

ORDINANCE NO. 6058
AN ORDINANCE AMENDING
THE MUNICIPAL CODE CONCERNING THE
PLAN COMMISSION AND ZONING BOARD OF APPEALS

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by redline/underline; deletions by ~~strikeout~~):

Section 1. That Section 2.IV.2 is hereby amended to read as follows:

Division 2.IV.2 ~~Plan Commission~~ Planning and Zoning Commission

Sec 2.54 Created; Composition; Terms Of Office

Sec 2.55 Powers And Duties

Section 2. That Section 2.54 is hereby amended to read as follows:

Sec 2.54 Created; Composition; Terms Of Office

A ~~Plan Commission~~ Planning and Zoning Commission is hereby created for the Village, pursuant to its home rule authority. The Planning and Zoning Commission shall serve as a plan commission and zoning board of appeals on planning and zoning matters. The ~~Plan Commission~~ Planning and Zoning Commission shall be organized as follows:

- (a) Nine (9) voting members shall be appointed for staggered terms of three (3) years each.
- (b) Three (3) additional members may be nominated for appointment and confirmation as follows:
 - (1) One (1) such member may be nominated by resolution of the Board of Commissioners of the Downers Grove Park District, and a copy of such a resolution, duly certified by the secretary of such board, shall be filed with the Village Clerk;
 - (2) One (1) such member may be nominated by resolution of the Board of Trustees of the Downers Grove Sanitary District, and a copy of such resolution, duly certified by the Clerk of such board shall be filed with the Village Clerk; and
 - (3) One such member may be nominated by joint action of the Board of School District No. 58 and the Board of School District No. 99, and copies of the resolutions of each of such school boards, duly certified by the respective secretaries of such boards, shall be filed with the Village Clerk.

Each member of the ~~Plan Commission~~ Planning and Zoning Commission appointed and confirmed under the provisions of this paragraph (b) shall not be entitled to vote, shall not be counted in determining whether a quorum of the ~~Plan Commission~~ Planning and Zoning Commission is present at any meeting and shall not have a designated term in office, but shall serve from time to time until such member has resigned or been removed by resolution of the board or boards which made the nomination of such member, and until his or her successor has been appointed and qualified.

- (c) In addition to the appointed members, the mayor shall be an ex officio member of the ~~Plan Commission~~ Planning and Zoning Commission, but shall not be entitled to vote and shall not be counted in determining whether a quorum of the ~~Plan Commission~~ Planning and Zoning Commission is present at any meeting.

(Ord. No. 118, § 1; Ord. No. 415, § 1; Ord. No. 1015, § 1; Ord. No. 1575, § 1; Ord. No. 2174, §§ 1, 2; Ord. No. 3266, § 34; Ord. No. 4518, 6/17/03)

Section 3. That Section 2.55 is hereby amended to read as follows:

Sec 2.55 Powers And Duties

The ~~Plan Commission~~Planning and Zoning Commission shall have the following powers and duties:

- (a) To prepare and recommend to the corporate authorities a comprehensive plan for the present and future development or redevelopment of the Village. The plan may be adopted in whole or in separate geographical or functional parts, each of which, when adopted, shall be the official comprehensive plan, or part thereof, of the Village. The plan may include reasonable requirements for the streets, alleys, public grounds, and other improvements hereinafter specified. The plan, as recommended by the ~~Plan Commission~~Planning and Zoning Commission may be made applicable, by the terms thereof, to land situated within the corporate limits and contiguous territory not more than one and one-half (1 ½) miles beyond the corporate limits and not included in any municipality. The plan may establish reasonable standards of design for subdivisions and for resubdivisions of unimproved land and of areas subject to redevelopment in respect to public improvements; may establish reasonable requirements governing the location, width, course, and surfacing of streets and highways, alleys, ways for public utilities and service facilities, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, size of lots to be used for residential purposes, storm water drainage, water supply and distribution, sanitary sewers, and sewage collection and treatment; and also may designate land suitable for annexation to the Village and the recommended land use for such land upon annexation. The plan shall be advisory except as to such parts thereof as have been implemented by ordinances duly enacted by the Village Council. ~~All requirements for public hearing, filing of notice of adoption with the county recorder of deeds, and the filing of such plan and ordinances with the Village Clerk shall be complied with as provided by law.~~
- (b) To recommend to the Village Council from time to time such changes or specific in the comprehensive plan as the ~~Plan Commission~~Planning and Zoning Commission may deem necessary.
- (c) To initiate, study and make recommendations regarding matters dealing with the planning of the ~~community~~Village and in contiguous territory outside of the corporate limits of the Village and distant not more than one and one-half (1 ½) miles from such limits and not included in the Village.
- (d) To exercise such other powers germane to the above powers as may be conferred by the Village Council.
- (e) To recommend, subject to consideration and approval by the Village Council, reasonable standards of design for subdivisions and for resubdivisions of unimproved land and of areas subject to redevelopment in respect to public improvements.
- (f) To review preliminary and final plans for planned unit developments pursuant to the requirements of the Zoning Ordinance of the Village and to consider and recommend approval or disapproval of such plans to the Village Council, including any specific conditions of any recommended approval.
- (g) To consider and approve certain ~~conveyances of land~~lot reconfigurations that do not require a subdivision plat, pursuant to DGMC Section 20.601 of this Code.
- (h) To consider and make recommendations to the Village Council concerning any request for a waiver or variation of any requirement of DGMC Section 19.14(b) for construction of public improvements as a condition of obtaining a permit for access across a parkway to Village right-of-way.
- (i) To hear, consider and recommend to the Village Council matters dealing with amendments to the Zoning Ordinance.
- (j) To hear, consider and recommend to the Village Council matters dealing with the granting of special uses.

- (k) Notwithstanding the provisions of DGMC Section 2.59(a) of this Code, to hear and decide on an application for any variations or exceptions from the terms of the Downers Grove Zoning Ordinance and/or the Downers Grove Subdivision Ordinance, subject to their terms, ~~but only when such application is filed in conjunction with an application as part of a planned development, an amendment to the Zoning Ordinance, or a special use otherwise requiring a public hearing before the Plan Commission.~~
- (l) To designate, subject to consideration and approval of the Village Council, land suitable for annexation to the Village and the recommended zoning classification for such land upon annexation.
- (m) To hear and decide appeals from, and to make modifications to, any order, requirement, decision or determination made by the Community Development Director responsible for the enforcement of the Zoning Ordinance.
- ~~(n)~~ To hear and decide on all matters referred to it or upon which it is required to pass under the Downers Grove Zoning Ordinance.
- ~~(m)~~(o) Any additional powers granted by the Illinois Municipal Code

(Ord. No. 972, § 1; Ord. No. 2641, § 1; Ord. No. 3266, § 34; Ord. No. 4101, 2/8/99; Ord. No. 4518, 6/17/03)

Section 4. That Section 2.55.1 is hereby added as follows:

Sec 2.55.1 Conduct Of Meetings; Extraordinary Vote For Certain Actions

- (a) Every person appearing before the Planning and Zoning Commission has a right to be heard before the Planning and Zoning Commission or to be represented by a duly authorized agent or attorney. All testimony of witnesses at any hearing provided for in the Downers Grove Zoning Ordinance shall be given under oath. The chair, or in his/her absence the acting chair, may administer oaths and compel the attendance of witnesses.
- (b) The concurring vote of five (5) members of the commission shall be necessary to reverse any order, requirement, decision, or determination of the zoning enforcement officer or to decide in favor of the applicant on any matter on which the commission is authorized by the Downers Grove Zoning Ordinance to render a decision.

(Ord. No. 972, § 1; Ord. No. 2641, § 1; Ord. No. 3266, § 34; Ord. No. 4101, 2/8/99; Ord. No. 4518, 6/17/03)

Section 5. That Division 2.IV.4 is hereby deleted in its entirety:

Reserved

Division 2.IV.4 Zoning Board Of Appeals

Sec 2.58 Created; Composition; Terms Of Office

Sec 2.59 Powers And Duties

Sec 2.60 Conduct Of Meetings; Extraordinary Vote For Certain Actions

Sec 2.58 Created; Composition; Terms Of Office

A Zoning Board of Appeals is hereby created for the Village, which board shall consist of seven (7) members appointed for staggered terms of three (3) years each.

(Ord. No. 2641, § 3; Ord. No. 3266, § 34; Ord. No. 4518, 6/17/03)

Sec 2.59 Powers And Duties

~~The Zoning Board of Appeals shall have the following powers and duties:~~

- ~~(a) Except as provided in DGMC Section 2.55 of this Code, to hear and decide on applications for any variation from the terms of the Downers Grove Zoning Ordinance subject to its provisions.~~
- ~~(b) To hear and decide appeals from, and to make modifications to, any order, requirement, decision, or determination made by the Director responsible for the enforcement of the Zoning Ordinance.~~
- ~~(c) To hear and decide on all matters referred to it or upon which it is required to pass under the Downers Grove Zoning Ordinance.~~
- ~~(d) To exercise such other powers germane to the above powers as may be conferred by the Village Council.~~
- ~~(e) (Ord. No. 2641, § 3; Ord. No. 3266, § 34; Ord. No. 4518, 6/17/03)~~

Sec 2.60 Conduct Of Meetings; Extraordinary Vote For Certain Actions

- ~~(a) Every person appearing before the Zoning Board of Appeals has a right to be heard before the Zoning Board of Appeals or to be represented by a duly authorized agent or attorney. All testimony of witnesses at any hearing provided for in the Downers Grove Zoning Ordinance shall be given under oath. The chairman, or in his/her absence the acting chairman, may administer oaths and compel the attendance of witnesses.~~
- ~~(b) The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of the zoning enforcement officer or to decide in favor of the applicant on any matter on which the board is authorized by the Downers Grove Zoning Ordinance to render a decision.~~

~~(Ord. No. 2641, § 3; Ord. No. 3266, § 34; Ord. No. 4852, 2/20/07)~~

Section 6. That Section 19.14 is hereby amended to read as follows:

Sec 19.14 Access To Streets And Alleys; Permit Required; Improvements

No person shall construct any access across a parkway to improved or unimproved street, public land or public right-of-way within the Village without first obtaining a permit to do so from the Village. This permit may be issued if the following requirements are met:

- (a) The access to the street will not create undue or unnecessary safety hazards; will not impede the safe and efficient flow of traffic and will be constructed in compliance with applicable laws, ordinances and specifications of the Village.
- (b) If the street to which access is desired is not improved with asphalt pavement, storm sewers and curbs and gutters, it shall be improved and maintained as follows by the person seeking access in accordance with Village specifications approved by the Director of Public Works:
 - (1) Curbs and gutters shall be constructed along the side of any street to which access is sought to the limits of the property, if the nearest paved portion of that street is improved with curbs and gutters along one or both sides. If no curb and gutter exists, a crushed aggregate or concrete shoulder, at least twenty-four ~~inches~~ (24") ~~inches~~-wide, shall be constructed along the side of any street to which access is sought, to the limits of the property.
 - (2) Pavement at least twenty ~~feet~~ (20') ~~feet~~-wide of material similar or equivalent to the material used for the nearest paved portion of that street or streets as determined by the Director of Public Works, shall be constructed along the side of the street or streets to which access is sought to the limits of the property and beyond to the nearest paved portion of that street or streets.

- (3) Adequate storm drainage shall be constructed so that storm water runoff from the property from which access to the street is sought shall not cause damage to adjoining properties or erosion of the land. Such storm drainage shall be constructed in accordance with specifications as determined by the Director of Public Works consistent with the provisions of Chapter 26 of this Code which shall assure that upstream and downstream drainage problems shall not result therefrom.
 - (4) Traffic signals shall be constructed along the street or streets to which access is desired if the property is used for other than single-family residential uses and if the traffic volume generated from development of the property meets the warrants established by the Illinois Department of Transportation.
 - (5) All improvements made to public land shall be maintained by the person seeking access in a clean and safe condition free of any and all obstacles. Such maintenance shall not damage, create a defect, obstruction, hazard or other dangerous condition to or upon any Village owned property or adjacent property owners.
- (c) No person shall construct any access to an alley within the Village without first obtaining a permit to do so from the Village. This permit may be issued if the following requirements are met:
- (1) Pavement shall be constructed in accordance with Downers Grove construction specifications and to the width of any existing improved alley (or to the Village standard alley width, whichever is wider), or if none of the alley is improved, to the standard Village alley specifications and details, along the alley to which access is sought to the limits of the property and beyond to the nearest paved portion of the alley. If the existing alley right-of-way is not sufficient to construct an alley to the Village standard, the alley shall be constructed as required by the Director of Public Works, but in no case shall the pavement be less than ten ~~feet~~ (10') ~~feet~~-wide.
 - (2) Adequate storm drainage shall be constructed so that storm water runoff from the property from which access to the alley is sought shall not cause damage to adjoining properties or erosion of the land. Such storm drainage shall be constructed in accordance with specifications as determined by the Director of Public Works consistent with the provisions of Chapter 26 of this Code which shall assure that upstream and downstream drainage problems shall not result therefrom.
- (d) If the right of way to which access is sought has been improved after the effective date of this Section pursuant to the requirements of paragraph (b) above, the person desiring access shall pay to the Village that portion of the original cost of the improvements installed within the right of way abutting his/her property to the center line of the right of way and the limits of his/her property. These recaptured costs shall be collected by the Village and reimbursed to the person who paid for the improvements when installed, when and if the Village collects these costs as aforesaid.
- (e) All proposed improvements shall be designed by a licensed professional engineer and shall be subject to review by the Director of Public Works and Village Engineer. The Village Council, after a public hearing before the ~~Plan Commission~~ Planning and Zoning Commission and receipt of the findings and recommendations of such Commission, may waive or vary any requirement of paragraph (b) above for good cause shown upon application by the person seeking access, pursuant to the criteria established in Section 20.602(c).

(Ord. No. 2295, § 1; Ord. No. 2962, § 2; Ord. No. 3263, § 5; Ord. No. 3288, § 1) (Ord. 5448, Amended, 02/01/2015; Ord. 4852, Amended, 02/20/2007, his to his/her(s); Ord. 4550, Amended, 11/18/2003; Ord. 4512, Amended, 06/03/2003; 3550, Amended, 04/04/1993)

Section 7. That Section 20.101 is hereby amended to read as follows:

Sec 20.101 Definitions

Wherever any term is used in this subdivision ordinance, it shall have the same meaning as defined in Chapters 1 and 28, unless otherwise defined in this subdivision ordinance. Words that are not expressly defined in Chapters 1, 20 or 28 of the Municipal Code have the meaning in the latest edition of Merriam-Webster's Unabridged Dictionary.

Chapter: Chapter 20 of the Downers Grove Municipal Code.

Code: The Downers Grove Municipal Code, as now or hereafter amended.

Construction security: A letter of credit or other security required under this subdivision ordinance to guarantee timely and proper completion of all public improvements.

County parcel: A parcel located outside the corporate limits, but within the planning jurisdiction, of the Village.

County plat: A final subdivision plat of a County parcel.

