

COUNTY OF KANE                    )  
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STATE OF ILLINOIS                )

**APPLICATION FOR SPECIAL USE  
[M.A. CENTER (MATA AMRITANANDAMAYI CENTER)]  
41W501 KESLINGER ROAD, ELBURN, ILLINOIS**

**Memorandum in Opposition to Amended Petition for Special Use**

Objectors, JEFF and MICHELE MUELLNER, JAMES and J.BRADLEY POLIVKA, and EDWARD RICHARDSON, by their attorneys, COOPER, STORM and PISCOPO, file this Memorandum in Opposition to the Amended Petition for Special Use for the M.A. CENTER (MATA AMRITANANDAMAYI CENTER)] 41W501 KESLINGER ROAD, ELBURN, ILLINOIS, stating as follows:

**Introduction**

The Applicant allegedly owns approximately 140 acres of real estate (“Property”) located at 41W501 Keslinger Road, Elburn, Illinois. The Property is not located within any municipality and therefore is governed by the Kane County Zoning Ordinance. The Property is within the F Farming District, the regulations for which are found in Article VIII of the Kane County Zoning Ordinance.

In 2012, the Applicant obtained an Amended Special Use for the property which provided as follows:

The Kane County Board on April 10, 2012 adopted an ordinance **GRANTING** a Special Use in the F-Farming District for a Religious Center which Special Use incorporates, individually or collectively the uses listed in your petition and your site plan, those being: religious/spiritual retreat center, religious oriented school, supporting administrative offices, 13 single-family residences along Faculty Drive, four additional dwelling units (*comprised of two single family residences and one duplex*) located in the farmstead at the NE corner, and a campground with 25 RV utility hook-ups on property located at 41W751

Keslinger Road, Section 10, Blackberry Township (fully described in petition on file with Kane County Zoning Board of Appeals). A copy of the ordinance is available from the Kane County Clerk's Office.

However, on January 2016, the Applicant filed an Application for a Special Use seeking to significantly expand the permitted uses of the M.A. CENTER. The Petition requests approval to construct the following additional units on the Property:

1. Seventy-Two (72) residential living units (which may be in the form of 2 up to 6 units) intended to be used as permanent residents of the M.A. Center;
2. An Administrative/Learning/Multipurpose Center;
3. One Hundred Ninety Two (192) apartment residential living units within three (3) buildings;
4. A non-denominational Montessori school; and
5. A renovated farm stand.

(See Ex B to Application for Zoning Map Amendment/Special Use).

With respect to residential uses, the 2012 Special Use references only four dwelling units to be constructed. Nothing in that 2012 Special Use granted any special use or variation from the Kane County Ordinances to authorize the construction of 72 multi-family residences either as townhomes or duplexes, or 192 units within residential apartment buildings. Moreover, the Petition filed in January 2016 expressly admitted that the 2012 Special Use was to be used only to authorize the construction of a (1) Spiritual Center known as the "Spiritual Hub" and (2) a religious school called the "Learning Center."

On May 10, 2016, a hearing was held before the Kane County Zoning Board of Appeals on the January 2016 petition. At that time, numerous questions arose regarding the proposed multi-family uses. Those questions included, among other things, whether the multi-family structures would be subject to real estate taxes, the nature and term of the occupation of the

residential units, and the impact of lighting, traffic and other aspects of the proposed multi-family uses. Nothing in the submitted plans actually details the dimensions, configurations or the projected occupancy capacities of any of the proposed multi-family units. The Applicant has failed to submit any plans or detailed plats depicting parking, lighting or any related improvements that will need to be constructed to service the multi-family units. The Applicant also failed to submit any engineering studies or environmental impact studies relative to the impact of the multi-family structures and the impact of both the construction and the maintenance and operation of the necessary parking and lighting for those multi-family structures on the Blackberry Creek watershed, or the impact of those parking and lighting structures on the surrounding properties.

