

## ARTICLE V

### ADMINISTRATION AND ENFORCEMENT

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#### 5.1 Enforcement

- A. Duties of the Director of Planning & Economic Development. The Director of Planning & Economic Development shall have the following responsibilities for enforcement and administration of this ordinance:
1. To maintain permanent and current zoning records, including but not limited to all maps, Amendments, Special Use Permits, Planned Unit Developments, Variations, Appeals, and applications therefore.
  2. To provide notice of all public hearings, as specified in Section 5.8 of this ordinance.
  3. To transmit to the City Council and Planning and Zoning Board written recommendations on all Amendments, Special Use Permits, and Planned Unit Developments, in conformance with the administrative procedures set forth in this article.
  4. To maintain copies of all final decisions on amendments, Special Use Permits, Planned Unit Developments, Variations, Appeals, and all other related matters and shall forward a copy of all such decisions to the Director of Building & Code Enforcement.
  5. To review all applications for site plan and architectural approval pursuant to Section 5.4 of this ordinance, and shall determine whether such applications meet the standards set forth therein.

6. To interpret the zoning ordinance when questions arise, after consultation with the City Attorney when necessary.
7. To determine or recommend the required parking or loading spaces for a use not listed by name in Section 21.5, Required Off-Street Parking.
8. To review all applications for downtown design review pursuant to Section 5.12 of this ordinance, and determine whether such applications comply with the Downtown Design Guidelines.
9. To fulfill other duties as specifically assigned by this ordinance.

B. Duties of the Director of Building & Code Enforcement. The Director of Building & Code Enforcement shall have the following responsibilities for enforcement and administration of this ordinance:

1. To issue all building permits and certificates of occupancy, and shall make and maintain records thereof.
2. To conduct inspections of buildings, structures, and uses of land to determine compliance with the provisions of this ordinance.
3. To issue violation notices to property owners found to be in violation of this ordinance, and shall require compliance within a reasonable period of time.

## 5.2 The Planning and Zoning Board

A. Membership. The term "Board" when used in this chapter shall mean the Planning and Zoning Board. The Board shall consist of seven members appointed by the City Council. One of the members of said Board shall be designated by the City Council as Chairman of said Board at the time of his/her appointment and shall hold his said office as Chairman until a successor is appointed. The City Council shall have the power to remove any member of said Board for cause and after a public hearing. Vacancies upon said Board shall be filled for the unexpired term of the member whose place has become vacant, in the manner herein provided for the appointment of such member. The members shall serve without compensation. Members shall serve for a term of five years.

B. Jurisdiction. The Board is hereby vested with the following jurisdiction and authority:

1. To hear and decide appeals from any order, requirement, decision, or determination by the Director of Planning & Economic Development.

2. To conduct hearings and make recommendations regarding applications for variations from the regulations of this chapter in the manner and subject to the standards set out herein.
  3. To conduct hearings and make recommendations respecting proposed amendments or other zoning matters that may be referred to it by the City Council; and
  4. To perform such other functions as may be assigned to it by the City Council, or upon which it is required to act under this chapter.
- C. Meetings and Rules. All meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. All hearings conducted by the Board shall be open to the public. Any person may appear and testify at a hearing either in person or by duly authorized agent or attorney. The Chairman, or in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall also keep records of its hearings and other official actions. A copy of every rule, regulation, recommendation, order requirement, decision, or determination of the Board shall be filed immediately with the Director of Planning & Economic Development and shall be a public record. The Board may adopt its own rules of procedure not in conflict with this chapter or with the applicable Illinois statutes.
- D. Finality of Decision of the Planning and Zoning Board. All final decisions of the Board, as they relate to an application for an appeal, shall be the final administrative determinations subject to judicial review as provided by law.

### 5.3 Downtown Design Review Board

- A. Establishment and Membership. The City of Wheaton hereby establishes the Downtown Design Review Board to review applications for downtown design review that are forwarded by the Director of Planning & Economic Development. The Downtown Design Review Board shall be made up of the following seven (7) members appointed by the Mayor with approval of the City Council:
1. Two (2) Downtown Wheaton business representatives.
  2. One (1) Downtown Manager.
  3. One (1) City Manager or his/her designee.
  4. Two (2) architects, landscape architects, urban planners, or other professionals with design expertise.
  5. One (1) member of the Historic Preservation Commission.

