

MEETING AGENDA



Planning and Zoning Commission

Village of Homewood

June 23, 2022

Meeting Start Time: 7:00 PM

Village Hall Board Room

2020 Chestnut Road, Homewood, IL

Commission Meetings will be held as in-person meetings. In addition to in-person public comment during the meeting, members of the public may submit written comments by email to pzc@homewoodil.gov or by placing written comments in the drop box outside Village Hall. Comments submitted before 4:00 p.m. on the meeting date will be distributed to all Commission members prior to the meeting.

Please see bottom of agenda for virtual meeting information.

1. Call to Order
2. Roll Call
3. Regular Business:

ZONING CODE UPDATE - Draft Ordinance Chapters 6-8 Overview

Presentation by Houseal Lavigne

4. Public Comments
5. Adjourn

The public is invited to the meeting using the link below to join Webinar:
<https://us06web.zoom.us/j/99184811606?pwd=UkU5TjBQc0Y0QXkxektpaGRYdz09>

To listen to the Meeting via phone: Dial: 1-312-626-6799
Webinar ID: 991 8481 1606 Passcode: 573812



MEMORANDUM

Date: June 16, 2022

SENT VIA EMAIL

To: Angela Mesaros
Director of Economic and Community Development
Village of Homewood

From: Houseal Lavigne Associates
Jackie Wells, AICP, Project Manager
Ruben Shell, Lead Support

Re: Draft Zoning Ordinance Articles 6-8 Overview

The purpose of this memorandum is to provide a high level overview of the major changes proposed to draft Zoning Ordinance Articles 6-8 including Article 6: Planned Development Standards and Procedures, Article 7: Zoning Procedures, and Article 8: Nonconformities.

Proposed changes are based on the recommendations included in the September 10, 2021, Diagnostic Report and Preliminary Recommendations Memo and feedback on the memo from Village staff, elected and appointed officials, and the public.

Article 6: Planned Development Standards and Procedures

The Village's current planned development standards and procedures are proposed to be fully rewritten. The proposed standards will require any development on a lot or lots greater than 25,000 square feet or in the B-1 and/or B-2 Districts be required to go through the planned development process while any development, other than single-unit detached residential, may choose to go through the process. The proposed standards will ensure that modifications requested through the process are considered and granted only in direct response to the accrual of tangible benefits to the Village or neighborhood in which it would be located. To accomplish this, new standards are proposed by which the Planning and Zoning Commission and Village Board would review planned development applications as a whole. Additionally, modification standards are proposed to be established to be utilized in the review of site development allowances (requested deviations from underlying zoning district standards). Unlike the Village's current planned development process, which is considered a special use, the new process is proposed to be considered a zoning map amendment, resulting in the application of the PD-O Planned Development Overlay District.

Article 7: Zoning Procedures

Article 7 is proposed to include all of the Village's administrative review and approval procedures as well as general board and commission review and approval procedures. The Article begins by establishing the parties responsible for administering the Ordinance as well as the general procedures for all zoning applications. Then, administrative review and approval procedures are established including those reviewed and approved by the Building Inspector, Economic and Community Development Director, and Administrative Review Committee. The following major changes are proposed:

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- **Certificate of Occupancy:** Per staff feedback, the Building Inspector is proposed to be the party responsible for the review and issuance of certificates of occupancy instead of the Economic and Community Development Director.
- **Zoning Compliance Permit.** A new zoning compliance permit procedure is proposed which would require the issuance of a zoning compliance permit before any person can erect, move, add to, or structurally alter any building or structure, or use or change the use of any building or land. The permit is proposed to be reviewed and approved by the Economic and Community Development Director.
- **Limited Use Permit.** A new limited use permit process is proposed for the review and approval of uses listed as limited uses in Section 44-03-04. The process would provide an additional level of review by the Economic and Community Development Director to ensure that the uses are meeting all use specific standards and are compatible with the area in which they will be located. The Economic and Community Development Director is proposed to have the ability to elevate a limited use permit to a special use permit if deemed necessary.
- **Administrative Exception.** A new administrative exception process is proposed for the review and approval of minor variances from the standards of the Ordinance. Administrative exceptions are derived from the Village's current standards for administrative variances and minor variances are proposed to be reviewed and approved by the Economic and Community Development Director.
- **Temporary Use Permit.** A new temporary use permit is proposed for the review and approval of temporary uses and special events. The permit is proposed to be reviewed and approved by the Economic and Community Development Director.

Next, general board and commission review and approval procedures are established including an easy to navigate table identifying the recommending and decision-making body for all processes as well as whether a public hearing is required. Another table is included to identify the type of public notice, mailed and/or published, that is required for all required public hearings. All costs associated with mailed and published notice are proposed to be the responsibility of the applicant. Then, the review and approval procedures for zoning text and zoning map amendments, special uses, variances, and appeals are established. No major changes are proposed.

Article 8: Nonconformities

Article 8: Nonconformities is proposed to include the regulations for nonconforming uses, buildings, lots, and/or structures as currently established in Article IX of the Village's Zoning Ordinance. No major changes are proposed.

Article 6. Planned Development Standards and Procedures

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44-06-01. Intent and Purpose

The purpose of the regulations, standards, and criteria contained in this Article is to provide an alternate zoning procedure under which land can be developed or redeveloped with innovation, imagination, and creative architectural design when sufficiently justified under the provisions of this Article. The objective of the planned development is to encourage a higher level of design and amenity than is possible to achieve under otherwise applicable zoning regulations. The end result can be a product which fulfills the objectives of Village plans and policies, including but not limited to the Comprehensive Plan and Downtown Master Plan, while departing from the strict application of the regulations of this Ordinance. The planned development is intended to permit and encourage such flexibility and to accomplish the following purposes:

- A. To stimulate creative approaches to the commercial, residential, and mixed-use development of land.
- B. To provide more efficient use of land.
- C. To preserve natural features and provide open space areas and recreation areas in excess of that required under existing zoning regulations.
- D. To develop new approaches to the living environment through variety in type, design and layout of buildings, transportation systems, and public facilities.
- E. To unify building and structures through design.
- F. To promote long term planning pursuant to the Village of Homewood Comprehensive Plan, Downtown Master Plan and other relevant plans and Village policies, which will allow harmonious and compatible land uses or combination of uses with surrounding areas.

44-06-02. General Provisions

- A. The following must be approved as a planned development in accordance with this Ordinance:
 - 1. Any development on a lot or lots greater than twenty-five thousand (25,000) square feet.
 - 2. Any development in the B-1 and/or B-2 District.
- B. Any development other than single-unit detached residential uses may be approved as a planned development.
- C. Each planned development should be presented and judged on its own merits. It shall not be sufficient to base justification for approval of a planned development solely upon an already existing planned development except to the extent such planned development has been approved as part of a development master plan.
- D. The burden of providing evidence and persuasion that any planned development is necessary and desirable shall rest with the applicant.

44-06-03. Standards for Review

Approval of development through the use of the planned development process will be considered by the Village only in direct response to the accrual of tangible benefits from the planned development to the Village or the neighborhood in which it would be located. These benefits shall be in the form of exceptional amenities; outstanding environmental, landscape, architectural, and/or site design; or the conservation of special man-made or natural features of the site. The approval of modifications to the conventional zoning and subdivision regulations is not guaranteed. No application for a planned development shall be approved unless the Village Board finds that the application meets all of the following standards:

- A. **Plan and Policy Alignment.** The planned development is consistent with the goals, objectives, and policies set forth in the Comprehensive Plan, Downtown Master Plan, and other adopted plans and policy documents of the Village.
- B. **Placemaking.** The planned development has a distinctive identity and brand that is utilized in the signs, streetscape, architecture, public gathering spaces, open spaces, etc.
- C. **Integrated Design with Identifiable Centers and Edges.** The planned development shall be laid out and developed as a unit in accordance with an integrated overall design, in which the various land uses included function as a cohesive whole and support one another. The design shall provide identifiable centers, which form focus areas of activity in the development, and edges, which define the outer borders of the development, through the harmonious grouping of buildings, uses, facilities, public gathering spaces, and open space.
- D. **Public Welfare.** The planned development is designed, located, and proposed to be operated and maintained so that it will not impair an adequate supply of light and air to adjacent property and will not substantially increase the danger of fire or otherwise endanger the public health, safety, and welfare.
- E. **Compatibility with Adjacent Land Uses.** The planned development includes uses which are generally compatible and consistent with the uses of adjacent parcels. If the uses are not generally compatible, all adverse impacts have been mitigated through screening, landscaping, public open space, and other buffering features that protect uses within the development and surrounding properties.
- F. **Impact on Public Facilities and Resources.** The planned development is designed so that adequate utilities, road access, drainage, and other necessary facilities will be provided to serve it. The planned development shall include such impact fees as may be reasonably determined by the Village Board. These required impact fees shall be calculated in reasonable proportion to the impact of the planned development on public facilities and infrastructure.
- G. **Archaeological, Historical or Cultural Impact.** The planned development does not substantially adversely impact an archaeological, historical, or cultural resource, included on the local, state, or federal register, located on or off the parcel(s) proposed for development.

- H. **Drives, Parking and Circulation.** The planned development has or makes adequate provision to provide necessary parking. Principal vehicular access is from dedicated public streets, and access points shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular or pedestrian traffic. With respect to vehicular and pedestrian circulation (including walkways, interior drives, and parking), special attention has been given to the location and number of access points to public streets, the width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, adequate provision for service by emergency vehicles, and arrangement of parking areas that are safe, convenient, and do not detract from the design of proposed buildings and structures and the neighboring properties. Access points are limited through the use of cross access connections.

44-06-04. Site Development Allowances and Modification Standards

A. Site Development Allowances.

1. Site development allowances are deviations from the standards of the underlying zoning district set forth outside of this Article.
2. Notwithstanding any limitations on variations which can be approved as contained elsewhere in this Ordinance, site development allowances may be approved provided the applicant specifically identifies each site development allowance on the approved site plan and demonstrates how each site development allowance would be compatible with surrounding development; is necessary for proper development of the site; and is aligned with a minimum of one (1) of the modification standards detailed in [Section 44-06-03\(B\)](#) below.

- B. **Modification Standards.** In addition to the Standards for Review established in [Section 44-06-04](#), the following modification standards shall be utilized in the consideration of site development allowances. These standards shall not be regarded as inflexible but shall be used as a framework by the Village to evaluate the quality of amenities, benefits to the community, and design and desirability of the proposal.

1. **Landscape Conservation and Visual Enhancement.** The planned development preserves and enhances existing landscape, trees, and natural features such as rivers, streams, ponds, groves, and landforms.
2. **Sustainable Design.** The planned development is designed with consideration given to various methods of site design and building location, architectural design of individual buildings, and landscaping design capable of reducing energy consumption and improving onsite stormwater management.
3. **Public Gathering Space.** The planned development includes public gathering space, the amount of which is proportional to the size of buildings or number of dwelling units. The public gathering space is activated through the use of moveable tables and chairs, a fountain or other water feature, a sculpture or other public art feature, benches, seat walls, raised landscape planters, pedestrian scale, and celebratory lighting such as string or Tivoli lights, and/or other features. The public gathering space is integrated into the overall design of the planned development and has a direct functional or visual relationship to the main building(s) and is not of an isolated or leftover character.
4. **Mix of Uses.** The planned development is comprised of a mix of nonresidential uses and/or a mix of housing types.
5. **Affordability.** The planned development includes residential dwellings that are deed restricted for households that make less than or equal to eighty (80) percent of the area median income.
6. **Universal Design.** the planned development includes buildings designed with accessible features such as level access from the street and/or zero entry thresholds.
7. **High Quality Building Materials.** The planned development utilizes time and weather tested building materials that are of a higher quality than what is otherwise required by this Ordinance.

44-06-05. Procedures

A. Pre-Filing Review and Transmittal of Application.

1. **Pre-Filing Administrative Review Committee Conference(s).** A prospective applicant, prior to submitting a formal application for a planned development, shall meet for a pre-filing conference(s) with the Administrative Review Committee. The purpose of the conference(s) is to help the applicant understand: Village plans and policies, including but not limited to the Comprehensive Plan and Downtown Master Plan; the Zoning Ordinance; site development allowances; the standards by which the application will be evaluated; and the application requirements.
2. **Pre-Filing Planning and Zoning Commission Project Introduction (Optional).** After the initial pre-filing conference, the prospective applicant may introduce their project to the Planning and Zoning Commission. The Planning and Zoning Commission may provide feedback to the applicant based on materials presented. Feedback from the Planning and Zoning Commission is intended to provide the applicant with an initial impression relative to the character, appropriateness, and intensity of the proposed development, prior to the applicant officially filing for a planned development. Any comments and feedback from the Planning and Zoning Commission at this meeting is non-binding. The applicant is expected to provide a brief narrative and development concept plan sufficient to communicate the character of the proposed development.
3. **Pre-Filing Public Meeting (Optional, Unless Otherwise Required).** After the pre-filing Administrative Review Committee Conference(s), the applicant may schedule a public meeting to discuss the proposed planned development and its impact on area residents. The Economic and Community Development Director may require the applicant to conduct the public meeting at the discretion of the Administrative Review Committee. If required, meeting notice requirements will be determined by the Economic and Community Development Director. A written summary of comments made at the meeting shall be maintained and submitted by the applicant with the application.
4. **Application Requirements Waiver Request.** After completing the pre-filing administrative review committee conference the applicant may request a waiver of any application requirement which in the applicant's judgment should not apply to the proposed planned development. Such request shall be made in writing prior to the submission of the formal application documents. A final determination regarding the waiver shall be made by the Economic and Community Development Director and given to the prospective applicant following the decision. An appeal of the determination of the Economic and Community Development Director may be brought to the Planning and Zoning Commission for consideration.
5. **Filing of Application.** After completing the pre-filing staff conference, pre-filing Planning and Zoning Commission project introduction, and the pre-filing public meeting, the applicant may file an application for a planned development including all of the information required in **Section 44-06-06**. With the exception of items that have received a waiver per Section 44-06-05(A)(4).
6. **Deficiencies.** The Economic and Community Development Director shall determine whether the application is complete. If the Economic and Community Development Director determines that the application is not complete, they shall notify the applicant in writing of any deficiencies and shall take no further steps to process the application until the deficiencies are remedied. If the Economic and Community Development Director determines that the application is complete they shall deliver copies of the application to other appropriate Village departments or agencies for review and comment.
7. **Staff Report.** A copy of the complete application and a written report incorporating the comments of Village staff and other agencies regarding the compliance of the proposed planned development with the requirements and standards of this Article shall be delivered to the Planning and Zoning Commission prior to the public hearing.
8. **Determination Not Binding.** Neither the Economic and Community Development Director's determination that an application is complete, nor any comment made by the Economic and Community Development Director, Village staff, or other agencies at a pre-filing conference or as part of the review process shall be intended or construed as a formal

or informal recommendation for the approval of a planned development or component part thereof, nor shall be intended or construed as a binding decision of the Village.

- B. **Public Hearing, Review, and Recommendation by the Planning and Zoning Commission.** The Planning and Zoning Commission shall hold a public hearing on the proposed planned development, and, at the close of the public hearing and after consideration of the staff report and public comment, make a recommendation to the Village Board to approve, approve with modifications, or deny the planned development based on the applicable review standards. The Economic and Community Development Director, on behalf of the Planning and Zoning Commission, shall transmit a report containing its recommendation to approve, approve with modifications, or deny the amendment to the Village Board.
- C. **Review and Action by the Village Board.** The Village Board shall after consideration of the recommendation of the Planning and Zoning Commission and staff report either:
 - 1. Approve the application and adopt the planned development ordinance,
 - 2. Approve the application with modifications and adopt the planned development ordinance with such modifications incorporated,
 - 3. Deny the application,
 - 4. Refer the application back to the Planning and Zoning Commission for further review, or
 - 5. Postpone further consideration pending the submittal of additional information, including any application requirement previously waived.

44-06-06. Application Requirements

- A. An application for a planned development may only be filed by one who has an ownership interest, the agents of one who has ownership interest, any contract purchaser, or anyone holding an option to purchase the parcel of land on which the planned development is to be located.
- B. Applications for a planned development shall be filed with the Economic and Community Development Director in such form and accompanied by such information, with sufficient copies, as shall be established from time to time by the Village.
- C. Every application shall contain, at a minimum, the following information. Refer to the application guide for further requirements of each:
 - 1. Completed application, including ownership information.
 - 2. Project narrative.
 - 3. ALTA Plat of Survey
 - 4. Proposed Plat of Record.
 - 5. Site survey or plan of existing conditions.
 - 6. Site plan(s) of the proposed planned development.
 - 7. Floor plans of the proposed development.
 - 8. Landscape plan.
 - 9. Transportation Impact Study.
 - 10. Village Impact Study.
 - 11. Studies or reports required by outside agencies.

12. Other materials reasonably required by the Director of Economic and Community Development.
- D. Every application must be accompanied by a fee in such amount as established from time to time by the Village Board to defray the costs of providing notice and contracting with independent professionals to review applications as required. Such professional costs may include but are not limited to engineering, legal fees, traffic analyses, environmental impact studies, land use design, or other similarly related professional studies.

44-06-07. Effect of Approval or Denial

- A. Approval of the planned development application and adoption of the planned development ordinance by the Village Board authorizes the applicant to proceed with any necessary applications for building permits, certificates of occupancy, and other permits which the Village may require for the planned development. The Economic and Community Development Director shall review applications for these permits for compliance with the terms of the planned development ordinance approved by the Village Board. No permit shall be issued for development which does not comply with the terms of the adopted planned development ordinance.
- B. **Zoning Map Amendment.** Upon approval of the planned development and adoption of the planned development ordinance by the Village Board, the Village Board shall direct the Economic and Community Development Director to amend the zoning map to reflect the existence and boundaries of the planned development.
- C. Subject to subsection (F) below, the adoption of a planned development ordinance by the Village Board shall be null and void if the recipient does not file an application for a building permit relative to the planned development within nine (9) months after the date of adoption of the ordinance.
- D. Subject to subsection (F) below, the adoption of a planned development ordinance by the Village Board shall be null and void if construction has not commenced within fifteen (15) months after the date of adoption of the ordinance.
- E. Subject to subsection (F) below, the adoption of a planned development ordinance with a phasing plan by the Village Board shall be null and void if construction has not commenced or is not completed in accordance with the terms of that phasing plan.
- F. An extension of the time requirements established in subsections (C-E) may be granted by the Village Board for good cause shown by the applicant, provided a written request is filed with the Village at least four (4) weeks prior to the respective deadline.
- G. Any changes to the planned development, found to be inconsistent with the ordinance for the planned development as established or amended, shall require an amendment to the planned development.
- H. No application for a planned development which was previously denied by the Village Board shall be considered by the Planning and Zoning Commission or the Village Board if it is resubmitted in substantially the same form and/or content within one (1) year of the date of such prior denial. The Economic and Community Development Director shall review the application for a planned development and determine if the application is or is not substantially the same. An appeal of the determination of the Economic and Community Development Director may be brought to the Village Board for consideration.

44-06-08. Amendments to Adopted Planned Development Ordinances

- A. **Determination of Level of Change.** Upon receiving a planned development ordinance amendment application, including the information required by the Economic and Community Development Director, the Economic and Community Development Director shall determine whether the amendment is a major amendment, or a minor amendment based on the criteria detailed in subsections (B) and (C) below.
- B. **Major Amendment.** A major amendment is any proposed change to an adopted planned development that results in one (1) or more of the following changes:
1. Increase in density;
 2. Increase the height of buildings;
 3. Reduce open space by more than five (5) percent;
 4. Modify the proportion of housing types;
 5. Change parking areas in a manner that is inconsistent with this Ordinance;
 6. Increase the approved gross floor area by more than five hundred (500) square feet;
 7. Alter alignment of roads, utilities, or drainage;
 8. Result in any other change inconsistent with any standard or condition imposed by the Village Board in approving the planned development and adopting the planned development ordinance, as determined by the Economic and Community Development Director.
- C. **Minor Amendment.** A minor amendment is any proposed change to an adopted planned development ordinance that is consistent with the standards and conditions upon which the planned development application was approved and planned development ordinance adopted, which does not alter the concept or intent of the planned development, and is not considered a major amendment as detailed in subsection (B).
- D. **Approval Processes.**
1. A major amendment to an adopted planned development ordinance shall follow the procedure set in Section 44-06-05.
 2. A minor amendment to an approved Planned Unit Development may be approved by the Economic and Community Development Director.

REVIEW GUIDE

Existing Text

New Text

Deleted or Moved Text

References to be updated

Article 6. Planned Development Standards and Procedures

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44-06-01. Intent and Purpose

The purpose of the regulations, standards, and criteria contained in this Article is to provide an alternate zoning procedure under which land can be developed or redeveloped with innovation, imagination, and creative architectural design when sufficiently justified under the provisions of this Article. The objective of the planned development is to encourage a higher level of design and amenity than is possible to achieve under otherwise applicable zoning regulations. The end result can be a product which fulfills the objectives of Village plans and policies, including but not limited to the Comprehensive Plan and Downtown Master Plan, while departing from the strict application of the regulations of this Ordinance. The planned development is intended to permit and encourage such flexibility and to accomplish the following purposes:

- A. To stimulate creative approaches to the commercial, residential, and mixed-use development of land.
- B. To provide more efficient use of land.
- C. To preserve natural features and provide open space areas and recreation areas in excess of that required under existing zoning regulations.
- D. To develop new approaches to the living environment through variety in type, design and layout of buildings, transportation systems, and public facilities.
- E. To unify building and structures through design.
- F. To promote long term planning pursuant to the Village of Homewood Comprehensive Plan, Downtown Master Plan and other relevant plans and Village policies, which will allow harmonious and compatible land uses or combination of uses with surrounding areas.

44-06-02. General Provisions

- A. The following must be approved as a planned development in accordance with this Ordinance:
 - 1. Any ~~mixed-use~~ development on a lot or lots greater than twenty-five thousand (25,000) square feet.
 - 2. Any development in the B-1 and/or B-2 District.
- B. Any development other than single-unit detached residential uses may be approved as a planned development.
- C. Each planned development should be presented and judged on its own merits. It shall not be sufficient to base justification for approval of a planned development solely upon an already existing planned development except to the extent such planned development has been approved as part of a development master plan.
- D. The burden of providing evidence and persuasion that any planned development is necessary and desirable shall rest with the applicant.

