

*Town of Brookfield, WI
Wednesday, March 8, 2023*

Chapter 17. Zoning Code

[HISTORY: Adopted by the Town Board of the Town of Brookfield. Amendments noted where applicable.]

§ 17.01. Authority, purpose, title and definitions.

- (1) **Authority.** These regulations are adopted under the authority granted by §§ 60.62, 61.35, 62.23(7) and 66.0103, Wis. Stats.
- (2) **Purpose.** The purpose of this chapter is to promote the health, safety, morals, prosperity, aesthetics, and general welfare of this community.
- (3) **Intent.** It is the general intent of this chapter to regulate and restrict the use of all structures, lands and waters; lot coverage, population distribution and density; size and location of structures so as to lessen congestion in and promote the safety and efficiency of the streets and highways; secure safety from fire, flooding, panic, and other dangers; provide adequate light, air, sanitation, and drainage; prevent overcrowding; avoid undue population concentration; facilitate the adequate provision of public facilities and utilities; facilitate the use of solar energy devices and other innovative development techniques; stabilize and protect property values; further the appropriate use of land and conservation of natural resources; reduce construction site erosion; avoid construction problems resulting from high groundwater; preserve and promote the beauty of the community; and implement the community's Comprehensive Plan or plan components. To this end, it is further intended to provide for the administration and enforcement of this chapter and provide penalties for its violation.
- (4) **Abrogation and greater restrictions.** It is not intended by this chapter to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations or permits previously adopted or issued pursuant to laws. However, wherever this chapter imposes greater restrictions, the provisions of this chapter shall govern.
- (5) **Interpretation.** In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Town and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.
- (6) **Severability.** If any section, clause, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.
- (7) **Repeal.** All other ordinances or parts of ordinances of the Town inconsistent or conflicting with this chapter, to the extent of the inconsistency only, are hereby repealed.
- (8) **Title.** This chapter shall be known as, referred to or cited as the "Zoning Ordinance, Town of Brookfield, Waukesha County Wisconsin."
- (9) **Definitions.**
 - (a) **General definitions.** For the purposes of this chapter, certain words or phrases shall have meanings that either vary somewhat from their customary dictionary meanings or are intended to be interpreted to have a specific meaning. Words used in the present tense include the future. The word "person" includes a firm, association, partnership, trust, company or corporation as well as an individual. The word "he" includes the word "she." The word "shall" is

mandatory, "should" is advisory, and "may" is permissive. Any words not defined in this section shall be presumed to have their customary dictionary definitions.

- (b) Specific words and phrases. The following terms shall have the meanings indicated:

ACCESSORY USE OR STRUCTURE

A use or detached structure subordinate to the principal use of a structure, land or water, located on the same lot or parcel and serving a purpose customarily incidental to the principal use or the principal structure. (See also "minor structure.")

AIR DOME STRUCTURE

A building consisting of a reinforced fabric envelope, anchored at its base, which is supported by air pressure. An air dome structure shall be considered a structure as that term is defined herein.

ALLEY

A special public right-of-way affording only secondary access to abutting properties.

ART STUDIO

An establishment engaged in the sale or exhibit of art works, such as paintings, sculpture, macrame, knitted goods, stitchery or pottery. Art studios are also engaged in the creations of such art works and often offer instruction in their creation. Within the context of this chapter, "art studio" does not include nude modeling and other pornographic exhibits.

ASSEMBLY

When used in describing an industrial operation, the fitting or joining of parts of a mechanism by means of fasteners, nuts and bolts, screws, glue, welding or other similar technique. "Assembly" shall not include the construction, stamping or reshaping of any of the component parts.

BABYSITTING

The act of providing care and supervision for fewer than four children. This definition does not apply when the babysitter is related to the child or when more than four children in one household are related.

BASEMENT

That portion of any structure which is below grade or which is partly below and partly above grade but so located that the vertical distance from the grade to the floor is greater than the vertical distance from the grade to the ceiling.

BOARDINGHOUSE

A building other than a hotel or restaurant where meals or lodging is regularly furnished by prearrangement for compensation for four or more persons not members of a family, but not exceeding 12 persons and not open to transient customers.

BOND

See "surety."

BUILDING

Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals, equipment, machinery, or materials.

BUILDING HEIGHT

The vertical distance measured from the mean elevation of the finished lot grade along the street yard face of the structure to the highest point of the coping of a flat roof, to the deck line of a mansard roof or to the average height of the highest gable of a gambrel, hip or pitch roof.

CLOTHING STORES

Retail stores where clothing is sold, such as department stores, dry goods and shoe stores, and dress, hosiery and millinery shops.

COMMUNITY LIVING ARRANGEMENT

The following facilities licensed and operated or permitted under the authority of the Wisconsin Statutes: child welfare agencies under § 48.60, group foster homes for children under § 48.02(7), and, adult family homes and community-based residential facilities under § 50.033; but does not include day-care centers, nursing homes, general hospitals, special hospitals, prisons or jails. The establishment of community living arrangements is governed by §§ 46.03(22), 59.69(15), 60.23, and 62.63(7)(i), Wis. Stats. [Amended 5-17-2016; 12-7-2021 by Ord. No. 2021-004]

CONDITIONAL USES

Uses of a special nature as to make impractical their predetermination as a permitted use in a district.

CONDOMINIUM

A building or group of buildings in which units are owned individually and the structure, common areas and facilities are owned by all owners on a proportional, undivided basis. It is a legal form of ownership of real estate and not a specific building type or style.

DAY-CARE CENTER

An establishment providing care and supervision for four or more persons under the age of seven, licensed by the state under § 48.65, Wis. Stats.

DEVELOPMENT

Any man-made change to improved or unimproved real estate, including but not limited to construction of or addition or substantial improvements to buildings, other structures or accessory uses, mining, dredging, filling, grading, paving, excavation or drilling operations or disposition of materials.

DISTRICT, BASIC

A part or parts of the Town for which the regulations of this chapter governing the use and location of land and buildings are uniform (such as the Residential, Commercial and Industrial District classifications).

DISTRICT, OVERLAY

Overlay districts provide for the possibility of superimposing certain additional requirements upon a basic zoning district without disturbing the requirements of the basic district. In the instance of conflicting requirements, the more strict requirements shall apply.

DRIVE-THROUGH RESTAURANT

A freestanding establishment used for the sale, dispensing or serving of food, refreshments or beverages in or on disposable plates and cups, including those establishments where customers may serve themselves and may eat and drink on or off the premises. Contemporary drive-in or fast-food restaurants often offer drive-through service. For the purpose of this chapter, an eating establishment, located in a shopping center with three or more attached business/retail establishments, which does not provide drive-through service and which may serve food, refreshments or beverages in or on disposable plates and cups is not considered to be a drive-through restaurant. (See also "restaurant.")

DWELLING

A detached building, also called a duplex, designed or used exclusively as a residence or sleeping place, but not including boarding or lodging houses, motels, hotels, tents, cabins or mobile homes.

DWELLING, BI-LEVEL

A two-level dwelling with one level above grade and the other level half above grade and half below grade. The lowest level may or may not have exterior access. For the purpose of measuring living area, the Building Inspector will determine functional areas as defined under "living area" and the first floor area will be considered to be the first level that is entirely above grade.

DWELLING, MULTIPLE-FAMILY

A residential building designed for or occupied by three or more families, with the number of families in residence not to exceed the number of dwelling units provided.

DWELLING, SINGLE-FAMILY

A detached building designed for or occupied exclusively by one family.

DWELLING, TRI-LEVEL

A three-level dwelling with two levels above grade, and a third level half above grade and half below grade. The lowest level may or may not have exterior access.

DWELLING, TWO-FAMILY

A detached building containing two separate dwelling (or living) units, designed for occupancy by not more than two families.

ELECTION CAMPAIGN PERIOD

In the case of an election for office, the period beginning on the first day for circulation of nomination papers by candidates or the first day that candidates would circulate papers were papers to be required and ending the day of the election. In the case of a referendum, the period beginning on the day on which the question to be voted upon is submitted to the electorate and ending on the day on which the referendum is held.

ESSENTIAL SERVICES

Services provided by public and private utilities necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface or overhead gas, electrical, steam, water, sanitary sewerage, stormwater drainage and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations and hydrants, but not including buildings.

FAMILY

The body of persons related by blood, marriage, adoption, or not more than four unrelated persons who live together in one dwelling unit as a single housekeeping entity.

FAMILY DAY CARE HOME

A dwelling licensed as a day-care center by the state under § 48.65, Wis. Stats., where care is provided for no more than eight children.

FAST-FOOD RESTAURANT

See "drive-through restaurant."

FENCE, OPEN

A structure of rails, planks, stakes, strung wire, or similar material erected as an enclosure, barrier, or boundary. Open fences are those with more than 30% of their surface area open for free passage of light and air. Examples of such fences include barbed wire, chain-link, picket, and rail fences.

FENCE, ORNAMENTAL

A fence intended to decorate, accent, or frame a feature of the landscape. Ornamental fences are often used to identify a lot corner or lot line or frame a driveway, walkway or

planting bed. Ornamental fences are those with more than 80% of their surface area open for free passage of light and air. Ornamental fences are often of the rail or wrought iron type.

FENCE, SOLID

A structure of rails, planks, stakes, strung wire, or similar material erected as an enclosure, barrier, or boundary. Solid fences are those with 30% or less of their surface area open for free passage of light and air and designed to conceal from the activities conducted behind them. Examples of such fences are stockade, board-on-board, board and batten, basket weave, louvered and chain-link with screening inserts.

FLEA MARKET

Any premises where the principal use is the sale of new or used household goods, personal effects, tools, art work, small household appliances and similar merchandise, equipment or objects, in small quantities, in broken lots or parcels, not in bulk, for use or consumption by the immediate purchaser. Flea markets may be conducted within a structure or in the open air. Rummage sales and garage sales are not considered flea markets.

FLOOR AREA RATIO

The total area of all buildings on a lot divided by the lot area. When a building has more than one story, the sum of the floor area of all stories is the total floor area of that building.

FRONTAGE

The smallest dimension of a lot abutting a public street measured along the street right-of-way line. For lots abutting a lake or stream, the smallest dimension measured along the shoreline.

GARAGE SALE

See "rummage sale."

GARAGE, PRIVATE

A structure primarily intended for and used for the enclosed storage or shelter of the private motor vehicles of the families resident upon the premises. Carports are considered garages.

GARAGE, PUBLIC OR COMMERCIAL

Any garage other than a private garage.

GIFT STORES

Retail stores where items such as art, antiques, jewelry, books, and notions are sold.

GROUP ASSEMBLY

A company of persons gathered together for any purpose for a period of two or more hours.

HARDWARE STORES

Retail stores where items, such as plumbing, heating and electrical supplies, sporting goods, and paints are sold.

HOME INDUSTRY

Any occupation for gain or support which may be of a more intense nature or exceeds the limitations as defined under "home occupations" in terms of storage of stock or inventory, use of equipment not customarily household in nature, display of product, etc. A home industry may include occupations or uses, such as assembly, mass mailing, multitiered marketing, gunsmithing or licensed firearm sales, furniture and cabinetry woodworking, furniture upholstery and refinishing, route sales, schools or classes (not exceeding four students in one interval), studios, animal grooming (with no overnight boarding) and

salons. Home industries are to be considered conditional uses as provided in § 17.02(14)(c).

HOME OCCUPATION

Any occupation for gain or support conducted entirely within buildings by resident occupants which is customarily incidental to the principal use of the premises. A home occupation includes uses such as telephone marketing, desktop publishing, word processing, computer services, home business office, employment services, travel services, baby sitting, canning, laundering, dressmaking, woodworking, and crafts, but does not include the display of any goods nor such occupations or uses as salons, studios, schools, real estate or insurance agencies. Home occupations shall be considered accessory uses as provided in § 17.02(14)(g).

IMPROVED SURFACE

Any exterior grade altered from a natural vegetated state by the installation of an impervious surface intended for accessory use such as a driveway, parking area, deck, or patio.

JUNK OR SALVAGE YARD

An area consisting of buildings, structures or premises where junk, waste and discarded or salvage materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including automobile wrecking yards and house wrecking and structural steel materials and equipment yards, but not including the purchase or storage of used furniture and household equipment or used cars in operable condition.

LIVING AREA

The total area bounded by the exterior walls of a building at the floor levels, but not including basement, utility rooms, garages, porches, breezeways and unfinished attics.

LOADING AREA

A completely off-street space or berth on the same lot as the principal uses it serves for the loading or unloading of freight carriers, having adequate ingress and egress to a public street or alley.

LOT

For the purpose of this chapter a lot shall be defined as a parcel of land on which a principal building and its accessory building are placed, together with the required open spaces, provided that no such parcel shall be bisected by a public street and should not include any portion of a public right-of-way. No lands dedicated to the public or reserved for roadway purposes should be included in the computation of lot size.

LOT WIDTH

The width of a parcel of land measured at the setback line.

LOT, CORNER

A lot abutting two or more streets at their intersection provided the corner of such intersection has an angle of 135 feet or less, measured on the lot side.

LOT, DOUBLE FRONTAGE

A parcel of land, other than a corner lot, with frontage on more than one street or with frontage on a street and a navigable body of water.

MACHINE SHOPS

Shops where lathes, presses, grinders, shapers and other wood and metal working machines are used, such as blacksmith, tinsmith, welding and sheet metal, plumbing, heating, electrical repair and overhaul shops.

MANUFACTURING

When used in describing an industrial operation, the making or processing of a product with machinery.

MINOR STRUCTURES

Any small, movable accessory erection or construction such as birdhouses, toolhouses, pethouses, play equipment, arbors and walls and fences.

MOTEL

A series of attached, semiattached or detached sleeping units for the accommodation of transient guests.

NONCONFORMING USES OR STRUCTURES

Any structure, land or water lawfully used, occupied or erected at the time of the effective date of this chapter or amendments thereto which does not conform to the current regulations of this chapter or amendments thereto. Any such structure conforming with respect to use but not in respect to frontage, width, height, area, yard, parking, loading or distance requirements is considered a nonconforming structure and not a nonconforming use.

OFFSET

The distance between any lot line, except a street line (street right-of-way) and the nearest roofed or enclosed portion of a building. The offset may also be referred to as a side yard or rear yard.

PARKING LOT

A structure or premises containing 10 or more parking spaces open to the public. Such spaces may be for rent or a fee.

PARTIES IN INTEREST

Includes all abutting property owners, all property owners within 300 feet, and all property owners of opposite frontages.

PROCESSING

When used in describing an industrial operation, the series of continuous actions that changes one or more raw materials into a finished product. The process may be chemical as in the processing of photographic materials; it may be a special method such as processing butter or cheese; it may be a mechanical process such as packaging a base product.

PROFESSIONAL HOME OFFICES

Residences of clergymen, architects, landscape architects, professional engineers, registered land surveyors, lawyers, real estate agents, artists, teachers, authors, musicians or persons in other recognized professions, used to conduct their professions where the office does not exceed 25% of the area of only one floor of the residence and only one nonresident person is employed.

REAR YARD

A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the rear lot line and a line parallel thereto through the nearest point of the principal structure. This yard is opposite the street yard or one of the street yards on a corner lot.

RESTAURANT

An establishment where food, refreshments, and beverages are prepared, served and consumed primarily within the principal structure. (See also "drive-through restaurant.")

RUMMAGE SALE

The occasional sale of personal property at a residence conducted by one or more families in a neighborhood. Rummage sales do not exceed four consecutive days in length and are not conducted more often than three times per year. Rummage sales do not involve the resale of merchandise acquired for that purpose. Rummage sales are also known as "garage sales." Flea markets, defined elsewhere in this section, are not rummage sales.

SEAT

Furniture upon which to sit having a linear measurement not less than 24 inches across the surface used for sitting.

SETBACK OR STREET YARD

A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots and double frontage lots have two such yards.

SHORELANDS

Those lands lying within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond, or flowage; 300 feet from a river or stream or to the landward side of the floodplain, whichever is greater. Shore lands shall not include lands adjacent to farm drainage ditches where such lands are not adjacent to a navigable stream or river; those parts of drainage ditches adjacent to such lands which were nonnavigable streams before ditching or had no previous stream history and such lands are maintained in nonstructural agricultural use.

SIDE YARD

A yard extending from the street yard to the rear yard of the lot, the width of which shall be the minimum horizontal distance between the side lot line and a line parallel thereto through the nearest point of the principal structure.

SIGN

Any medium, including its structure, words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is made known and which are used to advertise or promote an individual, firm, association, corporation, profession, business, commodity, or product and which is visible from any public street or highway.

SIGN AWNING

A sign that is mounted or painted on, or attached to an awning, canopy or marquee.

SIGN COPY

The message or advertisement and any other symbols on the face of a sign.

SIGN FACE

The area or display surface used for the message.

SIGN, GROUND

Any sign placed upon or supported by the ground independent of any other structure.

SIGN, POLE

A sign that is mounted on a freestanding pole or other support so that the bottom edge of the sign is 10 feet or more above grade.

SIGN, PORTABLE

A sign that is not permanent, affixed to a building, structure or to the ground. Such signs are sometimes mounted on wheels to make it transportable.

SIGN, PROJECTING

A sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building.

SIGN, ROOF

A sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above the point of a building with a flat roof, the eave line of a building with a gambrel, gable or hip roof or the deck line of a building with a mansard roof.

SIGN, WALL

A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of, the sign and which does not project more than 12 inches from such building or structure.

SIGN, WINDOW

A sign that is applied or attached to the exterior or interior of a window or located in such manner within the building that it can readily be seen from the exterior of the building through a window.

SILVICULTURE

The care and cultivation of forest trees; forestry.

SPECIAL EXCEPTION

A unique or unusual land use or situation which may be deemed to be appropriate by the Town Plan Commission and the Town Board in a given location or zoning district, but which has not been specifically provided for as a permitted, accessory, or conditional use. Such special exception shall not have the effect of rezoning, and shall not be considered or allowed if said use is specifically allowed as a permitted, accessory or conditional use in any other district. Granting of a special exception does not require the demonstration of unnecessary hardship or practical difficulty, and must be obtained through the procedural due process described herein.

STREET

A public right-of-way not less than 50 feet wide providing primary access to abutting properties.

STRUCTURAL ALTERATIONS

Any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams or girders.

STRUCTURE

Any erection or construction, such as buildings, prefabricated or prebuilt buildings, towers, masts, poles, booms, signs, decorations, carports, machinery and equipment.

SUBSTANTIAL COMPLETION

The date certified by a registered architect or engineer that a project is sufficiently complete to be occupied by the owner and for which the Building Inspector will issue a limited or temporary occupancy permit.

SUBSTANTIAL IMPROVEMENT

Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the present equalized assessed value of the structure, either before the improvement or repair is started or if the structure has been damaged and is being restored, before the damage occurred. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure or site documented as deserving preservation by the State Historical Society or listed on the National Register of Historic Places. Ordinary

maintenance repairs are not considered structural repairs, modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling and the replacement of doors, windows and other nonstructural components.

SURETY

Whenever the terms "surety," "surety bond" or "bond" are used in this chapter, such term shall describe only an irrevocable letter of credit or a cash bond as approved by the Town Attorney.

SUSTAINED YIELD FORESTRY

Management of forested lands to provide annual or periodic crops of forest products.

TOWNHOUSES

A group of single-family dwellings, also called row houses, having an unpierced common wall between each adjacent section and the end units having side yards.

TURNING LANE

An existing or proposed connecting roadway between two arterial streets or between an arterial street and any other street. Turning lanes include grade separated interchange ramps.

UTILITIES

Public and private facilities, such as water wells, water and sewage pumping stations, water storage tanks, power and communication transmission lines, electrical power substations, static transformer stations, telephone and telegraph exchanges, microwave radio relays and gas regulation stations, but not including sewage disposal plants, municipal incinerators, warehouses, shops and storage yards.

WETLAND

An area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

YARD

An open space on the same lot with a structure, unoccupied and unobstructed from the ground upward except for vegetation. The street and rear yards extend the full width of the lot.

§ 17.02. General provisions.

- (1) Jurisdiction. The jurisdiction of this chapter shall include all lands and waters within the limits of the Town.
- (2) Compliance. No structure, land or water shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered except in conformity with the regulations herein specified for the district in which it is located, except as allowed under § 62.23(7)(hc), Wis. Stats.
[Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
- (3) Plan commission. The Town Plan Commission shall have the duties of making reports and recommendations related to the planning and development of the Town to public officials, agencies, public utility companies, civic, educational, professional and other organizations, and citizens. The Plan Commission may employ staff and shall oversee the operation of the Office of the Zoning Administrator. The Commission, its members and employees, in the performance of its functions, may enter upon any land and make examinations and surveys. In general, the Plan Commission shall have such powers as may be necessary to enable it to perform its function and promote municipal planning.