Director: The Director of Community Development, or such person's designee.

Development: Development means any of the following:

- (a) Construction of any new building or structure with a total gross floor area of more than five hundred (500) square feet on any parcel of land;
- (b) Expansion by more than twenty-five percent (25%) of any existing building or structure with a total gross floor area of more than five hundred (500) square feet; or
- (c) Construction on any parcel of land that will create more than four (4) parking spaces.

Land division: Any change in the boundary or partition lines of a parcel.

Exempt land division: The following land divisions or conveyances of property which are exempt from the requirements of this subdivision ordinance: (1) A land division into parcels of five (5) acres or more in size which does not involve any new streets or easements of access; (2) The conveyance of parcels of land or interests therein for use as a right of way for railroads or other public utility facilities and other pipe lines which does not involve any new streets or easements of access and which does not create any additional lots; (3) The conveyance of land for highway or other public purposes or grants or conveyances relating to the dedication of land for public use or instruments relating to the vacation of land improved with a public use and which does not create any additional lots; (4) Conveyances made to correct descriptions in prior conveyances.

Engineering documents: Plans, designs and specifications for public improvements required under the provisions of this Code, including but not limited to such documents, plans, designs, studies and other information or items reasonably required by the Village Engineer, to ensure compliance with applicable codes and laws. Until approved by the Village Engineer, the engineering documents shall be considered preliminary. After approval by the Village Engineer, the engineering documents shall be considered final.

Flag lot: A parcel of land, whose area and dimensions meet all the requirements of this subdivision ordinance, in which access from the public right-of-way to the land is a narrow, extended portion of the parcel which does not meet the minimum lot width as required by this Ordinance.

Guarantee security: A letter of credit or other security as required under this subdivision ordinance, and posted at the time a required public improvement is transferred to, and accepted by, the Village or other public body, to guarantee that such public improvement has been properly constructed.

Lot: A lot that is part of a real estate subdivision, the plat of which has been recorded in the office of the DuPage County Recorder of Deeds.

Lot reconfiguration: An exchange of land between adjoining or contiguous parcels, located within the corporate limits of the Village, which changes the boundaries of the existing lots, but does not create an additional lot and which does not qualify as a subdivision or an exempt land division.

Net Non Conformity: The relative degree to which all the parcels or lots involved in a lot reconfiguration and/or consolidation are, or are not, in conformance with the standards for lots within the zoning district in which the property is located as compared before and after a lot reconfiguration and/or consolidation.

Owner: The fee title holders of property, including such fee holders' designees and agents.

Parcel: An identified tract of contiguous real property.

Petitioner: The Owner of a parcel seeking approval under this subdivision ordinance and any other party identified as the petitioner in a petition filed under this Chapter.

Plat: A plat of subdivision as required under this subdivision ordinance.

Plat Act: The Illinois Plat Act (765 ILCS 205/0.01 et seq.) as enacted or hereafter amended.

~~*Plan Commission*~~ *Planning and Zoning Commission:* The Downers Grove ~~Plan Commission~~ *Planning and Zoning Commission*, as now or hereafter configured and appointed.

Planning Jurisdiction: That area located within the corporate limits of the Village and that unincorporated area surrounding the Village but within the authority of the Village Council for planning and subdivision approval pursuant to State law or a boundary line agreement with a neighboring municipality.

Public Improvement Cost Estimate: The estimate of costs of public improvements within a subdivision upon which the engineering review fee and engineering inspection fees are based. The preliminary public improvement cost estimate is the estimate of costs based upon the preliminary engineering documents. The final public improvement cost estimate is the estimate of costs based upon the approved final engineering documents.

Sanitary District: The Downers Grove Sanitary District, which is a separate unit of local government, independent of the Village of Downers Grove, that is responsible for providing sanitary sewer service for much of the Village and several other municipalities.

Special Service Area: A taxing mechanism that can be used to fund a wide range of special or additional services and/or physical improvements in a defined geographical area within the Village.

Subdivision: Any development for which a plat of subdivision or Village approval is required or authorized pursuant to the Plat Act. This may include, but is not limited to, land divisions or the establishment or dedication of a road, highway, street or alley through a tract of land, regardless of area.

Subdivision and Development Ordinance: Chapter 20 of the Downers Grove Municipal Code.

Water Course: Any river, stream, creek, brook or other branch or drainage way in or into which stormwater runoff and floodwater flow either regularly or irregularly.

Village Engineer: The Downers Grove Village Engineer, or such person's designee.

Village Manager: The Downers Grove Village Manager, or such person's designee.

Zoning Ordinance: The Downers Grove Zoning Ordinance as now or hereafter enacted.

(Ord. 5443, Amended, 12/16/2014; Ord. 4960, Amended, 03/18/2008; Ord. 4550, Amended, 11/18/2003; 4033, Enacted, 05/18/1998)

Section 8. That Section 20.200 is hereby amended to read as follows:

Sec 20.200 Petitions

- (a) All petitions shall be signed or acknowledged by the Owner and all other co-petitioners. Provided, if the land is held in trust, the owner must file a disclosure statement identifying the beneficiaries of the trust. A petition shall include such submittals, information and materials as may be required by the Community Development Director or the Village Engineer to establish that the petition meets the standards and requirements of this chapter. This may include, but is not limited to, maps, plats of surveys, engineering documents, environmental reports regarding property to be dedicated, traffic studies, and other materials and information as required by rules established by the Community Development Director or the Village Engineer.
- (b) The Community Development Director shall receive and coordinate the processing of all petitions under this subdivision ordinance.
- (c) A petition shall be considered complete upon certification by the Community Development Director that all required information has been submitted.
- (d) A petition may be amended at any time before final action upon such terms and conditions as the Community Development Director (if amended before any required hearing), the ~~Plan Commission~~Planning and Zoning Commission (if amended before final action by such body), or the Village Council may direct. Such terms and conditions may include, but are not limited to, requiring repayment of fees or portions thereof, republication of notices, rehearing of the petition and/or tolling any time limits for Village action as otherwise mandated herein.

(Ord. 5443, Amended, 12/16/2014; 4033, Enacted, 05/18/1998)

Section 9. That Section 20.202 is hereby amended to read as follows:

Sec 20.202 Public Hearings

- (a) Public hearings required by this subdivision ordinance shall be conducted by the ~~Plan Commission~~Planning and Zoning Commission. The ~~Plan Commission~~Planning and Zoning Commission shall control the conduct of such hearing and may establish reasonable rules and regulations including but not limited to rules and regulations governing public participation, limitations on redundant or irrelevant testimony, the presentation of information and comments, the order and length of statements or testimony, and time limitations. The hearing may be continued from time to time as directed by the ~~Plan Commission~~Planning and Zoning Commission.
- (b) Notice of a public hearing will be given as provided in DGMC Section 28.12.010(f) of the Downers Grove Zoning Ordinance.

(Ord. 5443, Amended, 12/16/2014; 4033, Enacted, 05/18/1998)

Section 10. That Section 20.203 is hereby amended to read as follows:

Sec 20.203 Time Periods

Any time limit specified in this subdivision ordinance for any decision or action by the Community Development Director, the Village Engineer, the ~~Plan Commission~~Planning and Zoning Commission or

the Village Council may be extended or tolled by the joint agreement of the petitioner and the Community Development Director. In the event a decision or action by the Community Development Director, the ~~Plan Commission~~Planning and Zoning Commission or the Village Council is not rendered within the time period specified, the owner may serve written notice upon the Village that the owner has elected to treat this as denial. In the event such notice is not served, the time limits shall be deemed to be extended by the joint agreement of the petitioner and the Community Development Director.

(Ord. 5443, Amended, 12/16/2014; 4033, Enacted, 05/18/1998)

Section 11. That Section 2.503 is hereby amended to read as follows:

Sec 20.503 Preliminary Plat - Procedures

- (a) The preliminary plat and such supporting documents as may be required or appropriate, shall be transmitted by the Community Development Director, or designee, to the ~~Plan Commission~~Planning and Zoning Commission, along with staff analysis and recommendation, if any.
- (b) Within ninety (90) days of receipt of a complete petition notice shall be given and the ~~Plan Commission~~Planning and Zoning Commission shall commence a public hearing to be held as provided in DGMC Section 20.202. Within forty-five (45) days after conclusion of the public hearing, the ~~Plan Commission~~Planning and Zoning Commission shall transmit to the Owner and the Village Council its recommendations regarding the preliminary plat. The ~~Plan Commission~~Planning and Zoning Commission may recommend approval or disapproval of all, or any portion of the petition, including any modifications thereto or exceptions, and may condition such recommendation on restrictions and requirements as the ~~Plan Commission~~Planning and Zoning Commission determines appropriate or necessary to ensure that the petition, as approved, will conform to the provisions of this subdivision ordinance.
- (c) Within ninety (90) days of receipt of the findings and recommendations of the ~~Plan Commission~~Planning and Zoning Commission, the Village Council shall approve, approve as modified, or deny the petition, or any part thereof. The Village Council may approve or disapprove all, or any portion of the petition, including any modifications thereto or exceptions, and may condition any approval on restrictions and requirements as the Village Council determines appropriate or necessary to ensure that the petition, as approved, will conform to the provisions of this subdivision ordinance. A violation of such conditions shall be deemed a violation of this subdivision ordinance. In the alternative, the Village Council may remand the petition, in whole or in part, back to the ~~Plan Commission~~Planning and Zoning Commission if the Village Council determines that it is necessary or appropriate to provide a fair and complete consideration of the petition because there is a material and significant change in conditions since the ~~Plan Commission~~Planning and Zoning Commission hearing, or there is new or additional information which is material to the petition and which was not reasonably available at the time of the ~~Plan Commission~~Planning and Zoning Commission hearing. The Village Council will specify the reasons and scope of such remand and further proceedings before the ~~Plan Commission~~Planning and Zoning Commission will be limited to such items. The ~~Plan Commission~~Planning and Zoning Commission will conduct such further proceedings as may be appropriate and re-present the petition, with appropriate recommendations, to the Village Council within sixty (60) days of referral. Thereafter, the Village Council shall render a final decision within sixty (60) days of such re-presentation.
- (d) If the Village Council approves the preliminary plat, notice of such approval shall be affixed thereto by the Village. One copy of the approved preliminary plat shall thereupon be returned to the Owner, one (1) copy shall be delivered to the Village Engineer, and the other copies shall be retained by the Community Development Director or designee.

- (e) The preliminary plat shall be valid for one (1) year following date of approval. Provided, at the request of the Owner, this one-year limit may be extended at the sole discretion of the Village Council.

(Ord. 5443, Amended, 12/16/2014; 4033, Enacted, 05/18/1998)

Section 12. That Section 20.505 is hereby amended to read as follows:

Sec 20.505 Final Plat - Procedures

- (a) The final plat and such supporting documents as may be required or appropriate, shall be transmitted by the Community Development Director to the ~~Plan Commission~~Planning and Zoning Commission or Village Council, along with staff analysis and recommendation, if any. If the Village Council granted approval of a preliminary plat of subdivision, and the Community Development Director determines that the final plat of subdivision is in substantial compliance with the approved preliminary plat, the final plat of subdivision may be presented directly to the Village Council for approval. Should the Community Development Director determine that the final plat of subdivision is not in substantial compliance with the preliminary plat, the final plat of subdivision shall be transmitted to the ~~Plan Commission~~Planning and Zoning Commission for a public hearing as detailed below.
- (b) Within ninety (90) days of receipt of a complete petition notice shall be given and the ~~Plan Commission~~Planning and Zoning Commission shall commence a public hearing to be held as provided in DGMC Section 20.202. Within forty-five (45) days after conclusion of the public hearing, the ~~Plan Commission~~Planning and Zoning Commission shall transmit to the Owner and the Village Council its recommendations regarding the final plat. The ~~Plan Commission~~Planning and Zoning Commission may recommend approval or disapproval of all, or any portion of the petition, including any modifications thereto or exceptions, and may condition such recommendation on restrictions and requirements as the ~~Plan Commission~~Planning and Zoning Commission determines appropriate or necessary to ensure that the petition, as approved, will conform to the provisions of this subdivision ordinance.
- (c) Within ninety (90) days of receipt of the findings and recommendations of the ~~Plan Commission~~Planning and Zoning Commission, the Village Council shall approve, approve as modified, or deny the petition, or any part thereof. The Village Council may approve or disapprove all, or any portion of the petition, including any modifications thereto or exceptions, and may condition any approval on restrictions and requirements as the Village Council determines appropriate or necessary to ensure that the petition, as approved, will conform to the provisions of this subdivision ordinance. A violation of such conditions shall be deemed a violation of this subdivision ordinance. In the alternative, the Village Council may remand the petition, in whole or in part, back to the ~~Plan Commission~~Planning and Zoning Commission if the Village Council determines that it is necessary or appropriate to provide a fair and complete consideration of the petition because there is a material and significant change in conditions since the ~~Plan Commission~~Planning and Zoning Commission hearing, or there is new or additional information which is material to the petition and which was not reasonably available at the time of the ~~Plan Commission~~Planning and Zoning Commission hearing. The Village Council will specify the reasons and scope of such remand and further proceedings before the ~~Plan Commission~~Planning and Zoning Commission will be limited to such items. The ~~Plan Commission~~Planning and Zoning Commission will conduct such further proceedings as may be appropriate and re-present the petition, with appropriate recommendations, to the Village Council within sixty (60) days of referral. Thereafter, the Village Council shall render a final decision within sixty (60) days of such re-presentation.

- (d) Upon approval of the final plat and acceptance of the letter of credit for public improvements, the Village Council shall authorize the Mayor and Village Clerk respectively to sign such plat on behalf of the Village and to attest the same with the corporate seal of the Village on a proper certificate affixed to such plat.
- (e) The Owner shall cause the approved final plat to be filed in the Office of the DuPage County Recorder of Deeds within ninety (90) days of Council approval. Copies of the recorded plat shall be returned to the Community Development Director before any building permits may be issued by the Village of Downers Grove.
- (f) Approval of a final plat by the Village Council shall not constitute acceptance of any public improvement. The Village shall have no ownership or maintenance responsibility for such public improvement until formally accepted by the Village Council pursuant to DGMC Section 20.406.

