Item #5:

Ordinance Approving Preliminary Sub & Variations For 1899 Checker

VILLAGE OF LONG GROVE

ORDINANCE NO. 2010-O-___

AN ORDINANCE APPROVING THE PRELIMINARY PLAT OF SUBDIVISION AND VARIATIONS OF THE ZONING CODE ON THE FRONT AND SIDE YARD SETBACK REQUIREMENTS FOR THE PROPERTY COMMONLY KNOWN AS 1889 CHECKER ROAD

WHEREAS, Orren Pickell Homes, LLC (the "***Owner***") is the owner of certain real property in the Village of Long Grove (the "***Village***") consisting of approximately 14.98 acres, located at 1889 Checker Road and legally described on Exhibit A and depicted on the preliminary plat in Exhibit B (the "***Preliminary Plat***"), which exhibits are attached hereto and made a part hereof ("***Property***"); and

WHEREAS, Orren Pickell Designers & Builders, the developer of the Property ("***Applicant***"), has filed an application with the consent of the Owner (the Owner and Applicant shall hereinafter be referred to collectively as the "***Developer***") requesting approval of a preliminary plat of subdivision to permit the development of three single family residential lots on the Property (the "***Lots***"); and

WHEREAS, the Property is zoned in the R-2 District pursuant to the Long Grove Zoning Code ("***Zoning Code***"); and

WHEREAS, Paragraph 5-3-12 of the Zoning Code requires a minimum front yard setback of 75 feet and a minimum side yard setback of 40 feet in the R-2 District; and

WHEREAS, the Developer submitted an application requesting a variation from Paragraph 5-3-12 of the Zoning Code to permit the structures constructed on the Lots to encroach into the front yard and side yard setbacks (the "***Requested Variations***"); and

WHEREAS, pursuant to notice duly published in accordance with state law, the Village's Plan Commission / Zoning Board of Appeals (the "***PCZBA***") Commission did conduct a public hearing on June 15, 2010, for the purposes of hearing and considering testimony on the Owner's request for approval of the Requested Variations; and

WHEREAS, the PCZBA, having fully heard and considered the testimony by all those attending the public hearing who wished to testify, made the following findings:

1. The Property is located within the R-2 Single Family Residence District under the Zoning Code.

2. The Requested Variations include (i) the reduction of the front yard setback requirement from 75' to 50' on all Lots, and (ii) the reduction of the side yard setback requirements from 40' to 30' on Lots 1, 2, and the west side yard of Lot 3.

3. The evidence presented indicates that requiring the future structures on the Lots to be built in compliance with the Zoning Code will create a hardship because (i) the existing conditions limit the buildable area on the Lots; (ii) the shape of the Lots are significantly restricted by an easement held by the Lake County Forest Preserve District ("***Easement***"); (iii) the requested setback variations are consistent with the character of the neighborhood; (iv) the construction on the Lots in a fully conforming location will cause undue limitations for those wishing to build structures on the Lots; and (v) granting the Requested Variations would allow for the most aesthetically and architecturally logical location of structures on the Lots.

4. The evidence presented indicates that the granting of the Requested Variations will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood, and will not result in other detrimental effects to the area of the Property.

5. The evidence presented further indicates that the hardship and practical difficulties relating to Developer's requests for variations are based on the existing conditions of the Property that are unique in light of the existing Easement on and environs of the Property, and is not motivated solely by a desire to make more money out of the Property.

6. The evidence presented indicates that the Requested Variations will not alter the essential character of the Property and its environs and will otherwise satisfy all of the requirements for a variation under Section 5-11-15 of the Zoning Code.

WHEREAS, the PCZBA has recommended (i) approval of the Preliminary Plat for the subdivision of the Property, subject to the modification of the side yard setbacks to conform with

WHEREAS, the PCZBA, having fully heard and considered the testimony by all those attending the public hearing who wished to testify, made the following findings:

1. The Property is located within the R-2 Single Family Residence District under the Zoning Code.

2. The Requested Variations include (i) the reduction of the front yard setback requirement from 75' to 50' on all Lots, and (ii) the reduction of the side yard setback requirements from 40' to 30' on Lots 1, 2, and the west side yard of Lot 3.

3. The evidence presented indicates that requiring the future structures on the Lots to be built in compliance with the Zoning Code will create a hardship because (i) the existing conditions limit the buildable area on the Lots; (ii) the shape of the Lots are significantly restricted by an easement held by the Lake County Forest Preserve District ("***Easement***"); (iii) the requested setback variations are consistent with the character of the neighborhood; (iv) the construction on the Lots in a fully conforming location will cause undue limitations for those wishing to build structures on the Lots; and (v) granting the Requested Variations would allow for the most aesthetically and architecturally logical location of structures on the Lots.

4. The evidence presented indicates that the granting of the Requested Variations will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood, and will not result in other detrimental effects to the area of the Property.