In response to questions which arose during the Zoning Board of Appeals hearings, the Applicant allegedly stipulated that (a) the duplexes/townhomes containing the proposed 72 multi-family units would be subject to real estate property taxes; (b) occupants of the residential units in the apartment buildings would be limited to a term of nine months; and (c) the Applicant would use “downcast lighting” for the new structures.

On May 17, 2016, at the hearing before the Kane County Development Committee, several committee members again questioned the Applicant regarding the issue of real estate taxes and the anticipated use and occupancy of the 3 proposed apartment buildings. Although the Applicant referred to those residential units as “temporary housing” at no time did the Applicant stipulate to the new six month term of occupancy, nor did the Applicant provide any evidence or basis upon which any term limits on occupancy restrictions could be reasonably enforced by Kane County enforcement officers.

On June 14, 2016, the Applicant filed an Amended Petition for Special Use purporting to seek to amend the January 2016 Petition "*nunc pro tunc*" to add certain stipulations that the proposed 72 multi-family townhomes or duplexes would be subject to real estate taxes, that maximum height of those units would be two (2) stories above grade, that the 192 apartment units would be housed in three (3) new buildings with a maximum height of three stories above grade, for which the occupancy would be limited to 6 months and no occupants would be permitted to attend the Kane Community School District Schools during such occupancy and that the Applicant and Owner will use down cast lighting fixtures for all future exterior construction. The Amended Petition does not propose any basis upon which a County officer could actually enforce the 6 month occupancy or the school attendance stipulations.

The Objectors are owners of adjacent and surrounding properties. The proposed development will have a significant impact on the marketability and value of the surrounding property. The surrounding properties also include the Blackberry Creek watershed. The proposed development including its storm water management, drainage, sewage will have a significant impact on Blackberry Creek and its watershed and correspondingly the portions of Blackberry Creek and its watershed on the Objectors' properties. The construction and maintenance of the necessary parking for the proposed multi-family buildings will have a further dramatic impact on the surrounding properties, both with respect to the storm water management and drainage issues but also with respect to the lighting and other impacts from significantly increased number of parking spaces for the proposed uses.

**1. There Is No Right nor Any Recognized Procedure for the Filing of an Amended Petition for Special Use *Nunc Pro Tunc* Before the Development Committee**

The Applicant does not cite and we have found no provision of the County Zoning Ordinance which permits or authorizes an applicant to file an amendment to its application for special use *after* the conclusion of the public hearing before the Zoning Board of Appeals and instead seek to amend the petition at the Development Committee level. Indeed, while Section 4.8-3 of the Zoning Ordinance refers to “Amendments” it makes clear that any amendment to the detailed plat must be submitted to the Zoning Board of Appeals “at the public hearing.” Section 4.8-3 provides, in pertinent part as follows:

It shall be required that a detailed plat of all improvements (site plan) shall be submitted to the Zoning Board of Appeals for approval *or amendment at the public hearing.*

(Kane County Zoning Ordinance, § 4.8-3) (*emphasis added*). Accordingly, if the Applicant chooses to amend its Petition for Special Use, it follows that any such amendment must be presented first to the Zoning Board of Appeals with proper public notice of the public hearing on that amendment. The Zoning Board of Appeals should then consider whether or not to allow the amendment and should conduct a further public hearing based upon the Amended Petition.

This Committee is not authorized to accept or rule on amendments to applications for special use. For this reason, this Committee should recommend that the matter be remanded to the Zoning Board of Appeals for a public hearing on the Amended Petition for Special Use.

**2. The Multi-Family Uses Sought by the Applicant are not Permitted Special Uses within a “Farming District”**

Neither the January 2016 Petition, the newly filed Amended Petition, nor the findings of the Zoning Board of Appeals, identify which of the enumerated permitted special uses within a Farming district “F” authorizes the Applicant’s proposed multi-family residential structures.