(Ord. 5443, Amended, 12/16/2014; 4065, Amended, 09/14/1998; 4033, Enacted, 05/18/1998)

Section 13. That Section 20.507 is hereby amended to read as follows:

Sec 20.507 Lot Consolidations

- (a) A plat of subdivision to consolidate lots or portions thereof into one (1) new lot shall be required. In addition, approval of the Community Development Director shall be required before a lot consolidation is recorded in the Office of the DuPage County Recorder of Deeds. Provided, where an exception from the minimum lot dimensions is requested as part of the lot consolidation, or an appeal filed pursuant to this section, a hearing before the ~~Plan~~ Commission Planning and Zoning Commission and approval of the Village Council shall be required before such lot consolidation is recorded. A petition for lot consolidation approval shall be filed by the Owner, or authorized representative, in conformance with regulations established pursuant to DGMC Section 20.200.
- (b) If the Community Development Director determines that the lot resulting from the lot consolidation will be in conformance with the minimum lot dimension requirements set forth herein and in conformance with sound planning principles, the Director may approve such lot consolidation within thirty (30) days from the date of the completed petition. In the event the Community Development Director denies or does not approve the lot consolidation within thirty (30) days, the applicant may request that the petition be forwarded to the ~~Plan~~ Commission Planning and Zoning Commission for a hearing and be processed as provided herein, provided that all applicable fees are paid.
- (c) Upon administrative approval of a plat of consolidation, the Community Development Director and the Village Clerk shall be authorized to sign such plat on behalf of the Village and to attest the same with the corporate seal of the Village on a proper certificate affixed to such plat.
- (d) *Lot Dimensions:*
 - (1) Except as provided herein, lot dimensions shall conform to the requirements of the underlying zoning district.
 - (2) Consolidation of legal nonconforming lots shall be permitted provided such consolidation does not increase the degree of nonconformity or create any new nonconformity.
 - (3) In no case shall the properties being consolidated have a common lot line that is shared for less than one hundred (100) feet or fifty percent (50%) of the lot line, whichever is greater.
 - (4) Lot consolidations shall not result in the creation of new flag lots or through lots.
- (e) *Public improvements:* Public improvements required by DGMC Section 20.401 of this subdivision ordinance may not be required for lot consolidations. Provided, public improvements

may be required where such lot consolidation is requested as part of a special use or planned unit development.

- (f) If any lot resulting from the lot consolidation will not be in conformance with the standards contained in DGMC Section 20.507(d), or if the applicant wishes to appeal the decision, the petition shall be forwarded to the ~~Plan Commission~~Planning and Zoning Commission for a hearing. Within ninety (90) days of receipt of a complete petition notice shall be given and the ~~Plan Commission~~Planning and Zoning Commission shall commence a public hearing to be held as provided in DGMC Section 20.202. Within forty-five (45) days after conclusion of the public hearing, the ~~Plan Commission~~Planning and Zoning Commission shall transmit to the Owner and the Village Council its recommendations regarding the plat of consolidation. The ~~Plan Commission~~Planning and Zoning Commission may recommend approval or disapproval of all, or any portion of the petition, including any modifications thereto or exceptions, and may condition such recommendation on restrictions and requirements as the ~~Plan Commission~~Planning and Zoning Commission determines appropriate or necessary.
- (g) Within ninety (90) days of receipt of the findings and recommendations of the ~~Plan Commission~~Planning and Zoning Commission, the Village Council shall approve, approve as modified, or deny the petition, or any part thereof. The Village Council may approve or disapprove all, or any portion of the petition, including any modifications thereto or exceptions, and may condition any approval on restrictions and requirements as the Village Council determines appropriate or necessary to ensure that the petition, as approved, will conform to the provisions of this subdivision ordinance. A violation of such conditions shall be deemed a violation of this subdivision ordinance. In the alternative, the Village Council may remand the petition, in whole or in part, back to the ~~Plan Commission~~Planning and Zoning Commission if the Village Council determines that it is necessary or appropriate to provide a fair and complete consideration of the petition because there is a material and significant change in conditions since the ~~Plan Commission~~Planning and Zoning Commission hearing, or there is new or additional information which is material to the petition and which was not reasonably available at the time of the ~~Plan Commission~~Planning and Zoning Commission hearing. The Village Council will specify the reasons and scope of such remand and further proceedings before the ~~Plan Commission~~Planning and Zoning Commission will be limited to such items. The ~~Plan Commission~~Planning and Zoning Commission will conduct such further proceedings as may be appropriate and re-present the petition, with appropriate recommendations, to the Village Council within sixty (60) days of referral. Thereafter, the Village Council shall render a final decision within sixty (60) days of such re-presentation.
- (h) Upon approval of the plat of consolidation by the Village Council, the Mayor and Village Clerk shall be authorized to sign such plat on behalf of the Village and to attest the same with the corporate seal of the Village on a proper certificate affixed to such plat.
- (i) A lot consolidation grants the right, but not the obligation, to consolidate parcels. Any approval provided herein shall expire one (1) year after issuance unless, within that time, a conveyance affecting the lot consolidation has occurred.

(Ord. 5443, Amended, 12/16/2014; Ord. 5285, Amended, 11/06/2012; 4033, Enacted, 05/18/1998)

Section 14. That Section 20.601 is hereby amended to read as follows:

Sec 20.601 Lot Reconfiguration

- (a) No subdivision plat shall be required, but approval of the ~~Plan Commission~~Planning and Zoning Commission or the Community Development Director shall be required before a lot reconfiguration is recorded in the Office of the DuPage County Recorder of Deeds. A petition for

lot reconfiguration approval shall be filed by the Owner in conformance with regulations established pursuant to DGMC Section 20.200.

- (b) If the Community Development Director determines that all the lots resulting from the lot reconfiguration will be in conformance with sound planning principles and will either (i) be in conformance with the lot dimension requirements set forth in DGMC Section 20.301; or (ii) will not increase the degree of nonconformity or create any new nonconformity. The Community Development Director may approve such lot reconfiguration within thirty (30) days from the date of the completed petition. In the event the Community Development Director denies or does not approve the lot reconfiguration within thirty (30) days, the request for lot reconfiguration shall be forwarded to the ~~Plan Commission~~Planning and Zoning Commission and processed as provided in DGMC Section 20.601(c).
- (c) If any lot resulting from the lot reconfiguration will not be in conformance with the standards for lots within the zoning district in which the property is located, or if the Director denies or does not approve the lot reconfiguration within thirty (30) days of submittal of a complete application, the Community Development Director shall forward the matter to the ~~Plan Commission~~Planning and Zoning Commission for their consideration. Within ninety (90) days of receipt of a complete petition notice shall be given and the ~~Plan Commission~~Planning and Zoning Commission shall commence a public hearing to be held as provided in DGMC Section 20.202. Within forty-five (45) days after conclusion of the public hearing, the ~~Plan Commission~~Planning and Zoning Commission shall approve or deny the lot reconfiguration as provided herein. The ~~Plan Commission~~Planning and Zoning Commission may approve or disapprove all, or any portion of the petition, including any modifications thereto, and may condition such recommendation on restrictions and requirements as the ~~Plan Commission~~Planning and Zoning Commission determines appropriate or necessary to ensure that the petition, as approved, will conform to the provisions of this subdivision ordinance. If no exceptions are sought and the ~~Plan Commission~~Planning and Zoning Commission determines that such lot reconfiguration does not increase the net non-conformity of the parcels involved, or increase an existing non-conformity on any individual parcel, the decision of the ~~Plan Commission~~Planning and Zoning Commission shall be final unless appealed by the Owner to the Village Council within ninety (90) days of a findings and decision of the ~~Plan Commission~~Planning and Zoning Commission. If exceptions are sought or the ~~Plan Commission~~Planning and Zoning Commission determines that such lot reconfiguration does increase the net non-conformity of the parcels involved, or increases an existing non-conformity on any individual parcel, the decision of the ~~Plan Commission~~Planning and Zoning Commission shall be a recommendation which shall be forwarded to the Village Council for final action.
- (d) Where an appeal has been filed as provided in this section, or an exception is sought, or such lot reconfiguration is determined to increase the net non-conformity of the parcels involved, or increase an existing non-conformity on any individual parcel, the Village Council, shall consider and approve, disapprove or approve as modified the lot reconfiguration, including recommended exceptions within ninety (90) days of the findings and decision of the ~~Plan Commission~~Planning and Zoning Commission. The Village Council may approve or disapprove all, or any portion of the petition, including any modifications thereto, and may condition any approval on restrictions and requirements as the Village Council determines appropriate or necessary to ensure that the petition, as approved, will conform to the provisions of this subdivision ordinance. A violation of such conditions shall be deemed a violation of this subdivision ordinance. In the alternative, the Village Council may remand the petition, in whole or in part, back to the ~~Plan Commission~~Planning and Zoning Commission if the Village Council determines that it is necessary or appropriate to provide a fair and complete consideration of the petition because there is a material and significant change in conditions since the ~~Plan Commission~~Planning and Zoning Commission hearing, or there is new or additional information which is material to the petition and which was not reasonably available at the time of the ~~Plan Commission~~Planning and Zoning Commission

Commission hearing. The Village Council will specify the reasons and scope of such remand and further proceedings before the ~~Plan Commission~~Planning and Zoning Commission will be limited to such items. The ~~Plan Commission~~Planning and Zoning Commission will conduct such further proceedings as may be appropriate and represent the petition, with appropriate recommendations, to the Village Council within sixty (60) days of referral. Thereafter, the Village Council shall render a final decision within sixty (60) days of such representation.

- (e) A lot reconfiguration grants the right, but not the obligation, to change the boundaries of existing parcels of land. Any approval provided herein shall expire one (1) year after issuance unless, within that time, a conveyance effecting the lot reconfiguration has occurred.

(Ord. 5443, Amended, 12/16/2014; 4033, Enacted, 05/18/1998)

Section 15. That Section 20.602 is hereby amended to read as follows:

Sec 20.602 Exceptions

- (a) In conjunction with considering any subdivision, lot reconfiguration or other approval under this subdivision ordinance, the ~~Plan Commission~~Planning and Zoning Commission may consider and recommend, and the Council may grant, exceptions from the requirements of this subdivision ordinance as set forth herein. A petition for an exception shall be filed by the Owner in conjunction with such other proceedings and in conformance with regulations established pursuant to DGMC Section 20.200.
- (b) Exceptions may be granted only in specific cases where such exceptions do not alter the general plan and intent of this subdivision ordinance and where the Council determines that a requested exception does not adversely impact the public health, safety and welfare. Provided:
 - (1) With respect to the requirements of this subdivision ordinance for the construction of sidewalks, the ~~Plan Commission~~Planning and Zoning Commission shall only have the authority to recommend whether sidewalks are to be constructed or whether a fee is to be paid in lieu of construction, based on the recommendation of the Village Engineer in administering Village Council policy, as provided in this Code. The ~~Plan Commission~~Planning and Zoning Commission shall not have the authority to grant exceptions to such requirements or to waive the requirement for sidewalk construction without requiring payment in lieu of construction.
 - (2) No exception may be granted from the minimum provisions of DGMC Section 20.302 regarding flag lots and front lots.
- (c) An exception shall be recommended by the ~~Plan Commission~~Planning and Zoning Commission only if it finds that there are practical difficulties or particular hardships in the way of carrying out the strict letter of the provisions of this subdivision ordinance. In its consideration of the standards of practical difficulties or particular hardships, the Commission may consider, but is not limited to, the following:
 - (1) The extent to which the proposed exception impacts on the value or reasonable use of surrounding properties;
 - (2) Whether the exception is consistent with the trend of development in the area and the surrounding uses;
 - (3) The characteristics of the property which support or mitigate against the granting of the exception;
 - (4) Whether the exception is in conformance with the general plan and spirit of this subdivision ordinance;
 - (5) Whether the exception will alter, or be consistent with, the essential character of the locality.

- (d) Exceptions shall be processed and considered in conjunction with such other petitions for approval submitted by the Owner. The ~~Plan Commission~~Planning and Zoning Commission may recommend approval or disapproval of all, or any portion of the exception request, including any modifications thereto, and may condition such recommendation on restrictions and requirements as the ~~Plan Commission~~Planning and Zoning Commission determines appropriate or necessary to ensure that the petition, as approved, will conform to the provisions of this subdivision ordinance. The Village Council may approve or disapprove all, or any portion of the exception, including any modifications thereto, and may condition any approval on restrictions and requirements as the Village Council determines appropriate or necessary to ensure that the petition, as approved, will conform to the provisions of this subdivision ordinance. A violation of such conditions shall be deemed a violation of this subdivision ordinance. In the alternative, the Village Council may remand the exception petition, in whole or in part, back to the ~~Plan Commission~~Planning and Zoning Commission if the Village Council determines that it is necessary or appropriate to provide a fair and complete consideration of the petition because there is a material and significant change in conditions since the ~~Plan Commission~~Planning and Zoning Commission hearing, or there is new or additional information which is material to the petition and which was not reasonably available at the time of the ~~Plan Commission~~Planning and Zoning Commission hearing. The Village Council will specify the reasons and scope of such remand and further proceedings before the ~~Plan Commission~~Planning and Zoning Commission will be limited to such items. The ~~Plan Commission~~Planning and Zoning Commission will conduct such further proceedings as may be appropriate and re-present the petition, with appropriate recommendations, to the Village Council within sixty (60) days of referral. Thereafter, the Village Council shall render a final decision within sixty (60) days of such re-presentation.

(Ord. 5443, Amended, 12/16/2014; 4033, Enacted, 05/18/1998)

Section 16. That Section 20.603 is hereby amended to read as follows:

Sec 20.603 Appeals From Administrative Decisions

- (a) The ~~Plan Commission~~Planning and Zoning Commission shall hear and decide appeals from Owners who have pending petitions for approval under this subdivision ordinance regarding any order, requirement, decision, or determination made by the Community Development Director or Village Engineer in the enforcement of this subdivision ordinance. This includes, but is not limited to interpretative rulings of this subdivision ordinance and petition submittal requirements.
- (b) Appeals may be initiated by the Owner by filing a notice of appeal in conformance with DGMC Section 20.200. Such appeal shall be filed within forty-five (45) days of the order, requirement, decision, or determination at issue, but not later than ten (10) days before commencement of a public hearing before the ~~Plan Commission~~Planning and Zoning Commission on the pending petition of the Owner. The Community Development Director shall forthwith transmit to the ~~Plan Commission~~Planning and Zoning Commission all the papers constituting the record upon which the action appealed from was taken.
- (c) An appeal stays all proceedings in furtherance of the action appealed from, unless the Community Development Director certifies to the ~~Plan Commission~~Planning and Zoning Commission that by reason of facts stated in the certificate a stay would, in the Community Development Director's opinion, cause imminent peril to life or property. In this event, the proceedings shall not be stayed other than by an order of the ~~Plan Commission~~Planning and Zoning Commission on due cause being shown.
- (d) Appeals shall be processed and considered in conjunction with such other petitions for approval submitted by the Owner. The ~~Plan Commission~~Planning and Zoning Commission may reverse, or

affirm wholly or in part, or may modify any order, requirement, decision, or determination appealed from, and may make such order or finding as it deems warranted and to be in compliance with this subdivision ordinance. To this end, the ~~Plan Commission~~Planning and Zoning Commission shall have the powers of the Community Development Director or Village Engineer from whom the appeal is taken.

