the legal standard is that the conditions they impose should be related to the permit application that is before them. He commented that this would not be a legal issue.

Upon a roll call vote, Mayor Bradley and Commissioners Anderson and Bridges voted yes. Commissioner Diebel voted no. The motion carried with a 3-1 vote. Commissioner Dillaha was absent.

Mayor Bradley explained the full motion with the two amendments for clarification. He listed the P&Z's conditions to approving the conditional use as follows: 1) Expansion of the existing parking lot over the exiting stormwater retention area with no more than up to 15 spaces; 2) Any changes to the approved plans, including internal floor plans, will require approval from the City; 3) The YMCA is to research areas of remote parking for employees and adding more bike racks to promote more bike ridership with their members; and 4) The final landscape plans and updated lighting plan come back to the board for final approval. The two amendments by the Commission were as follows: 1) to provide equal locker counts for the men's and women's locker rooms, not to exceed 150 lockers each; and 2) to provide a property line conditional use between the YMCA parcel and the residential lots that prevents any covered building structure from crossing the line. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Diebel and Bridges voted yes. The motion carried with a 4-0 vote. Commissioner Dillaha was absent.

b) ORDNANCE NO. 2784-09: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING WITHIN THE CHARTER LAWS OF THE CITY OF WINTER PARK, SECTION 1.02, "CORPORATE LIMITS DESCRIBED" SO AS TO ANNEX THE PROPERTIES AT 1807, 1810, 1850, 1911 and 1922 STONEHURST ROAD AND THE EAST KINGS WAY AND STONEHURST ROAD RIGHT-OF-WAY THEREOF, MORE PARTICULARLY DESCRIBED HEREIN.
CITY OF WINTER PARK
PLANNING AND ZONING BOARD

Staff Report
November 6, 2012

REQUEST OF ABC LIQUORS INC. FOR: CONDITIONAL USE APPROVAL TO CONSTRUCT A NEW 13,281 SQUARE FOOT ABC LIQUORS RETAIL STORE ON THE PROPERTY AT 401 N. ORLANDO AVENUE WITHIN 300 FEET OF RESIDENTIAL PROPERTIES.

This item is a request for conditional use approval by ABC Liquors, Inc. to redevelop the existing store location at 401 N. Orlando Avenue. The redevelopment would build a new 13,281 sq. ft. ABC store directly behind to the rear of the existing building. Then when that new store is completed, the existing store that currently is 7,200 square feet in size will be demolished. To accomplish this redevelopment, ABC Liquors is purchasing the property at 1411 Trovillion Avenue which is immediately behind to the rear of the existing ABC property. Both properties are zoned commercial (C-3).

This project is a conditional use as a building over 10,000 square feet and as a liquor store within 300 feet of residential. This is intended to be a ‘complete’ application for both the ‘preliminary’ and ‘final’ conditional use approvals.

Site and Context: The site plan shows the new building with the footprint of the existing building as dashed lines in the front parking lot area. The new development is behind to the rear of the existing store. When the existing building is demolished that front area will be redeveloped into a new front parking lot area of nineteen spaces which will be a major improvement over the current seven parking spaces.

In the rear, the existing building at 1411 Trovillion Avenue is to be demolished and that land utilized for a new rear parking lot area of eleven spaces. Generally is no change to the current traffic access points onto Trovillion or Orlando Avenues, except moving of the driveway onto Trovillion Avenue west by 50 feet.

Building Plans: This is a larger ABC store building but a good part of the increase in floor space is for storage. In this two story building design the second floor exists only over the rear one-third of the building or the rear 40 feet of the 110 foot long building. This new ABC building will have 4,624 sq. ft. of storage/mechanical/office or ‘back-of-house’ area and 8,657 sq. ft. of retail store or ‘sales’ area.

Parking: The required parking has been based on the 8,647 sq. ft. of ‘sales’ floor space. In the planning staff’s opinion the storage and other back-of-house areas do not contribute to the need for parking. Thus for the 8,647 sq. ft. of ‘sales’ area the code of (1 per 250 sq. ft.) requires 35 parking spaces which are provided. The site plan layout provides the two handicap spaces required by code.
To get to the 35 parking spaces, the site plan shows using four parallel parking spaces in the Trovillion Avenue right-of-way. There are now three parallel parking spaces in that same general area of the right-of-way used by the ABC store. Thus, staff is comfortable with counting these spaces given the pre-existing conditions.

**Traffic Generation:** The attached letter presents the calculation of the expected increase in traffic from the new ABC store which is offset to some degree by the demolition and removal of the business at 1411 Trovillion Avenue. The net increase is just 24 cars per day.

**Storm Water Retention:** The City code requires retrofit for storm water retention for major redevelopment projects. In this case, the plans show retention areas for the building and rear parking as well as for the new front parking lot. Currently only the rear parking lot has storm water retention and after this project the entire site will meet the City, St. John’s WMD and FDOT retention requirements.

**Architecture and Landscaping:** The preliminary architectural elevations are provided and are consistent with the image of other ABC stores. Staff was initially concerned that we would see flat unarticulated wall elevations for the rear and Trovillion Avenue sides of the retail building. However, the applicant recognized the context of this building facing two streets and also residential/office to the rear. There is some architectural interest and articulation that make these facades visually appealing.

The staff was very pleased to see the new storm water retention area proposed on the corner of Orlando and Trovillion Avenues. (Of course everyone who has used the front parking lot will be happy to see the better and safer arrangement) That area on the corner provides an opportunity for some nice landscaping and ABC is supportive of that initiative as long as understandably there is visibility of the pylon sign and for traffic movements. There was not time to get a full landscape plan completed so the recommendation will provide for that subsequent review and approval.

**Summary:**

There may be neighbors concerned with a larger ABC store closer to their residences. However, this store will not have a rear door access like the current one does, so while one can park in back and walk up front, it will not be preferable. Instead increasing the customer parking from 7 spaces to 19 spaces in the front will make that the focus of customer traffic and activity.

Clearly the image and traffic safety of the new front parking lot will vastly improve this ABC store functional operations and visual appeal. The new storm water and landscape area at the corner gives the City the chance to also do something special visually on that corner.

**STAFF RECOMMENDATION IS FOR APPROVAL** with the condition that the landscape be reviewed and approved by the Planning Board.
Parcel ID: 292201418402140 (Ring-Town-Sec format)
This map is for reference only and is not a survey.

Created on 10/24/2012, Copyright 2007, Orange County Property Appraiser.
APPLICATION FOR CONDITIONAL USE
CONDITIONAL USE # __________________________

General Instructions: To request approval of a Conditional Use, complete this application and submit it to the Planning Department along with a fee of $500 for applications with 500 ft notice requirement, $1,000 for applications with 1,500 ft notice requirement, and $6,000 for applications with city-wide notice requirement, and any additional information necessary to be presented for public hearing before the Planning and Zoning and City Commissions. Submit one full-size (24"x36") set and twelve (12) 11"x17". All required documents must be submitted with application (see checklist). Additional information for Conditional Use requirements can be found in Chapter 58-90 of the City's Land Development Code.

I. APPLICANT

Name __________________________
ABC Liquors, Inc.
8989 S. Orange Ave
Orlando, FL 32859

Phone __________________________
407.851.0000
rexw@abcfws.com

II. PROPERTY

Multiple parcels - see attached Owners list

Zoning Classification: C3 (all parcels) Comprehensive Plan Future Land Use Designation: __________________________

PARCEL # multiple - see attached (same as tax ID number of Orange County property tax records)

Legal Description: Provide complete and accurate legal description below including Mat Book and Page Number OR attach a copy of the legal description to this application: attached

III. CONDITIONAL USE REQUESTED: The applicant requests Conditional Use Approval for: 

see attached letter

IV. CERTIFICATION

I certify that, to the best of my knowledge and belief, all information supplied with this application is true and accurate, and that I am:

[Signature] Gay Rd access property

Trovillion St
Orlando Ave (exit, store) property.

If applicable, it is understood and agreed that approval of this application by the Planning and Zoning Commission is contingent upon the recording of restrictive covenants designing the terms and conditions of an approval. These restrictive covenants will be executed by the owner of the property and recorded by the City of Winter Park. Said owner will be responsible for all fees associated with the recording of this document.