44-06-03. Standards for Review

Approval of development through the use of the planned development process will be considered by the Village only in direct response to the accrual of tangible benefits from the planned development to the Village or the neighborhood in which it would be located. These benefits shall be in the form of exceptional amenities; outstanding environmental, landscape, architectural, and/or site design; or the conservation of special man-made or natural features of the site. The approval of Modifications to the conventional zoning and subdivision regulations ~~shall be considered a privilege is not guaranteed~~. No application for a planned development shall be approved unless the Village Board finds that the application meets all of the following standards:

- A. **Plan and Policy Alignment.** The planned development is consistent with the goals, objectives, and policies set forth in the Comprehensive Plan, Downtown Master Plan, and other adopted plans and policy documents of the Village.
- B. **Placemaking.** The planned development has a distinctive identity and brand that is utilized in the signs, streetscape, architecture, public gathering spaces, open spaces, etc.
- C. **Integrated Design with Identifiable Centers and Edges.** The planned development shall be laid out and developed as a unit in accordance with an integrated overall design, in which the various land uses included function as a cohesive whole and support one another. The design shall provide identifiable centers, which form focus areas of activity in the development, and edges, which define the outer borders of the development, through the harmonious grouping of buildings, uses, facilities, public gathering spaces, and open space.
- D. **Public Welfare.** The planned development is designed, located, and proposed to be operated and maintained so that it will not impair an adequate supply of light and air to adjacent property and will not substantially increase the danger of fire or otherwise endanger the public health, safety, and welfare.
- E. **Compatibility with Adjacent Land Uses.** The planned development includes uses which are generally compatible and consistent with the uses of adjacent parcels. If the uses are not generally compatible, all adverse impacts have been mitigated through screening, landscaping, public open space, and other buffering features that protect uses within the development and surrounding properties.
- F. **Impact on Public Facilities and Resources.** The planned development is designed so that adequate utilities, road access, drainage, and other necessary facilities will be provided to serve it. The planned development shall include such impact fees as may be reasonably determined by the Village Board. These required impact fees shall be calculated in reasonable proportion to the impact of the planned development on public facilities and infrastructure.
- G. **Archaeological, Historical or Cultural Impact.** The planned development does not substantially adversely impact an archaeological, historical, or cultural resource, included on the local, state, or federal register, located on or off the parcel(s) proposed for development.

- H. **Drives, Parking and Circulation.** The planned development has or makes adequate provision to provide necessary parking. Principal vehicular access is from dedicated public streets, and access points shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular or pedestrian traffic. With respect to vehicular and pedestrian circulation (including walkways, interior drives, and parking), special attention has been given to the location and number of access points to public streets, the width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, adequate provision for service by emergency vehicles, and arrangement of parking areas that are safe, convenient, and do not detract from the design of proposed buildings and structures and the neighboring properties. Access points are limited through the use of cross access connections.

44-06-04. Site Development Allowances and Modification Standards

A. Site Development Allowances.

1. Site development allowances are deviations from the standards of the underlying zoning district set forth outside of this Article.
2. Notwithstanding any limitations on variations which can be approved as contained elsewhere in this Ordinance, site development allowances may be approved provided the applicant specifically identifies each site development allowance on the approved site plan and demonstrates how each site development allowance would be compatible with surrounding development; is necessary for proper development of the site; and is aligned with a minimum of one (1) of the modification standards detailed in [Section 44-06-03\(B\)](#) below.

- B. **Modification Standards.** In addition to the Standards for Review established in [Section 44-06-04](#), the following modification standards shall be utilized in the consideration of site development allowances. These standards shall not be regarded as inflexible but shall be used as a framework by the Village to evaluate the quality of amenities, benefits to the community, and design and desirability of the proposal.

1. **Landscape Conservation and Visual Enhancement.** The planned development preserves and enhances existing landscape, trees, and natural features such as rivers, streams, ponds, groves, and landforms.
2. **Sustainable Design.** The planned development is designed with consideration given to various methods of site design and building location, architectural design of individual buildings, and landscaping design capable of reducing energy consumption and improving onsite stormwater management.
3. **Public Gathering Space.** The planned development includes public gathering space, the amount of which is proportional to the size of buildings or number of dwelling units. The public gathering space is activated through the use of moveable tables and chairs, a fountain or other water feature, a sculpture or other public art feature, benches, seat walls, raised landscape planters, pedestrian scale, and celebratory lighting such as string or Tivoli lights, and/or other features. The public gathering space is integrated into the overall design of the planned development and has a direct functional or visual relationship to the main building(s) and is not of an isolated or leftover character.
4. **Mix of Uses.** The planned development is comprised of a mix of nonresidential uses and/or a mix of housing types.
5. **Affordability.** The planned development includes residential dwellings that are deed restricted for households that make less than or equal to eighty (80) percent of the area median income.
6. **Universal Design.** the planned development includes buildings designed with accessible features such as level access from the street and/or zero entry thresholds.
7. **High Quality Building Materials.** The planned development utilizes time and weather tested building materials that are of a higher quality than what is otherwise required by this Ordinance.

44-06-05. Procedures

A. Pre-Filing Review and Transmittal of Application.

1. **Pre-Filing ~~Staff~~ Administrative Review Committee Conference(s).** A prospective applicant, prior to submitting a formal application for a planned development, shall meet for a pre-filing conference(s) with the ~~Economic and Community Development Director and any other Village official or employee designated by the Village Manager~~ Administrative Review Committee. The purpose of the conference(s) is to help the applicant understand: Village plans and policies, including but not limited to the Comprehensive Plan and Downtown Master Plan; the Zoning Ordinance; site development allowances; the standards by which the application will be evaluated; and the application requirements.
2. **Pre-Filing Planning and Zoning Commission Project Introduction (Optional).** After the initial pre-filing conference, the prospective applicant ~~shall~~ may introduce their project to the Planning and Zoning Commission. The Planning and Zoning Commission may provide feedback to the applicant based on materials presented. Feedback from the Planning and Zoning Commission is intended to provide the applicant with an initial impression relative to the character, appropriateness, and intensity of the proposed development, prior to the applicant officially filing for a planned development. Any comments and feedback from the Planning and Zoning Commission at this meeting is non-binding. The applicant is expected to provide a brief narrative and development concept plan sufficient to communicate the character of the proposed development.
3. **Pre-Filing Public Meeting (Optional, Unless Otherwise Required).** After the pre-filing ~~Planning and Zoning Commission project introduction~~ Administrative Review Committee Conference(s), the applicant ~~shall~~ may schedule a public meeting to discuss the proposed planned development and its impact on area residents. The Economic and Community Development Director may require the applicant to conduct the public meeting at the discretion of the Administrative Review Committee. ~~The applicant shall send a written notice of the meeting via certified mail to all taxpayers of record and residents for all property within two hundred fifty (250) feet of the proposed planned development. Such notice shall be mailed not less than fifteen (15) nor more than thirty (30) days prior to the date of the meeting. If required, meeting notice requirements will be determined by the Economic and Community Development Director. A copy of the notice and mailing list shall be provided to the Economic and Community Development Director.~~ A written summary of comments made at the meeting shall be maintained and submitted by the applicant with the application.
4. **Application Requirements Waiver Request.** After completing the pre-filing ~~staff administrative review committee conference, pre-filing Planning and Zoning Commission project introduction, and the pre-filing public meeting,~~ the applicant may request a waiver of any application requirement which in the applicant's judgment should not apply to the proposed planned development. Such request shall be made in writing prior to the submission of the formal application documents. A final determination regarding the waiver shall be made by the Economic and Community Development Director and given to the prospective applicant following the decision. An appeal of the determination of the Economic and Community Development Director may be brought to the Planning and Zoning Commission for consideration.
5. **Filing of Application.** After completing the pre-filing staff conference, pre-filing Planning and Zoning Commission project introduction, and the pre-filing public meeting, the applicant may file an application for a planned development including all of the information required in Section 44-06-06. With the exception of items that have received a waiver per Section 44-06-05(A)(4).
6. **Deficiencies.** The Economic and Community Development Director shall determine whether the application is complete. If the Economic and Community Development Director determines that the application is not complete, they shall notify the applicant in writing of any deficiencies and shall take no further steps to process the application until the deficiencies are remedied. If the Economic and Community Development Director determines that the application is complete they shall deliver copies of the application to other appropriate Village departments or agencies for review and comment.

7. **Staff Report.** A copy of the complete application and a written report incorporating the comments of Village staff and other agencies regarding the compliance of the proposed planned development with the requirements and standards of this Article shall be delivered to the Planning and Zoning Commission prior to the public hearing.
 8. **Determination Not Binding.** Neither the Economic and Community Development Director's determination that an application is complete, nor any comment made by the Economic and Community Development Director, Village staff, or other agencies at a pre-filing conference or as part of the review process shall be intended or construed as a formal or informal recommendation for the approval of a planned development or component part thereof, nor shall be intended or construed as a binding decision of the Village.
- B. **Public Hearing, Review, and Recommendation by the Planning and Zoning Commission.** The Planning and Zoning Commission shall hold a public hearing on the proposed planned development, and, at the close of the public hearing and after consideration of the staff report and public comment, make a recommendation to the Village Board to approve, approve with modifications, or deny the planned development based on the applicable review standards. The Economic and Community Development Director, on behalf of the Planning and Zoning Commission, shall transmit a report containing its recommendation to approve, approve with modifications, or deny the amendment to the Village Board.
- C. **Public Hearing, Review, and Action by the Village Board.** The Village Board shall ~~hold a public hearing on the proposed planned development, and, at the close of the public hearing and~~ after consideration of the recommendation of the Planning and Zoning Commission ~~and~~ staff report, ~~and public comment~~ either:
1. Approve the application and adopt the planned development ordinance,
 2. Approve the application with modifications and adopt the planned development ordinance with such modifications incorporated,
 3. Deny the application,
 4. Refer the application back to the Planning and Zoning Commission for further review, or
 5. Postpone further consideration pending the submittal of additional information, including any application requirement previously waived.

44-06-06. Application Requirements

- A. An application for a planned development may only be filed by one who has an ownership interest, the agents of one who has ownership interest, any contract purchaser, or anyone holding an option to purchase the parcel of land on which the planned development is to be located.
- B. Applications for a planned development shall be filed with the Economic and Community Development Director in such form and accompanied by such information, with sufficient copies, as shall be established from time to time by the Village.
- C. Every application shall contain, at a minimum, the following information. Refer to the application guide for further requirements of each:
 1. Completed application, including ownership information.
 2. Project narrative.
 3. ALTA Plat of Survey
 4. Proposed Plat of Record.
 5. Site survey or plan of existing conditions.
 6. Site plan(s) of the proposed planned development.

7. Floor plans of the proposed development.
8. Landscape plan.
9. Transportation Impact Study.
10. Village Impact Study.
11. Studies or reports required by outside agencies.
12. Other materials reasonably required by the Director of Economic and Community Development.

~~C. Every application shall contain, at a minimum, the following information, and related data:~~

- ~~1. The names and addresses of the owner of the subject property, the applicant, and all persons having an ownership or beneficial interest in the subject property and proposed planned development.~~
- ~~2. A statement from the owner of the subject property, if not the applicant, approving of the filing of the application by the particular applicant.~~
- ~~3. A survey of, and legal description and street address for the subject property.~~
- ~~4. A narrative describing the proposed planned development's overall character, uses, operations, intent, and impact.~~
- ~~5. A zoning analysis and narrative identifying conformity with zoning standards, any site development allowances being requested, and the modification standard(s) utilized to justify the requested site development allowances.~~
- ~~6. A statement detailing how the application complies with each of the Standards for Review established in **Section 44-06-04**.~~
- ~~7. A scaled site plan(s) of existing site conditions including:

 - ~~a. Existing contiguous land uses;~~
 - ~~b. Current zoning designation(s) of subject property and contiguous property;~~
 - ~~c. Existing streets (including travel lanes, sidewalks, street trees, rights-of-way, etc.), established open spaces, buildings, structures, utility lines and facilities, fire hydrants, and street lights;~~
 - ~~d. Existing easements and an indication of their purpose;~~
 - ~~e. A topographic survey of the area with contour lines a maximum of two (2) feet apart;~~
 - ~~f. The location of natural streams, regulated drains, 100-year floodplains and floodways, water courses, wetlands (as identified by IDNR, IDEM, or an individual with a US Army Corps of Engineers Regulation 4 Jurisdictional Wetland Certification), wooded areas, and isolated preservable trees (with greater than an eight-inch DCH);~~
 - ~~g. An identification of any historic features, specifically those listed on the state or national register of historic places; and~~
 - ~~h. Any other significant feature(s), as determined by the Economic and Community Development Director.~~~~
- ~~8. A scaled site plan(s) of the proposed planned development showing:

 - ~~a. Lots, lot area, and lot area per dwelling unit if relevant;~~
 - ~~b. Required yard setbacks;~~
 - ~~c. Contour lines;~~~~

- ~~d.—Preserved and/or open space and environmental features;~~
 - ~~e.—The location, height, and building coverage of buildings and structures;~~
 - ~~f.—The location and coverage of all impervious surfaces; and~~
 - ~~g.—The number of parking spaces and loading areas if relevant.~~
 - ~~9.—Schematic drawings illustrating the design and character of the building elevations, types of construction, and floor plans of all proposed buildings and structures. The drawings shall also include a schedule showing the number, type, and gross floor area of all uses or combinations of uses, and the gross floor area of the entire development.~~
 - ~~10.—A landscape plan showing the location, size, character and composition of vegetation and other material.~~
 - ~~11.—The substance of covenants, easements, and other restrictions existing and any to be imposed on the use of land, including common open space, and buildings or structures.~~
 - ~~12.—A project phasing plan indicating the approximate date for beginning and completion of each phase of construction of the planned development, if applicable.~~
 - ~~13.—A professional traffic study acceptable to the Village showing the proposed traffic circulation pattern within and in the vicinity of the area of the planned development, including the location and description of public improvements to be installed, and any streets and access easements.~~
 - ~~14.—A professional economic analysis acceptable to the Village, including the following:~~
 - ~~a.—The financial capability of the applicant to complete the proposed planned development;~~
 - ~~b.—Evidence of the project's economic viability; and~~
 - ~~c.—An analysis summarizing the economic impact the proposed planned development will have upon the Village.~~
 - ~~15.—Copies of all environmental impact studies as required by law.~~
 - ~~16.—An analysis setting forth the anticipated demand on all Village services.~~
 - ~~17.—A plan showing off-site utility improvements required to service the planned development, and a report showing the cost allocations and funding sources for those improvements.~~
 - ~~18.—A site drainage plan.~~
 - ~~19.—A written summary of feedback received at the pre-filing public meeting as required in Section 44-06-05(A)(3), and how the applicant refined their proposal based on feedback received.~~
 - ~~20.13. Other materials reasonably required by the Economic and Community Development Director.~~
- D. Every application must be accompanied by a fee in such amount as established from time to time by the Village Board to defray the costs of providing notice and contracting with independent professionals to review applications as required. Such professional costs may include but are not limited to engineering, legal fees, traffic analyses, environmental impact studies, land use design, or other similarly related professional studies.

44-06-07. Effect of Approval or Denial

- A. Approval of the planned development application and adoption of the planned development ordinance by the Village Board authorizes the applicant to proceed with any necessary applications for building permits, certificates of occupancy, and other permits which the Village may require for the planned development. The Economic and Community Development Director shall review applications for these permits for compliance with the terms of the planned development ordinance

approved by the Village Board. No permit shall be issued for development which does not comply with the terms of the adopted planned development ordinance.

- B. **Zoning Map Amendment.** Upon approval of the planned development and adoption of the planned development ordinance by the Village Board, the Village Board shall direct the Economic and Community Development Director to amend the zoning map to reflect the existence and boundaries of the planned development.
- C. Subject to **subsection (F)** below, the adoption of a planned development ordinance by the Village Board shall be null and void if the recipient does not file an application for a building permit relative to the planned development within nine (9) months after the date of adoption of the ordinance.
- D. Subject to **subsection (F)** below, the adoption of a planned development ordinance by the Village Board shall be null and void if construction has not commenced within fifteen (15) months after the date of adoption of the ordinance.
- E. Subject to **subsection (F)** below, the adoption of a planned development ordinance with a phasing plan by the Village Board shall be null and void if construction has not commenced or is not completed in accordance with the terms of that phasing plan.
- F. An extension of the time requirements established in **subsections (C-E)** may be granted by the Village Board for good cause shown by the applicant, provided a written request is filed with the Village at least four (4) weeks prior to the respective deadline.
- G. Any changes to the planned development, found to be inconsistent with the ordinance for the planned development as established or amended, shall require an amendment to the planned development. ~~A planned development ordinance shall be null and void if the use or combination of uses for which the approval was granted ceases for a consecutive period of one (1) year.~~
- H. No application for a planned development which was previously denied by the Village Board shall be considered by the Planning and Zoning Commission or the Village Board if it is resubmitted in substantially the same form and/or content within one (1) year of the date of such prior denial. The Economic and Community Development Director shall review the application for a planned development and determine if the application is or is not substantially the same. An appeal of the determination of the Economic and Community Development Director may be brought to the Village Board for consideration.

44-06-08. Amendments to Adopted Planned Development Ordinances

- A. **Determination of Level of Change.** Upon receiving a planned development ordinance amendment application, including the information required by the Economic and Community Development Director, the Economic and Community Development Director shall determine whether the amendment is a major amendment, or a minor amendment based on the criteria detailed in **subsections (B) and (C)** below.
- B. **Major Amendment.** A major amendment is any proposed change to an adopted planned development that results in one (1) or more of the following changes:
 - 1. Increase in density;
 - 2. Increase the height of buildings;
 - 3. Reduce open space by more than five (5) percent;
 - 4. Modify the proportion of housing types;
 - 5. Change parking areas in a manner that is inconsistent with this Ordinance;
 - 6. Increase the approved gross floor area by more than five hundred (500) square feet;

7. Alter alignment of roads, utilities, or drainage;
 8. Result in any other change inconsistent with any standard or condition imposed by the Village Board in approving the planned development and adopting the planned development ordinance, as determined by the Economic and Community Development Director.
- C. **Minor Amendment.** A minor amendment is any proposed change to an adopted planned development ordinance that is consistent with the standards and conditions upon which the planned development application was approved and planned development ordinance adopted, which does not alter the concept or intent of the planned development, and is not considered a major amendment as detailed in subsection (B).
- D. **Approval Processes.**
1. A major amendment to an adopted planned development ordinance shall follow the procedure set in Section 44-06-05.
 2. A minor amendment to an approved Planned Unit Development may be approved by the Economic and Community Development Director.

Article 7. Zoning Procedures

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44-07-01. Zoning Procedures Responsibilities

- A. **Village Board of Trustees.** The Village Board shall, with respect to this Ordinance, make final decisions on applications for text and map amendments, planned unit developments, and special uses, with or without conditions, and final decisions on applications for those zoning variances set forth in **section 44-82(a)(1)**, with or without conditions.
- B. **Planning and Zoning Commission.**
1. With respect to this chapter, the Planning and Zoning Commission shall:
 - a. Hear and decide appeals of any order, requirement, decision or determination made by authorized village personnel under this Ordinance.
 - b. Hear, consider, make a written report with findings of fact and recommendations to the Village Board on all applications for zoning variances as set forth in **section 44-82(a)(1)**, amendments, site plan review, special uses, subdivisions, and planned unit developments or other matters referred to it upon which it is required to pass under this Ordinance.
 - c. Assist in the development, review, and amendment of the comprehensive plan, as requested by the Village Board.
 2. In carrying out its duties and exercising its authority, the Commission shall adhere to the following procedure:
 - a. **Testimony.** All testimony by witnesses shall be given under oath. The chairperson or, in their absence, the acting chairperson, may administer oaths. All meetings of the Planning and Zoning Commission shall be open to the public, in accordance with the State Open Meetings Law.
 - b. **Voting.** All decisions arrived at by the Planning and Zoning Commission shall require a majority vote of all members for passage or approval of the matter being considered.
 - c. **Decisions.**
 - I. All decisions of the Planning and Zoning Commission on appeals from staff decisions, including, but not limited to, decisions listed in sections **44-76, 44-78, 44-79 and 44-85** shall be final determinations.

C. Economic and Community Development Director.

1. The Economic and Community Development Director shall have the following powers and duties with regard to this Ordinance:
 - a. To receive, file, and forward to the Planning and Zoning Commission, all applications for amendments, appeals, site plan review, special uses, variances, planned unit developments, and other matters, which these bodies are, required to consider under this Ordinance.
 - b. To forward to the building inspector and department heads copies of all applications for amendments, appeals, special uses, variances, planned unit developments, and site plan review, which they are required to pass under this Ordinance. To review and approve plans submitted by applicants for development approval in conformity with the terms of this Ordinance.
 - c. To conduct inspections of the uses of land to determine compliance with the terms of this Ordinance and other applicable ordinances.
 - d. To propose new or revised zoning regulations, as may be required from time to time, based on changes in state law, case law, market conditions, or technical standards.
 - e. To maintain permanent and current records of all zoning related ordinances and documents, including, but not limited to, all maps, amendments, special uses, variances, appeals, site plan review, interpretations, and planned unit developments.
 - f. To interpret the provisions of this Ordinance.
 - g. To enforce this Ordinance and issue notices of violation.
 - h. To provide technical assistance to the Planning and Zoning Commission, Village Board, and other bodies with authority under this Ordinance.
 - i. To perform such other duties as may be required by the Village Board, including providing assistance to Village commissions, committees, and agencies.

D. Building Inspector.

1. The Building Inspector shall have the following powers and duties with regard to this Ordinance:
 - a. To review requests for and to issue building permits and certificates of occupancy and maintain records thereof.
 - b. To conduct inspections of buildings and structures to determine compliance with the terms of this Ordinance and other applicable ordinances.
 - c. To enforce the provisions of this Ordinance and to issue notices of violations.
 - d. To provide technical assistance to the Appearance Commission, Village Board, and other bodies with authority under this Ordinance and this Code.
 - e. To perform such other duties as may be requested by the Village Board, including providing assistance and advice as may be required to various commissions, committees and agencies of the Village.