(Ord. 5443, Amended, 12/16/2014; 4065, Amended, 09/14/1998; 4033, Enacted, 05/18/1998)

Section 17. That Section 28.1.110 is hereby amended to read as follows:

Sec 28.1.110 Zoning Map

- (a) *Establishment.* The location and boundaries of the zoning districts established by this zoning ordinance are shown on a geographic coverage layer entitled “Zoning” that is maintained as part of a geographic information system (GIS) maintained by the Village. This “Zoning” geographic coverage layer constitutes the Village’s official zoning map. The official zoning map, together with all notations, references, data and other information shown on the map, is adopted and incorporated into this zoning ordinance. It is as much a part of this zoning ordinance as it would be if it were actually depicted within its pages.
- (b) *Maintenance, Updates and Publishing.* The Community Development Director is responsible for directing revisions to the official zoning map to reflect its amendment as soon as possible after the effective date of zoning map amendments (rezonings). Unauthorized persons may not alter or modify the official zoning map. The zoning map must be published annually as required by law. (65 ILCS 5/11-13-19).
- (c) *Map Interpretations.* Where any uncertainty exists about a zoning boundary, the ~~C~~eommunity ~~d~~evelopment ~~D~~irector is authorized to refer the matter to the ~~Zoning Board of Appeals~~Planning and Zoning Commission for a determination or make an administrative interpretation using the following rules of interpretation:
 - (1) A boundary shown on the zoning map as approximately following lot lines or section lines will be construed as following those lot lines or section lines.
 - (2) A boundary shown on the zoning map as approximately following a street, alley or railroad line will be construed as following the centerline of the street, alley or railroad right-of-way.
 - (3) A boundary shown on the zoning map as approximately following the boundary of an adjacent municipality will be construed as following that boundary.
 - (4) A boundary shown on the zoning map as approximately following the shoreline or centerline of a river, stream, lake or other water body will be construed as following the actual shoreline or centerline of that water body. If, subsequent to the establishment of the boundary, the shoreline or centerline of the watercourse should move as a result of natural processes (flooding, erosion, sedimentation, etc.), the boundary will be construed as moving with the shoreline or centerline of the water body.
 - (5) A boundary shown on the zoning map as approximately parallel to, or as an apparent extension of, a feature described above will be construed as being actually parallel to, or an extension of, the feature.
- (d) *Zoning of Public Ways and Railroad Rights-of-way.* All streets, alleys, public ways and railroad rights-of-way, if not otherwise specifically designated, will be deemed to be in the same zoning district as the property in the most restrictive classification immediately abutting the street, alley, public way or railroad rights-of-way. If the centerline of a street, alley, public way or railroad right-of-way serves as a zoning district boundary, the zoning of such areas, unless otherwise

specifically designated, will be deemed to be the same as that of the abutting property up to the centerline.

- (e) *Zoning of Annexed Land.* When land is annexed or otherwise brought into the zoning jurisdiction of the Village, it may be automatically classified in the R-1 district or, simultaneously with the petition for annexation, be assigned a zoning classification based on the comprehensive plan, existing land uses, approved development agreements or other relevant land use planning criteria.

Section 18. That Section 28.5.020 is hereby amended to read as follows:

Sec 28.5.020 Use Categorization System

This Section establishes and describes the use categorization system used to classify principal uses in this zoning ordinance.

- (a) *Use Categories.* This zoning ordinance classifies principal land uses into eight (8) major groupings. These major groupings are referred to as “use categories.” The use categories are as follows:
- (1) Residential. See DGMC Section 28.5.030.
 - (2) Public, Civic and Institutional. See DMGC Section 28.5.040.
 - (3) Commercial. See DGMC Section 28.5.050.
 - (4) Wholesale, Distribution and Storage. See DMMC Section 28.5.060.
 - (5) Industrial. See DGMC Section 28.5.070.
 - (6) Recycling. See DGMC Section 28.5.080.
 - (7) Agricultural. See DGMC Section 28.5.090.
 - (8) Other. See DGMC Section 28.5.100.
- (b) *Use Subcategories.* Each use category is further divided into more specific “subcategories.” Use subcategories classify principal land uses and activities based on common functional, product or physical characteristics, such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered and site conditions.
- (c) *Specific Use Types.* Some use subcategories are further broken down to identify specific types of uses that are regulated differently than the subcategory as a whole.
- (d) *Determination of Use Categories and Subcategories*
- (1) The Ceommunity Development Director is authorized to classify uses on the basis of the use category, subcategory and specific use type descriptions of this Chapter.
 - (2) When a use cannot be reasonably classified into a use category, subcategory or specific use type, or appears to fit into multiple categories, subcategories or specific use types, the Community Development Director is authorized to determine the most similar and thus most appropriate use category, subcategory or specific use type based on the actual or projected characteristics of the principal use or activity in relationship to the use category, subcategory and specific use type descriptions provided in this Section. In making such determinations, the Ceommunity Development Director must consider:
 1. the types of activities that will occur in conjunction with the use;
 2. the types of equipment and processes to be used;
 3. the existence, number and frequency of residents, customers or employees;
 4. parking demands associated with the use; and
 5. other factors deemed relevant to a use determination.
 - (3) If a use can reasonably be classified in multiple categories, subcategories or specific use types, the Community Development Director must categorize the use in the category, subcategory or specific use type that provides the most exact, narrowest and appropriate “fit.”
 - (4) If the Community Development Director is unable to determine the appropriate use category for a proposed use, the Community Development Director is authorized to

classify the use as a prohibited use and deny permits and certificates for establishment of the proposed use. This decision may be appealed to the Planning and Zoning Commission~~zoning board of appeals~~ in accordance with appeal procedures of DGMC Section 28.12.100.

Section 19. That Section 28.6.120 is hereby amended to read as follows:

Sec 28.6.120 Religious Assembly

- (a) *Location Criteria.* Religious assembly uses may be approved as a special use in an R district only if located on lots:
- (1) that have frontage on an arterial or collector street; or
 - (2) that about a B, M, or O-R-M zoning district on at least one side.
- (b) *Lot and Building Regulations*
- (1) The maximum allowed building coverage on lots occupied by religious assembly uses is forty percent (40%). All other lot and building regulations of the subject zoning district apply.
 - (2) Modifications of applicable lot and building regulations may be approved as part of the special use approval process if the Village Council determines that strict compliance with applicable lot and building regulations substantially burdens the exercise of religion, except that no modification is allowed if the Village Council determines that the burden:
 - (1) is in furtherance of a compelling governmental interest and
 - (2) is the least restrictive means of furthering that compelling governmental interest.
 - (3) In the event that a substantial burden (on the exercise of religion) is claimed, the applicant for religious assembly special use approval must submit materials and evidence describing:
 - a. the alleged burden in detail, including why such burden is of such a substantial nature so as to justify modification of the zoning regulations;
 - b. efforts employed by the applicant to avoid or reduce the burden;
 - c. the minimal modification requested to avoid or reduce the burden;
 - d. any adverse impacts of the requested modification on the area involved and efforts to reduce such impact; and
 - e. other information or factors the applicant may deem relevant or as requested by the Community Development Director, the Plan Commission~~Planning and Zoning Commission~~ or the Village Council related to the alleged burden or requested modification.
 - (4) If the Village Council determines that there is a substantial burden, and that the regulation at issue is not in furtherance of a compelling governmental interest or is not the least restrictive means of furthering that compelling governmental interest, ~~the Plan Commission may recommend and~~ the Village Council may authorize modification of the lot and building regulations of the subject zoning district, subject to the following:
 - a. The modification must be the smallest adjustment needed so that the regulation no longer substantially burdens the exercise of religion.
 - b. The modification may be permitted only to the extent that and for the period of time that, the lot is used for religious assembly purposes. A covenant must be recorded with the DuPage County recorder of deeds, in a form acceptable to Village Attorney, stating that the property owner will bring the property into compliance with the affected regulation when the property ceases to be used for religious assembly uses.
 - c. Conditions and restrictions may be imposed as appropriate to mitigate any adverse impact of the modification.

Section 20. That Section 28.11.010 is hereby amended to read as follows:

Sec 28.11.010 General

- (a) *Scope.* The regulations of this Article govern nonconformities, which are lots, uses, and structures that were lawfully established but because of the adoption of new or amended regulations no longer comply with one (1) or more requirements of this zoning ordinance.
- (b) *Intent*
- (1) Occasionally, lots, uses, and structures that were lawfully established (i.e., in compliance with all regulations in effect at the time of their establishment) have been made nonconforming because of changes in the zoning regulations that apply to the subject property (e.g., through zoning map amendments or amendments to the text of this zoning ordinance). The regulations of this Article are intended to clarify the effect of such nonconforming status and avoid confusion with “illegal” buildings and uses (those established in violation of applicable zoning regulations). The regulations of this Article are also intended to:
 - a. recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established;
 - b. promote maintenance, reuse and rehabilitation of existing buildings; and
 - c. place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties.
 - (2) The regulations recognize that buildings and structures have a long useful life and allowing their continued occupancy and modernization can be more desirable than requiring them to remain vacant if they cannot be converted to conforming uses. Consequently, this ordinance authorizes the Zoning Board of Appeals Planning and Zoning Commission to allow conversion of nonconforming uses and, under limited circumstances, expansions of nonconforming uses and structures.
- (c) *Authority to Continue.* Any nonconformity that existed on the effective date specified in DGMC Section 28.11.030 of this Chapter or any situation that becomes nonconforming upon adoption of any amendment to this zoning ordinance may be continued in accordance with the regulations of this Article unless otherwise expressly stated.
- (d) *Determination of Nonconformity Status*
- (1) The burden of proving that a nonconformity exists (as opposed to a violation of this zoning ordinance) rests entirely with the subject owner.
 - (2) The Community Development Director is authorized to determine whether adequate proof of nonconforming status has been provided by the subject owner.
 - (3) Building permits, lawfully recorded plats, aerial photography owned by the Village and other official government records that indicate lawful establishment of the use, lot or structure constitute conclusive evidence of nonconforming status. If such forms of conclusive evidence are not available, the Community Development Director is authorized to consider whether other forms of evidence provided by the applicant are reliable and adequate to document nonconforming status. Common examples of evidence that may be determined to be reliable and adequate include:
 - a. professional registrations or licenses;
 - b. utility billing records;
 - c. leasing records;
 - d. advertisements in dated publications;
 - e. listings in telephone or business directories; and
 - f. notarized affidavits affirming the date of lawful establishment of the use, lot or structure.

- (4) The Community Development Director's determination of nonconforming status may be appealed in accordance with DGMC Section 28.12.100 of this Chapter.
- (e) *Repairs and Maintenance*
 - (1) Nonconformities must be maintained to be safe and in good repair.
 - (2) Repairs and normal maintenance necessary to keep a nonconformity in sound condition are permitted unless the work increases the extent of the nonconformity or is otherwise expressly prohibited by this zoning ordinance.
 - (3) Nothing in this article is intended to prevent nonconformities from being structurally strengthened or restored to a safe condition in accordance with an order from a duly authorized order of a public official.
- (f) *Change of Tenancy or Ownership.* Nonconforming status runs with the land and is not affected by changes of tenancy, ownership, or management.

Section 21. That Section 28.11.030 is hereby amended to read as follows:

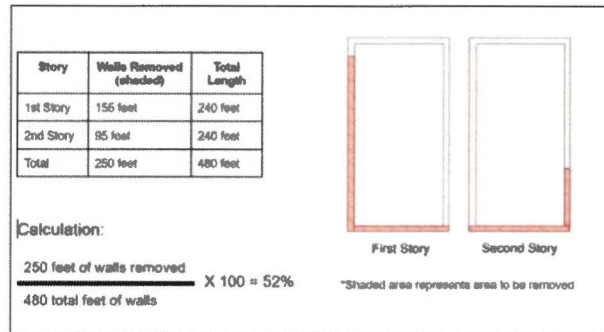
Sec 28.11.030 Nonconforming Uses

- (a) *Description.* A nonconforming use is a land use that was lawfully established in accordance with all zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the zoning district in which the use is now located. Lawfully established uses that do not comply with any applicable separation (or spacing) distance requirements (e.g., those that require one land use to be located a certain minimum distance from another land use) are also deemed nonconforming uses.
- (b) *Change of Use.* A nonconforming use may be changed to any other use that is allowed in the subject zoning district. Once changed to a conforming use, a nonconforming use may not be re-established.
- (c) *Expansion of Use*
 - (1) The nonconforming use of land that does not involve a building or structure or that is accessory to the nonconforming use of a building may not be expanded or extended beyond the area the use occupied at the time the use became nonconforming.
 - (2) Nonconforming uses within a building may not be expanded except as expressly stated below:
 - a. A nonconforming use within a building may be expanded into another part of the same building that was occupied by the subject nonconforming use at the time the use became nonconforming;
 - b. Other expansions of a nonconforming use may be approved in accordance with the zoning exception procedures of DGMC Section 28.12.080. In order to approve such an expansion of a nonconforming use, the [Planning and Zoning Commission](#)~~Zoning Board of Appeals~~ must find that all of the following criteria have been met:
 - 1. in residential districts, the expansion will not result in an increase in the number of dwelling units;
 - 2. the expansion will comply with all applicable lot and building regulations of the subject zoning district;
 - 3. the appearance of the expansion will be compatible with the adjacent properties and neighborhood;
 - 4. off-street parking is provided for the expansion in accordance with the requirements of DGMC Section 28.7.010(b)(2) (for new uses);
 - 5. rezoning the property would result in an inappropriate spot zoning;

6. the expansion will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare; and
 7. the use is consistent with the comprehensive plan.
- (d) *Remodeling and Improvements.* A building in which a nonconforming use is located may be remodeled or otherwise improved as long as the remodeling or improvements do not violate the other regulations of this Article.
- (e) *Moving.* A nonconforming use may be moved in whole or in part to another location on the same lot only if the movement or relocation does not increase the extent of the nonconformity. A nonconforming use may be moved to another lot only if the use is allowed under the zoning regulations that apply to that (relocation) lot.
- (f) *Loss of Nonconforming Status*
- (1) Abandonment
 - a. Except as expressly authorized in DGMC Section 28.11.030(f)(1)d, once a nonconforming use is abandoned, its nonconforming status is lost and any new, replacement use must comply with the regulations of the zoning district in which it is located.
 - b. A nonconforming use is presumed abandoned when the use is discontinued or ceases for a continuous period of six (6) months or more.
 - c. Any period of discontinuance caused by acts of God or accidental fire are not counted in calculating the length of discontinuance.
 - d. Re-establishment of an abandoned nonconforming use may be approved in accordance with the zoning exception procedures of DGMC Section 28.12.080 if the Planning and Zoning Commission~~Zoning Board of Appeals~~ finds that all of the following criteria have been met:
 1. the subject property cannot reasonably or economically be used for a conforming use;
 2. the proposed use is equally appropriate or more appropriate in the proposed location than the existing nonconforming use;
 3. the traffic, hours of operation, noise and other operating characteristics of the proposed use will result in no greater adverse impact on the neighborhood than the previous nonconforming use;
 4. the proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare; and
 5. the use is consistent with the comprehensive plan.
 - (2) Damage or Destruction
 - a. When a building containing a nonconforming use is destroyed or damaged by acts of God or accidental fire, the building may be restored or repaired, provided that no new nonconformities are created and that the existing extent of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within twelve (12) months of the date of occurrence of such damage.
 - b. When a building containing a nonconforming use is demolished, damaged or destroyed by causes within the control of the owner and the extent of demolition, damage or destruction is more than fifty percent (50%) structure's exterior walls measured in linear feet, the use may not be reestablished except in compliance with all regulations applicable to the zoning district in which it is located. Exterior walls include supporting structural elements, such as load bearing masonry walls, and in wood construction, studs, sole plate or top plate. Roofs,

interior finishes, non-structural exterior finishes, and all foundation walls are excluded. See Figure 11.1 below:

Figure 11.1: Exterior Wall Calculation



- (g) *Accessory Uses.* No use that is accessory to a principal nonconforming use may continue after the principal nonconforming use has been abandoned.
- (h) *Nonconforming Junk Yards and Outdoor Storage Yards.* Junk yards, salvage yards and land used for outdoor storage purposes that are annexed into the Village must be discontinued within five (5) years of the date of annexation.
- (i) *Electric Transmission Lines and Electrical Substations.* The use or holding for use by a public utility under the jurisdiction of the Illinois Commerce Commission of any premises before July 1, 1967, for electric transmission lines supported by towers or for an electrical substation are deemed a lawful special use for such purposes, without any restrictions against enlargement, extension, reconstruction or structural alteration of any such facilities that may be located on the subject property on or after July 1, 1967.

