

Article 7. Zoning Procedures

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44-07-01. Zoning Procedures Responsibilities

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

C. Economic and Community Development Director.

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

D. Building Inspector.

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

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

F. Administrative Review Committee.

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

44-07-02. General Application Requirements

A. Authorization.

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

B. Filing.

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

C. Completeness.

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

D. Fees.

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

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

F. Successive Applications.

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

44-07-03. Administrative Review and Approval Procedures

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

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

B. **Building Permit.**

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

C. **Certificate of Occupancy.**

1. **Requirement.**

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

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

3. **Temporary and Conditional Certificate of Occupancy.**

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

4. **Posting.**

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

5. **Procedure.**

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

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

D. Zoning Compliance Permit.

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

E. Limited Use Permit.

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

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

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

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

F. Administrative Exception.

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

- a. Is consistent with the Comprehensive Plan and other adopted Village plans,
 - b. Is consistent with the purpose of the underlying district,
 - c. Is consistent with adopted building and fire codes,
 - d. Will not result in incompatible development,
 - e. Will not result in adverse impacts unless adequately mitigated, and
 - f. Is of a technical nature and is required to:
 - I. Compensate for an unusual condition,
 - II. Eliminate a minor inadvertent failure to comply with this Ordinance, or
 - III. To protect a sensitive resource or natural feature.
4. **Pre-Application Conference.** The applicant for an Administrative Exception is encouraged to meet with the Economic and Community Development Director prior to submitting an application to discuss the submittal requirements, review criteria, and review process.
5. **Economic and Community Development Director Action.** The application shall be reviewed by the Economic and Community Development Director to ensure the application conforms to the criteria in **Subsection 3** above. Based upon their review, the Economic and Community Development Director shall:
- a. Approve the Administrative Exception application,
 - b. Approve the Administrative Exception application with conditions,
 - c. Advance the Administrative Exception application to a Variance, or
 - d. Deny the Administrative Exception application.
6. **Expiration.** If a building permit is not issued or a site plan is not approved within six (6) months of the approval of the Administrative Exception, the Administrative Exception approval shall be void.

G. Temporary Use Permit.

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

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

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

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

H. **Interpretations.**

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

I. **Site Plan Review.**

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

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

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

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

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

B. **Notices.**

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

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

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

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

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

A. Authority.

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

B. Processing.

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

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

D. Map Amendments.

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

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

E. Text Amendments.

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

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

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

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

44-07-06. Special Uses

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

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

44-07-07. Variances

A. Purpose.

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

B. Processing.

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

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

C. Standards.

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

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

44-07-08. Appeals

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