

ORDINANCE NO. F-2044

**AN ORDINANCE AMENDING CERTAIN PORTIONS OF CITY OF WHEATON
ZONING ORDINANCE**

**ARTICLE V ADMINISTRATION AND ENFORCEMENT, ARTICLES VII THRU XIV
AND ARTICLE XXIV ACCESSORY USES AND HOME OCCUPATIONS
FRONT YARD SETBACKS, VOTING REQUIREMENTS, HOME OCCUPATIONS AND
PLANNED UNIT DEVELOPMENTS**

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

WHEREAS, the Corporate Authorities of the City have determined that it is appropriate and necessary to amend the text of the Wheaton Zoning Ordinance, Article V Administration and Enforcement, Articles VII Thru XIV and Article XXIV Accessory Uses and Home Occupations, pertaining to front yard setbacks, voting requirements, home occupations and planned unit developments; and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the City Zoning Ordinance, a public hearing was conducted by the Wheaton City Council, acting as a hearing body on September 11, 2017, on the proposed amendments to the Wheaton Zoning Ordinance.

WHEREAS, a technical amendment is appropriate to Ordinance F-2019 to establish that the ordinances it amended were repealed as part of the amendment.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule power as follows:

SECTION 1: Article 5.7 A of the City of Wheaton Zoning Ordinance is hereby repealed and rescinded and replaced with the following:

“5.7 Variations

A. **Administrative Variations.** Any variation to decrease any front yard setback by less than or equal to 25% or 10 feet, whichever is less, or any minimum side or rear yard dimension by less than or equal to 25% or five feet, whichever is less, or to increase the maximum height required by the applicable provisions by less than or equal to 25% or five feet, whichever is less, may be heard and decided by the Director of Planning & Economic Development as an administrative variation.

1. **Application for Administrative Variation.** Any application for an administrative variation shall be filed with the Director of Planning & Economic Development.
2. **Application Form.** The application shall contain such information as the Director of Planning & Economic Development may require.
3. **Applicant qualification.** Any application shall be filed either by the owner of record or the contract purchaser of the property to be directly affected thereby.

Upon review of the application for completeness by the Director of Planning & Economic Development, the applicant may choose one of the following two methods for notifying property owners within a one property radius of the subject property:

Notice to Adjacent Owners. A copy of the variation application shall be sent by certified mail to all property owners within a one property radius of the subject property.

Adjacent Owner Review. The applicant shall review the variation application with all adjacent property owners within a one property radius of the applicant's property. The applicant shall obtain a signed statement along with a signed set of plans from each adjacent property owner confirming that the owner has no objection to the requested variation. The applicant shall notify the City in writing if any adjacent property owner objects to the variation application. The Director of Planning and Economic Development shall wait at least 15 days from the receipt of signed statements by adjacent property owners, or notification of objection, before making a determination on the application.

B. Conditions for 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 that: (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 that a practical 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.

C. Director of Planning's Review. 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 and whether or not any written objections to the application have been submitted.

D. Conditions. 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.

E. Denial. If the Director of Planning & Economic Development finds the proposed application does not meet the standards contained herein, the application for an administrative variation will be denied. Following a denial of an administrative variation, the applicant may file for a non-administrative variation.

F. Administrative Variation Limitations. No administrative variation shall be valid unless completed by the Owner within twelve months of its approval. Upon written application, the Director of Planning & Economic Development may grant a maximum extension not exceeding one additional year.”

SECTION 2: Article 5.6 F of the City of Wheaton Zoning Ordinance is hereby repealed and rescinded and replaced with the following:

“F. Action by the City Council. After receipt by the City Council of the recommendation of the Hearing Body, or after the expiration of the time designated by the City Council for submission by the Hearing Body to the City Council of its recommendations, whichever shall first occur, said proposed amendment may be passed, with or without modification. An amendment may be approved by a majority of the members of the City Council qualified to vote. Failure of the Hearing Body to make a recommendation within the time designated shall be construed to mean that denial is recommended.”

