

**VILLAGE OF VERNON HILLS
ORDINANCE 2024-132**

AN ORDINANCE AMENDING APPENDIX C, ZONING, OF THE VERNON HILLS CODE OF ORDINANCES, ARTICLE 4, GENERAL REGULATIONS, SECTION 4.14, COMMERCIAL BUILDING AND USE REVIEW WITHIN THE CORE RETAIL AREA

WHEREAS, the Village of Vernon Hills is a municipal corporation existing under the laws of the State of Illinois, and

WHEREAS, the Village of Vernon Hills, acting as the petitioner, filed a petition to amend the zoning code in order to revise the regulations associated with the Core Retail Area Overlay District procedures for the review of a Certificate of Building and Use Conversion; and

WHEREAS, the Planning and Zoning Commission held a public hearing, duly noticed, on October 16, 2024, and has recommended approval of the proposed amendment as documented in Exhibit A, Findings of Fact and Recommendation; and

WHEREAS, the President and Board of Trustees Whole discussed the recommendation of the Planning and Zoning Commission at its meeting on November 4, 2024; and

WHEREAS, the President and Board of Trustees, having determined that the requested amendment is in the best interest of the Village of Vernon Hills and meets the relevant standards contained within the Zoning Code, hereby finds adopts this ordinance amending the Zoning Code of the Village of Vernon Hills pursuant to its duty to regulate the uses of land within the Village of Vernon Hills.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF VERNON HILLS, COUNTY OF LAKE AND STATE OF ILLINOIS:

SECTION I. The above recitals are hereby incorporated into and made part of this Ordinance.

SECTION II Appendix C, Zoning, of the Village of Vernon Hills Code of Ordinances, Article 4, General Regulations, Section 4.14, Commercial Building and Use Review within the Core Retail Area, is hereby amended read as follows:

Sec. 4.14.1. *Introduction/purpose.* Because the village does not impose a village real estate tax on properties located in the village, the village is forced to rely almost exclusively on retail sales generated from the village to fund its municipal services. The major source of retail sales (approximately 85 percent) in the village is located within the core retail area of the village as set forth on the village's zoning district map.

~~The village's core retail area is located along Milwaukee Avenue and Townline Road. While retail sales tax revenues have historically been sufficient to fund all necessary and required village operational costs and services, the downturn in the economy has caused a serious reduction in retail sales resulting in~~

~~a serious reduction in retail sales taxes payable to the village. Together with this reduction in retail sales in the core retail area, the village has experienced a disturbing trend in former retail sales tax generating stores being leased to nonretail sales tax generating uses. A reduction in sales tax generating tenant spaces in the village will exacerbate the already serious reduction in sales taxes being generated. This trend threatens the very economic viability of the village.~~

The purpose of this section is to regulate the conversion or elimination of existing retail sales establishments within its core retail area. In doing this, the village will preserve and enhance its largest source of operating revenue, being sales tax, while also working with the property owners to maintain a viable tenant mix on various properties within the core retail area.

Sec. 4.14.2. *Definitions.*

1. *Retail sales establishment (RSE)*—A retail establishment engaged in selling goods or merchandise to the general public, other retailers, contractors, or businesses, where such sales constitute the primary function of the business, all of which result in the payment of state and local sales taxes as defined by ILCS/35/120. The retail sales establishment may also include the rendering of services incidental to the sale of such goods.
2. *Core retail area overlay district (CRA)*—The CRA is defined as the commercially zoned properties generally located along Milwaukee Avenue (Route 21) and Townline Road (Route 60) and specifically defined as the core retail area on the village zoning district map where a variety of land uses are permitted including retail sales establishments and service oriented uses including legal or financial institutions, various offices or similar uses.
3. *Commercial areas*—The CRA is divided into ten commercial areas which contain individual RSE and non-RSE properties or building(s) as defined in the Initial Findings Report prepared by Rolf C. Campbell & Associates, Inc., dated April 30, 2010.
4. *Certificate of building and use conversion (CBUC)*—The CBUC is issued by the village upon approval by the village board and is required when changes are proposed to floor areas sizes of certain RSE which may result in the reduction of retail sales tax generating floor spaces and the potential loss of sales tax revenue to the village.