[Signature] DATE 9.27.12

N:deptstplanning&CDUApplications&COND USE Application.doc 2/15/2012
September 26, 2012

Jeff Briggs, Planning Director
City of Winter Park
401 South Park Avenue
Winter Park, Florida 32789

Subject: Property Owner's Authorization for Applicant: Conditional Use/Site Plan Application:
Parcel: 01-22-29-4184-01-050
401 N. Orlando Ave., Winter Park
Re Project: ABC Store 71B

Dear Mr. Briggs:

We provide this letter as verification that PLATINUM HOLDINGS 1999, LTD. does authorize ABC LIQUORS, INC. to submit to the City of Winter Park, application(s) for Conditional Use/Site Plan review, for the referenced project, which partially involves the subject property.

This letter is not a grant of permission for ABC LIQUORS, INC. to demolish, develop, construct on, or alter, any part of the subject property or improvements.

PLATINUM HOLDINGS 1999, LTD.
By: BANK OF AMERICA N.A., AS TRUSTEE, General Partner

By: Amy A. Bock, SVP
October 2, 2012

Mr. Jeff Briggs, Planning Director
City of Winter Park
401 Park Ave. South
Winter Park, FL 32789

Subject: ABC Fine Wine & Spirits Store No. 71B (401 N. Orlando Ave.)
Application for Conditional Use/Site Plan

Dear Mr. Briggs:

This letter is an attachment to the accompanying application by ABC Liquors, Inc. for the subject project. For Part III of the Application, the Conditional Uses requested for this project within the City's C-3 zoning district are:

1. Liquor store on property with separation less than 300 feet from residential area (as provided for by LDC 58-76 (c)(1)(j)). We note:
   - Existing separation
     - SW corner Parcel 01-22-29-4184-01-050 (Platinum Holdings 1999 parcel) ↔ NE corner Lot 4, Block D (Killarney Bay Condo. parcel) = +/- 83 ft.
   - Proposed separation
     - SW corner Parcel 01-22-29-4184-02-140 (Judith Meese parcel) ↔ NE corner Lot 4, Block D (Killarney Bay Condo. parcel) = +/- 60 ft

2. Building GFA > 10,000 sq.ft. (as provided for by LDC 58-76 (c)(1)(k)). We note the Plan shows proposed 13,281 sq.ft. GFA total, comprised of
   - +/- 8,657 sq.ft. sales area and
   - +/- 4,624 sq.ft. storage/mach./office, i.e. non-sales area

Also, as discussed in our meeting last month we request approval for a parking reduction, as shown in the accompanying Preliminary Site Plan (detailed in the Parking Data table). As discussed, we believe this request can be justified in consideration of the unique nature of ABC’s business and customer base, including that

- The store’s single type of merchandise (alcoholic beverages) limits customer browsing time (when compared to other similarly-sized retail with more varied merchandise)
- ABC’s experience is that most customers make store visits for targeted purchases, and consequently shopping time, and the duration of the average store visit, is relatively short
- Age restriction on alcohol sales rules out any reason for visits by that group of drivers
All the above, in our experience of observing ABC stores' parking utilization, is that the parking is under-utilized.

We would also note that the current parking activity by the Wazzabi business on the 13 spaces of the ABC site, is provided for by the Cross Access, Retention and Parking Easement Agreement recorded at OR BK 07006 PG 4469 (copy attached) and the 1st and 2nd Amendments to that Agreement According to provision 4 of the 1st Amendment, the Wazzabi’s use of that parking is set to expire in June 2013. The Owner of the relevant parcel does not intend to extend that use.

We hope this above, and the attached information is sufficient for your consideration of these requests. Please contact us for any additional documentation or information required.

Sincerely,

DRMP, Inc.

John C. Kelly, P.E.
Vice President

CC: Rex Weeks, ABC Liquors
Project: ABC Fine Wine & Spirits Store No. 71B

Attachment to Application for Conditional Use

**Property Owners**

<table>
<thead>
<tr>
<th>Parcel Address</th>
<th>Parcel ID</th>
<th>Desc</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>401 N. Orlando Ave</td>
<td>01-22-29-4184-02-140</td>
<td>Existing ABC Store parcel</td>
<td><strong>Platinum Holdings 1999, Inc.</strong>&lt;br&gt;390 N. Orange Ave.&lt;br&gt;Suite 700&lt;br&gt;Orlando, FL 32801&lt;br&gt;Applicant leases property for existing business</td>
</tr>
<tr>
<td>1411 Trovillion Ave</td>
<td>01-22-29-4184-01-050</td>
<td>Existing Store/Off./Res.</td>
<td><strong>Judith A. Meese</strong>&lt;br&gt;572 S. Osceola Ave.&lt;br&gt;Orlando, FL 32801&lt;br&gt;Applicant has under contract for purchase</td>
</tr>
<tr>
<td>Gay Road</td>
<td>01-22-29-4184-02-020</td>
<td>Veh. use/Gay Rd. access</td>
<td><strong>ABC Liquors, Inc.</strong>&lt;br&gt;P.O. Box 593688&lt;br&gt;Orlando, FL 32859&lt;br&gt;Owned by Applicant</td>
</tr>
</tbody>
</table>

**Civil Engineer**
John C. Kelly, P.E.<br>Vice President<br>DRMP, Inc.<br>941 Lake Baldwin Lane<br>Orlando, FL 32814<br>Ph. (407) 896 0594<br>jkelley@drmp.com

**Land Surveyor**
Jonathan M. Mott, P.L.S.<br>President<br>William Mott Land Surveying, Inc.<br>3716 N Wickham Road, Suite 3<br>Melbourne, FL 32935<br>Ph. (321) 751 4444 ext. 206<br>jon@wmlsi.com
Vicinity Map & Aerial
Letters of Authorization
(from Non-Applicant Owners)
September 17, 2012

Jeff Briggs, Planning Director
City of Winter Park
401 South Park Ave.
Winter Park, FL 32789

Subject: Property Owner’s Authorization for Applicant: Conditional Use/Site Plan Application:
Parcel 01-22-29-4184-02-140
1411 Trovillion Ave. Winter Park

Re Project: ABC Store 71B

Dear Mr. Briggs:

As the owner of record of the subject property, I provide this letter as verification that I have authorized ABC LIQUORS to submit to the City of Winter Park, application(s) for Conditional Use/Site Plan review, for the referenced project which partially involves my property.

This letter is not a permission for ABC LIQUORS to develop, construct on, or alter, any part of my property.

Very Truly yours,

[Signature]
Judith A. Meese
September 26, 2012

Jeff Briggs, Planning Director
City of Winter Park
401 South Park Avenue
Winter Park, Florida 32789

Subject: Property Owner’s Authorization for Applicant: Conditional Use/Site Plan Application:
Parcel: 01-22-29-4184-01-050
        401 N. Orlando Ave., Winter Park
Re Project: ABC Store 71B

Dear Mr. Briggs:

We provide this letter as verification that PLATINUM HOLDINGS 1999, LTD. does authorize ABC LIQUORS, INC. to submit to the City of Winter Park, application(s) for Conditional Use/Site Plan review, for the referenced project, which partially involves the subject property.

This letter is not a grant of permission for ABC LIQUORS, INC. to demolish, develop, construct on, or alter, any part of the subject property or improvements.

PLATINUM HOLDINGS 1999, LTD.
By: BANK OF AMERICA N.A., AS TRUSTEE, General Partner

By: [Signature]
Amy A. Bock, SVP
Legal Descriptions
Legal Description of

1411 Trovillion St. property
THIS WARRANTY DEED Made and executed February 14, 1998, by L. DANNER HIERS and MELBOURNE P. KING hereinafter called the grantor, to JUDITH A. MEES and EDUARDO L. MARQUEZ, whose post office address is 1280 Park Avenue North, Winter Park, FL 32789 hereinafter called the grantee:

(Witnesses used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of $10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, alienates, releases, conveys and confirms unto the grantee all that certain land situated in Orange County, State of Florida, viz:

Lot 14, of Block B, KILLARNEY SHORES, according to the Plat thereof as recorded in Plat Book O, Page 135, of the Public Records of Orange County, Florida.

Subject to all Easements, Restrictions and Reservations of record, if any, the mention of which herein shall not operate to reissue the same.