- (4) Architectural review committee. There shall be a Town of Brookfield Architectural Review Committee consisting of the Town Building Inspector and a minimum of two members of the Town Plan Commission. One of the Plan Commission members shall be a Town Board Supervisor serving on the Plan Commission. Other members serving on the Architectural Review Committee shall be appointed by the Plan Commission Chairperson, subject to Town Board approval, for a term of two years. An attempt shall be made to include a member from the public at large. The Chairperson of the Architectural Review Committee shall be elected at the first meeting in May by the Committee membership. The Architectural Review Committee may employ staff or professional consultants with the consent of the Town Board.
- (a) Organization. The Architectural Review Committee shall organize and adopt rules of procedure for its own government in accordance with the provisions of this chapter.
1. Meetings shall be held at the call of the Chairperson and shall be open to the public.
 2. Minutes of the proceedings and a record of all actions and recommendations shall be kept by the Building Inspector, or other designated person, showing the reasons for the Committee's determination, and its finding of facts. These records shall be immediately filed in the office of the Committee and shall be a public record.
- (b) The Building Inspector shall review the site plans, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, drainage, sewerage and water systems, and utilization of landscaping and open space as deemed appropriate for all development in the A-1 Agricultural District, and the Rs-1, Rs-2, Rs-3, Rs-4, and Rd-1 Residential Districts. The Building Inspector shall grant or deny associated building permit application, or refer application to the Architectural Review Committee for further consideration.
- (c) The Architectural Review Committee shall review the site plans, existing and proposed structures, architectural plans, parking areas, driveway location, loading and unloading, highway access, traffic generation and circulation, drainage, and utilization of landscaping and open space and the proposed operation for development in all districts except the A-1 Agricultural District, and the Rs-1, Rs-2, Rs-3, Rs-4, and the Rd-1 Residential Districts. The Architectural Review Committee shall make a recommendation to the Plan Commission and Town Board who shall grant or deny the associated building permit, conditional use permit, or other referred permit applications.
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]
- (5) Duties of the Zoning Administrator/Building Inspector. The Town Zoning Administrator/Building Inspector designated as the administrative and enforcement officer for the provisions of this chapter. The duty of the Building Inspector/Zoning Administrator shall be to interpret all permits required by this chapter and to issue, after on-site inspection, all permits required by this chapter. The Zoning Administrator shall further:
- (a) Maintain records of all permits issued, inspections made, work approved, and other official actions.
1. All available information in the form of reports, bulletins, maps, and engineering data shall be readily available and widely distributed.
 2. Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the 100-year recurrence interval floodplain at appropriate locations within the floodplain.
 3. Where useful, wetland boundaries may be staked in the field and said boundaries may be identified on a plat of survey.
 4. Information regarding the location of floodlands and wetlands shall be provided to realtors, lenders, and the general public. All legal descriptions of property containing floodlands or wetlands should include information designating the floodland or wetland areas when property is transferred.

5. The Town Board may set fees necessary to recover the costs of providing information to the public.
- (b) Inspect all structures, lands, and waters as often as necessary to assure compliance with this chapter.
 - (c) Interpretations concerning whether specific uses are permitted and concerning the precise selection of zoning district boundaries shall be made initially by the Building Inspector.
 - (d) Investigate all complaints made relating to the location of structures and the use of structures, lands, and waters, give notice of all violations of this chapter to the owner, resident, agent, or occupant of the premises, and report uncorrected violations to the Town Attorney in a manner specified by him.
 - (e) Assist the Town Attorney in the prosecution of violations of this chapter.
 - (f) Be permitted access to premises and structures during reasonable hours to make those inspections as deemed necessary by the Building Inspector to ensure compliance with this chapter. If, however, he is refused entry after presentation of his identification, he may procure a special inspection warrant in accordance with § 66.0119 of the Wisconsin Statutes. [Amended 12-7-2021 by Ord. No. 2021-004]
 - (g) Prohibit the use or erection of any structure, land or water until he has inspected and approved such use or erection.
 - (h) Request assistance and cooperation from the Town Police Department and Town Attorney as deemed necessary.
 - (i) Attend all meetings of the Town Plan Commission, Zoning Board of Appeals.
- (6) Plan of operation, site plan and architectural review. For the purpose of promoting compatible development, stability of property values, and to prevent impairment or depreciation of property values, no person shall commence any use or erect any structure without first obtaining the approval of detailed site and architectural plans as set forth in this section. A plan of operation approval shall be required if 25% of any existing building is proposed to be altered or remodeled, or an occupancy change occurs equaling 25% of the floor area of the structure. The Zoning Administrator/Building Inspector shall review the site plans, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, utilization of landscaping and open space as deemed appropriate for all development in the A-1 Residential District, and the Rs-1, Rs-2, Rs-3 Rs-4, and Rd-1 Residential Districts. The Zoning Administrator may, at his discretion, refer site plans or architectural plans to the Plan Commission when a question arises concerning generally accepted community standards or when a development is substantially different from Town norms. The Plan Commission shall review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, loading and unloading, highway access, traffic generation and circulation, drainage, sewerage and water systems, utilization of landscaping and open space, and the proposed operation in all districts except the A-1 Agricultural District, and the Rs-1, Rs-2, Rs-3 Rs-4, and Rd-1 Residential Districts. Plan Commission review and recommendation shall be pursuant to § 17.02(7).
- (a) Principles. To implement and define criteria for the purposes set forth above, the following principles are established to apply to all new structures and uses, and to changes or additions to existing structures and uses.
 - 1. Appearance. No building shall be permitted the design or exterior appearance of which is of such unorthodox or abnormal character in relation to its surroundings as to be unsightly or offensive to generally accepted taste and community standards. The Plan Commission or Zoning Administrator shall make necessary interpretations as to the substance of community standards.
 - 2. Monotony. No building shall be permitted the design or exterior appearance of which is so identical with those adjoining as to create excessive monotony or drabness. The Plan

Commission or Zoning Administrator shall make necessary interpretations as to what is monotonous or drab in the Town of Brookfield.

3. Facades, generally. No building shall be permitted where any exposed facade is not constructed or faced with a finished material, which is not aesthetically compatible with the other facades and presents an attractive appearance to the public and to surrounding properties.
4. Facades in manufacturing districts. The facade of a manufacturing building which faces upon a street right-of-way shall be finished with an aesthetically pleasing material. Fifty percent of a facade facing a street shall be finished with brick, decorative masonry, glass panel, or other appropriate finished facade as may be approved by the Plan Commission. Such brick, masonry, glass, or other decorative facing shall extend for a distance of at least 20 feet along the sides of the structure. Manufacturing buildings on corner lots shall have the required masonry facade facing each street. Metal buildings may be constructed in any business, manufacturing, institutional, or park district, but only by a 3/4 affirmative vote of the Plan Commission.
[Amended 12-7-2021 by Ord. No. 2021-004]
5. Building scale and mass. The relative proportion of a building to its neighboring buildings, to pedestrians and observers, or to other existing buildings shall be maintained or enhanced when new buildings are built or when existing buildings are remodeled or altered.
6. Building rooflines and roof shapes. The visual continuity of roofs and their contributing elements (parapet walls, coping, and cornices) shall be maintained in building development and redevelopment.
7. Colors. Since the selection of building colors has a significant impact upon the public and neighboring properties, color shall be selected in general harmony with existing neighborhood buildings.
8. Siting of structures. No building or sign shall be permitted to be sited on the property in a manner which would unnecessarily destroy or substantially damage the natural beauty of the area, particularly insofar as it would adversely affect values incident to ownership of land in that area; or which would unnecessarily have an adverse effect on the beauty and general enjoyment of existing structures on adjoining properties. A ten-foot offset to paving shall be provided in all nonresidential districts.
9. Health and safety. No building or use shall be permitted that would have a negative impact on the maintenance of safe and healthful conditions in the Town.
10. Outdoor storage. No articles, goods, material, finished or unfinished product, incinerators, storage tanks, refuse containers, or like equipment shall be kept outdoors, exposed to public view, or exposed to view from adjacent buildings and property. Garbage and refuse containers shall be screened from the street and from neighboring facilities. The Plan Commission may recommend the outdoor display of product or merchandise when it makes a finding that such display is essential to a business or industrial use.
11. Topography and drainage. Buildings and uses shall maintain existing topography, drainage patterns, and vegetative cover insofar as is practical. The Plan Commission may require that drainage easements be executed. Buildings and uses shall conform with any adopted Stormwater Management Plan.
12. Erosion control. Appropriate erosion control measures shall be utilized in all new construction.
13. Traffic circulation. Buildings and uses shall provide for safe traffic circulation and safe driveway locations.

14. Parking and loading. Buildings and uses shall provide adequate parking and loading areas. No loading dock or overhead doors shall face upon a street right-of-way. A ten-foot offset to paving shall be provided in all nonresidential districts.
15. Lighting shall be installed and maintained in accordance with the standards set forth herein. No exterior lighting used for parking lots, recreational facilities, product display, or security shall be permitted to spillover on operators of motor vehicles, pedestrians, and uses of land in the vicinity of the light source. These requirements shall not apply to lighting placed in a public right-of-way for public safety. The requirements are:
 - a. Type. Shielded luminaires, or luminaires with cutoff optics, and careful fixture placement shall be required so as to facilitate compliance with this section.
 - b. Orientation. Exterior lighting fixture shall be orientated so that the lighting element (or a transparent shield) does not throw rays onto neighboring properties. No lighting source shall be visible from outside its premises. Light rays shall not be directed into street rights-of-way or upward into the atmosphere. No horizontal throw via outward projecting lenses or optics shall be permitted contributing as a point glare source.
 - c. Minimum lighting standards. All areas designated on approved site plans for vehicular parking, loading, or circulation and used for any such purpose after sunset shall provide artificial illumination in such areas at a minimum intensity of 0.4 footcandle, exclusive of approved antivandal lighting. This standard shall not apply to properties in agricultural and single-family residential districts.
 - d. Intensity of illumination. The intensity of illumination, measured at the property line, shall not exceed 0.2 footcandle.
 - e. Location. Light fixtures shall not be permitted within required buffer yards.
 - f. Flashing, flickering, and other distracting lighting which may distract motorists is prohibited.
 - g. Nuisances. Lighting which creates or becomes a public nuisance is not permitted.
 - h. Accent lighting and low voltage lighting (12 volts or less) is exempt from these requirements.
 - i. Nonconforming lighting. All lighting fixtures approved prior to the adoption of this chapter shall be treated as and regulated as legal nonconforming uses (see § 17.09).
16. Utilities. Buildings and uses shall be provided with adequate public services as approved by the appropriate utility.
17. Heating, air-conditioning, and ventilating equipment shall be located in a manner to be unobtrusive or screened from view.
18. Open spaces. Buildings and uses shall make appropriate use of open spaces and shall be landscaped in accordance with the standards set forth in § 17.02(6)(a)19 of this chapter. [Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
19. Landscaping for all development in all districts shall be in accordance with this section and shall submit a landscaping plan as part of the required site plan.
 - a. Required landscape planting. The number of plant materials required in order to achieve an appropriate and complete landscape plan for a site shall be as provided below:
 - i. In every district the minimum open space required in that district shall be provided. For the purpose of this chapter, open space shall not include buildings, driveways, parking lots, loading areas, or storage yards, but may include trees, shrubs, ground cover, patios, decks, sidewalks and paths, and swimming pools.

- ii. Required open space shall consist of a mixture of trees, shrubs, ground cover, and other open space features as approved by the Plan Commission.
- iii. Parking lot interior and peripheral planting shall be provided as set forth in § 17.06(3)(f) of this chapter.
[Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
- b. The minimum size of plantings required by this section shall be as follows:
 - i. Deciduous trees shall have a minimum caliper of two inches caliper.
 - ii. Coniferous trees shall be a minimum of six feet in height.
 - iii. Shrubs shall be a minimum of 18 inches in height or spread.
 - iv. Ornamental trees shall have a minimum caliper of one inch caliper.
- c. Woodland preservation.
 - i. It is the policy of the Town of Brookfield to preserve the environmentally sensitive or significant natural areas including natural forest, and woodland areas in the Town, and with respect to specific site development to retain, as far as practical, substantial tree stands which should be incorporated into the site. Credit for the retention of existing trees which are of desirable and acceptable minimum size, species, and location may be given by the Plan Commission to satisfy other requirements of this section.
 - ii. Trees that are to be destroyed in the development process shall be identified in the required landscaping plan. Any trees not approved for destruction in the approved development or landscape plan, which are subsequently destroyed, shall be replaced in accordance with the following schedule:

Tree Type	Size of Tree Destroyed	Size of Replacement Tree(s)
Deciduous	5-inch to 7-inch caliper tree	One 5-inch to 7-inch caliper tree; or Two 2 1/2-inch to 4-inch caliper trees
	8-inch to 11-inch caliper tree	Three 5-inch to 7-inch caliper trees; or Nine 2-inch to 4-inch caliper trees
	12-inch or larger tree	Six 5-inch to 7-inch caliper trees; or Twelve 2 1/2-inch to 4-inch caliper trees
Conifers	10-foot or taller tree	One 10-foot or taller tree; or Three 6-to-10-foot trees or 4-foot to 6-foot trees

- d. Plant species. Landscaping shall utilize a variety of tree species and no species currently under disease epidemic shall be used. Species planted shall be hardy under local conditions and compatible with the local landscape.
- e. Location of trees shall consider the mature height and spread of trees. Trees shall be located in such a manner that no part of the tree shall extend beyond the lot line.
- f. No landscaping shall be permitted within utility easements, drainage easements, or road rights-of-way except with seed or sod with the approval of the Plan Commission.

- (d) Project approval fee. There shall be a project approval review fee as set forth in § 17.03 of this chapter. A separate fee shall not be required for each approval — conceptual, preliminary, and final — provided that each phase is completed within the time schedule set forth above. Should the Plan Commission determine that the final project plans are not substantially in conformance with the approved preliminary project plans, or that the preliminary project plans are not substantially in conformance with the approved conceptual plans, the project shall be considered a new project. At that point, the developer starts over with the resubmission of plans and fees.
- (8) Building permit required. No structure shall hereafter be located, erected, moved, reconstructed, extended, enlarged, or structurally altered until after the owner or his agent has secured a building permit from the Zoning Administrator unless otherwise exempted pursuant to § 17.02(9) of this chapter. A building permit is required for all alterations or modifications impacting structure or exiting. Applications for building permits shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable:
- (a) Name and addresses of the applicant, owner of the site, architect, professional engineer, and contractor.
 - (b) Description of the subject site by lot, block and recorded subdivision, or metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.
 - (c) Plat of survey prepared by a registered land surveyor showing the location, boundaries, dimensions, elevations to National Geodetic Vertical Datum (NGVD), uses, and sizes of the following: subject site; existing and proposed structures; existing and proposed easements, streets, and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; and existing and proposed street, side, and rear yards. In addition, the plat of survey shall show the location, elevation, and use of any abutting lands and their structures within 40 feet of the subject site.
 - (d) Proposed sewage disposal plan if municipal sewerage service is not available. This plan shall include a copy of the permit issued by the Waukesha County Health Department for the installation of an on-site soil absorption sanitary sewage disposal system, or other appropriate means of waste disposal. The Town Engineer shall certify that satisfactory, adequate, and safe sewage disposal is possible on the site as shown in the private sewage disposal plan.
 - (e) Proposed water supply. Plan if municipal water service is not available. This plan shall be in accordance with Chapter NR 812 of the Wisconsin Administrative Code and shall be approved by the Town Engineer who shall certify, in writing, that an adequate and safe supply of water will be provided.
 - (f) Condominium declaration. Any developer of land in the Town of Brookfield who elects to create a condominium pursuant to Chapter 703 of the Wisconsin Statutes shall submit a copy of the Condominium Declaration, and any amendment thereto, to the Zoning Administrator to be attached to the file copy of the building permit application.
 - (g) Additional information as may be required by the Town Plan Commission, Town Engineer, Zoning Administrator, or Plumbing Inspector.
 - (h) A building permit for a permitted use in a single-family or two-family residential district shall be granted or denied, in writing, by the Zoning Administrator within 15 working days. A building permit for a permitted use in any other district shall be granted or denied in writing by the Zoning Administrator within 30 working days following approval as required under § 17.02(6). Building permits for conditional uses shall be granted or denied, in writing, within 90 working days.
 - 1. All building permits shall expire within six months unless work has commenced. In addition, building permits for single-family residences shall expire within 12 months from

the date the permit was issued unless the structure has been substantially completed. Any permit issued in conflict with the provisions of this chapter shall be null and void.

2. A permit applicant shall apply for conceptual or preliminary project approval in which case the time limits set forth in § **17.02(7)** of this chapter shall apply.
- (9) Uses not requiring a building permit. No building permit shall be required for any of the following cases:
 - (a) For building an accessory building less than 120 square feet in area.
 - (b) For any improvement or alteration to an existing building less than 120 square feet in area which does not structurally alter or effect a change in use to an existing building.
 - (c) For repairs that do not alter the size or position of an existing structure on a lot, subject to the conditions of the original project approval, if required under § **17.02(6)**. Such repairs shall not include the replacement or alteration of bearing walls.
 - (d) For ordinary maintenance, such as painting, or the replacement of roofing, roof gutters, or siding subject to the conditions of the original project approval, if required under § **17.02(6)**.
 - (e) However, any work that does qualify for an exemption under this section shall be required to comply with the applicable setback, yard, height, and other requirements set forth in this chapter.
 - (10) Foundation survey required.
 - (a) Any person erecting, moving, enlarging or reconstructing a structure, which under this chapter requires a building permit, shall, prior to the completion of the construction of footings, concrete slab, or other foundation, submit to the Zoning Administrator a survey prepared by a registered land surveyor showing the location, boundaries, dimensions, elevations and size of the following: all structures and their relation to the lot line. The Zoning Administrator shall compare the location of all new or extended foundations with the location of all proposed construction activity reported on the building permit application. No further construction may commence unless the Zoning Administrator finds that the foundation location is as certified by the surveyor and is consistent with the permit as issued.
 - (11) Occupancy permit required.
 - (a) No vacant land shall be occupied or used; and no building or premises shall be erected, altered or moved, or create change in use; and no nonconforming use shall be maintained, renewed, changed, or extended until a certificate of compliance shall have been issued by the Zoning Administrator. Such certificate shall show that the building or premises or part thereof is in compliance with the provisions of this chapter. Such certificate shall be applied for at the time of occupancy of any land and/or building.
 - (b) No building located in a business or industrial zone and used for business or industrial purposes shall be occupied by a new tenant or a new owner or shall have the use changed without the issuance of a new certificate of compliance by the Zoning Administrator. Plan of operation approval, as required under § **17.02(6)**, shall be required for any change in tenancy which accounts for an excess of 25% of the floor area of the structure. Such certificate shall show that the building or premises or part thereof is in compliance with the provisions of this chapter, Uniform Dwelling Code, Electrical Code, Fire Prevention Code and the Plumbing Code of the Town of Brookfield and State of Wisconsin. Such occupancy permit for the occupation of a previously existing building by a new tenant or use shall be applied for at the time of any remodeling of the building or prior to the occupancy for the new use or by the new owner. Application for an occupancy permit be made in the same manner as for a building permit pursuant to § **17.02(8)** of this chapter.
 - (12) Special occupancy permit required. The following uses are special occupancy uses which are temporary in nature and may be permitted as specified herein upon the issuance of a special

occupancy permit by the Zoning Administrator. Application for a special occupancy permit shall be made in the same manner as for a building permit pursuant to § 17.02(8) of this chapter.

(a) Model homes, real estate sales and rental field offices, and shelters for the storage of material and equipment being used in the construction of a permanent structure may be permitted in any district for a period not to exceed one year. Special requirements may be imposed by the Zoning Administrator for parking, sanitary facilities, lighting, and hours of operation. No temporary use listed herein shall be conducted within the street right-of-way. Temporary uses permitted under this section may erect one temporary sign not to exceed 50 square feet in area on one side and 100 square feet in area on all sides. All buildings, tents, signs, equipment, supplies, and debris shall be removed from the site within 10 days following the temporary activity.

(b) Outdoor group assemblies may be permitted for each tenant in a B-1, B-2, or any manufacturing district for a period not to exceed 14 days within a twelve-month period. Special requirements may be imposed by the Zoning Administrator for parking, sanitary facilities, lighting, and hours of operation. No temporary use listed herein shall be conducted within the street right-of-way. Temporary uses permitted under this section may erect one temporary sign not to exceed 50 square feet in area on one side and 100 square feet on all sides. All buildings, tents, signs, equipment, supplies, and debris shall be removed from the site within 10 days following the temporary activity.
[Amended 3-3-2020]

(c) (Reserved)^[1]

[1] *Editor's Note: Former Subsection (c), regarding circuses and animal shows, was repealed 3-3-2020.*

(d) Farmers markets may be permitted in a B-1, B-2, or any manufacturing district for a period not to exceed 120 days in a twelve-month period. Special requirements may be imposed by the Zoning Administrator for parking, sanitary facilities, lighting, and hours of operation. No temporary use listed herein shall be conducted within the street right-of-way. Temporary uses permitted under this section may erect one temporary sign not to exceed 50 square feet in area on one side and 100 square feet in area on all sides. All buildings, tents, signs, equipment, supplies, and debris shall be removed from the site within 10 days following the temporary activity.

(e) Fireworks sales facilities are prohibited in the Town of Brookfield.

(13) Site restrictions. No land shall be used or structure erected where the land is unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community. The Town Building Inspector, in applying the provisions of this section, shall, in writing, recite the particular facts upon which he bases his conclusion that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence contesting such unsuitability if he so desires. Thereafter the Town Plan Commission may affirm, modify, or withdraw the determination of unsuitability. In addition:

(a) All lots shall abut upon a public street and each lot shall have a minimum frontage at the road right-of-way of 50 feet.

(b) All principal structures shall be located on a lot; and only one principal structure shall be located, erected or moved onto a lot in single-family and two-family residential districts. The Plan Commission may permit more than one structure per lot in other districts where more than one structure is needed for the orderly development of the parcel. Where additional structures are permitted, the Plan Commission may impose additional yard requirements, landscaping requirements, or parking requirements, or require a minimum separation distance between principal structures.

