

Effective Date: May 4, 2013

3/21/2013  
2/25/2013

**4-O-13**

**AN ORDINANCE**

**Amending Portions of the Zoning Ordinance  
Related to Certain Non-Conforming Residential Uses**

**WHEREAS**, the City of Evanston is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

**WHEREAS**, as a home rule unit of government, the City has the authority to adopt ordinances and to promulgate rules and regulations that protect the public health, safety, and welfare of its residents; and

**WHEREAS**, Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the "powers and functions of home rule units shall be construed liberally," was written "with the intention that home rule units be given the broadest powers possible" (*Scadron v. City of Des Plaines*, 153 Ill.2d 164); and

**WHEREAS**, it is a well-established proposition under all applicable case law that the power to regulate land use through zoning regulations is a legitimate means of promoting the public health, safety, and welfare; and

**WHEREAS**, Division 13 of the Illinois Municipal Code (65 ILCS 5/11-13-1, *et seq.*) grants each municipality the power to establish zoning regulations; and

**WHEREAS**, pursuant to its home rule authority and the Illinois Municipal Code, the City has adopted a set of zoning regulations, set forth in Title 6 of the Evanston City Code of 2012, as amended, ("the Zoning Ordinance"); and

**WHEREAS**, on November 28 and December 12, 2012, the Plan Commission held a public hearing, pursuant to proper notice, regarding case no. 12PLND-0071 to consider amendments to the text of the Zoning Ordinance relating to certain non-conforming residential uses; and

**WHEREAS**, the Plan Commission received testimony and made written findings pursuant to Section 6-3-4-5 of the Zoning Ordinance that the proposed amendments met the standards for text amendments, and recommended City Council approval thereof; and

**WHEREAS**, at its meetings of March 11 and April 1, 2013, the Planning and Development Committee of the City Council considered, amended, and adopted the findings and recommendation of the Plan Commission in case no. 12PLND-0071 and recommended City Council approval thereof, as amended; and

**WHEREAS**, at its meetings of April 1 and April 22, 2013, the City Council considered and adopted the records and recommendations of the Plan Commission as amended by the Planning and Development Committee; and

**WHEREAS**, it is well-settled law that the legislative judgment of the City Council must be considered presumptively valid (see *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747) and is not subject to courtroom fact-finding (see *National Paint & Coating Ass'n v. City of Chicago*, 45 F.3d 1124),

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:**

**SECTION 1:** The foregoing recitals are hereby found as fact and incorporated herein by reference.

**SECTION 2:** Subsection 6-6-3-3 of the Zoning Ordinance is hereby amended to read as follows:

**6-6-3-3: STRUCTURAL ALTERATION:**

Except when permitted pursuant to a Major Variation, no complying structure that is accessory to a nonconforming use of land, or that is devoted in whole or in part to a nonconforming use, shall be structurally altered unless the use thereof shall thereafter conform to the use regulations of the zoning district in which it is located. Except when permitted pursuant to a Major Variation, no such alteration shall create any new parking, loading, bulk, yard or space noncompliance or increase the degree of noncompliance with any existing parking, loading, bulk, yard or space requirement for such structure.

**SECTION 3:** Subsection 6-6-3-4 of the Zoning Ordinance is hereby amended to read as follows:

**6-6-3-4: ENLARGEMENT OF STRUCTURE:**

Except when permitted pursuant to a Major Variation, no complying structure that is accessory to a nonconforming use of land or a complying structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner, including the interior addition of floor area, unless the use of such structure shall thereafter conform to the use regulations of the district in which it is located. Except when permitted pursuant to a Major Variation, no such enlargement shall create any new parking, loading, bulk, yard or space noncompliance or increase the degree of noncompliance with any existing parking, loading, bulk, yard or space requirement for such structure.

**SECTION 4:** Subsection 6-6-3-5 of the Zoning Ordinance is hereby amended to read as follows:

**6-6-3-5: EXPANSION OF USE:**

Except when permitted pursuant to a Major Variation, a nonconforming use of land that does not involve a structure, a complying structure that is accessory to a nonconforming use of land, or a nonconforming use in a complying structure, shall not be expanded, extended, enlarged or increased in intensity. Such prohibited activity shall include, without being limited to:

- (A) An expansion of such use, including its accessory uses, to any structure or land area other than that occupied by such nonconforming use on the effective date of this Ordinance or any change thereto that causes such use to become nonconforming; and

- (B) An expansion of such use, including its accessory uses, within a building or other structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of this Ordinance or any change thereto that causes such use to become nonconforming.

**SECTION 5:** Subsection 6-6-4-3 of the Zoning Ordinance is hereby amended to read as follows:

**6-6-4-3: STRUCTURAL ALTERATION:**

Except when permitted pursuant to a Major Variation, a noncomplying structure devoted in whole or in part to a nonconforming use shall not be structurally altered unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located. Except when permitted pursuant to a Major Variation, no such alteration shall create any new parking, loading, bulk, yard or space noncompliance or increase the degree of noncompliance with any existing parking, loading, bulk, yard or space requirement in such structure.

**SECTION 6:** Subsection 6-6-4-4 of the Zoning Ordinance is hereby amended to read as follows:

**6-6-4-4: ENLARGEMENT OF STRUCTURE:**

Except when permitted pursuant to a Major Variation, a noncomplying structure devoted in whole or in part to a nonconforming use shall not be enlarged or added to in any manner, including the interior addition of floor area, unless the entire structure and the use thereof shall thereafter conform to all the regulations of the district in which it is located. Except when permitted pursuant to a Major Variation, no such alteration shall create any new parking, loading, bulk, yard or space nonconformity or increase the degree of any existing parking, loading, bulk, yard or space requirement in such structure.

**SECTION 7:** Subsection 6-6-4-5-(A) of the Zoning Ordinance is hereby amended to read as follows:

**6-6-4-5: EXPANSION OF USE:**

- (A) Prohibited Expansions: Except when permitted pursuant to a Major Variation, a nonconforming use in a noncomplying structure shall not be expanded, extended, enlarged or increased in intensity by an expansion of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of this Ordinance or any amendment thereto that cause such use to become nonconforming.

**SECTION 8:** Subsection 6-3-8-3-(D) of the Zoning Ordinance is hereby amended to read as follows:

- (D) Major Variations: "Major Variations" shall be defined as all Variations other than Minor Variations and Fence Variations, and shall be limited to the following:
1. Yards and setbacks.
  2. Height.
  3. Lot size, width and depth (including flag lots).
  4. Lot coverage including impervious surface and/or floor area ratio.
  5. Off-street parking and loading.
  6. Home occupations.
  7. Townhouse orientation.
  8. Expansion, alteration, and/or enlargement of legal, nonconforming residential uses that contain no more than four (4) dwelling units and zero (0) lodging rooms/rooming units, and/or construction of accessory uses to such legal, nonconforming residential uses.

**SECTION 9:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 10:** If any provision of this ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

**SECTION 11:** This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

**SECTION 12:** The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: April 1, 2013

Approved:

Adopted: April 22, 2013

April 24, 2013

Elizabeth B. Tisdahl  
Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene  
Rodney Greene, City Clerk

W. Grant Farrar  
W. Grant Farrar, Corporation Counsel