THE GRANTORS HEREBY WARRANT THAT THE SUBJECT PROPERTY DOES NOT CONSTITUTE THEIR HOMESTEAD, NOR THAT OF THEIR SPOUSES, IF ANY, AND IS NOT CONTIGUOUS TO THEIR HOMESTEADS. THE GRANTORS' HOMESTEAD ADDRESS APPEARS BELOW THEIR RESPECTIVE SIGNATURES. Together, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and To Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 1997.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness:

[Signature]

ALLAN M. MICHAELS
Witness:

[Signature]

MELBOURNE P. KING
2415 Lee Road, Winter Park, FL

STATE OF FLORIDA
COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, February 14, 1998, before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, personally appeared L. DANNER HIERS and MELBOURNE P. KING who produced the proper identification and who executed the foregoing instrument and acknowledged before me the execution the same.

My Commission Expires [Date]

[Seal]

Notary Public: ALLAN M. MICHAELS
Legal Description of

Platinum Holdings 1999, Ltd. property
(401 N. Orlando Ave. - Existing ABC Store site)
SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED made the 6th day of May, 1999, by JOHN W. HOLLOWAY, a single man, whose address is 6201 Matchett Road, Orlando, Florida 32809, (hereinafter referred to as the "Grantor"), to PLATINUM HOLDINGS 1999, LTD., a Florida limited partnership, whose address is 6201 Matchett Road, Orlando, Florida 32809, (hereinafter referred to as "Grantee"):

WITNESSETH, that the Grantor, for and in consideration of the sum of TEN DOLLARS ($10.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, hereby grants, bargains, sells, alien, remises, releases, conveys and confirms unto the Grantee all that certain land situate in Orange County, Florida, to-wit:

Begin 206.36 feet north of the SE corner of Lot 3, LORD'S SUBDIVISION (which point is the SE corner of Lot 6, Block A, KILLARNEY SHORES INCORPORATED SUBDIVISION as recorded in Plat Book Q, Page 135), thence West 145 feet, thence North 100 feet, thence East 145 feet, thence South 100 feet to Point of Beginning, being part of Lots 4, 5, 6, Block "A", and 20 feet on the West thereof of KILLARNEY SHORES INCORPORATED according to plat thereof as recorded in Plat Book Q, Page 135, Public Records of Orange County, Florida,

AND Lots 15 and 16, Block "B", KILLARNEY SHORES INCORPORATED SUBDIVISION according to plat thereof as recorded in Plat Book Q, Page 135, Public Records of Orange County, Florida.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.
AND the Grantor hereby covenants with said Grantee that it is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through, and under the Grantor, subject to leases, easements, restrictions, and encumbrances of record, and ad valorem real property taxes for the year commencing January 1, 1999.

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

(Signature of Witness One)

(Signature of Witness Two)

(Print Name of Witness One)

(Print Name of Witness Two)

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me on the 6th day of May, 1999 by JOHN W. HOLLOWAY, a single man, who executed the foregoing instrument for the purposes expressed therein and is/are either:

☑ personally known to me; or

☐ produced _______________ as identification,

and did not take an oath.

Notary Public (Signature)

David E. Terry
MY COMMISSION # CO862299 EXPIRES
June 20, 2001
INSURED THRU TROY FIRE INSURANCE, INC.

insert Notarial Stamp (Above)
Legal Description of

ABC Liquors’ (Gay St. access) property
Parcel Information - 01-22-29-4184-02-020

Property Summary

Property Name
Gay Rd

Names
ABC Liquors Inc

Municipality
WP - Winter Park

Property Use
2800 - Surface Parking

Mailing Address
Po Box 593688
Orlando, FL 32859-3688

Physical Address
Gay Rd
Winter Park, FL 32789

Value and Taxes

Historical Value and Tax Benefits

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<th>Tax Year Values</th>
<th>Land</th>
<th>Building(s)</th>
<th>Feature(s)</th>
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Tax Year Benefits

Tax Savings

1 of 4
2012 Taxable Value and Estimate of Proposed Taxes

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<th>Taxes</th>
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2012 Non-Ad Valorem Assessments

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<th>Assessment Description</th>
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There are no Non-Ad Valorem Assessments

Property Features

Property Description

KILLARNEY SHORES INC Q/135 W 45 FT OF LOT 2 BLK B

Total Land Area

6,599 sqft (+/-) | 0.15 acres (+/-) GIS Calculated

Land

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<th>Land Use Code</th>
<th>Zoning Land Units</th>
<th>Unit Price</th>
<th>Land Value</th>
<th>Class</th>
<th>Unit Price</th>
<th>Class Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>2800 - Surface Parking C-3</td>
<td>6587 SQUARE FEET $9.50</td>
<td>$62,577</td>
<td>$0.00</td>
<td>$62,577</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Buildings

Extra Features

<table>
<thead>
<tr>
<th>Description</th>
<th>Date Built</th>
<th>Units</th>
<th>Unit Price</th>
<th>XFOB Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>PKSP - Parking Space</td>
<td>01/01/2005</td>
<td>20 Unit(s)</td>
<td>$500.00</td>
<td>$10,000</td>
</tr>
</tbody>
</table>
Preliminary
Project Trip Generation Data
## Preliminary Trip Generation Calculation

**Property Address:** 401 N. Orlando Ave., Winter Park, FL.

### Specialty Retail Center (Land Use 814): ITE 8TH EDITION, p 1387

Average Vehicle Trip Ends: Where $X = 1,000 \text{ ft}^2$ Gross Leasable Area

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekday</td>
<td>$T = 42.78(X) + 37.66$</td>
<td></td>
</tr>
<tr>
<td>Weekday, Peak Hour of adjacent street traffic, one hour between 4 and 6 p.m.</td>
<td>$T = 2.40(X) + 21.48$</td>
<td></td>
</tr>
</tbody>
</table>

### Existing ABC Store (to be demo'd):

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Weekday Trips</td>
<td>$T = 42.78(6011) + 37.66$</td>
<td>$T = 295$ Trips</td>
</tr>
<tr>
<td>Average Weekday Peak Hour of Adjacent Street Traffic</td>
<td>$T = 2.40(6011) + 21.48$</td>
<td>$T = 36$ Trips</td>
</tr>
</tbody>
</table>

*Note: Exist store GFA = 6,011* ft$^2$, 7,072 sf for sales area, without detailed interior data, use 85% x GFA*

### Single Tenant Office Bldg (Land Use 715): ITE 7th Ed

Average Vehicle Trip Ends: Where $X = 1,000 \text{ ft}^2$ Gross Leasable Area

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Weekday</td>
<td>$\ln(T) = 0.60 \ln(X) + 4.32$</td>
<td>$T = 89$ Trips</td>
</tr>
<tr>
<td>Weekday, P.M. Peak Hour of adjacent street traffic</td>
<td>$T = 1.12(X) + 78.81$</td>
<td>$T = 37$ Trips</td>
</tr>
</tbody>
</table>

### Existing Office (to be demo'd):

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Weekday Trips</td>
<td>$\ln(T) = 0.60\ln(1306) + 4.32$</td>
<td>$T = 89$ Trips</td>
</tr>
<tr>
<td>Average Weekday Peak Hour of Adjacent Street Traffic</td>
<td>$T = 1.52(1306) + 34.88$</td>
<td>$T = 37$ Trips</td>
</tr>
</tbody>
</table>

### Proposed ABC Store:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Weekday Trips</td>
<td>$T = 42.78(8657) + 37.66$</td>
<td>$T = 408$ Trips</td>
</tr>
<tr>
<td>Average Weekday Peak Hour of Adjacent Street Traffic</td>
<td>$T = 2.40(8657) + 21.48$</td>
<td>$T = 43$ Trips</td>
</tr>
</tbody>
</table>

### Net Change for Proposed Store:

Average Weekday Trips

\[ 408 - (295+89) = 24 \text{ weekday trips (net increase)} \]

Average Weekday Peak Hour of Adjacent Street Traffic

\[ 43 - (36+37) = -30 \text{ PM peak hour trips (NET DECREASE)} \]
Winter Park Terrace (Wazzabi) – Platinum – ABC
Cross Access, Retention and Parking Easement
Agreement & 1st Amendment
CROSS ACCESS, RETENTION AND PARKING EASEMENT AGREEMENT

THIS CROSS ACCESS AND PARKING EASEMENT AGREEMENT (the "Easement") is made this 30th day of June, 2003, by and between WINTER PARK TERRACE, INC. ("WPT2"), WPT OUTPARCEL, L.L.C. ("WPT1"), ABC LIQUORS, INC. ("ABC") and PLATINUM HOLDINGS 1999, LTD. ("PH").