~~Sec. 4.14.3. *Applicability.* This section shall apply to all properties and uses as of April 30, 2010, (as delineated in the Village of Vernon Hills Commercial Space Occupancy Analysis Initial Findings Report prepared by Rolf C. Campbell & Associates, Inc.) and located within the CRA district as designated on the village's zoning map.~~

Within the CRA district, the conditions upon which a certificate of building and use conversion must be obtained from the village are as follows:

1. **Single Use Building** When any property within the CRA district, being a single use building which exceeds 20,000 sq ft of gross floor area, whether occupied or vacant and which is or was defined as a retail sales establishment (RSE) and the owner or tenant proposes the reduction in or conversion of the existing floor area of the RSE below 80 percent of the gross floor area to a non-RSE.
2. **Multiple Units under Common Control.** In a shopping center, whether in a single multi-tenant building or multiple buildings held in common ownership, any conversion proposed that would reduce the RSE floor area below 80 percent of the total floor area.
3. **Hawthorn Mall.** In areas of the mall held in common ownership, any conversion that would reduce the RSE floor area below 65 percent of the total floor area.
2. ~~When any combination of smaller spaces in a building which total 20,000 square feet or more that, through their consolidation, is proposed to convert the existing floor area into a non-RSE.~~

3. ~~For Westfield Hawthorn Mall, when any single existing RSE which exceeds 100,000 square feet of gross floor area, or leasable spaces within the mall which are contiguous and, when combined, exceed 20,000 square feet and the owner or tenant proposes its conversion of the existing floor area into a non-RSE. Due to Westfield Hawthorn Mall being multiple floors, the gross floor area or leasable area shall be calculated using all floors within the building.~~
4. ~~When any property being a single building containing an RSE which exceeds the applicable 80 percent requirements above, and where a property owner or developer intends to either subdivide the building into smaller leasable spaces or change the use from an RSE to non-RSE such as office or other service type uses that would result in the loss of sales tax revenue to the village.~~

For the purpose of this section, the replacement of one non-RSE for another of the exact same size or less or with an RSE shall not require the issuance of a certificate of building and use conversion. However, the requirements of section 4.12 Building site review shall still apply.

With the exception of ~~Westfield Hawthorn Mall~~, all gross floor area or leasable spaces calculations shall be based on the ground floor dimensions.

Sec. 4.14.4. *Requirements.*

- A. For all applicable properties as set forth in section 4.14.3, the owners must maintain a minimum of 80 percent of building floor area per building for RSEs **(65 percent for floor area at Hawthorn Mall held in common ownership)**, and ~~the remainder being for RSEs or non-RSEs.~~
- B. A certificate of building and use conversion shall not be required for any conversion of space where the gross floor area will meet or exceed the restrictions set forth in item A., above.
- C. For properties with multiple buildings located within a unified retail center under single ownership, the maximum amount of non-RSE for a unified retail center may be shifted into one building which may cause that building to exceed the maximum percentage of non-RSE per building. This provision is subject to issuance of a certificate of building and use conversion **per 4.14.3(1)**.
- D. A new certificate of building and use conversion shall be required for any building or property where a certificate of building and use conversion has been previously granted, **in order to further increase the percentage of non-RSE floor area.** ~~for conversion of a portion of said building or property to a non-RSE and where, the property owner is requesting additional conversion of the building to another non-RSE.~~
- E. For the purpose of calculating non-RSE for a building, **vacant units shall be considered part of the RSE floor area.** ~~any previously existing non-RSE or previously issued and still existing non-RSE shall be included in calculating the total non-RSE for the building or property.~~
- F. **New construction or additions intended for immediate use by a non-RSE shall be considered additional non-RSE floor area, and require a conversion certificate if the resulting non-RSE square footage will exceed 20 percent of the total floor area (or 35 percent for Hawthorn Mall).**

Sec. 4.14.5. *Review Process.* Prior to building site review as required by section 4.12 of the zoning ordinance and/or issuance of a building permit and/or issuance of a certificate of occupancy, whichever is the first to occur, a property owner and petitioner shall appear before the board of trustee's committee of the whole for review ~~and approval~~ of a certificate of building and use conversion. **For non-RSEs requiring Special Use approval, the conversion certificate request shall be considered by the**

