

SANGAMON COUNTY, ILLINOIS

ORDINANCE
NUMBER 17- 09

**AN ORDINANCE AUTHORIZING A VARIANCE TO REDUCE THE REAR YARD
SETBACK AND CHANGE THE ZONING CLASSIFICATION FROM R-1 TO B-1 FOR
CERTAIN PROPERTY WITHIN THE VILLAGE OF CHATHAM AND TO APPROVE
A DEVELOPMENT AGREEMENT BETWEEN DEBACKERE DEVELOPMENT LLC
AND JOHN M. POLLOCK**

THOMAS S. GRAY, Village President
PAT SCHAD, Village Clerk

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TERRY FOUNTAIN
DAVID KIMSEY
NINA LINDHORST
MATT MAU
JOE SCHATTEMAN
Village Trustees

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Chatham

on 2/28, 2017

Sorling Northrup – 1 N. Old State Capitol Plaza, Suite 200, Springfield, IL 62705

ORDINANCE NO. 17- 09

AN ORDINANCE AUTHORIZING A VARIANCE TO REDUCE THE REAR YARD SETBACK, CHANGE THE ZONING CLASSIFICATION FROM R-1 TO B-1 FOR CERTAIN PROPERTY WITHIN THE VILLAGE OF CHATHAM (PARCEL NO. 29-07.0-326-003) AND TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN DEBACKERE DEVELOPMENT LLC AND JOHN M. POLLOCK

WHEREAS, the Village of Chatham, Sangamon County, State of Illinois, is a duly organized and existing Village created under the provisions of the laws of the State of Illinois; and,

WHEREAS, on or around October 4, 2016, an application was filed by Matt DeBackere to change the zoning district classification for the property physically located between East Walnut Street (new) and East Walnut Street (old) directly adjacent to the business at 410 East Walnut, Parcel No. 29-07.0-326-003 (hereinafter "Property"), from R-1 to B-1 was filed with the Village; and

WHEREAS, on or around October 25, 2016, an application was filed by Matt DeBackere seeking a variance to reduce the rear yard setback from 20 feet to 7 feet at the Property; and

WHEREAS, a public hearing was noticed and duly held by the Chatham Zoning Board of Appeals on both applications on January 5, 2017; and,

WHEREAS, the Zoning Board of Appeals met on January 5, 2017, and unanimously recommended the Village Board approve the variance to the Zoning Code and the proposed change in the zoning classification; and,

WHEREAS, Section 158.044 of the Zoning Code permits the Village Board to approve variations from the Zoning Code when in the best interest of the Village; and,

WHEREAS, Section 158.119 of the Zoning Code sets forth the procedures for rezoning

and the standards for same; and

WHEREAS, due to the unique size, configuration and location of the property, a Development Agreement with the property owner and developer is desired to address issues related to necessary improvements regarding sidewalk installation, access to the property and allowable signage; and

WHEREAS, the Illinois Constitution, Article VII, Section 10, provides that units of local government may contract with individuals, associations, and corporations in any manner not prohibited by law;

WHEREAS, with the development of the property as set forth in the Development Agreement, the Village Board concurs with the recommendation of the Zoning Board of Appeals on the requested zoning variance and re-classification.

WHEREAS, the Village Board of Trustees and the President of the Village of Chatham believe it is in the best interests of the Village to grant the requested variance.

NOW THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Chatham, Sangamon County, Illinois, as follows:

Section 1. Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

Section 2. Findings of Fact. Regarding the need for all of the variations requested by Petitioner, the Board of Trustees find as follows:

- A. **Economic Hardship.** Due to the unique size, shape and location of the lot, the strict application of the regulations set forth in the Zoning Code would result in an unnecessary and undue hardship, thereby creating an economic hardship.
- B. **Unique Circumstances.** The variance is necessary solely as a result of the location of the lot and is unique to the property.
- C. **Not Alter Local Character.** The variance will not alter or impact the local

character of the area.

Section 3. Description of the Property. The Property is located between East Walnut Street (new) and East Walnut Street (old) directly adjacent to the business at 410 East Walnut, within an R-1 District and is legally described as follows:

L 3, 4, S & E 44' OF L2 OF TIER 1 THAYERS ADDN 7-14-5

Parcel No. 29-07.0-326-003

Section 4. Public Hearing. A public hearing was advertised on December 8, 2016, in the Chatham Clarion and held by the Zoning Board of Appeals on January 5, 2017, at which time the Zoning Board of Appeals unanimously recommended approval of the variance requested.

Section 5. Variance. The variations requested in the Petition for Zoning Variance to the Zoning Code, outlined herein, and recommended at the January 5, 2017, Zoning Board of Appeals meeting, is hereby granted as follows:

- A. A variance allowing the rear setback to be 7 feet instead of 20 feet, on the condition of the approval that the property be developed in accordance with the development agreement attached hereto as Exhibit A.