HISTORY

Amended by Ord. 6004 ZO Omnibus 2023 on 10/24/2023

Section 22. That Section 28.11.040 is hereby amended to read as follows:

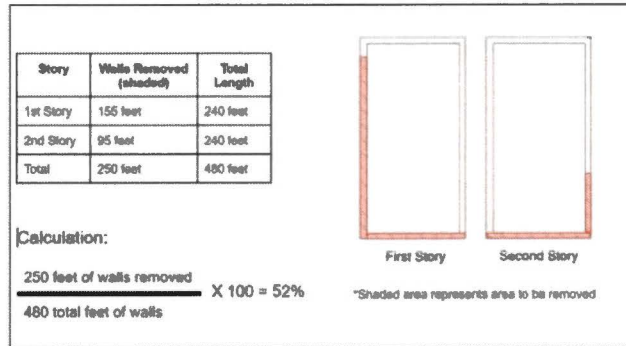
Sec 28.11.040 Nonconforming Structures

- (a) *Description.* A nonconforming structure is any structure, other than a sign, that was lawfully established but no longer complies with applicable lot and building regulations or other dimensional or locational requirements of this zoning ordinance. Regulations governing nonconforming signs can be found in DGMC Section 28.9.090.
- (b) *Use.* A nonconforming structure may be used for any use allowed in the zoning district in which the structure is located.
- (c) *Alterations and Expansions*
 - (1) Nonconforming principal structures may be altered or expanded if the proposed alteration or expansion complies with all applicable lot, building, dimensional and locational requirements and does not increase the extent of the structure’s nonconformity. A principal building with a nonconforming street setback, for example, may be expanded to the rear as long as the rear expansion complies with applicable rear setback standards.
 - (2) A principal structure with a nonconforming setback may not be expanded horizontally or vertically within the required setback area, except that the [Planning and Zoning](#)

Commission Zoning Board of Appeals may approve a either a horizontal or a vertical extension of the nonconforming exterior walls of a detached house in accordance with the zoning exception procedures of DGMC Section 28.12.080. In order to approve such horizontal or vertical extension, the Planning and Zoning Commission Commission Zoning Board of Appeals must find that all of the following criteria have been met:

- a. the extended wall will comply with all other applicable lot and building regulations (other than the nonconforming setback);
 - b. the extension will not obstruct farther into the required setback than the existing exterior building wall and will not extend the horizontal length of the nonconforming building wall more than fifteen percent (15%) of its existing length;
 - c. the horizontal or vertical wall extension does not include windows that allow views onto an abutting lot occupied by a detached house;
 - d. the appearance of the expansion will be compatible with the adjacent property and neighborhood; and
 - e. the expansion will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.
- (d) *Moving*. A nonconforming structure may be moved in whole or in part to another location only if the movement or relocation eliminates or reduces the extent of nonconformity.
- (e) *Loss of Nonconforming Status*
- (1) *Damage or Destruction*
 - a. When a nonconforming structure is destroyed or damaged by acts of God or accidental fire, the structure may be restored or repaired, provided that no new nonconformities are created and that the existing extent of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within twelve (12) months of the date of occurrence of such damage.
 - b. When a nonconforming principal structure is demolished, damaged or destroyed by causes within the control of the owner and the extent of demolition, damage or destruction is more than fifty percent (50%) of the structure's exterior walls measured in linear feet, the structure may not be reestablished except in compliance with all regulations applicable to the zoning district in which it is located. Exterior walls include supporting structural elements, such as load bearing masonry walls, and in wood construction, studs, sole plat or top plate. Roofs, interior finishes, non-structural exterior finishes, and all foundation walls are excluded. See Figure 11.1 below:

Figure 11.1: Exterior Wall Calculation



- (2) **Damage or Destruction after Right-of-Way Acquisition.** If a structure is rendered nonconforming or made more nonconforming by a public agency’s acquisition of right-of-way and the structure is subsequently damaged or destroyed by any means, the structure may be reestablished, provided that no new nonconformities are created and that the existing extent of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within twelve (12) months of the date of occurrence of such damage.
- (f) **Nonconforming Fences.** Nonconforming fences may be maintained or repaired without regard to the requirements of this zoning ordinance, provided that the extent of nonconformity of the fence is not increased. The damage or destruction provisions of DGMC Section 28.11.040(e)(1) apply to nonconforming fences.
- (g) **Nonconforming Accessory Structures.** Any nonconforming residential accessory structure such as a garage, shed, deck or porch may be razed and replaced in its entirety, provided that it is replaced in the same location, and for the same purpose, with no footprint expansion and no more than an increase of fifteen percent (15%) or the original height. This provision does not apply to nonconforming accessory structures located within in the Special Management Areas as defined in Chapter 26 or those structures that are located over common property lines or the public right-of-way.

HISTORY

Amended by Ord. 5828 ZO revisions 2020 on 10/20/2020

Amended by Ord. 5914 ZO - Omnibus 2022 on 2/15/2022

Amended by Ord. 6004 ZO Omnibus 2023 on 10/24/2023

Section 23. That Section 28.12.010 is hereby amended to read as follows:

Sec 28.12.010 Common Provisions

- (a) **Applicability.** The “common provisions” of this Section apply to all of the procedures in this Article unless otherwise expressly stated.
- (b) **Review and Decision-making Authority.** Table 12-1 provides a summary of the review and approval procedures of this Article. In the event of conflict between Table 12-1 and the detailed procedures contained elsewhere in this Article, the detailed procedures govern.

Table 12-1: Review and Decision-Making Summary Table

Procedure	Community Development Director	Planning & Zoning Commission	Zoning Board of Appeals	Village Council
Zoning Ordinance Text Amendments	R	<R>	-	DM
Zoning Map Amendments	R	<R>	-	DM
Planned Unit Developments				
PUD Development Plan	R	<R>	-	DM
PUD Site Plan	DM	<R>[1]	-	A
Special Uses	R	<R>	-	DM
Zoning Compliance Determination	DM	<A>	<A>	-
Certificates of Occupancy	DM	<A>	<A>	-
Administrative Adjustments	DM	<A>	<A>	-
Zoning Exceptions	R	<DMR>	<DM>	-
Variations	R	<DMR>[2]	<DM>	DM[2]
Appeals of Administrative Decisions	-	<DM>	<DM>	-

R = Review body (responsible for review and recommendation)

DM = Decision-making body (responsible for final decision to approve or deny)

A = Appellate decision-making body responsible for final decision only upon appeal of administrative decision

<> = Public hearing required

[1] Review authority only in case of appeals of the Community Development Director's decision

[2] Where variations are requested in conjunction with a Planned Unit Development or Special Use Petition, it may be heard by the ~~Plan Commission~~Planning and Zoning Commission and the ~~Plan Commission~~Planning and Zoning Commission shall make a recommendation to the Village Council for final action.

(c) *Applications and Fees*

- (1) Form of Application. Applications required under this zoning ordinance must be submitted in a form and in such numbers as required by the Community Development Director. Applications must include materials and information as may be required by the Community Development Director to establish that the proposed activity complies with all applicable requirements of this zoning ordinance.
- (2) Application Filing Fees. All applications must be accompanied by the fee amount that has been established in the User-Fee, License & Fine Schedule.
- (3) Application Completeness, Accuracy and Sufficiency
 - a. An application will be considered complete and ready for processing only if it is submitted in the required number and form, includes all required information and is accompanied by the required filing fee.
 - b. The Community Development Director must make a determination of application completeness within ten (10) business days of application filing.
 - c. If an application is determined to be incomplete, the Community Development Director must provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application will occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within sixty (60) days, the application will be considered withdrawn.
 - d. No further processing of incomplete applications will occur and incomplete applications will be pulled from the processing cycle. When the deficiencies are corrected, the application will be placed in the next processing cycle.
 - e. Applications deemed complete will be considered to be in the processing cycle and will be reviewed by staff and other review and decision-making bodies in accordance with applicable review and approval procedures of this zoning ordinance.
 - f. The Community Development Director may require that applications or plans be revised before being placed on an agenda for possible action if the Community Development Director determines that:
 1. the application or plan contains one or more significant inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with zoning ordinance requirements or other regulations;
 2. the application contains multiple minor inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with zoning ordinance requirements or other regulations; or
 3. the decision-making body does not have legal authority to approve the application or plan.

- (d) *Amended Applications*. Applications may be amended at any time before final action upon such terms and conditions as the Community Development Director (if amended before any required hearing), the ~~Zoning Board of Appeals or Plan Commission~~Planning and Zoning Commission (if amended before final action by such body), or the Village Council, directs. Examples of such terms and conditions include requiring republication of the notice, rehearing of the application and/or extension of any time-frames required for Village action.

(e) *Application Processing Cycles.* The Community Development Director, after consulting with review and decision-making bodies, is authorized to promulgate reasonable cycles and timelines for processing applications, including deadlines for receipt of complete applications.

(f) *Public Hearing Notices and Neighbor Communications*

(1) **Required Public Hearing Notice—Publication in Newspaper.** Published notice is required for public hearings required under this zoning ordinance. This required notice must be published at least once in a newspaper of general circulation in Downers Grove at least fifteen (15) days before and no more than thirty (30) days before the public hearing.

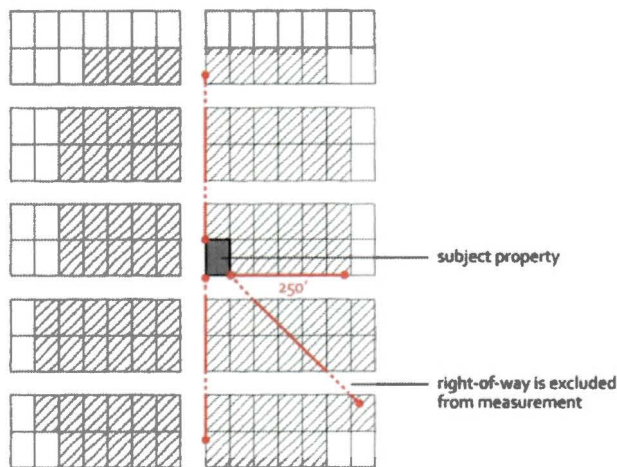
Required notices must include at least the following information:

- a. an address or legal description of the property that is the subject of the hearing;
- b. a summary of the nature of the application; and
- c. the time and place of the hearing.

(2) **Courtesy Public Hearing Notices**

- a. In addition to the required published notice, the Village will provide or require that the applicant provide one (1) or more of the following forms of additional notice of public hearings required under this zoning ordinance:
 - 1. posting of a public hearing notice sign on the subject property;
 - 2. mailing notices to the subject property owner;
 - 3. mailing notices to property owners within two hundred fifty feet (250') of the subject property, as measured from the property line to property line, but excluding public rights-of-way less than one hundred fifty feet (150') in width (in other words, most rights-of-way are not counted in calculating the required notification radius); See Figure 12-1.
- b. In addition to the required published notice, the Village may provide or require that the applicant provide one (1) or more of the following forms of additional notice of public hearings required under this zoning ordinance:
 - 1. mailing notices to Village-registered property owners' associations and organizations whose boundaries include the subject property;
 - 2. posting notices in Village Hall or in other government buildings; or
 - 3. publishing notice on the Village website.
- c. Failure to provide any form of courtesy notice that is not required by State law or any defect in such courtesy notice does not invalidate, impair, or otherwise affect any application, public hearing or decision rendered in respect to the matter under consideration.

Figure 12-1: Measurement of Mailed Notification Radius



(3) Neighbor Communications

- a. Purpose. The purpose of neighbor communications is to help educate applicants for development approvals and neighbors about one another's interests, to attempt to resolve issues in a manner that respects those interests and to identify unresolved issues before initiation of formal public hearings.
- b. Applicability. Neighbor communications are encouraged in all cases. They are required for zoning map amendment applications that meet the criteria specified in DGMC Section 28.12.030(b). The Community Development Director is also authorized to require them prior to public hearings on other matters addressed in this Article.
- c. Summary Report. The applicant must submit a neighbor communication summary to the Community Development Director at least one (1) week before the first required public hearing. The summary report must describe:
 1. efforts to notify neighbors about the proposal (how and when notification occurred, and who was notified);
 2. how information about the proposal was shared with neighbors (mailings, workshops, meetings, open houses, flyers, door-to-door handouts, etc.);
 3. who was involved in the discussions;
 4. suggestions and concerns raised by neighbors; and
 5. what specific changes to the proposal were considered and/or made as a result of the communications.

(g) *Public Hearing Procedures*

- (1) General Procedure. Public hearings required by this zoning ordinance must be conducted by the designated hearing body. At the hearing, interested persons must be permitted to submit information and comments, verbally or in writing. The designated hearing body is authorized to establish reasonable rules and regulations governing the presentation of information and comments such as, the limitation of redundant or irrelevant materials and testimony, the order and length of statements or testimony and time limitations.
- (2) Continued Public Hearings
 - a. Once commenced, a public hearing may be continued by the hearing body. No re-notification is required if the continuance is set for specified date and time and that date and time is announced at the time of the continuance.
 - b. If a public hearing is continued or postponed for an indefinite period of time from the date of the originally scheduled public hearing, a new public hearing notice must be given before the rescheduled public hearing.
 - c. If the applicant requests and is granted a postponement, the applicant must pay any costs of re-notification.

(h) *Action by Review Bodies and Decision-Making Bodies*

- (1) Review and decision-making bodies may take any action that is consistent with:
 - a. the regulations of this zoning ordinance;
 - b. any rules or by-laws that apply to the review or decision-making body; and
 - c. the notice that was given.
- (2) Review and decision-making bodies are authorized to continue a public hearing or defer action in order to receive additional information or further deliberate.