Committee of the Whole prior to the public hearing for the special use. The review procedure shall be as follows:

- A. An application for certificate of building and use conversion, required fee per chapter 25 and the following information shall be submitted to the village clerk 30 days prior to the scheduled meeting:
 1. Detailed description of the project.
 2. List of the proposed uses for the building including specific business names, if possible.
 3. Proposed site plan locating the building on the property and existing and proposed floor plan(s) of the building. Please note that these plans along with the landscaping plans and building elevations will be reviewed at a separate meeting by the planning and zoning commission pursuant to section 4.12.
 4. ~~Detailed reasons why the building is being converted.~~ **A written statement addressing each of the standards for the granting of a conversion certificate listed in Section B1 below, including information such as:**
 - ~~5.~~ a. Detailed explanation discussing to what extent the proposed use and development at the particular location requested is necessary or desirable to provide a service or facility that is permitted outside the CRA district.
 - ~~6.~~ b. ~~Explain~~ **How this conversion is in the best interest of the village and will contribute to the financial vitality of the village or general welfare of the community.**
 - c. **Discussion of how the proposed use is complementary to other uses in the immediate area, and consistent with the general character of the CRA.**
 - d. **Comparison of estimated sales tax revenue of the unit occupied by a retail use vs. projected revenues (direct or indirect) should the conversion be granted**
 7. Detailed economic impact to the village from said conversion including what the annual loss of sales tax will be.
- B. ~~Within 30 days following the initial consideration by the committee of the whole, the committee shall take one of the following actions:~~ **The Committee of the Whole, following consideration of the application at a public meeting, shall take one of the following actions:**
 1. **Recommend** A approval of the certificate of building and use conversion, by ordinance duly adopted **by the Board of Trustees**, with or without modifications or conditions, based on the following standards:
 - a. The proposed building conversion **will not have a detrimental impact on the fiscal health of the Village.** ~~either through its unique nature or via commensurate PILOT equivalent will not have a detrimental impact on the fiscal health of the village; or~~
 - b. The proposed building conversion will strengthen the economic viability of the adjacent properties and village; or
 - c. Without the proposed building conversion, the property cannot yield a reasonable rate of return; ~~and~~
 - d. The proposed building conversion of RSE floor area is the minimum needed to accomplish the goals of the property owner and/or developer.

- e. **The proposed building conversion, if granted, will result in a mix of uses consistent with the intended character of the area.**
2. **Recommend denial of** ~~Deny~~ **the application for certificate of building and use conversion for failure to demonstrate that the standards have been met.**
 3. **Table the discussion with specific guidance to the applicant to submit supplemental materials necessary for the consideration of the Certificate.**
 3. ~~Postpone the issuance of a building permit which would allow the conversion of said building for a period of up to one year from the date of application for a certification of building and use conversion to allow marketing of the building to RSE tenants. At the expiration of one year, the certificate of building and use conversion shall be approved, subject to 4.15.5.B.4. below, and building permit will be issued, subject to satisfying all requirements of Code of Ordinances, Chapter 5 Building Regulations.~~
 4. ~~In consideration of the certificate of building and use conversion, the board of trustees may consider an offer of a payment in lieu of taxes (PILOT) from the property owner or applicant for conversion of RSE to a non-RSE as set forth in section 4.14.4. The terms of the PILOT shall be agreed to between the parties prior to issuance of the certificate of building and use conversion. The PILOT shall be calculated based on the average retail sales per square foot for the entire building based on the most recent annual average sales per square foot for the Chicago region as reported in the Urban Land Institute's Dollars & Cents of Shopping Centers or other village approved sources. The PILOT would be applicable to floor area formerly dedicated to retail sales but exclude internal office and storage spaces. Where floor plan information is not available, the building commissioner will inspect the tenant space(s) to determine how the space was divided up by square feet.~~
 5. ~~In regards to the PILOT, the owner shall pay, on or before the date the certificate of building and use conversion is issued and on or before each subsequent anniversary date of the first payment for a period of five years after the date that the certificate of building and use conversion is issued, the amounts determined pursuant to the formula ("sales tax formula") set forth in section 4.14.5.B.4. as follows:~~
 - i. ~~The first payment shall be made on or before the date the certificate of building use is issued, in an amount equal to the 100 percent of the sales tax formula.~~
 - ii. ~~The second payment shall be made on or before the first anniversary date of the issuance of the certificate of building use in an amount equal to 80 percent of the sales tax formula.~~
 - iii. ~~The third payment shall be made on or before the second anniversary date of the issuance of the certificate of building use in an amount equal to 60 percent of the sales tax formula.~~
 - iv. ~~The fourth payment shall be made on or before the third anniversary date of the issuance of the certificate of building use in an amount equal to 40 percent of the sales tax formula.~~
 - v. ~~The fifth and final payment shall be made on or before the fourth anniversary date of the issuance of the certificate of building use in an amount equal to 20 percent of the sales tax formula.~~
- C. **The Village Board shall take action on the recommendation within 30 days of the Committee of the Whole discussion or Planning and Zoning Commission public hearing, whichever is later.**