- (c) No building permit shall be issued for a lot which abuts a public street dedicated to only a portion of its proposed width and located on that side thereof from which the required dedication has not been secured.
 - (d) Street yard and offset areas shall be landscaped and kept clean and free from the accumulation of debris and refuse and shall not be used for the storage or display of equipment, products, vehicles or other materials. All commercial and manufacturing lots shall maintain an area not less than 10 feet in width around the periphery of the lot that is free of structures, materials, trees or shrubs for access by emergency vehicles.
 - (e) Lots abutting more restrictive district boundaries shall provide offsets not less than those required in the more restrictive abutting district. The street yards on the less restrictive district shall be modified for a distance of not more than 60 feet from the district boundary line so as to equal the average of the street yards required in both districts.
- (14) Use restrictions. The following use restrictions and regulations shall apply:
- (a) Principal uses. Only those principal uses specified for a district, their essential services, and the following uses shall be permitted in that district.
 - (b) Conditional uses.
 - 1. Permits. The Town Board may issue a conditional use permit for conditional uses after review and a public hearing, provided that such conditional uses and structures are in accordance with the purpose and intent of this chapter and are found to be not hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the neighborhood or the community. A review of all approved conditional use permits shall be made at least every five years. Applications for conditional use permits shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where pertinent and necessary for proper review by the Plan Commission:
 - a. Names and addresses of the applicant owner of the site, architect, professional engineer, contractor, and all opposite and abutting property owners of record.
 - b. Description of the subject site by lot, block, and recorded subdivision or by metes and bounds; address of the subject site; type of structure; proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site is located. For floodland conditional uses, such description shall also include information that is necessary for the Plan Commission to determine whether the proposed development will hamper flood flows, impair floodplain storage capacity, or cause danger to human or animal life. This additional information may include plans, certified by a registered professional engineer or land surveyor, showing elevations or contours of the ground; fill or storage elevations; first floor elevations of structures; size, location, and spatial arrangement of all existing and proposed structures on the site; location and elevation of streets, water supply, and sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream; soil types; and other pertinent information.
 - c. Plat of survey prepared by a registered land surveyor showing all of the information required under § **17.02(8)(c)** for a building permit and, in addition, the mean and historic high-water lines and floodlands on or within 40 feet of the subject premises and existing and proposed landscaping.
[Amended 12-7-2021 by Ord. No. 2021-004]
 - d. Additional information as may be required by the Town Plan Commission, Town Engineer, Zoning Administrator, or Plumbing Inspector.
 - e. Review and approval. The Town Plan Commission shall review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway

locations, highway access, traffic generation and circulation, drainage, sewerage and water systems, and the proposed plan of operation. Conditions such as landscaping, architectural design, dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements may be required by the Town Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this chapter.

- f. Compliance with all other provisions of this chapter, such as lot width and area, yards, height, parking, loading, traffic, and highway access shall be required of all conditional uses. Variances shall only be granted as provided in § 17.11 of this chapter.
 - g. Public hearing. The Town Plan Commission shall hold a public hearing on each application giving public notice as specified in § 17.13 of this chapter. The Plan Commission may subsequently issue the conditional use permit with appropriate conditions, deny the permit with reasons, or require the submittal of a modified application.
 - h. Existing conditional uses. All uses existing at the effective date of this chapter which would be classified as a conditional in the district concerned if they were to be established after the effective date of this chapter, are hereby declared to be conforming conditional uses to the extent of their existing operation. Any proposed change in the existing operation shall be subject to the conditional use procedures as if such use were being established anew.
 - i. Amendments. Changes subsequent to the initial issuance of a conditional use permit which would result in a need to change the initial conditions shall require an amendment to the conditional use permit. Enlargement of a conditional use shall be considered an amendment. The process for amending a permit shall generally follow the same procedures as those required for granting a conditional use permit as set forth in this section.
 - j. Revocation of conditional use permit. Should a permit applicant, his heirs or assigns, fail to comply with the conditions of the permit issued by the Plan Commission or should the use, or characteristics of the use be changed without prior approval by the Plan Commission, the conditional use permit may be revoked. The process for revoking a permit shall generally follow the same procedures as those required for granting a conditional use permit as set forth in this section.
2. Public and semipublic uses. The following public and semipublic uses shall be conditional uses and may be permitted as specified:
- a. Airports, airstrips, and landing fields in the I-1 Institutional District, the M-1 and M-2 Manufacturing Districts, and A-1 Agricultural District, provided that the site is not less than 20 acres.
 - b. Governmental and cultural uses, such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds, and museums, in all residential and business districts, in the M-1 and M-2 Manufacturing Districts, and in the P-1 Park District.
 - c. Utility substations, wells, pumping stations, and water towers in all districts, provided all principal structures and uses are not less than 50 feet from any residential district lot line.
 - d. Public passenger transportation terminals, such as heliports, and bus and rail depots, but excluding airports, airstrips, and landing fields, in all business districts and in the M-1 and M-2 Manufacturing Districts provided that uses are not less than 100 feet from any residential district boundary.

- e. Public, parochial, and private elementary and secondary schools and churches in all residential districts and the P-1 Park District, provided the lot area is not less than two acres and all principal structures and uses are not less than 100 feet from any lot line.
 - f. Penal and correctional institutions in the I-1 Institutional District, provided that the site is not less than five acres and does not abut upon a residential property.
 - g. Cemeteries, mausoleums, and crematoriums which are subject to the requirements of Subchapter II, Chapter 157, Wis. Stats., in the I-1 Institutional District, provided that no structure may be located closer than 50 feet from any lot line.
[Amended 5-3-2016]
 - h. Solar energy collectors erected as an accessory structure may be permitted in any district, provided that the structure shall comply with all the yard and height requirements for the district in which the solar collector is located.
 - i. Churches in B-3 Office And Professional Business Districts, provided that the lot area is not less than two acres and that all church related uses are not less than 100 feet from any lot line zoned or used for residential purposes. Before granting a conditional use, the Plan Commission shall approve a site plan and plan of operation which shall include estimates of occupancy during normal or special uses, required parking and traffic control related issues, any and all exterior accessory uses incidental to the operation of the church, the hours of operation, the length and terms of any lease if the church is to be located on property leased, rather than owned, and such information as may be required in the discretion of the Plan Commission so as to ensure that the granting of the conditional use will be consistent with the spirit and intent of the zoning code.
[Added 7-5-2011; amended 12-7-2021 by Ord. No. 2021-004]
 - j. Any columbarium that is established and used by a religious association and is not subject to the requirements of Subchapter II, Chapter 157, Wis. Stats., as the result of the exemption granted by § 157.123(2) Wis. Stats, in the I-1 Institutional District for the purpose of promoting compatible use of residential property and stability of property values, any conditional use granted under this section shall require the submission of a plan of operation and a site plan. The Plan Commission shall review the proposed location of the columbarium, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, loading and unloading or other special needs accommodations, highway access, landscaping and open space, and such other matters as the Plan Commission deems appropriate to achieve the purposes described in this section. No conditional use authorized under this section may permit the construction and maintenance of any columbarium located within the street yard, offset or setback dimensions or restrictions as established by the underlying zoning classification.
[Added 5-3-2016]
3. Residential uses. The following residential and quasi-residential uses shall be conditional uses and may be permitted as specified:
- a. Community living arrangements which have a capacity for nine or more persons in the Rs-1, Rs-2, Rs-3, Rs-4, and Rd-1 Residential Districts.
 - b. Community living arrangements which have a capacity for 16 or more persons in the Rm-1 and Rm-2 Residential Districts.
 - c. Multifamily residential projects exceeding eight units per structure in the Rm-1 and Rm-2 Residential Districts.
 - d. Rest homes, nursing homes, clinics, and children's nurseries in the Rm-1 and Rm-2 Residential Districts and the I-1 Institutional District, provided all principal structures and uses are not less than 50 feet from any lot line.

- e. Clubs, fraternities, lodges, and meeting places of a noncommercial nature in any residential district and the I-1 Institutional District, provided all principal structures and uses are not less than 25 feet from any lot line.
 - f. Home industries in any residential district, provided that:
 - i. The use of the residential dwelling for the home industry shall be clearly incidental and subordinate to its residential use and shall not occupy more than 25% of the floor area of one floor.
 - ii. One person other than members of the family residing on the premises may be employed or engaged in such home industry.
 - iii. No traffic shall be generated by the home industry in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of the home industry shall be provided off the street and other than in the required street yard.
 - iv. No outdoor storage of equipment or product shall be permitted.
 - v. Shall not be adverse to the residential character of the neighborhood in terms of either nonresidential traffic or solid waste storage or disposal of a quantity greater than normally expected in a residential neighborhood.
 - vi. Shall have no measurable effect outside the building (noise, odors, vibrations, electrical disturbance, etc.).
 - g. Community living arrangements in all districts zoned for residential use, located between 1,500 feet and 2,500 feet of the location of another community living arrangement, subject to the provisions of § 60.63, Wis. Stats. for the purpose of promoting compatible use of residential property, stability of property values, and to prevent impairment of depreciation of property values, any conditional use granted under this section shall require the submission of a plan of operation and a site plan. The Plan Commission shall review the proposed location of the community living arrangement facility, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, loading and unloading or other special needs accommodations, highway access, landscaping and open space, and such other matters as the Plan Commission deems appropriate to achieve the purposes described in this section.
[Added 5-17-2016]
4. Business uses. The following commercial uses shall be conditional uses and may be permitted as specified:
- a. Automotive, marine, and aircraft sales, service, repair, and storage facilities in the B-2 Business District, provided that there shall be not more than two automotive facilities or two marine facilities or two aircraft facilities in a one-mile radius.
 - b. Drive-in theaters in the B-2 Business District, provided that a planting screen at least 25 feet wide is created along any side abutting a residential district and no access is permitted to or within 1,000 feet of an arterial street.
 - c. Drive-in banks in the B-1, B-2 and B-3 Business Districts.
 - d. Drive-through and fast-food restaurants in the B-2 Business District.
[Amended 5-17-2016]
 - e. Funeral homes in any business district and the I-1 Institutional District, provided all principal structures and uses are not less than 25 feet from any lot line.
 - f. Gasoline service stations and car washes in the B-1 and B-2 Business Districts, provided that all service islands, pumps, and structural supports for canopies shall

meet the setback and yard requirements of the district, and further provided that there shall be not more than two such facilities in a one-mile radius.

- g. Transmitting towers, receiving towers, relay and microwave towers in the B-2 Business and I-1 Institutional Districts.
 - h. Broadcast studios in the I-1 Institutional District.
 - i. Adult day care facilities in B-3 Office and Professional Districts.
[Added 9-5-2017]
5. Industrial and agricultural uses. The following industrial and agricultural uses shall be conditional uses and may be permitted as specified:
- a. Animal hospitals with exterior runs in the B-2 Business District and the M-1 and M-2 Manufacturing Districts, provided all principal structures and uses are not less than 100 feet from any residential use.
 - b. Dumps, disposal areas, incinerators, and sewage treatment plants in A-1 Agricultural Districts and M-2 Manufacturing District.
 - c. Processing and manufacturing of feeds prepared for animals and fowl; storage of animal feeds, fertilizer, seeds, animal health products, and lawn and garden equipment in the M-1 and M-2 Manufacturing District, provided all storage operations are conducted within an enclosed building.
 - d. Lumberyards, millwork, sawmills, and planing mills in the M-1 and M-2 Manufacturing Districts.
 - e. Manufacturing and processing of dimension hardwood flooring, veneer, and plywood, in the M-1 and M-2 Manufacturing Districts.
 - f. Freight yards freight terminals, and transshipment depots in the M-1 and M-2 Manufacturing Districts.
 - g. Commercial service facilities, such as restaurants, fueling stations, and office uses, in the M-1 and M-2 Manufacturing Districts, provided that all such services are physically and saleswise oriented toward industrial district users and employees, and that other users are only incidental customers.
[Amended 8-2-2005]
6. Mineral extraction. The following earthmoving and mineral extraction uses shall be conditional uses and may be permitted as specified:
- a. Topsoil removal and sale may be permitted in any district except the C-1 Conservancy District. An adequate amount of topsoil shall be retained or stored on the site to accommodate final development of the site. An "adequate amount" is declared to be four inches of topsoil over all areas not paved or covered by buildings. The Town Board shall require the use of adequate soil erosion control measures to prevent tracking of Town streets and prevent pollution of surface waters caused by runoff.
 - b. Processing and storage of cement products in the M-3 Manufacturing District.
 - c. Mineral extraction operations, including washing, crushing, or other processing, may be permitted in the M-3 Manufacturing District, provided:
 - i. The application for the conditional use permit shall include an adequate description of the operation; a list of equipment, machinery, and structures to be used; a topographic map of the site showing existing contours with minimum vertical contour interval of five feet, trees, proposed and existing and proposed excavations; and a restoration plan.

- ii. The restoration plan provided by the applicant shall contain proposed contours after filling, depth of the restored topsoil, type of fill, planting or reforestation, and restoration commencement and completion dates. The applicant shall furnish the necessary fees to provide for the Town's inspection and administrative costs and the necessary sureties which will enable the Town to perform the planned restoration of the site in event of default by the applicant. The amount of such sureties shall be based upon cost estimates prepared by the Town Engineer, and the form and type of such sureties shall be approved by the Town Attorney.
 - iii. The conditional use permit shall be in effect for a period not to exceed two years and may be renewed upon application for a period not to exceed two years. Modifications or additional conditions may be imposed upon application for renewal.
 - iv. The Town Plan Commission shall particularly consider the effect of the proposed operation upon existing streets, neighboring development, proposed land use, drainage, water supply, soil erosion, natural beauty, character, and land value of the locality and shall also consider the practicality of the proposed restoration of the site.
7. Recreation uses. The following public recreational facilities shall be conditional uses and may be permitted as specified:
 - a. Archery ranges, bathhouses, beaches, boating, camps, conservatories, driving ranges, firearm ranges, golf courses, gymnasiums, ice boating, marinas, music halls, polo fields, pools, riding academies, stadiums, and zoological and botanical gardens in the P-1 Park District, provided that the lot area is not less than one acre and all structures are not less than 50 feet from any district boundary.
 - b. Commercial recreation facilities, such as arcades, bowling alleys, clubs, dance halls, driving ranges, gymnasiums, lodges, miniature golf facilities, physical culture facilities, pool and billiard halls, racetracks, rifle ranges, Turkish baths, skating rinks, and theaters are conditional uses and may be permitted in all nonresidential districts.
[Amended 12-7-2004]
8. Conservancy uses. The following uses are conditional uses in the C-1 Conservancy Overlay District and may be permitted as specified:
 - a. The construction of streets which are necessary for the conduct of agricultural cultivation or to a silvicultural activity, or necessary for the provision of essential utility and public safety services, or necessary to provide access to permitted open space uses, provided that:
 - i. The street cannot as a practical matter be located outside the Conservancy District;
 - ii. The street is designed and constructed to minimize adverse impact upon the natural functions of the Conservancy District;
 - iii. The street is designed and constructed with the minimum cross section practical to serve the intended use;
 - iv. The street construction activities are carried out in the immediate area of the roadbed only; and
 - v. Any filling, flooding, draining, dredging, ditching, tiling, or excavating that is done must be necessary for the construction or maintenance of the street.
 - b. The construction and maintenance of nonresidential buildings used solely in conjunction with raising of waterfowl, minnows, or other wetland or aquatic animals or

used solely for some other purpose which is compatible with natural resource preservation, provided that:

- i. The building cannot as a practical matter be located outside the Conservancy District;
 - ii. The building is not designed for human habitation and does not exceed 500 square feet in area; and
 - iii. Only limited filling or excavating necessary to provide structural support is conducted.
- c. The establishment and development of public and private parks and recreation areas, recreation trails, public boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves, and private habitat areas, provided that:
- i. Any private recreation or wildlife habitat area must be exclusively for that purpose;
 - ii. No filling is to be done; and
 - iii. Ditching, excavating, dredging, dike and dam construction may be done in wildlife refuges, game preserves, and private wildlife habitat areas, but only for the purpose of improving wildlife habitat or to otherwise enhance the value of a wetland or other natural resource.
- d. The Construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to members, provided that:
- i. The transmission and distribution lines and related facilities cannot as a practical matter be located outside the Conservancy District; and
 - ii. Any filling, draining, dredging, ditching, or excavating that is done must be necessary for the construction or maintenance of the utility, and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the Conservancy Area.
- e. The construction and maintenance of railroad lines, provided that:
- i. The railroad lines cannot as a practical matter be located outside the Conservancy District; and
 - ii. Any filling, draining, dredging, ditching, or excavating that is done must be necessary for the construction or maintenance of the railroad, and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the Conservancy Area.
9. PUD planned unit development. The PUD planned unit development conditional use is intended to permit developments that will, over a period of time, be enhanced by coordinated area site planning, diversified location of structures, diversified building types and mixing of compatible uses. Such developments are intended to provide a safe and efficient system for pedestrian and vehicle traffic; attractive recreation and open spaces as integral parts of the developments; enable economic design in the location of public and private utilities and community facilities; and ensure adequate standards of construction and planning. The PUD conditional use under this chapter will allow for flexibility of overall development design with benefits from such design flexibility intended to be derived by both the developer and the community, while at the same time maintaining insofar as

possible the land use density and other standards or use requirements set forth in the underlying basic zoning district.

[Added 8-5-2014]

- a. Application of the PUD conditional use. This conditional use may be used for development in the following basic use districts except:
 - i. C-1 Conservancy District.
 - ii. P-1 Park District.
- b. Permitted uses. Uses permitted in a planned unit development conditional use shall conform to uses generally permitted in the underlying basic use district. Individual structures shall comply with specific building area and height requirements of the underlying basic use district. Open space and parking requirements of the underlying basic use district shall be complied with either individually or by providing the combined open space and parking space required for the entire development in one or more locations within the development.
- c. Procedural requirements.
 - i. Prepetition conference. Prior to the official submission of the petition for the approval of a planned unit development conditional use, the owner or his agent making such petition shall meet with the Plan Commission or its staff to discuss the scope and proposed nature of the contemplated development.
 - ii. Petition. Following the prepetition conference, the owner or his agent may file a petition with the Town Clerk for approval of a planned unit development conditional use. Such petition shall be accompanied by the review fee required under § 17.03 of this chapter and the following information:
 - [i] A statement which sets forth the relationship of the proposed PUD to the Town's Master Plan or any adopted component thereof and the general character of and uses to be included in the proposed PUD, including:
 - [A] Total area to be included in the PUD, area of open space, residential density computations, proposed number of dwelling units, population analysis, availability of or requirements for municipal services and any similar data pertinent to a comprehensive evaluation of the proposed development.
 - [B] General summary of the estimated value of structures and site improvement costs, including landscaping and special features.
 - [C] General outline of the organizational structure of a property owners' or management association proposed to be established to provide any necessary private services.
 - [D] Proposed departures from the standards of development in this chapter, other Town regulations, administrative rules or universal guidelines.
 - [E] Expected date of commencement of physical development as set forth in the proposal.
 - [ii] A general development plan including:
 - [A] Legal description of the boundaries of the subject property included in the proposed PUD and its relationship to surrounding properties.
 - [B] Location of public and private roads, driveways, and parking facilities.

- [C] Size, arrangement and location of any individual building sites and proposed building groups on each individual site.
 - [D] Location of institutional, recreational and open space areas and areas reserved or dedicated for public uses, including schools, parks and drainageways.
 - [E] Type, size and location of all structures.
 - [F] General landscape treatment.
 - [G] Architectural plans, elevation and perspective drawings and sketches illustrating the design and character of proposed structures.
 - [H] Existing and proposed location of public sanitary sewer and water supply facilities and proposed location of all private utilities or other easements.
 - [I] Characteristics of soils related to contemplated specific uses.
 - [J] Existing topography on the site with contours at no greater than two-foot intervals.
 - [K] Anticipated uses of adjoining lands in regard to roads, surface water drainage and compatibility with existing adjacent land uses.
- iii. Referral to Plan Commission. The petition for a PUD conditional use shall be referred to the Plan Commission for its review and recommendation, including any additional conditions or restrictions it may deem necessary or appropriate.
 - iv. Public Hearing. The Plan Commission and Town Board shall hold a joint public hearing under §§ **17.12** and **17.13** of this chapter. Notice of such hearing shall include reference to the development plans filed in conjunction with the requested planned unit development conditional use. As soon as practical following the hearing, the Plan Commission shall report its findings and recommendations to the Town Board.
- d. Basis for approval of petition.
- i. The Plan Commission in making its recommendation and the Town Board in making its determination shall consider:
 - [i] That the petitioners for the proposed Planned Development conditional use have indicated they intend to begin the physical development of the PUD within nine months following approval of the petition and the development will be carried out according to a reasonable construction schedule satisfactory to the Town.
 - [ii] That the proposed planned unit development conditional use is consistent in all respects to the purpose of this section and spirit and intent of this chapter; is in conformity with the adopted Master Plan or any adopted component thereof, and the development would not be contrary to the general welfare and economic prosperity of the community.
 - [iii] The proposed site shall be provided with adequate drainage facilities for surface and stormwaters.
 - [iv] The proposed site shall be accessible from public roads that are adequate to carry the traffic that can be expected to be generated by the proposed development.