During the initial hearing before the Development Committee, after counsel for the Objectors raised this issue, AIA Director Mark VanKerkhoff, suggested that the following enumerated special use set forth in Section 8.1-2 of the Zoning Ordinance is the underlying authorization for proposed special use:

q. Monasteries, nunneries, religious retreats, nursing and convalescent homes, assisted living facilities, boarding schools and orphanages.

(Kane County Zoning Ordinance, § 8.1-2(q).) However, that section does not authorize or even mention multi-family dwellings as a permitted special use within a Farming district. Moreover, as this Memorandum will demonstrate, none of the other enumerated uses, such as “boarding schools” or “religious retreats” authorize the construction of multi-family residential dwellings within a Farming district. The Zoning Ordinance defines “multi-family dwellings” as follows:

*Dwelling, multiple-family:* A building, or portion hereof, containing three (3) or more dwelling units.

(Kane County Zoning Ordinance, § 3.1.) Under this definition, and based upon the description of the proposed townhomes and apartment buildings in the January 2016 Petition and the Amended Petition, it is clear that the proposed structures are “Multiple Family Dwellings” within the meaning of the Zoning Ordinance. They are not and are not intended to be boarding schools or the lodging that would be permitted for a boarding school. Further, they cannot be fit within any of the enumerated special uses listed in Section 8.1-2. Because there is no enumerated special use that could authorize the use of the Property to construct and maintain the proposed multi-family dwellings, the proposed Special Use cannot be lawfully granted.

Neither the characterization of the apartment building units as “temporary housing” nor the new stipulation to supposedly limit the term of occupancy of the 192 apartment units to six (6) months for any one occupant, could serve to authorize the proposed use under Section 8.1-

2(q). First, the use of property as a multi-family dwelling does not depend upon the term of the tenancy or residence. Many apartment buildings have tenants who occupy such properties on a month-to month basis or even tenancies of lesser terms. Moreover, the Applicant's new stipulation reinforces that the effort to re-characterize the proposed use as "temporary housing" does not change the use to one that is a permitted special use, but instead clearly requires the proposed structures to be defined as a "hotel/motel" or a lodging house, neither of which are permitted uses or permitted special uses within the subject zoning districts for the number of housing units proposed.

The Zoning Ordinance defines a Hotel/Motel as follows:

*Hotel or Motel:* An establishment consisting of a group of attached living or sleeping accommodations with individual bathrooms and designed for use by transients in contradistinction to a boarding, rooming, or lodging house.

Kane County Zoning Ordinance, § 3.1.)

The Zoning Ordinance further defines a Lodging House and Lodging Room as follows:

*Lodging House (including boarding and rooming house):* A residential building, or portion thereof, other than a motel, apartment hotel, or hotel, containing lodging rooms which accommodate persons, not exceeding twenty (20) in number, who are not members of the keeper's family. Lodging with or without meals is provided for compensation.

*Lodging Room (rooming unit):* A room rented as sleeping and living quarters, but without cooking facilities and with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one "lodging room" for the purposes of this Ordinance.

Kane County Zoning Ordinance, § 3.1.) Under these definitions, the effort to limit the term of occupancy of a multi-family dwelling could only serve to convert it from an apartment building or townhome, into a hotel or motel. Further, the proposed apartment buildings could not be

regarded as a lodging house or such related housing that would be authorized for a boarding school, because they exceed the unit requirements for a lodging house.

In the end, the only provision in the Zoning Ordinance for multi-family dwellings the Applicant proposes is found in the Sections governing an R9 residential district. R9 uses are not permitted uses or permitted special uses within the F District. (See, Kane County Zoning Ordinance, §§ 8.1-1, 8.1-2.) The Applicant has not petitioned to rezone the portion of the property upon which the townhomes/duplexes or the apartment buildings are proposed to be built to an R9 District.