Sec. 4.14.6. *Limitations.* A certificate of building and use conversion shall expire within one year unless a building permit is issued and construction has actually begun within that period and is thereafter diligently pursued to completion or unless a certificate of occupancy is issued and a use commenced within that period.

Sec. 4.14.7. *Departures.* The village may administratively grant the following departures from this section:

1. The addition of 1,000 or less square feet to any approved non-RSE provided that the addition does not decrease the percentage of RSE building floor area by one full percent.
2. The reduction of the floor area of any RSE that does not decrease the percentage of RSE building floor area by one full percent.

For departures that exceed the limits of this section, issuance of a certificate of building and use conversion shall be required pursuant to the review process in section 4.14.5.

SECTION III. SEVERABILITY. In the event that any section, clause, provision, or part of this ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect. If any part of this ordinance is found to be invalid in any one or more of its several applications, all valid applications that are severable from the invalid applications shall remain in effect.

SECTION IV. REPEAL AND SAVINGS CLAUSE. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions or causes of action which shall have accrued to the Village of Vernon Hills prior to the effective date of this ordinance.

SECTION V. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

SECTION V. ORDINANCE NUMBER. This ordinance shall be known as Ordinance Number 2024-132.

Adopted by roll call vote as follows:

AYES: 7 – Takaoka, Marquardt, Forster, Oppenheim, Schenk, Koch, Byrne

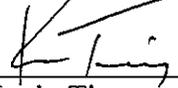
NAYS: 0 - None

ABSENT AND NOT VOTING: 0 - None

PASSED: 11/04/2024

APPROVED: 11/04/2024

ATTEST: 11/04/2024


Kevin Timony, Village Clerk

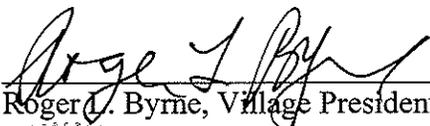

Roger L. Byrne, Village President



EXHIBIT A

Planning and Zoning Commission

Case 2024-10: Amendment to Appendix C, Zoning Code, Article 4, General Regulations,
Section 4.14, Commercial Building and Use Review Withing the Core Retail Area.

Findings of Fact and Recommendation

Planning and Zoning Commission – Meeting Minutes
October 16, 2024 - 7:30 p.m.

I. Call to Order and Roll Call

Director Jennings called the meeting to order at 7:30 PM.

Attendance: Commissioners Cotton, Fluno, Heidner, Lis, and Nabat. Chairman Morris and Commissioner Smith had given prior notice of their absence.

Also attending: Andrew Jennings, Director of Community Development.

Director Jennings requested a motion to nominate a chair pro-tem for the meeting. Commission Cotton made a motion, seconded by Commissioner Lis, to nominate Commissioner Heidner as chair pro-tem.

AYES: Cotton, Lis, Fluno, Heidner, Nabat

NAYS:

ABSENT:

Motion approved (5-0).

II. General Public Comment

No one from the public came forward to speak.