The terms of office shall be for three (3) years, except that the first appointed members subsequent to adoption of this section shall be as follows: three (3)

members shall be appointed for a term of three (3) years each; three (3) members for a term of two (2) years each; and one (1) member for a term of one (1) year. All members appointed subsequent thereto shall serve a term of three (3) years.

- B. Jurisdiction. The Downtown Design Review Board is vested with the authority to review and make decisions on design review applications for proposals within the Downtown Design Review Overlay District that meet the applicability requirements of Section 5.12 of this Article.
- C. Meetings and Rules. All meetings of the Downtown Design Review Board shall be held at the call of the Chairperson and at such other times as the Board may determine necessary. All meetings conducted by the Downtown Design Review Board shall be open to the public and held in accordance with the Illinois Open Meetings Act. The Downtown Design Review Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent and failing to vote, indicating such fact, and shall also keep records of its meetings and other official actions. A copy of every decision shall be filed immediately with the Director of Planning & Economic Development and shall be a public record. The Downtown Design Review Board may adopt its own rules of procedure not in conflict with this chapter or with the applicable Illinois Statutes.

#### 5.4 Occupancy Permit

##### A. Compliance with Zoning Ordinance

No occupancy permit shall be issued until construction, if any, has been completed and the premises inspected and certified by the Director of Building & Code Enforcement to be in conformance with this ordinance and with other applicable laws, ordinances and codes. Pending the issuance of the occupancy permit, a temporary occupancy permit may be issued in order to occupy a portion of the structure that is not entirely complete. Said temporary occupancy permit shall be valid for a period not to exceed six (6) months.

An occupancy permit shall be issued, or written notice shall be given to the applicant stating the reason why an occupancy permit cannot be issued, not later than fourteen (14) days after the Director of Building & Code Enforcement is notified in writing that the building or premises are ready of occupancy.

#### 5.5 Site Plan and Architectural Approval

##### A. Application

Where site plan and architectural approval is specifically required by this ordinance, two copies of a plat of survey, site plan, and other drawings showing the following shall be submitted to the Director of Building & Code Enforcement, in addition to the materials required for the building permit application. This

information shall be forwarded to the Director of Planning & Economic Development for review.

1. Lot dimensions, area and easements.
2. Locations of existing and proposed buildings, structures and improvements on the subject property, and the proposed uses of said buildings on the subject property.
3. Types and locations of existing and proposed utilities, fire hydrants, and lighting facilities.
4. Exterior elevations of existing and proposed structures on the subject property, showing height of buildings.
5. Location and description of all machinery, garbage handling equipment, or other materials to be maintained or stored on the property exterior to any building.
6. Existing and proposed topography, drainage patterns, and retention or detention facilities, as required by Chapter 12½ of the City Code.
7. Existing trees on the subject property, and existing and proposed landscaping and screening, identified by type and height as required by Article VI of this ordinance.
8. Existing and proposed off-street parking and loading facilities and sidewalks, points of ingress and egress to and from public streets, and location of any municipal parking spaces proposed to be credited toward the off-street parking requirements.
9. Drawings or photographs of all existing and proposed signs as required by Article XXIII of this ordinance.

The Director of Planning & Economic Development may waive any of the foregoing items of information if he determines that they are not necessary for an adequate review of the application or request additional information to complete an adequate review of the application.

B. Standards

The Director of Planning & Economic Development will review the application for compliance with the following standards.