(i) *Conditions of Approval.* When decision-making bodies approve applications with conditions, the conditions must relate to a situation created or aggravated by the proposed use or development and must be roughly proportional to the impacts of the use or development.

(j) *Decision-Making Criteria; Burden of Proof or Persuasion.* Applications must address relevant review and decision-making criteria. In all cases, the burden is on the applicant to show that an application complies with all applicable review or approval criteria.

- (k) *Required Time-frames for Action.* Any time limit specified in this zoning ordinance for any decision or action on behalf of a review or decision-making body may be extended if the applicant agrees to an extension. If a review or decision-making body does not render a decision or take action within any time period required under this zoning ordinance and the applicant has not agreed to an extension of that time limit, the application is deemed denied.
- (l) *Preapplication Meeting.* Before submitting an application for review and approval as noted in Table 12-1, the applicant must schedule a meeting with the Community Development Director to discuss the proposed project and the required process. The Community Development Director is responsible for coordinating the involvement of other related Village departments in the preapplication meeting.

(Ord. No. 5804, 12/17/19)

Section 24. That Section 28.12.020 is hereby amended to read as follows:

Sec 28.12.020 Zoning Ordinance Text Amendments

- (a) *Authority to File.* Amendments to the text of this zoning ordinance may be initiated only by the Village Council, ~~Plan Commission~~Planning and Zoning Commission, Village Manager, Community Development Director or by the property owner(s) or the property owner's authorized agent.
- (b) *Review and Report—Community Development Director.* Complete applications for zoning ordinance text amendments must be filed with the Community Development Director. The Community Development Director must prepare a report and recommendation on the proposed zoning ordinance text amendment. The report must be transmitted to the ~~Plan Commission~~Planning and Zoning Commission before their public hearing on the proposed amendment.
- (c) *Notice of Hearing.* Notice of the ~~Plan Commission~~Planning and Zoning Commission's required public hearing on a zoning ordinance text amendment must be published in the newspaper in accordance with DGMC Section 28.12.010(f)(1) Additional notice may also be provided in accordance with DGMC Section 28.12.010(f)(2)b.
- (d) *Hearing and Recommendation—~~Plan Commission~~Planning and Zoning Commission.* The ~~Plan Commission~~Planning and Zoning Commission must hold a public hearing on the proposed text amendment. Within forty-five (45) days of the close of the public hearing, the ~~Plan Commission~~Planning and Zoning Commission must act by simple majority vote to recommend that the proposed text amendment be approved, approved with modifications, or denied and transmit its findings and recommendations to the Village Council.
- (e) *Final Action—Village Council*
 - (1) Within ninety (90) days of receipt of the ~~Plan Commission~~Planning and Zoning Commission's recommendation, the Village Council must act to approve the proposed zoning ordinance text amendment, approve the proposed text amendment with modifications or deny the proposed text amendment. The Village Council may also remand the proposed text amendment back to the ~~Plan Commission~~Planning and Zoning Commission for further consideration.
 - (2) If the zoning ordinance text amendment is remanded, the Village Council must specify the reasons and scope of the remand, and further proceedings before the ~~Plan Commission~~Planning and Zoning Commission must be limited to those identified items. The ~~Plan Commission~~Planning and Zoning Commission must conduct such further proceedings as may be appropriate and re-present the text amendment, with recommendations, to the Village Council within sixty (60) days of the date that the matter

is remanded to the ~~Plan Commission~~ Planning and Zoning Commission. Within sixty (60) days of receipt of the ~~Plan Commission~~ Planning and Zoning Commission's recommendation, the Village Council must take final action on the proposed zoning ordinance text amendment.

- (3) Zoning ordinance text amendments may be approved by a simple majority vote of the Village Council.
- (f) *Review and Approval Criteria*. The decision to amend the zoning ordinance text is a matter of legislative discretion that is not controlled by any one standard. In making recommendations and decisions about zoning ordinance text amendments, review and decision-making bodies must consider at least the following factors:
- (1) whether the proposed text amendment is in conformity with the policy and intent of the comprehensive plan; and
 - (2) whether the proposed zoning ordinance text amendment corrects an error or inconsistency in the zoning ordinance, meets the challenge of a changing condition or is necessary to implement established policy.

(Ord. No. 5471, § 3, 7/21/15)

Section 25. That Section 28.12.030 is hereby amended to read as follows:

Sec 28.12.030 Zoning Map Amendments (Rezoning)

- (a) *Authority to File*. Amendments to the zoning map may be initiated only by the Village Council, the Community Development Director or by the owner of the property that is the subject of the proposed zoning map amendment or by the subject property owner's authorized agent.
- (b) *Neighbor Communications*. Neighbor communications (see DGMC Section 28.12.010(f)(3)) are required for all owner-initiated zoning map amendment applications, except that neighbor communications are not required in the following cases:
 - (1) if the zoning map amendment application proposes R-1, R-2, R-3, R-4 R-5 or, R-5A zoning; or
 - (2) if there is no residential zoning within five hundred feet (500') of the property proposed to be rezoned.
- (c) *Application Filing*. Complete applications for zoning map amendments must be filed with the Community Development Director.
- (d) *Review and Report—Community Development Director*. Upon receipt of a complete zoning map amendment application, the Community Development Director must prepare a report and recommendation on the proposed zoning map amendment. The report must be transmitted to the ~~Plan Commission~~ Planning and Zoning Commission before their public hearing on the proposed amendment.
- (e) *Notice of Hearing*. Notice of the ~~Plan Commission~~ Planning and Zoning Commission's required public hearing on a zoning map amendment must be published in the newspaper in accordance with DGMC Section 28.12.010(f)(1) Applicant or Village shall also provide notice in accordance with DGMC Section 28.12.010(f)(2)a 1, 2, 3. Additional notice may also be provided in accordance with DGMC Section 28.12.010(f)(2)b 1, 2, 3.
- (f) *Hearing and Recommendation—~~Plan Commission~~ Planning and Zoning Commission*. The ~~Plan Commission~~ Planning and Zoning Commission must hold a public hearing on the proposed zoning map amendment within ninety (90) days of receipt of a complete application. Within forty-five (45) days of the close of the public hearing, the ~~Plan Commission~~ Planning and Zoning Commission must act by simple majority vote to recommend that the proposed amendment be

approved, approved with modifications, or denied and transmit its findings and recommendations to the Village Council.

(g) *Final Action—Village Council*

- (1) Within ninety (90) days of receipt of the ~~Plan-Commission~~Planning and Zoning Commission's recommendation, the Village Council may act to approve the proposed zoning map amendment, approve the proposed amendment with modifications or deny the proposed amendment. The Village Council may also may remand the proposed zoning map amendment back to the ~~Plan-Commission~~Planning and Zoning Commission for further consideration.
- (2) If the zoning map amendment application is remanded, the Village Council must specify the reasons and scope of the remand, and further proceedings before the ~~Plan-Commission~~Planning and Zoning Commission must be limited to those identified items. The ~~Plan-Commission~~Planning and Zoning Commission must conduct further proceedings as may be appropriate and return a recommendation on the zoning map amendment to the Village Council within sixty (60) days of the date that the matter is remanded to the ~~Plan-Commission~~Planning and Zoning Commission. Within sixty (60) days of receipt of the ~~Plan-Commission~~Planning and Zoning Commission's recommendation, the Village Council must take final action on the zoning map amendment.
- (3) Zoning map amendments may be approved by a simple majority vote of the Village Council, except as stated in DGMC Section 28.12.030(h).

(h) *Protest Petitions*

- (1) If a valid protest petition is filed against any proposed zoning map amendment, passage of the ~~textmap~~ amendment requires a favorable vote of two-thirds (2/3) of the entire Village Council.
- (2) A protest petition will be deemed valid if it is signed and acknowledged by the owners of twenty percent (20%) of the frontage proposed to be altered, or by the owners of twenty percent (20%) of the frontage immediately abutting or across an alley therefrom, or by the owners of the twenty percent (20%) of the frontage directly opposite the frontage proposed to be altered.
- (3) A written protest petition opposing a zoning map amendment must be submitted to the Village Clerk at least five (5) business days before the Village Council's vote.
- (4) When a written protest petition has been submitted, the protest petition must be served by the protestors upon the applicant and upon the applicant's attorney, if any, by certified mail at the applicant's and attorney's addresses shown on the application.

(i) *Review and Approval Criteria.* The decision to amend the zoning map is a matter of legislative discretion that is not controlled by any single standard. In making recommendations and decisions about zoning map amendments, review and decision-making bodies must consider at least the following factors:

- (1) the existing use and zoning of nearby property;
- (2) the extent to which the particular zoning restrictions affect property values;
- (3) the extent to which any diminution in property value is offset by an increase in the public health, safety and welfare;
- (4) the suitability of the subject property for the zoned purposes;
- (5) the length of time that the subject property has been vacant as zoned, considering the context of land development in the vicinity;
- (6) the value to the community of the proposed use; and
- (7) the comprehensive plan.

(j) *Successive Applications.* If a zoning map amendment application is denied, no application may be accepted that proposes reclassification of any portion of the same property for the same zoning classification for twelve (12) months from the date of the Village Council decision to deny.

Section 26. That Section 28.12.040 is hereby amended to read as follows:

Sec 28.12.040 Planned Unit Developments

(a) *Overview*

(1) Planned Unit Development (PUD) overlay zoning districts are established through the concurrent approval of:

- a. a PUD overlay district map amendment, in accordance with the zoning map amendment procedures of DGMC Section 28.12.030; and
- b. a PUD development plan application in accordance with the procedures of this Section.

(2) PUD site plan approval is required after approval of the PUD zoning map amendment and PUD development plan. This Section describes the required review and approval procedures for PUD development plans and PUD site plans.

(b) *Development Plan Approval Required.* Approval of a PUD development plans and PUD site plan must occur before any building permit is issued and before any development takes place in a PUD overlay district. Permits may be issued for a phase of development within a section of an approved PUD overlay district if a development plan has been approved for the entire PUD and a PUD site plan has been approved for the subject property.

(c) *PUD Development Plans.* At the option of the applicant, the PUD development plan may serve also as the preliminary subdivision plat if such intention is declared before the ~~Plan~~ CommissionPlanning and Zoning Commission's hearing and if the plans include all information required for preliminary plats and PUD development plans.

(1) *Application Contents.* An application for a PUD overlay district rezoning and PUD development plan must contain all items of information specified in the preapplication meeting.

(2) *Application Filing.* Complete applications for PUD development plan approval must be filed with the Community Development Director at the same time that the PUD zoning map amendment application is filed. The zoning map amendment procedures of DGMC Section 28.12.030 apply to PUD zoning map amendments except as expressly modified by the PUD approval procedures of this Section.

(3) *Hearing and Recommendation—~~Plan Commission~~ Planning and Zoning Commission.* The ~~Plan Commission~~ Planning and Zoning Commission must hold a public hearing on the proposed PUD development plan and PUD zoning map amendment within ninety (90) days of receipt of a complete application. Within forty-five (45) days of the close of the public hearing, the ~~Plan Commission~~ Planning and Zoning Commission must act by simple majority vote to recommend that the proposed plan and map amendment be approved, approved with modifications or conditions, or denied and transmit its recommendations to the Village Council.

(4) *Final Action—Village Council*

a. Within ninety (90) days of receipt of the ~~Plan Commission~~ Planning and Zoning Commission's recommendation, the Village Council may act to approve the proposed PUD development plan and PUD zoning map amendment, approve the proposed plan and amendment with modifications or conditions or deny the proposed plan and map amendment. The Village Council may also may remand the matter back to the ~~Plan Commission~~ Planning and Zoning Commission for further consideration.

b. If the PUD development plan and PUD zoning map amendment application are remanded, the Village Council must specify the reasons and scope of the remand, and further proceedings before the ~~Plan Commission~~ Planning and Zoning Commission must be limited to those identified items. The ~~Plan~~

~~Commission~~ Planning and Zoning Commission must conduct further proceedings as may be appropriate and return a recommendation on the plan and zoning map amendment to the Village Council within sixty (60) days of the date that the matter is remanded to the ~~Plan-Commission~~ Planning and Zoning Commission. Within sixty (60) days of receipt of the ~~Plan-Commission~~ Planning and Zoning Commission's recommendation, the Village Council must take final action on the PUD development plan and PUD zoning map amendment.

- c. PUD development plan and PUD zoning map amendments may be approved by a simple majority vote of the Village Council, except as stated in DGMC Section 28.12.030(h).
- (5) Review and Approval Criteria. The decision to amend the zoning map to approve a PUD development plan and to establish a PUD overlay district are matters of legislative discretion that are not controlled by any single standard. In making recommendations and decisions regarding approval of planned unit developments, review and decision-making bodies must consider at least the following factors:
- a. the zoning map amendment review and approval criteria of DGMC Section 28.12.030(i) in the case of new Planned Unit Development proposals;
 - b. whether the proposed PUD development plan and map amendment would be consistent and in substantial compliance with the comprehensive plan, downtown design guidelines and any other adopted plans for the subject area;
 - c. whether PUD development plan complies with the PUD overlay district provisions of DGMC Section 28.4.030;
 - d. whether the proposed development will result in public benefits that are greater than or at least equal to those that would have resulted from development under conventional zoning regulations; and
 - e. whether appropriate terms and conditions have been imposed on the approval to protect the interests of surrounding property owners and residents, existing and future residents of the PUD and the general public.
- (6) Lapse of Approval
- a. If the applicant fails to file an application for PUD site plan approval within one (1) year of the date of approval of the PUD development plan and zoning map amendment, the PUD development plan will lapse and be of no further effect, in which case the regulations of the base zoning district will govern development of the property. The landowner may request a one-time extension for a period of up to one (1) additional year by filing an extension request with the Community Development Director before the expiration of the PUD development plan. Extension requests must be approved or denied by the Village Council.
 - b. For projects to be developed in phases, phase limits must be shown on the PUD development plan and approved by the Village Council. The Village Council may impose conditions upon the phasing plan as deemed necessary to ensure orderly development, including requirements for financial guarantees ensuring construction of all required improvements.

(d) *PUD Site Plans*

- (1) Application Filing. PUD site plan applications must be filed with the Community Development Director before the lapse of a PUD development plan.
- (2) Review and Action by Community Development Director; Appeals
 - a. The Community Development Director must review and take action on the PUD site plan. The Community Development Director must approve the PUD site plan if it complies with the approved PUD development plan, all conditions of PUD development plan approval and all applicable regulations of this zoning ordinance. If the submitted PUD site plan does not comply with the approved

PUD development plan, any conditions imposed on that plan or any applicable regulations of this zoning ordinance, the Community Development Director must deny the PUD site plan and advise the landowner in writing of the specific reasons for denial.

