

ORDINANCE NO. F-0706

**AN ORDINANCE AMENDING THE WHEATON ZONING ORDINANCE
ARTICLE 5.6 - ADMINISTRATIVE VARIATIONS**

WHEREAS, Article 5.6 of the City of Wheaton Zoning Ordinance pertains to zoning variations; and

WHEREAS, the City Council of the City of Wheaton deems it necessary and appropriate to amend Article 5.6 of the Wheaton Zoning Ordinance to create an Administrative Zoning Variation process:

NOW, THEREFORE BE IT ORDAINED by the Wheaton City Council that Article II of the City of Wheaton Zoning Ordinance is hereby amended by adding a new definition entitled Variations, and that Article 5.6 of the City of Wheaton Zoning Ordinance is hereby amended by hereby repealing and rescinding it in its entirety and replacing it with a new Article 5.6 which shall read as follows:

Section 1:

“Variations:

- a) Administrative Variation: Any variation to decrease any setback or any minimum yard dimension by less than or equal to 25% or five feet, whichever is less, or to increase the maximum height required by the applicable provisions, which is heard and decided by the Director of Planning.
- b) Non-administrative variation: any administrative variation that has been denied or any other modification that does not qualify as an administrative variation.”

Section 2:

“5.6 Variations

5.6A Administrative Variations. Any variation to decrease any setback or any minimum yard dimension by less than or equal to 25% or five feet, whichever is less, or to increase the maximum height required by the applicable provisions, may be heard and decided by the Director of Planning as an administrative variation.

5.6A (1)

Application for Administrative Variation. Any application for an administrative variation shall be filed with the Director of Planning. The application shall contain such information as the Director of Planning may require. Any application shall be filed either by the owner of record or the contract purchaser of the property to be directly affected thereby.

The Director of Planning shall review the proposed application against the standards contained herein. If the Director of Planning finds that the proposed application does not meet the standards contained herein, the administrative variation will be denied. Following a denial of an administrative variation, the applicant may file for a non-administrative variation.

If the Director of Planning decides to approve the requested variation, a notice of intent to approve such a variance shall be sent by certified mail to all properties within a one home radius of the subject property. If any such landowner files a written objection with the Director of Planning within 15 days of receipt of such notice, the administrative variation will be denied. If an application for an administrative variation is denied, the applicant may file for a non-administrative variation.

The granting of an administrative variation must be in harmony with the general purpose and intent of the Zoning Ordinance, and only in cases where there are practical difficulties or particular hardships in the way of carrying out the strict letter of the regulations of this chapter. In consideration of the standards of practical difficulties or particular hardships, the Director of Planning shall require evidence that:

1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district (for the purpose of these standards, reasonable return includes both monetary considerations and non monetary considerations, such as use and enjoyment).
2. The plight of the owner is due to unique physical characteristics (such as particular physical surroundings, shape or topographical conditions of the specific property involved) which create a hardship as distinguished from a mere inconvenience, if the strict letter of the Zoning Ordinance were carried out.
3. The variation, if granted, will not alter the essential character of the area, nor will it be detrimental or injurious to other property or improvements in the neighborhood, impair an adequate supply of light and air to adjacent property, substantially increase congestion in the public streets, endanger the public safety, or diminish or impair property values within the neighborhood.

The Director of Planning may impose such conditions and restrictions upon the premises benefited by an administrative variation as may be necessary to comply with the standards set out in this section to reduce or minimize the injurious effect of such variation upon other property in the neighborhood, and to better carry out the general intent of this chapter.

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Administrative Variation Limitations. No administrative variation shall be valid for a period longer than twelve months. Upon written application, the Director of Planning may grant a maximum extension not exceeding one year.