- E. Village Manager.** The Village Manager shall appoint members of the Village administration to enforce this Ordinance, to provide such clerical and technical assistance as may be required by the Planning and Zoning Commission in the exercise of their duties, and to perform such other duties as may be appropriate.

F. Administrative Review Committee.

1. An Administrative Review Committee is established for the review of all Board and/or Commission approved zoning procedures and consists of the:
 - a. Economic and Community Development Director,
 - b. Village Planner,
 - c. Director of Public Works,
 - d. Village Engineer,
 - e. Building Inspector,
 - f. Fire Chief,
 - g. Police Chief, and
 - h. Village Manager.
2. Members of the Administrative Review Committee may delegate a member of their department to act for the committee member.
3. The Economic and Community Development Director shall be the chairperson.
4. Meetings will be called by the Chairperson as needed.
5. When possible, Administrative Review Committee review shall be completed within fifteen (15) days of receipt by the Village of a complete application.

44-07-02. General Application Requirements

A. Authorization.

1. An application for any zoning procedure, except for amendments, may be filed only by the owner or lessee of the property, or by an agent or contract purchaser specifically authorized by the owner to file such application.
2. An application for an amendment may be filed by an owner, lessee, agent or contract purchaser of property located in the Village or by the Village Board, the Economic and Community Development Director, or the Planning and Zoning Commission.

B. Filing.

1. An application for any zoning procedure shall be filed with the Economic and Community Development Director.
2. The application shall be on forms provided by the Village and shall be filed in such number as the instructions provide.
3. All plans shall be at a scale sufficient to permit a clear and precise understanding of the proposal.
4. The application shall include information, plans, and data, specified in **section 44-578** and sufficient to determine whether the application will conform to the requirements set forth in this Ordinance.

C. Completeness.

1. The Economic and Community Development Director shall determine whether the application is complete.
2. If the application is not complete, the Economic and Community Development Director shall notify the applicant of any deficiencies and shall take no steps to process the application until the deficiencies are remedied.
3. Once the Economic and Community Development Director has determined that the application is complete, the application shall be scheduled for consideration at the appropriate meeting.

D. Fees.

1. Every application shall be accompanied by the required filing fee as established and modified, from time to time, by the Village Board.
2. The failure to pay such fee when due shall be grounds for refusing to process the application and for denying or revoking any permit or approval for the subject property.
3. No fees shall be waived, and no fees shall be refunded except those authorized by the Village Manager or their designee in their sole discretion.
4. A current fee schedule is included in the Village Fee Schedule in **Section #####**.

E. Withdrawal of Application. An applicant shall have the right to withdraw an application at any time prior to the decision on the application by a Village official, commission, or board. Such withdrawal shall be in writing.

F. Successive Applications.

1. A subsequent application shall not be reviewed or heard within one (1) year of the date of denial, unless there is substantial new evidence available or if a significant mistake of law or of fact affected the prior denial.
2. Such subsequent applicant shall include a detailed statement of the grounds justifying its consideration.
3. The Economic and Community Development Director shall make a determination as to whether the subsequent application is seeking essentially the same relief.
4. If the Economic and Community Development Director finds that there are no grounds for consideration of the subsequent application, they shall summarily and without hearing deny the request.

44-07-03. Administrative Review and Approval Procedures

A. **Village Staff Authority.** The following Village staff shall have the authority to receive applications and make determinations for the following administrative procedures:

1. **Building Inspector.**
 - a. Building Permit
 - b. Certificate of Occupancy
2. **Economic and Community Development Director.**
 - a. Zoning Compliance Permit
 - b. Limited Use Permit
 - c. Administrative Exception
 - d. Temporary Use Permit
 - e. Interpretations
3. **Administrative Review Committee.**
 - a. Site Plan Review

B. **Building Permit.**

1. **Requirement.**
 - a. When this Code requires a building permit, no development shall occur until and unless the building inspector has issued a building permit in accordance with the terms of this Ordinance and this Code.
 - b. Prior to the issuance of a building permit in the instances required in Section ##-##-#### of the Village Municipal Code, the applicant shall receive approval from the Appearance Commission per Section ##-##-#### of the Village Municipal Code.
2. **Compliance.**
 - a. No building permit shall be issued for a building or a structure that does not comply with the terms of this chapter.
 - b. The building permit shall not be issued until all approvals required by this chapter are obtained.
 - c. The Building Inspector shall be responsible for determining compliance with this and all other applicable ordinances prior to the issuance of the building permit.
 - d. All building permits shall be kept on file in the office of the Building Inspector and, subject to the exceptions in the Freedom of Information Act, 5 ILCS 140/1 et seq., copies shall be available on request to any person.

C. Certificate of Occupancy.

1. Requirement.

- a. No land shall be occupied or used, and no building shall be erected or substantially altered, in whole or in part, for any purpose whatsoever, until the Building Inspector has issued a certificate of occupancy.
- b. No change of use shall be made in a building, or part thereof, without issuance of a certificate of occupancy.
- c. The certificate of occupancy shall state that the building complies with all the building and health laws and ordinances and with the provisions of this Ordinance.
- d. The certificate of occupancy shall not be issued until a building permit and any other approvals required by this chapter are obtained.
- e. The Building Inspector shall be responsible for determining compliance with this and all other applicable ordinances before the issuance of the certificate of occupancy.

2. Continuance of Present Occupancy of Existing Building. Nothing in this Section shall prevent the continuance of the present occupancy or use of any existing building, except as may be necessary for safety of life and property and as required in Article 8: Nonconformities.

3. Temporary and Conditional Certificate of Occupancy.

- a. The Building Inspector may issue a temporary or conditional certificate of occupancy to allow the premises to be occupied for the proposed use.
- b. Such certificate shall become final only upon full compliance with this Ordinance and this Code.

4. Posting.

- a. The certificate of occupancy shall be dated and signed by the Building Inspector and shall identify the approved use or occupancy of the building or structure.
- b. The certificate shall state that the use or occupancy complies with the terms of this Ordinance and this Code.
- c. Every certificate of occupancy for a nonresidential use shall be permanently posted in a prominent place on the premises at all times.

5. Procedure.

- a. If approved, the certificate of occupancy shall be issued within five (5) days after the erection or alteration of such building has been completed.
- b. If denied, written notice to the applicant specifying the reasons why the request is denied, will be issued no later than five (5) days after the Village has been notified in writing that the building or structure is ready for occupancy.

6. Records. A record of all certificates of occupancy shall be kept on file in the office of the Building Inspector and one (1) copy shall be furnished, on request, to any persons having a proprietary or tenancy interest in the building affected subject to the exceptions in the Freedom of Information Act, 5 ILCS 140/1 et seq.

D. Zoning Compliance Permit.

1. It shall be unlawful for any person to erect, move, add to, or structurally alter any building or structure, or to use or change the use of any building or land or to permit the aforementioned actions, until a Zoning Compliance Permit has been issued by the Economic and Community Development Director.
2. An application for a Zoning Compliance Permit shall be accompanied by a legal description of the lot and plans, drawn to scale, showing the actual shape and dimension of the lot; the location, size and height of any buildings or structures to be erected or altered; the existing and intended use of each building or structure and portion of the lot; the number of dwellings the building is intended to accommodate, if any; and such other information with regard to the lot and neighboring lots as may be requested by the Economic and Community Development Director to determine and provide for the enforcement of this Ordinance.
3. The Economic and Community Development Director shall act upon each application for a Zoning Compliance Permit after it is filed in compliance with the provisions herein. The Economic and Community Development Director shall return one copy of the plans and issue a Zoning Compliance Permit or notify the applicant, in writing, of said official's refusal to issue a permit setting forth the reasons therefore.
4. No Zoning Compliance Permit shall be issued until appropriate fees have been paid. Fees shall be in the amount set forth in the **Village Fee Schedule**.

E. Limited Use Permit.

1. **Purpose.**
 - a. In order to provide flexibility and to help diversify uses within a district, specified uses are permitted in certain districts subject to the granting of a Limited Use Permit. Because of their unusual or special characteristics, Limited Uses require review and evaluation so that they may be located properly with respect to their effects on surrounding properties. The review process set forth in this Section is intended to assure compatibility and harmonious development between Limited Uses, surrounding properties, and the Village at large.
 - b. Limited Uses are permitted within the district where designated when they comply with specific conditions and limitations as set forth in this Ordinance to ensure that the location and operation of the Limited Uses will be in accordance with the specific use criteria. The scope and elements of any Limited Use may be limited or qualified by the conditions applicable to the specific property. A listed Limited Use that cannot meet the specific conditions and limitations set forth in this Ordinance shall not be allowed under a Limited Use permit.
2. **Pre-Application Conference.** The applicant for a Limited Use permit is advised to meet with the Economic and Community Development Director prior to submitting an application to discuss the submittal requirements, review criteria, and review process.
3. **Limited Use Permit Review Criteria.**
 - a. **General Criteria.** The Limited Use permit shall be approved upon a finding by the Economic and Community Development Director that the following general criteria have been met, to the extent they may be applicable:
 - I. The proposed use will conform with or further the goals, objectives and strategies of the Village's Comprehensive Plan and other adopted plans,
 - II. The site, building(s), and use meet all criteria specified for the use and all applicable regulations and development standards as specified in this Ordinance and for the district in which the use is located; however, nonconforming sites and/or buildings must be brought into conformance if required to do so pursuant to **Article 8: Nonconformities**, of this Ordinance,
 - III. The proposed use will not substantially alter the basic character of the district in which it is located, or jeopardize the development or redevelopment potential of property within the district,

- IV. The proposed use will not have a significant adverse impact on the adjacent uses or properties, or result in hazardous conditions for pedestrians or vehicles within or in close proximity to the site,
 - V. The proposed use will be adequately served with public utilities, services, and facilities and not impose an undue burden above and beyond those of the Permitted Uses of the district in which it is located, and
 - VI. Potential negative impacts of the Limited Use on the surrounding properties have been or may be mitigated through specific setbacks, architecture, screen walls, landscaping, site arrangement or other methods required in the permit as conditions and/or limitations of permit approval. The applicant shall satisfactorily address each of the following impacts:
 - i. Traffic,
 - ii. Activity levels,
 - iii. Light,
 - iv. Noise,
 - v. Odor,
 - vi. Building type, style and scale,
 - vii. Hours of operation,
 - viii. Dust, and
 - ix. Stormwater management, drainage, and erosion control.
 - b. **Use-Specific Standards.** In addition to the general criteria for review of a Limited Use Permit listed above, certain uses, due to their unique characteristics, must also comply with the special provisions specific to those uses contained in **Article 4. Use Specific Standards** of this Ordinance.
4. **Economic and Community Development Director Action.**
- a. The application shall be reviewed by the Economic and Community Development Director to ensure the application conforms to the criteria in **Subsection 3** above. Based upon their review, the Economic and Community Development Director shall:
 - I. Approve the Limited Use Permit application,
 - II. Approve the Limited Use Permit application with conditions,
 - III. Advance the Limited Use Permit application to a Special Use, or
 - IV. Deny the Limited Use Permit application.
 - b. If denied, the Economic and Community Development Director shall report the deficiencies to the applicant. The applicant shall have six (6) months from the date of notification of the deficiencies to correct the deficiencies; otherwise, the Limited Use Permit application will be considered abandoned without further notice from the Village.
5. **Permit Transferability.** A Limited Use Permit may be transferred to any other person to operate the same use on the same property and/or within the same building according to the same terms of the permit. A Limited Use Permit may not be transferred to any other property or other building. The transfer of a Limited Use Permit shall be in writing to the new owner or operator of the use, using a form provided or approved by the Economic and Community Development

Director. Such transfer shall not be complete until a counterpart of the transfer document has been filed with the Economic and Community Development Director.

6. **Termination.** A Limited Use Permit shall automatically terminate without any further action by the Village under the following circumstances:
 - a. The use for which the permit was granted has not been established at the approved location within a period of one (1) year from the date the permit was issued, or
 - b. The use for which the permit was issued has been discontinued for a period of one (1) year or longer.

F. Administrative Exception.

1. **Purpose.** Administrative Exception is an administrative process through which certain minor variances may be approved by the Economic and Community Development Director. Administrative Exceptions are intended to allow a limited amount of flexibility in the siting and height of certain buildings and/or structures. The Economic and Community Development Director shall have the authority to grant or deny applications for Administrative Exceptions for such circumstances as this Ordinance allows subject to the requirements of this Section. No site plan shall be approved or building permit issued for a proposal requiring an exception to a zoning standard listed in subsection (2) below unless an Administrative Exception is approved.
2. **Administrative Exceptions Considered.**
 - a. An administrative exception to certain requirements of this Ordinance may be granted:
 - I. To permit a yard up to five (5) percent less than the yard required by the applicable regulations.
 - II. To permit the use of a lot for a use otherwise prohibited solely because of the insufficient area of the lot, but in no event shall the area of the lot be less than ninety five (95) percent of the required lot area.
 - III. To modify the applicable off-street parking or loading requirements to the extent of not more than one parking space or loading berth, or five percent of the spaces required by applicable regulations, whichever number is greater.
 - IV. To allow any permitted nonresidential use in a residential district to exceed the floor area ratio imposed by the applicable regulations by no more than five percent of that area limit imposed by applicable regulations.
 - V. To permit the direct replacement of a stoop and stairs that encroaches into the required front or side yard with a structure of the same dimensions.
 - VI. To permit an accessory structure to be located less than ten feet but not less than five feet from the principal structure, provided the accessory structure is constructed with no less than a one-hour fire resistance rating.
 - b. An Administrative Exception shall not be granted for the approval of any use not otherwise allowed as a permitted, limited, or special use within the subject district.
 - c. No Administrative Exception shall be considered where the setback is five (5) feet or less.
 - d. In the case of a requested addition to a structure, no exception shall be considered where the existing structure does not meet the minimum setback.
 - e. No exception shall be considered for a reduction of a setback for property in the M-1 or M-2 districts if the yard in which the setback reduction is requested is adjacent to any residential use.
3. **Administrative Exception Review Criteria.** The Administrative Exception shall be approved if the Economic and Community Development Director finds that the proposed exception meets the following criteria:

- a. Is consistent with the Comprehensive Plan and other adopted Village plans,
- b. Is consistent with the purpose of the underlying district,
- c. Is consistent with adopted building and fire codes,
- d. Will not result in incompatible development,
- e. Will not result in adverse impacts unless adequately mitigated, and
- f. Is of a technical nature and is required to:
 - I. Compensate for an unusual condition,
 - II. Eliminate a minor inadvertent failure to comply with this Ordinance, or
 - III. To protect a sensitive resource or natural feature.

- 4. **Pre-Application Conference.** The applicant for an Administrative Exception is encouraged to meet with the Economic and Community Development Director prior to submitting an application to discuss the submittal requirements, review criteria, and review process.
- 5. **Economic and Community Development Director Action.** The application shall be reviewed by the Economic and Community Development Director to ensure the application conforms to the criteria in **Subsection 3** above. Based upon their review, the Economic and Community Development Director shall:
 - a. Approve the Administrative Exception application,
 - b. Approve the Administrative Exception application with conditions,
 - c. Advance the Administrative Exception application to a Variance, or
 - d. Deny the Administrative Exception application.
- 6. **Expiration.** If a building permit is not issued or a site plan is not approved within six (6) months of the approval of the Administrative Exception, the Administrative Exception approval shall be void.

G. Temporary Use Permit.

- 1. **Purpose.** A Temporary Use Permit shall be required prior to the commencement of a Temporary Use identified in Table 44-03-04(B).
- 2. **Temporary Use Permit Review Criteria.** To approve the issuance of Temporary Use Permit, the Economic and Community Development Director, in consultation with the Administrative Review Committee, shall make an affirmative finding that the following criteria are met:
 - a. **Land Use Compatibility.** The Temporary Use must be compatible with the purpose and intent of this Ordinance and the district in which it will be located. The Temporary Use shall not impair the normal, safe, and effective operation of a permanent use on the same site. The Temporary Use shall not endanger or be materially detrimental to the public health, safety, or welfare, or injurious to property or improvements in the immediate vicinity of the Temporary Use, given the nature of the activity, its location on the site, and its relationship to parking and access points.
 - b. **Compliance with Other Regulations.** A building permit, life safety inspection, or temporary certificate of occupancy may be required before any structure used in conjunction with the Temporary Use is approved, constructed, or modified. All structures and the site as a whole shall meet all applicable building code, Ordinance, and fire code standards and shall be promptly removed upon the cessation of the use or event. Upon cessation of

the use or event, the site shall be returned to its previous condition (including the removal of all trash, debris, signage, attention attracting devices, or other evidence of the special event or use).

- c. **Hours of Operation and Duration.** The duration and hours of operation of the Temporary Use shall be consistent with the intent of the event or use, and compatible with the surrounding land uses. The duration and hours of operation shall be established by the Economic and Community Development Director at the time of approval of the Temporary Use Permit.
- d. **Traffic Circulation.** The Temporary Use, as determined by the **Village Engineer**, shall not cause undue traffic congestion or accident potential given anticipated attendance and the design of adjacent streets, intersections, and traffic controls.
- e. **Off-Street Parking.** Adequate off-street parking shall be provided for the Temporary Use, as determined by the Economic and Community Development Director, and it shall not create a parking shortage for any of the other existing uses on the site.
- f. **Public Conveniences and Litter Control.** Adequate on-site restroom facilities and on-site solid waste containers may be required. The applicant shall provide a written guarantee that all litter generated by the event or use shall be removed at no expense to the Village.
- g. **Appearance and Nuisances.** The Temporary Use shall be compatible in intensity, appearance, and operation with surrounding land uses in the area, and shall not impair the usefulness, enjoyment, or value of adjacent property due to the generation of excessive noise, dust, smoke, glare, spillover lighting, or other forms of environmental or visual pollution.
- h. **Signs and Attention-Getting Devices.** The Economic and Community Development Director shall review all signage in conjunction with the issuance of the permit, although a Sign Permit is not required. The Economic and Community Development Director may approve the Temporary Use of attention-getting devices. The number and types of signs and attention-getting devices allowed shall be evaluated on the following criteria:
 - I. Type and size of the proposed event or use,
 - II. Safety considerations (sight distance setbacks, sidewalks in area, etc.),
 - III. Lighting considerations (disturbance of nearby residents or adverse effects to traffic on adjacent streets),
 - IV. Aesthetic concerns (appearance, illumination, number, and size of signs and attention-getting devices proposed).
- i. **Other Conditions.** The Economic and Community Development Director may establish any additional conditions deemed necessary to ensure land use compatibility and to minimize potential adverse impacts on nearby uses, including, but not limited to, time and frequency of operation, temporary arrangements for parking and traffic circulation, requirements for screening/buffering, and guarantees for site restoration and cleanup following the Temporary Use. Conditions may include, but shall not be limited to:
 - I. Modifications or restrictions to the hours of operation, duration of the event, size of the activity or other operational characteristics.
 - II. If the permit applicant requests the Village to provide extraordinary services or equipment or if the Economic and Community Development Director otherwise determines that extraordinary services (e.g., traffic control or security personnel) or equipment should be provided to protect the public health or safety, the applicant shall be required to pay to the Village a fee sufficient to reimburse the Village for the costs of these services if not provided by the applicant. This requirement shall not apply if the event or use has been anticipated in the budget process and sufficient funds have been included in the budget to cover the costs incurred.

3. **Economic and Community Development Director Action.** The application shall be reviewed by the Economic and Community Development Director to ensure the application conforms to the criteria in **Subsection 2** above. Based upon their review, the Economic and Community Development Director shall:
 - a. Approve the Temporary Use Permit,
 - b. Approve the Temporary Use Permit with conditions, or
 - c. Deny the Temporary Use Permit.

H. Interpretations.

1. **Purpose.**
 - a. The interpretation authority established by this section is intended to recognize that the provisions of this Ordinance, though detailed and extensive, cannot, as a practical matter, address every specific situation to which they may have to be applied.
 - b. The Economic and Community Development Director may issue interpretations of the provisions of this Ordinance to clarify the standards or requirements as they relate to a particular type of development on a particular property.
 - c. The interpretation authority established herein is not intended to add or change the essential content of this Ordinance but is intended only to allow authoritative application of that content to specific cases.
2. **Request.** The Economic and Community Development Director may issue an interpretation at the written request of a petitioner who is proposing to take action requiring the issuance of a permit or certificate. The request for an interpretation shall set forth the facts and circumstances, a description of the proposed development, and the precise interpretation claimed by the applicant to be correct.
3. **Content of Letter.** The interpretation does not itself authorize the establishment of a use but provides guidance for any approvals or permits required by this Ordinance, and the interpretation shall be advisory in nature and shall not be binding upon the Planning and Zoning Commission or the Village Board in their functions under this Ordinance. The interpretation shall specify the facts, reasons, analysis, and standards upon which the interpretation is based.
4. **Records.** A record of all zoning interpretations shall be kept on file in the Economic and Community Development Director's office.

I. Site Plan Review.

1. **Requirement.**
 - a. Every application for a building permit, including new construction and additions equal to or greater than twenty (20) percent of the existing floor area of the building, shall be subject to site plan review and approval.
 - b. Site plan review shall not apply to:
 - I. Building permits for construction that are limited to interior remodeling, exterior modifications or additions less than twenty (20) percent of the existing floor area of the building,
 - II. Building permits for detached single-family dwellings or accessory structures to detached single-family dwellings.
 - c. No building permit shall be issued unless and until site plan approval has been granted.
2. **Purpose.** The purpose of Site Plan Review is to certify compliance with all applicable provisions of this Ordinance and Code.

