

ORDINANCE NO. CO-2014-02

**AN ORDINANCE APPROVING A ZONING CODE TEXT AMENDMENT
RELATIVE TO NON-CONFORMING USES WITHIN THE VILLAGE**

WHEREAS, the Village of Maywood adopted a new Zoning map (the "Zoning Map") and zoning ordinance (the "Zoning Code"), in April, 2010 which have been amended from time to time; and

WHEREAS, under the new Zoning Map and Zoning Code, there were a number of existing legal or commercial residential uses that were physically located in districts where such residential or commercial uses were not allowed under the Zoning Code, making such uses legal non-conforming uses; and

WHEREAS, based on Section 16.3 of the Zoning Code, if a legal, nonconforming residential use is discontinued for more than a year or a legal nonconforming commercial use is discontinued for six (6) months, the property may no longer be used for such purpose but must instead conform to the requirements of the current zoning district; and

WHEREAS, due to the recession, mortgage foreclosure crisis, and other economic circumstances, a number of the nonconforming use properties in the Village have become vacant and, in cases where they were designed for a nonconforming use, have remained vacant due to Section 16.3 rather than be returned to productive use; and

WHEREAS, in an effort to address these continuing vacancies, the President and Board of Trustees, and the Plan Commission/Zoning Board of Appeals, have discussed creating an exception to the application of Section 16.3 in cases where certain defined circumstances are present; and

WHEREAS, a proposed text amendment to the Zoning Code creating such an exception (the "Text Amendment") has been filed with the Village of Maywood by Petitioner the Village of Maywood; and

WHEREAS, the proposed Text Amendment has been referred to the Plan Commission/Zoning Board of Appeals ("Plan Commission") of the Village and has been processed in accordance with the Zoning Code; and

WHEREAS, said Plan Commission held a public hearing on the question of whether the requested Text Amendment should be granted on December 12, 2013, at which time all persons present were afforded an opportunity to be heard; and

WHEREAS, public notice in the form required by law was given of said public hearing by publication not more than thirty (30) days nor less than fifteen (15) days prior to said public hearing; and

WHEREAS, on December 12, 2013, the Plan Commission voted to favorably recommend the requested Text Amendment to the Village President and Board of Trustees of the Village of Maywood; and

WHEREAS, the Village is a home rule municipality, having all of the powers and authority granted to such municipalities pursuant to Article VII, Section 6 of the Illinois Constitution of 1970, including the right to exercise any power and perform any function pertaining to its government and affairs. The Village is also authorized to enact and amend zoning regulations pursuant to Section 11-13-1.1 of the Illinois Municipal Code (65 ILCS 5/11-13-1.1); and

WHEREAS, the Plan Commission of this Village has reported its findings and recommendations regarding the Text Amendment to this Village President and Board of Trustees, and this Village President and Board of Trustees has duly considered said report and findings and recommendations; and

WHEREAS, the President and Board of Trustees, pursuant to their statutory zoning powers, home rule powers and the findings and recommendation of the Plan Commission, have determined that it is in the best interests of the health welfare and safety of residents of the Village to adopt the proposed Text Amendment as set forth below and that said Amendment is demanded by and required for the public good.

NOW, THEREFORE, BE IT ORDAINED, by the President and Board of Trustees of the Village of Maywood, Cook County, Illinois, as follows:

SECTION 1: The Village President and Board of Trustees of the Village of Maywood approve and adopt the findings of fact and recommendation of the Plan Commission, a copy of which is attached hereto as **Exhibit A**, and incorporate such findings and recommendation by reference as if fully set forth herein.

SECTION 2: Section 16.3 (Nonconforming Uses), subsection G (Discontinuation or Abandonment) of the Zoning Code is amended to read in its entirety as follows:

“G. Discontinuation or Abandonment

1. If a nonconforming use is discontinued, or the structure that it occupies becomes vacant and/or remains unoccupied by the occupants who operated the nonconforming use for a continuous period of one-hundred eighty (180) days for nonconforming non-residential uses and three-hundred sixty-five (365) days for residential uses, such use at the location shall be deemed to be abandoned and except in cases where the application of this subsection is waived pursuant to subsection 2 below, shall not be reestablished or resumed regardless of the intent to resume or to continue the use. Any subsequent use or occupancy of such land or structure shall comply with all regulations of the zoning district in which such land or structure is located. The period of such discontinuance

caused by government action or acts of God shall not be included in calculating the length of discontinuance for this section.

