

ORDINANCE NO. F-0930

**AN ORDINANCE AMENDING SECTION 5.7 OF THE WHEATON ZONING
ORDINANCE- "NON-ADMINISTRATIVE and ADMINISTRATIVE VARIATIONS"**

Recitals

The City of Wheaton, Illinois ("City"), is an Illinois home rule municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and, as such, the City may exercise any power and perform any function pertaining to its government and affairs; and

The subject matter of this ordinance pertains to the government and affairs of the City and its residents; and

The City deems it necessary and appropriate to provide an analytic frame work to provide guidance in making determinations whether an applicant for a zoning variation has satisfied the standards and requirements set forth in Section 5.7.B.2 of the Zoning Ordinance; and

The City has determined that the reported decisions of the Illinois Appellate and Supreme Courts have established an analytical frame-work which provides appropriate guidance for the City and zoning variation applicants in the determination of whether a property owner has satisfied the standards and requirements required for the granting and issuance of a zoning variation; and

The City has concluded that in addition to the guidelines set forth in the Supreme and Appellate Court case law, there are additional guidelines and factors which should be considered by the City in determining the appropriateness of granting or denying zoning variations; and

The City finds that it is beneficial to the City, its residents and property owners applying for zoning variations to have specific written guidelines and standards which will be of assistance in the preparation of zoning variation applications and their consideration by the City.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois, pursuant to its home rule powers as follows:

SECTION 1: The Wheaton Zoning Ordinance is amended by deleting Section 5.7.B in its entirety and adding and including the following Sections in lieu thereof:

"5.7.B. Non-administrative Variations. The Board may recommend, and the City Council may grant, non-administrative variations from the regulations of this ordinance when such variations are in harmony with the general purpose and intent of the zoning ordinance. It shall be a condition precedent to the recommendation of the Board to grant a variation and the granting of a variation by the City Council that the applicant seeking the variation demonstrate and establish the following:

1. **Hardship.** Practical difficulties prevent compliance with the strict application of the regulations of the zoning ordinance, or a particular hardship would result from compliance with the strict application of the requirements of the zoning ordinance; and
2. **Essential Character of the Neighborhood.** The variation, if granted, will not alter the essential character of the area or neighborhood.

5.7. B (1) Variation Evidence. For purposes of determining whether an applicant for a variation has satisfied the requirements recited in Section 5.7 of this Ordinance, the Planning and Zoning Board, and the City Council, shall take into consideration the extent to which the evidence establishes, or fails to establish, the following:

1. The particular physical surroundings shape or topographical condition of the property involved prevents compliance with the strict application of the regulations of the zoning ordinance rather than causing a mere inconvenience if there is compliance with the strict application of the regulations of the zoning ordinance.
2. The purpose of the variation is not based primarily upon a desire to enhance the monetary value of the property.
3. The alleged practical difficulty or particular hardship has not been created by any person presently having any interest, whether financial, beneficial, legal or other, in the property or by the applicant.
4. The granting of the variation will not be detrimental to the public welfare, injurious, in any way whether economic, aesthetic or otherwise, to other property or improvements in the neighborhood or inconsistent with the general character of the area or neighborhood.
5. The proposed variation will not:
 - a. impair an adequate supply of light and air to adjacent property;
 - b. substantially increase the hazard from fire or other dangers to the property or adjacent property;
 - c. otherwise impair the public health, safety or general welfare;
 - d. diminish or impair property values within the neighborhood;
 - e. unduly increase traffic congestion in the public streets and highways;

F-0930

- f. create a nuisance;
 - g. result in an increase in public expenditure.
6. A denial of the requested variation would potentially allow for the creation of a more adverse or unintended use, improvement or consequence because the regulations of the Zoning Ordinance would allow alternative construction which would potentially have a more negative impact on the character of the neighborhood than the construction of the improvement pursuant to the requested variation.
 7. The variation is the minimum variation that will make possible the reasonable use of the land, building or structure.
 8. In the case of an existing Planned Unit Development, the granting of the variation will not significantly compromise the character and concept of the planned unit development.
 9. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district.
 10. That denial of the variation would unreasonably deprive the property owner of the use and enjoyment of the property.

No single factor recited above shall be controlling or determinative. All applicable factors shall be weighed and evaluated in an overall determination of whether the requirements of Section 5.7 have been satisfied.

The Board or the City Council may recommend, and the City Council may impose, such conditions and restrictions upon the premises benefited by a non-administrative variation as may be necessary to comply with the standards set out in this section to reduce or minimize the injurious effect of such variation upon other property in the neighborhood, and to better carry out the general intent of this chapter.”