III. Items for Review

Chairman Pro-tem Heidner called for the opening of the following public hearing:

1. Public Hearing for Case #2024-10. A petition filed by the Village of Vernon Hills requesting approval of an amendment to Appendix C, Zoning, of the Village of Vernon Hills Code of Ordinances, Article 4, General Regulations, Section 4.14, Commercial Building and Use Review Withing the Core Retail Area.

ALL PERSONS PROVIDING TESTIMONY WERE SWORN IN

Andrew Jennings, Director of Community Development for the Village of Vernon Hills, was present and sworn in.

Director Jennings provided the background for the current petition. In the course of reviewing several recent non-retail conversion certificate requests, the Committee of the Whole directed Staff to prepare materials for a discussion of potential amendments to the code. While the program is under the purview of the Board of Trustees, the regulations are in the Zoning Code and a public hearing with the Planning and Zoning Commission is required prior to formal consideration by the Board.

The draft amendments were presented to the Committee of the Whole on September 17th. The Committee directed staff to initiate the public hearing process following the discussion.

The Certificate of Building and Use Conversion (CBUC) procedures were originally approved in 2010. The regulations were inserted into the Zoning Code, and the zoning map was amended to define the location of the related Core Retail Area (CRA) Overlay District. As a municipality without a municipal property tax, the overlay district was established to ensure the preservation of sales tax producing uses. The essential functions of Village services were dependent on the revenue from sales tax

Properties within the CRA are required to obtain a CBUC if more than 20% of the leasable square footage would become non-retail. There are three options for the Board when reviewing a non-retail conversion certificate: approval, denial, and conditional approval. The conditional approval could include a payment in lieu of taxes (the PILOT) or deferred approval. The deferred approval requires the landlord to market the unit for a year before the non-retail use can occupy the space.

Director Jennings displayed a map of the approved CBUCs, noting that most were approved within the last two years. The demolition of large anchors at the mall reduced the leasable square footage, meaning that new non-retail uses would require conversion certificates.

Director Jennings explained that the rationale for amending the requirement was as follows:

- The development of Melody Farm has expanded the total retail square footage.
- The popularity of online shopping has impacted demand for brick and mortar locations. The demand for larger retail units in particular has decreased dramatically.
- The procedure itself is a challenge for local landlords and brokers that does not exist in other municipalities.
- Provisions in the code are not practical (such as requiring a year of marketing of the vacant unit or requiring a payment in lieu of taxes up front for a business that is not producing revenue).
- The calculation of retail square footage doesn't recognize that some uses, such as restaurants, produce significantly greater sales per square foot.
- There is no consideration for the duration of vacancy. Vacant units should not be counted against the landlord when attempting to fill another vacant unit. They should be presumed to be potentially retail when vacant.
- Current trends in commercial development are more difficult to accommodate (mixing retail with experiential businesses and services).

He referred to the draft amendment included in the Commission's materials. He summarized the changes in general terms as removing conditional approvals from the procedures, increasing the threshold for the mall, and various other changes to clarify provisions that are confusing or do not match how the program is managed in practice.

The Committee of the Whole had reviewed the draft that was included in the Commission's materials. They had no particular concern with the version presented, but a zoning code change requires a public hearing through the Planning and Zoning Commission.

PUBLIC NOTICE

Chairman Pro-tem Heidner requested confirmation that the public notice requirements had been met. Director Jennings stated that a text amendment that doesn't reference a specific location requires notice in the newspaper. Staff has had discussions with property owners in the overlay district, but the written notice of the hearing is not required. Chairman Pro-tem Heidner asked whether the Village attorney had reviewed the notice. Director Jennings stated that he has discussed the notice requirement in general, but not specific to the preparation of this particular hearing.

Chairman Pro-tem Heidner asked for a description of the purpose of the amendment, other than eliminating the conditional approvals and increasing the threshold for the mall. Director Jennings explained that most changes were based on Staff observations. For example, the procedures do not address the role of the Committee of the Whole or explain how a non-retail use certificate would be reviewed in the context of a Special Use petition.