2. A party with an interest in a property may request a waiver of the application of subsection (G)(1) above, by submitting a request for a nonconforming use reestablishment waiver to the Zoning Administrator on a form provided by the Village for such purpose.

A nonconforming use reestablishment waiver may be issued by the Zoning Administrator in circumstances where an applicant is able to establish, to the reasonable satisfaction of the Zoning Administrator, either of the following:

- a.
 - i. The property has been the subject of a foreclosure proceeding or other litigation or court action and such action directly or indirectly resulted in the discontinuation of the nonconforming use or vacancy and unoccupied status of the property; OR
 - ii. Some other circumstance exists or existed that establishes to the reasonable satisfaction of the Zoning Administrator that the discontinuation of the nonconforming use or vacancy and unoccupied status of the property was caused by economic or other extenuating circumstances rather than an affirmative intent to discontinue or abandon the nonconforming use.

In addition, an applicant must also establish, to the reasonable satisfaction of the Zoning Administrator, all of the following:

- b. A new owner now desires to reestablish the same or a substantially similar nonconforming use; and
- c. The real estate property taxes on the property that is the subject of the request are not delinquent, and no water bills, liens, fees or penalties are owed to the Village or other taxing authority by the applicant or on the property; and
- d. The structure or portion of a structure on the property that is proposed to be used for the reestablished nonconforming use was the same structure or portion of a structure or property that was previously used for the nonconforming use; and
- e. The structure or portion of the structure on the property that is proposed to be used for the reestablished non-conforming use was designed for such nonconforming use (i.e. two-family residence in single-family zoning district, or first floor of a two-family residence in a commercial zoning district that does not allow residential uses on the first-floor); and

- f. The use proposed to be reestablished is verified as a previous legal nonconforming use by a Zoning Certificate, past permits or other documentation either submitted by the applicant or on file with the Village. In all cases, the burden of establishing the legality of a nonconformity is on the applicant. A structure designed for a nonconforming use that was erected or altered for a use in violation of the provisions of the Zoning Ordinance or previous zoning ordinances (i.e. single-family residence illegally converted to multi-family) shall not be eligible for a reestablishment waiver, but must instead be deconverted and any subsequent use or occupancy of such land or structure shall comply with all regulations of the zoning district in which such land or structure is located.

The Zoning Administrator shall review a written request for a nonconforming use reestablishment waiver and shall render a decision in writing within thirty (30) days. Documentation sufficient to establish the above must be provided by an applicant. The Zoning Administrator shall have the ability to request additional information prior to rendering a decision on a waiver request, and the time period of time between such a request and the submittal by an applicant of the requested documentation shall not count towards the thirty (30) days. An applicant may appeal the Zoning Administrator's decision to the Plan Commission/Zoning Board of Appeals pursuant to Section 4.10."

SECTION 3: All ordinances, or parts of ordinances, in conflict with the provisions of this Ordinance, to the extent of such conflict, are repealed.

SECTION 4: Each section, paragraph, clause and provision of this Ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance, nor any part thereof, other than that part affected by such decision.

SECTION 5: Except as to the Text Amendment set forth above in this Ordinance, all Chapters and Sections of the Zoning Ordinance of the Village of Maywood, as amended, shall remain in full force and effect.

SECTION 6: This Ordinance shall be in full force and effect from and after its adoption, approval and publication as provided by law.

ADOPTED this 21st day of January, 2014, pursuant to a roll call vote as follows:

AYES: Mayor E. Perkins, Trustee(s) C. Ealey-Cross, A. Jaycox, A. Dorris,
M. Rogers, M. Lightford and R. Rivers

NAYS: None

ABSENT: None

APPROVED by me this 21st day of January, 2014, and attested to by the Village Clerk this same day.