- b. In acting on PUD site plans, the Community Development Director is authorized to approve the following minor deviations from an approved PUD development plan:
 1. any deviation expressly authorized as at the time of PUD development plan approval;
 2. the addition of customary accessory uses and structures; and
 3. changes to the development site or to structures necessitated by engineering, architectural or physical limitations of the site that could not have been foreseen at the time the development plan was approved and that are not otherwise classified as amendments pursuant to DGMC Section 28.12.040(e).
 - c. No other changes or amendments may be approved as part of the Community Development Director action on a PUD site plan. Any other changes will be considered amendments to an approved PUD development plan. Amendments are subject to DGMC Section 28.12.040(e).
 - d. If the Community Development Director does not approve the PUD site plan, the landowner may either: (1) resubmit the PUD site plan to correct the plan's inconsistencies and deficiencies, or (2) within sixty (60) days of the date of notice of disapproval, appeal the decision of the Community Development Director. If an appeal is filed, the PUD site plan must be processed in the same manner as a PUD development plan, with review and recommendation by the Plan CommissionPlanning and Zoning Commission and a final decision by the Village Council.
- (3) Effect of Approval. Approval of a PUD site plan must occur before any building permits are issued for the PUD. PUD site plan approval does not constitute effective dedication of rights-of-way or any other public improvements, nor will the filed plan be the equivalent of or an acceptable alternative for the final platting of land prior to the issuance of building permits in the PUD (if platting is required).
- (e) *Amendments to Approved PUD Development Plans*
- (1) All of the following constitute amendments to an approved PUD development plan:
 - a. elimination or relaxation of a condition of approval imposed by the Village Council at the time of PUD development plan approval;
 - b. an increase in overall building coverage by more than five percent (5%);
 - c. an increase in building height by more than ten percent (10%) or five feet (5'), whichever is less;
 - d. an overall reduction in the amount of usable open space, common open space or landscaping by more than five percent (5%);
 - e. a reduction in off-street parking by more than ten percent (10%) or one (1) space, whichever results in a greater reduction;
 - f. a change in the vehicle circulation pattern that would increase points of access, change access to another street or increase projected traffic volumes; and
 - g. anything that the Community Development Director determines a material change, likely to create adverse impacts that were not considered as part of the PUD development plan approval.
 - (2) Any amendment to an approved PUD development must be processed as a new PUD development plan, including all requirements for fees, notices and hearings.

(Ord. No. 5804, 12/17/19; Ord. No. 5471, §4, 7/21/15)

HISTORY

Amended by Ord. 5914 ZO - Omnibus 2022 on 2/15/2022

Section 27. That Section 28.12.050 is hereby amended to read as follows:

Sec 28.12.050 Special Uses

- (a) *Intent.* The special use approval procedures of this section are intended to provide a transparent, public review process for land uses that, because of their widely varying design and operational characteristics, require case-by-case review in order to determine whether they will be compatible with surrounding uses and development patterns.
- (b) *Authority to File.* Special use applications may be filed by the owner of the property that is the subject of the special use application or by the subject property owner's authorized agent.
- (c) *Application Filing.* Complete applications for special use approval must be filed with the Community Development Director.
- (d) *Review and Report—Community Development Director.* Upon receipt of a complete application for special use approval, the Community Development Director must prepare a report and recommendation that evaluates the proposed special use in light of the approval criteria of DGMC Section 28.12.050(h). The report must be transmitted to the ~~Plan Commission~~Planning and Zoning Commission before their public hearing on the proposed special use.
- (e) *Notice of Hearing.* Notice of the ~~Plan Commission~~Planning and Zoning Commission's required public hearing on a special use application must be published in the newspaper in accordance with DGMC Section 28.12.010(f)(1). Applicant or Village shall also provide notice in accordance with DGMC Section 28.12.010(f)(2)a 1, 2, 3. Additional notice may also be provided in accordance with DGMC Section 28.12.010(f)(2)b 1, 2, 3.
- (f) *Hearing and Recommendation—~~Plan Commission~~Planning and Zoning Commission.* The ~~Plan Commission~~Planning and Zoning Commission must hold a public hearing on the special use application within ninety (90) days of receipt of a complete application. Within forty-five (45) days of the close of the public hearing, the ~~Plan Commission~~Planning and Zoning Commission must act by simple majority vote to recommend that the proposed special use be approved, approved with modifications and/or conditions, or denied and transmit its findings and recommendations to the Village Council.
- (g) *Final Action—Village Council*
 - (1) Within ninety (90) days of receipt of the ~~Plan Commission~~Planning and Zoning Commission's findings and recommendation, the Village Council may act to approve the proposed special use application, approve the special use with conditions and/or modifications or deny the special use. The Village Council may also may remand the special use application back to the ~~Plan Commission~~Planning and Zoning Commission for further consideration.
 - (2) If the special use application is remanded, the Village Council must specify the reasons and scope of the remand, and further proceedings before the ~~Plan Commission~~Planning and Zoning Commission must be limited to those identified items. The ~~Plan Commission~~Planning and Zoning Commission must conduct further proceedings as may be appropriate and return a recommendation on the special use application to the Village Council within sixty (60) days of the date that the matter is remanded to the ~~Plan Commission~~Planning and Zoning Commission. Within sixty (60) days of receipt of the ~~Plan Commission~~Planning and Zoning Commission's recommendation, the Village Council must take final action on the special use application.

- (3) The Village Council is authorized to impose such conditions and restrictions upon the premises benefited by a special use as the Village Council determines to be necessary to ensure compliance with the standards of DGMC Section 28.12.050(h), to reduce or minimize the effect of the special use upon other properties in the area, and to better carry out the general public's interest and intent of this zoning ordinance.
- (4) The Village Council may act by a simple majority vote.
- (h) *Approval Criteria.* No special use may be recommended for approval or approved unless the respective review or decision-making body determines that the proposed special use is consistent with and in substantial compliance with all Village Council policies and plans, including, but not limited to, the Comprehensive Plan and the Downtown Design Guidelines and that the applicant has presented evidence to support each of the following conclusions:
- (1) that the proposed use is expressly authorized as a special use in the district in which it is to be located;
 - ~~(2) that the proposed use at the proposed location is necessary or desirable to provide a service or a facility that is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community;~~
 - ~~(2)~~ that the proposed use will not, in the particular case, be detrimental to the health, safety, or general welfare of the community; of persons residing or working in the vicinity or be injurious to property values or improvements in the vicinity.
 - ~~(3)~~ that the proposed use will not be injurious to the use and enjoyment of other property in the immediate area for the purposes already permitted, nor substantially diminish or impair property values within the neighborhood;
 - ~~(3)(4)~~ that the establishment of the special use will not impede the normal and orderly development and improvement of adjacent property for uses permitted in the district.
- (i) *Lapse of Approval*
- (1) The applicant may submit, and the Village Council may approve, as part of the ordinance authorizing the special use, a maximum 2-year schedule for establishing the approved special use. If such a schedule is not approved by the Village Council, the approved special use will lapse and have no further effect one (1) year after it is approved by the Village Council, unless:
 - a. a building permit has been issued (if required);
 - b. a certificate of occupancy has been issued; or
 - c. the special use has been lawfully established.
 - (2) The Village Council is authorized to extend the expiration period for good cause on up to two (2) separate occasions, by up to six (6) months each. Requests for extensions must be submitted to the Community Development Director and forwarded to the Village Council for a final decision.
 - (3) A special use also lapses upon revocation of a building permit or a certificate of occupancy for violations of conditions of approval or upon expiration of a building permit to carry out the work authorized by the special use.
 - (4) If any special use is discontinued or not in operation for a continuous period of six (6) months or more, the special use for such use is void, and such use may not be reestablished unless and until a new special use is obtained in accordance with the procedures of this Section.
- (j) *Transferability.* Special use approval runs with the land and is not affected by changes of tenancy, ownership, or management.
- (k) *Amendments.* Amendments to approved special uses may be approved in accordance with the following requirements. The special use amendment procedures may not be used to vary or modify zoning ordinance standards.
- (1) Minor Amendments

- a. The Community Development Director is authorized to approve the following minor amendments to approved special uses:
 1. any amendments expressly authorized as minor amendments at the time of special use approval;
 2. the addition of customary accessory uses and structures; and
 3. changes to the development site or to structures necessitated by engineering, architectural or physical limitations of the site that could not have been foreseen at the time the special use permit was approved and that are not otherwise classified as major amendments pursuant to DGMC Section 28.12.050(k)(2).
- b. Applications for minor amendments to approved special uses must be filed in a form established by the Community Development Director. If no action is taken on the minor amendment application within twenty (20) days of filing of a complete application, the minor amendment is deemed denied.

(2) Major Amendments

- a. All of the following constitute major amendments to approved special uses:
 1. an increase in overall building coverage by more than five percent (5%);
 2. an increase in building height by more than ten percent (10%) or five feet (5'), whichever is less;
 3. an overall reduction in the amount of common open space or landscaping;
 4. a reduction in off-street parking by more than ten percent (10%) or one space, whichever results in a greater reduction;
 5. a change in the vehicle circulation pattern that would increase points of access, change access to another street or increase projected traffic volumes; and
 6. any combination of three (3) or more minor changes that were not expressly authorized by the approved special use permit.
 - b. Major amendments to an approved special use must be processed as a new special use application, including all requirements for fees, notices and public hearings.
- (l) *Successive Applications.* If a special use application is denied, no substantially similar application may be accepted for the same property for twelve (12) months from the date of denial by the Village Council.

(Ord. No. 5706, 7/10/18)

HISTORY

Amended by Ord. 5914 ZO - Omnibus 2022 on 2/15/2022

Amended by Ord. 6004 ZO Omnibus 2023 on 10/24/2023

Section 28. That Section 28.12.070 is hereby amended to read as follows:

Sec 28.12.070 Administrative Adjustments

- (a) *Intent.* These administrative adjustments procedures are intended to provide a streamlined approval procedure for relatively minor forms of zoning relief. While most variations require a public hearing before the ~~Zoning Board of Appeals~~ Planning and Zoning Commission (see DGMC Section 28.12.090), the Community Development Director is authorized to approve the administrative adjustments identified in DGMC Section 28.12.070(b) without a public hearing.
- (b) *Authorized Administrative Adjustments*

- (1) The Community Development Director is authorized to grant the following administrative adjustments for principal and accessory buildings or structures:
 - a. a reduction of the minimum required lot area by up to ten percent (10%);
 - b. a reduction of the minimum required lot width by up to ten percent (10%);
 - c. a reduction of minimum required setbacks by up to ten percent (10%) or two feet (2'), whichever is greater; and
 - d. a reduction of the minimum required driveway width by up to one foot (1').
 - (2) The Community Development Director is authorized to grant an administrative adjustment reducing minimum required off-street parking or loading requirements by up to ten percent (10%) or one (1) space, whichever is greater.
 - (3) The administrative adjustment provisions may not be used to vary, modify or otherwise override a condition of approval or requirement imposed by an authorized Village decision-making body or the State or federal government.
- (c) *Authority to File.* Administrative adjustment applications may be filed by the subject property owner or by the property owner's authorized agent.
- (d) *Application Filing.* Complete applications for administrative adjustments must be filed with the Community Development Director.
- (e) *Notice of Filing/Intent to Approve.* Within five (5) business days of receipt of a complete application for an administrative adjustment, written notice of application filing must be delivered to all owners of property within one hundred feet (100') of the subject parcel. The notice must describe the nature of the requested administrative adjustment. It must also indicate the date on which the Community Development Director will take action on the application and that the application will be available for review and comment until that date. Any interested party may submit written comments concerning the application to the Community Development Director.
- (f) *Action by Community Development Director*
- (1) The Community Development Director must review each application for an administrative adjustment and act to approve the application, approve the application with conditions, deny the application or refer the application to the ~~Zoning Board of Appeals~~ Planning and Zoning Commission for consideration as a variation.
 - (2) The Community Development Director may not take final action to approve or deny an administrative adjustment application until at least fifteen (15) days after the date of mailing or delivery of the required notices.
 - (3) The Community Development Director's decision to approve or deny an administrative adjustment must be based on the approval criteria and standards of DGMC Section 28.12.070(g) and accompanied by written findings of fact.
 - (4) At least once per calendar year, the Community Development Director must provide to the ~~zoning board of appeals~~ Planning and Zoning Commission and the Village Council a listing of all administrative adjustment decisions.
- (g) *Standards and Review Criteria.* Administrative adjustments may be approved only when the Community Development Director determines that any specific standards associated with the authorized administrative adjustment and the following general approval criteria have been met:
- (1) the requested administrative adjustment is consistent with all relevant purpose and intent statements of this zoning ordinance and with the general purpose and intent of the comprehensive plan;
 - (2) the requested administrative adjustment will not have a substantial or undue adverse effect upon adjacent property, the character of the area or the public health, safety and general welfare; and
 - (3) any adverse impacts resulting from the administrative adjustment will be mitigated to the maximum extent feasible.
- (h) *Conditions of Approval.* In granting an administrative adjustment, the Community Development Director is authorized to impose conditions upon the subject property that are necessary to reduce

or minimize any potentially adverse impacts on other property in the surrounding area, and to carry out the stated purpose and intent of this zoning ordinance.

- (i) *Transferability*. Approved administrative adjustments run with the land and are not affected by changes of tenancy, ownership, or management.
- (j) *Amendments*. A request for changes in the specific nature of the approved administrative adjustment or changes to any conditions attached to an approved administrative adjustment must be processed as a new administrative adjustment application, including the requirements for fees and notices.
- (k) *Lapse of Approval*
 - (1) An approved administrative adjustment will lapse and have no further effect one (1) year after it is approved by the Community Development Director, unless:
 - a. A building permit has been issued (if required); or
 - b. The use or structure has been lawfully established.
 - (2) The Community Development Director is authorized to extend the expiration period for good cause on up to two (2) separate occasions, by up to six (6) months each. Requests for extensions must be submitted to the Community Development Director before the administrative adjustment expires. No hearings, notices or fees are required for extensions.
 - (3) An administrative adjustment also lapses upon revocation of a building permit or a certificate of occupancy for violations of conditions of approval or upon expiration of a building permit to carry out the work authorized by the administrative adjustment.
- (l) *Conditions of Approval*. In granting an administrative adjustment, the Community Development Director may impose conditions upon the subject property that are necessary to reduce or minimize any potentially adverse impacts on other property in the surrounding area, and to carry out the stated purpose and intent of this zoning ordinance.
- (m) *Appeals*. The applicant or any interested party may appeal the decision of the Community Development Director in accordance with DGMC Section 28.12.100.