Section 6. Re-Zoning. Based on the recommendation of the Zoning Board of Appeals, including its review of the considerations for rezoning set forth in Section 158.119(D)(1) of the Zoning Code, after a public hearing held on January 5, 2017 in compliance with the requirements of Section 158.119(C) of the Village Code, the Village Board hereby approves the rezoning of the Property from R-1 to B-1.

Section 7. Development Agreement. The Village Board hereby approves the Development Agreement between the Village of Chatham, Debackere Development LLC and John M. Pollock, as set forth in Exhibit A, and authorizes the Village President and Village Clerk to execute said Development Agreement.

Section 8. Severability. In the event a court of competent jurisdiction finds this ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

Section 9. Repeal and Savings Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or causes of action which shall have accrued to the Village of Chatham prior to the effective date of this ordinance.

Section 10. Effectiveness. This ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

| | YES | NO | ABSENT | PRESENT |
|----------------|-----|----|--------|---------|
| MARK CLAYTON | | | ✓ | |
| TERRY FOUNTAIN | ✓ | | | |
| DAVID KIMSEY | | | ✓ | |
| NINA LINDHORST | | | ✓ | |
| MATT MAU | ✓ | | | |
| JOE SCHATTEMAN | ✓ | | | |
| | | | | |
| THOMAS S. GRAY | ✓ | | | |
| | | | | |
| TOTAL | 4 | | 3 | |

PASSED this 28 day of FEB, 2017.

APPROVED by the President of the Village of Chatham, Illinois this 28 day of FEB, 2017.

Thomas J. Gray

VILLAGE PRESIDENT

ATTEST: *Pat Schaefer*

VILLAGE CLERK

**EXHIBIT A
DEVELOPMENT AGREEMENT**

**DEVELOPMENT AGREEMENT BETWEEN VILLAGE OF CHATHAM,
DEBACKERE DEVELOPMENT LLC AND JOHN M. POLLOCK**

This DEVELOPMENT AGREEMENT is entered into as of this 28 day of FEB, 2017 by and between the VILLAGE OF CHATHAM, an Illinois municipal corporation, and DEBACKERE DEVELOPMENT LLC, an Illinois limited liability company, and JOHN M. POLLOCK.

RECITALS

WHEREAS, John M. Pollock is in the process of purchasing certain real property with parcel #29-07.0-326-003 as described more fully in **Exhibit A** ("Property"), from Debackere Development LLC; and,

WHEREAS, Matthew Debackere, agent for Debackere Development LLC, has recently applied for a zoning change and zoning variance for the Property which was heard by the Village Zoning Board of Appeals on January 5, 2017; and,

WHEREAS, John Pollock is desirous of developing certain commercial property within a portion of the Property as an appliance sales and service center named John's Appliance Service Center (hereinafter "Development"); and

WHEREAS, there are a variety of outstanding issues regarding the Property that need to be addressed by Debackere Development LLC and John Pollock; and

WHEREAS, the Village, Debackere Development LLC, and John Pollock desire to enter into this Development Agreement to set forth how various obligations will be met and how the commercial property will be developed; and

WHEREAS, the parties acknowledge sufficient consideration has been given for this Development Agreement; and,

WHEREAS, the Illinois Constitution, Article VII, Section 10, provides that units of local government may contract with individuals, associations, and corporations in any manner not prohibited by law.

NOW THEREFORE, for good and valuable consideration, the receipt insufficiencies of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals set forth above are a material part of this Agreement and are hereby incorporated in this Agreement by reference.
2. Development. John Pollock agrees to develop the property described in **Exhibit A** as an appliance sales and service center in accordance with the plans attached as **Exhibit B**.
3. Improvements. John Pollock shall be responsible for installing 275 feet of 6 foot wide

sidewalk as follows: 230 feet along the south edge of the Property to the western edge of Holly Drive, then an additional 45 feet of sidewalk north to the corner of East Walnut Street and Holly Drive. John Pollock shall be responsible for all costs in installing the sidewalk. He shall submit his plan to the Village for approval prior to installation. The improvements shall be completed prior to an occupancy permit being issued for any structure constructed on the property set forth on **Exhibit A**, or October 1, 2017, whichever occurs first.

4. Allowable Signage. The parties acknowledge that there is currently a Petition for Zoning Variance filed on October 25, 2017, which has been through the Zoning Board of Appeals hearing process and is pending before the Village Board. The Petition requests a zoning variance from the 20 foot setback requirement to a 7 foot setback. If this variance is granted and the Development is completed as contemplated by the parties, the building will have frontage on both New East Walnut Street (South of the Property) and East Walnut Street (North of the Property). Due to the unique size and shape of the Property, the parties agree that following the signage regulations based on frontage as found in the 1982 Village of Chatham sign ordinance would create an excessive amount of allowable signage for the Property. As such, the parties agree that, if the variance is granted, the amount of allowable signage on the lot shall not exceed 827 square feet no matter how much frontage actually exists on the property. This signage was calculated by averaging the frontage of the three existing neighboring properties to the Property (410 E. Walnut, 408 E. Walnut, and 404 E. Walnut).

5. Access to the Property. Access to the property shall be restricted to a driveway connecting from the North side of the Property (connecting to East Walnut Street).