SECTION 3: Article 5.7.B(3)9 of the City of Wheaton Zoning Ordinance is hereby repealed and rescinded and replaced with the following:

“9. To allow an attached front, side or rear loading garage on a single-family dwelling in the Northside Residential Overlay District where construction of a detached garage is not physically possible. In such cases, the total area of the attached garage, up to 500 square feet, shall not be counted in the gross floor area calculation for the purpose of calculating the floor area ratio.

A non-administrative variation may be granted by the City Council, by ordinance, approved by a majority of the members of the City Council qualified to vote. No non-administrative variation shall be valid unless completed within 12 months of approval. The City Council may grant a maximum of two extensions, not exceeding 1 additional year each, upon written application without notice of hearing, as provided in Section 4.4 of this ordinance.”

SECTION 4: Article 5.11 of the City of Wheaton Zoning Ordinance is hereby repealed and rescinded and replaced with the following:

“5.11 Planned Unit Development (PUD)

A. Intent and Purpose. The regulations contained in this section are established to encourage more creative and imaginative design of coordinated land uses than might be possible under conventional zoning and subdivision regulations and which offer enhanced protection of natural resources and sensitive environmental features, including streams, floodplains, wetlands and woodlands, achieve high levels of energy conservation and sustainability, offer a range of housing options that offer a variety of lifestyle choices to meet the needs of different age groups and household types, and/or contain a complementary mix of residential and nonresidential uses or that provide for a range of land use types on a single development parcel.

B. Applicability. A Planned Unit Development may only be granted as a special use in accordance with the procedures and standards of Sections 5.10 and 5.11 in the following instances:

1. When two or more principal structures on a single zoning lot located in the I-1, C-1, C-2, C-3, C-4, and C-5 Commercial Zoning District is developed.
2. When any lot or parcel, or combination of lots or parcels, over one acre in the C-2 Retail Core Business District and C-4 CBD Perimeter Commercial District is developed.
3. When any multifamily project which contains over two units in R-5, over four units in R- 6, over 12 units in R-7 or C-4 CBD Perimeter Commercial District is developed.

C. Public Benefit. In addition to the special use permit standards of Sections 5.10 and 5.11, all Planned Unit Developments should demonstrate a public benefit commensurate with the degree of development flexibility proposed and proportional to the anticipated impact of the proposed Planned Unit Development on adjacent land uses and on the community at large.

The applicant shall submit written commentary as part of its Planned Unit Development application outlining the benefits and any other information the applicant deems relevant in defining the public benefit component of the proposed Planned Unit Development application.

The written commentary shall be considered by the Planning and Zoning Board in its recommendation to the City Council, and the City Council in its deliberation and legislative determination as to whether the applicant's proposed Planned Unit Development application demonstrates public benefits sufficient to justify the anticipated impacts of the proposed Planned Unit Development on adjacent land uses and the City at large.

The factors listed below are not exhaustive of those that may demonstrate public benefit. No single factor shall be controlling or determinative. All applicable factors shall be weighed and evaluated in an overall determination of whether the requirements of this section have been satisfied. The following factors shall be addressed by the applicant when applicable:

1. *Public Benefits for Downtown Planned Unit Developments.* All proposed Planned Unit Developments in the C-2 and C-4 Zoning Districts should enhance and support the character and vitality of the downtown area and provide improved pedestrian amenities and experiences.
2. *Public Benefits for Sustainable Building and Site Design.* Certification based upon the Leadership in Energy and Environmental Design (LEED) rating system or similar design or building certification system, architectural and landscape architectural elements, site plan features, or use of other technologies that are incorporated into the design of the proposed Planned Unit Development are considered to promote sustainability.
3. *Public Benefits for the Protection of Natural Resources.* Enhanced protection of natural resource areas should provide for preservation and protection of environmentally sensitive areas, the preservation of structures and areas with architectural or historical significance, the provision of recreational and open space areas, and a development pattern which preserves and utilizes natural topography and geological features, scenic vistas, trees and other vegetation.