3. **B-1 District.** Site plan review for developments located within the B-1 Downtown Core District shall adhere to the design guidelines as specified in the 2005 Downtown Master Plan, as amended.
4. **Administrative Review Committee Action.**
 - a. The Administrative Review Committee shall review the site plan review application to determine whether it conforms to all applicable provisions of this Ordinance and Code.
 - b. Based upon their review the Administrative Review Committee shall:
 - I. Approve the site plan,
 - II. Approve the site plan with conditions,
 - III. Refer the site plan to the Planning and Zoning Commission for review and approval, or
 - IV. Deny the site plan.
5. **Concurrent Applications.** A Limited Use Permit, Special Use Permit, or Variance application may be processed concurrently with the site plan.
6. **Expiration and Lapse of Approval.** The applicant shall have twelve (12) months from the date of site plan approval to secure a building permit to carry out the proposed improvements. If a building permit has not been obtained within twelve (12) months of the date of approval, the approval shall expire. An extension of the time requirements may be requested in writing and granted by the Economic and Community Development Director for good cause shown by the applicant, provided a written request is filed with the Village at least four (4) weeks prior to the respective deadline.

44-07-04. General Board and Commission Review and Approval Procedures

- A. **Summary of Board and Commission Review and Approval Procedures.** Table 44-07-04(A) summarizes the Board and Commission review and approval procedures and identifies the appropriate boards or commissions that serve as recommending or decision-making bodies.

Table 44-07-04(A): Summary of Board and Commission Review and Approval Procedures		
Procedure	Planning and Zoning Commission	Village Board
<i>Planned Unit Development</i>	R*	D
<i>Major Planned Unit Development Amendment</i>	R*	D
<i>Zoning Map Amendment</i>	R*	D
<i>Zoning Text Amendment</i>	R*	D
<i>Special Use Permit</i>	R*	D
<i>Variance</i>	R*	D
<i>Appeals</i>	D	
Key		
R = Recommending Body		
D = Decision Making Body		
* = Public Hearing Required		

B. **Notices.**

1. **Notice Requirements by Procedure.** Table 44-07-04(B)(1) summarize the notice requirements per Board and Commission review and approval procedure.

Table 44-07-04(B)(1): Notice Requirements by Procedure		
Procedure	Mailed Notice	Published Notice
<i>Planned Unit Development</i>	•	•
<i>Major Planned Unit Development Amendment</i>	•	•
<i>Zoning Map Amendment</i>	•	•
<i>Zoning Text Amendment</i>		•
<i>Special Use Permit</i>	•	•
<i>Variance</i>	•	•
Key		
• = Required form of notice		

2. **Mailed Notices.** All occupants within 250 feet of the proposed site's outermost property line, as determined by the Village's records, shall receive notification by first class mail.
3. **Published Notices.** The Village shall cause a notice to be published in a newspaper of general circulation within the Village. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant and the address of the subject property. Such notice shall be published not less than fifteen (15) days nor more than thirty (30) days in advance of the scheduled hearing date.
4. **Cost of Notice.** All costs associated with mailed and published notice, as required by this Ordinance, shall be the responsibility of the applicant.
- C. **Recording of Documents.** Recording of documents as required by the Village in instances of subdivision, consolidation, amendment, or Planned Unit Development (PUD) or otherwise required by state statutes, shall be completed by the Economic and Community Development Director or their nominee in a timely manner and at the expense of the

applicant. Notice of all fees shall be furnished to the applicant by the Economic and Community Development Director or their nominee and paid prior to the recording of documents.

44-07-05. Zoning Text Amendments and Zoning Map Amendments

A. Authority.

1. The regulations imposed and the districts created under the authority of this Ordinance may be amended, from time to time, by ordinance, in accordance with the state statutes. No such amendment shall be made without public hearings before the Planning and Zoning Commission, which shall report their findings and recommendations to the Village Board.
2. The amendment process is intended to adjust this Ordinance in response to changed conditions or changes in Village policy. Amendments are not intended to relieve particular hardships or confer special privileges or rights upon any person or party.
3. The Economic and Community Development Director is authorized to make minor, non-substantive additions, corrections, or deletions to verbiage and punctuation as necessary to correct typographical and editing errors incurred during the comprehensive amendment of April 2002, and any subsequent amendment to this Ordinance.

B. Processing.

1. All amendments are heard initially by the Planning and Zoning Commission, which shall hold a public hearing with notice given. The Planning and Zoning Commission shall forward its findings of fact and its recommendation to approve or deny the proposed amendment to the Village Board.
2. Notice for amendments shall be given in accordance with section 44-75, except in the case of a comprehensive zoning text or map amendment. In those cases, notice shall be in accordance with the statutes of the state.
3. In the case of two (2) consecutive unexcused absences by the applicant, the request for the amendment shall be dismissed without prejudice.

- C. **Standards.** In making their recommendations on the map or text amendment, the Planning and Zoning Commission shall review the proposed amendment, any oral and written comments received at the respective public hearing, and the standards set forth below. Not one of the standards is controlling.

D. Map Amendments.

1. Does the current zoning or the proposed zoning more closely conform to the stated goals in the comprehensive plan?
2. Have major land uses, conditions or circumstances changed since the original zoning was established?
3. Do sites exist for the proposed use in existing districts permitting such use?
4. Is the requested change compatible with the existing uses, development patterns and zoning of nearby properties?
5. Does the present development of the area comply with existing ordinances?
6. Does the existing zoning impose an unreasonable hardship or can a reasonable economic benefit be realized from uses permitted by the existing zoning?
7. What is the extent of the diminishment of property values, if any, resulting from the current zoning?
8. How long has the property been vacant as compared to development occurring in the vicinity?
9. Is the property physically suitable for the zoned uses or for the proposed use?

10. Does the proposed use satisfy a public need?
11. Will the proposed change conflict with existing or planned public improvements or adversely impact schools, parks or other public facilities?
12. In the vicinity, will the environment or traffic patterns be adversely affected?
13. To what extent will the proposed change diminish property values of the surrounding properties?
14. Will the proposed change deter the use of properties in the area or contribute to redevelopment?
15. Will the proposed change be detrimental to the health, safety and welfare of the neighborhood or of the village as a whole?

E. Text Amendments.

1. Is the proposed text amendment consistent with the stated goals in the comprehensive plan?
2. Does the proposed text amendment address a particular issue or concern for the village?
3. Will the proposed text amendment impose an unreasonable hardship on existing uses?
4. Have major land uses, conditions or circumstances changed since the original zoning ordinance text was established?
5. Is the requested change compatible with the existing uses and development patterns of the community?
6. Will the proposed change be detrimental to the health, safety and welfare of the neighborhood or of the village as a whole?

F. Decision. The Village Board shall make the final decision on all amendments. Upon receiving the report from the Planning and Zoning Commission, the Village Board may:

1. Adopt the proposed amendment by ordinance,
2. Deny the proposed amendment, or
3. refer the matter back to the Planning and Zoning Commission for further consideration.

G. Written Protest. In the case of a written protest against any proposed amendment of the regulations or districts, signed and acknowledged either by the owners of twenty (20) percent of the frontage proposed to be altered, or twenty (20) percent of the frontage immediately adjacent to or across an alley therefrom, or by the owners of twenty (20) percent of the frontage abutting or directly opposite the frontage proposed to be altered, the amendment shall not be passed except by a favorable vote of two-thirds of the members of the Village Board. In such cases, a copy of the written protest shall be served, by the protestor, to both the applicant for the proposed amendment and the applicant's attorney, if any, by certified mail at the address of such applicant and attorney shown in the application for the proposed amendment.

44-07-06. Special Uses

- A. **Purpose.** This Ordinance is based upon the division of the Village into districts, within which the use of land and buildings and the bulk and location of buildings or structures are essentially uniform. However, there are special uses, which, because of their unique character, cannot be properly classified in a particular district without consideration, in each case, of the impact of those uses upon neighboring lands and upon the public need for the particular use at the particular location. The special use process addresses these unique circumstances and regulates such uses to protect the public health, safety and welfare. Such special uses fall into two (2) categories:
1. Uses operated by a public agency or publicly related utilities or uses traditionally maintained for the public interest.
 2. Uses entirely private in character, but of such a nature that the operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.
- B. **Processing.**
1. Petitions for special uses are heard by the Planning and Zoning Commission, which shall hold a public hearing in accordance with the requirements of [section 44-74](#), with notice given in accordance with [section 44-75](#).
 2. In the case of two unexcused absences by the applicant, the request shall be dismissed without prejudice.
 3. Within thirty (30) days of the hearing, the Planning and Zoning Commission shall forward its findings of fact and its recommendation to approve, to approve with conditions, or to deny the special use to the Village Board. The Village Board shall make the final decision on all special uses. Upon receiving the report from the Planning and Zoning Commission, the Village Board may:
 - a. Approve the special use,
 - b. Approve the special use with conditions,
 - c. deny the special use, or
 - d. refer the special use back to the Planning and Zoning Commission for further consideration.
- C. **Standards.** No special use shall be granted by the Village Board unless the special use:
1. Is deemed necessary for the public convenience at that location.
 2. Is not detrimental to the economic welfare of the community.
 3. Will be consistent with the goals and policies of the comprehensive plan and other adopted plans of the Village.
 4. Is so designed, located, and proposed to be operated, that the public health, safety, and welfare will be protected.
 5. Is a suitable use of the property and, without the special use, the property will be substantially diminished in value.
 6. Will not cause substantial injury to the value of other property in the neighborhood in which it is located.
 7. Will be consistent with the uses and community character of the neighborhood surrounding the parcel.
 8. Will not be injurious to the use or enjoyment of other property in the neighborhood for the purposes permitted in the zoning district.
 9. Will not impede the normal and orderly development and improvement of surrounding properties for uses permitted in the zoning district.
 10. Provides adequate measures of ingress and egress in a manner that minimizes traffic congestion in the public streets.

11. Is served by adequate utilities, drainage, road access, public safety and other necessary facilities.
 12. Will not substantially adversely affect one or more historical, archeological, cultural, natural or scenic resources located on the parcel or surrounding properties.
- D. **Conditions.** The Planning and Zoning Commission may recommend and the Village Board may impose conditions and restrictions upon the construction, location and operation of a special use. Such conditions must be deemed necessary to comply with the standards set forth in this section, to promote the general objectives of this chapter, and to minimize or reduce the injury to the value of property in the neighborhood. Such conditions shall be expressly set forth in the ordinance granting the special use. Failure to maintain such conditions or restrictions as may have been imposed shall constitute grounds for revocation of such special use approval.
- E. **No Presumption of Approval.** The listing of a use as a special use within a zoning district does not constitute an assurance or presumption that such special use will be approved. Rather, each proposed special use shall be evaluated on an individual basis, in relation to the standards in this section, the standards in **article V** of this Ordinance and the standards for the district in which it is located. Such evaluation will determine whether approval of the special use is appropriate at the particular location and in the particular manner proposed.
- F. **Limitation on Special Uses.**
1. Special use approval may become null and void unless a building permit is issued within one (1) year of the date of adoption of the ordinance granting special use approval and a certificate of occupancy is issued within two (2) years of the date of adoption of such ordinance. After notice to the property owner and an opportunity for a hearing, the Village Board may terminate the special use. However, the Village Board may extend these periods, upon written request from the applicant showing good cause.
 2. Special use approval is granted to a specific property and authorizes the conduct of the special use only on the property represented on the application and is not transferable to other properties.
 3. The approval of a special use authorizes the use on the property in the manner proposed but does not in itself authorize the establishment of such use without first obtaining any other required approvals, including a building permit and certificate of occupancy.
 4. Any modification or intensification of a special use that alters the essential character or operation of the use in a way not approved at the time the special use was granted, as evidenced by the record or by the text of this Ordinance, shall require new special use approval in accordance with this section.
- I. **Findings of Fact.** Every special use decision shall be accompanied by findings of fact specifying the reason or reasons for granting or denying the special use.

44-07-07. Variances

A. Purpose.

1. The variance process is designed to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this Ordinance that create practical difficulties or particular hardships. Practical difficulties or particular hardships in the way of carrying out the strict letter of the regulations imposed by this Ordinance, in the instances detailed in **subsection 2** below, may, be varied by the Planning and Zoning Commission. All other variances, except for those which classify as Administrative Exceptions per **Section #####**, shall be decided upon by the Village Board.
2. The Planning and Zoning Commission shall have the authority to decide variance requests only in the following instances:
 - a. To permit a yard less than the yard required by the applicable regulations.
 - b. To permit the use of a lot for a use otherwise prohibited solely because of the insufficient area of the lot, but in no event shall the area of the lot be less than ninety (90) percent of the required lot area.
 - c. To permit the same off-street parking spaces to qualify as required spaces for two (2) or more uses, provided that the maximum use of each facility by each user does not take place during the same hours or on the same days of the week.
 - d. To modify the applicable off-street parking or loading requirements to the extent of not more than one parking space or loading berth, or twenty (20) percent of the spaces required by applicable regulations, whichever number is greater.
 - e. To increase, by not more than twenty five (25) percent, the maximum distance that required parking spaces are permitted to be located from the use served.
 - f. To allow any permitted nonresidential use in a residential district to exceed the floor area ratio imposed by the applicable regulations by no more than ten percent of that area limit imposed by applicable regulations.
 - g. To allow a private garage in a residence district to exceed the limitations of **article IV** of this chapter, provided that the applicant testifies and the Planning and Zoning Commission finds that the proposed garage will be used only for lawful purposes.
 - h. To allow a reduction of not more than five feet in the required setback provisions for outdoor private residential swimming pools in accordance with **chapter 10**.
 - i. To allow the modification of height restrictions for fences in accordance with **section 10-133(e)**.

B. Processing.

1. All petitions for a variance, except as otherwise detailed in this Ordinance, are heard by the Planning and Zoning Commission, which shall hold a public hearing in accordance with the requirements of **section 44-74**, with notice given in accordance with **section 44-75**.
2. The Planning and Zoning Commission shall make the final decision on all variances, except as otherwise detailed in this Ordinance.
3. In the case of two (2) unexcused absences by the applicant, the request for the variance shall be dismissed without prejudice.

4. If the variance does not meet the standards of 44-07-03(E) or 44-07-07(A)(2) then the Planning and Zoning Commission shall, within thirty (30) days of the conclusion of the hearing, forward its findings of fact and its recommendation to approve, to approve with conditions, or to deny the variation to the Village Board.
5. The Village Board shall make the final decision on all zoning variances that do not meet the standards of 44-07-03(E) or 44-07-07(A)(2).
6. Upon receiving the report from the Planning and Zoning Commission, the Village Board may approve the variance, with or without conditions, by adoption of an ordinance or may deny the variance.
7. All ordinances granting variances, with or without conditions, shall be recorded in the office of the county recorder of deeds.

C. Standards.

1. No variance shall be granted as authorized in this section unless findings based upon the evidence presented in each specific case establish that the standards in subsections (e)(1)a, b, and c below are met:
 - a. That the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located.
 - b. That the plight of the owner is due to unique circumstances.
 - c. That the variance, if granted, will not alter the essential character of the locality.
2. For the purpose of supplementing the above standards, the applicable decision making body, in making its determination, when there are practical difficulties or particular hardships, shall also take into consideration the extent to which items in subsections (e)(2)a through f below have been established by the evidence. Not one of the standards is controlling.
 - a. That the particular physical surroundings, shape or topographical conditions, or the specific property involved would bring a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
 - b. That the conditions upon which the petition for variance is based would not be applicable generally to other property within the same zoning classification.
 - c. That the alleged difficulty or hardship or the alleged unique circumstance, has not been created by any person presently having an interest in the property.
 - d. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
 - e. That the proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the danger of fire or otherwise endanger the public safety, or substantially diminish or impair property values within the neighborhood.
3. **Standards for Garage Variances.**
 - a. An application for an oversized garage variance or variance to construct a second garage on a residential lot shall be filed and processed in the manner prescribed for variances in Section 44-07-07. However, in the case of garage variances, after a public hearing, the Planning and Zoning Commission shall make a recommendation to the Village Board and the Village Board shall either grant or deny such application. The property owner and all future owners of property, which is the site of an approved oversized garage or second garage, shall comply with all of the terms and conditions of the ordinance granting such approval. Petitioners shall file a copy of their title insurance policy with each such application.

- I. When there is an existing garage on a residential lot, a property owner may petition for a variation to allow the construction of a second garage on such lot. No such petition shall be granted unless findings, based upon the evidence presented in each specific case, establish that the standards in subsection (e) of this section have been met and further establish:
 - i. That either the existing garage or the proposed second garage shall be attached to the residential building on a lot containing a minimum of ten thousand four hundred (10,400) square feet.
 - ii. That the proposed garage conforms to the Village building code and all requirements of this Ordinance, including but not limited to yard setbacks, height, and size.
 - iii. That the proposed garage and the existing garage will be used only for purposes incidental to a lawful residential use.
 - II. When there is an existing carport on a residential lot, a property owner may petition for a variance to allow the construction of a separate garage on such lot. No such petition shall be granted unless findings, based upon the evidence presented in each specific case, establish that the standards in subsection (e) of this section have been met and further establish:
 - i. That the existing carport cannot be removed because it is part of the roofline of the existing single-family residence.
 - ii. That the proposed garage conforms to the village building code and all other requirements of this Ordinance including but not limited to yard setbacks, height, and size.
 - iii. That the proposed garage and the existing carport will be used only for lawful purposes incidental to a residential use.
- D. **Limitations on Variances.**
1. An approved variance may become null and void unless a building permit is issued within six months of the date the variance was granted and a certificate of occupancy is issued within one year of the date the variance was granted. After notice giving the property owner an opportunity for a hearing, the village board may terminate the variance or the village board may extend these periods, upon written request from the applicant showing good cause.
 2. An approved variance is granted to a specific property, authorizes the variance only on the property represented on the application, and is not transferable to other properties.
 3. An approved variance shall be deemed to authorize only the particular construction or development for which it was issued. The approval of a variance does not in itself authorize the establishment of any use, nor construction, alteration or development, without first obtaining any other required approvals, including a building permit and certificate of occupancy.
 4. Any construction, alteration or development that is beyond the scope so authorized shall require approval of a new variance in accordance with this section.
- E. **Findings of fact.** Every decision on a variance shall be accompanied by findings of fact specifying the reason or reasons for granting or denying the variance.

44-07-08. Appeals

- A. **Scope of Appeals.** An appeal may be taken to the Planning and Zoning Commission by any person, firm or corporation, or by any office, department, board, bureau, or commission, aggrieved by a decision of the building inspector, Economic and Community Development Director or other authorized officials. The appeal process provides checks and balances on administrative authority.
- B. **Petition for Appeal.** A petition for an appeal before the Planning and Zoning Commission shall be filed in writing within thirty (30) days after the date of the contested decision. The filing of the appeal shall stay any proceedings and any development permitted by the contested action, until a final decision has been rendered by the planning and zoning commission, unless the stay would cause imminent peril to life or property.
- C. **Procedure.** Upon filing of an administrative appeal, the Economic and Community Development Director shall transmit to the Planning and Zoning Commission all the papers constituting the record of the decision. The Economic and Community Development Director shall place the appeal on the agenda of the Planning and Zoning Commission for consideration at the earliest available meeting. The Economic and Community Development Director shall provide the person who filed the appeal with written notice of the date, time and place of the scheduled meeting.
- D. **Meeting.** By motion, the Planning and Zoning Commission shall reverse, affirm, or modify the contested decision. In reversing, modifying or affirming the contested decision, the Planning and Zoning Commission shall have all the related powers of the administrative officer whose decision is being appealed.
- E. **Decision.** The contested decision shall not be modified unless the Planning and Zoning Commission finds that an error has been made in the application or interpretation of the terms of this Ordinance, any other related codes, ordinances or policies adopted by the Village. The contested action shall not be reversed or modified except by the concurring vote of four (4) Planning and Zoning Commission members.
- F. **Further Appeal.** In the event that the contested action is reversed or modified, all subsequent administrative actions concerning the subject matter shall be in accordance with the reversal or modification by the Planning and Zoning Commission. All decisions of the Planning and Zoning Commission made pursuant to this part shall be final administrative decisions. Any appeal from such decisions shall be made to the circuit court.

REVIEW GUIDE

Existing Text

New Text

Deleted or Moved Text

References to be updated

Article 7. Zoning Procedures

44-07-01. Zoning Procedures Responsibilities	1
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44-07-01. Zoning Procedures Responsibilities

- A. **Village Board of Trustees.** The ~~village-Village board-Board~~ shall, with respect to this ~~chapterOrdinance~~, make final decisions on applications for text and map amendments, planned unit developments, and special uses, with or without conditions, and final decisions on applications for those zoning variances set forth in ~~section 44-82(a)(1)~~, with or without conditions.
- B. **Planning and Zoning Commission.**
1. With respect to this chapter, the ~~planning-Planning~~ and ~~zoning-Zoning commission-Commission~~ shall:
 - a. Hear and decide appeals of any order, requirement, decision or determination made by authorized village personnel under this ~~chapterOrdinance~~.
 - b. ~~Hear and decide all applications for outdoor itinerant merchants in the manner set forth in section 12-333.~~
 - c. ~~Hear and decide administrative variations from the terms provided in this chapter in the manner and subject to the standards set forth in section 44-82.~~
 - d. Hear, consider, make a written report with findings of fact and recommendations to the ~~village-Village board-Board~~ on all applications for zoning variances as set forth in ~~section 44-82(a)(1)~~, amendments, site plan review, special uses, subdivisions, and planned unit developments or other matters referred to it upon which it is required to pass under this ~~chapterOrdinance~~.
 - e. Assist in the development, review, and amendment of the comprehensive plan, as requested by the ~~village-Village board-Board~~.
 2. In carrying out its duties and exercising its authority, the ~~commission-Commission~~ shall adhere to the following procedure:
 - a. **Testimony.** All testimony by witnesses shall be given under oath. The chairperson or, in ~~his-their~~ absence, the acting chairperson, may administer oaths. All meetings of the ~~planning-Planning~~ and ~~zoning-Zoning commission-Commission~~ shall be open to the public, in accordance with the State Open Meetings Law.