5.6B Non-administrative Variations. The Board may recommend, and the City Council may grant, non-administrative variations from the regulations of this ordinance when such variations are in harmony with the general purpose and intent of the zoning ordinance and only in cases where there are practical difficulties or particular hardships in the way of carrying out the strict letter of the regulations of this chapter. In consideration of the standards of practical difficulties or particular hardships, the Board shall require evidence that:

1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district (for the purpose of these standards, reasonable return includes both monetary considerations and non monetary considerations, such as use and enjoyment).
2. The plight of the owner is due to unique physical characteristics (such as particular physical surroundings, shape or topographical conditions of the specific property involved) which create a hardship as distinguished from a mere inconvenience, if the strict letter of the Zoning Ordinance were carried out.
3. The variation, if granted, will not alter the essential character of the area, nor will it be detrimental or injurious to other property or improvements in the neighborhood, impair an adequate supply of light and air to adjacent property, substantially increase congestion in the public streets, endanger the public safety, or diminish or impair property values within the neighborhood.

The Board may recommend, and the City Council may impose, such conditions and restrictions upon the premises benefited by a non-administrative variation as may be necessary to comply with the standards set out in this section to reduce or minimize the injurious effect of such variation upon other property in the neighborhood, and to better carry out the general intent of this chapter.

5.6B (1)

Application for non-administrative Variation and Notice of Hearing. Any application for a non-administrative variation shall be filed with the Director of Planning. The application shall contain such information as the Director of Planning may reasonable require. Any application shall be filed either by the owner of record or the contract purchaser of the property to be directly affected thereby. The Director of Planning shall submit any application for variation to the City Council, which shall then refer said application to the Board for a public

hearing and recommendation. The Board shall submit its recommendations on the proposed variation to the City Council within 90 days of the date said proposed variation was referred to it, or within such additional time as may be designated by the City Council. Notice of the public hearing shall be given in accordance with Section 5.7.

5.6 B (2)

Variation Limitations. A non-administrative variation from the regulations of this chapter shall be granted by the City Council only in accordance with the standards set out in Section 5.6B and may be granted only in the following instances, and in no others:

1. To permit a decrease of greater than 25% or five feet in any setback or any minimum yard dimension or to permit an increase in the maximum height required by the applicable provisions.
2. To permit the use of a lot or lots for use otherwise prohibited solely because of the insufficient area or width of the lot or lots but in no event shall the respective area and width of the lots be less than seventy-five percent (75%) of the required area and width.
3. In the C-4 Zoning District, to permit more than 1/3 of the required parking to be fulfilled by the utilization of available municipal parking (either on-street or off-street).
4. To reduce the applicable off-street parking or loading facilities required by not more than one (1) parking space or loading space or twenty percent (20%) of the applicable provisions, whichever number is greater.
5. To increase by not more than twenty-five percent (25%) the maximum distance that required parking spaces are permitted to be located from the use served.
6. To permit overhead wiring for public utility purposes not otherwise permitted under the regulations of this chapter.
7. To increase the Floor Area Ratio to a maximum of forty-five percent (45%) for additions only, to single-family dwellings constructed prior to October 17, 1989.
8. For a seasonal parking lot, to permit a reduction in the amount of required landscaping and/or the elimination of any required lighting.

A non-administrative variation shall be granted by the City Council, by ordinance, by a affirmative vote of the City Council, provided that a variation shall not be passed except by an affirmative vote of five (5) members of the City Council

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whenever the Board fails to recommend favorably regarding a proposed non-administrative variation. No non-administrative variation shall be valid for a period longer than 12 months. The City Council may grant a maximum of two extensions, not exceeding 1 year each, upon written application without notice of hearing, as provided in Section 4.4 of this ordinance.”

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.


Section 4: That if any part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this ordinance.

Section 5: This ordinance shall become effective after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



Mayor

ATTEST



City Clerk

Ayes: Roll Call Vote
Councilman Mouhelis
Councilman Eckhoff
Councilman Gresk
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork

Nays: None

Absent: None

Motion Carried Unanimously

Passed: May 6, 2002
Published: May 7, 2002