(Ord. No. 5706, 7/10/18)

Section 29. That Section 28.12.080 is hereby amended to read as follows:

Sec 28.12.080 Zoning Exceptions

- (a) *Intent*. The zoning exception procedure is intended to establish a procedure for consideration of requests to modify specific zoning regulations that cannot, by their nature, reasonably be considered by using the variation regulations and procedures established in this ordinance.
- (b) *Authorized Exceptions*. The ~~Zoning Board of Appeals~~ Planning and Zoning Commission is authorized to grant the following zoning exceptions:
 - (1) expansion of nonconforming uses, in accordance with DGMC Section 28.11.030(c)(2);
 - (2) re-establishment of an abandoned nonconforming use, in accordance with DGMC Section 28.11.030(f)(1)d; and
 - (3) extension of an existing building wall located within a required setback, in accordance with DGMC Section 28.11.040(c)(2).
- (c) *Authority to File*. Zoning exception applications may be filed by the subject property owner or by the property owner's authorized agent.
- (d) *Application Filing*. Complete applications for zoning exceptions must be filed with the Community Development Director.
- (e) *Notice of Hearing*. Notice of the ~~Zoning Board of Appeals~~ Planning and Zoning Commission required public hearing on a zoning exception application must be published in the newspaper in

- accordance with DGMC Section 28.12.010(f)(1). Applicant or Village shall also provide notice in accordance with Section 12.010(f)(2)a 1, 2, 3. Additional notice may also be provided in accordance with Sec. 12.010(f)(2)b 1, 2, 3.
- (f) *Hearing and Final Decision—~~Zoning Board of Appeals~~ Planning and Zoning Commission*. Within ninety (90) days of receipt of a complete application, the ~~Zoning Board of Appeals~~ Planning and Zoning Commission must hold a public hearing to consider the requested zoning exception. Within forty-five (45) days of the close of the public hearing, the ~~Zoning Board of Appeals~~ Planning and Zoning Commission must make its findings of fact and act to approve the requested zoning exception, approve the zoning exception with modifications and/or conditions, or deny the zoning exception request based on the standards and review criteria of DGMC Section 28.12.080(g). Approval of a zoning exception requires an affirmative vote of at least ~~five~~ four (45) members of the ~~Zoning Board of Appeals~~ Planning and Zoning Commission. All decisions of the ~~Zoning Board of Appeals~~ Planning and Zoning Commission are final administrative determinations and are subject to judicial review only, in accordance with the Illinois Administrative Review Law, 735 ILCS 5/3-101 et seq.
- (g) *Standards and Review Criteria*. Zoning exceptions may be approved by the ~~Zoning Board of Appeals~~ Planning and Zoning Commission only when the ~~Board~~ Commission determines that any specific standards associated with the authorized zoning exception and the following general approval criteria have been met:
- (1) the requested zoning exception is consistent with all relevant purpose and intent statements of this zoning ordinance and with the general purpose and intent of the comprehensive plan;
 - (2) the requested zoning exception will not have a substantial or undue adverse effect upon adjacent property, the character of the area or the public health, safety and general welfare;
 - (3) the proposed zoning exception will be constructed, arranged and operated so as not to dominate the immediate vicinity or to interfere with the use and development of neighboring property in accordance with the applicable district regulations;
 - (4) the proposed zoning exception demonstrates high-quality design and uses construction materials and colors that are compatible with other structures on the property and other properties in the vicinity; and
 - (5) any adverse impacts resulting from the zoning exception will be mitigated to the maximum extent feasible.
- (h) *Conditions of Approval*. In granting a zoning exception, the ~~Zoning Board of Appeals~~ Planning and Zoning Commission is authorized to impose conditions upon the subject property that are necessary to reduce or minimize any potentially adverse impacts on other property in the surrounding area, and to carry out the stated purpose and intent of this zoning ordinance.
- (i) *Transferability*. Approved zoning exceptions run with the land and are not affected by changes of tenancy, ownership, or management.
- (j) *Amendments*. A request for changes in the specific nature of the approved zoning exception or changes to any conditions attached to an approved zoning exception must be processed as a new zoning exception application, including all requirements for fees, notices and public hearings.
- (k) *Lapse of Approval*
- (1) An approved zoning exception will lapse and have no further effect one (1) year after it is approved by the ~~Zoning Board of Appeals~~ Planning and Zoning Commission, unless:
 - a. a building permit has been issued (if required); or
 - b. the use or structure has been lawfully established.
 - (2) The ~~Zoning Board of Appeals~~ Planning and Zoning Commission is authorized to extend the expiration period for good cause on up to two (2) separate occasions, by up to one hundred eighty (180) days each. Requests for extensions must be submitted to the

Community Development Director before the zoning exception expires. No hearings, notices or fees are required for extensions.

- (3) A zoning exception also lapses upon revocation of a building permit or a certificate of occupancy for violations of conditions of approval or upon expiration of a building permit to carry out the work authorized by the zoning exception.

Section 30. That Section 28.12.090 is hereby amended to read as follows:

Sec 28.12.090 Variations

- (a) *Intent.* A variation is a grant of relief to a property owner from strict compliance with the regulations of this zoning ordinance. The intent of a variation is not to simply remove an inconvenience or financial burden that may result from compliance with applicable zoning requirements. Variations are intended to help alleviate an undue hardship that would be caused by the literal enforcement of the subject ordinance requirements. They are intended to provide relief when the requirements of this zoning ordinance render land difficult or impossible to use because of some unique or special characteristic of the property itself.
- (b) *Authorized Variations.* Except where the variation is requested in conjunction with a Planned Unit Development or Special Use Petition, the ~~Zoning Board of Appeals~~ Planning and Zoning Commission shall hear all petitions for variations. Where a variation is requested in conjunction with a Planned Unit Development or Special Use Petition, it may be heard by the ~~Plan Commission~~ Planning and Zoning Commission and the ~~Plan Commission~~ Planning and Zoning Commission shall make a recommendation to the Village Council for final action regarding such variation request. A variation is authorized to be granted from any regulation in this zoning ordinance in accordance with the variation procedures of this Section, except that the variation procedures may not be used to do any of the following:
- (1) allow a principal use in a zoning district that is not otherwise allowed in that zoning district (i.e., “use variations” are prohibited);
 - (2) waive, modify or amend any definition or use classification;
 - (3) waive, modify or otherwise vary any of the review and approval procedures of this Article;
 - (4) waive, vary, modify or otherwise override a condition of approval or requirement imposed by an authorized decision-making body or the State or federal government;
 - (5) waive, vary or modify applicable residential density regulations, provided that this provision is not intended to prohibit variations to minimum lot area or width requirements that apply to lots occupied by a single dwelling unit.
- (c) *Authority to File.* Variation applications may be filed by the subject property owner or by the property owner’s authorized agent.
- (d) *Application Filing.* Complete applications for variations must be filed with the Community Development Director.
- (e) *Notice of Hearing.* Notice of the required public hearing on a variation application must be published in the newspaper in accordance with DGMC Section 28.12.010(f)1. The Village or the applicant shall also provide notice in accordance with Section 12.010(f)(2)a 1, 2, 3. Additional notice may also be provided in accordance with Sec. 12.010(f)(2)b 1, 2, 3.
- (f) *Hearing and Final Decision—*~~Zoning Board of Appeals~~ Planning and Zoning Commission. Within ninety (90) days of receipt of a complete application, a public hearing to consider the requested variation must be held. Within forth-five (45) days of the close of the public hearing, the findings of fact and decision to approve the requested variation, approve the variation with modifications and/or conditions, or deny the variation request based on the standards and review criteria of DGMC Section 28.12.090(g) must be made. Approval of a variation requires an

affirmative vote of at least ~~four~~ five (54) members of the ~~Zoning board of appeals Planning and Zoning Commission~~. All decisions of the ~~Zoning Board of Appeals Planning and Zoning Commission~~ are final administrative determinations and are subject to judicial review only, in accordance with the Illinois Administrative Review Law, 735 ILCS 5/3-101 et seq.

(g) *Standards and Review Criteria*

- (1) No variation may be approved unless the variation to be approved is consistent with the spirit and intent of this zoning ordinance and that strict compliance with the subject provisions would result in practical difficulties or particular hardships for the subject property owner.
- (2) The consideration of whether a variation request has met the standards of practical difficulties or particular hardships must include all of the following findings from the evidence presented:
 - a. the subject property cannot yield a reasonable return if required to comply with the regulations that apply to it;
 - b. the plight of the owner is due to unique circumstances; and
 - c. the variation, if granted, will not alter the essential character of the locality.
- (3) In addition, the hearing body must also take into consideration the extent to which the following facts, favorable to the property owner, have been established by the evidence presented:
 - a. that the physical surroundings, shape, or topographical conditions of the subject property would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
 - b. that the conditions leading to the need of the requested variation are not applicable, generally, to other properties within the same zoning classification;
 - c. that the alleged difficulty or hardship was not created by the current property owner;
 - d. that the proposed variation will not impair an adequate supply of 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;
 - e. that the proposed variation will not alter the essential character of the area; and
 - f. that the granting of the variation will not confer on the subject property owner any special privilege that is not available to other properties or structures in the same district.

(h) *Conditions of Approval*. In granting a variation, the hearing body is authorized to impose conditions upon the subject property that are necessary to reduce or minimize any potentially adverse impacts on other property in the surrounding area, and to carry out the stated purpose and intent of this zoning ordinance.

(i) *Transferability*. Approved variations run with the land and are not affected by changes of tenancy, ownership, or management.

(j) *Amendments*. A request for changes in the specific nature of the approved variation or changes to any conditions attached to an approved variation must be processed as a new variation application, including all requirements for fees, notices and public hearings.

(k) *Lapse of Approval*

- (1) An approved variation will lapse and have no further effect one (1) year after it is approved, unless:
 - a. a building permit has been issued (if required); or
 - b. the use or structure has been lawfully established.
- (2) The hearing body is authorized to extend the expiration period for good cause on up to two (2) separate occasions, by up to six (6) months each. Requests for extensions must be

submitted to the Community Development Director before the variation expires. No hearings, notices or fees are required for extensions.

- (3) A variation also lapses upon revocation of a building permit or a certificate of occupancy for violations of conditions of approval or upon expiration of a building permit to carry out the work authorized by the variation.

Section 31. That Section 28.12.010 is hereby amended to read as follows:

Sec 28.12.100 Appeals Of Administrative Decisions

- (a) *Authority.* The ~~Zoning Board of Appeals~~ Planning and Zoning Commission is authorized to hear and decide appeals where it is alleged there has been an error in any order, requirement, decision or determination made by the Community Development Director or any other administrative official in the administration, interpretation or enforcement of this zoning ordinance.
- (b) *Right to Appeal.* Appeals of administrative decisions may be filed by any person aggrieved by the Community Development Director's or other administrative official's decision or action. The ~~Zoning Board of Appeals~~ Planning and Zoning Commission is authorized to make determinations about whether individuals filing appeals are "aggrieved" by the decision or action.
- (c) *Application Filing*
- (1) Complete applications for appeals of administrative decisions must be filed with the Community Development Director.
 - (2) Appeals of administrative decisions must be filed within forty-five (45) days of the date of the decision being appealed.
- (d) *Effect of Filing.* The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the Community Development Director certifies to the ~~Zoning Board of Appeals~~ Planning and Zoning Commission, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property, in which case the proceedings will not be stayed unless by a restraining order, which may be granted by the ~~Zoning Board of Appeals~~ Planning and Zoning Commission or by a court of record based on due cause shown.
- (e) *Record of Decision.* Upon receipt of a complete application of appeal, the Community Development Director or other administrative official whose decision is being appealed must transmit to the ~~Planning and Zoning Commission~~ Zoning Board of Appeals all papers constituting the record upon which the action appealed is taken.
- (f) *Notice of Hearing.* Notice of the ~~Planning and Zoning Commission~~ Zoning Board of Appeals's required public hearing must be published in the newspaper in accordance with DGMC Section 28.12.010(f)(1).
- (g) *Hearing and Final Decision*
- (1) The ~~Planning and Zoning Commission~~ Zoning Board of Appeals must hold a public hearing on the appeal within sixty (60) days of the date that the appealed is filed.
 - (2) Within forty-five (45) days of the close of the public hearing, the ~~Planning and Zoning Commission~~ Zoning Board of Appeals must take action on the appeal. The board's decision must be in writing and be supported by written findings of fact.
 - (3) In exercising the appeal power, the ~~Planning and Zoning Commission~~ zoning board of appeals has all the powers of the administrative official from whom the appeal is taken. The ~~Planning and Zoning Commission~~ Zoning Board of Appeals may affirm or may, upon the concurring vote of at least ~~four~~ five (45) members, reverse, wholly or in part, or modify the decision being appealed.
 - (4) In acting on the appeal, the ~~Planning and Zoning Commission~~ Zoning Board of Appeals must grant to the official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.

- (5) All decisions of the ~~Planning and Zoning Commission~~ Zoning Board of Appeals are final administrative determinations and are subject to judicial review only, in accordance with the Illinois Administrative Review Law, 735 ILCS 5/3-101 et seq.
- (h) *Review Criteria.* An appeal may be sustained only if the ~~zoning board of appeals~~ Planning and Zoning Commission finds that the Community Development Director or other administrative official erred.

Section 32. That Section 28.13.010 is hereby amended to read as follows:

Sec 28.13.010 Review And Decision-Making Bodies

(a) *Community Development Director*

- (1) General Powers and Duties. The Community Development Director has primary responsibility for administration of this zoning ordinance, including the following general powers and duties:

- a. conducting periodic inspections of structures and uses of land to determine compliance with this zoning ordinance;
- b. notifying in writing all persons responsible for violating this zoning ordinance;
- c. taking appropriate actions to ensure compliance with this zoning ordinance and remedying violations of its provisions, including:
 1. ordering discontinuance of any illegal use of land or structures;
 2. ordering removal of illegal structures and additions or alterations thereto; and,
 3. ordering discontinuation of work being done in violation of zoning ordinance provisions.
- d. maintaining permanent and current records of this zoning ordinance, including all zoning maps, amendments, planned unit developments, zoning exceptions, special uses, variations and administrative adjustments;
- e. maintaining records of permits, certificates, registers of pollutants, and copies of notices of violation and orders of discontinuances or removal for such time as necessary to ensure continuous compliance with zoning ordinance provisions;
- f. receiving and processing all applications for permits and development approvals under this zoning ordinance;
- g. providing technical assistance and support to the Village Council, staff, boards and commissions; and,
- h. exercising other powers and performing other duties as specified or necessarily implied by the provisions of this zoning ordinance.

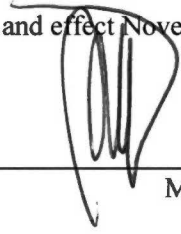
- (2) Promulgation of Administrative Rules. The Community Development Director is authorized to establish written rules and regulations implementing the provisions of this zoning ordinance, including rules related to the content and processing of any application and the interpretation and administration of this zoning ordinance.

- (b) ~~Plan Commission~~ Planning and Zoning Commission. The ~~Plan Commission~~ Planning and Zoning Commission has those powers and duties expressly identified in this zoning ordinance. Additional information regarding the ~~Plan Commission~~ Planning and Zoning Commission's composition and their powers and duties are described in Chapter 2 of this Code.

- ~~(e) Zoning Board of Appeals. The Zoning Board of Appeals has those powers and duties expressly identified in this zoning ordinance. Additional information regarding the Zoning Board of Appeals' powers and duties are described in Chapter 2 of this Code.~~

Section 33. That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 34. That this ordinance shall be in full force and effect November 1, 2024.



Mayor

Passed: August 20, 2024

Published: August 20, 2024

Attest:

Village Clerk