Section 4.8-3 of the Zoning Ordinance authorizes the County Board to require evidence and guarantees that prove the conditions stipulated in connection with any special use are being and will be complied with. That Section provides, in pertinent part, as follows:

*4.8-3 Conditions and Guarantees.*

Prior to the granting of any special use, the Zoning Board may recommend and the County Board shall stipulate such conditions and restrictions, upon the establishment, location, construction, maintenance and operation of the special use as is deemed necessary for the protection of the public health, safety and welfare. In all cases in which special uses are granted, the County Board shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.

(Kane County Zoning Ordinance, § 4.8-3.)

Here, the Applicant has not presented any evidence as to how the County enforcement officers could possibly reasonably establish and assure compliance with a stipulation that the occupancy of the proposed apartment buildings would be limited of 6 months for any tenant or that no occupant is attending the Kaneland Public Schools. Because these stipulations were not presented to the Zoning Board of Appeals, it cannot now make and has not made recommendations to the County Board relative to the enforcement of those stipulations. This



further underscores why the Amended Application must first be presented to the Zoning Board of Appeals.

For all of the foregoing reasons, neither the January 2016 Petition, nor the Amended Application for Special Use may be lawfully granted, because the County is without any statutory authority whatsoever under the Zoning Ordinance to grant a special use for the construction of the proposed multi-family dwellings within the F Farming District. Under the circumstances set forth above, this Committee should not make recommendations that the County Board authorize the requested special use. Therefore, the Objectors respectfully submit that the only appropriate recommendations made by this Committee should be to deny the Application before it, and either return the matter to the Zoning Board of Appeals for hearing on the Amended Application, or require the Applicant to file a sufficient Petition for Subdivision and Rezoning or an Application for a PUD.

**3. Applicant Has Failed To Seek Subdivision of the Lots or File an Application for a PUD**

Even if a special use for the proposed structures could be granted, Section 5.5 of the Zoning Ordinance would prohibit the proposed development in its present form, because the Zoning Ordinance also expressly prohibits the construction of more than one multi-family building on one recorded lot, except in connection with a Planned Unit Development. (*See Kane County Zoning Ordinance, § 5.5.*) Here, the Applicant has failed to seek to subdivide the lots to accommodate the proposed multi-family residential buildings and has not made an application for a Planned Unit Development.

Section 5.5 of the Zoning Ordinance provides, in pertinent part, as follows:

Except in the case of a planned unit development, not more than one residential building shall be located on a recorded zoning lot, and not more than two (2) detached structures accessory to a dwelling shall be located on a recorded or zoning lot.

(Kane County Zoning Ordinance, § 5.5.)

Because Section 5.5 of the Ordinance expressly prohibits the proposed mixed use development and prohibits the construction of more than one residential building on a recorded lot except in the context of an Application for a PUD, this Committee should recommend that the application be denied.

**4. The January 2016 Petition Even As Requested to Be Amended Is Insufficient As a Matter of Law**

**A. The Applicant's Petition as Amended and Supporting Materials Do Not Contain the Required Detailed Plat**

Section 4.8 of the Kane County Zoning Ordinance governs the procedures for an applicant to seek and the Zoning Board of Appeals to recommend the granting of a special use. (Kane County Zoning Ordinance, § 4.8.) Section 4.8-3 of the Zoning Ordinance provides, in pertinent part, as follows:

It shall be required that a detailed plat of all improvements (site plan) shall be submitted to the Zoning Board of Appeals for approval or amendment at the public hearing.

(Kane County Zoning Ordinance, § 4.8-3.) Here, the materials submitted by the Applicant fail to contain any detailed plat depicting the proposed parking lots and parking spaces for the requested multi-family townhomes and apartment buildings. No plans have been submitted showing or depicting the lighting for such proposed parking. No plans or engineering studies have been submitted with respect to the drainage and storm water management for the parking and related improvements, especially for the multi-family apartment buildings. For this reason alone, the January 2016 Petition and the Amended Petition are insufficient as a matter of law under the Zoning Ordinance and should not have even been considered by the Zoning Board of Appeals.