1. The proposed development shall comply with the purpose and intent of this ordinance, as well as with all applicable specific requirements of this ordinance.
2. The plans shall provide for the required landscaping and screening, and shall provide for the preservation of trees as required by Article VI of this code.
3. The applicant's plan shall locate entrances, exits, access roads, internal circulation, and parking facilities so as to provide traffic safety and ease and convenience of movement, within the development and on surrounding public streets.
4. The applicant's plan shall provide for adequate utilities, drainage, and other necessary facilities. The site plan and architectural approval process shall be used to determine whether an application adequately meets the standards of this ordinance. It shall not be used to control architectural style, except as provided in Section 5.11 of this ordinance, or to impose a particular aesthetic viewpoint having no relationship to the requirements of this ordinance.

C. Approval

If the Director of Planning & Economic Development finds that the application meets the standards of Section 5.5B and all other applicable requirements, the Director of Planning & Economic Development shall so notify the Director of Building & Code Enforcement in writing. The Director of Planning & Economic Development may grant approval subject to written conditions or restrictions reasonably designed to implement the standards of Section 5.5B. If the Director of Planning & Economic Development finds that the standards of Section 5.5B have not been met, the Director of Planning & Economic Development shall refuse to grant approval and shall so notify the applicant and the Director of Building & Code Enforcement in writing. Notification that site plan and architectural approval has been denied shall include specific details regarding the reasons why the application failed to meet the standards of Section 5.4.2. Any decision of the Director of Planning & Economic Development pursuant to this paragraph may be appealed to the Planning and Zoning Board pursuant to Section 5.9 of this ordinance.

5.6 Amendments

- A. Authority. The regulations imposed and the districts created under the authority of this chapter may be amended by ordinance but no such amendment shall be made without a public hearing before the Board, or committee as may be designated by the City Council. The term "Hearing Body", as used in this Article, means the Board, or committee.

- B. Initiation of Amendments. Amendments may be proposed by the City Council, the Director of Planning & Economic Development, Director of Building and Code Enforcement, the Planning and Zoning Board or by any owner of real estate in the City of Wheaton, which is the subject of the proposed amendment.
- C. Application. Amendments proposed by any owner of real estate in the City of Wheaton may be proposed by application with the Director of Planning & Economic Development. The application shall be in such form and accompanied by such information as the Director of Planning & Economic Development may require.
- D. Processing of Amendments. The Director of Planning and Economic Development shall transmit applications for amendments to the Wheaton Zoning Ordinance to such Boards and Commissions designated under this Ordinance to conduct hearings, review such applications and submit recommendations to the City Council. The City Council may request such other Boards, Commissions or Officials, as it deems appropriate, to submit recommendations regarding proposed amendments to this Chapter.
- E. Hearing. Upon referral of the proposed amendment to the appropriate hearing body, notice of the hearing shall be given in accordance with section 5.8. The hearing body shall hold a hearing on the proposed amendment at such time and place as it shall determine. The hearing shall be conducted and a record of the hearing preserved in such manner as the hearing body may determine or in conformance with other provisions of this Ordinance and as may be otherwise required by law. The hearing body shall submit its final recommendation on the proposed amendment to the City Council as soon as reasonably practical, but in no event, later than sixty (60) days from the closing of the public hearing, or within such additional time as may be designated by the City Council. Hearing for special use permits shall be conducted in accordance with Section 5.10(c).
- 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.

## 5.7 Variations

- 5.7.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.”

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. 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 and Economic Development. The application shall contain such information as the Director of Planning and Economic Development may reasonably require. Any application shall be filed by either the owner of record or the contract purchaser of the property involved. The Director of Planning and Economic Development shall submit the application to the Planning and Zoning Board for a public hearing and recommendation. The Planning and Zoning Board shall submit its recommendation related to the proposed variation to the City Council as soon as reasonably practical, but in no event, later than sixty (60) days from the closing of the public hearing, or within such additional time as may be designated by the City Council. Notice of the Public Hearing shall be given in accordance with Sections 5.7.7.

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 5.7B and may be granted only in the following instances, and in no others:

1. To permit a decrease of greater than twenty-five percent (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. To reduce the applicable off-street parking or loading spaces for a property located in the Downtown Parking Overlay District or the College Avenue Parking Overlay District.
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 to single-family dwellings constructed prior to October 17, 1989, and for additions to single-family dwellings constructed in the Northside Residential Overlay District prior to February 7, 2005.
8. For a seasonal parking lot, to permit a reduction in the amount of required landscaping and/or the elimination of any required lighting.
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.