WITNESSETH:

WHEREAS, WPT1 has entered into a Ground Lease with ABC pursuant to which it has the right to possession and occupancy of, certain real property located in Orange County, Florida, as more particularly described on Exhibit A attached hereto (the "WPT Parcel 1"); and

WHEREAS, WPT2 is the owner of certain real property located in Orange County, Florida, as more particularly described on Exhibit B attached hereto (the "WPT Parcel 2"); and

WHEREAS, ABC is the owner of WPT Parcel 1;

WHEREAS, ABC is the owner of certain real property located in Orange County, Florida, as more particularly described in Exhibit C attached hereto (the "ABC Parcel 1"); and

WHEREAS, PH is the owner of certain real property in Orange County, Florida, as more particularly described in Exhibit D attached hereto (the "ABC Parcel 2"); and

WHEREAS, WPT1 intends to develop the WPT Parcel 1 in accordance with that certain site plan prepared by Avid Engineering Inc. (the "Site Plan") a copy of which is attached hereto as Exhibit E; and

WHEREAS, WPT1, WPT2, PH and ABC desire to execute, deliver and record this Easement for the purpose of providing cross access, retention and parking over and across the WPT1, WPT2, ABC 1 and ABC 2 Parcels as shown on the Site Plan.

NOW, THEREFORE, WPT1, WPT2, PH and ABC hereby declare that the WPT Parcel 1, WPT Parcel 2, ABC Parcel 1 and ABC Parcel 2 shall be held, transferred, sold, conveyed and occupied subject to the easement hereinafter set forth, to-wit:
1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Reciprocal Ingress and Egress, Parking and Drainage. The WPT1, WPT2, PH and ABC hereby each grant to the other a nonexclusive right and easement: for pedestrian and vehicular ingress to, egress from and access across their respective parcels (being WPT Parcel 1, WPT Parcel 2, ABC Parcel 1 and ABC Parcel 2) for the purpose of driving, walking or going upon or across any driveway, access road, sidewalk or walkway, now existing or hereafter constructed on such parcel and being utilized by the owner of such parcel, or by or for the benefit of tenants or occupants of such parcel, as a driveway, access road, sidewalk or walkway; for parking in those spaces as shown on the Site Plan and as may be constructed upon the WPT Parcel 1, WPT Parcel 2, ABC Parcel 1 and ABC Parcel 2. No owner of a Parcel may relocate, alter, eliminate or build upon any driveway or access easement, or parking space, now or hereafter existing upon such Parcel, without the prior written consent of the other Parcel owners which consent shall not be unreasonably withheld or delayed provided the Parcel owner requesting the consent provides, without cost, an alternate driveway or access easement, or parking space, and the alternate driveway or access easement, or parking space, does not materially adversely affect the other parcels. WPT Parcel 1 shall have a drainage and retention easement over and across that portion of the ABC Parcel 2 noted on the site plan as the Retention Pond for the benefit of WPT Parcel 1. ABC Parcel 1 shall have a drainage easement over WPT Parcel 2 to the said Retention Pond on ABC Parcel 2. ABC shall pay for the cost of any paving required to be performed on ABC Parcel 2 in accordance with the terms of the Site Plan. WPT 1 and WPT 2 shall be obligated to pay for all other costs of the improvements to be made to WPT Parcel 1, WPT Parcel 2, ABC Parcel 1 and ABC Parcel 2 in accordance with the terms of the Site Plan. WPT 1 and WPT 2 shall cause all work required to be done for the initial construction of the improvements contemplated by the Site Plan, and all repairs and maintenance required by the terms of Paragraph 3 hereof, to be performed in a manner so as to cause the least practically possible interference with, and interruption of, the business conducted by ABC on ABC Parcel 2. Without limiting the generality of the forgoing, no construction or substantial repairs will be conducted by or on behalf of WPT1 and/or WPT2 upon ABC Parcel 1 or ABC Parcel 2 between October 14 of each year and January 15 of the following year. At the option of ABC, the work contemplated by the Site Plan to be performed on ABC Parcel 1 and ABC Parcel 2 may be performed by contractors retained by ABC, with the cost thereof to be paid by WPT 1 and WPT 2.

3. Maintenance of Easements. WPT Parcel 1 owner shall be responsible for maintaining the parking areas and driveways on WPT Parcel 1 and ABC Parcel 1. WPT1, while it shall lease WPT Parcel 1, and the WPT Parcel 1 owner thereafter, shall also be responsible for maintaining the parking spaces on ABC Parcel 2 for a period of 5 years from the execution of this Agreement. WPT 1, while it shall lease WPT Parcel 1, and the WPT Parcel 1 owner thereafter, shall also be responsible for all maintenance of the Retention Pond as shown on the Site Plan. WPT Parcel 2 owner and ABC Parcel 2 owner shall be responsible for maintaining all other parking and drives in existence on their respective parcels. WPT 1, while it shall lease WPT Parcel 1, and the WPT Parcel 1 owner thereafter, shall be responsible for seventy percent (70%) of the ad valorem real property taxes applicable to ABC Parcel 1, which will be payable to the owner of ABC Parcel 1 promptly upon presentation of a paid invoice for the ad valorem real
property taxes applicable to ABC Parcel 1.

4. Limitation of Easement. The easement for parking on ABC Parcel 2, for the benefit of WPT Parcel 1, shall be limited to a term of 5 years from the date of execution of this Agreement. All other easements set forth herein are perpetual. In addition, delivery vehicles for WPT Parcel 1 and WPT Parcel 2 may not park on ABC Parcel 2. Owners and occupants of ABC Parcel 2 shall be permitted to have a small directional sign placed upon WPT Parcel 2, if permitted by local ordinances and regulations, so long as it does not limit WPT Parcel 2’s signage.

5. Easements and Covenants Running With Land. The easements set forth herein are intended to be and shall be construed as easements running with the WPT Parcel 1, WPT Parcel 2, ABC Parcel 1 and ABC Parcel 2, and shall run with, be appurtenant to, binding upon, inuring to the benefit of the WPT Parcel 1, WPT Parcel 2, ABC Parcel 1 and ABC Parcel 2 and enforceable by the parties hereto and their respective successors and assigns. Each time the title to the WPT Parcel 1, WPT Parcel 2, ABC Parcel 1 and ABC Parcel 2 is transferred, the transferee shall assume all the rights, liabilities and obligations of the former owner hereunder, and these rights, liabilities and obligations shall inure to and/or be the obligation of the then owner of the respective parcel. It is the intent of this Section that each owner shall only have responsibility and liability for the covenants and obligations hereunder for that period of time during which they own their respective parcel.

6. Enforcement. The beneficiaries hereof may enforce the breach of, or default under, any of the terms or provisions, covenants, conditions and restrictions contained herein by any procedure at law or in equity against any person or persons, entity or entities, violating or attempting to violate any covenant or restriction contained herein either to restrain such violation or to require certain performances or to recover damages or to enforce any lien created hereby.

7. Compliance. The easements set forth herein shall apply not only to the owners of the properties set forth herein, but also to any person or persons, entity or entities occupying the respective owner’s premises under lease or by permission or invitation of such owner or such party’s tenants, expressed or implied. Failure of such owner to notify said persons, entities or occupants of the existence of this Easement shall not in any way act to limit or divest the right of any party, or its successors or assigns, to enforcement of this Easement. The WPT Parcel 1 owner, WPT Parcel 2 owner, ABC Parcel 1 owner and ABC Parcel 2 owner shall be responsible for any violations of this Easement by such party’s tenants, licensees, invitees or guests and by guests, licensees, and invitees of such party’s tenants at any time.

8. Amendment. The parcel owners shall have the right to amend or modify this Easement by an instrument in writing recorded in the Public Records of Orange County, Florida executed by the fee simple owners of the WPT Parcel 1, WPT Parcel 2, ABC Parcel 1 and ABC Parcel 2, and their respective mortgagees, if any.

9. No Waiver. No waiver of any breach or default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such breach or default.
10. **Entire Agreement.** This Easement contains the entire and complete understanding and agreement of the parties hereto with respect to the matters set forth herein.

11. **Headings and Captions.** The titles and captions of paragraphs and subparagraphs in this Easement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Easement Agreement, and therefore, such titles or captions do not define, limit, extend, explain, or describe the scope or extent of this Easement or any of its terms, provisions, representations, warranties or conditions, in any manner or way whatsoever.