6. Accessory Structures. No accessory structure shall be placed east of the sidewalk described in Section 3 herein without prior approval of the Village.

7. Obligation to Develop Per Code. In the construction and use of improvements on the subject property, John Pollock shall comply with all zoning subdivision, building, mechanical and other applicable codes and ordinances of the Village of Chatham in effect at the time of construction.

8. Covenants & Agreements. The covenants and agreements contained in the Agreement shall inure to the benefit and be binding upon the heirs, successors and assigns of the parties hereto. Notwithstanding the foregoing, the parties agree that this Agreement is meant to apply to the development of the property. This Agreement is not intended to and shall not impede or restrict usage of the land in accordance with a B-1 zoning designation for John Pollock and any future owners, with the exception of the Allowable Signage, which is made a condition to and a part of the zoning variance that was granted by the Village.

9. Default & Enforcement. In the event of any default of this Agreement, the parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement; provided, however, that John Pollock and Debackere Development LLC agree that they will not seek, and do not have the right to seek, to recover a judgment for monetary damages against the Village, or any of its elected or appointed officials, officers, employees,

agents, representatives, engineers, or attorneys, on account of the negotiation, execution, or breach of this Agreement. The prevailing party in any legal action to enforce the provisions of this Agreement, or for default thereof, may recover its attorney's fees and costs of suit, including expert witness fees.

10. General Provisions. The following general provisions shall apply to this Agreement:

A. Time of the Essence. Time is of the essence in the performance of this Agreement.

B. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

C. Non-Waiver. The Village shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of the Village to exercise at any time any right granted to the Village shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the Village's right to enforce that right or any other right.

D. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

E. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois.

F. Severability. It is hereby expressed to be the intent of the parties to this Agreement that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

G. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

H. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

I. Exhibits. The Exhibits attached to this Agreement are, by this reference, incorporated in, and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

J. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

K. Changes in Laws. Unless otherwise provided in this Agreement, any reference to any requirements of law shall be deemed to include any modifications of, or amendments to, the requirements of law that may occur in the future.

L. Authority to Execute. The Village hereby warrants and represents to John Pollock that the Persons executing this Agreement on its behalf have been properly authorized to do so by the Corporate Authorities. John Pollock and Debackere Development LLC hereby warrant and represent to the Village (i) that they are the record and beneficial owners of fee simple title to the Property, (ii) except for a mortgage on the property, no other person has any legal, beneficial, contractual, or security interest in the property and that the proposed development of the property is not a violation of the security interests, (iii) that they have the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and to bind the Property as set forth in this Agreement, (iv) that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (v) that neither the execution of this Agreement nor the performance of the obligations assumed by the parties will (a) result in a breach or default under any agreement to which they are a party or to which it or the Property is bound or (b) violate any statute, law, restriction, court order, or agreement to which they or the Property are subject.

M. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any Person shall be made, or be valid, against the

Village, John Pollock, or Debackere Development LLC.

N. Assignment. This Agreement may not be assigned without the written consent of the non-assigning party, which consent shall not be unreasonably withheld.

O. Recording. The Village Clerk shall record a copy of this Development Agreement with the Sangamon County Clerk.

EXECUTED and ADOPTED this 28 day of FEB, 2017, at Chatham, Illinois.

VILLAGE OF CHATHAM

By: Thomas J Gray
Tom Gray, Mayor

Attest:

By: [Signature]
Village Clerk

JOHN POLLOCK

By: [Signature]
John Pollock

DEBACKERE DEVELOPMENT LLC

By: [Signature]

Its: owner

EXHIBIT A
LEGAL DESCRIPTION

L 3, 4, S & E 44' OF L2 OF TIER 1 THAYERS ADDN 7-14-5

Parcel No. 29-07.0-326-003

Exhibit B

1. Roadway cross-section of East Walnut is 60' throughout the entire front of the property, which meets the Village's long range plans if East Walnut were to be widened to include a center turn lane. The Development shall not impede the Village's long range plans.
2. Access to the property will only be from North (East Walnut). No access of any kind from the busier South (East Walnut).
3. A parking lot may be constructed on the east side of the building, but only within the existing property boundaries.
4. This tract of land is not subject to subdividing or parceling.
5. Access and sight lines (triangle of vision) shall not be hindered where the two E. Walnut Streets are connected.
6. Due to an excessive amount of frontage on this particular lot, the advertisement sign regulation recommendation for this business is as follows as compared to the 1982 Village of Chatham sign ordinance. The size of the sign can be based on the average frontage (New East Walnut St.) of 410 E. Walnut (93.7 ft.), 408 E. Walnut (70.6 ft.) and 404 E. Walnut (83.8 ft.), which is 82.7 ft. average frontage. This equates to all signs on the lot not exceeding 827 square feet.
7. The advertisement sign, owned by Matt Debackere, located on the very east end of the Property shall be removed from the Village right-of-way. A sign may remain on the Property for advertisement purposes; however, the sign may not be placed within the right-of-way. This sign size will count towards Pollock's total sign frontage allowance.