5. The evidence presented further indicates that the hardship and practical difficulties relating to Developer's requests for variations are based on the existing conditions of the Property that are unique in light of the existing Easement on and environs of the Property, and is not motivated solely by a desire to make more money out of the Property.

6. The evidence presented indicates that the Requested Variations will not alter the essential character of the Property and its environs and will otherwise satisfy all of the requirements for a variation under Section 5-11-15 of the Zoning Code.

WHEREAS, the PCZBA has recommended (i) approval of the Preliminary Plat for the subdivision of the Property, subject to the modification of the side yard setbacks to conform with

Section Three and (ii) the grant of the Requested Variations pursuant to Section 5-11-15 of the Zoning Code, subject to certain conditions and restrictions; and

WHEREAS, the President and Board of Trustees of the Village have considered the recommendations of the PCZBA, together with all the relevant supporting materials and data, including the Preliminary Plat, and have determined that it is in the best interests of the Village and its residents to approve the Preliminary Plat and Requested Variations, subject to the terms and conditions of this Ordinance as hereinafter set forth;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS, as follows:

SECTION ONE: Recitals. The foregoing recitals are hereby incorporated into this Ordinance as if fully set forth.

SECTION TWO: Preliminary Plat Approval. The proposed Preliminary Plat for the 1889 Checker Road Subdivision, a copy of which is attached to this Ordinance as Exhibit B and made a part hereof, is hereby approved, subject to (i) the modification of the side yard setbacks to conform with Section Three and (ii) the conditions and restrictions set forth in Section Four of this Ordinance.

SECTION THREE: Approval of Variation. Pursuant to Section 5-11-15 of Zoning Code, and subject to the limitations therein and the conditions set forth in Section Four of this Ordinance, the Board of Trustees does hereby grant variations from the regulations contained in Paragraph 5-3-12 of the Zoning Code to allow permitted structures on the Lots to encroach into:

(i) the required front yard setback for the Lots, but no closer than approximately 50 feet from the front lot line of the Lots; and

(ii) the required side yard setbacks for Lots 1, 2, and the west side yard of Lot 3, but no closer than 30 feet from the side lot lines on the Lots.

SECTION FOUR: Additional Conditions. The approval of the Preliminary Plat is conditioned upon and limited by the following requirements, conditions, and restrictions, the violation of any of which shall, in the sole discretion of the President and Board of Trustees, render void all permits and approvals granted pursuant to this Ordinance:

A. No Authorization of Work. This Ordinance does not authorize commencement of any work on the Property. Except as otherwise specifically provided in writing in advance by the Village, no work of any kind shall be commenced on the Property pursuant to the approvals granted in this Ordinance except only after all conditions of this Ordinance precedent to such work have been fulfilled, including without limitation approval and recordation of a final plat of subdivision and Village approval of final engineering plans for the Property, and after all permits, approvals, and other authorizations for such work have been properly applied for, paid for, and granted in accordance with applicable law.

B. Final Subdivision Plat. Within two years from the effective date of this Ordinance, the Developer shall submit for review and approval a final plat of subdivision ("***Final Plat***"), which plat shall be in substantial conformance with the Preliminary Plat and otherwise comply with all applicable laws, including without limitation Title Six of the Village Code (the "***Subdivision Code***"). This Ordinance shall be null and void unless the Developer has obtained approval of the Final Plat within such two year period. The Final Plat shall depict all wetlands, conservancy, scenic corridor, and scenic roadway easement areas, as well as septic fields, and shall contain language approved by the Village Attorney restricting development within such areas.

C. Final Engineering Plans. The Developer shall submit to the Village for its review and approval final engineering plans for the Property, which plans shall be considered for approval as part of the Final Plat.

D. Compliance with Laws. The Zoning Code, the Subdivision Code, the Building Code, and all other applicable ordinances and regulations of the Village shall continue to apply to the Property, and the development and use of the Property shall be in compliance with all laws and regulations of all other federal, state, and local governments and agencies having jurisdiction.

E. Access. Any relief or approvals authorized hereby are expressly conditioned upon the Developer securing all appropriate easements or property rights to provide access to the Property as depicted on the Preliminary Plat. Such easements or property rights must be demonstrated to the Village's satisfaction prior to the approval of a Final Plat.

F. Terms for Maintenance of Private Drive and Outlot. The Developer must provide a proposal for maintenance of the Private Drive and outlot (as depicted on the Preliminary Plat) prior to the approval of the Final Plat, which maintenance proposal will be subject to the Village's review and approval and will thereafter be incorporated into the Declaration of Covenants and Restrictions as provided for in Section 4.K of this Ordinance.

G. Impact Fees. The Developer shall comply with the impact fee requirements contained in Chapter 9 of Title 6 of the Long Grove Village Code. The final amount of the impact fees for the Property shall be as set forth in the Ordinance approving the Final Plat and shall be paid to the Village prior to recordation of the Final Plat.

H. Tree Removal and Protection. No tree subject to the provisions of Chapter 5-16 of the Village Code shall be removed from the Property unless a tree permit has first been issued. Any tree that is removed in connection with the development of the Property shall either (i) be relocated on the Property or (ii) be replaced in accordance with the Village's Tree Preservation Ordinance.