## 5.8 Notice of Hearings

- A. Notice by Publication. Notice of the time and place of any proposed amendment, Special Use Permit, planned unit development, or variation (hereinafter

collectively referred to as "Zoning Matters") shall be given by the City Clerk not more than thirty (30) nor less than fifteen (15) days before the hearing by publishing a notice thereof at least once in a newspaper of general circulation in the City of Wheaton.

The notice shall briefly state the purpose of the proposed Zoning Matter and state where copies of the proposed Zoning Matter may be obtained or examined. If the Zoning Matter relates to specific property, the notice shall describe the property by common street address or general location. A Zoning Matter relates to specific property if it will directly affect less than all the property in any use district.

- B. Notice to Adjacent Owners. At the time of the filing of an application for any amendment, Special Use Permit, Planned Unit Development, or variation relating to specific property, the applicant shall furnish to the Director of Planning & Economic Development a complete typewritten list on mailing labels containing names and addresses of those persons to whom were sent the tax bills for the general taxes for the last proceeding year on all property within 250 feet of the subject property; provided, the number of feet occupied by all public streets, alleys, and other public ways shall be excluded in computing the 250 foot requirement. The applicant shall file a sworn affidavit with the list of taxpayers, certifying that the list is complete and accurate. The Board shall hear no zoning matter unless the applicant furnishes such information.
- C. Owners Not Located. If notice is mailed to an adjacent owner pursuant to Section 5.7B above and the notice is returned unclaimed or because the intended recipient thereof cannot be found at the address shown on the notice, the notice requirement of that paragraph shall be deemed to have been satisfied.
- D. Posting of Sign on Subject Property. At least 15 days prior to the public hearing, the Director of Planning & Economic Development shall cause a sign or signs to be erected on the subject property, so as to be clearly legible to the public view on all adjacent public rights-of-way. This sign shall contain the City seal, and a statement to the effect that the property will be the subject of an upcoming zoning hearing. A telephone number for contacting the Director of Planning & Economic Development for information about the hearing shall be given. The applicant shall reimburse the City for expenses incurred for the sign and its erection, prior to the final disposition of the zoning matter.

## 5.9 Appeals

- A. Scope of Appeal. An appeal may be taken to the Board by any person, firm or corporation, or by an officer, department, board or bureau aggrieved by a decision of the Director of Planning & Economic Development under this chapter. The application for appeal shall be filed with the Board and shall be taken within such time as shall be prescribed by the Board by rule. A notice of appeal specifying the grounds thereof shall be filed with the Director of Planning & Economic

Development. The Director of Planning & Economic Development shall then forward to the Board any and all records relating to the action from which the appeal is taken.

- B. Findings on Appeals. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Director of Planning & Economic Development certifies to the Board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by a court record on application, and notice to the Director of Planning & Economic Development, and on due cause shown.

The Board shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the applicant and all interested parties and shall render a written decision on the appeal without unreasonable delay. The Board may affirm or may, upon the concurring vote of four members, reverse, wholly or in part, or modify, the order, requirement, decision or determination, as in its opinion ought to be done, and to that end shall have all the powers of the officer from whom the appeal is taken.

#### 5.10 Special Use Permits

- A. Purpose. The various permitted uses listed in the zoning district requirements are compatible with other permitted uses within the district. The various uses for which a special use permit is required, however, may or may not be compatible with adjacent uses, depending upon their location relative to other uses, the capacity of adjacent streets, the characteristics of the proposed use, and other factors. The purpose of the special use permit procedure is to ensure that all granted special uses comply with the purposes and intent of this Zoning Ordinance.
- B. Application. Where a special use permit is required by this ordinance, such permit must be obtained prior to the commencement of the use. An application for a special use permit shall be filed with the Director of Planning & Economic Development, in such form and accompanied by such information as the Director of Planning & Economic Development shall establish, including any of the items required by Section 5.4A deemed necessary for a thorough evaluation of the application.
- C. Processing, Notice and Hearing. Applications for Special Use Permits shall be submitted to the Director of Zoning and Economic Development. The Director of Zoning and Economic Development shall review the application to determine whether it contains such basic information as is required by the standards set forth in Section 5.10D of this Ordinance. Upon determination that the application provides such information the Director of Economic