12. **Severability.** Invalidation of any provisions under this Easement, in whole or in part by a court of competent jurisdiction shall not affect any of the other provisions set forth herein, all of which shall remain in full force and effect.

13. **Attorneys’ Fees.** In the event litigation arises concerning this Easement or the enforcement, hereof, each party shall pay all of its own costs and expenses incurred, including, but not limited to, attorneys’ fees, whether such fees are incurred in any pretrial, trial or appellate proceeding.

14. **Estoppel Letter.** The parcel owners agree, upon reasonable request in writing, to execute and deliver to an appropriate requesting party, for the benefit of the appropriate requesting party and such other persons or entities as the requesting party may name in such request, a statement in writing confirming that this Easement is in full force and effect and that the requesting party is not in default hereunder, or if in default, specifying the nature of such default, together with such other matters as may be reasonably requested by the requesting party relating to this Easement.

15. **Liability Insurance.** The parcel owners shall at all times maintain comprehensive, general liability insurance with respect to each of their respective parcels, for the benefit of such owner and all owners of such other parcels, against claims for bodily injury and/or property damage occurring on or about the WPT Parcel 1, WPT Parcel 2, ABC Parcel 1 and ABC Parcel 2 with a minimum single liability limit of $1,000,000.00. ABC Parcel 1 owner and ABC Parcel 2 owner shall be entitled to provide such insurance through self-insurance of ABC Liquors, Inc.

16. **Hold Harmless.** WPT 1 and WPT 2 shall indemnify, defend, and hold harmless ABC and PH with respect to any harm, loss, or damage which ABC or PH shall suffer, and from and against any and all claims, arising from or in connection with the construction of the improvements contemplated by the Site Plan on ABC Parcel 1 and/or ABC Parcel 2 by WPT 1 and/or WPT 2, and in connection with the maintenance of the easements required by the terms of Paragraph 3 hereof on ABC Parcel 1 and/or ABC Parcel 2. Without limiting the generality of the foregoing, WPT 1 and WPT 2 shall assure that no lien claims shall be filed against ABC Parcel 1 or ABC Parcel 2 with respect to any such work performed by or for the account of WPT 1 and/or WPT 2, and upon filing of any such claim of lien, shall cause same to be discharged or transferred to other security within ten (10) business days after written demand therefor by PH or ABC.
IN WITNESS WHEREOF, the parties hereto have executed this Easement the day and year first set forth hereinabove.

ABC Liquors, Inc.

By: [Signature]

As: CEO

The foregoing instrument was acknowledged before me this 16th day of June, 2003 by

Charles E. Bailey, Jr. as President/CEO of ABC Liquors, Inc., (PLEASE CHECK ONE OF THE FOLLOWING) [ ] who is personally known to me or [ ] who has produced (TYPE OF IDENTIFICATION) as identification.

Robin L. Martin (Print Name)

NOTARY PUBLIC, State of Florida

Commission Number: C6972579
My Commission Expires: 10-3-04

WPT OUTPARCEL, L.L.C.
A Florida limited liability company

Charles Whittall, Member

[Signature]
STATE OF FLORIDA  
COUNTY OF ORANGE  

The foregoing instrument was acknowledged before me this 3rd day of June, 2003 by Charles Whittall, Member of WPT OUTPARCEL, LLC., a Florida limited liability company, who is personally known to me.

[Signature]

(Print Name)

NOTARY PUBLIC, State of  
Commission Number:  
My Commission Expires:

(SEAL)  

WINTER PARK TERRACE, INC.  
A Florida corporation

[Signature]

Charles Whittall, Director

[Signature]

Witness

[PRINT NAME OF WITNESS]

[Signature]

Witness

[PRINT NAME OF WITNESS]

STATE OF FLORIDA  
COUNTY OF ORANGE  

The foregoing instrument was acknowledged before me this 3rd day of June, 2003 by Charles Whittall, Director of Winter Park Terrace, Inc., a Florida corporation, who is personally known to me.

[Signature]

(Print Name)

NOTARY PUBLIC, State of  
Commission Number:  
My Commission Expires:

(SEAL)  

[Signature]

Print Name}

[Signature]

Witness

[PRINT NAME OF WITNESS]
PLATINUM HOLDINGS 1999, LTD.
A Florida limited partnership
By: John W. Holloway Irrevocable Dynasty
Trust Number 2 under Trust Agreement dated
March 5, 1999, as General Partner
By: Bank of America NA, as Trustee

Witness

[PRINT NAME OF WITNESS]
PAMELA O. MILLER

[PRINT NAME OF WITNESS]
JOHN T. COLN

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 30 day of June, 2003 by

[PRINT NAME OF WITNESS]
AMY A. ROOK
as Vice President

of Bank of America, N.A., as trustee of the John
W. Holloway Irrevocable Dynasty Trust Number 2, under Trust Agreement dated March 5, 1999, as
General Partner of Platinum Holdings 1999, Ltd., a Florida limited partnership, (PLEASE CHECK ONE OF
THE FOLLOWING) [ ] who is personally known to me or [ ] who has produced
(TYPE OF IDENTIFICATION) as identification

REBECCA M. DICE
(Print Name)
NOTARY PUBLIC, State of Florida

(SEAL)
Commission Number:

My Commission Expires:
MAP SHOWING SKETCH OF:
PROPOSED LOT SPLIT
LOT 1 AND LOT 2 BLOCK B, KILLARNEY SHORES INC.
WINTER PARK, ORANGE COUNTY, FLORIDA

PARCEL 1

A portion of Lot 1 and 2, Block B, KILLARNEY SHORES INC. as recorded in Plat Book Q, Page 135, Public Records of Orange County, Florida, more particularly described as follows.

Begin at the northeast corner of said Lot 1, Block B; thence S00°33'00"E along the east line of said Lot 1, 146.38' to the southeast corner of said Lot 1; thence S90°00'00"W along the south line of said Lot 1 and Lot 2, 75.00'; thence N00°33'00"W, 146.38' to the south right of way of Gay Road; thence N90°00'00"E along said right of way, 75.00' to the Point of Beginning.

Said lands lying in the City of Winter Park, Orange County, Florida.

NOTE:
1. Bearings based on assumed N90°00'00"E along south right of way of Gay Road.
2. Not abstracted for easements or right of ways of record.

CERTIFICATION: We do hereby certify that the attached sketch of description is in compliance with applicable minimum technical standards set forth by Florida Administrative Code 81 G 17-8

SEE SHEET 3 FOR MAP

BY: GARY A. BURDEN DATE: 11-7-01
GARY A. BURDEN
FLORIDA REGISTRATION NO. 3691

SCALE 1" = 300 FEET
DRAWN-BY: GJS
JOB NUMBER: 01105L

IT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR-ENGINEER.
DESCRIPTION: (D.R.B. 3991, PAGE 4037)

FROM THE NORTHEAST CORNER OF LOT 2, LORD'S SUBDIVISION, ACROSS THE PLAT THEREOF AS RECORDED IN PLAT BOOK P, PAGE 50, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, RUN SOUTH 01° 25' EAST ALONG EAST LINE OF SAID LOT, A DISTANCE OF 481.50 FEET TO THE POINT OF BEGINNING, THEN RUN NORTH 88° 53' 44" WEST PARALLEL WITH NORTH LINE OF SAID LOT 2 A DISTANCE OF 210 FEET; THEN SOUTH 01° 25' WEST 30 FEET; THEN north 88° 53' 44" WEST PARALLEL WITH NORTH LINE OF SAID LOT 148 FEET TO A POINT ON THE EASTERN RIGHT OF WAY OF COUNTY ROAD NOW KNOWN AS WEBSTER AVENUE, THEN SOUTH 01° 25' WEST ALONG SAID EASTERLY RIGHT OF WAY LINE 180 FEET TO POINT SOUTH 01° 25' WEST 871.50 FEET FROM NORTH LINE OF SAID LOT 2; THEN SOUTH 88° 53' 44" EAST PARALLEL WITH NORTH LINE OF SAID LOT 2, A DISTANCE OF 355 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF STATE ROAD 15-600 (SECTION 76030) AND THE EAST LINE OF SAID LOT 2; THEN NORTH 01° 25' EAST 210 FEET TO POINT OF BEGINNING.