Chairman Pro-tem Heidner asked whether the justification would be similar. Director Jennings referred to the standards in the draft code. The standards for the Board review would be more explicitly addressed in the application.

THE HEARING WAS OPENED FOR PUBLIC COMMENT

No one from the public spoke. Public comment was closed by Chairman Pro-tem Heidner at 7:50 PM.

DISCUSSION OF RECOMMENDATION

Chairman Pro-tem Heidner stated there is a standing motion to approve. Commissioner Cotton seconded the motion. Director Jennings stated for the record that the motion had been made as drafted in the staff report.

There being no additional discussion, the Commission voted on the motion, as follows:

Make Findings of Fact and Recommend Approval of the following Amendment to Appendix C, Zoning, Article 4, General Regulations, Section 4.14, Commercial Building and Use Review Within the Core Retail Area, as required by Section 21.7 (Amendments), as described in the application by the Village of Vernon Hills and illustrated in the Zoning Code excerpt "Draft for Public Hearing – October 16, 2024":

AYES: Cotton, Lis, Fluno, Heidner, Nabat

NAYS:

ABSENT:

Motion approved (5-0).

THE PUBLIC HEARING WAS CLOSED AT 7:52 PM.

IV. Approval of Minutes

Chairman Pro-tem Heidner requested comments from the Commission on the August 14th meeting minutes. Commissioner Cotton noted a typo on page 3. There being no additional revisions, Chairman Pro-tem Heidner referred to the standing motion to approve the minutes of the August 14, 2024 Planning & Zoning Commission meeting. The motion was seconded by Commissioner Fluno. All were in favor by a voice vote (5-0).

V. Development Review

Director Jennings provided updates on the following items:

- Progress is underway on the construction at Anton Par
- Work continues at Yard House
- The Hawthorn Mall Phase II revisions were discussed at the Committee of the Whole meeting on October 15th. Director Jennings provided a brief overview, and explained that he project would be presented to the Commission following Technical Review. He displayed a drone video of the existing conditions between the Yard House site and the mall.

VI. Adjournment

With no further items on the agenda, Pro-tem Heidner request a motion to adjourn. Commissioner Cotton made a motion to adjourn, seconded by Commissioner Nabat. The motion was approved by a voice vote.

The meeting adjourned at 8: PM.

Respectfully submitted,

Andrew Jennings
Director of Community Development

Distribution:
President and Board of Trustees
Village Manager/Village Clerk
Commission Members

Approval Date

Chairman Morris

Secretary Heidner

VILLAGE OF VERNON HILLS

ORDINANCE NO. 2024-132

AN ORDINANCE AMENDING APPENDIX C, ZONING, OF THE VERNON HILLS CODE
OF ORDINANCES, ARTICLE 4, GENERAL REGULATIONS, SECTION 4.14,
COMMERCIAL BUILDING AND USE REVIEW WITHIN THE CORE RETAIL AREA

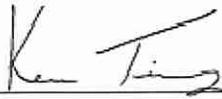
THE 4th DAY OF NOVEMBER 2024

Published in pamphlet form by the Authority of the
President and Board of Trustees of the Village of
Vernon Hills, Lake County, Illinois, this
4th day of November, 2024

AFFIDAVIT OF SERVICE

STATE OF ILLINOIS)
)
COUNTY OF LAKE)

I, KEVIN TIMONY, BEING FIRST DULY APPOINTED, DEPOSES AND SAYS ON OATH THAT AS VILLAGE CLERK OF THE VILLAGE OF VERNON HILLS, HE DID CAUSE THE FOREGOING CERTIFICATE FOR ORDINANCE NO. 2024-132 AN ORDINANCE AMENDING APPENDIX C, ZONING, OF THE VERNON HILLS CODE OF ORDINANCES, ARTICLE 4, GENERAL REGULATIONS, SECTION 4.14, COMMERCIAL BUILDING AND USE REVIEW WITHIN THE CORE RETAIL AREA TO BE POSTED IN THE VILLAGE HALL AS REQUIRED BY LAW FROM NOVEMBER 4, 2024 TO NOVEMBER 14, 2024.



Kevin Timony, Village Clerk

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 4th DAY OF NOVEMBER 2024



Notary Public