- [v] No undue constraint or burden will be imposed on public services and facilities, such as fire and police protection, street maintenance and maintenance of public areas by the proposed development.
 - [vi] The streets and driveways on the site of the proposed development shall be adequate to serve the residents of the proposed development and shall meet the minimum standards of all applicable ordinances or administrative regulations of the Town.
 - [vii] Centralized water and sewer facilities shall be provided.
 - [viii] The entire tract or parcel of land to be included in a planned unit development conditional use shall be held under single ownership or if there is more than one owner, the petition for such planned unit development conditional use shall be considered as one tract, lot or parcel and the legal description shall define the PUD as a single parcel, lot or tract and be so recorded with the Register of Deeds for Waukesha County.
- ii. That in the case of a proposed residential planned unit development conditional use:
- [i] Such development will create an attractive residential environment of sustained desirability and economic stability, including structures in relation to terrain, consideration of safe pedestrian flow, ready access to recreation space and coordination with overall plans for the community.
 - [ii] The total net residential density within the planned unit development conditional use will be compatible with the Town Master Plan or component thereof.
 - [iii] Twenty percent of any area within a planned unit development zoned C-1 Conservancy District under this chapter or Floodplain or Conservancy District under the Waukesha County Shoreland and Floodland Protection Ordinance may be used in calculating density if the total number of units permitted does not exceed 20% of the units permitted without using floodland or conservancy lands.
 - [iv] Provision has been made for the installation of adequate public facilities and the continuing maintenance and operation of such facilities.
 - [v] Adequate, continuing fire and police protection is available.
 - [vi] The population composition of the development will not have an adverse effect upon the community's capacity to provide needed school or other municipal service facilities.
 - [vii] Adequate guarantee is provided for permanent preservation of open space areas as shown on the approved site plan either by private reservation and maintenance or by dedication to the public.
- iii. That in the case of a proposed commercial planned unit development conditional use:
- [i] The proposed development will be adequately served by off-street parking and truck service facilities, and shall not impose any undue burden on public services and facilities, such as fire and police protection, street maintenance and maintenance of public areas.
[Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
 - [ii] (Reserved)^[2]

[2] *Editor's Note: Former Subsection (14)(b)9.d.iii.[ii], which regarded undue burdens on public services and facilities, of the 2005 Code was repealed at time of adoption of Code (see Ch. 25, General Provisions, Art. II). See now § 17.02(14)(b)9.d.iii.[i].*

- [iii] The locations for entrances and exits have been designated to prevent unnecessary interference with the safe and efficient movement of traffic on surrounding streets and that the development will not create an adverse effect upon the general traffic pattern of the surrounding neighborhood.
 - [iv] The architectural design, landscaping, control of lighting and general site development will result in an attractive and harmonious service area compatible with and not adversely affecting the property values of the surrounding neighborhood.
- iv. That in the case of a proposed industrial planned unit development conditional use:
- [i] The operational character, physical plant arrangement and architectural design of buildings will be compatible with the latest in performance standards and industrial development design and will not result in adverse effect upon the property values of the surrounding neighborhood.
 - [ii] The proposed development shall be adequately provided with and shall not impose any undue burden on public services and facilities, such as fire and police protection, street maintenance and maintenance of public areas.
 - [iii] The proposed development will include adequate provisions for off-street parking and truck service areas and will be adequately served by rail, arterial highway facilities or both.
 - [iv] The proposed development is properly related to the total transportation system of the community and will not result in an adverse effect on the safety and efficiency of the public streets.
- v. That in the case of a mixed-use planned unit development conditional use:
- [i] The proposed mixture of uses produces a unified composite which is compatible within the underlying districts and which as a total development entity is compatible with the surrounding neighborhood.
 - [ii] The various types of uses conform to the general requirements stated above, applicable to projects of such use and character.
 - [iii] The proposed development shall be adequately provided with and shall not impose any undue burden on public services and facilities, such as fire and police protection, street maintenance and maintenance of public areas.
- e. Determination. The Town Board, after due consideration, may deny the petition, approve the petition as submitted or approve the petition subject to additional conditions and restrictions. The approval of a planned unit development conditional use shall be based upon and include as conditions thereto the building, site and operational plans for the development as approved by the Town Board.
- f. Changes and Additions. Any subsequent change or addition to the plans or uses shall first be submitted for approval to the Plan Commission, and if in the opinion of the Commission such change or addition constitutes a substantial alteration of the original plan, a public hearing before the Commission shall be required and notice thereof be given under § 17.12 of this chapter and such proposed alterations shall be submitted to the Town Board for approval.

- g. Subsequent land division. The division of any land within a planned unit development conditional use for the purpose of change or conveyance of ownership shall be accomplished under the Town land division regulations and when such division is contemplated, a preliminary plat of the lands to be divided shall accompany the petition for PUD approval.
- h. A conditional use for a compact development form planned unit development (PUD) shall be available in all districts in which PUDs are available subject to the requirements of § 17.02(14)(b)9d and as described below:
[Amended 12-7-2021 by Ord. No. 2021-004]
 - i. A compact development form PUD shall allow a mixture of commercial, office, residential, institutional and park and open uses and may also allow for single use projects that contain certain specified urban design elements. Such projects are envisioned to accommodate compact, higher-intensity development or redevelopment in settings where urban services are available and new compact development is appropriate and will contribute to the vitality of the community.
 - ii. The compact development form PUD shall require a heightened level of site design, and individual buildings shall be arranged in a unified fashion so as to be complementary to each other and to be compatible with the surrounding neighborhood. Higher-density residential development is encouraged (less than 6,000 square feet of land area per dwelling unit) in location-appropriate areas and can be authorized within this conditional use category.
 - iii. This PUD option provides opportunity for design flexibility and sets forth basic requirements for compact development projects in order to accommodate unique, integrated development projects. The availability of this design option recognizes that the community realizes economic, aesthetic and quality of life benefits from projects with interesting design and higher-intensity mixed uses in projects with an upscale dynamic. Development projects or new neighborhoods with vertical scale architecture, mixed uses, pedestrian facilities and public gathering spaces create more dynamic places that are attractive for people to live, work and play within. Required amenities will benefit both the developer and the community while also allowing for orderly and efficient land use. For a project to be eligible for consideration and approval as a compact development form PUD, the following project design elements shall be provided:
 - [i] Compact development form PUDs will only be considered in existing corridor business settings or in close proximity to major transportation facilities, such as interstate highway interchanges, county trunk highways, major arterials or mass transit stops.
 - [ii] Proposed development projects must be complementary to the surrounding neighborhood.
 - [iii] Eligible sites must be served by municipal sewer and municipal water.
 - [iv] Architecture, landscaping and building siting must be designed to create an attractive and cohesive environment that contributes positively to the existing setting. Landscape treatments shall be provided to enhance architectural features, improve appearance, screen parking areas and structures, provide shade and enhance the streetscape.
 - [v] Compact development form scale architecture (minimum two-story buildings or two-story facades) is required. Maximum permissible building height and massing must be complementary to the neighborhood as determined by the Town Plan Commission and Town Board.

- [vi] Building designs shall utilize a variety of aesthetically compatible exterior building materials and building styles and articulations shall be varied. Long, monotonous facades or roof designs shall not be permitted. HVAC units and other rooftop mechanicals/utilities are required to be screened from view.
- [vii] Meaningful communal gathering and green spaces provided in accessible settings must be an integral part of any proposed development.
- [viii] Pedestrian facilities must connect buildings and uses within the proposed development and must connect the development to the surrounding neighborhood in order to provide safe and convenient access for patrons, residents, and pedestrians. Bicycle accommodations should be considered in project design.
- [ix] Buildings shall be predominantly oriented to streets with minimal street setbacks.
- [x] Large surface parking lots shall be minimized with specific consideration given to avoidance of parking lots between buildings and the street edge. Structured, underground or on-street parking must be provided to the greatest extent practicable. Surface parking lots should be located to the side and rear of buildings as much as possible. Parking areas should be landscaped to incorporate planting islands large enough so they may also serve as stormwater areas or snow storage areas.
- [xi] Retail and mixed retail/office buildings shall provide large store front windows that provide visibility and transparency at the pedestrian level.
- [xii] A compact development form for residential development is permissible at densities dependent upon, and related to, the form and massing of buildings. Specified maximum building height, setbacks, build-to lines, offsets, and on-site parking requirements are to be established by the Planning Commission and Town Board, which will determine available housing densities. "More of the same" is specifically discouraged.
- [xiii] Internal streets must be designed to adequately serve the users of the proposed development and contain traffic calming measures (landscape bumpouts, parallel or angle on-street parking, visually conspicuous crosswalks, narrow streets, etc.) while allowing for safe and efficient traffic circulation.
- [xiv] Developers of mixed-use projects or structures with more than one tenant shall submit a comprehensive description of a uniform signage system so that individual business or tenant signs will be harmonious and compatible with the overall design of the structures and site. Individual tenant signage must be predominantly wall mounted.
- [xv] Streets and pedestrian facilities shall contain appropriate streetscape amenities (street trees, street furniture, such as benches, planters, trash receptacles, information kiosks, bike racks, bus shelters, appropriate scale lighting and wayfinding signage), and the Architectural Control Committee shall set forth the required streetscape elements with consideration given to similar Town-imposed requirements, if applicable. Terraces to separate pedestrians from vehicles shall be provided, where feasible. ADA-complaint access and facilities shall be provided throughout the development. Sidewalks that will traverse predominantly retail or restaurant use areas shall be wide to accommodate space for passing pedestrians and certain designated sidewalks within retail areas should be widened to allow for sidewalk cafe dining or outdoor retail display while still providing for pedestrian passage.

- (c) Conditional uses. Conditional uses and their accessory uses are considered as special uses requiring review, public hearing, and approval by the Town Board in accordance with § 17.02(14) of this chapter.
- (d) Unclassified or unspecified uses. Unclassified or unspecified uses may be permitted by the Town Plan Commission, provided such uses are similar in character to the principal uses permitted in the district.
- (e) Interpretations. Interpretations concerning whether specific uses are permitted and concerning the precise location of zoning district boundaries shall be made initially by the Building Inspector. Interpretations may be corroborated or modified by the Plan Commission. Persons aggrieved by an interpretation of the Building Inspector or Plan Commission may appeal such interpretation to the Zoning Board of Appeals as set forth in § 17.11 of this chapter.
- (f) Temporary uses. Temporary uses are considered special uses regarding review and approval by the Building Inspector and issuance of a special occupancy permit as set forth in § 17.02(12) of this chapter.
[Amended 3-3-2020]

1. Description and purpose.

- a. A temporary use is the use of property conducted from an area or structure (e.g., parking lots, lawns, trucks, tents, or other temporary structures) that does not require a building permit and that may or may not comply with the use or lot and building standards of the zoning district in which the use is located.
- b. The temporary use regulations of this section are intended to permit such occasional, temporary uses and activities when consistent with the overall purposes of this chapter and when the operation of the temporary use will not be detrimental to the public health, safety, or general welfare.
- c. Temporary uses include temporary buildings and uses for construction purposes for a period of not more than one year.

2. (Reserved)^[3]

[3] *Editor's Note: Former Subsection (14)(f)(2), Definitions, was repealed at time of adoption of Code (see Ch. 25, General Provisions, Art. II).*

3. Authority to approve.

- a. Unless otherwise provided herein, all temporary uses are subject to all Town permits and requirements.
- b. The Zoning Administrator is authorized to approve temporary uses that comply with the provisions of this section and to impose conditions on the operation of temporary uses that will help to ensure that they do not create unreasonable adverse impacts on surrounding uses and that they operate safely, consistent with the general purposes of this chapter.
- c. The Zoning Administrator is also authorized to require that individual temporary use requests be processed as conditional uses.

4. Exemptions. The following are permitted as temporary uses without complying with the permit requirements of this section.

- a. Temporary uses and structures needed as the result of a natural disaster or other health and safety emergencies during the period of the emergency;
- b. Temporary events or activities occurring within, or upon the grounds of, a private residence or upon the common areas of a multiunit residential development;

- c. Garage sales conducted in zoning districts zoned for residential use, or on parcels occupied by residential dwelling units; and
 - d. Temporary uses conducted on public property, provided such uses have been approved by the Town Board or other duly authorized Town official.
5. Authorized uses. The following may be approved by the Zoning Administrator as temporary uses when the Zoning Administrator determines that the operation of such use will be generally compatible with surrounding uses and will not be detrimental to public safety:
- a. Temporary signs, subject to § **17.08(7)**;
 - b. Temporary sales offices, including real estate sales and rental field offices, and other temporary uses, subject to § **17.02(12)**;
 - c. Flea markets, subject to § 17.02(12)(b).;
 - d. Farmers markets, subject to § **17.02 (12)**;
 - e. Christmas tree and similar holiday sales lots;
 - f. Outdoor carnivals;
 - g. Outdoor concerts, festivals, and similar events;
 - h. Temporary portable storage containers;
 - i. Auctions;
 - j. Similar uses and activities as determined by the Zoning Administrator.
6. Conditions of approval. In approving a temporary use, the Zoning Administrator is authorized to impose conditions on the operation of temporary uses that will help to ensure that they do not create unreasonable adverse impacts on surrounding uses and that they operate safely, consistent with the general purposes of this chapter. Such conditions may include the following:
- a. Requirements for vehicle access and parking.
 - b. Restrictions on hours of operation;
 - c. Limitations on signs, outdoor lighting, and amplified sound;
 - d. Requirements for financial guarantees for cleanup and/or removal of structures or equipment; and
 - e. Approval of an agreement between the applicant, property owner or other responsible party and the Town, for reimbursement to the Town of reasonable anticipated costs that will be incurred by the Town for providing police and fire protection, if necessary, for any event or activity for which a temporary use permit is issued.
 - f. Other conditions necessary to carry out the general purposes of this chapter.
- (g) Accessory use regulations. Accessory uses are permitted in any district as may be specified in the appropriate district regulations or herein. A building permit shall be required where specifically noted in this section. Accessory uses are permitted only after their principal structure is present or under construction.
1. Accessory structures.
 [Added 12-6-2005,^[4] amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]

- a. Accessory structures including, but not limited to, garages, garden or utility sheds, playhouses, or gazebos may be located in the rear yard only. Accessory structures shall be placed respecting, and in sensitivity to, the uses on the adjacent properties. Accessory buildings shall be screened from view from the street and all property lines via landscaping, trellises or other means to minimize the impact and visual clutter. Garages, gazebos, and garden or utility sheds require a building permit, and shall be consistent in design and finish materials with the zoning district in which it is located. Accessory structures shall not occupy more than 20% of the rear yard, with a maximum area of 625 square feet in all districts except the business and manufacturing districts, where such uses and structures shall not occupy more than 50% of the rear yard area.
- b. Accessory buildings shall be located at least 10 feet from the principal structure; shall be on a pad of concrete, shall be located not closer than five feet to a lot line for structures less than 120 square feet; exceeding 120 square feet shall conform to the offset requirements of the zoning district; and shall not exceed 11 feet in height. Not more than one accessory building shall be erected on any residential districts without a conditional use permit as provided in § 17.02(14).

[4] *Editor's Note: This ordinance was approved 11-28-2016.*

2. Improved surfaces.
 - a. Patios installed at existing yard grade, may be constructed in side and rear yards without a building permit, adjacent to the principal structure, and shall be located not closer than three feet to a lot line.
 - b. Improved surfaces for vehicular parking may, upon the issuance of a building permit, be installed not closer than three feet to a lot line.
3. Decks. Decks shall conform to the offset and setback requirements for the district in which they are located and shall require the issuance of a building permit.
4. Pet kennels. Permanently installed pet kennels may be placed in the rear yard of any residential district, provided that the kennel is located not closer than five feet from a lot line; that the kennel is placed on a pad of concrete or asphalt; that the kennel is enclosed by a fence not less than four feet nor more than six feet in height; and that no pet kennel shall exceed 150 square feet in area and shall be screened from all abutting properties with landscaping.
5. Home occupations. Home occupations are a permitted accessory use in any residential district, provided that:
 - a. The use of the residential dwelling for the home occupation shall be clearly incidental and subordinate to its residential use and shall not occupy more than 25% of the floor area of one floor.
 - b. No home occupation or home office shall be located in or conducted in an accessory structure.
 - c. One person other than members of the family residing on the premises may be employed or engaged in such home occupation or home office.
 - d. Home occupations shall use only household equipment and no stock-in-trade shall be kept or sold except that made on the premises.
 - e. No traffic shall be generated by the home occupation or home office in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of the home occupation or use shall be provided off the street and other than in the required street yard.
 - f. No outdoor storage of equipment or product shall be permitted.

- f. Heating units, pumps, and filter equipment shall be adequately housed and muffled in such a manner as not to create a nuisance. Such equipment shall be located not closer than 10 feet to a lot line;
 - g. There shall be an unobstructed areaway around all pools of at least three feet in width;
 - h. No private swimming pool shall be located closer than 10 feet to a lot line. No areaway surrounding a private swimming pool shall be located closer than three feet to a lot line;
 - i. Private swimming pools, together with other accessory structures regulated by § **17.02(14)(g)1** of this chapter, shall not occupy more than 50% of the rear yard area.
10. Tennis and volleyball courts. Private tennis courts and volleyball courts accessory to a residential use may be placed in the side yard or rear yard in any residential district, provided that the use is located not closer than three feet to any rear or side lot line; and provided that no lighting installed around a private recreation facility shall throw rays onto adjacent property. The Plan Commission may permit the construction of a fence around the court when it is determined that such a fence is needed for safety purposes or to prevent the court from being a nuisance to neighbors.
11. Fences. Fences are a permitted accessory use in any district and may be erected without a permit, provided that fences shall comply with the following requirements:
- a. Residential fences shall be constructed in such a manner that the "finished" side shall face the neighboring property. Fence posts shall be on the side of the fence facing the subject property.
 - i. Open residential fences are permitted up to the lot line in the side and rear yards of residential districts, but shall not exceed a height of four feet, and shall not extend into the street yard.
 - ii. Solid residential fences, as defined in § **17.01(9)(b)** of this chapter, shall meet the offset requirements of the district. Fences shall not exceed six feet in height and shall be placed in the rear yard only.
[Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
 - b. Ornamental fences, as defined in § **17.01(9)(b)** of this chapter, are permitted in the street yard in any district, but shall not be erected in a street right-of-way and shall not exceed a fence height of three feet. Ornamental fences shall comply with the traffic visibility requirements set forth in § **17.06** of this chapter.
 - c. Security fences or screening fences are permitted up to the property lines in all districts except residential districts, but shall not exceed 10 feet in total height and shall be "open fences" as defined in § **17.01(9)(b)** of this chapter when located in the street yard. Security fences may include up to four strands of barbed wire on the top of the fence, provided that the barbed wire is at least eight feet above grade with the vertical supports for the barbed wire slanting inward away from the property line. Security and screening fences shall comply with the traffic visibility requirements set forth in § **17.06** of this chapter. Security fences shall be constructed in such a manner that the "finished" side shall face the neighboring property. Fence posts shall be on the side of the fence facing the permit applicant's property.
 - d. Solid, privacy fences, as described in § **17.01(9)(b)** of this chapter, not exceeding six feet in height, may be placed in a street yard of double frontage or corner lots subject to approval by the Building Inspector or Architectural Review Committee. Approval shall be based upon a neighborhood continuity standard. Such fencing may be placed at a minimum five-foot setback to a street right-of-way, providing the side facing the street is attractively landscaped.

- e. Barbed wire fences and electric fences are prohibited in the Town of Brookfield.
 - f. Any proposed fence which would not conform with the above provisions shall be considered a conditional use as described in § 17.02(14) of this chapter.
12. Screening enclosures. Enclosures intended to screen equipment, dumpsters or materials, are permitted in the side and rear yards in all districts without permit subject to the area restrictions as contained under "accessory structures" above and to review and approval by the Architectural Review Committee and shall conform to the offset requirements of the district.
13. Antennas. The Town of Brookfield recognizes that the development of various antennas, including earth station dish antennas, and their increased use poses questions of regulation not often addressed in municipal zoning ordinances. In developing antenna regulations, the interest of the antenna owner in the use of the device must be balanced with the interest of adjoining property owners and the general public so as to protect the health and safety of all citizens, as well as the aesthetic values embodied in this chapter. To this end, the following regulations are adopted. Antennas are permitted as accessory uses in any district subject to the following regulations. These provisions shall not be deemed to apply to an antenna, including earth station dish antennas, which are less than two feet in diameter.
- [Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
- a. Terrestrial antennas and earth station dish antennas may be located in the rear yard or on the roof of the principal structure in all agricultural, business, office, manufacturing, institutional, or park districts.
 - b. All freestanding terrestrial antennas and roof antennas shall meet the height requirements for the district in which they are located, except as provided in § 17.07 of this chapter.
 - c. Ground-mounted earth station dish antennas shall not exceed 15 feet in height.
 - d. All terrestrial antennas shall be located not less than one foot from a lot line for each three feet of height above the surrounding grade to any element of the antenna, with a minimum offset of five feet.
 - e. All earth station dish antennas shall be located not less than five feet from a side or rear lot line.
 - f. All antennas, including earth station dish antennas, shall be constructed and anchored in such a manner to withstand winds of not less than 80 miles per hour and such installations shall be constructed of noncombustible and corrosive resistant materials.
 - g. Earth station dish antennas shall be located and designed to reduce their visual impact on surrounding properties.
 - h. No form of advertising or identification may be displayed on the dish or framework of any antenna other than the customary manufacturer's identification plates.
 - i. All dish antennas exceeding 48 inches in diameter, and the construction supports and installation thereof, shall conform to applicable Building Code and Electrical Code regulations and requirements. Appropriate permits shall be issued by the Building Inspector. Prior to the issuance of a permit for a building-mounted earth station dish antenna, the applicant shall submit a plan or document prepared by a registered professional engineer which certifies that the proposed dish antenna installation is structurally sound to accommodate wind load, snow load, and dead load. The Building Inspector shall review and approve plans, including ground elevation, for location of all earth station dish antennas prior to the issuance of a permit.