Development and Zoning shall notify the applicant to proceed with notice of public hearing in the same manner as provided for amendments to this Ordinance. Upon proper notice, the Planning and Zoning Board shall conduct such public hearing or hearings as may be required and necessary to present recommendations to the City Council. The burden of establishing that the proposed Special Use Permit satisfies the standards of Section 5.10B of this Ordinance shall be upon the applicant. The public hearing shall be transcribed at the applicant's expense. The applicant shall prepay all estimated costs of the public hearing. The amount of the hearing deposit shall be that amount estimated by the Director of Economic Development/Zoning Director. Any funds remaining, after payment for the costs of the public hearing, shall be returned to the applicant.

- D. Standards. A special use permit shall not be granted unless the proposed use complies with the following standards:
1. The establishment, maintenance, or operation of the special use shall not be detrimental to the public health, safety, morals, comfort, convenience, and general welfare;
  2. The special use shall not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, not substantially diminish property values within the neighborhood;
  3. The establishment of a special use shall not impede the normal and orderly development and improvement of the surrounding property for uses already permitted;
  4. Adequate utilities, access ways, drainage, and other necessary facilities shall be provided;
  5. Adequate measures shall be taken to provide ingress and egress designed to minimize traffic congestion in the public streets;
  6. The special use shall comply with the objectives of the Wheaton Comprehensive Plan; and
  7. The special use shall conform to the applicable requirements of the district in which it is located, as well as any other applicable requirements of this ordinance, except as may be varied by the Board or City Council.
  8. Action by the City Council. The City Council shall act upon applications for special use permits in compliance with Section 5.6F of this ordinance. The ordinance granting the special use permit may contain conditions deemed necessary to ensure compliance with the standards, purposes, and intent of this ordinance. The special use permit shall become effective upon the effective date of the ordinance granting said special use.

## 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.

5. 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.”

## 5.12 Downtown Design Review

- A. Establishment and Purpose of the Downtown Design Review Process. The downtown design review process is hereby established to promote orderly and compatible development and redevelopment within the Downtown Design Review Overlay District and to ensure that such development or redevelopment complies with the approved Wheaton Downtown Design Guidelines which are an appendix to the Zoning Ordinance.
- B. Applicability. Downtown design review is required for all properties located within the Downtown Design Review Overlay District, except for properties solely occupied by single-family dwellings and no other use. Any property occupied by a single-family dwelling that has been converted to a non-residential use shall be subject to downtown design review. The Character Areas map that is Appendix A of the Downtown Design Guidelines shall specify the set of guidelines that apply to the property.

Downtown design approval shall be required prior to the issuance of 1) a sign permit; 2) a building permit for any construction activity that modifies the exterior of the building or 3) a site development permit for any site alteration that requires a permit, and/or changing the exterior color or materials on the building. For applications that also require the approval of a special use permit, non-administrative variation, and/or planned unit development by the City Council, the downtown design review process may be conducted concurrently with the applicable discretionary review process or downtown design approval may be a condition of approval of the special use permit, non-administrative variation, and/or planned unit development.

- C. Application. The application requirements for downtown design review are set forth in Section 5.5.1, with the exception that all building elevations shall be in color. In addition, building material samples shall be provided, if required by the Director of Planning & Economic Development or Downtown Design Review Board.
- D. Authority and Process.
  - 1. Action by the Director of Planning & Economic Development. Prior to issuance of a sign, building, or site development permit, the Director of

Planning & Economic Development shall review all complete applications for properties located within the Downtown Design Review Overlay District, except for single-family dwellings, to determine compliance with all applicable zoning requirements and the approved Downtown Design Guidelines. Where there are any conflicts between the applicable zoning requirements and the Downtown Design Guidelines, the more restrictive shall control. The Director of Planning & Economic Development may approve or approve with conditions applications for downtown design review which, in his/her determination, comply with the Downtown Design Review Guidelines. The Director of Planning & Economic Development shall forward applications that do not fully comply with the Guidelines for review by the Downtown Design Review Board. The decision of the Director of Planning & Economic Development and any conditions shall be issued in writing within seven (7) days of receiving a complete application.