**B. The Zoning Board of Appeals Did Not and Could Not Have Made Appropriate Findings Because of the Deficiencies in the Petition and Accompanying Materials**

The deficiencies in the original Petition and the materials submitted establish that neither the Zoning Board of Appeals nor this Committee could make or have made the appropriate findings and recommendations relative to the impact of the proposed development on both the storm water management aspects of the development, nor its proposed impact on traffic and the surrounding properties.

The Zoning Ordinance defines a "Parking Space" as follows:

*Parking Space:* An enclosed or unenclosed surfaced area permanently reserved for the temporary storage of one (1) automobile and appropriately connected with a street or alley by a surfaced driveway affording adequate ingress and egress. Such space shall be at least nine (9) feet in width and eighteen (18) feet in length and meet all other requirements of this Ordinance.

(Kane County Zoning Ordinance, § 3.1.)

Section 14.1-7 of the Zoning Ordinance establishes the following specific minimum requirements for off-street parking:

*14.1-7 Specific requirements.*

Parking requirements shall be in conformity with the following schedule:

- a. One-family dwellings: Two (2) spaces for each unit.
- b. Two-family dwellings: Two (2) spaces for each unit.
- c. Multiple-dwellings and apartments: Two (2) spaces for each unit.
- d. Hotels and motels: One space for each dwelling unit and one space for each lodging room.
- e. Lodging houses: One space for each lodging room plus one space for the owner

or manager

(Kane County Zoning Ordinance, § 14.1-7.) Under this provision, the Applicant will need to provide 2 parking spaces for the each of the 72 proposed townhome or duplex units (144 parking

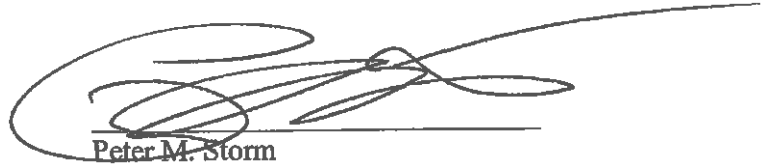
spaces) and 2 spaces for the each of the 192 multi-family units (384 parking spaces). That is a total of 528 parking spaces. Nowhere in the materials submitted by the Applicant or considered by the Zoning Board of appeals is there a single drawing, plat or site-plan depicting the location and configuration of the 528 parking spaces which must be provided for those multi-family dwellings. Under these circumstances, the Zoning Board of Appeals, in making any findings regarding the impact of the proposed development, could not possibly have considered, much less made any competent findings relative to the impact of the proposed use with respect to the huge increase in off street parking that is a component mandated by the ordinance.

Further, no engineering or environmental studies relative to such parking were submitted by the Applicant or considered by the Zoning Board of Appeals. Notably, there are already proposed revisions to the storm water management and sewage treatment on the property. There do not appear to be any specific engineering studies and environmental impact studies on the impact of excavating, grading, construction and paving of such necessarily large parking facilities to accommodate 528 new parking spaces. Without such evidence, the Zoning Board of Appeals and this Committee cannot possibly determine the impact of those new structures and improvements on the Blackberry Creek watershed, or their potential impact on the surrounding properties.

The Applicant, recognizing that the proposed lighting for the buildings alone will negatively impact the surrounding properties, has now pledged to use downcast lighting. But no plans for the location of that lighting have been submitted. Moreover, because there are no plans for any parking spaces as required by the Zoning Ordinance, the Zoning Board of Appeals and now this Committee cannot possibly evaluate or make any findings as to the impact the lighting that will be required for the parking lots will have on surrounding properties. Here again, the

failure of the Applicant to have presented a sufficient plan and sufficient evidence to support its major redevelopment plan, should result in the denial of the application even as amended.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter M. Storm", written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

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Attorney for Objectors

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