- j. Portable or trailer-mounted antennas are not permitted with the exception of temporary installation for on-site testing and demonstration purposes for a period not to exceed two days at any one location.
 - k. In the event the property owner of a parcel of land located in a residential district determines and documents that the placement of an antenna in a rear yard would prevent its use for its intended purpose, the property owner may apply to the Zoning Board of Appeals for a variance to allow for the installation of the antenna in a side yard location. The procedure for issuing the variance shall follow the procedure set forth in § 17.11 of this chapter.
- (h) Air dome structures. The use of air dome structures in the Town is prohibited.
- (15) Reduction or joint use. No lot, yard, parking area, building or other space shall be reduced in area or dimension so as not to meet the provisions of this chapter. No part of any lot, yard, parking area, or other space required for a structure or use shall be used for any other structure or use.
- (16) Special exceptions.
- (a) Approval required. Where certain developments or uses are of such special nature, or such a unique situation, or their effect is so dependent upon actual contemporary circumstances as to make impractical the absolute predetermination of permissibility or listing of specific standards which would be automatically applied in each case to determine permissibility, an application for a special exception may be made to the Town Board. In such case, the development or use may be permitted if the Town Board, after a public hearing, determines that there is or will be compliance with the requirements set forth in this section. In order to approve a special exception, the Town Board does not require the demonstration of an unnecessary hardship or practical difficulty.
 - (b) Procedures.
 1. Petition made. A petition for special exception shall be made to the Town Board for consideration.
 2. Filing a petition. Such petition shall be prepared and submitted on printed forms provided for this purpose and shall be filed with the Town Clerk, who shall present it to the Town Board at its next meeting.
 3. Data required. In addition to all information required on the petition form, the petitioner shall supply the following:
 - a. Twelve copies of a plot map drawn to a scale of not less than 100 feet to the inch showing the land in question, its location, the length and direction of each boundary thereof, the location and existing use of all buildings on such land and the principal use of all properties within 300 feet of such land.
 - b. The names and addresses of the owners of all properties within 300 feet of any part of the land included in the proposed change.
 - c. A detailed description of the intended development or use (plan of operation).
 - d. Any further information is required by the Town to facilitate the making of an evaluation of such request, such as a site plan depicting proposed buildings, parking, traffic impact, landscaping, drainage, sanitary sewer, erosion control and other factors as would be pertinent including the impact on public facilities.
 4. Hearing. The Town Board and Plan Commission shall hold a joint public hearing within 60 days of the receipt of such petition. Notice of the time and place of such hearing shall be given in the manner prescribed under § 17.13(1) of this chapter.
 5. At the next regularly scheduled meeting after such public hearing, the Plan Commission shall act Board shall take action to approve the petition, deny the petition, or approve the

petition with conditions.

6. Fee. Any petition shall be accompanied by a fee as set from time to time by the Town Board to defray the cost of publication, notification, and holding a public hearing. The petitioner shall also pay to the Town all costs incurred for legal, planning, engineering, and administrative work necessary to administer the application and oversee the development.
- (c) Basis of approval. An application for a special exception may be approved, denied, or approved with conditions. If approved, the Town Board must determine that the approval, except as elsewhere herein expressly provided, shall not:
1. Be inconsistent with or contradictory to the purpose, spirit or intent of the Town's General Code;
 2. Violate the spirit or general intent of this chapter;
 3. Be contrary to the public health, safety or welfare, but rather shall promote the public health, safety and welfare;
 4. Be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, traffic congestion, odor or other similar factors;
 5. For any other reason, cause a substantial adverse effect on the property values and general desirability of the neighborhood; and
 6. Be a use which is incompatible to the surrounding land uses.
- (d) Nonconforming use of structures or land. A special exception may be granted to allow the substitution of a more restrictive nonconforming use for an existing nonconforming use, provided that the new use does not exacerbate any existing violations of the preceding point list in § 17.02(16)(c), nor result in a greater degree of nonconformity than the current use.
- (e) Determination. The action of the Town Board shall be stated in writing, and shall include findings of fact setting forth the basis upon which the special exception is granted, utilizing and referring to the criteria set forth above. A copy of the Town Board's action shall be made a permanent part of the Town's records. If a special exception is not approved, the reasons therefore will be included in such record. If approved, such special exceptions shall be approved only by the unanimous vote of the members of the Town Board present and voting.
- (17) Other permits. It is the responsibility of the permit applicant to secure all other necessary permits required by any state, federal, or county agency. This includes, but is not limited to, a wetland fill permit pursuant to Section 404 of the Federal Water Pollution Act,^[5] a water use permit pursuant to Chapter 30 of the Wisconsin Statutes, or a water quality certification pursuant to Chapter NR 103 of the Wisconsin Administrative Code.
- [5] *Editor's Note: See 33 U.S.C. § 1344.*

§ 17.03. Fees; violations and penalties.

- (1) Permit fees. All persons, firms, or corporations performing work which by this chapter requires the issuance of a permit shall pay a fee for such permit to the Town Treasurer to help defray the cost of administration, investigation, advertising, and processing of permits and variances. The permits for which a fee is required are listed in the Schedule of Fees and Forfeitures. A fee shall also be required for a zoning text or map amendment, and a zoning appeal or variance. An appearance before the Plan Commission for the purpose of securing conceptual, preliminary, or final project approval shall require the fee set forth in the Schedule of Fees and Forfeitures. Any action requiring a public hearing shall require a fee to cover the cost of the public hearing and attendant publication costs. All fees shall be established by separate resolution by the Town Board from time to time as deemed appropriate.
- [Amended 12-7-2021 by Ord. No. 2021-004]

- (2) Double fee. A double fee shall be charged by the Zoning Administrator if work is started before a permit is applied for and issued. Such double fee shall not release the applicant from full compliance with this chapter nor from prosecution for violation of this chapter.
- (3) Violations. It shall be unlawful to construct or use any structure, land, or water in violation of any of the provisions of this chapter. Failure to secure the necessary permits prior to commencing construction shall also constitute a violation. In case of any violation, the Town Board, the Zoning Administrator, the Town Plan Commission, or any property owner who would be specifically damaged by such violation may institute appropriate action or proceedings to enjoin a violation of this chapter.
- (4) Remedial action. Whenever an order of the Zoning Administrator has not been complied with within 30 days after written notice has been mailed to the owner, resident agent, or occupant of the premises, the Town Board, the Zoning Administrator, or the Town Attorney may institute appropriate legal action or proceedings to prohibit such owner, agent, or occupant from using such structure, land, or water.
- (5) Penalties. Any person, firm, or corporation that fails to comply with the provisions of this chapter shall, upon conviction thereof, forfeit an amount as listed in the Schedule of Fees and Forfeitures and costs of prosecution for each violation, and in default of payment of such forfeiture and costs shall be imprisoned in the County Jail until payment thereof, but not exceeding 30 days. Each day a violation exists or continues shall constitute a separate and distinct offense.
[Amended 12-7-2021 by Ord. No. 2021-004]

§ 17.04. Zoning districts.

- (1) Established. For the purposes of this chapter, the Town is divided into 17 basic use districts and one overlay district as follows:
[Amended 12-7-2021 by Ord. No. 2021-004]

A-1 Agricultural District
 Rs-1 Single-Family Residential District
 Rs-2 Single-Family Residential District
 Rs-3 Single-Family Residential District
 Rs-4 Single-Family Residential District
 Rd-1 Two-Family Residential District
 Rm-1 Multifamily Residential District
 Rm-2 Multifamily Residential District
 B-1 Neighborhood Business District
 B-2 Limited General Business District
 B-3 Office and Professional Business District
 M-1 Limited Manufacturing District
 M-2 General Manufacturing District
 M-3 Quarrying District
 I-1 Institutional District
 P-1 Park District
 C-1 Conservancy District
 MU-1 Mixed-Use District

- (a) Boundaries. The boundaries of the districts enumerated above are hereby established as shown on the map entitled "Zoning Map - Town of Brookfield, Wisconsin," dated December 20, 1988, which map is made a part of this chapter by reference. Any future changes in such maps

or later zoning maps that may be adopted by ordinance of the Town Board are also adopted herein by reference. Unless otherwise noted on the Zoning Map, such boundaries shall be construed to follow corporate limits, U.S. Public Land Survey lines, lot or property lines, center lines of streets, highways, alleys, easements and railroad rights-of-way or such lines extended.

(b) (Reserved)^[1]

[1] *Editor's Note: Former Subsection (1)(b), Interpretations, was repealed 12-7-2021 by Ord. No. 2021-004.*

(c) Vacation. Vacation of public streets and alleys shall cause the vacated land to be automatically placed in the same district as the abutting side to which the vacated land reverts.

(2) Zoning Map. A certified copy of the Zoning Map shall be adopted and approved with the text as part of this chapter, shall bear upon its face the attestation of the Town Chairperson and Town Clerk and be available to the public in the office of the Town Clerk. Changes thereafter to the general zoning districts shall not become effective until adopted by the Town Board, approved by the Waukesha County Board of Supervisors and entered and attested on the certified copy.

(3) A-1 Agricultural District. The A-1 Agricultural District is intended to provide for the continuation of general farming and related uses in those areas of the Town that are not yet committed to urban development. It is further the intent of this district to protect lands contained herein from urban development until their orderly transition into urban-oriented districts is required.

(a) Permitted uses.

1. General farming, including agriculture, dairying, floriculture, forestry, grazing, hay, orchards, truck farming and viticulture.
2. Keeping and raising of domestic stock for agribusiness, show, breeding or other purposes incidental to the principal use of the premises subject to the following limitations:
 - a. No more than one horse, cow, sheep or similar animal, over six months of age, shall be kept for each two acres.
 - b. No more than five chickens, ducks, or similar poultry, over two months of age, shall be kept for each acre.
 - c. No more than eight rabbits or hare, over two months of age, shall be kept for each acre.
 - d. The keeping and raising of hogs or fur-bearing animals, except rabbits, is prohibited.
 - e. Combinations of the above shall be apportioned to the total acreage and the Building Inspector shall determine the total number of animals allowed.
3. Existing dwellings not accessory to any farm operation or a dwelling remaining after farm consolidation.
4. Essential services.

(b) Permitted accessory uses.

1. Customary accessory buildings, including not more than one roadside stand for the sale of farm products produced on the premises. Any such stand shall conform to the setback, sign, and other provisions of this chapter.
2. One farm dwelling per operating farm.
3. Home occupations and professional home offices.
4. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
5. Roof-mounted solar collectors.

- (c) Conditional uses. See § **17.02(14)**.
 - (d) Lot area and width.
 - 1. Lots shall have a minimum area of five acres and shall be not less than 300 feet in width.
 - 2. Lots with existing non-farm dwellings or lots with dwellings remaining after farm consolidation shall provide a minimum lot area of 40,000 square feet and shall be not less than 150 feet in width.
 - (e) Building height and area.
 - 1. No dwelling or part of a dwelling shall exceed 35 feet in height. Farm buildings shall not exceed 100 feet in height. Other accessory buildings shall not exceed 15 feet in height.
 - 2. The total minimum floor area of a dwelling shall be 1,200 square feet.
 - 3. The minimum first floor area of a bi-level or two-story dwelling shall be 1,000 square feet.
 - 4. A tri-level dwelling shall have a minimum living area of 400 square feet per level.
 - 5. The sum total of the floor area of all principal buildings and all accessory buildings shall not exceed 5% of the lot area.
 - (f) Setback and yards.
 - 1. There shall be a minimum setback of 50 feet from the street right-of-way.
 - 2. There shall be a minimum offset from all side and rear lot lines not less than 30 feet in width.
- (4) Rs-1 Single-Family Residential District. The Rs-1 Residential District is intended to provide for single-family residential development at densities not to exceed 1.1 dwelling units per net acre.
- (a) Permitted uses.
 - 1. Single-family dwellings.
 - 2. Community living arrangements which have a capacity for eight or fewer persons, and which are located not less than 2,500 feet from the location of another community living arrangement, subject to the limitations and conditions set forth in Wis. Stat. § 60.63. [Amended 5-17-2016]
 - 3. Foster family homes.
 - 4. Family day care homes.
 - 5. Essential services.
 - (b) Permitted accessory uses.
 - 1. Private garages and carports.
 - 2. Gardening, tool, and storage sheds incidental to the residential use.
 - 3. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
 - 4. Roof-mounted solar collectors.
 - 5. Home occupations and professional home offices.
 - (c) Conditional uses. See § **17.02(14)**.
 - (d) Lot area and width. Lots shall be a minimum of 40,000 square feet in area and not less than 150 feet in width.

- (e) Building height and area.
 - 1. No principal building or part of a principal building shall exceed 35 feet in height. No accessory building shall exceed 15 feet in height.
 - 2. The total minimum floor area of a principal building shall be 1,300 square feet.
 - 3. The minimum first floor area of a bi-level or two-story dwelling shall be 1,000 square feet.
 - 4. A tri-level dwelling shall have a minimum living area of 450 square feet per level.
 - 5. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 20% of the lot area.
- (f) Setback and yards.
 - 1. There shall be a minimum setback of 50 feet from the street right-of-way.
 - 2. There shall be a minimum offset from all side and rear lot lines not less than 20 feet in width.
- (5) Rs-2 Single-Family Residential District. The Rs-2 Residential District is intended to provide for single-family residential development at densities not to exceed 1.5 dwelling units per net acre.
 - (a) Permitted uses.
 - 1. Single-family dwellings.
 - 2. Community living arrangements which have a capacity for eight or fewer persons, subject to the limitations in § 60.63, Wis. Stats.
 - 3. Foster family homes.
 - 4. Family day care homes.
 - 5. Essential services.
 - (b) Permitted accessory uses.
 - 1. Private garages and carports.
 - 2. Gardening, tool, and storage sheds incidental to the residential use.
 - 3. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
 - 4. Roof-mounted solar collectors.
 - 5. Home occupations and professional home offices.
 - (c) Conditional uses. See § **17.02(14)**.
 - (d) Lot area and width. Lots shall be a minimum of 30,000 square feet in area and shall be not less than 120 feet in width.
 - (e) Building height and area.
 - 1. No principal building or part of a principal building shall exceed 35 feet in height. No accessory building shall exceed 15 feet in height.
 - 2. The total minimum floor area of a principal building shall be 1,200 square feet.
 - 3. The minimum first floor area of a bi-level or two-story dwelling shall be 1,000 square feet.
 - 4. A tri-level dwelling shall have a minimum living area of 400 square feet per level.

5. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 18% of the lot area.
- (f) Setback and yards.
1. There shall be a minimum setback of 50 feet from the street right-of-way.
 2. There shall be a minimum offset from all side and rear lot lines not less than 20 feet in width.
- (6) Rs-3 Single-Family Residential District. The Rs-3 Residential District is intended to provide for single-family residential development at densities not to exceed 2.2 dwelling units per net acre.
- (a) Permitted uses.
1. Single-family dwellings.
 2. Community living arrangements which have a capacity for eight or fewer persons, subject to the limitations in 60.63, Wis. Stats.
 3. Foster family homes.
 4. Family day care homes.
 5. Essential services.
- (b) Permitted accessory uses.
1. Private garages and carports.
 2. Gardening, tool, and storage sheds incidental to the residential use.
 3. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
 4. Roof-mounted solar collectors.
 5. Home occupations and professional home offices.
- (c) Conditional uses. See § **17.02(14)**.
- (d) Lot area and width. Lots shall be a minimum of 20,000 square feet in area and not less than 110 feet in width.
- (e) Building height and area.
1. No principal building or part of a principal building shall exceed 35 feet in height. No accessory building shall exceed 15 feet in height.
 2. The total minimum floor area of a principal building shall be 1,100 square feet.
 3. The minimum first floor area of a bi-level or two-story dwelling shall be 1,000 square feet.
 4. A tri-level dwelling shall have a minimum living area of 400 square feet per level.
 5. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 25% of the lot area.
- (f) Setback and yards.
1. There shall be a minimum setback of 50 feet from the street right-of-way.
 2. There shall be a minimum offset from all side and rear lot lines not less than 20 feet in width.

(7) Rs-4 Single-Family Residential District. The Rs-4 Residential District is intended to provide for single-family residential development at densities not to exceed 2.9 dwelling units per net acre, served by centralized sewer and water facilities.

(a) Permitted uses.

1. Single-family dwellings.
2. Community living arrangements which have a capacity for eight or fewer persons, subject to the limitations in § 60.63, Wis. Stats.
3. Foster family homes.
4. Family day care homes.
5. Essential services.

(b) Permitted accessory uses.

1. Private garages and carports.
2. Gardening, tool, and storage sheds incidental to the residential use.
3. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
4. Roof-mounted solar collectors.
5. Home occupations and professional home offices.

(c) Conditional uses. See § **17.02(14)**.

(d) Lot area and width. Lots shall be a minimum of 15,000 square feet in area and not less than 90 feet in width.

(e) Building height and area.

1. No principal building or part of a principal building shall exceed 35 feet in height. No accessory building shall exceed 15 feet in height.
2. The total minimum floor area of a principal building shall be 1,100 square feet.
3. The minimum first floor area of a bi-level or two-story dwelling shall be 1,000 square feet.
4. A tri-level dwelling shall have a minimum living area of 400 square feet per level.
5. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 25% of the lot area.

(f) Setback and yards.

1. There shall be a minimum setback of 35 feet from the street right-of-way.
2. There shall be a minimum offset from all side and rear lot lines not less than 15 feet in width.

(8) Rd-1 Two-Family Residential District. The Rd-1 Residential District is intended to provide for two-family residential development at densities not exceeding 4.4 dwelling units per net acre, served by municipal sewer and water facilities.

(a) Permitted uses.

1. Two-family dwellings.
2. Community living arrangements which have a capacity for eight or fewer persons, subject to the limitations in § 60.63, Wis. Stats.

3. Foster family homes.
 4. Family day care homes.
 5. Essential services.
- (b) Permitted accessory uses.
1. Private garages and carports.
 2. Gardening, tool, and storage sheds incidental to the residential use.
 3. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
 4. Roof-mounted solar collectors.
 5. Home occupations and professional home offices.
- (c) Conditional uses. See § **17.02(14)(b)**.
- (d) Lot area and width. Lots shall be a minimum of 20,000 square feet in area, with not less than 10,000 square feet per dwelling unit, not less than 120 feet in width.
- (e) Building height and area.
1. No principal building or part of a principal building shall exceed 35 feet in height. No accessory building shall exceed 15 feet in height.
 2. The total minimum floor area of a principal building shall be 1,000 square feet per dwelling unit.
 3. The minimum first floor area of a two-family structure shall 1,000 square feet.
 4. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 20% of the lot area.
- (f) Setback and yards.
1. There shall be a minimum setback of 35 feet from the street right-of-way.
 2. There shall be a minimum offset from all side and rear lot lines not less than 15 feet in width.
- (9) Rm-1 Multifamily Residential District. The Rm-1 Residential District is intended to provide for multifamily residential development at densities not exceeding 4.4 dwelling units per net acre, served by municipal sewer and water facilities.
- (a) Permitted uses.
1. Two-family and multifamily dwellings. Multifamily residential structures shall not exceed eight dwelling units per structure.
 2. Community living arrangements which have a capacity for 15 or fewer persons, subject to the limitations in § 60.63, Wis. Stats.
 3. Foster family homes.
 4. Family day care homes.
 5. Essential services.
- (b) Permitted accessory uses.
1. Private garages and carports.

2. Gardening, tool, and storage sheds incidental to the residential use.
 3. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
 4. Roof-mounted solar collectors.
 5. Home occupations and professional home offices.
- (c) Conditional uses. See § **17.02(14)**.
- (d) Lot area and width.
1. Lots shall be a minimum of 20,000 square feet in area, with not less than 10,000 square feet per dwelling unit, and not less than 120 feet in width.
 2. Twenty percent of any adjacent area owned by the applicant zoned C-1 Conservancy District under this chapter or Floodplain or Conservancy District under the Waukesha County Shoreland and Flood land Protection Ordinance may be used in calculating density, provided the total number of units permitted shall not exceed 20% of the units permitted without using flood land or conservancy lands.
- (e) Building height and area.
1. No principal building or part of a principal building shall exceed 40 feet in height. No accessory building shall exceed 15 feet in height.
 2. The total minimum floor area of a principal building shall be as follows:
 - a. One-bedroom dwelling unit: 750 square feet per dwelling unit.
 - b. Two-bedroom dwelling unit: 950 square feet per dwelling unit.
 - c. Three-bedroom or larger dwelling unit: 1,100 square feet per dwelling unit.
 3. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 30% of the lot area.
- (f) Setback and yards.
1. There shall be a minimum setback of 35 feet from the street right-of-way.
 2. There shall be a minimum offset from all side and rear lot lines not less than 20 feet in width.
- (g) Plans and specifications to be submitted to plan commission. To encourage a multifamily residential environment that is compatible with the residential character of the Town, building permits for permitted uses in Rm-1 Multifamily Residential District shall not be issued without review and approval of the Town Plan Commission. Such review and approval shall be concerned with general layout, building plans, ingress, egress, parking, landscaping and open space utilization. In addition, all plans are subject to SPS approval prior to the issuance of a building permit.
- (10) Rm-2 Multifamily Residential District. The Rm-2 Residential District is intended to provide for multifamily residential development at densities not exceeding 7.3 dwelling units per net acre. The Rm-2 Residential District is intended for use in more intensely developed areas, particularly in areas adjacent to business and manufacturing areas. It is not intended that the Rm-2 Residential District be located directly adjacent to single-family residential development in the Town. All Rm-2 residential developments should be served by municipal sewer and water facilities.
- (a) Permitted uses.
1. Two-family and multifamily dwellings. Multifamily residential structures shall not exceed eight dwelling units per structure.