2. Action by the Downtown Design Review Board. The Downtown Design Review Board shall consider complete applications that have been determined by the Director of Planning & Economic Development to not be in full compliance with the approved Downtown Design Review Guidelines. A meeting to review the application shall be held within fourteen (14) days of receiving a request to appear before the Downtown Design Review Board from the Director of Planning & Economic Development. In considering applications that do not fully comply with the Downtown Design Guidelines, the Downtown Design Review Board shall consider the following factors:
  - a. Compatibility of the proposed development with neighboring properties;
  - b. The degree to which the applicant is proposing to comply with the guidelines;
  - c. Whether strict adherence to the guidelines is reasonable and/or achievable for the application in question; and/or
  - d. Although not in full compliance with the Downtown Design Guidelines, the application as proposed will substantially improve the appearance and function of the building and/or site and will enhance the character of the downtown.

The Downtown Design Review Board may, upon a concurring vote of a majority of a quorum, approve, approve with conditions, or deny applications for downtown design review. The decision of the Downtown Design Review Board and any conditions shall be issued in writing.

- D. Appeals to the City Council. Appeals from the decision of the Downtown Design Review Board shall be forwarded to the City Council for review within thirty (30)

days of the Downtown Design Review Board's decision. The City Council may affirm, or may, by a majority of the City Council, reverse, wholly or in part, or modify the decision of the Downtown Design Review Board. Where an appeal is filed for a property that is also under consideration for a special use permit, planned unit development, and/or variation, the appeal may be heard concurrently by the City Council as part of the discretionary review process where downtown design review was conducted concurrently with other review processes. The City Council's decision and any conditions shall be issued in writing.

- E. Review Standards. Decisions by the Director of Planning & Economic Development or Downtown Design Review Board shall be based on the applicable Downtown Design Guidelines contained within the adopted Downtown Design Guidelines document.
  - F. Emergency Measures. The downtown design review process is not required when, in the opinion of the Director of Planning & Economic Development, there is an actual or immediate danger of collapse or failure of a building or structure, or part thereof, which would endanger life or physically damage adjoining property. The Director of Planning & Economic Development may also waive the downtown design review process, when in his/her opinion the proposed work is of such limited scope so as not to require review.
  - G. Modifications to Downtown Design Approvals. Modifications or changes to a downtown design approval, whether proposed by the property owner or required by the City to protect the public health, safety and welfare, shall require an application and approval as if for a new application. Submission of a new application is not required when, in the opinion of the Director of Planning & Economic Development, the proposed modification or change is of such limited scope and in sufficient conformance with the downtown design approval so as not to require a new application, however, the City may require a new or amended sign, building, or site development permit.
  - H. Limitations on Downtown Design Approvals. A downtown design approval shall automatically become null and void unless a building permit is issued and construction is actually begun within one (1) year of design approval and is thereafter diligently pursued to completion. However, the Director of Planning & Economic Development may extend the period by one (1) additional year, upon request of the property owner.
- 5.13 Fees. Any Application for a variation, amendment, Special Use Permit, or Planned Unit Development shall be accompanied by a fee as set forth in the Fee Schedule, contained in Appendix B of the Wheaton City Code.

The applicant shall also reimburse the City for the costs of the Court Reporter who shall attend and transcribe every public hearing; the applicant shall also reimburse the City for the cost of the notification signs required by Section 5.8D, in the



amount as set forth in the Fee Schedule contained in Appendix B of the City Code. Said Court Reporter and sign costs shall be reimbursed to the City prior to the final disposition of the application.

- 5.14 Penalties. A person who violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be fined not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00). Each day such a violation or failure to comply is permitted to exist after notification shall constitute a separate offense.