LESS AND EXCEPT THAT PART THEREOF LYING SOUTHEAST OF A LINE DESCRIBED AS FOLLOWS

BEGIN ON A WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 10, BLOCK 2, HAVILAH PARK SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK O, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, AT A POINT 30.20 FEET WEST OF THE SOUTHWEST CORNER OF SAID LOT 10; THEN RUN NORTH 00° 47' 00" EAST A DISTANCE OF 38.36 FEET TO SURVEY STATION 1384+00.00 ON SECTION 76030; THEN RUN NORTH 88° 13' 00" WEST A DISTANCE OF 40.00 FEET FOR A POINT OF BEGINNING, THEN RUN NORTH 00° 47' 00" EAST AND PARALLEL TO THE SURVEY LINE OF STATE ROAD 15-600 (US 17-92), SECTION 76030, A DISTANCE OF 141.24 FEET TO A POINT 10 FEET WEST OF SURVEY STATION 1384+51.24 ON SAID SURVEY LINE, SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 18 FEET; THEN ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29° 47' 43" A DISTANCE OF 14.52 FEET TO A POINT 33.50 FEET WEST OF SURVEY STATION 1384+53.60 ON SAID SURVEY LINE, THEN RUN NORTH 00° 47' 00" EAST, PARALLEL TO THE SURVEY LINE OF SAID STATE ROAD 15-600, A DISTANCE OF 188.37 FEET TO A POINT 33.50 FEET WEST OF SURVEY STATION 1384+49.57 ON SAID SURVEY LINE OF STATE ROAD 15-600, SECTION 76030 FOR THE END OF SAID LINE.

TOGETHER WITH

BEGINNING AT THE SOUTHEAST CORNER OF LOT 2 OF LORD'S SUBDIVISION, RUN THENCE N 89° 37' 05" W ALONG THE SOUTH LINE OF LOT 2 A DISTANCE OF 388.00 FEET, THENCE N 02° 20' 30" E A DISTANCE OF 39.65 FEET, THENCE S 89° 37' 05" W A DISTANCE OF 356.00 FEET TO THE EAST LINE OF LOT 2, THENCE S 02° 20' 30" W A DISTANCE OF 40.10 FEET TO THE POINT OF BEGINNING LESS THE EAST 10.00 FEET FOR RIGHT OF WAY FOR ORLANDO AVENUE (U.S. HIGHWAY NOS. 17 & 92), AND LESS

THE NORTHERLY 4.00 FEET OF THE SOUTHERLY 15.00 FEET OF THE WESTERLY 39.00 FEET OF THE EASTERLY 41.00 FEET OF THE ABOVE DESCRIBED PARCEL.
MAP SHOWING SKETCH OF:
PROPOSED LOT SPLIT
LOT 1 AND LOT 2 BLOCK B, KILLARNEY SHORES INC.
WINTER PARK, ORANGE COUNTY, FLORIDA

PARCEL 2

A portion of Lot 1 and 2, Block B, KILLARNEY SHORES INC. as recorded in Plat Book Q, Page 135, Public Records of Orange County, Florida, more particularly described as follows.
Begin at the northwest corner of said Lot 2, Block B; thence N90°00'00"E along the south right of way line of Gay Road, 45.00'; thence S00°33'00"E, 146.36' to the south line of said Lot 2; thence S90°00'00"W along said south line 45.00' to the southwest corner of said Lot 2, thence N00°33'00"W along the west line of said Lot 2, 146.36' to the Point of Beginning;
Said lands lying in the City of Winter Park, Orange County, Florida.

NOTE:
1. BEARINGS BASED ON ASSUMED N90°00'00"E ALONG SOUTH RIGHT OF WAY OF GAY ROAD.
2. NOT ABSTRACTED FOR EASEMENTS OR RIGHT OF WAYS OF RECORD.

CERTIFICATION: WE DO HEREBY CERTIFY THAT THE ATTACHED SKETCH OF DESCRIPTION IS IN COMPLIANCE WITH APPLICABLE MINIMUM TECHNICAL STANDARDS SET FORTH BY FLORIDA ADMINISTRATIVE CODE 91 G 17-B

SEE SHEET 3 FOR MAP
EXHIBIT "D"

ABC PARCEL 2

401 South Orlando Avenue, Winter Park, Florida
Orange Tax Parcel # 01-22-29-4184-01-050
Orange Tax Parcel # 01-22-29-4184-02-150
Orange Tax Parcel # 01-22-29-4184-02-160

Begin 206.36 feet north of the SE corner of Lot 3, LORD'S SUBDIVISION (which point is the SE corner of Lot 6, Block A, KILLARNEY SHORES INCORPORATED SUBDIVISION as recorded in Plat Book Q, Page 135), thence West 145 feet, thence North 100 feet, thence East 145 feet, thence South 100 feet to Point of Beginning, being part of Lots 4, 5, 6, Block "A", and 20 feet on the West thereof of KILLARNEY SHORES INCORPORATED according to plat thereof as recorded in Plat Book Q, Page 135, Public Records of Orange County, Florida,

AND Lots 15 and 16, Block "B", KILLARNEY SHORES INCORPORATED SUBDIVISION according to plat thereof as recorded in Plat Book Q, Page 135, Public Records of Orange County, Florida.
AMENDMENT TO CROSS ACCESS, RETENTION AND PARKING EASEMENT AGREEMENT

THIS AMENDMENT IS MADE THIS 24TH DAY OF JANUARY 2004 by and between WINTER PARK TERRACE, INC., ("WPT2"), WPT OUTPARCEL, LLC. ("WPT1"), ABC LIQUORS, INC. ("ABC") and PLATINUM HOLDINGS 1999, LTD. ("PH") to amend that CROSS ACCESS, RETENTION AND PARKING EASEMENT AGREEMENT recorded 21 July 2003 in the O.R. Book 7006, Page 4469, Public Records of Orange County, Florida. ("Easement")

WITNESSETH:

WHEREAS, WPT1, WPT2, ABC & PH have entered into the Easement referenced above.

WHEREAS, WPT1, WPT2, ABC & PH desire to Amend that Easement.

NOW, THEREFORE, WPT1, WPT2, PH and ABC hereby modify and amend Section 3 and 4 of the ACCESS, RETENTION AND PARKING EASEMENT AGREEMENT as set forth below. ALL OTHER SECTIONS OF THE CROSS ACCESS, RETENTION AND PARKING EASEMENT AGREEMENT REMAIN IN FULL FORCE AND EFFECT.

3. Maintenance of Easements. WPT Parcel 1 owner shall be responsible for maintaining the parking areas and driveways on WPT Parcel 1 and ABC Parcel 1. WPT1, while it shall lease WPT Parcel 1, and the WPT Parcel 1 owner thereafter, shall also be responsible for maintaining the parking spaces on ABC Parcel 2 for a period of 10 years from the execution of this Agreement. WPT1, while it shall lease WPT Parcel 1, and the WPT Parcel 1 owner thereafter, shall also be responsible for all maintenance of the Retention Pond as shown on the Site Plan. WPT Parcel 2 owner and ABC Parcel 2 owner shall be responsible for maintaining all other parking and drives in existence on their respective parcels. WPT1, while it shall lease WPT Parcel 1, and the WPT Parcel 1 owner thereafter, shall also be responsible for seventy percent (70%) of the ad valorem real property taxes applicable to ABC Parcel 1, which will be payable to the owner of ABC Parcel 1 promptly upon presentation of a paid invoice for the ad valorem real property taxes applicable to the ABC Parcel 1.

4. Limitation of Easement. The easement for parking on ABC Parcel 2, for the benefit of WPT Parcel 1, shall be limited to a term of 10 years from the date of execution of the CROSS ACCESS, RETENTION AND PARKING EASEMENT AGREEMENT. This shall be done in consideration for the sum of $5,000.00 paid by WPT1 to ABC. The easement for parking shall be limited to that
crosshatched area as shown on Exhibit A attached hereto and made a part hereof. All other easements set forth herein are perpetual. In addition, delivery vehicles for WPT Parcel 1 and WPT Parcel 2 may not park on ABC Parcel 2. Owners and occupants of ABC Parcel 2 shall be permitted to have a small directional sign placed upon WPT Parcel 2, if permitted by local ordinances and regulations, so long as it does not limit WPT Parcel 2's signage.

IN WITNESS WHEREOF, the parties hereto have executed this Easement the day and year first set forth hereinabove.