2. Community living arrangements which have a capacity for 15 or fewer persons, subject to the limitations in § 60.63, Wis. Stats.
 3. Foster family homes.
 4. Family day care homes.
 5. Essential services.
- (b) Permitted accessory uses.
1. Private garages and carports.
 2. Gardening, tool, and storage sheds incidental to the residential use.
 3. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
 4. Roof-mounted solar collectors.
 5. Home occupations and professional home offices.
- (c) Conditional uses. See § **17.02(14)**.
- (d) Lot area and width.
1. Lots shall be a minimum of 20,000 square feet in area, with not less than 6,000 square feet per dwelling unit, and not less than 120 feet in width.
 2. 20% of any adjacent area owned by the applicant zoned C-1 Conservancy District under this chapter or Floodplain or Conservancy District under the Waukesha County Shoreland and Flood land Protection ordinance may be used in calculating density provided the total number of units permitted shall not exceed 20% of the units permitted without using flood land or conservancy lands.
- (e) Building height and area.
1. No principal building or part of a principal building shall exceed 40 feet in height. No accessory building shall exceed 15 feet in height.
 2. The total minimum floor area of a principal building shall be as follows:
 - a. One-bedroom dwelling unit: 750 square feet per dwelling unit.
 - b. Two-bedroom or larger dwelling unit: 950 square feet per dwelling unit.
 3. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 25% of the lot area.
- (f) Setback and yards.
1. There shall be a minimum setback of 35 feet from the street right-of-way.
 2. There shall be a minimum offset from all side and rear lot lines not less than 20 feet in width.
- (g) Plans and specifications to be submitted to plan commission. To encourage a multifamily residential environment compatible with the residential character of the Town, building permits for permitted uses in the Rm-1 Multifamily Residential District shall not be issued without review and approval of the Plan Commission. Such review and approval shall be concerned with general layout, building plans, ingress, egress, parking, landscaping and open space utilization. In addition, all plans are subject to SPS approval prior to the issuance of a building permit.

(11) B-1 Neighborhood Business District. The B-1 Neighborhood Business District is intended for individual and small groups of retail and customer service establishments serving primarily the convenience of a local neighborhood. The character, appearance, and operation of a neighborhood business area should be compatible with surrounding residential areas. No such district shall be less than two acres in area.

(a) Permitted uses.

- Bakeries
- Banks, savings and loan associations and other financial institutions
- Barbershops
- Beauty shops
- Business offices
- Clinics
- Clothing stores
- Delicatessens
- Drugstores
- Fish markets
- Florists
- Fruit stores
- Gift stores
- Grocery stores
- Hardware stores
- Hobby shops
- Insurance sales offices
- Meat markets
- Optical stores
- Packaged beverage stores
- Professional offices
- Real estate sales offices
- Restaurants, except drive-through and fast-food restaurants
- Self service laundry and dry-cleaning establishments
- Soda fountains and ice cream stores
- Sporting goods stores
- Tobacco stores
- Vegetable stores
- Videotape sales and rental

(b) Permitted accessory uses.

1. Garages used for storage of vehicles used in conjunction with the operation of the business.
2. Off-street parking and loading areas.
3. Residential quarters for the owner, proprietor, commercial tenant, employee or caretaker located in the same building as the business, provided that an occupancy separation is provided in accordance with State Code (Chs. SPS 361 through 366, Wis. Adm. Code).
4. Satellite dish antennas located on the roof of the principal structure or in the rear yard.

5. Roof-mounted solar collectors.
- (c) Conditional uses. See § **17.02(14)**.
- (d) Lot area and width.
1. Neighborhood business shopping centers shall contain a minimum area of two acres and shall be not less than 200 feet in width.
 2. Individual business sites in the B-1 Business District shall provide sufficient area for the principal building and its accessory buildings, off-street parking and loading areas and required yards. There is no minimum required site width.
- (e) Building height and area.
1. No principal building or parts of a principal building shall exceed 35 feet in height. No accessory building shall exceed 15 feet in height.
 2. The sum total of the floor area of the principal building and all accessory buildings shall be not less than 6,000 square feet or 15% of the lot area, whichever is less.
 3. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 30% of the lot area.
- (f) Setback and yards.
1. There shall be a minimum building setback of 50 feet from the right-of-way of all streets.
 2. There shall be a minimum offset from all side and rear lot lines not less than 15 feet in width.
- (g) Plans and specifications to be submitted to the plan commission. To encourage a business environment compatible with the residential character of the Town, building permits for permitted uses in the B-1 Business District shall not be issued without review and approval of the Plan Commission. Such review and approval shall be concerned with general layout, building plans, ingress, and egress, parking, loading, and unloading, landscaping and open space utilization. Building plans shall be prepared by a registered architect or engineer and are subject to SPS approval prior to issuance of a building permit.
- (h) Buffer yard required. Any business use which abuts a residential district shall provide a ten-foot-minimum buffer yard between the business use and the residential district to screen the business activity from the residential environment in such a manner that:
1. If a buffer yard is composed entirely of plant materials, it shall be of sufficient depth and height and contain sufficient plant species as to provide dense visual screening within two years and during all seasons of the year.
 2. Where architectural walls or fences are used, sufficient landscaping shall be used in conjunction with such wall or fence to create an attractive view from the residential side. Any wall or fence shall not be less than four nor more than six feet in height.
 3. Where the land adjacent to the buffer yard is a parking lot, the buffer screen shall be sufficiently opaque to prevent the penetration of headlight glare.
 4. All landscaping shall be maintained by the owner or operator to the satisfaction of the Plan Commission.
 5. No lighting shall be permitted on or in any part of the buffer yard and no lighting installed elsewhere on the parcel shall throw any rays onto adjacent residential properties.
 6. No signs shall be permitted on or in any part of the buffer yard.

- (i) Occupancy. All site work shall be completed prior to the issuance of an occupancy permit. A temporary occupancy permit may be issued subject to the deposit of a completion bond in the amount determined by the Building Inspector and approved by the Town Board.

(12) B-2 Limited General Business District. The B-2 Limited General Business District is intended to provide for the orderly and attractive grouping at appropriate locations of businesses offering a wider range of retail products and services than are provided in neighborhood business districts. Many such businesses are related to and dependent upon highway traffic or are specifically designed to serve the need of such traffic.

- (a) Permitted uses.

[Amended 12-7-2004]

- Antique and collector's stores
- Appliance stores
- Art shops
- Bakeries
- Banks, savings and loan and other financial institutions; including drive-in facilities
- Barbershops
- Beauty shops
- Book or stationery stores
- Building supply stores, excluding lumber yards
- Business offices
- Camera and photographic supply stores
- Clinics
- Clothing stores
- Communication offices or exchanges
- Commercial day-care centers
- Confectioneries and ice cream stores
- Convenience food store
- Delicatessens
- Department stores
- Drugstores
- Dry cleaning and dyeing establishments
- Electronic equipment sales, service, and repair
- Equipment rental facilities
- Fish markets
- Florist shops
- Fruit and vegetable markets
- Funeral homes
- Furniture stores
- Garden centers
- Gift shops
- Grocery and other food products stores
- Hardware stores
- Hobby shops
- Hotels and motels
- Indoor tennis and racquetball courts and physical fitness centers

- Insurance sales offices
- Interior decorators
- Jewelry stores
- Meat markets
- Music and radio stores
- Notion and variety stores
- Optical stores
- Packaged beverage stores
- Pharmacies
- Photography and art studios
- Printing and publishing houses
- Professional offices
- Radio and television broadcast studios, not including transmission towers
- Real estate sales offices
- Restaurants, not including drive-through or fast-food restaurants
- Self-service laundries
- Shoe stores
- Soda fountains
- Sporting goods stores
- Super markets
- Tailoring or dressmaking shops
- Tobacco stores
- Videotape sales and rental

(b) Permitted accessory uses.

1. Garages used for storage of vehicles used in conjunction with the operation of the business.
2. Off-street parking and loading areas.
3. Residential quarters for the owner, proprietor, commercial tenant, employee or caretaker located in the same building as the business, if an occupancy separation is provided in accord with Chs. SPS 361 through 366, Wis. Adm. Code.
4. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
5. Roof-mounted solar collectors.

(c) Conditional uses. See § **17.02(14)**

(d) Lot area and width. Lots shall have a minimum area of 20,000 square feet and be not less than 120 feet in width.

(e) Building height and area.

1. No principal building or parts of a principal building shall exceed 45 feet in height. No accessory building shall exceed 15 feet in height.
2. The sum total of the floor area of the principal building and all accessory buildings shall be not less than 6,000 square feet or 15% of the lot area, whichever is less.
3. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 50% of the lot area.

- (f) Setback and yards.
1. There shall be a minimum building setback of 50 feet from the right-of-way of all streets.
 2. There shall be a minimum offset from all side and rear lot lines not less than 15 feet in width.
- (g) Plans and specifications to be submitted to the plan commission. To encourage a business environment that is compatible with the residential character of the Town, building permits for permitted uses in the B-2 Business District shall not be issued without review and approval of the Plan Commission. Such review and approval shall be concerned with general layout, building plans, ingress, and egress, parking, loading, and unloading, landscaping and open space utilization. Building plans shall be prepared by a registered architect or engineer and are subject to SPS approval prior to the issuance of a building permit.
- (h) Buffer yard required. Any business use which abuts a residential district shall provide a ten-foot-minimum buffer yard between the business use and the residential district to screen the business activity from the residential environment in such a manner that:
1. If a buffer yard is composed entirely of plant materials, it shall be of sufficient depth and height and contain sufficient plant species as to provide dense visual screening within two years and during all seasons of the year.
 2. Where architectural walls or fences are used, sufficient landscaping shall be used with such wall or fence to create an attractive view from the residential side. No wall or fence shall be less than four feet nor more than six feet in height.
 3. Where the land adjacent to the buffer yard is a parking lot, the buffer screen shall be sufficiently opaque to prevent the penetration of headlight glare.
 4. All landscaping shall be maintained by the owner or operator to the satisfaction of the Plan Commission.
- (i) Occupancy. All site work shall be completed prior to the issuance of an occupancy permit. A temporary occupancy permit may be issued subject to the deposit of a completion bond in the amount determined by the Building Inspector and approved by the Town Board.
- (13) B-3 Office and Professional Business District. The B-3 Office and Professional Business District is intended for individual or small groups of buildings limited to office, professional and special service uses where the office use would be compatible with other neighborhood uses and not exhibit the intense activity of other business districts.
- (a) Permitted uses.
- Administrative and public service offices
 - Banks, savings and loan and other financial institutions
 - Barbershops and beauty shops
 - Interior decorators
 - Medical clinics
 - Parking lots and structures
 - Professional offices of an architect, engineer, landscape architect, lawyer, accountant, doctor, Christian science practitioner, dentist, optometrist, clergy or other similarly recognized profession
 - Real estate and insurance sales offices
 - Studios for photography, painting, music, sculpture, dance or other recognized fine art.
- (b) Permitted accessory uses.

1. Garages used for storage of vehicles in conjunction with the operation of the Business.
 2. Off-street parking and loading areas.
 3. Enclosed storage of equipment and materials which is incidental to the office use. Residential quarters for the owner, proprietor, commercial tenant, employee, or caretaker located in the same building as the business, provided an occupancy separation is provided in accordance with Chs. SPS 361 through 366, Wis. Adm. Code.
 4. Satellite dish antennas located on the roof of the principal structure or in rear yard. Roof-mounted solar collectors.
- (c) Conditional uses. See § **17.02(14)**
- (d) Lot area and width. Lots shall have a minimum area of 20,000 square feet and be not less than 120 feet in width.
- (e) Building height and area.
1. No principal building or parts of a principal building shall exceed 60 feet in height. No accessory building shall exceed 15 feet in height.
 2. The sum total of the floor area of the principal building and all accessory buildings shall be not less than 6,000 square feet or 15% of the lot area, whichever is less.
 3. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 30% of the lot area.
- (f) Setback and yards.
1. There shall be a minimum building setback of 50 feet from the right-of-way of all streets.
 2. There shall be a minimum offset from all side and rear lot lines not less than 15 feet in width.
- (g) Plans and specifications to be submitted to the plan commission. To encourage a business environment that is compatible with the residential character of the Town, building permits for permitted uses in the B-3 Business District shall not be issued without review and approval of the Plan Commission. Such review and approval shall be concerned with general layout, building plans, ingress, and egress, parking, loading, and unloading, landscaping and open space utilization. Building plans shall be prepared by a registered architect or engineer and are subject to SPS approval prior to the issuance of a building permit.
- (h) Buffer yard required. Any business use which abuts a residential district shall provide a ten-foot-minimum buffer yard between the business use and the residential district to screen the business activity from the residential environment in such a manner that:
1. If a buffer yard is composed entirely of plant materials, it shall be of sufficient depth and height, and contain sufficient plant species as to provide dense visual screening within two years and during all seasons of the year.
 2. Where architectural walls or fences are used, sufficient landscaping shall be used in conjunction with such wall or fence to create an attractive view from the residential side. Any wall or fence shall not be less than four nor more than six feet in height.
 3. Where the land adjacent to the buffer yard is a parking lot, the buffer screen shall be sufficiently opaque to prevent the penetration of headlight glare.
 4. All landscaping shall be maintained by the owner or operator to the satisfaction of the Plan Commission.
- (i) Occupancy. All site work shall be completed prior to the issuance of an occupancy permit. A temporary occupancy permit may be issued subject to the deposit of a completion bond in the

amount determined by the Building Inspector and approved by the Town Board.

(14) M-1 Manufacturing District. The M-1 Limited Manufacturing District is intended to provide for manufacturing, industrial and related uses of a limited nature and size, which on the basis of actual physical and operational characteristics would not be detrimental to the surrounding area or to the Town as a whole by reason of smoke, noise, dust, odor, traffic, physical appearance or other similar factors.

(a) Permitted uses. Assembly, processing, manufacturing and storage of the following:

- Automotive customizing
- Automotive upholstery and automotive accessories
- Apparel and findings and related products
- Automatic temperature controls
- Blank books, loose-leaf binders and binding devices
- Books: publishing, printing and binding
- Brooms and brushes
- Candy and confectionery products
- Cereal preparations
- Cleaning, dressing and dyeing
- Commercial bakery
- Commercial greenhouses
- Costume jewelry, buttons and miscellaneous notions
- Curtains and draperies.
- Dental equipment and supplies
- Dress and work gloves
- Electrotyping and stereotyping
- Electrical appliances
- Electronic devices
- Engineering, laboratory, scientific and research instruments and related equipment
- Envelopes
- Fabric, broad and narrow woven
- Felt goods
- Flavor extracts and flavor syrups
- Floor coverings limited to rugs and carpeting
- Food locker plants
- Footwear
- Fresh or frozen fruits, fruit juices, vegetables and specialties
- Glass manufacturing
- Greeting cards
- Handbags and other personal leather goods
- Hats, caps, and millinery
- Household furniture and furnishings
- Ice
- Ice cream and frozen desserts
- Jewelry manufacturing
- Knit goods

- Laboratories
- Lace goods
- Lampshades
- Leather fabrication, not including tanning
- Luggage
- Macaroni, spaghetti, vermicelli and noodles
- Machine shops
- Manifold business forms
- Manufacturing and bottling of nonalcoholic beverages
- Mechanical measuring and controlling instruments
- Men's, youth's and boy's furnishings, work clothing and allied garments
- Morticians' goods
- Musical instruments and parts
- Newspapers: publishing and printing
- Office furniture
- Ophthalmic goods
- Optical instruments and lenses
- Orthopedic, prosthetic and surgical appliances and supplies
- Packaging and assembly of products made from fur
- Paper coating and glazing
- Partitions, shelving, lockers and office and store fixtures
- Pens, pencils and other office and artist materials
- Periodicals: publishing and printing
- Pharmaceutical processing
- Photoengraving instruments and apparatus
- Photographic equipment and supplies
- Pleating, decorative and novelty stitching and tucking for the trade
- Pressed and molded pulp goods
- Printing and publishing
- Raincoats and other waterproof outer garments
- Rice milling
- Robes and dressing gowns
- Sanitary paper products
- Self-service storage facilities (mini warehouses)
- Sign and other advertising display manufacturing
- Silverware and plated ware
- Surgical and medical instruments and apparatus
- Textiles, dyeing and finishing
- Tire cord and fabric
- Toys, amusement, sporting and athletic goods
- Typesetting
- Umbrellas, parasols and canes
- Venetian blinds and shades
- Wallpaper

- Warehousing
 - Watches, clocks, clockwork operated devices and parts
 - Wholesaling
 - Women's, miss's, junior's, girl's and infant's furnishings, work and dress garments
 - Wool scouting, worsted combing and towing to top
 - Yarns and threads
- (b) Permitted accessory uses.
1. Garages used for storage of vehicles used in conjunction with operation of the business.
 2. Off-street parking and loading areas.
 3. Office, storage, power supply and uses normally auxiliary to principal industrial operation
 4. Residential quarters for owner or caretaker, provided an occupancy separation is provided in accordance with Chs. SPS 361 through 366, Wis. Adm. Code).
 5. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
 6. Roof-mounted solar collectors.
- (c) Conditional uses. See § **17.02(14)**
- (d) Certain incompatible uses prohibited. The following uses are considered to be incompatible with the residential characteristics of the Town and surrounding area and are herewith prohibited:
1. Manufacturing, processing or storage of acid, ammonia, asbestos, asphalt, cement, chlorine, coal tar, creosote, explosives (except as permitted for small arms ammunition in the M-2 District), fertilizer, glue, grease, gypsum, insecticides, lampblack, lime, offal, plaster of paris, poison, pulp, pyroxylin, and radioactive materials.
 2. Storage of flammable gases or liquids and hazardous chemicals in the M-1 District.
 3. Forges, foundries, animal reduction, slaughterhouses, smelters, stockyards, and tanneries.
- (e) Lot area and width. Lots shall have a minimum area of 20,000 square feet and be not less than 120 feet in width.
- (f) Building height and area.
1. No principal building or parts of a principal building shall exceed 45 feet in height. No accessory building shall exceed 15 feet in height.
 2. The sum total of the floor area of the principal building and all accessory buildings shall be not less than 8,000 square feet or 20% of the lot area, whichever is less.
 3. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 50% of the lot area.
- (g) Setback and yards.
1. There shall be a minimum building setback of 50 feet from the right-of-way of all streets.
 2. There shall be a minimum offset from all side and rear lot lines not less than 10 feet in width.
- (h) Plans and specifications to be submitted to the plan commission. To encourage a manufacturing and industrial environment that is compatible with the residential character of the Town, building permits for permitted uses in the M-1 Manufacturing District shall not be issued without review and approval of the Plan Commission. Such review and approval shall

be concerned with general layout, building plans, ingress, and egress, parking, loading, and unloading, landscaping and open space utilization. Building plans shall be prepared by a registered architect or engineer and are subject to SPS approval prior to the issuance of a building permit.