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- b. **Voting.** All decisions arrived at by the ~~planning-Planning~~ and ~~zoning-Zoning commission-Commission~~ shall require a majority vote of all members for passage or approval of the matter being considered.

c. **Decisions.**

~~All final decisions of the planning and zoning commission on administrative variations shall be subject to judicial review in accordance with 65 ILCS 5/11-13-13.~~

- i. All decisions of the ~~planning-Planning~~ and ~~zoning-Zoning commission-Commission~~ on appeals from staff decisions, including, but not limited to, decisions listed in sections ~~44-76, 44-78, 44-79 and 44-85~~ shall be final ~~administrative~~ determinations.

C. **Economic and Community Development Director.**

1. The ~~economic-Economic~~ and ~~community-Community development-Development~~ director-Director shall have the following powers and duties with regard to this ~~chapter-Ordinance~~:
 - a. To receive, file, and forward to the ~~planning-Planning~~ and ~~zoning-Zoning commission-Commission~~, all applications for amendments, appeals, site plan review, special uses, variances, planned unit developments, and other matters, which these bodies are, required to consider under this ~~chapter-Ordinance~~.
 - b. To forward to the building inspector and department heads copies of all applications for amendments, appeals, special uses, variances, planned unit developments, and site plan review, which they are required to pass under this ~~chapter-Ordinance~~. To review and approve plans submitted by applicants for development approval in conformity with the terms of this ~~chapter-Ordinance~~.
 - c. To conduct inspections of the uses of land to determine compliance with the terms of this ~~chapter-Ordinance~~ and other applicable ordinances.
 - d. To propose new or revised zoning regulations, as may be required from time to time, based on changes in state law, case law, market conditions, or technical standards.
 - e. To maintain permanent and current records of all zoning related ordinances and documents, including, but not limited to, all maps, amendments, special uses, variances, appeals, site plan review, interpretations, and planned unit developments.
 - f. To interpret the provisions of this ~~chapter-Ordinance~~.
 - g. To enforce this ~~chapter-Ordinance~~ and issue notices of violation.
 - h. To provide technical assistance to the ~~planning-Planning~~ and ~~zoning-Zoning commission-Commission~~, ~~village Village board-Board~~, and other bodies with authority under this ~~chapter-Ordinance~~.
 - i. To perform such other duties as may be required by the ~~village-Village board-Board~~, including providing assistance to ~~village-Village~~ commissions, committees, and agencies.

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D. **Building Inspector.**

1. The ~~building-Building inspector-Inspector~~ shall have the following powers and duties with regard to this ~~chapter-Ordinance~~:
 - a. To review requests for, and to issue, building permits and certificates of occupancy and maintain records thereof.
 - b. To conduct inspections of buildings and structures to determine compliance with the terms of this ~~chapter-Ordinance~~ and other applicable ordinances.
 - c. To enforce the provisions of this ~~chapter-Ordinance~~ and to issue notices of violations.

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- d. To provide technical assistance to the ~~appearance~~Appearance ~~commission~~Commission, ~~village~~Village ~~board~~Board, and other bodies with authority under this ~~chapter~~Ordinance and this Code.
- e. To perform such other duties as may be requested by the ~~village~~Village ~~board~~Board, including providing assistance and advice as may be required to various commissions, committees and agencies of the ~~village~~Village.

E. **Village Manager.** The ~~village~~Village ~~manager~~Manager shall appoint members of the ~~village~~Village administration to enforce this ~~chapter~~Ordinance, to provide such clerical and technical assistance as may be required by the ~~planning~~Planning and ~~zoning~~Zoning ~~commission~~Commission in the exercise of their duties, and to perform such other duties as may be appropriate.

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F. **Administrative Review Committee.**

1. An Administrative Review Committee is established for the review of all Board and/or Commission approved zoning procedures and consists of the:
 - a. Economic and Community Development Director.
 - b. Village Planner.
 - c. Director of Public Works.
 - d. Village Engineer.
 - e. Building Inspector.
 - f. Fire Chief.
 - g. Police Chief, and
 - h. Village Manager.
2. Members of the Administrative Review Committee may delegate a member of their department to act for the committee member.
3. The Economic and Community Development Director shall be the chairperson.
4. Meetings will be called by the Chairperson as needed.
- 2.5. When possible, Administrative Review Committee review shall be completed within fifteen (15) days of receipt by the Village of a complete application.

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44-07-02. General Application Requirements

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A. **Authorization.**

1. An application for ~~a variance, special use, site plan review, letter of interpretation, appeal or planned unit development~~any zoning procedure, except for amendments, may be filed only by the owner or lessee of the property, or by an agent or contract purchaser specifically authorized by the owner to file such application.
- 4.2. An application for an amendment may be filed by an owner, lessee, agent or contract purchaser of property located in the ~~village~~Village or by the ~~village~~Village ~~board~~Board, the ~~economic~~Economic and ~~community~~Community ~~development~~Development ~~director~~Director, or the ~~planning~~Planning and ~~zoning~~Zoning ~~commission~~Commission.

B. **Filing.**

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1. An application for ~~an appeal, interpretation, site plan review, variance, special use, amendment and planned unit development~~any zoning procedure shall be filed with the ~~economic~~Economic and ~~community~~Community development ~~director~~Director.
2. The application shall be on forms provided by the ~~village~~Village and shall be filed in such number as the instructions provide.
3. All plans shall be at a scale sufficient to permit a clear and precise understanding of the proposal.
- 2.4. The application shall include information, plans, and data, specified in section 44-578 and sufficient to determine whether the application will conform to the requirements set forth in this ~~chapter~~Ordinance.

C. Completeness.

1. The ~~economic~~Economic and ~~community~~Community development ~~director~~Director shall determine whether the application is complete.
2. If the application is not complete, the Economic and Community Development Director ~~director~~ shall notify the applicant of any deficiencies and shall take no steps to process the application until the deficiencies are remedied.
3. Once the Economic and Community Development Director ~~director~~ has determined that the application is complete, the application shall be scheduled for consideration at the appropriate meeting.

D. Fees.

1. Every application shall be accompanied by the required filing fee as established and modified, from time to time, by the ~~village~~Village ~~board~~Board.
2. The failure to pay such fee when due shall be grounds for refusing to process the application and for denying or revoking any permit or approval for the subject property.
3. No fees shall be waived, and no fees shall be refunded except those authorized by the ~~village~~Village ~~manager~~Manager or ~~his~~their designee in ~~his~~their sole discretion.
4. A current fee schedule is included in the ~~village~~Village ~~fee~~Fee ~~schedule~~Schedule in Section #####.

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B.E. Withdrawal of Application. An applicant shall have the right to withdraw an application at any time prior to the decision on the application by a ~~village~~Village official, commission, or board. Such withdrawal shall be in writing.

F. Successive Applications.

1. A subsequent application shall not be reviewed or heard ~~Within~~within one (1) year of the date of denial, ~~a subsequent application shall not be reviewed or heard~~ unless there is substantial new evidence available or if a significant mistake of law or of fact affected the prior denial.
2. Such subsequent applicant shall include a detailed statement of the grounds justifying its consideration.
3. The ~~e~~E~~C~~C~~ommunity~~ommunity ~~d~~D~~evelopment~~evelopment ~~d~~D~~irector~~irector shall make a determination as to whether the subsequent application is seeking essentially the same relief.
- 4.4. If the ~~e~~E~~C~~C~~ommunity~~ommunity ~~d~~D~~evelopment~~evelopment ~~d~~D~~irector~~irector finds that there are no grounds for consideration of the subsequent application, ~~he~~they shall summarily and without hearing deny the request.

44-07-03. Administrative Review and Approval Procedures

A. Village Staff Authority. The following Village staff shall have the authority to receive applications and make determinations for the following administrative procedures:

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1. Building Inspector.

- a. Building Permit
- b. Certificate of Occupancy

2. Economic and Community Development Director.

- a. Zoning Compliance Permit
- b. Limited Use Permit
- c. Administrative Exception
- d. Temporary Use Permit
- e. Interpretations

3. Administrative Review Committee.

- a. Site Plan Review

B. Building Permit.

1. Requirement.

- a. When this Code requires a building permit, no development shall occur until and unless the building inspector has issued a building permit in accordance with the terms of this ~~chapter~~ Ordinance and this Code.
- b. Prior to the issuance of a building permit in the instances required in Section ##-##-### of the Village Municipal Code, the applicant shall receive approval from the Appearance Commission per Section ##-##-### of the Village Municipal Code.

2. Compliance.

- a. No building permit shall be issued for a building or a structure that does not comply with the terms of this chapter.
- b. The building permit shall not be issued until all approvals required by this chapter are obtained.
- c. The ~~building~~ Building inspector ~~Inspector~~ shall be responsible for determining compliance with this and all other applicable ordinances prior to the issuance of the building permit.
- b.d. All building permits shall be kept on file in the office of the ~~building~~ Building inspector ~~Inspector~~ and, subject to the exceptions in the Freedom of Information Act, 5 ILCS 140/1 et seq., copies shall be available on request to any person.

B.C. Certificate of Occupancy.

1. Requirement.

- a. No land shall be occupied or used, and no building shall be erected or substantially altered, in whole or in part, for any purpose whatsoever, until the ~~economic and community development director~~ Building Inspector has issued a certificate of occupancy. ~~In addition, n~~
- b. No change of use shall be made in a building, or part thereof, without issuance of a certificate of occupancy.
- c. The certificate of occupancy shall state that the building complies with all the building and health laws and ordinances and with the provisions of this ~~chapter~~ Ordinance.

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d. The certificate of occupancy shall not be issued until a building permit and any other approvals required by this chapter are obtained.

a.e. The ~~Building Inspector~~ ~~economic and community development director~~ shall be responsible for determining compliance with this and all other applicable ordinances before the issuance of the certificate of occupancy.

2. **Continuance of pPresent eOccupancy of eExisting bBuilding.** Nothing in this ~~section~~ ~~Section~~ shall prevent the continuance of the present occupancy or use of any existing building, except as may be necessary for safety of life and property and as required in Article 8: Nonconformities.

3. **Temporary and eConditional eCertificate of eOccupancy.**

a. The ~~Building Inspector~~ ~~economic and community development director~~ may issue a temporary or conditional certificate of occupancy to allow the premises to be occupied for the proposed use.

a.b. Such certificate shall become final only upon full compliance with this ~~chapter~~ Ordinance and this Code.

4. **Posting.**

a. The certificate of occupancy shall be dated and signed by the ~~Building Inspector~~ ~~economic and community development director~~ and shall identify the approved use or occupancy of the building or structure.

b. The certificate shall state that the use or occupancy complies with the terms of this ~~chapter~~ Ordinance and this Code.

b.c. Every certificate of occupancy for a nonresidential use shall be permanently posted in a prominent place on the premises at all times.

5. **Procedure.**

a. If approved, the certificate of occupancy shall be issued within ~~five~~ (5) days after the erection or alteration of such building has been completed.

e.b. If denied, written notice to the applicant specifying the reasons why the request is denied, will be issued no later than ~~five~~ (5) days after the ~~village~~ Village has been notified in writing that the building or structure is ready for occupancy.

- 3.6. **Records.** A record of all certificates of occupancy shall be kept on file in the office of the ~~Building Inspector~~ ~~economic and community development director~~ and one (1) copy shall be furnished, on request, to any persons having a proprietary or tenancy interest in the building affected subject to the exceptions in the Freedom of Information Act, 5 ILCS 140/1 et seq.

D. **Zoning Compliance Permit.**

1. It shall be unlawful for any person to erect, move, add to, or structurally alter any building or structure, or to use or change the use of any building or land or to permit the aforementioned actions, until a Zoning Compliance Permit has been issued by the Economic and Community Development Director.
2. An application for a Zoning Compliance Permit shall be accompanied by a legal description of the lot and plans, drawn to scale, showing the actual shape and dimension of the lot; the location, size and height of any buildings or structures to be erected or altered; the existing and intended use of each building or structure and portion of the lot; the number of dwellings the building is intended to accommodate, if any; and such other information with regard to the lot and neighboring lots as may be requested by the Economic and Community Development Director to determine and provide for the enforcement of this Ordinance.
3. The Economic and Community Development Director shall act upon each application for a Zoning Compliance Permit after it is filed in compliance with the provisions herein. The Economic and Community Development Director shall

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Is there a maximum amount of time a temporary CO can last before a permanent is received?

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return one copy of the plans and issue a Zoning Compliance Permit or notify the applicant, in writing, of said official's refusal to issue a permit setting forth the reasons therefore.

4. No Zoning Compliance Permit shall be issued until appropriate fees have been paid. Fees shall be in the amount set forth in the Village Fee Schedule.

E. Limited Use Permit.

1. Purpose.

- a. In order to provide flexibility and to help diversify uses within a district, specified uses are permitted in certain districts subject to the granting of a Limited Use Permit. Because of their unusual or special characteristics, Limited Uses require review and evaluation so that they may be located properly with respect to their effects on surrounding properties. The review process set forth in this Section is intended to assure compatibility and harmonious development between Limited Uses, surrounding properties, and the Village at large.
- b. Limited Uses are permitted within the district where designated when they comply with specific conditions and limitations as set forth in this Ordinance to ensure that the location and operation of the Limited Uses will be in accordance with the specific use criteria. The scope and elements of any Limited Use may be limited or qualified by the conditions applicable to the specific property. A listed Limited Use that cannot meet the specific conditions and limitations set forth in this Ordinance shall not be allowed under a Limited Use permit.

2. **Pre-Application Conference.** The applicant for a Limited Use permit is advised to meet with the Economic and Community Development Director prior to submitting an application to discuss the submittal requirements, review criteria, and review process.

3. Limited Use Permit Review Criteria.

- a. **General Criteria.** The Limited Use permit shall be approved upon a finding by the Economic and Community Development Director that the following general criteria have been met, to the extent they may be applicable:
 - I. The proposed use will conform with or further the goals, objectives and strategies of the Village's Comprehensive Plan and other adopted plans.
 - II. The site, building(s), and use meet all criteria specified for the use and all applicable regulations and development standards as specified in this Ordinance and for the district in which the use is located; however, nonconforming sites and/or buildings must be brought into conformance if required to do so pursuant to Article 8: Nonconformities, of this Ordinance.
 - III. The proposed use will not substantially alter the basic character of the district in which it is located, or jeopardize the development or redevelopment potential of property within the district.
 - IV. The proposed use will not have a significant adverse impact on the adjacent uses or properties, or result in hazardous conditions for pedestrians or vehicles within or in close proximity to the site.
 - V. The proposed use will be adequately served with public utilities, services, and facilities and not impose an undue burden above and beyond those of the Permitted Uses of the district in which it is located, and
 - VI. Potential negative impacts of the Limited Use on the surrounding properties have been or may be mitigated through specific setbacks, architecture, screen walls, landscaping, site arrangement or other methods required in the permit as conditions and/or limitations of permit approval. The applicant shall satisfactorily address each of the following impacts:
 - i. Traffic.
 - ii. Activity levels.

- iii. Light,
- iv. Noise,
- v. Odor,
- vi. Building type, style and scale,
- vii. Hours of operation,
- viii. Dust, and
- ix. Stormwater management, drainage, and erosion control.

b. **Use-Specific Standards.** In addition to the general criteria for review of a Limited Use Permit listed above, certain uses, due to their unique characteristics, must also comply with the special provisions specific to those uses contained in **Article 4. Use Specific Standards** of this Ordinance.

4. Economic and Community Development Director Action.

a. The application shall be reviewed by the Economic and Community Development Director to ensure the application conforms to the criteria in **Subsection 3** above. Based upon their review, the Economic and Community Development Director shall:

- I. Approve the Limited Use Permit application.
- II. Approve the Limited Use Permit application with conditions.
- III. Advance the Limited Use Permit application to a Special Use, or
- IV. Deny the Limited Use Permit application.

b. If denied, the Economic and Community Development Director shall report the deficiencies to the applicant. The applicant shall have six (6) months from the date of notification of the deficiencies to correct the deficiencies; otherwise, the Limited Use Permit application will be considered abandoned without further notice from the Village.

5. **Permit Transferability.** A Limited Use Permit may be transferred to any other person to operate the same use on the same property and/or within the same building according to the same terms of the permit. A Limited Use Permit may not be transferred to any other property or other building. The transfer of a Limited Use Permit shall be in writing to the new owner or operator of the use, using a form provided or approved by the Economic and Community Development Director. Such transfer shall not be complete until a counterpart of the transfer document has been filed with the Economic and Community Development Director.

6. **Termination.** A Limited Use Permit shall automatically terminate without any further action by the Village under the following circumstances:

- a. The use for which the permit was granted has not been established at the approved location within a period of one (1) year from the date the permit was issued, or
- b. The use for which the permit was issued has been discontinued for a period of one (1) year or longer.

F. Administrative Exception.

1. **Purpose.** Administrative Exception is an administrative process through which certain minor variances may be approved by the Economic and Community Development Director. Administrative Exceptions are intended to allow a limited amount of flexibility in the siting and height of certain buildings and/or structures. The Economic and Community

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Development Director shall have the authority to grant or deny applications for Administrative Exceptions for such circumstances as this Ordinance allows subject to the requirements of this Section. No site plan shall be approved or building permit issued for a proposal requiring an exception to a zoning standard listed in subsection (2) below unless an Administrative Exception is approved.

2. Administrative Exceptions Considered.

- a. An administrative exception to certain requirements of this Ordinance may be granted:
 - I. To permit a yard up to five (5) percent less than the yard required by the applicable regulations.
 - II. To permit the use of a lot for a use otherwise prohibited solely because of the insufficient area of the lot, but in no event shall the area of the lot be less than ninety five (95) percent of the required lot area.
 - III. To modify the applicable off-street parking or loading requirements to the extent of not more than one parking space or loading berth, or five percent of the spaces required by applicable regulations, whichever number is greater.
 - IV. To allow any permitted nonresidential use in a residential district to exceed the floor area ratio imposed by the applicable regulations by no more than five percent of that area limit imposed by applicable regulations.
 - V. To permit the direct replacement of a stoop and stairs that encroaches into the required front or side yard with a structure of the same dimensions.
 - VI. To permit an accessory structure to be located less than ten feet but not less than five feet from the principal structure, provided the accessory structure is constructed with no less than a one-hour fire resistance rating.
- b. An Administrative Exception shall not be granted for the approval of any use not otherwise allowed as a permitted, limited, or special use within the subject district.
- c. No Administrative Exception shall be considered where the setback is five (5) feet or less.
- d. In the case of a requested addition to a structure, no exception shall be considered where the existing structure does not meet the minimum setback.
- e. No exception shall be considered for a reduction of a setback for property in the M-1 or M-2 districts if the yard in which the setback reduction is requested is adjacent to any residential use.

3. Administrative Exception Review Criteria. The Administrative Exception shall be approved if the Economic and Community Development Director finds that the proposed exception meets the following criteria:

- a. Is consistent with the Comprehensive Plan and other adopted Village plans.
- b. Is consistent with the purpose of the underlying district.
- c. Is consistent with adopted building and fire codes.
- d. Will not result in incompatible development.
- e. Will not result in adverse impacts unless adequately mitigated, and
- f. Is of a technical nature and is required to:
 - I. Compensate for an unusual condition.
 - II. Eliminate a minor inadvertent failure to comply with this Ordinance, or
 - III. To protect a sensitive resource or natural feature.

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4. **Pre-Application Conference.** The applicant for an Administrative Exception is encouraged to meet with the Economic and Community Development Director prior to submitting an application to discuss the submittal requirements, review criteria, and review process.
5. **Economic and Community Development Director Action.** The application shall be reviewed by the Economic and Community Development Director to ensure the application conforms to the criteria in **Subsection 3** above. Based upon their review, the Economic and Community Development Director shall:
 - a. Approve the Administrative Exception application.
 - b. Approve the Administrative Exception application with conditions.
 - c. Advance the Administrative Exception application to a Variance, or
 - d. Deny the Administrative Exception application.
6. **Expiration.** If a building permit is not issued or a site plan is not approved within six (6) months of the approval of the Administrative Exception, the Administrative Exception approval shall be void.

G. Temporary Use Permit.

1. **Purpose.** A Temporary Use Permit shall be required prior to the commencement of a Temporary Use identified in Table 44-03-04(B).
2. **Temporary Use Permit Review Criteria.** To approve the issuance of Temporary Use Permit, the Economic and Community Development Director, in consultation with the Administrative Review Committee, shall make an affirmative finding that the following criteria are met:
 - a. **Land Use Compatibility.** The Temporary Use must be compatible with the purpose and intent of this Ordinance and the district in which it will be located. The Temporary Use shall not impair the normal, safe, and effective operation of a permanent use on the same site. The Temporary Use shall not endanger or be materially detrimental to the public health, safety, or welfare, or injurious to property or improvements in the immediate vicinity of the Temporary Use, given the nature of the activity, its location on the site, and its relationship to parking and access points.
 - b. **Compliance with Other Regulations.** A building permit, life safety inspection, or temporary certificate of occupancy may be required before any structure used in conjunction with the Temporary Use is approved, constructed, or modified. All structures and the site as a whole shall meet all applicable building code, Ordinance, and fire code standards and shall be promptly removed upon the cessation of the use or event. Upon cessation of the use or event, the site shall be returned to its previous condition (including the removal of all trash, debris, signage, attention attracting devices, or other evidence of the special event or use).
 - c. **Hours of Operation and Duration.** The duration and hours of operation of the Temporary Use shall be consistent with the intent of the event or use, and compatible with the surrounding land uses. The duration and hours of operation shall be established by the Economic and Community Development Director at the time of approval of the Temporary Use Permit.
 - d. **Traffic Circulation.** The Temporary Use, as determined by the **Village Engineer**, shall not cause undue traffic congestion or accident potential given anticipated attendance and the design of adjacent streets, intersections, and traffic controls.
 - e. **Off-Street Parking.** Adequate off-street parking shall be provided for the Temporary Use, as determined by the Economic and Community Development Director, and it shall not create a parking shortage for any of the other existing uses on the site.