JENNIFER O'NEILL, Witness

THOMAS C. HATZMANN, Witness

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 31st day of January, 2004 by Charles E. Balles, III, as President/CEO of ABC Liquors, Inc., (PLEASE CHECK ONE OF THE FOLLOWING) [ ] who is personally known to me or [ ] who has produced (TYPE OF IDENTIFICATION) as identification.

CHRISTINA E. BUNTING
Commission # DDOB73288
Express 8/13/2009
Bonded through
Florida Notary Assn., Inc.

(WITNESS)

WPT OUTPARCEL 1, LLC.
A Florida Limited Liability Company

By: Charles E. Whittall, Member
STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 15th day of Jan, 2004 by Charles Whittall, Member of WPT OUTPARCEL, L.L.C., a Florida Limited Liability Company, who is personally known to me.

LEIGH A. WILLIAMS  
NOTARY PUBLIC, State of Florida  
(Print Name)

(SEAL)

WINTER PARK TERRACE, INC.  
A Florida Corporation

By: Charles E. Whittall, Director

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 15th day of Jan, 2004 by Charles Whittall, Director of Winter Park Terrace, Inc., a Florida Corporation, who is personally known to me.

LEIGH A. WILLIAMS  
NOTARY PUBLIC, State of Florida  
(Print Name)

(SEAL)
PLATINUM HOLDINGS 1999, LTD.
A Florida limited partnership
By: John W. Holloway Irrevocable Dynasty
Trust Number 2 under Trust Agreement
dated March 5, 1999, as General Partner
By: Bank of America NA, as Trustee

Rebecca M. Dice, Witness

Amy A. Bock, Vice President

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 29th day of March, 2004 by
Amy Bock as Vice President of Bank of America, N.A., as trustee of the John W. Holloway
Irrevocable Dynasty Trust Number 2, under Trust Agreement dated March 5, 1999, as General Partner
of Platinum Holdings 1999, Ltd., a Florida limited partnership. (PLEASE CHECK ONE OF THE FOLLOWING)
[ ] who is personally known to me or [ ] who has produced __________________________ (TYPE OF IDENTIFICATION) as identification

Rebecca M. Dice (Print Name)

(SEAL)

NOTARY PUBLIC, State of Florida
The Lakes and Waterways Advisory Board has the responsibility under our Code to review and approve all docks and boathouses on the lakes and canals. The Lakes Board has requested that P&Z and City Commission consider changes to the length and size of docks (those rules are in the Zoning Code) in order to streamline the permit process on Lake Killarney where shallow water conditions necessitate some additional dock length.

A recent dock variance request on Lake Killarney initiated this discussion at the Lakes Board related to the length and square footage allowance. Historically the City has had a maximum 30 foot dock length on our lakes and when Lake Killarney was annexed (which had a 50 foot length from the Orange County regulations) our code related to dock length was written to allow docks up to 50 feet in length (from OHW) on lake Killarney.

However, at that time the total maximum size or square foot area of docks and boathouses was not changed to reflect the extra allowed length. This has resulted in variance requests that have had to go to the Zoning Board of Adjustment for approval and then to the Lakes and Waterways Board for review and approval. This two-step process is time consuming (3 months) for the lakefront property owners and largely unnecessary given the thorough Lakes Board public hearing review process, notice to neighbors, etc.

There have also been the occasional situation where variances were requested and necessary from the 30 foot maximum length on the other lakes in the City. As a result, the planning staff is suggesting that the Code be further modified by allowing up to 10 additional feet to address those situations so again such approvals can be streamlined by only going to one Board and not two.

The key criteria in both instances is that the allowance is only “when the applicant has provided sufficient water depth and bottom contour information to demonstrate that the additional length is needed and essential for normal boathouse/boatlift operation”.

STAFF RECOMMENDATION IS FOR APPROVAL.
ORDINANCE NO. __________

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 “LAND DEVELOPMENT CODE” ARTICLE III, “ZONING” TO AMEND SECTION 58-87 “LAKEFRONT LOTS, CANALFRONT LOTS, STREAMFRONT LOTS, BOATHOUSES AND DOCKS” TO REVISE THE DEVELOPMENT STANDARDS FOR DOCKS ON LAKEFRONT LOTS, PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board of the City of Winter Park has recommended approval of this Ordinance at its November 4, 2012 meeting; and

WHEREAS, the City Commission of the City of Winter Park held duly noticed public hearings on the proposed zoning change set forth hereunder and considered advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis, and after complete deliberation, hereby finds the requested change consistent with the City of Winter Park’s Comprehensive Plan; and

WHEREAS, the City Commission hereby find that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. That Chapter 58 “Land Development Code”, Article III "Zoning" of the Code of Ordinances, Section 58-87 "Lakefront lots, canalfront lots, streamfront lots, boathouses and docks", subsections (c) (2) and (c) (4) are amended to read as follows:

Sec. 58-87. Lakefront lots, canalfront lots, streamfront lots, boathouses and docks.

(c) Docks and boathouses. The following minimum or maximum standards shall apply to all construction or renovation of docks and boathouses:

1. Before a building permit is issued, the plans for docks and boathouses shall be approved by the lakes and waterways board after review of comments from city staff and notification of the adjacent lakefront property owners.

2. The maximum size or square footage of boats and boathouses shall be as follows:

   a. The total area of docks and boathouses built at the water's edge over land and water shall not exceed 600 square feet except on Lake Killarney where up to 700 square feet may be approved by the Lakes and Waterways Board if the following conditions are met:

      1. A dock longer than 30 feet from the OHW is being proposed under the Lake Killarney special length allowance.
2. The applicant has provided sufficient water depth and/or bottom contour information to demonstrate that the additional length is needed and essential for normal boathouse/boatlift operation.

3. No more than 25 square feet of additional area is proposed for each five feet of length beyond 30 feet from the OHW.

   b. In the case of canalfront lots (other than boathouse lots on canals as set forth in subsection (f) hereafter), the maximum total area of docks, boathouses, decks, stairs and any other attachments shall be based on the length of the canal frontage as follows:
   1. Seventy-five feet or less of frontage, 450 sq. ft.
   2. Seventy-six feet to 100 feet of frontage, 500 sq. ft.
   3. Over 100 feet of frontage, 550 sq. ft.

   The maximum width of canal boathouses shall be 20 feet.

(4) All new docks and boathouses shall not extend over 30 feet into the water from the ordinary high water elevations specified in this section. The Lakes and Waterways Board shall have the authority to approve up to an additional 10 feet in length and corresponding area for docks when the applicant has provided sufficient water depth and/or bottom contour information to demonstrate that the additional length is needed and essential for normal boathouse/boatlift operation. However, on Lake Killarney the maximum distance may be 50 feet.

SECTION 2. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 3. CONFLICTS. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 4. CODIFICATION. It is the intention of the City Commission of the City of Winter Park, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Winter Park, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

SECTION 5 - EFFECTIVE DATE. This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this ______ day of ______________, 2012.

__________________________________________
Mayor

__________________________________________
City Clerk
Jeff/George

A recent dock variance request on Lake Killarney initiated a discussion at the Lakes and Waterways Advisory Board related to the length allowance on that lake. At some time in the past, the code related to dock length was written to allow docks up to 50 feet in length (from OHW) on Lake Killarney, 20 feet longer than allowed on other lakes. The total area allowed was not changed to reflect the extra allowed length, and the Lakes Board thought it would be useful to add language to the code that would provide a fair area allowance for docks that need to be longer than 30 feet to reach deep water, establish a correlation between extra length and the amount of extra area allowed, and provide a baseline area as a guide when considering future variance requests. Attached is the draft language unanimously recommended by the board. They request that the issue be taken up by the Planning and Zoning Board, and if they agree with the proposed revisions, sent on to the City Commission with their recommendation for inclusion in the Land Development Code.

Let me know if you have any questions or need any additional information.

Thanks!

Timothy J. Egan
City of Winter Park
Environmental Resource Manager
Phone: (407) 599-3599
FAX: (407) 599-3417
e-mail: tegan@cityofwinterpark.org
REQUEST OF THE CITY OF WINTER PARK FOR: TO AMEND THE "ZONING REGULATIONS" SECTION 58-75 "COMMERCIAL (C-2) DISTRICT," TO REVISE THE PERMITTED USES AND CONDITIONAL USES ALONG PARK AVENUE, SOUTH OF COMSTOCK AVENUE AND TO PROVIDE NEW DEFINITIONS FOR FAST CASUAL AND FINE DINING RESTAURANTS.