4. *Public Benefits for Increased Density.* Where density greater than that allowed by the underlying zoning district is proposed, the applicant should demonstrate that any impact attributable to increased densities will not be detrimental to adjacent land uses or the City at large.
5. *Public Benefits for a Range of Housing Types and/or Uses.* Planned Unit Developments should provide for a range of housing options covering a variety of lifestyle choices for different age groups and household types, and complementary mix of residential and nonresidential uses, and range of land use types on a single parcel where applicable.
6. *Comprehensive Plan.* The manner in which the proposed PUD promotes the goals of the City's comprehensive plan as a public benefit.
7. *Other factors.* Any other factors as identified by City staff, the Planning and Zoning Board and the City Council which the Council deems pertinent to the specific proposed PUD and the purposes of this section.

D. Limitations

1. Uses. Only Permitted and Special uses in the underlying zoning district in which the Planned Unit Development property is located shall be allowed.

2. Unified Ownership. The Planned Unit Development shall remain under one ownership and/or unified control. Documentation reflecting how the Planned Unit Development will be maintained under one ownership or control shall be submitted at the time of application for the special use. The documents shall include, but not be limited to, homeowner's association documents, campus agreements and covenants clearly defining the shared maintenance of common open spaces and detention/ retention areas and other utilities within each of the zoning lots and/or phases comprising a Planned Unit Development, shared/cross access and parking arrangements, common design elements including integration of common architectural themes and active and passive open space and landscaped areas. A sale of a portion of a parcel designated Planned Unit Development may occur only after a final plat of subdivision is approved and recorded. However, the subdivided parcels shall continue to be a single Planned Unit Development and require the individual parcel owners to conform with the previously approved Planned Unit Development.

3. Minimum Site Area. The minimum land area to be developed as a Planned Unit Development shall be at least the minimum lot area required by the underlying zoning district. The applicant shall have the burden of establishing that the subject property is of sufficient size and shape to be planned and developed as a unified whole capable of meeting the objectives for which Planned Unit Developments may be established pursuant to this section.

4. Covenants and Restrictions to be Enforceable by the City. All covenants, deed restrictions, easements, and similar restrictions to be recorded in connection with the Planned Unit Development shall provide that they may not be modified, removed, or released without the expressed consent of the City Council and that they may be enforced by the City as well as by future land owners within the proposed development.

8. Declarations. The declaration of covenants and restrictions, covering the property owners or homeowners associations, where such associations exist, shall include in addition to standard clauses, the following:

- a. Establishment of an escrow fund for the maintenance of the common elements of the development.
- b. Delineation of the type of structures or activities which may occur on property deeded to individual property owners or on common property.
- c. Delineation of the restrictions on exterior alterations of the individual buildings and structures.
- d. Any terms and conditions the City Council deem appropriate in furtherance of the public health safety and welfare or the promotion of the use and function of the Planned Unit Development.

6. Compliance with Special Use Standards. Planned Unit Developments shall comply with the standards of Section 5.10D of this ordinance, applicable to Special Uses.

7. Compliance with Comprehensive Plan. The Planned Unit Development shall be in substantial accord with the Comprehensive Plan as amended.

E. Planned Unit Development Application and Approval Procedures

1. Pre-Application Conference. Before submitting the required materials for a Planned Unit Development review, the applicant shall attend a pre-application conference with the Director of Planning & Economic Development and appropriate City department directors. The purpose of the pre-application conference is to informally discuss the general concept of the proposed development, its effects on the surrounding area and City as a whole, and the feasibility of its utilizing City services.