- (i) Buffer yard required. Any manufacturing or industrial use which abuts a residential district shall provide a twenty-five-foot-minimum buffer yard between the industrial use and residential district to screen the industrial activity from the residential environment in such a manner that:
1. If a buffer yard is composed entirely of plant materials, it shall be of sufficient depth and height, and contain sufficient plant species as to provide dense visual screening within two years and during all seasons of the year.
 2. Where architectural walls or fences are used, sufficient landscaping shall be used in conjunction with such wall or fence to create an attractive view from the residential side. No wall or fence shall be less than four feet nor more than six feet in height.
 3. Where the land adjacent to the buffer yard is a parking lot, the buffer screen shall be sufficiently opaque to prevent the penetration of headlight glare.
 4. All landscaping shall be maintained by the owner or operator to the satisfaction of the Plan Commission.
- (j) Occupancy. All site work shall be completed prior to the issuance of an occupancy permit. A temporary occupancy permit may be issued subject to the deposit of a completion bond in the amount determined by the Building Inspector and approved by the Town Board.
- (15) M-2 General Manufacturing District. The M-2 General Manufacturing District is intended for manufacturing and industrial development of a more general and less restrictive nature than the M-1 Limited Manufacturing District in those areas where the relationship to surrounding land use would create fewer problems of compatibility. The M-2 District should not normally abut directly upon residential districts.
- (a) Permitted uses. Those uses permitted in the M-1 Limited Manufacturing District, and:
- Auto body repair, engine repair
 - Automobile, marine, and aircraft manufacturing
 - Automobile wrecking yard
 - Coating, engraving, and allied services
 - Construction, mining and materials handling machinery and equipment, manufacturing and repair of
 - Cutlery, hand tools and general hardware manufacturing
 - Electric lighting and wiring equipment manufacturing
 - Electrical industrial apparatus manufacturing
 - Electrical transmission and distribution equipment manufacturing
 - Electrometallurgical products manufacturing
 - Engine and turbine manufacturing
 - Farm machinery and equipment manufacturing
 - Fine earthenware, table and kitchen articles manufacturing
 - Glass and glass container manufacturing
 - Heating apparatus and plumbing fixtures manufacturing
 - Household appliance manufacturing
 - Inflammable gases and liquids storage, not to exceed 50,000 gallons
 - Metal container manufacturing

- Metal products manufacturing, fabricating and distribution
 - Motorcycle and bicycle manufacturing
 - Office, computing and accounting machine manufacturing
 - Small arms ammunition manufacturing
 - Screw machine products, bolts, nuts, screws, rivets and washer manufacturing
 - Signaling and fire control equipment manufacturing
 - Wire products manufacturing
- (b) Permitted accessory uses.
1. Garages used for storage of vehicles used in conjunction with the operation of the business.
 2. Off-street parking and loading areas.
 3. Office, storage, power supply, and other uses normally auxiliary to the principal industrial operation.
 4. Residential quarters for the owner or caretaker, provided that an occupancy separation is provided in accordance with Chs. SPS 361 through 366, Wis. Adm. Code.
 5. Satellite dish antennas located on the roof of the principal structure or in the rear yard.
 6. Roof-mounted solar collectors.
- (c) Conditional uses. See § **17.02(14)**.
- (d) Certain incompatible uses prohibited. The following uses are considered to be incompatible with the residential characteristics of the Town and surrounding area and are prohibited:
1. Manufacturing, processing or storage of acid, ammonia, asbestos, asphalt, cement, chlorine, coal tar, creosote, explosives (except as permitted for small arms ammunition), fertilizer, glue, grease, gypsum, insecticides, lampblack, lime, offal, plaster of paris, poison, pulp, pyroxylin and radioactive materials.
 2. Storage of flammable gases or liquids and hazardous chemicals in excess of 50,000 gallons.
 3. Forges, foundries, animal reduction, slaughterhouses, smelters, stockyards, and tanneries.
- (e) Lot area and width. Lots shall have a minimum area of 20,000 square feet and be not less than 120 feet in width.
- (f) Building height and area.
1. No principal building or parts of a principal building shall exceed 45 feet in height. No accessory building shall exceed 15 feet in height.
 2. The sum total of the floor area of the principal building and all accessory buildings shall be not less than 8,000 square feet or 20% of the lot area, whichever is less.
 3. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 50% of the lot area.
- (g) Setback and yards.
1. There shall be a minimum building setback of 50 feet from the right-of-way of all streets.
 2. There shall be a minimum offset from all side and rear lot lines not less than 10 feet in width.

- (h) Plans and specifications to be submitted to the plan commission. To encourage a manufacturing and industrial environment that is compatible with the residential character of the Town, building permits for permitted uses in the M-2 Manufacturing District shall not be issued without review and approval of the Plan Commission. Such review and approval shall be concerned with general layout, building plans, ingress, and egress, parking, loading, and unloading, landscaping and open space utilization. Building plans shall be prepared by a registered architect or engineer and are subject to SPS approval prior to issuance of a building permit.
 - (i) Buffer yard required. Any manufacturing or industrial use which abuts a residential district shall provide a twenty-five-foot-minimum buffer yard between the industrial use and residential district to screen the industrial activity from the residential environment in such a manner that:
 - 1. If a buffer yard is composed entirely of plant materials, it shall be of sufficient depth and height, and contain sufficient plant species as to provide dense visual screening within two years and during all seasons of the year.
 - 2. Where architectural walls or fences are used, sufficient landscaping shall be used in conjunction with such wall or fence to create an attractive view from the residential side. Any wall or fence shall not be less than four feet nor more than six feet in height.
 - 3. Where the land adjacent to the buffer yard is a parking lot, the buffer screen shall be sufficiently opaque to prevent the penetration of headlight glare.
 - 4. All landscaping shall be maintained by the owner or operator to the satisfaction of the Plan Commission.
 - (j) Occupancy. All site work shall be completed prior to the issuance of an occupancy permit. A temporary occupancy permit may be issued subject to the deposit of a completion bond in the amount determined by the Building Inspector and approved by the Town Board.
- (16) M-3 Quarrying District. The M-3 Quarrying District is intended to provide for the orderly continuation of existing quarries and related operations and to provide for new operations that provide maximum protection to the natural environment. This district further provides for the restoration of quarries in a manner that will not deteriorate the natural environment of the Town.
- (a) Permitted uses. None; all uses in the M-3 District are conditional uses.
 - (b) Conditional uses. See § **17.02(14)**
 - 1. If a buffer yard is composed entirely of plant materials, it shall be of sufficient depth and height and contain sufficient plant species as to provide dense visual screening within two years and during all seasons of the year.
 - 2. Where architectural walls or fences are used, sufficient landscaping shall be used in conjunction with such wall or fence to create an attractive view from the residential side. Any wall or fence shall not be less than four nor more than six feet in height.
 - 3. Where the land adjacent to the buffer yard is a parking lot, the buffer screen shall be sufficiently opaque to prevent the penetration of headlight glare.
 - 4. All landscaping shall be maintained by the owner or operator to the satisfaction of the Plan Commission.
 - 5. All excavation sites shall be fenced.
- (17) I-1 Institutional District. The I-1 Institutional District is intended to eliminate the ambiguity of maintaining, in unrelated use districts, areas which are under public or public-related ownership and where the use for public purpose is anticipated to be permanent.
- (a) Permitted uses.

1. Churches.
 2. Hospitals, sanatoriums, nursing homes and clinics.
 3. Libraries, community centers, museums and public art galleries.
 4. Public administrative offices and public service buildings, including fire and police stations.
 5. Public or private schools, colleges and universities.
- (b) Permitted accessory uses.
1. Garages for storage of vehicles used in conjunction with the operation of a permitted use.
 2. Residential quarters for caretakers or clergy, provided occupancy separation is provided per Chs. SPS 361 through 366, Wis. Adm. Code.
 3. Roof-mounted solar collectors.
 4. Satellite dish antennas located on the roof of the principal structure or in rear yard.
 5. Service buildings and facilities normally accessory to the permitted use.
- (c) Conditional uses. See § **17.02(14)**.
- (d) Lot area and width. Lots shall be a minimum of 20,000 square feet in area and not be less than 120 feet in width.
- (e) Building height and area.
1. No principal building or part of a principal building shall exceed 35 feet in height. No accessory building shall exceed 15 feet in height.
 2. Residential uses permitted in the I-1 District shall comply with the building area requirements of the Rs-3 Single-Family Residential District.
- (f) Setback and yards.
1. There shall be a minimum setback of 50 feet from the street right-of-way.
 2. There shall be a minimum offset from all side and rear lot lines not less than 20 feet in width.
- (g) Plans and specifications to be submitted to Plan Commission. To encourage an institutional use environment that is compatible with the residential character of the Town, building permits for permitted uses in the Institutional District shall not be issued without review and approval of the Plan Commission. Such review and approval shall be concerned with general layout, building plans, ingress, egress, parking, loading and unloading, and landscaping and open space utilization. Building plans shall be prepared by a registered architect or engineer and are subject to SPS approval prior to the issuance of a building permit.
- (h) Occupancy. All site work shall be completed prior to the issuance of an occupancy permit. A temporary occupancy permit may be issued subject to the deposit of a completion bond in the amount determined by the Building Inspector and approved by the Town Board.
- (18) P-1 Park District. The P-1 Park District is intended to provide for areas where the open space and recreational needs, both public and private, of the citizens of the Town can be met without undue disturbance of natural resources and adjacent uses.
- (a) Permitted uses.
- Botanical gardens and arboretums
 - Exhibition halls

- Fairgrounds
- Golf courses without country club facilities
- Historic monuments or sites
- Hiking, biking and nature trails
- Neighborhood tot lots
- Outdoor skating rinks
- Parks and playgrounds
- Picnicking areas
- Playfields or athletic fields
- Public art galleries
- Sledding, skiing or tobogganing
- Swimming beaches
- Swimming pools
- Tennis courts

(b) Permitted accessory uses.

1. Buildings accessory to the permitted use.
2. Roof-mounted solar collectors.
3. Satellite dish antennas located on the roof of the principal structure or in rear yard.

(c) Conditional uses. See § **17.02(14)**.

(d) Building height. No building or part of a building shall exceed 45 feet in height. No accessory building shall exceed 15 feet in height.

(e) Yards. No building or structure shall be erected, altered, or moved closer than 20 feet to a lot line.

(f) Plans and specifications to be submitted to plan commission. To encourage a recreational use environment compatible with the residential character of the Town, building permits for permitted uses in the Park District shall not be issued without review and approval of the Plan Commission. Such review and approval shall be concerned with general layout, building plans, ingress, egress, parking, loading and unloading and landscape plans. Municipally owned facilities shall be exempt from site plan review.

Building plans shall be prepared by a registered architect or engineer and are subject to SPS approval prior to the issuance of a building permit.

(19) C-1 Conservancy District. The C-1 District is intended to preserve, protect and enhance the ponds, streams and wetland areas of the Town. Preservation, protection and enhancement of these areas will serve to maintain safe and healthful conditions; maintain and improve water quality, both ground and surface; prevent flood damage; control stormwater runoff, protect stream banks from erosion; protect groundwater recharge and discharge areas; protect wildlife habitat; protect native plant communities; avoid the location of structures on soils which are generally not suitable for use and protect the water-based recreation resources of the Town.

(a) Permitted uses.

1. Hiking, fishing, trapping, swimming and boating, unless otherwise prohibited.
2. Harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

3. Silviculture, including the planting, thinning and harvesting of timber, provided no filling, flooding, draining, dredging, ditching, tiling or excavating is done except for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on silvicultural activities if not corrected.
4. Construction and maintenance of fences.
5. Existing agricultural uses that do not involve extension of cultivated areas, extension of or creation of new drainage systems and do not substantially disturb or impair the natural fauna, flora, topography, or water regimen.
6. Ditching, tiling, dredging, excavating or filling done to maintain or repair an existing agricultural drainage system only to the extent necessary to maintain the level of drainage required to continue the existing agricultural use.
7. The construction and maintenance of piers, docks and walkways, including those built on pilings.
8. The maintenance, repair, replacement and reconstruction of existing streets, roads and bridges.

(b) Conditional uses. See § **17.02(14)**.

(20) (Reserved)^[2]

[2] *Editor's Note: Original Subsection (20), PUD Planned Unit Development Overlay District, was repealed 8-5-2014.*

(21) MU-1 Mixed-Use District. The Mixed-Use District is intended to encourage mixed-use development that promotes a range of compatible land uses through appropriate site design. Development is allowed at a higher density than other zoning districts in the Town. The District provides for coordinated development of a variety of uses, such as office, commercial, institutional and residential, and their necessary support functions in the vicinity of key highway intersection and transit corridors. The District is designed to facilitate lively, people-oriented environments that offer a variety of activities that have peak use times throughout the day in order to efficiently utilize infrastructure and keep the area continuously active. The uses may be located in the same building or in separate buildings. The intent is to encourage efficient land use by facilitating compact development and by minimizing the amount of land needed for surface parking.

[Added 10-6-2009; amended 6-1-2010; 7-5-2011]

(a) Permitted uses.

1. All permitted uses under the B-1 Neighborhood Business District [§ **17.04(11)(a)**].
2. All permitted uses under the B-2 Limited General Business District [§ **17.04(12)(a)**].
3. All permitted uses under the B-3 Office and Professional Business District [§ **17.04(13)(a)**].
4. Residential dwelling unit structures having a density of up to 7.3 units per acre.
5. Group homes with capacity to accommodate 15 or fewer individuals.
6. Storage warehouses are prohibited in the MU Mixed-Use District.

(b) Permitted accessory uses.

1. Garages used for storage of vehicles used in conjunction with the operation of businesses.
2. Off-street parking and loading areas, including structured parking.
3. Satellite dish antennas located on the roof of a structure or in the rear yard.
4. Roof-mounted solar collectors.

5. Attached private garages for residential use.
 6. Gardening, tool, and storage sheds incidental to residential uses.
 7. Home occupations and professional home offices.
- (c) Conditional uses [integrate with § 17.02(14)(b)].
1. Residential occupancy of dwelling unit structures with a density of up to 14 units per acre.
 2. Governmental and cultural uses, as described in § 17.02(14)(b)2b.
 3. Utility substations, as described in § 17.02(14)(b)2c.
 4. Public passenger transportation terminals, as described in § 17.02(14)(b)2d.
 5. Schools, as described in § 17.02(14)(b)2e.
 6. Community living arrangements for over 15 persons, as described in § 17.02(14)(b)3b.
 7. Rest homes and nursing homes.
 8. Drive-in banks, as described in § 17.02(14)(b)4c.
 9. Drive-through restaurants, as described in § 17.02(14)(b)4d.
 10. Gasoline service stations, as described in § 17.02(14)(b)4f.
 11. Transmitting towers, as described in § 17.02(14)(b)4g.
 12. Detached private garages.
 13. Attached private garages for nonresidential use (other than permitted loading facilities).
- (d) Lot area and width. Lots shall have a minimum area of 20,000 square feet and shall not be less than 120 feet in width.
- (e) Building height and area.
1. No building shall exceed 100 feet in height. This does not include rooftop mechanicals or HVAC systems and any screening of such systems.
 2. Multi-story structures are strongly encouraged to achieve the actual and apparent densities believed necessary to promote a lively, people-oriented environment. Achieving those dynamics is also possible with creative site design, including courts, outdoor dining areas, etcetera. Fake multistory facades are discouraged.
 3. The sum total of the floor area of the principal building and all accessory buildings shall not be less than 50% of the lot area.
 4. The sum total of the floor area of the principal building and all accessory buildings shall not exceed 400% of the lot area. Parking structures shall not be included in the calculation.
 5. Fifteen percent of the lot shall remain usable open space. "Usable open space" means that part of a lot which is unoccupied by driveways, drive aisles, service drives, off-street parking spaces and/or loading berths, principal buildings or accessory buildings, and is unobstructed to the sky. This space shall be available to all occupants of the development and shall be usable for greenery, recreational space and other leisure activities normally carried on outdoors. Balconies and roof areas, designed and improved for outdoor activities, may also be considered as usable open space. Ground level spaces for this purpose may include open terraces (including outdoor dining areas) plazas or courtyards, but may not include a permanently roofed-over terrace or porch. An open space credit of up to 7.5% is available for building designs utilizing of vegetated roof strategies.

6. A creative use of green building strategies are strongly encouraged in both the building and site design, including green roofs, rain gardens and solar design.
 7. Structured parking is strongly encouraged.
- (f) Exceptions to height and area limits.
1. The Town Board may grant exceptions to § **17.04(21)(e)1** and § **17.04(21)(e)4**, above. Exceptions are subject to the standards and approval process described in § 17.04(21)(f)2a and b, below. The exception shall not exceed two floors (30 feet) in height and shall not add more than an additional 100% of the lot area to the square footage of the proposed building or buildings.
 2. The following standards must be met before the Plan Commission and Town Board may consider granting an exception to height and area limits:
 - a. Exceptions shall not be granted to single-use buildings, such as buildings that only contain office uses. Goods and services that are only available to tenants and/or guests of a building shall not be considered separate from the main use, such as an office cafeteria or a condominium exercise facility.
 - b. If office uses are included in the project the developer must submit a workable and binding Transportation Demand Management (TDM) plan that will result in at least a 15% reduction in car traffic to the proposed office uses through implementation of such things as carpooling, transit, shared ride programs, paid parking, etc.
 - c. If residential units are included in the project, the Town may require the inclusion of affordable units for people making less than 80% of the county median income for a family size appropriate to unit. The inclusion of affordable units shall weigh into the decision regarding any exceptions to height or area limits, should they be requested by the developer. Affordable unit size and finish shall be roughly comparable to equivalent market-rate units. The mix of affordable unit layouts (studio, one-bedroom, two-bedroom, three-bedroom) shall be at a ratio comparable to the market-rate unit layouts.
 3. An applicant may, at their discretion, request feedback from the Plan Commission and Town Board under § **17.02(7)(a)**, Conceptual approval, on the potential for granting an exception. Favorable feedback regarding the potential of an exception by the Plan Commission and/or the Town Board does not grant any rights to the developer or property, and shall not be interpreted as guaranteeing final approval to an exception. A request for an exception shall be made as part of the plan review process under section § **17.04(21)(h)**. The Plan Commission shall forward its recommendation for approval or denial of the request, with accompanying reasons for approval or denial, to the Town Board. Following Plan Commission review, consideration of the request shall be placed upon the next Town Board meeting agenda, and shall be acted upon by the Town Board at said meeting.
- (g) Setback and yards.
1. There shall be a minimum building setback of 12 feet from the right-of-way of all streets.
 2. There shall be a maximum building setback of 70 feet from the right-of-way of all streets.
 3. Buildings that abut a residential district shall be set back a distance that is greater than 50% of their height. If a building steps back, such that floors terminate at different heights, each level shall be treated as a separate building for the purposes of measuring the appropriate setback in relation to height. All buildings and accessory structures shall have a minimum setback of 20 feet from adjoining residential parcels.
- (h) Plans and specifications to be submitted to the Plan Commission. To encourage a mixed-use environment that is pedestrian-oriented and well-integrated with its surroundings, building permits for permitted uses in the MU Mixed-Use District shall not be issued without review and

approval of the development plans, and a proposed Plan of operation, by the Plan Commission. Such review and approval shall be concerned with general layout, building plans, ingress and egress, parking, loading and unloading, landscaping, and open space utilization, building design and materials, and pedestrian and bicycle facilities and mobility. Building plans shall be prepared by a registered architect or engineer and are subject to Wisconsin Department of Commerce (COMM) approval prior to the issuance of a building permit. Buildings and site plans for areas within the MU Mixed-Use District shall comply with the standards in § 17.04(21)(e), in addition to the standards contained in § 17.02(6) of this chapter. In the event that any standards are found contradictory between those two sections, § 17.04(21)(e) shall govern. Projects proposed for the area included in the Redevelopment Plan for the Bluemound Road Corridor, adopted on July 1, 2008 by the Town Board, shall comply with the provisions in that plan. These standards identify the desired height, density and design characteristics of redevelopment projects within this area. The Planning Commission will review and approve all zoning and land use applications, as necessary, for compliance with this chapter and the Redevelopment Plan referenced above. In addition to the standards contained in § 17.02(6) of this chapter, site plans in this district will be reviewed for compliance with the design standards below. In cases where standards identified within the Bluemound Road Corridor Redevelopment Plan are more stringent than this chapter, the plan shall supersede the minimum requirements established by this chapter.

1. Building orientation and access.

- a. Principal buildings within the district shall be oriented toward streets, courtyards or plazas so as to promote a pedestrian-oriented environment. Site design shall accommodate access by auto and pedestrian traffic. Broad parking fields between the building and streets are discouraged.
- b. The design shall utilize a variety of compatible exterior materials, building styles, massing, composition, articulations, and/or prominent architectural features. The street-facing portion of an interior oriented building cannot be built as a solid wall facing the street.
- c. Development that includes a commercial component shall have:
 - i. Storefront windows that provide transparency to the building at the pedestrian level. The design shall provide a traditional urban retail streetscape aesthetic. Glass is to be clear or tinted, not reflective.
 - ii. A prominent location relative to the existing commercial uses located in the surrounding area in order to provide a continuity of the commercial presence in the community.
 - iii. Direct and visible access noticeable from the street to uses (residential or commercial) located above ground level.
 - iv. Built-in flexibility so as to allow conversion from one commercial use to another and to ensure that commercial space that is adequate for retail is also adequate for a variety of other uses.
 - v. Food and drink establishments are encouraged to incorporate outdoor dining opportunities into their plans.
- d. Single-use residential buildings shall be situated so as to not disrupt the continuity of a commercial district or corridor.

2. Pedestrian-oriented design.

- a. Development should be connected to adjacent development with direct, convenient and attractive sidewalks and/or pathways.

- b. Development should provide internal and/or public pedestrian connections that are direct, convenient and pleasant with appropriate amenities (e.g., attractive sidewalks and benches).
 - c. Outdoor seating for restaurants is encouraged, and may extend into rights-of-way or access easements of streets or public ways if a minimum sidewalk clearance and/or distance to curblineline of five feet is maintained.
 - d. Development should incorporate the following criteria listed below, as appropriate:
 - i. Main building entrances that open directly to the outside;
 - ii. A variety of paving colors and textures to encourage way-finding throughout the site;
 - iii. At least one entrance per building that does not require passage through a parking lot or garage to gain access to the building;
 - iv. Corner buildings shall have corner entrances whenever possible;
 - v. Sidewalks and/or plazas with weather protection (e.g., awnings/canopies) and appropriate pedestrian amenities (e.g., street tree grates, outdoor seating, trash cans, mailboxes, sidewalk displays, public art, etc.).
 - vi. Streets and drive-aisles with traffic calming elements such as bulbouts and raised or textured pedestrian crosswalks.
3. Parking, loading and access. Development within mixed-use districts shall follow § 17.06 of these ordinances. The design of parking in mixed-use districts shall be subject to the following additional standards.
- a. Minimum parking standards in § 17.06(3)(h) may be waived by the Plan Commission if the applicant provides a shared parking plan that complies with the criteria below. The amount of parking spaces required shall be based on shared parking criteria, listed below, that is met by the proposed project. In no case shall minimum parking requirements be reduced where, based on substantial evidence, there is insufficient off-street parking to meet the needs of the development.
 - i. Parking spaces proposed for shared parking arrangements shall be within a reasonable distance of all uses they are to serve.
 - ii. The applicant shall submit sufficient data to indicate that the peak hours of operation of uses or activities proposed for shared parking arrangements do not substantially coincide or overlap with each other.
 - iii. Transit alternatives are available as part of the development or within 1,000 feet of the development's boundary.
 - iv. No more than 50% of the parking spaces required for a building or use may be supplied by parking facilities required for any other building or use.
 - v. If more than one parcel is involved, the property owner(s) involved in the shared use of off-street parking facilities shall submit a legal agreement approved by the Town Attorney as to form and content guaranteeing that said required parking spaces shall be maintained so long as the use requiring parking is in existence or unless the required parking is provided elsewhere in accordance with the provisions of this article. Such instrument, when approved as conforming to the provisions of this section, shall be recorded by the property owner in the office of the Waukesha County Register of Deeds and a copy thereof filed with the Zoning Administrator.