This agenda item returns for P&Z Board discussion, the issue of amending the C-2 commercial zoning rules along Park Avenue in the one block south of Comstock Avenue. This was discussed by P&Z at your July 10th meeting and then tabled by the City Commission at their July 23rd meeting. It was the discussed at your September 11th meeting and at a workshop on October 24th with members from the Park Avenue Area Association.

Unfortunately, these zoning rules changes have generated a great deal of controversy. The original intention by the planning staff was to help the five properties in this one block of Park Avenue, south of Comstock Avenue that has struggled for many years. This block is ‘cut-off’ by City Hall for many pedestrians and also has challenges with available parking. Historically there has been more turnover and vacancies in this block than elsewhere along Park Avenue.

In order to help with the “economy” of this one block of Park Avenue, south of Comstock Avenue, this ordinance originally proposed to allow as permitted uses any type of restaurant (not just fine dining restaurants) and to allow as a permitted use, any type of office business or educational use (Rollins) on the ground floor (that otherwise are not permitted now by the existing zoning rules). That generated concerns and opposition from downtown business and property owners along with opposition from the Park Avenue Area Association. The primary concerns were about whether there was a need for these changes, about the scale of these changes and unintended consequences. As a result, the “menu” of the proposed changes has been significantly scaled back to a much more limited scope.

The proposed ordinance now makes just two changes, again only to the area south of Comstock Avenue, as follows:

1. Allows as a permitted use, barber shops, beauty/nail salons and other cosmetic treatment businesses. This is in recognition that Gary Lamberts’ salon has been in this block for 30+ years and it would provide some additional tenant flexibility for these owners.
2. Allows for “fast casual” restaurants within this block where ordering and payment may be done at a counter but the food or meals are brought to the customer’s tables (other than take-out). Fast casual restaurants also would not include any type of restaurants where the business model is predominately, in the majority of other locations, as drive-thru or take-out restaurants. Fast casual restaurants along with the fine dining restaurants, that are now permitted, are intended to be complimentary and supportive of the retail character of Park Avenue. These restaurants hopefully attract customers to Park Avenue that also hopefully will shop at the retail stores in the Park Avenue area. Restaurants with business models that cater primarily to take-out or fast food customers where you get you food and go are not supportive of the character of the Park Avenue area.

**STAFF RECOMMENDATION:** The comments heard by the Planning and Zoning Board at the work session on October 24th indicated that the Park Avenue Association and various downtown business and property owners still do not favor even this reduced menu of code changes. Basically, they do not feel the code is broken and needs fixing. The comments also reflected their concern about this being precedent setting for the rest of Park Avenue.

To the planning staff, relaxing the rules for hair salons, spas and other types of cosmetic businesses and for fast casual restaurants, in just this one block of Park Avenue did not seem to be detrimental or precedent setting to the overall character of Park Avenue as a retail shopping and fine dining restaurant district. This ordinance only applies to five properties and 180 feet of frontage. Staff understands that this block is a ‘gateway’ to Park Avenue and the zoning rules and the character of the businesses should not be significantly different in this block than for the balance of the Avenue. However, history indicates that this block has challenges of location and parking that create the need for some very limited additional tenant flexibility.

This was a staff initiated proposal. Staff understands the reasons for the opposition and understands completely if the Planning Board does not want to support these code changes in light of those concerns. However, staff believed this has merit when the process was started so staff remains in support of the limited menu of changes.
ORDINANCE NO. __________

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, TO AMEND CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SECTION 58-75 "COMMERCIAL (C-2) DISTRICT", TO REVISE THE PERMITTED USES ALONG PARK AVENUE, SOUTH OF COMSTOCK AVENUE AND AMENDING SECTION 58-95 "DEFINITIONS" TO PROVIDE DEFINITIONS FOR FAST CASUAL AND FINE DINING RESTAURANTS, PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board of the City of Winter Park has recommended approval of this Ordinance at its November 4, 2012 meeting; and

WHEREAS, the City Commission of the City of Winter Park held duly noticed public hearings on the proposed zoning change set forth hereunder and considered advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis, and after complete deliberation, hereby finds the requested change consistent with the City of Winter Park’s Comprehensive Plan.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. That Chapter 58 "Land Development Code", Article III "Zoning" is hereby amended and modified by amending Section 58-75 "Commercial (C-2) District", subsections (b) and (c) to read as follows:

Sec. 58-75. Commercial (C-2) District.

(b) Permitted uses. All permitted uses shall be conducted so as to emphasize the pedestrian orientation of the district. Thus, drive-in type businesses or uses which have a drive-in component as part of their operation shall not be permitted except to a limited degree in the area on Morse Boulevard, west of Virginia Avenue and confined to non-retail use. All uses permitted shall be conducted exclusively within a building except those uses permitted which are customarily conducted in the open such as off-street parking and out-door patio seating for dining. Storage shall be limited to accessory storage of commodities sold at retail on the premises and storage shall be within a completely enclosed building. Bars, taverns and cocktail lounges are prohibited in this zoning district.

(1) Retail businesses involved in the sale of merchandise on the premises within enclosed buildings but excluding resale establishments or pawn shops (other than clothing resale stores). Liquor stores, provided the store is more than 300 feet from residually used properties.

(2) Personal services limited to hotels, and shoe/watch repair businesses; but excluding places of amusement such as game rooms, video or internet arcades, tattoo, body art or fortune telling businesses and the like.

(3) Bank, savings and loans, financial institutions, travel agencies, photographic studios, interior design studios, barber shops, beauty/nail salons, spas, state licensed massage therapists, cosmetic treatments businesses, governmental, educational, medical, real estate and other offices but only when such uses are located above the ground floor within the Park Avenue Corridor or located on
any floor outside the Park Avenue Corridor. This shall be referred to as the Park Avenue corridor vertical zoning restrictions. However, in the block of Park Avenue, south of Comstock Avenue, barber shops, beauty/nail salons and other cosmetic treatment businesses may be permitted on the ground floor.

(4) Residences located on any floor outside of the Park Avenue Corridor or above the ground floor within the Park Avenue Corridor.

(5) Public and semi-private facilities such as museums, lodges, libraries and the like.

(6) Fine dining restaurants, as well as ice cream, tea, coffee, cheese, pastry and bakery stores with retail sales and consumption of food and beverage products on premises. However, in the block of Park Avenue, south of Comstock Avenue, fast casual restaurants may also be permitted.

(7) Churches, non-profit organizations' halls/lodges and schools less than 5,000 square feet in size. (See parking requirements for limitations).

SECTION 2. That Chapter 58 “Land Development Code”, Article III “Zoning” is hereby amended and modified by amending Section 58-95 “Definitions”, to provide definitions for fast casual and fine dining restaurants to read as follows:

Sec. 58-95. Definitions.

Fast casual restaurant means any establishment which is devoted to the retailing and on-premise consumption of meals and food where more than fifty (50%) percent of the gross revenue is derived from food sales versus sales of alcoholic beverages and where the food sold does not include pre-packaged or off-site prepared food items as entrees or core offerings and whose most common business model for the restaurant does not include a majority of locations with drive-thru or predominately take-out food service. Fast casual restaurants allow ordering and payment at a counter/cashier but the food or meals other than for take-out must be served to customers at their tables.

Fine dining restaurant means any establishment which is devoted to the retailing and on-premise consumption of meals and food where more than fifty (50%) percent of the gross revenue is derived from food sales versus sales of alcoholic beverages and where food service is provided by waiters/waitresses and where the menu shall consist of fine dining cuisine with a range of appetizers, entrees and desserts. Fine dining restaurants shall not include establishments where ordering or payment is done at a counter/cashier and shall not include sandwich shops, sub shops or any type of fast food business. Fine dining restaurants may provide a supplementary option for ordering and payment at a counter/cashier in order to accommodate take-out orders but if such food or meals is intended for on-site consumption then such food or meals must be served to customers at their tables by waiter/waitresses and full table service by waiter/waitresses must be available at all times. Fine Dining does not include any restaurant of a franchise whose most common business model for their restaurants includes a majority of locations with drive-thru or predominately take-out food service.

SECTION 3. SEVERABILITY AND CONFLICTS. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 4 - EFFECTIVE DATE. This ordinance shall become effective immediately upon its final passage and adoption.
ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of ______________, 2012.

______________________________________________  Mayor

ATTEST:

______________________________________________  City Clerk

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