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- f. **Public Conveniences and Litter Control.** Adequate on-site restroom facilities and on-site solid waste containers may be required. The applicant shall provide a written guarantee that all litter generated by the event or use shall be removed at no expense to the Village.
 - g. **Appearance and Nuisances.** The Temporary Use shall be compatible in intensity, appearance, and operation with surrounding land uses in the area, and shall not impair the usefulness, enjoyment, or value of adjacent property due to the generation of excessive noise, dust, smoke, glare, spillover lighting, or other forms of environmental or visual pollution.
 - h. **Signs and Attention-Getting Devices.** The Economic and Community Development Director shall review all signage in conjunction with the issuance of the permit, although a Sign Permit is not required. The Economic and Community Development Director may approve the Temporary Use of attention-getting devices. The number and types of signs and attention-getting devices allowed shall be evaluated on the following criteria:
 - I. Type and size of the proposed event or use.
 - II. Safety considerations (sight distance setbacks, sidewalks in area, etc.).
 - III. Lighting considerations (disturbance of nearby residents or adverse effects to traffic on adjacent streets).
 - IV. Aesthetic concerns (appearance, illumination, number, and size of signs and attention-getting devices proposed).
 - i. **Other Conditions.** The Economic and Community Development Director may establish any additional conditions deemed necessary to ensure land use compatibility and to minimize potential adverse impacts on nearby uses, including, but not limited to, time and frequency of operation, temporary arrangements for parking and traffic circulation, requirements for screening/buffering, and guarantees for site restoration and cleanup following the Temporary Use. Conditions may include, but shall not be limited to:
 - I. Modifications or restrictions to the hours of operation, duration of the event, size of the activity or other operational characteristics.
 - II. If the permit applicant requests the Village to provide extraordinary services or equipment or if the Economic and Community Development Director otherwise determines that extraordinary services (e.g., traffic control or security personnel) or equipment should be provided to protect the public health or safety, the applicant shall be required to pay to the Village a fee sufficient to reimburse the Village for the costs of these services if not provided by the applicant. This requirement shall not apply if the event or use has been anticipated in the budget process and sufficient funds have been included in the budget to cover the costs incurred.
3. **Economic and Community Development Director Action.** The application shall be reviewed by the Economic and Community Development Director to ensure the application conforms to the criteria in **Subsection 2** above. Based upon their review, the Economic and Community Development Director shall:
- a. Approve the Temporary Use Permit.
 - b. Approve the Temporary Use Permit with conditions, or
 - c. Deny the Temporary Use Permit.

G.H. Interpretations.

- 1. **Purpose.**
 - a. The interpretation authority established by this section is intended to recognize that the provisions of this ~~chapter~~**Ordinance**, though detailed and extensive, cannot, as a practical matter, address every specific situation to which they may have to be applied.

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b. The ~~Economic and Community Development Director~~~~economic and community development director~~ may issue interpretations of the provisions of this ~~chapter~~~~Ordinance~~ to clarify the standards or requirements as they relate to a particular type of development on a particular property.

a-c. The interpretation authority established herein is not intended to add or change the essential content of this ~~chapter~~~~Ordinance~~ but is intended only to allow authoritative application of that content to specific cases.

2. **Request.** The ~~Economic and Community Development Director~~~~economic and community development director~~ may issue an interpretation at the written request of a petitioner who is proposing to take action requiring the issuance of a permit or certificate. The request for an interpretation shall set forth the facts and circumstances, a description of the proposed development, and the precise interpretation claimed by the applicant to be correct.
3. **Content of Letter.** The interpretation does not itself authorize the establishment of a use but provides guidance for any approvals or permits required by this ~~chapter~~~~Ordinance~~, and the interpretation shall be advisory in nature and shall not be binding upon the ~~p~~Planning and ~~z~~Zoning ~~e~~Commission or the ~~v~~Village ~~b~~Board in their functions under this ~~chapter~~~~Ordinance~~. The interpretation shall specify the facts, reasons, analysis, and standards upon which the interpretation is based.
4. **Records.** A record of all zoning interpretations shall be kept on file in the ~~Economic and Community Development Director~~~~economic and community development director~~'s office.

D-1. Site Plan Review.

1. ~~Review committee established; composition, meetings; review operating procedure. The village has created a site plan review committee consisting of the economic and community development director, director of public works, village engineer, building inspector, fire chief, police chief, and village manager. Members of the committee may delegate a member of their department to act for the committee member. The economic and community development director is the chairperson. Meetings will be called by the chairperson as needed. When possible, site plan review shall be completed within 15 days of receipt by the village of the complete application.~~

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2. Jurisdiction Requirement.

- a. Every application for a building permit, including new construction and additions equal to or greater than ~~twenty~~ (20) percent of the existing floor area of the building, shall be subject to site plan review and approval.
- b. ~~This requirement~~Site plan review shall not apply to:
 - I. ~~those b~~Building permits for construction that are limited to interior remodeling, exterior modifications or additions less than ~~twenty~~ (20) percent of the existing floor area of the building.
 - II. ~~This section shall not apply to any request for b~~Building permits for detached single-family dwellings or accessory structures to detached single-family dwellings.
- c. No building permit shall be issued unless and until site plan approval has been granted.

Commented [JW20]: This language is proposed to be moved to 44-07-01(F) above. The committee is proposed to be expanded for review of all Board/Commission zoning procedure applications.

2-3. Purpose. The purpose of Site Plan Review is to certify compliance with all applicable provisions of this Ordinance and Code.

3. **Scope.** The scope of site plan review includes the location of principal and accessory structures, infrastructure, open space, landscaping, exterior lighting, traffic movement, traffic flow, number of parking spaces and design of parking lots. In reviewing site plans, the committee shall evaluate the relationship of the site plan to adopted land use policies and the goals and objectives of the comprehensive plan. In addition, the committee shall evaluate the following characteristics:

- a. ~~The arrangement of the structures and buildings on the site with respect to how well it:~~

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- I. ~~Allows for the effective use of the proposed development.~~
- II. ~~Allows for the efficient use of the land.~~
- III. ~~Is compatible with development on adjacent property.~~
- IV. ~~Considers off-site utilities and services and minimizes potential impacts on existing or planned municipal services, utilities, and infrastructure.~~
- V. ~~Protects the public health, safety and general welfare.~~
- VI. ~~Conforms to the requirements of this chapter and other applicable regulations.~~
- b. ~~The arrangement of open space or natural features on the site with respect to how well it:~~
 - I. ~~Creates a desirable and functional environment for patrons, pedestrians, and occupants.~~
 - II. ~~Preserves unique natural resources, where possible.~~
 - III. ~~Provides adequate measures to preserve existing healthy, mature trees, wherever practically feasible.~~
 - IV. ~~Respects desirable natural resources on adjacent sites.~~
 - V. ~~Designs drainage facilities to promote the use and preservation of natural watercourses and patterns of drainage.~~
 - VI. ~~Avoids unnecessary or unreasonable alterations to existing topography.~~
- c. ~~Circulation systems with respect to how well they:~~
 - I. ~~Provide adequate and safe access to the site.~~
 - II. ~~Minimize potentially dangerous traffic movements.~~
 - III. ~~Separate pedestrian and auto circulation and provide for bicycle parking or storage insofar as practical.~~
 - IV. ~~Minimize curb cuts.~~
- d. ~~Parking lots or garages with respect to how well they:~~
 - I. ~~Are located, designed, and screened to minimize adverse visual impacts to adjacent properties.~~
 - II. ~~Promote logical and safe parking and internal circulation.~~
 - III. ~~Provide perimeter parking lot screening and internal landscaped islands.~~
 - IV. ~~Include site illumination that has been designed, located and installed to minimize adverse impacts to adjacent properties.~~
- e. ~~Landscaping design with respect to how well it:~~
 - I. ~~Creates a logical transition to adjoining lots and developments.~~
 - II. ~~Screens incompatible uses.~~
 - III. ~~Minimizes the visual impact of the development to adjacent sites and roadways.~~
 - IV. ~~Utilizes native plant materials selected to withstand the microclimate of the village and individual site microclimates.~~

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4. ~~B-1 District. For a~~ Site plan review for developments located within the B-1 ~~central business district and DO downtown overlay district; Downtown Core District~~ the site plan review shall adhere to the design guidelines as specified in the 2005 ~~downtown m~~ Master p Plan, as amended (2005).

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5. Administrative Review Committee Action.

- a. The Administrative Review Committee shall review the site plan review application to determine whether it conforms to all applicable provisions of this Ordinance and Code.
- b. Based upon their review the Administrative Review Committee shall:
 - I. Approve the site plan.
 - II. Approve the site plan with conditions.
 - III. Refer the site plan to the Planning and Zoning Commission for review and approval, or
 - IV. Deny the site plan.

6. **Concurrent Applications.** A Limited Use Permit, Special Use Permit, or Variance application may be processed concurrently with the site plan.

- 4.7. **Expiration and Lapse of Approval.** The applicant shall have twelve (12) months from the date of site plan approval to secure a building permit to carry out the proposed improvements. If a building permit has not been obtained within twelve (12) months of the date of approval, the approval shall expire. An extension of the time requirements may be requested in writing and granted by the Economic and Community Development Director for good cause shown by the applicant, provided a written request is filed with the Village at least four (4) weeks prior to the respective deadline.

5. **Approval.** The site plan, together with the site plan review committee's report, shall be submitted to the planning and zoning commission for consideration at the earliest available meeting. When the planning and zoning commission approves the site plan, a building permit may be issued, provided that the requirements of all other applicable codes and ordinances are satisfied. If the planning and zoning commission does not approve the site plan, the applicant may revise it and submit it for further review in accordance with this section.

6. **Denial.** If the planning and zoning commission fails to approve the site plan, the economic and community development director shall notify the applicant in writing, by certified mail return receipt requested, within 15 days of the planning and zoning commission's decision. The applicant may appeal the planning and zoning commission's decision to the village board. The applicant's failure to submit a revised site plan or to file an appeal shall be deemed to constitute a withdrawal of the application for a building permit.

7. **Rules.** The written notice of appeal shall be filed with the economic and community development director no later than 15 days after the date of the letter from the economic and community development director. The village board shall act on the appeal no later than 30 days after the date of receipt of the written appeal. The village board shall vote to sustain or deny the appeal. A majority vote is required to sustain the appeal. If the village board sustains the appeal, the building permit may be issued, provided that the requirements of all other applicable codes and ordinances are satisfied.

44-07-04. General Board and Commission Review and Approval Procedures

A. ~~Public Hearings:~~

1. **Evidence.** All testimony and evidence shall be given under oath or by affirmation to the body conducting the hearing. Any person may appear at a hearing and submit evidence, upon receiving recognition from the chairperson of the body conducting the hearing. Each person who submits evidence shall identify themselves and their address. All testimony and evidence shall be provided in accordance with the adopted rules of conduct of hearings. Rules for conduct of hearings shall be available at public hearings of the planning and zoning commission for public review and inspection.

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2. **Continuances.** The body conducting the hearing may continue the hearing to a future date, time and place. In order to reopen the hearing, no new notice shall be required if a hearing is continued to a date certain, provided that a public announcement of the future date, time and place of the continued hearing is made at the hearing and placed in the minutes. If the hearing is adjourned, rather than continued to a date certain, in order to reopen the hearing, all notices must be given that would have been required for the initial public hearing.
3. **Records.** During normal business hours, any person may examine or, at their expense, have copies made of the application and material submitted in support of or in opposition to the application, subject to the exceptions set forth in the Freedom of Information Act, 5 ILCS 140/1 et seq. Upon reasonable request, any person shall be entitled to copies of the application and related documents. The economic and community development director shall make copies of such materials available at cost.
4. **Decisions.** Written findings of fact clearly indicating the reasoning in granting or denying the request shall support all decisions by the planning and zoning commission and the village board.
5. **Court report requirement.** The cost of recording documents, including, but not limited to, plats, ordinances and memoranda of agreements shall be at the petitioner's expense. Notice of such fees shall be furnished to the petitioner by the economic and community development director or his nominee and paid to the village prior to the recording of documents. Upon receipt of such payment, document recording shall be completed by the economic and community development director or his nominee in a timely manner.

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- A. Summary of Board and Commission Review and Approval Procedures. Table 44-07-04(A) summarizes the Board and Commission review and approval procedures and identifies the appropriate boards or commissions that serve as recommending or decision-making bodies.

Table 44-07-04(A): Summary of Board and Commission Review and Approval Procedures		
Procedure	Planning and Zoning Commission	Village Board
Planned Unit Development	R*	D
Major Planned Unit Development Amendment	R*	D
Zoning Map Amendment	R*	D
Zoning Text Amendment	R*	D
Special Use Permit	R*	D
Variance	R*	D
Appeals	D	
Key		
R = Recommending Body		
D = Decision Making Body		
* = Public Hearing Required		

B. Notices.

1. Notice Requirements by Procedure. Table 44-07-04(B)(1) summarize the notice requirements per Board and Commission review and approval procedure.

Table 44-07-04(B)(1): Notice Requirements by Procedure		
Procedure	Mailed Notice	Published Notice
Planned Unit Development	•	•
Major Planned Unit Development Amendment	•	•
Zoning Map Amendment	•	•
Zoning Text Amendment		•
Special Use Permit	•	•
Variance	•	•
Key		
• = Required form of notice		

2. **Mailed Notices.** ~~Prior to the public hearing by the planning and zoning commission, a~~ All occupants within 250 feet of the proposed site's outermost property line, as determined by the ~~village's~~ Village's records, shall receive notification of ~~requests for variances, special uses, planned unit developments and map amendments~~ by first class mail.
3. **Published Notices.** ~~In addition to the mailed notice, t~~he Village shall cause a notice to be published in a newspaper of general circulation within the Village. The notice shall include the date, time, place and purpose of such hearing, the name of the applicant and the address of the subject property. Such notice shall be published not less than fifteen (15) days nor more than thirty (30) days in advance of the scheduled hearing date.
4. Cost of Notice. All costs associated with mailed and published notice, as required by this Ordinance, shall be the responsibility of the applicant.

- C. Recording of Documents. Recording of documents as required by the Village in instances of subdivision, consolidation, amendment, or Planned Unit Development (PUD) or otherwise required by state statutes, shall be completed by the ~~economic~~ Economic and ~~community~~ Community development ~~Development~~ director ~~Director~~ or his ~~their~~ nominee in a timely manner and at the expense of the ~~petitioner~~ applicant. Notice of all fees shall be furnished to the ~~petitioner~~.

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applicant by the Economic and Community Development Director~~economic and community development director~~ or his ~~their~~ nominee and paid prior to the recording of documents.

44-07-05. Zoning Text Amendments and Zoning Map Amendments

A. Authority.

1. The regulations imposed and the districts created under the authority of this ~~chapter~~Ordinance may be amended, from time to time, by ordinance, in accordance with the state statutes. No such amendment shall be made without public hearings before the ~~planning~~Planning and ~~zoning~~Zoning ~~commission~~Commission, which shall report their findings and recommendations to the ~~village~~Village ~~board~~Board.
2. The amendment process is intended to adjust this ~~chapter~~Ordinance in response to changed conditions or changes in ~~Village~~ policy. Amendments are not intended to relieve particular hardships or confer special privileges or rights upon any person or party.
3. The Economic and Community Development Director~~economic and community development director~~ is authorized to make minor, non-substantive additions, corrections, or deletions to verbiage and punctuation as necessary to correct typographical and editing errors incurred during the comprehensive amendment of April 2002, and any subsequent amendment to this ~~chapter~~Ordinance.

~~B. Initiation of Amendment.~~ The village board, planning and zoning commission, the economic and community development director or any person having a right of ownership in any property in the village may propose amendments. All petitions for a proposed amendment shall be filed with the economic and community development director in accordance with the requirements in section 44-73.

~~G.B.~~ Processing.

1. All amendments are heard initially by the Planning and Zoning Commission~~planning and zoning commission~~, which shall hold a public hearing with notice given. The Planning and Zoning Commission~~planning and zoning commission~~ shall forward its findings of fact and its recommendation to approve or deny the proposed amendment to the ~~village~~ Village ~~board~~ Board.
2. ~~All hearings on amendments shall be in accordance with the requirements of section 44-74.~~ Notice for amendments shall be given in accordance with section 44-75, except in the case of a comprehensive zoning text or map amendment. In those cases, notice shall be in accordance with the statutes of the state.
- 2.3. In the case of two (2) consecutive unexcused absences by the applicant, the request for the amendment shall be dismissed without prejudice.

~~D.C.~~ Standards. In making their recommendations on the map or text amendment, the Planning and Zoning Commission~~planning and zoning commission~~ shall review the proposed amendment, any oral and written comments received at the respective public hearings, and the standards set forth below: Not one of the standards is controlling.

~~E.D.~~ Map Amendments.

1. Does the current zoning or the proposed zoning more closely conform to the stated goals in the comprehensive plan?
2. Have major land uses, conditions or circumstances changed since the original zoning was established?
3. Do sites exist for the proposed use in existing districts permitting such use?
4. Is the requested change compatible with the existing uses, development patterns and zoning of nearby properties?
5. Does the present development of the area comply with existing ordinances?

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6. Does the existing zoning impose an unreasonable hardship or can a reasonable economic benefit be realized from uses permitted by the existing zoning?
7. What is the extent of the diminishment of property values, if any, resulting from the current zoning?
8. How long has the property been vacant as compared to development occurring in the vicinity?
9. Is the property physically suitable for the zoned uses or for the proposed use?
10. Does the proposed use satisfy a public need?
11. Will the proposed change conflict with existing or planned public improvements or adversely impact schools, parks or other public facilities?
12. In the vicinity, will the environment or traffic patterns be adversely affected?
13. To what extent will the proposed change diminish property values of the surrounding properties?
14. Will the proposed change deter the use of properties in the area or contribute to redevelopment?
15. Will the proposed change be detrimental to the health, safety and welfare of the neighborhood or of the village as a whole?

F.E. Text Amendments.

1. Is the proposed text amendment consistent with the stated goals in the comprehensive plan?
2. Does the proposed text amendment address a particular issue or concern for the village?
3. Will the proposed text amendment impose an unreasonable hardship on existing uses?
4. Have major land uses, conditions or circumstances changed since the original zoning ordinance text was established?
5. Is the requested change compatible with the existing uses and development patterns of the community?
6. Will the proposed change be detrimental to the health, safety and welfare of the neighborhood or of the village as a whole?

~~Not one of the above standards is controlling.~~

F. Decision. The ~~v~~Village ~~b~~Board shall make the final decision on all amendments. Upon receiving the report from the ~~Planning and Zoning Commission~~planning and zoning commission, the ~~village-Village board-Board~~ may.

1. ~~a~~Adopt the proposed amendment by ordinance,

2. ~~reject~~Deny the proposed amendment, or

3. ~~refer~~refer the matter back to the ~~Planning and Zoning Commission~~planning and zoning commission for further consideration.

G. Records. ~~A record of all requests for amendments and village action taken shall be kept on file in the office of the economic and community development director. Subject to the exceptions in the Freedom of Information Act, 5 ILCS 140/1 et seq., copies shall be available on request to any person for a fee.~~

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H.G. Written Protest. In the case of a written protest against any proposed amendment of the regulations or districts, signed and acknowledged either by the owners of twenty (20) percent of the frontage proposed to be altered, or twenty (20) percent of the frontage immediately adjacent to or across an alley therefrom, or by the owners of twenty (20)~~20~~ percent of the frontage abutting or directly opposite the frontage proposed to be altered, the amendment shall not be passed except by a favorable

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vote of two-thirds of the members of the ~~v~~Village ~~b~~Board ~~then holding office~~. In such cases, a copy of the written protest shall be served, by the protestor, to both the applicant for the proposed amendment and the applicant's attorney, if any, by certified mail at the address of such applicant and attorney shown in the application for the proposed amendment.

44-07-06. Special Uses

A. **Purpose.** This ~~chapter~~ Ordinance is based upon the division of the ~~v~~Village into districts, within which the use of land and buildings and the bulk and location of buildings or structures are essentially uniform. However, there are special uses, which, because of their unique character, cannot be properly classified in ~~a~~ny particular district without consideration, in each case, of the impact of those uses upon neighboring lands and upon the public need for the particular use at the particular location. The special use process addresses these unique circumstances and regulates such uses to protect the public health, safety and welfare. Such special uses fall into two ~~(2)~~ categories:

1. Uses operated by a public agency or publicly related utilities or uses traditionally maintained for the public interest.
2. Uses entirely private in character, but of such a nature that the operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.

~~B. Initiation of Application. Any owner of or any person having a right of ownership in, any property in the village may petition for a special use. A petition for a special use shall be filed initially with the economic and community development director. The application shall be filed in accordance with the requirements in section 44-73.~~

~~G-B~~ Processing.

1. Petitions for special uses are heard by the ~~Planning and Zoning Commission~~ ~~planning and zoning commission~~, which shall hold a public hearing in accordance with the requirements of ~~section 44-74~~, with notice given in accordance with ~~section 44-75~~.
2. In the case of two unexcused absences by the applicant, the request shall be dismissed without prejudice.
- 4.3. Within ~~thirty~~ (30) days of the hearing, the ~~Planning and Zoning Commission~~ ~~planning and zoning commission~~ shall forward its findings of fact and its recommendation to approve, to approve with conditions, or to deny the special use to the ~~village~~ ~~Village board~~ ~~Board~~. The ~~village~~ ~~Village board~~ ~~Board~~ shall make the final decision on all special uses. Upon receiving the report from the ~~Planning and Zoning Commission~~ ~~planning and zoning commission~~, the ~~village~~ ~~Village board~~ ~~Board~~ may:
 - a. Approve the special use,
 - b. ~~a~~ Approve ~~it~~ the special use with conditions,
 - c. deny the special use, or
 - a.d. refer the special use back to the ~~Planning and Zoning Commission~~ ~~planning and zoning commission~~ for further consideration.

~~D. Records. A record of all requests for special uses and village action taken shall be kept on file in the office of economic and community development director. Subject to the exceptions in the Freedom of Information Act, 5 ILCS 140/1 et seq., copies shall be available on request to any person for a fee.~~

~~E-C~~ Standards. No special use shall be granted by the ~~village~~ ~~Village board~~ ~~Board~~ unless the special use:

1. Is deemed necessary for the public convenience at that location.
2. Is not detrimental to the economic welfare of the community.
3. Will be consistent with the goals and policies of the comprehensive plan ~~and other adopted plans of the Village~~.