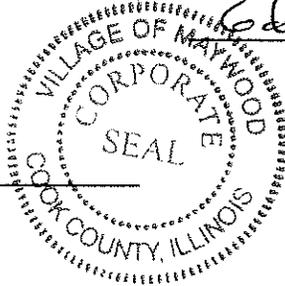
ATTEST:



VILLAGE CLERK



VILLAGE PRESIDENT



VILLAGE OF MAYWOOD
CORPORATE
SEAL
COOK COUNTY, ILLINOIS

EXHIBIT A

FINDINGS OF FACT
(ATTACHED)

Village of



MAYWOOD

Finding Facts

TO: Maywood Village Board

From: David Myers, Assistant Village Manager

DATE: January 15, 2014

**FINDINGS OF FACT AND RECOMMENDATIONS OF THE
PLAN COMMISSION/ZONING BOARD OF APPEALS TO
THE PRESIDENT AND BOARD OF TRUSTEES**

RE: PBA Case#13-004

On December 12, 2013 the Maywood Plan Commission/Zoning Board of Appeals held a Public Hearing to hear testimony and evidence on proposed text amendments to the Maywood Zoning Ordinance ("Zoning Code") relative to non-conforming uses. When the new Zoning Ordinance and Zoning Map were adopted in 2010, there were a number of residential properties that were physically located in districts where residential uses were not allowed under the new Zoning Code. Based on Section 16.3 of the Zoning Code, if a residential use is discontinued for more than a year, the property may no longer be used for a residential purpose but must instead conform to the requirements of the current zoning district. Before the Plan Commission/Zoning Board of Appeals were proposed text amendments ("Proposed Text Amendments") that would allow relief, in certain cases, from the requirements of Section 16.3. A copy of the Proposed Text Amendments is attached hereto as **Exhibit 1** and made a part hereof. The Proposed Text Amendments create a "nonconforming use reestablishment waiver" which may be issued by the Zoning Administrator in circumstances where an applicant is able to establish certain facts relative to the circumstances of the discontinued nonconforming use.

APPLICANT INFORMATION

APPLICANT(S): Village of Maywood
40 W. Madison Street
Maywood, IL 60153

BACKGROUND: The Village of Maywood's President and Board of Trustees forwarded this matter to the Plan Commission/Zoning Board of Appeals for a public hearing after several discussions on this topic at the Commission and Board of Trustees levels.

PUBLIC HEARING:

At the public hearing held on December 12, 2013 staff and the Village Attorney presented the proposed text amendments and the reasoning behind them. The ideas on which the proposed text amendments were based had been discussed by the PC/ZBA and Board of Trustees on several occasions prior to the public hearing.

One (1) resident was present for the purpose of speaking in support the proposed text amendment. Mrs. Ratina Choudhary gave testimony that her and her husband purchased 1600 W. Madison Avenue. However based on the current zoning the property owner is not allowed to use the building as a residential unit, its intended purpose.

Following the close of the public hearing, the members of the PC/ZBA discussed the Proposed Text Amendments and, following a motion by Commissioner Stelnicki and a second by Commissioner Ratley, voted to recommend approval of the Proposed Text Amendments on a vote as follows:

- Ayes 4
- Nays 0
- Abstention 0

FINDINGS:

The PC/ZBA makes the following Findings as to the proposed Text Amendment:

1. **The degree to which the proposed amendment has general applicability within the Village at large and is not intended to benefit specific property.** The Commission found that the request, being Village-wide, will benefit a number of properties and property owners throughout the Village by allowing them to put their properties to productive use.
2. **The consistency of the proposed amendment with the objectives of the Zoning Code and the intent of any applicable zoning district regulations.** The Commission found the requested change to be consistent with the public health, safety, comfort and general welfare of the people and property owners of the Village, and with the other objectives of the Zoning Code.
3. **The degree, if any, to which the proposed amendment would create nonconformity.** The Commission did not find the request to create non-conformity potential within the zoning districts of the Village, but will instead allow existing non-conforming structures to be put to productive use.

RECOMMENDATION: Based upon the foregoing Findings, the Plan Commission/Zoning Board of Appeals, recommends to the Village President and Board of Trustees that the requested Text Amendment to revise the language of Section 16.3 (Nonconforming Use) attached hereto as **Exhibit 1** and made a part hereof, be approved.

Signed: Clifford Christian, Chairman
Clifford Christian Chairman
Plan Commission/Zoning Board of Appeals
Village of Maywood