B (2) Application for Non-administrative Variation and Notice of Hearing. Any application for a non-administrative variation shall be filed with the Director of Planning & Economic Development. The application shall contain such information as the Director of Planning & Economic Development may reasonable require. Any application shall be filed either by the owner of record or the contract purchaser of the property to be directly affected thereby. The Director of Planning & Economic Development shall

submit any application for variation to the City Council, which shall then refer said application to the Board for a public hearing and recommendation. The Board shall submit its recommendations on the proposed variation to the City Council within 90 days of the date said proposed variation was referred to it, or within such additional time as may be designated by the City Council. Notice of the public hearing shall be given in accordance with Section 5.7.

B (3) Variation Limitations. A non-administrative variation from the regulations of this chapter shall be granted by the City Council only in accordance with the standards set out in Section 5.6B and may be granted only in the following instances, and in no others:

1. To permit a decrease of greater than 25% or five feet in any setback or any minimum yard dimension or to permit an increase in the maximum height required by the applicable provisions.
2. To permit the use of a lot or lots for use otherwise prohibited solely because of the insufficient area or width of the lot or lots but in no event shall the respective area and width of the lots be less than seventy-five percent (75%) of the required area and width.
3. In the C-4 Zoning District, to permit more than $\frac{1}{3}$ of the required parking to be fulfilled by the utilization of available municipal parking (either on-street or off-street).
4. To reduce the applicable off-street parking or loading facilities required by not more than one (1) parking space or loading space or twenty percent (20%) of the applicable provisions, whichever number is greater.
5. To increase by not more than twenty-five percent (25%) the maximum distance that required parking spaces are permitted to be located from the use served.
6. To permit overhead wiring for public utility purposes not otherwise permitted under the regulations of this chapter.
7. To increase the Floor Area Ratio to a maximum of forty-five percent (45%) for additions only, to single-family dwellings constructed prior to October 17, 1989.
8. For a seasonal parking lot, to permit a reduction in the amount of required landscaping and/or the elimination of any required lighting.

A non-administrative variation shall be granted by the City Council, by ordinance, by an affirmative vote of the City Council, provided that a variation shall not be passed except by an affirmative vote of five (5) members of the City Council whenever the Board fails to recommend favorably regarding a proposed non-administrative variation. No non-administrative variation

F-0930

shall be valid for a period longer than 12 months. The City Council may grant a maximum of two extensions, not exceeding 1 year each, upon written application without notice of hearing, as provided in Section 4.4 of this ordinance."

SECTION 2: The Wheaton Zoning Ordinance is amended by deleting Section 5.7.A.2 in its entirety and adding and including the following Section in lieu thereof:

"2. The applicant shall review the variation application with all property owners within a one property radius of the property of the applicant ("neighboring property owner"). The applicant shall obtain a signed statement along with a signed set of plans from each neighboring property owner confirming that the owner has no objection to the requested variation. Only upon receiving a signed statement along with a signed set of plans from each neighboring property owner, shall the Director of Planning and Economic Development consider granting the administrative variation. If an application for an administrative variation is not granted, the applicant may file an application for a non-administrative variation.

It shall be a condition precedent to the granting of an administrative variation that the Director of Planning and Economic Development determines and concludes: (i) the variation, if granted, will be in harmony with the general purpose and intent of the Zoning Ordinance; and (ii) the applicant seeking the variation has demonstrated and established the following:

1. **Hardship.** Practical difficulties prevent compliance with the strict application of the regulations of the zoning ordinance, or a particular hardship would result from compliance with the strict application of the requirements of the zoning ordinance; and
2. **Essential Character of the Neighborhood.** The variation, if granted, will not alter the essential character of the area or neighborhood.

For purposes of determining whether an applicant for an administrative variation has satisfied the requirements recited in Section 5.7A.(1.) 2.1 and 2.2 of this Ordinance, the Director of Planning and Economic Development shall take into consideration the extent to which the evidence establishes, or fails to establish, the factors recited in Section 5.7. B (1) of this Ordinance.

The Director of Planning & Economic Development may impose such conditions and restrictions upon the premises benefited by an administrative variation as may be necessary to comply with the standards recited in this section to reduce or minimize the injurious effect of such variation upon other property in the neighborhood, and to better promote and implement the general intent of this chapter."

SECTION 3: To the extent any sections in the Zoning Ordinance require re-numbering as a result of this amendment to the Ordinance, the Administrative staff is authorized and directed to implement the appropriate re-numbering. All ordinances and parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed to the extent of any such conflict or inconsistency.

SECTION 4: In the event any part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this ordinance.

SECTION 5: This ordinance shall become effective after its passage, approval and publication in pamphlet form in the manner prescribed by law.


Mayor

ATTEST:


City Clerk

Ayes:

Roll Call Vote:

Councilman Mork
Councilman Mouhelis
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson

Nays: None

Absent: None

Motion Carried Unanimously

Passed: July 19, 2004
Published: July 20, 2004