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4. Is so designed, located, and proposed to be operated, that the public health, safety, and welfare will be protected.
5. Is a suitable use of the property and, without the special use, the property will be substantially diminished in value.
6. Will not cause substantial injury to the value of other property in the neighborhood in which it is located.
7. Will be consistent with the uses and community character of the neighborhood surrounding the parcel.
8. Will not be injurious to the use or enjoyment of other property in the neighborhood for the purposes permitted in the zoning district.
9. Will not impede the normal and orderly development and improvement of surrounding properties for uses permitted in the zoning district.
10. Provides adequate measures of ingress and egress in a manner that minimizes traffic congestion in the public streets.
11. Is served by adequate utilities, drainage, road access, public safety and other necessary facilities.
12. Will not substantially adversely affect one or more historical, archeological, cultural, natural or scenic resources located on the parcel or surrounding properties.

~~Not one of the above standards is controlling.~~

F.D. Conditions. The ~~planning-Planning~~ and ~~zoning-Zoning~~ ~~commission-Commission~~ may recommend and the ~~village-Village~~ ~~board-Board~~ may impose ~~such~~ conditions and restrictions upon the construction, location and operation of a special use. Such conditions must be deemed necessary to comply with the standards set forth in this section, to promote the general objectives of this chapter, and to minimize or reduce the injury to the value of property in the neighborhood. Such conditions shall be expressly set forth in the ordinance granting the special use. Failure to maintain such conditions or restrictions as may have been imposed shall constitute grounds for revocation of such special use approval.

G.E. No Presumption of Approval. The listing of a use as a special use within a zoning district does not constitute an assurance or presumption that such special use will be approved. Rather, each proposed special use shall be evaluated on an individual basis, in relation to the standards in this section, the standards in **article V** of this ~~chapter-Ordinance~~ and the standards for the district in which it is located. Such evaluation will determine whether approval of the special use is appropriate at the particular location and in the particular manner proposed.

H.F. Limitation on Special Uses.

1. Special use approval may become null and void unless a building permit is issued within one **(1)** year of the date of adoption of the ordinance granting special use approval and a certificate of occupancy is issued within two **(2)** years of the date of adoption of such ordinance. After notice to the property owner and an opportunity for a hearing, the ~~village~~ ~~Village board-Board~~ may terminate the special use. However, the ~~village-Village board-Board~~ may extend these periods, upon written request from the applicant showing good cause.
 2. Special use approval is granted to a specific property and authorizes the conduct of the special use only on the property represented on the application and is not transferable to other properties.
 3. The approval of a special use authorizes the use on the property in the manner proposed, but does not in itself authorize the establishment of such use without first obtaining any other required approvals, including a building permit and certificate of occupancy.
 4. Any modification or intensification of a special use that alters the essential character or operation of the use in a way not approved at the time the special use was granted, as evidenced by the record or by the text of this ~~chapter-Ordinance~~, shall require new special use approval in accordance with this section.
- I. **Findings of Fact.** Every special use decision shall be accompanied by findings of fact specifying the reason or reasons for granting or denying the special use.

44-07-07. Variances**A. Purpose.**

A.—The variance process is designed to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this ~~chapter~~ Ordinance that create practical difficulties or particular hardships. ~~The three types of variances are:~~

B.—~~**Zoning variance.** The development and execution of the zoning ordinance is based upon the division of the village into districts with regulations for the location and bulk of buildings and structures. It is recognized that some variations from such district regulations may be found reasonable and desirable and that such specific variances must be considered based on individual circumstances and conditions. Variances, except those administrative variances enumerated in subsection (a)(2) of this section and minor variances enumerated in subsection (a)(3) of this section, shall be granted by the village board and shall be subject to such controls as are deemed reasonable and necessary by the village board.~~

1. ~~**Administrative variance.** Practical difficulties or particular hardships in the way of carrying out the strict letter of the regulations imposed by this chapter Ordinance, in the instances detailed in subsection 2 below, may, as hereinafter provided, be administratively varied by the planning Planning and zoning Zoning commissionCommission. All other variances, except for those which classify as Administrative Exceptions per Section #####, shall be decided upon by the Village Board.~~

1.2. ~~The Planning and Zoning Commissionplanning and zoning commission shall have the authority to decide variance requests such petitions in harmony with the general purpose and intent of this chapter and in accordance with the procedures set forth by the state statutes and this chapter. The planning and zoning commission shall grant an administrative variance without further action by the village board only in accordance with the standards set forth in this section, and only in the following instances:~~

- a. To permit a yard less than the yard required by the applicable regulations.
- b. To permit the use of a lot for a use otherwise prohibited solely because of the insufficient area of the lot, but in no event shall the area of the lot be less than ninety (90) percent of the required lot area.
- c. To permit the same off-street parking spaces to qualify as required spaces for two (2) or more uses, provided that the maximum use of each facility by each user does not take place during the same hours or on the same days of the week.
- d. To modify the applicable off-street parking or loading requirements to the extent of not more than one parking space or loading berth, or twenty (20) percent of the spaces required by applicable regulations, whichever number is greater.
- e. To increase, by not more than twenty five (25) percent, the maximum distance that required parking spaces are permitted to be located from the use served.
- f. To allow any permitted nonresidential use in a residential district to exceed the floor area ratio imposed by the applicable regulations by no more than ten percent of that area limit imposed by applicable regulations.
- g. To allow a private garage in a residence district to exceed the limitations of article IV of this chapter, provided that the applicant testifies and the Planning and Zoning Commissionplanning and zoning commission finds that the proposed garage will be used only for lawful purposes.
- h. To allow a reduction of not more than five feet in the required setback provisions for outdoor private residential swimming pools in accordance with chapter 10.
- i. To allow the modification of height restrictions for fences in accordance with section 10-133(e).

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2. **Minor variance.** In certain limited circumstances, practical difficulties or particular hardships in the way of carrying out the strict letter of the regulations imposed by this chapter may, as hereinafter provided, be administratively varied by the economic and community development director. He shall decide such petitions in harmony with the general purpose and intent of this chapter and in accordance with the procedures set forth by the state statutes and this chapter. He shall grant a minor variance without further action by the village board only in accordance with the standards set forth in this section, and only in the following instances:

- a. ~~To permit a yard up to five percent less than the yard required by the applicable regulations.~~
- b. ~~To permit the use of a lot for a use otherwise prohibited solely because of the insufficient area of the lot, but in no event shall the area of the lot be less than 95 percent of the required lot area.~~
- c. ~~To modify the applicable off-street parking or loading requirements to the extent of not more than one parking space or loading berth, or five percent of the spaces required by applicable regulations, whichever number is greater.~~
- d. ~~To allow any permitted nonresidential use in a residential district to exceed the floor area ratio imposed by the applicable regulations by no more than five percent of that area limit imposed by applicable regulations.~~
- e. ~~To permit the direct replacement of a concrete stoop and stairs that encroaches into the required front or side yard with a wood structure of the same dimensions.~~
- f. ~~To permit an accessory structure to be located less than ten feet but not less than five feet from the principal structure, provided the accessory structure is constructed with no less than a one-hour fire resistance rating.~~

The economic and community development director may decide the above type of cases but may refer any such case to the planning and zoning commission for a hearing and a decision. The granting of the variance by the economic and community development director confers the same rights and responsibilities on the owner as the granting of a variance by the planning and zoning commission. If the economic and community development director denies the variance, the applicant may request that the planning and zoning commission hear and decide the case.

B. **Initiation of Application.** Any owner of, or any person having a right of ownership in, any property in the village may request a variation. A petition for a variation shall be filed initially with the economic and community development director. The application shall be filed in accordance with the requirements of section 44-86.

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B. **Processing.**

1. All petitions for a variance, except those enumerated in subsection (a)(3) of this section as otherwise detailed in this Ordinance, are heard by the ~~planning~~ Planning and ~~zoning~~ Zoning commission ~~Commission~~, which shall hold a public hearing in accordance with the requirements of ~~section 44-74~~, with notice given in accordance with ~~section 44-75~~.
2. The ~~Planning and Zoning Commission~~ planning and zoning commission shall make the final decision on all ~~administrative~~ variances, ~~except as otherwise detailed in this Ordinance~~, ~~except certain garage variances specified in subsection (j) of this section~~.
3. In the case of two (2) unexcused absences by the applicant, the request for the variance shall be dismissed without prejudice.
4. If the variance does not meet the standards of 44-07-03(E) or 44-07-07(A)(2) then the Planning and Zoning Commission shall, ~~Within thirty (30) days of the conclusion of the hearing, for a zoning variance and certain garage variances specified in subsection (j) of this section, the planning and zoning commission shall forward its findings of fact and its recommendation to approve, to approve with conditions, or to deny the variation to the village~~ Village board ~~Board~~.

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5. The ~~village-Village board-Board~~ shall make the final decision on all zoning variances ~~that do not meet the standards of 44-07-03(E) or 44-07-07(A)(2) and certain garage variances specified in subsection (j) of this section.~~

6. Upon receiving the report from the ~~planning-Planning~~ and ~~zoning-Zoning commission-Commission~~, the ~~village-Village board-Board~~ may approve the variance, with or without conditions, by adoption of an ordinance or may deny the variance.

4.7. All ordinances granting variances, with or without conditions, shall be recorded in the office of the county recorder of deeds.

C. ~~Records. A record of requests for variations and action taken, whether by the economic and community development director, the planning and zoning commission or by the village board shall be kept on file in the office of economic and community development. Subject to exceptions in the Freedom of Information Act, 5 ILCS 140/1 et seq., copies shall be available on request to any person for a fee.~~

D.C. Standards.

1. No ~~zoning~~-variance shall be granted as authorized in this section unless findings based upon the evidence presented in each specific case establish that the standards in ~~subsections (e)(1)a, b, and c~~ below are met:
 - a. That the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located.
 - b. That the plight of the owner is due to unique circumstances.
 - c. That the variance, if granted, will not alter the essential character of the locality.
2. For the purpose of supplementing the above standards, the ~~planning and zoning commission~~~~applicable decision making body~~, in making ~~this-its~~ determination, when there are practical difficulties or particular hardships, shall also take into consideration the extent to which items in ~~subsections (e)(2)a through f~~ below have been established by the evidence. ~~Not one of the standards is controlling.~~
 - a. That the particular physical surroundings, shape or topographical conditions, or the specific property involved would bring a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
 - b. That the conditions upon which the petition for ~~variation-variance~~ is based would not be applicable generally to other property within the same zoning classification.
 - c. That the alleged difficulty or hardship or the alleged unique circumstance, has not been created by any person presently having an interest in the property.
 - d. That the granting of the ~~variance variation~~ will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
 - e. That the proposed ~~variance variation~~ will not impair an adequate supply of light and air to adjacent property, or substantially increase the danger of fire or otherwise endanger the public safety, or substantially diminish or impair property values within the neighborhood.
3. Standards for Garage Variances.
 - a. An application for an oversized garage variance or variance to construct a second garage on a residential lot shall be filed and processed in the manner prescribed for ~~administrative~~-variances in ~~Section 44-07-07~~. However, in the case of garage variances, after a public hearing, the ~~planning-Planning~~ and ~~zoning-Zoning commission-Commission~~ shall make a recommendation to the ~~village-Village board-Board~~ and the ~~village-Village board-Board~~ shall either grant or deny such application. The property owner and all future owners of property, which is the site

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of an approved oversized garage or second garage, shall comply with all of the terms and conditions of the ordinance granting such approval. ~~The fee for an oversized garage application or a second garage application shall be the same as required for an administrative variance application.~~ Petitioners shall file a copy of their title insurance policy with each such application.

I. When there is an existing garage on a residential lot, a property owner may petition for a variation to allow the construction of a second garage on such lot. ~~The planning and zoning commission shall hear such petitions and shall make a recommendation to the village board.~~ No such petition shall be granted unless findings, based upon the evidence presented in each specific case, establish that the standards in **subsection (e)** of this section have been met and further establish:

- i. That either the existing garage or the proposed second garage shall be attached to the residential building on a lot containing a minimum of ten thousand four hundred (10,400) square feet.
- ii. That the proposed garage conforms to the ~~village~~ Village building code and all ~~zoning ordinance~~ requirements of this Ordinance, including but not limited to yard setbacks, height, and size.
- iii. That the proposed garage and the existing garage will be used only for purposes incidental to a lawful residential use.

II. When there is an existing carport on a residential lot, a property owner may petition for a variance to allow the construction of a separate garage on such lot. ~~The planning and zoning commission shall hear the petition and shall make a recommendation to the village board.~~ No such petition shall be granted unless findings, based upon the evidence presented in each specific case, establish that the standards in **subsection (e)** of this section have been met and further establish:

- i. That the existing carport cannot be removed because it is part of the roofline of the existing single-family residence.
- ii. That the proposed garage conforms to the village building code and all other requirements of this Ordinance ~~zoning ordinance requirements~~ including but not limited to yard setbacks, height, and size.
- iii. That the proposed garage and the existing carport will be used only for lawful purposes incidental to a residential use.

~~4. A request for a variance to replace a nonconforming fence existing prior to December 9, 1997, must meet the variance standards. In addition, the and zoning commission shall consider the following factors:~~

- ~~a. The extent to which fences of the same type sought by the applicant already exist in the immediate area.~~
- ~~b. The type of street, to which the fence will be oriented, and the volume and speed of traffic using the street.~~
- ~~c. The extent to which the fence will use landscaping to minimize the visual impact of the fence.~~
- ~~d. That the proposed variation will help to achieve the purposes enumerated for planned unit developments in **article VI** of this chapter, if the variation is requested as part of an application for planned unit development approval.~~

~~Not one of the above standards is controlling.~~

~~E. **Conditions.** The economic and community development director, in the case of minor variances listed in subsection (a)(3) of this section, the planning and zoning commission, in the case of administrative variances listed in subsection (a)(2) of this section, and the village board, in the case of zoning variances as in subsection (a)(1) of this section, may require such conditions and limitations upon the use, construction, location, and character on any lot benefited by a variation. Such conditions must be deemed necessary to comply with the standards set forth in this section, to promote the general~~

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objectives of this chapter, and to minimize or reduce the injurious effect on other property in the neighborhood. Such conditions shall be expressly set forth in the ordinance granting the zoning variation or in the minutes of the hearing when the planning and zoning commission granted the administrative variation. Violation of any such conditions or limitations as may have been imposed shall constitute grounds for revocation of the variation.

~~F. Variation less than requested.~~ The economic and community development director, in the case of minor variations listed in subsection (a)(3) of this section, the planning and zoning commission, in the case of administrative variances listed in subsection (a)(2) of this section, and the village board, in the case of zoning variances as in subsection (a)(1) of this section, may grant variations less than or different from the relief requested when the record supports the applicant's right to some relief but not to the entire relief as requested.

G.D. Limitations on Variancections.

1. An approved variance may become null and void unless a building permit is issued within six months of the date the variance was granted and a certificate of occupancy is issued within one year of the date the variance was granted. After notice giving the property owner an opportunity for a hearing, the village board may terminate the variance or the village board may extend these periods, upon written request from the applicant showing good cause.
2. An approved variance is granted to a specific property, authorizes the variance only on the property represented on the application, and is not transferable to other properties.
3. An approved variance shall be deemed to authorize only the particular construction or development for which it was issued. The approval of a variance does not in itself authorize the establishment of any use, nor construction, alteration or development, without first obtaining any other required approvals, including a building permit and certificate of occupancy.
4. Any construction, alteration or development that is beyond the scope so authorized shall require approval of a new variance in accordance with this section.

~~H.E. Findings of fact.~~ Every decision on a variance, made by the village board, the planning and zoning commission or the economic and community development director shall be accompanied by findings of fact specifying the reason or reasons for granting or denying the variance.

44-07-08. Appeals

- A. **Scope of Appeals.** An appeal may be taken to the ~~planning~~ Planning and ~~zoning~~ Zoning ~~commission~~ Commission by any person, firm or corporation, or by any office, department, board, bureau, or commission, aggrieved by a decision of the building inspector, ~~economic~~ Economic and ~~community~~ Community ~~development~~ Development ~~director~~ Director or other authorized officials. The appeal process provides checks and balances on administrative authority.
- ~~B. Petition for Appeal.~~ A petition for an appeal before the ~~Planning~~ Planning and ~~zoning~~ Zoning ~~commission~~ Commission shall be filed ~~initially with the economic and community development director.~~ The appeal must be filed in writing within ~~thirty~~ (30) days after the date of the contested decision. The filing of the appeal shall stay any proceedings and any development permitted by the contested action, until a final decision has been rendered by the planning and zoning commission, unless the stay would cause imminent peril to life or property.

B.

- C. **Procedure.** Upon filing of an administrative appeal, the ~~Economic and Community Development Director~~ economic and community development director shall transmit to the ~~planning~~ Planning and ~~zoning~~ Zoning ~~commission~~ Commission all the papers constituting the record of the decision. The ~~Economic and Community Development Director~~ economic and community development director shall place the appeal on the agenda of the ~~planning~~ Planning and ~~zoning~~ Zoning ~~commission~~ Commission for consideration at the earliest available meeting. The ~~Economic and Community Development Director~~ economic and community development director shall provide the person who filed the appeal with written notice of the date, time and place of the scheduled meeting.

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- D. **Meeting.** By motion, the ~~planning-Planning and zoning-Zoning commission-Commission~~ shall reverse, affirm, or modify the contested decision. In reversing, modifying or affirming the contested decision, the Planning and Zoning Commission ~~planning-and-zoning-commission~~ shall have all the related powers of the administrative officer whose decision is being appealed.
- E. **Decision.** The contested decision shall not be modified unless the Planning and Zoning Commission ~~planning-and-zoning commission~~ finds that an error has been made in the application or interpretation of the terms of this ~~chapter~~ Ordinance, any other related codes, ordinances or policies adopted by the ~~village~~ Village. The contested action shall not be reversed or modified except by the concurring vote of four (4) Planning and Zoning Commission ~~planning-and-zoning-commission~~ members.
- F. **Further Appeal.** In the event that the contested action is reversed or modified, all subsequent administrative actions concerning the subject matter shall be in accordance with the reversal or modification by the Planning and Zoning Commission ~~planning-and-zoning-commission~~. All decisions of the Planning and Zoning Commission ~~planning-and-zoning commission~~ made pursuant to this part shall be final administrative decisions. Any appeal from such decisions shall be made to the circuit court.
- ~~G. **Records.** A record of all requests for appeals, including village action taken, shall be kept on file in the office of economic and community development. Subject to the exception in the Freedom of Information Act, 5 ILCS 140/1 et seq., copies shall be made available on request to any person for a fee.~~

Article 8. Nonconformities

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44-08-01. Purpose and Intent

- A. **Purpose.** The purpose of this Article is to establish regulations for nonconforming uses, buildings, lots, and/or structures and specify those circumstances and conditions to which those nonconforming uses, buildings, lots, and/or structures must comply.
- B. **Intent.**
1. The intent of this Article is to encourage the development and maintenance of appropriate groupings of compatible uses and thus to protect the public health, safety and welfare.
 2. The intent of the Village Board is to curtail substantial investment in nonconforming uses, buildings, lots, and/or structures and to bring about their eventual elimination in order to preserve the integrity of the zoning districts. While such nonconformities are allowed to continue, subject to the provisions of this section and without a specific time limitation, the regulations restrict further action that would make the nonconforming use, building, lot, and/or structure more permanent as contrary to the desired eventual elimination of the nonconformity.

44-08-02. General Standards of Applicability

- A. **Authority to Continue.** Unless otherwise prohibited in this Ordinance, any nonconforming use, building, lot, and/or structure which existed lawfully at the time of the adoption of this Ordinance and which remains nonconforming, and any such use, building, lot, and/or structure which has become nonconforming upon the adoption of this Ordinance or of any subsequent amendments, may be continued subject to the provisions of this Article so long as it remains otherwise lawful.
- B. **Illegal Use.** Illegal uses existing on the effective date of this Ordinance is derived shall not be validated by virtue of its enactment.
- C. **Burden of Owner to Establish Legality.** The burden of establishing the legality of a nonconformity that is lawfully existing under the provisions of the Ordinance shall, in all cases, be upon the property owner of the nonconforming use, building, lot, and/or structure and not upon the Village.
- D. **Safety Regulations.** All safety regulations, including, but not limited to, building, fire, and health, shall apply to nonconforming buildings and structures.

44-08-03. Nonconforming Uses

This Section regulates land, buildings, or structures that, on the effective date of this Ordinance are used for purposes that are not permitted in the zoning district in which they are located.

- A. **Ordinary Repairs and Maintenance.** Normal maintenance and incidental repair or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing may be performed on any building or structure that is devoted in whole, or in part, to a nonconforming use.
- B. **Structural Alterations.** No structural alterations shall be performed on any building or structure used for a nonconforming use, except in the following situations:
 - 1. When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.
- C. **Expansion of Use.** A nonconforming use of land, buildings, or structures shall not be expanded, extended, enlarged or increased in intensity. Such prohibited activity shall include, without limitation:
 - 1. Any extension of the hours of operation of such use beyond the normal hours of operation on the effective date of this Ordinance.
 - 2. Expansion of any building or structure devoted entirely to a nonconforming use.
 - 3. An expansion or extension of a use, or its accessory uses, to any structure, building, or land area, other than that occupied by such nonconforming use, on the effective date of the Ordinance, that caused such use to become nonconforming.
 - 4. An expansion or extension of such use, including its accessory uses, within a building and/or structure, to any portion of the floor area that was not occupied by such nonconforming use on the effective date of the Ordinance that caused such use to become nonconforming.
- D. **Relocation.** A nonconforming use of land, buildings, or structures shall not be relocated in whole, or in part, to any other location on the same lot or parcel, or to any other lot or parcel, unless the use shall, due to the relocation, conform to all regulations of the zoning district in to which it is relocated.
- E. **Change of Use.** A nonconforming use shall not be changed to any use other than a use allowed within the zoning district in which the use is located. When such a nonconforming use has been changed, in whole or in part, to an allowed use, the whole or part which has been made to conform may not thereafter be changed back to a use that is not allowed. A change of use shall be deemed to occur when an existing nonconforming use has been terminated and an allowed use has commenced. Any change in use in violation of this Ordinance shall be deemed an abandonment of the lawfully existing nonconforming use.