2. Formal Application. The following, submitted in full to the Director of Planning & Economic Development, shall constitute the application for a Special Use, for a Planned Unit Development:

- a. Letter of Transmittal addressed to the Mayor and City Council.
- b. Two copies of the Planned Unit Development application form, as may be established by the Director of Planning & Economic Development.
- c. Application fee (refer to Section 5.13).
- d. List of adjacent property owners as required by Section 5.8B.
- e. Draft of any homeowner's association agreements, declarations, covenants, or similar documents, which will apply to the Planned Unit Development.

- f. Proposed dimensions and locations of all principal and accessory buildings.
- g. Proposed parking areas, driveways, sidewalks, and private streets.
- h. Proposed landscaping and screening as required by Article VI "Landscape Requirements" of this Ordinance.
- i. Location of all machinery, refuse handling and storage areas, or other facilities to be stored or maintained outside of completely enclosed buildings.
- j. Architectural drawings and sketches illustrating the design and character of proposed structures.
- k. A topographic and boundary line map of the development, locating its relationship to surrounding properties.
- l. Location of utilities.
- m. Location of recreational and/or open space.
- n. Existing and proposed storm drainage pattern.
- o. Engineering feasibility studies as necessary.
- p. Master sign plan in accordance with Article XXIII "Signs" of this Ordinance.
- q. Any other information and data as deemed necessary by the Director of Planning & Economic Development.

Upon review of said application for completeness, the Director of Planning & Economic Development shall schedule the Planned Unit Development application for a public hearing before the Planning and Zoning Board.

3. Staff Review. The staff shall submit their review and recommendations regarding the proposed Planned Unit Development application to the applicant, Board and City Council consecutively prior to consideration of the Planned Unit Development application by said bodies.

4. Planning and Zoning Board. The Planning and Zoning Board shall conduct a public hearing on the Planned Unit Development application. The public hearing shall be as set forth in Section 5.6E of this ordinance. The Planning and Zoning Board shall review the application for compliance with this ordinance.

5. City Council Review. The City Council shall take under advisement the recommendations of the staff, and the Planning and Zoning Board when considering the Planned Unit Development application. The City Council shall approve with or without modifications, or disapprove the Planned Unit Development within sixty (60) days of the receipt of the Planning and Zoning Boards' recommendations. The City Council may grant a Special Use Permit for a Planned Unit Development in compliance with Section 5.10 of this ordinance. In addition, the preliminary plat (if required), may be approved as provided in Chapter 62 of the City Code.

Failure of the City Council to act upon the application within the time designated shall be construed to mean a denial of the application.

6. Final Plat. When a Planned Unit Development involves the subdivision of land into two or more parcels, the applicant shall submit a final plat to the Director of Engineering in accord with Chapter 62 of the City Code, after the granting of the Special Use Permit for a Planned Unit Development and approval of the preliminary plat. The final plat shall be reviewed as provided by Chapter 62 of the City Code.

7. Regulations During and Following Completion of Development. Following approval of the Planned Unit Development, the approved plans, rather than any other provision of this Code, shall constitute the use, parking, loading, sign, bulk, space, and yard regulations applicable to the subject property. No additional use other than a home occupation or temporary use shall be permitted within the Planned Unit Development.

F. Changes to Planned Unit Development

The Director of Planning & Economic Development may from time to time, approve minor changes within an existing Planned Unit Development; provided, the minor changes as determined by the Director of Planning & Economic Development do not significantly alter the plan of the Planned Unit Development in terms of density, floor area ratio, landscape, building height, dwelling unit type, provisions of open space, or the physical relationships of elements of the Planned Unit Development and are necessary only to solve technical or engineering considerations first discovered during the preparation of final building and engineering drawings. Minor changes shall be consistent with intent and purpose of this Code and the approved Planned Unit Development and shall be the minimum necessary to overcome the particular difficulty. The Director of Planning & Economic Development shall report to the City Council any minor changes to a Planned Unit Development which have been approved. Any changes considered to be major changes shall be granted only upon application to, and approval by, the City Council. The City Council may, by ordinance duly adopted, grant approval for a major change without a hearing upon finding that any changes to the Final Planned Unit Development as approved will be in substantial conformity with said final plan. If the City Council determines that a major change is not in substantial conformity with the final plan as approved, then the City Council shall refer the request to the Planning and Zoning Board for further hearing and review as provided in Section 5.11E of this ordinance.