I. Improvements. The Developer shall provide sufficient security for all required improvements for the Property, in an amount and form satisfactory to the Village, as well as in accordance with the applicable provisions of the Village Code, including without limitation Section 6-5-6 of the Code.

J. Roadway. The roadway within the Property shall be privately owned and maintained and installed in accordance with the Preliminary Plat and the Final Plat, as reviewed and approved by the Village Engineer, and shall be depicted on the Final Plat. The width of the private roadway and access to public roads shall be subject to the approval of the Village Engineer.

K. Declaration of Covenants and Restrictions. Prior to the recordation of the Final Plat, the Developer shall record a declaration of covenants and restrictions, which declaration shall be subject to the review and approval of the Village Attorney. The declaration shall provide, among other things, that the ownership and maintenance of the private roadway and the stormwater detention areas on the Property shall be the responsibility of the homeowners' association for the Property; provided, however, that the Village shall have the right (but not the obligation) to undertake remedial actions relating to such roadway and detention areas and other required improvements as deemed necessary for the health, safety, and welfare of those residents served by or affected by such improvements, with any costs incurred by the Village being recoverable from the owners of lots within the Property.

L. Fees and Costs. The Applicant and Owner shall be responsible for paying all applicable fees relating to the granting of the approvals set forth herein in accordance with the Long Grove Village Code. In

addition, the Applicant and Owner shall reimburse the Village for all of its costs (including without limitation engineering, planning, and legal expenses) incurred in connection with the review, preparation, consideration, approval, implementation, or enforcement of this Ordinance and any Final Plat review or approval. Any amount not paid within 30 days after delivery of a demand in writing for such payment shall, along with interest and the costs of collection, become a lien upon the Property, and the Village shall have the right to foreclose such lien in the name of the Village as in the case of foreclosure of liens against real estate.

M. Transferees. The rights and obligations set forth in this Ordinance shall be binding on the Applicant and the Owner and upon any and all of the Applicant's and Owner's heirs, successors, and assigns, and upon any and all successor legal or beneficial owners of all or any portion of the Property. To the extent that a successor becomes bound to the obligation created herein pursuant to a transferee assumption agreement acceptable to the Village, and such successor demonstrates to the Village that it has the financial viability to meet the obligations herein, the Applicant or Owner, as the case may be, shall be released from its obligations under this Ordinance to the extent of the transferee's assumption of such liability. The failure of the Applicant and Owner to provide the Village with an enforceable transferee assumption agreement as herein provided shall result in the Applicant and Owner remaining fully liable for all of its obligations under this Ordinance but shall not relieve the transferee of its liability for all such obligations as a successor to Applicant and Owner.

SECTION FIVE: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law provided, however, that this Ordinance shall be of no force or effect unless and until the Applicant and the Owner have (i) caused duly authorized representatives of the Applicant and the Owner to execute and (ii) thereafter file with the Village their unconditional agreement and consent, in the form attached hereto as Exhibit C and by this reference incorporated herein and made a part hereof; provided further that, if the Applicant and the Owner do not so file their unconditional agreement and consent within 60 days following the passage of this Ordinance, the Village Board may, in its discretion and without public notice or hearing, repeal this Ordinance and thereby revoke the approvals granted in this Ordinance.

PASSED this __ day of _____, 2010.

AYES:

NAYS:

ABSENT:

APPROVED this __ day of _____, 2010.

_____
Village President

ATTEST:

_____
Village Clerk

9647841_v3

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[to be attached]

EXHIBIT B

PRELIMINARY PLAT

[to be attached]

EXHIBIT C

Unconditional Agreement and Consent

Pursuant to Section Five of Long Grove Ordinance No. 2010-O-22, and to induce the Village of Long Grove to grant the approvals provided for in such Ordinance, the undersigneds acknowledge for themselves and their successors and assigns in title to the Property that they

1. have read and understand all of the terms and provisions of said Ordinance No. 2010-O-22;

2. hereby unconditionally agree to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of this Ordinance, the Long Grove Zoning Code, and all other applicable codes, ordinances, rules, and regulations;

3. acknowledge and agree that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's issuance of any permits for the use of the Property, and that the Village's issuance of any permit does not, and shall not, in any way, be deemed to insure the Applicant against damage or injury of any kind and at any time;

4. acknowledge that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, has considered the possibility of the revocation provided for in the Ordinance, and agrees not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right;

5. agree to and does hereby hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of these parties in connection with the Village's adoption of the Ordinance granting the approvals to the Applicant pursuant to the Ordinance; and

6. represent and acknowledge that the persons signing this Unconditional Agreement and Consent are duly authorized to do so on behalf of the Applicant of the Property.

Orren Pickell Homes, LLC

By:_____

Its_____

ATTEST:

_____

Orren Pickell Designers & Builders

By:_____

Its_____

ATTEST:

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