F. Discontinuation or Abandonment.

1. If a nonconforming use is discontinued, or becomes vacant, and remains unoccupied for a continuous period of one hundred eighty (180) days, regardless of the intent to resume or not to terminate the use, such use shall be deemed to be abandoned and shall not be reestablished or resumed.
2. Any subsequent use or occupancy of such land, building, or structure shall comply with all regulations of the zoning district in which such land, building, or structure is located.
3. The period of such discontinuance caused by government action, natural disaster, or other acts without any contributing fault by the user, shall not be included in calculating the length of discontinuance for this section.

G. Damage or Destruction. The following standards shall apply to buildings and/or structures damaged or destroyed by any means not within the control of the property owner. In the event a building or structure is damaged or destroyed by means within the control of the owner, the building or structure shall not be altered in any fashion except to make it conforming to all requirements of this Ordinance.

1. **Replacement Value.** The replacement value of the building or structure will be based on either a sale within the prior year, an appraisal within the last two (2) years, or the amount for which the building or structure was insured prior to the date of the damage or destruction.
2. **Fifty (50) Percent or More of Replacement Value.**
 - a. In the event that any building or structure that is devoted in whole, or in part, to a nonconforming use is damaged or destroyed, by any means not within the control of the property owner, to the extent of fifty (50) percent or more of its replacement value, then the building or structure shall not be restored or rebuilt unless the building or structure, including foundation, and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located.
3. **Less than Fifty (50) Percent of Replacement Value.**
 - a. When such building or structure is damaged or destroyed, by any means not within the control of the property owner, to the extent of less than fifty (50) percent of the replacement value at that time, it may be repaired and reconstructed and used for the same purposes as it was before the damage or destruction, provided that a building permit for the repair or reconstruction is obtained within one (1) year of the date of damage or destruction and construction is completed within one (1) year of the issuance of the building permit.
 - b. No restoration, rebuilding, repairs, or reconstruction shall be made that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk of the building or structure in any manner.
 - c. In the event that a building permit is not obtained within one (1) year or if repairs are not completed within one (1) year of the issuance of the building permit, then the building or structure shall not be restored unless the building or structure and the use conforms to all regulations of the zoning district in which it is located.
 - d.

44-08-04. Nonconforming Buildings and Structures

This Section regulates buildings and structures that are existing on the effective date of this Ordinance that do not conform to the yard, height, lot coverage, floor area ratio or other provisions of this Ordinance.

A. Ordinary Repairs and Maintenance.

1. Normal maintenance and incidental repair or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing may be performed on any nonconforming building or structure.
2. No repairs or reconstruction shall be made that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk of the building in any manner.

B. Structural Alterations. No structural alterations shall be performed on any nonconforming building or structure, except in the following situations:

1. When the alteration is required by law or is necessary to restore the building or structure.
2. When the alteration will result in eliminating the nonconformity.
3. When the alteration will not create any new nonconformity, increase the degree of any existing nonconformity, or increase the bulk of the building or structure in any manner.

C. Additions and Enlargements.

1. A building or structure, which is nonconforming with respect to its bulk, may be added to or enlarged, provided that such addition or enlargement does not increase the degree of the existing nonconformity of the building or structure.
2. In determining the extent of the allowable addition or enlargement, the nonconformity of the building or structure shall be based only upon those portions of the building having both foundation and roof.
3. A nonconforming building or structure shall not be added to or enlarged if such addition or enlargement would increase the degree of the existing nonconformity of the building or structure, such as but limited to encroaching into a required setback(s) more than the existing encroachment.

D. Relocation. A nonconforming building or structure shall not be relocated in whole, or in part, to any other location on the same lot or parcel, or to any other lot or parcel, unless the building or structure would thereafter conform to all regulations of this Ordinance.

E. Damage or Destruction. The following standards shall apply to buildings and/or structures damaged or destroyed by any means not within the control of the property owner. In the event a building or structure is damaged or destroyed by means within the control of the owner, the building or structure shall not be altered in any fashion except to make it conforming to all requirements of this Ordinance.

1. **Replacement Value.** The replacement value of the building or structure will be based on either a sale within the previous year, an appraisal within the last two (2) years, or the amount for which structure or building was insured prior to the date of the damage or destruction.
2. **Fifty (50) Percent or More of Replacement Value.**
 - a. In the event that any nonconforming building or structure is damaged or destroyed, by any means not within the control of the property owner, to the extent of fifty (50) percent or more of its replacement value at that time, then the building or structure shall not be restored or rebuilt unless the building or structure, including foundation, thereafter conforms to all regulations of the zoning district in which it is located.
3. **Less than Fifty (50) Percent of Replacement Value.**

- a. In the event that any nonconforming building or structure is damaged or destroyed, by any means not within the control of the property owner, to the extent of less than fifty (50) percent of the replacement value at that time, it may be repaired and reconstructed, provided that no new nonconformities are created, and that existing degree of nonconformity is not increased.
- b. A building permit shall be obtained for such rebuilding, restoration, repair, or reconstruction within one (1) year of the date of damage or destruction, and the construction shall be completed within one (1) year of issuance of the building permit.
- c. In the event that the permit is not obtained within one (1) year or that repairs are not completed within one (1) year of the issuance of the building permit, then the structure or building shall not be restored unless the structure or building conforms to all regulations of the district in which it is located.

44-08-05. Nonconforming Lots of Record

This Section regulates lots of record, existing on the effective date of this Ordinance, which do not conform with the lot area or lot width requirements for the zoning district in which they are located. No nonconforming lot of record may be improved except in compliance with this Section.

- A. **Individual Lots of Record in the R-1 and R-2 Zoning Districts.** In the R-1 and R-2 zoning districts, notwithstanding limitations imposed by other provisions of this Ordinance, a legally established use and its accessory building(s) and/or structure(s) may be erected on a single nonconforming lot of record, provided that the lot is in separate ownership and all other requirements of this Ordinance are met.
- B. **Lots of Record Held in Common Ownership.**
 - 1. If, on the effective date of this Ordinance, two (2) or more lots of record with continuous frontage in single ownership do not meet the requirements for lot width or lot area as established by this chapter, the land so involved shall be considered to be a single undivided parcel for the purposes of this Ordinance.
 - 2. No portion of the parcel shall be used, transferred, or conveyed which does not meet the lot width and lot area requirements established by this Ordinance.
 - 3. No building permit shall be issued for the use of any lot or portion of a lot transferred or conveyed in violation of this section.
 - 4. No lot shall be created by subdivision or any other means, which does not comply with all provisions of this Ordinance, unless the owner has been granted a Variance in accordance with [section 44-82](#). This provision shall not prevent the division of existing multifamily dwelling units into separate ownership, such as condominiums or fee simple townhomes.
- C. **Variance.** A variance from this section may be obtained to permit the separation of two (2) adjoining lots held in common ownership, provided that the Planning and Zoning Commission finds that the applicant complies with the standards for a variance in [section 44-82](#). In addition, the applicant must comply with one (1) of the following standards:
 - 1. Both lots met the lot area and lot width requirements in effect at the time the applicant purchased the lots.
 - 2. More than fifty (50) percent of the lots within five hundred (500) feet of the subject lots have been developed as individual building sites and do not comply with either the lot width or lot area requirement for the zoning district in which they are located.
 - 3. The owners of the abutting lots refuse to sell or convey, at a fair market price, portions of their lots that could be added to the subject lots to render them conforming without rendering the abutting lots or structures located on such lots nonconforming.

44-08-06. Condemnation

- A. The Village, at any time, by ordinance duly enacted, and in accordance with the authority vested in it by 65 ILCS 5/11-13-17 and other state and federal laws may acquire by negotiated purchase, by condemnation, or by other means, any buildings or structures that do not conform to the Village standards.
- B. The Village may acquire, by negotiated purchase, by condemnation, or by any other means, any land which is necessary or appropriate for the rehabilitation or development of any area blighted by substandard buildings or structures.

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Existing Text

New Text

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44-08-01. Purpose and Intent

- A. **Purpose.** The purpose of this ~~a~~Article is to establish regulations for nonconforming uses, buildings, lots, ~~and~~ or structures and specify those circumstances and conditions to which those nonconforming uses, buildings, lots, and/or structures ~~and buildings~~ must comply.
- B. **Intent.**
1. The intent of this ~~a~~Article is to encourage the development and maintenance of appropriate groupings of compatible uses and thus to protect the public health, safety and welfare.
 2. The intent of the ~~v~~illage ~~b~~oard is to curtail substantial investment in nonconforming uses, buildings, lots, and/or structures ~~such nonconformities~~ and to bring about their eventual elimination in order to preserve the integrity of the zoning districts. While such nonconformities are allowed to continue, subject to the provisions of this section and without a specific time limitation, the regulations restrict further action that would make the nonconforming use, building, lot, and/or structure ~~nonconformity~~ more permanent as contrary to the desired eventual elimination of the nonconformity.

44-08-02. General Standards of Applicability

- A. **Authority to Continue.** Unless otherwise prohibited in this ~~chapter~~Ordinance, any nonconforming use, building, lot, and/or structure ~~building, structure, lot, and use~~ which existed lawfully at the time of the adoption of this ~~chapter~~Ordinance and which remains nonconforming, and any such use, building, lot, and/or structure ~~building, structure, lot, or use~~ which has become nonconforming upon the adoption of this ~~chapter~~Ordinance or of any subsequent amendments, may be continued subject to the provisions of this ~~section~~Article so long as it remains otherwise lawful.
- B. **Illegal Use.** Illegal uses existing on the effective date of ~~the ordinance from which~~ this ~~chapter~~Ordinance is derived shall not be validated by virtue of its enactment.
- C. **Burden of Owner to Establish Legality.** The burden of establishing the legality of a nonconformity that is lawfully existing under the provisions of the ~~e~~Ordinance shall, in all cases, be upon the property owner of the nonconforming use, building, lot, and/or structure ~~use, building, structure or lot~~ and not upon the ~~v~~illage.
- D. **Safety Regulations.** All safety regulations, including, but not limited to, building, fire, ~~s~~ and health, shall apply to nonconforming buildings and structures.

44-08-03. Nonconforming Uses of Land

This section regulates land, buildings, or structures that, on the effective date of this ordinance ~~from which this chapter is derived~~, are used for purposes that are not permitted in the zoning district in which they are located.

- A. **Ordinary Repairs and Maintenance.** Normal maintenance and incidental repair or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing may be performed on any building or structure that is devoted in whole, or in part, to a nonconforming use.
- B. **Structural Alterations.** No structural alterations shall be performed on any building or structure used for a nonconforming use, except in the following situations:
 - 1. When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.
 - ~~2. When the alteration will result in eliminating the nonconformity.~~
 - ~~3. When the alteration will not create any new nonconformity, increase the degree of any existing nonconformity, or increase the bulk of the building or structure in any manner.~~
- C. **Expansion of Use.** A nonconforming use of land, buildings, or structures shall not be expanded, extended, enlarged or increased in intensity. Such prohibited activity shall include, without limitation:
 - 1. Any extension of the hours of operation of such use beyond the normal hours of operation on the effective date of ~~the ordinance from which this chapter is derived~~ this Ordinance.
 - 2. Expansion of any building or structure devoted entirely to a nonconforming use.
 - 3. An expansion or extension of a use, or its accessory uses, to any structure, building, or land area, other than that occupied by such nonconforming use, on the effective date of the ~~e~~Ordinance, that caused such use to become nonconforming.
 - 4. An expansion or extension of such use, including its accessory uses, within a building ~~and/or other~~ structure, to any portion of the floor area that was not occupied by such nonconforming use on the effective date of the ~~e~~Ordinance that caused such use to become nonconforming.
- D. **Relocation.** A nonconforming use of land, buildings, or structures shall not be relocated in whole, or in part, to any other location on the same lot or parcel, or to any other lot or parcel, unless the use shall ~~due to the relocation, thereafter~~ conform to all regulations of the zoning district in ~~to~~ which it is relocated.
- E. **Change of Use.** A nonconforming use shall not be changed to any use other than a use ~~permitted~~ allowed within the zoning district in which the use is located. When such a nonconforming use has been changed, in whole or in part, to an ~~permitted~~ allowed use, the whole or part which has been made to conform may not thereafter be changed back to a use that is not ~~permitted~~ allowed. A change of use shall be deemed to occur when an existing nonconforming use has been terminated and an ~~permitted~~ allowed use has commenced. Any change in use in violation of this ~~chapter~~ Ordinance shall be deemed an abandonment of the lawfully existing nonconforming use.
 - ~~1. The planning and zoning commission may recommend that the village board allow a change of one nonconforming use to another nonconforming use if the planning and zoning commission finds that the proposed use is more appropriate to the district than the existing nonconforming use. In permitting such a change in use, the planning and zoning commission may recommend that the village board impose conditions on the nonconforming use.~~

F. Discontinuation or Abandonment.

1. If a nonconforming use is discontinued, or becomes vacant, and remains unoccupied for a continuous period of one hundred eighty (180) days, regardless of the intent to resume or not to terminate the use, such use shall be deemed to be abandoned and shall not be reestablished or resumed.
2. Any subsequent use or occupancy of such land, building, or structure shall comply with all regulations of the zoning district in which such land, building, or structure is located.
- 2.3. The period of such discontinuance caused by government action, ~~acts of God~~ natural disaster, or other acts without any contributing fault by the user, shall not be included in calculating the length of discontinuance for this section.

G. Damage or Destruction. The following standards shall apply to buildings and/or structures damaged or destroyed by any means not within the control of the property owner. In the event a building or structure is damaged or destroyed by means within the control of the owner, the building or structure shall not be altered in any fashion except to make it conforming to all requirements of this Ordinance.

1. Replacement Value. The replacement value of the building or structure will be based on either a sale within the prior year, an appraisal within the last two (2) years, or the amount for which the building or structure was insured prior to the date of the damage or destruction.
2. Fifty (50) Percent or More of Replacement Value.
 - a. In the event that any building or structure that is devoted in whole, or in part, to a nonconforming use is damaged or destroyed, by any means not within the control of the property owner, to the extent of fifty (50) percent or more of its replacement value, then the building or structure shall not be restored or rebuilt unless the building or structure, including foundation, and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located.
 - a. ~~The structure's or building's replacement value will be based on either a sale within the prior year, an appraisal within the last two years or the amount for which the building or structure was insured prior to the date of the damage or destruction.~~
3. Less than Fifty (50) Percent of Replacement Value.
 - a. When such building or structure is damaged or destroyed, by any means not within the control of the property owner, to the extent of less than fifty (50) percent of the replacement value at that time, it may be repaired and reconstructed and used for the same purposes as it was before the damage or destruction, provided that a building permit for the repair or reconstruction is obtained within one (12) months-year of the date of damage or destruction and construction is completed within one (1) year of the issuance of the building permit.
 - b. No restoration, rebuilding, repairs, or reconstruction shall be made that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk of the building or structure in any manner.
 - c. In the event that ~~the a building~~ permit is not obtained within one (1) year or ~~that if~~ repairs are not completed within one (1) year of the issuance of the building permit, then the ~~structure or building~~ or structure shall not be restored unless the ~~structure or building~~ or structure and the use conforms to all regulations of the zoning district in which it is located.
 - b.d. ~~In the event a building or structure is damaged or destroyed by means within the control of the owner, the building or structure shall not be altered in any fashion except to make it conforming to all requirements of this chapter.~~

44-08-04. Nonconforming Buildings and Structures

This ~~s~~Section regulates buildings and structures that are existing on the effective date of ~~the~~ this Ordinance ~~from which this chapter is derived~~ that do not conform to the yard, height, lot coverage, floor area ratio or other ~~dimensional or bulk~~ provisions of this ~~chapter~~ Ordinance.

A. Ordinary Repairs and Maintenance.

1. Normal maintenance and incidental repair or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing may be performed on any nonconforming building or structure.
- ~~4.2.~~ No repairs or reconstruction shall be made that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk of the building in any manner.

B. Structural Alterations. No structural alterations shall be performed on any nonconforming building or structure, except in the following situations:

1. When the alteration is required by law or is necessary to restore the building or structure.
2. When the alteration will result in eliminating the nonconformity.
3. When the alteration will not create any new nonconformity, increase the degree of any existing nonconformity, or increase the bulk of the building or structure in any manner.

C. Additions and Enlargements.

1. A building or structure, which is nonconforming with respect to its bulk, may be added to or enlarged, provided that such addition or enlargement does not increase the degree of the existing nonconformity of the building or structure.
2. In determining the extent of the allowable addition or enlargement, the nonconformity of the building or structure shall be based only upon those portions of the building having both foundation and roof.
- ~~4.3.~~ A nonconforming building or structure shall not be added to or enlarged if such addition or enlargement would increase the degree of the existing nonconformity of the building or structure, such as but limited to by encroaching ~~further into a~~ required setback(s) more than the existing encroachment.

~~C.D.~~ Relocation. A nonconforming building or structure shall not be relocated in whole, or in part, to any other location on the same lot or parcel, or to any other lot or parcel, unless the building or structure ~~thereof shall~~ would thereafter conform to all regulations of ~~the zoning district in which it is relocated~~ this Ordinance.

~~D.E.~~ Damage or Destruction. The following standards shall apply to buildings and/or structures damaged or destroyed by any means not within the control of the property owner. In the event a building or structure is damaged or destroyed by means within the control of the owner, the building or structure shall not be altered in any fashion except to make it conforming to all requirements of this Ordinance.

1. Replacement Value. The replacement value of the building or structure will be based on either a sale within the previous year, an appraisal within the last two (2) years, or the amount for which structure or building was insured prior to the date of the damage or destruction.
2. Fifty (50) Percent or More of Replacement Value.
 - a. In the event that any nonconforming building or structure is damaged or destroyed, by any means not within the control of the property owner, to the extent of fifty (50) percent or more of its replacement value at that time, then the building or structure shall not be restored or rebuilt unless the building or structure, including foundation, thereafter conforms to all regulations of the zoning district in which it is located.

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The structure's or building's replacement value will be based on either a sale within the previous year, an appraisal within the last two years, or the amount for which structure or building was insured prior to the date of the damage or destruction.

3. Less than Fifty (50) Percent of Replacement Value.

- a. In the event that any nonconforming building or structure ~~When such building or structure is~~ damaged or destroyed, by any means not within the control of the property owner, to the extent of less than fifty (50) percent of the replacement value at that time, it may be repaired and reconstructed, provided that no new nonconformities are created, and that existing degree of nonconformity is not increased.
- b. A building permit shall be obtained for such rebuilding, restoration, repair, or reconstruction within one (1) year of the date of damage or destruction, and the construction shall be completed within one (1) year of issuance of the building permit.
- c. In the event that the permit is not obtained within one (1) year or that repairs are not completed within one (1) year of the issuance of the building permit, then the structure or building shall not be restored unless the structure or building conforms to all regulations of the district in which it is located. ~~In the event that any nonconforming building or structure is damaged or destroyed by means within the control of the property owner, the building or structure as restored or repaired shall comply with all requirements of this chapter.~~

44-08-05. Nonconforming Lots of Record

This ~~s~~Section regulates lots of record, existing on the effective date of ~~the this o~~Ordinance ~~from which this chapter is derived~~, which do not conform with the lot area or lot width requirements for the zoning district in which they are located. No nonconforming lot of record may be improved except in compliance with this ~~s~~Section.

- A. ~~Individual !~~**Lots of Record in the R-1 and R-2 Zoning Districts.** In the R-1 and R-2 zoning districts, notwithstanding limitations imposed by other provisions of this ~~chapter~~Ordinance, a legally established use single-family dwelling and its accessory building(s) and/or structure(s) may be erected on a single nonconforming lot of record, provided that the lot is in separate ownership and all other requirements of this Ordinance are met.

B. Lots of Record Held in Common Ownership.

1. If, on the effective date of ~~the this o~~Ordinance ~~from which this chapter is derived~~, two (2) or more lots of record with continuous frontage in single ownership do not meet the requirements for lot width or lot area as established by this chapter, the land so involved shall be considered to be a single undivided parcel for the purposes of this ~~chapter~~Ordinance.
2. No portion of the parcel shall be used, transferred, or conveyed which does not meet the lot width and lot area requirements established by this ~~chapter~~Ordinance.
- ~~1.3. No division of the parcel shall be made which leaves remaining lots with lot width or area below the requirements as stated in this chapter. No building permit shall be issued for the use of any lot or portion of a lot transferred or conveyed in violation of this section.~~
- ~~2.4.~~ No lot shall be created by subdivision or any other means, which does not comply with all provisions of this ~~chapter~~Ordinance, unless the owner has been granted a variation~~Variance~~ in accordance with section 44-82. This provision shall not prevent the division of existing multifamily dwelling units into separate ownership, such as condominiums or fee simple townhomes.

- C. **Variation**~~Variance~~. A variation~~variance~~ from this section may be obtained to permit the separation of two (2) adjoining lots held in common ownership, provided that the ~~p~~Planning and ~~z~~Zoning ~~e~~Commission finds that the applicant complies with the standards for a variation~~variance~~ in section 44-82. In addition, the applicant must comply with one (1) of the following standards:

1. Both lots met the lot area and lot width requirements in effect at the time the applicant purchased the lots.

Commented [JW1]: This sentence seems to be contradictory to the language in (4) below

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2. ~~Over-More than fifty (50) percent~~half of the lots within five hundred (500) feet of the subject lots have been developed as individual building sites and do not comply with either the lot width or lot area requirement for the zoning district in which they are located.
3. The owners of the abutting lots refuse to sell or convey, at a fair market price, portions of their lots that could be added to the subject lots to render them conforming without rendering the abutting lots or structures located on such lots nonconforming.

44-08-06. Condemnation

- A. The village, at any time, by ordinance duly enacted, and in accordance with the authority vested in it by 65 ILCS 5/11-13-17 and other state and federal laws may acquire by negotiated purchase, by condemnation, or by other means, any buildings or structures that do not conform to the village standards.
- B. The village may acquire, by negotiated purchase, by condemnation, or by any other means, any land which is necessary or appropriate for the rehabilitation or development of any area blighted by substandard buildings or structures.