G. Expiration of Planned Unit Development - Final Plat Not Recorded.

In the event an ordinance granting a Special Use for a Planned Unit Development expires, as provided by Section 4.4 of this ordinance or by the terms of said Special Use ordinance, and a final plat encompassing part or all of the Planned Unit Development has not been recorded, the Director of Planning & Economic Development shall notify the owner of such expiration. If an extension of the Special Use for a Planned Unit Development is not requested by the owner within 60 days of notification, or if the City Council denies such extension, the Director of Planning & Economic Development shall file an application for revocation of the Special Use for a Planned Unit Development. Such application shall be processed, noticed, heard, and acted upon in accordance with this Section 5.11.

H. Expiration of Planned Unit Development - Final Plat Recorded.

In the event a final plat encompassing all or part of the Planned Unit Development has been recorded and remains in effect, work on the Planned Unit Development shall be considered to have commenced, and the ordinance granting a special use for the Planned Unit Development shall remain in effect. Provided, however, that if said final plat is proposed to be vacated, the procedures of Section 5.10G shall be followed, and an ordinance revoking the special use for Planned Unit Development may be enacted after recording of the plat vacating said final plat.”

SECTION 5: Articles 7.2.5, 8.2.5, 9.2.5, 10.2.5, 11.2.5, 12.2.5, 13.2.5, 14.2.5 of the Zoning Ordinance are hereby amended by the adoption of the following sentence to the end of each Article:

“Unenclosed, roofed front porches shall be permitted to encroach up to eight (8) feet into a required front or side yard abutting a street.”

SECTION 6: Article 24.10 of the Zoning Ordinance is hereby amended by the addition of the following:

“10. Home Kitchen and Cottage Food Operations as defined by the State of Illinois Food Safe Handling Regulation Act.”

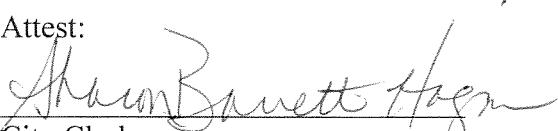
SECTION 7: That Ordinance number F-2019 is hereby amended to reflect that the Ordinances referenced, prior to the adoption of the amendments in F-2019, are repealed as part of the amendment; so that only the amendments shall stand.

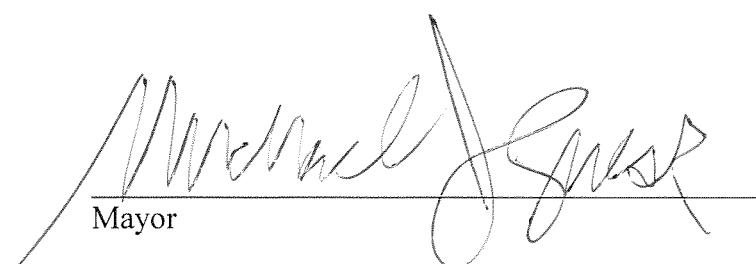
SECTION 8: In all other respects, the Wheaton Zoning Ordinance is ratified and remains in full force and effect.

SECTION 9: All Ordinances or parts of Ordinances in conflict with these provisions are repealed.

SECTION 10: This Ordinance shall become effective form and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

Attest:


Sharon Bennett Hagen
City Clerk


Michael J. Gusk
Mayor

Roll Call Vote:

Ayes: Councilman Prendiville
Mayor Gresk
Councilman Rutledge
Councilman Scalzo
Councilman Suess
Councilman Barbier
Councilwoman Fitch

Nays: None

Absent: None

Motion Carried Unanimously

Passed: November 20, 2017

Published: November 21, 2017