- b. Shared access/cross-access shall be provided wherever possible. Within existing and planned retail centers and adjacent properties, provision to preserve future shared access is required if not provided immediately. Easements are required to provide and preserve shared access and shall be recorded in the office of the Waukesha County Register of Deeds.
 - c. If surface parking is located to the side of a building, the parking shall be screened by a decorative fence or hedge.
 - d. Facilities to lock bicycles shall be provided for each building larger than 5,000 square feet. A structured/covered parking area for bicycles shall be provided if structured parking is provided for automobiles.
4. Open space. Developments should provide usable open space, enhance the vitality of existing commercial activity, and recognize and respond appropriately to adjacent existing or planned public spaces (e.g., civic buildings, sidewalks, plazas, and similar spaces.) A shared and interconnected open space network is encouraged between developments to avoid small, unconnected spaces that have the potential of being underutilized. Shared and interconnected spaces could be in the form of pedestrian ways (galleries), courts or plazas.
- (i) Buffer yard required. A minimum twenty-foot buffer yard is required between structures within the MU district and adjoining residential districts to screen activities. Buffer yards shall meet the following requirements:
1. If a buffer yard is composed entirely of plant materials, it shall be of sufficient depth and height and contain sufficient plant species so as to provide dense visual screening within two years and during all seasons of the year.
 2. Where architectural walls or fences are used, sufficient landscaping shall be used with such wall or fence to create an attractive view from the residential side. No wall or fence shall be less than four feet, nor more than six feet in height.
 3. Where the land adjacent to the buffer yard is a parking lot, the buffer screen shall be sufficiently opaque to prevent the penetration of headlight glare. The screening requirement shall be effective prior to occupancy.
 4. All landscaping shall be maintained by the property owner or operator to the satisfaction of the Plan Commission.

§ 17.05. (Reserved)

§ 17.06. Traffic, loading, parking and access.

(1) Traffic visibility.

- (a) No obstructions, such as structures, parking, or vegetation, shall be permitted in any district between the heights of 2 1/2 feet and 10 feet above the plane through the mean center line grade of the vision triangle. The vision triangle is formed by connecting a line between points located 30 feet from the intersection of two streets along the right-of-way line.
- (b) In the case of arterial streets intersecting with other intersecting streets or railways, the corner cutoff distances establishing the vision triangle clearance space shall be increased to 60 feet.
- (c) In the case of driveways intersecting with other intersecting streets, the corner cutoff distances establishing the vision triangle clearance space shall be a minimum of 15 feet.

- (2) Loading requirements. On every lot on which a business, trade or industrial use is hereafter established, adequate space with access to a public street or alley shall be provided for the loading and unloading of vehicles off the public right-of-way. At no time shall any part of a truck or van be allowed to extend into the right-of-way of a public thoroughfare while the truck or van is being loaded or unloaded.
- (3) Parking requirements. In all districts, in connection with every use, there shall be provided at the time any use is erected, enlarged, extended or increased, off-street parking stalls for all vehicles in accordance with the following:
- (a) Adequate access to a public street shall be provided for each parking space.
[Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
 - (b) The minimum dimensions of each parking space shall be nine feet by 18 feet, except for properly signed spaces provided for use by physically disabled persons.
 - (c) Parking spaces for use by physically disabled persons. All open off-street parking areas provided for more than 25 parking spaces, except for parking areas restricted to use by employees only, shall provide properly signed parking spaces for use by motor vehicles which transport physically disabled persons in accordance with the following minimum standards:
 - 1. One properly signed physically disabled parking space shall be provided in parking areas containing 26 to 49 spaces.
 - 2. Two percent of the total number of spaces shall be properly signed physically disabled parking spaces in parking areas containing 50 to 1,000 spaces.
 - 3. In addition to the number of spaces required in Subsection (3)(c)2 above, 1% of each 1,000 spaces over the first 1,000 spaces shall be provided for properly signed physically disabled parking spaces in parking areas containing more than 1,000 spaces.
 - 4. The minimum dimensions for all parking spaces provided for use by physically disabled persons shall be 12 feet by 18 feet.
 - 5. Parking spaces provided for use by physically disabled persons shall be located as close as possible to an entrance which allows persons to enter and leave the parking area without assistance.
 - 6. All parking spaces provided for physically disabled persons shall be marked by a sign which includes the international symbol for barrier-free environments and a statement informing the public that the parking space is reserved for physically disabled persons. Such sign shall comply with the requirements of §§ 346.50, 346.503, and 346.505, Wis. Stats.
 - (d) Location. Location of parking spaces shall be on the same lot as the principal use or not more than 400 feet from the principal use. No parking space or driveway, except in residential districts, shall be closer than 25 feet to a residential lot line or a street right-of-way opposite a residential district.
 - (e) Surfacing. All off-street parking areas shall be surfaced with an asphaltic or portland cement pavement in accordance with Town standards and specifications so as to provide a durable and dust-free surface and shall be so graded and drained as to dispose of all surface water. Any parking area for more than five vehicles shall have the aisles and spaces clearly marked. Surfacing of parking areas shall be completed before occupancy is granted. The Plan Commission may, however, recommend a delay in surfacing if surfacing will be completed within 12 months following occupancy. When a delay is permitted, the Town Board shall require appropriate sureties to guarantee that surfacing will be completed on in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the conservancy area.

- (f) Landscaping. All public off-street parking areas serving five or more vehicles and created or redesigned and rebuilt subsequent to adoption of this chapter shall be provided with accessory landscaped areas totaling not less than 5% of the surface area. The minimum size of each landscaped area shall be 100 square feet. Location of landscaped areas, plant materials, protection afforded the plantings, including curbing and provision for maintenance, shall be subject to approval by the Plan Commission. All plans for proposed parking areas shall include a topographic survey and grading plan showing existing and proposed grades and location of improvements. The preservation of existing trees, shrubs, and other natural vegetation in the parking area may be included in the calculation of required minimum landscaped area. Parking areas for five or more vehicles which adjoin residential districts shall be visually screened with a solid wall, fence or evergreen planting of equivalent visual density or other effective means, built and maintained to a minimum height of six feet.
- (g) Curbs or barriers shall be installed at least four feet from a property line so as to prevent parked vehicles from extending over any lot line.
- (h) The following guide specifies the minimum number of parking spaces required. In the case of structures or uses not specified herein, the number of spaces specified as the general standard for the use class or number of spaces specified for similar use shall apply. In developments involving the establishment or addition of two or more uses on one lot or parcel, the cumulative number of spaces required for each use shall determine the total number of spaces required.
1. Residential uses.
 - a. Single-family, two-family and multiple-family dwellings: two spaces per dwelling unit.
 - b. Housing for the elderly: one space per dwelling unit.
 2. Retail sales and customer service uses and places of entertainment.
 - a. General standard for the above uses: one space per 150 square feet of gross floor area of customer sales and service, plus one space per employee.
 - b. Financial institutions: one space for each 150 square feet of gross floor area of customer service, plus one space per employee for the work shift with the largest number of employees. Financial institutions with drive-in facilities shall provide sufficient space for four waiting vehicles at each drive-in service lane.
 - c. Funeral homes: one space for each four patrons at maximum capacity or 25 spaces per chapel unit, whichever is greater.
 - d. Grocery stores or supermarkets: one space per 150 square feet of gross floor area of customer sales and service area, plus one space per employee for the work shift with the largest number of employees.
 - e. Convenience grocery stores: one space per 100 square feet of gross floor area.
 - f. Motels and hotels: one space per room or suite, plus one space per every two employees for the work shift with the largest number of employees, plus one space per three persons, based on maximum capacity, for each public meeting room and banquet room.
 - g. Lodges and clubs: one space per three persons based on the maximum capacity of the facility.
 - h. Restaurants: one space per 100 square feet of gross dining area, plus one space per employee for the work shift with the largest number of employees.
 - i. Restaurants, drive-through or fast-food: one space per 50 square feet of gross dining area, plus one space per two employees for the work shift with the largest number of employees. Restaurants with drive-through facilities shall provide sufficient space for four waiting vehicles at each drive-through service lane.

- j. General merchandise repair services: one space per 300 square feet of gross floor area, plus one space per employee for the work shift with the largest number of employees.
 - k. Theaters, auditoriums, and other places of public assembly: one space per three patrons based on the maximum capacity of the facility.
 - l. Personal services: one space per 200 square feet of gross floor area, plus one space per employee for the work shift with the largest number of employees.
 - m. Taverns, dance halls, night clubs and lounges: one space per 50 square feet of gross floor area, plus one space per employee for the work shift with the largest number of employees.
 - n. Motor vehicle sales establishments: two-customer parking spaces per salesperson, plus one space per employee for the work shift with the largest number of employees.
 - o. Motor vehicle repair, maintenance, and service stations: three spaces per indoor service bay plus one space per employee for the work shift with the largest number of employees.
 - p. Animal hospitals: three patron parking spaces per doctor, plus one space per employee for the work shift with the largest number of employees.
 - q. Plant nurseries and lawn and garden supply stores: one space per 200 square feet of gross indoor sales and display area, plus one space per 500 square feet of gross outdoor sales and display area, plus one space per employee for the work shift with the largest number of employees.
 - r. Shopping centers (gross leasable area of at least 50,000 square feet): five spaces per 1,000 square feet of gross leasable area.
3. Offices.
- a. Medical, dental and similar professional health service offices: five patron spaces per doctor, plus one space per employee for the work shift with the largest number of employees.
 - b. Government, professional, and business offices: one space per 250 square feet of gross floor area.
4. Commercial/recreational uses.
- a. General standard: one space per four patrons based on the maximum capacity of the facility, plus one space per employee for the work shift with the largest number of employees.
 - b. Bowling alleys: five spaces for each lane, plus one space per employee for the work shift with the largest number of employees.
 - c. Golf courses: 90 spaces per nine holes, plus one space per employee for the work shift with the largest number of employees.
 - d. Golf driving ranges: one space per tee, plus one space per employee for the work shift with the largest number of employees.
 - e. Miniature golf course: 1 1/2 spaces per hole, plus one space per employee for the work shift with the largest number of employees.
 - f. Indoor tennis, racquetball, and handball courts: three spaces per court, plus one space per employee for the work shift with the largest number of employees.
 - g. Skating rinks, ice, or roller: one space per 200 square feet of gross floor area.

5. Industrial and related uses.
 - a. Manufacturing, processing, and fabrication operations: one space per employee for the work shift with the largest number of employees.
 - b. Wholesale business: one space per employee for the work shift with the largest number of employees, plus one space per 2,500 square feet of gross floor area.
 - c. Warehousing: one space per employee for the work shift with the largest number of employees, plus one space per 5,000 square feet of gross floor area.
 - d. Mini-warehousing: one space per 10 storage cubicles, plus one space per employee for the work shift with the largest number of employees.
 - e. Extractive and related operations: one space per employee for the work shift with the largest number of employees.
 6. Institutional and related uses.
 - a. Churches: one space per three seats based on the maximum capacity of the facility.
 - b. Libraries: one space per 250 square feet of gross floor area or one space per four seats based on maximum capacity, whichever is greater, plus one space per employee for the work shift with the greatest number of employees.
 - c. Museums: one space per 250 square feet of gross floor area, plus one space per employee for the work shift with the greatest number of employees.
 - d. Rooming houses and boardinghouses, fraternity and sorority houses, dormitories, and rectories: one space per bed.
 - e. Convents and monasteries: one space per three residents, plus one space per employee for the work shift with the largest number of employees, plus one space per five chapel seats if the public may attend.
 - f. Nursing homes: one space per three patient beds, plus one space per employee for the work shift with the largest number of employees.
 - g. Hospitals: two spaces per three patient beds, plus one space per staff doctor, plus one space per employee, excluding doctors, for the work shift with the largest number of employees.
 - h. Schools:
 - i. Elementary, middle and high schools: one space for each teacher and staff member, plus one space for each 10 students 16 years of age or older.
 - ii. Colleges, universities, and trade schools: one space for each teacher and staff member, plus one space for each two students during the highest attendance period.
 - iii. Children's nursery schools and day-care centers: one space per employee for the work shift with the greatest number of employees, plus one space per six students at the highest class attendance period.
- (4) Driveways. All driveways installed, altered, changed, replaced, or extended after the effective date of this chapter shall be designed in accordance with Chapter 8, Public Works, of this Code.
[Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
- (5) Highway access. No direct private access shall be permitted to the existing or proposed rights-of-way of expressways nor to any controlled access arterial street without permission from the highway agency that has access control jurisdiction. No direct public or private access shall be permitted to the existing or proposed rights-of-way of the following:

- (a) Arterial streets intersecting other arterial streets within 100 feet of the intersection of the right-of-way lines.
- (b) Collector and minor land access streets intersecting an arterial street or another minor land access street within 50 feet of the intersection of the right-of-way lines.
- (c) Access barriers, such as curbing, fencing, ditching, landscaping or other topographic barriers, shall be erected to prevent unauthorized vehicular ingress or egress to the above-specified streets or highways.
- (d) Temporary access to the above rights-of-way may be granted by the Town Board after review and recommendation by the highway agencies having jurisdiction. Such access permit shall be temporary, revocable and subject to any conditions required and shall be issued for a period not to exceed 12 months.
- (e) Landscape islands. All off-street parking areas which serve 30 vehicles or more and are created or redesigned and rebuilt subsequent to the adoption of this chapter shall be provided with landscape islands or peninsulas within the parking lot totaling not less than 5% of the surfaced area. The minimum size of each landscape island shall be 170 square feet. Landscape islands and peninsulas shall consist of landscape areas, type and size of plant materials, protection afforded the plantings, including curbing and provision for maintenance shall be subject to approval by the Plan Commission. Landscape islands shall be dispersed throughout the off-street parking area. Islands and peninsulas should be located at the ends of parking rows and aisles; around light poles; signs; existing trees; hydrants; and along entryways. Landscape islands and peninsulas should also be used to break up long aisles of parking. Any island or peninsula that is less than 170 square feet in area shall not be counted towards the 5% required landscaping. All plans for such proposed parking areas shall include a topographic survey of grading plan which shows existing and proposed grades and location of improvements. The preservation of existing trees, shrubs, and other natural vegetation in the parking area may be included in the calculation of the required minimum landscape area.
- (f) Parking lot screening. Those parking areas for five or more vehicles if adjoining a residential zoning district line or public right-of-way shall be screened from casual view by an earth berm, a solid wall, fence, evergreen planting of equivalent visual density or other effective means approved by the Plan Commission. Such fence or berm and landscaping together shall be an average of three feet in height between the parking and the street right-of-way and six feet in height between the parking and any adjacent residential property line. All screening materials shall be placed and maintained at a minimum height of three feet. The Plan Commission may require greater screening requirements for parking of large trucks, semi-trailers, and large equipment.

§ 17.07. Modifications.

- (1) General. The Town Building Inspector, in reviewing building permits, may grant modifications to the terms of this chapter as provided herein.
- (2) Height. The district height limitations stipulated elsewhere in this chapter may be exceeded, but such modification shall be in accord with the following:
 - (a) Architectural projections, such as spires, belfries, parapet walls, cupolas, domes, flues and chimneys, are exempt from the height limitations of this chapter.
 - (b) Special structures, such as elevator penthouses, grain elevators, radio and television receiving antennas, satellite dish antennas when mounted on the roof of a principal structure, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations, and smoke stacks, are exempt from the height limitations of this chapter.
 - (c) Essential services, utilities, water towers, and electric power and communication transmission lines are exempt from the height limitations of this chapter.

- (d) Communication structures, such as radio and television transmission and relay towers, aerials, and observation towers, shall not exceed in height their distance from the nearest lot line.
 - (e) Agricultural structures, such as barns and silos, shall not exceed in height their distance from the nearest lot line.
 - (f) Public or semipublic facilities, such as schools, churches, hospitals, monuments, sanitariums, libraries and governmental offices and stations, may be erected to a height of 60 feet, provided all required yards are increased not less than one foot for each foot the structure exceeds the district's maximum height requirement.
- (3) Yards. The yard requirements stipulated elsewhere in this chapter may be modified as follows:
- (a) Architectural projections, such as chimneys, flues, sills, eaves, belt courses and ornaments, may project into any required yard, but such projection shall not exceed two feet.
 - (b) Accessory structures used for decorating may be placed in the required street yard and side yards. Permitted structures include flagpoles, basketball goals, ornamental light standards, lawn furniture, sundials, and birdbaths.
 - (c) Landscaping and vegetation are exempt from the yard requirements of this chapter, but shall comply with the traffic visibility requirements in § 17.06(1) of this chapter.
 - (d) Essential services, utilities, and electric power and communication transmission lines are exempt from the yard requirements of this chapter.
- (4) Additions. Additions in the street yard of existing structures shall not project beyond the average of the existing street yards on the abutting lots or parcels.
- (5) Average street yards. The required street yard or setback may be decreased in any residential district to the average of the existing street yards as measured from the existing principal structures on each side if they are closer than the required street yard, but such modified street yard shall in no case be less than 40 feet.
- (6) Corner lots. Structures shall provide a front yard setback as required by this chapter on each street that the structure abuts as established by the zoning district regulations.
- (7) Double frontage lot. Lots abutting two opposite streets shall provide the front yard setback required by the district in which the lot is located from each street upon which the lot abuts.
- (8) Existing substandard lots.
- (a) A lot which does not contain sufficient area to conform to the dimensional requirements of this chapter but which is at least 75 feet wide and 10,000 square feet in area may be used as a single-family building site if the use is permitted in the zoning district, the lot is of record in the County Register of Deeds Office prior to the effective date of this chapter and the lot is in separate ownership from abutting lands.
 - (b) If two or more substandard lots with continuous frontage have the same ownership as of the effective date of this chapter, the lots involved shall be considered to be an individual parcel for the purpose of this chapter.
 - (c) Substandard lots granted permits under this section shall be required to meet the setback and other yard requirements of this chapter. A building permit for the improvement of a lot with lesser dimensions and requisites than those stated above shall be issued only after a variance by the Board of Appeals. A variance shall not be granted if the lot at any time was conveyed to another owner where the common ownership of adjoining lots existed unless a variance was granted for the conveyance.

§ 17.08. Signs.

[Amended 12-7-2004; 11-21-2006; 9-2-2008]

- (1) Purpose and intent. The intent of this chapter is to provide for and regulate the area, number, location, construction, maintenance and overall design of signs in the Town in a manner which is compatible with surrounding land uses, and promotes public welfare and community aesthetics.
- (2) Compliance. No sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without first complying with the provisions of this chapter.
- (3) Signs permitted in all districts without a permit. The following signs may not be illuminated in any manner, except as noted, and are subject to the following regulations:
 - (a) Real estate signs which advertise the sale, rental, or lease of the premises upon which the signs are temporarily located, are subject to the following restrictions:
 1. Shall be set back a minimum of 10 feet from all lot lines.
 2. Shall not exceed eight square feet of sign display area in residential districts, nor 32 square feet in all other districts. Installations at commercial properties proposing signage larger than 32 square feet require review and approval by the Architectural Control Committee.
 3. Shall be displayed only on the subject property.
 4. Directional signs at entrances to subdivisions may be displayed only during the hours of an open house.
 - (b) Election campaign signs are subject to the following:
 1. Shall not be located in a public right-of-way and shall be set back a minimum of 10 feet from all lot lines.
 2. Shall not exceed eight square feet of sign display area in residential districts, nor 32 square feet in all other districts.
 3. Shall not be erected on any parcel of land without the permission of the property owner, renter or lessee.
 4. Shall not be erected prior to the first day of the "election campaign period" as defined by § 12.04 of the Wisconsin Statutes, and shall be removed within seven days following the election.
 - (c) Name and warning signs which identify a property or describe a hazardous condition which may exist on a property, are subject to the following:
 1. Shall be set back a minimum of 10 feet from all lot lines.
 2. Shall not exceed two square feet of sign display area.
 - (d) Professional home office signs are subject to the following:
 1. Shall be mounted flush against the dwelling, on a private light post, or on a mailbox support structure.
 2. Shall not exceed two square feet of sign display area.
 - (e) Rummage sale and garage sale signs are subject to the following:
 1. Shall not be located in a public right-or-way.
 2. Shall not exceed four square feet in sign display area.
 3. Shall not exceed a seven-day display period, and shall be removed within 24 hours following the sale.

- (f) Bulletin boards which are used for public, charitable or religious institutions are subject to the following:
 - 1. Shall be located on the premises which the sign represents, and shall be set back a minimum of 10 feet from all lot lines.
 - 2. Shall not exceed 12 square feet of sign display area.
 - (g) Employment and "help wanted" signs are allowed in all districts except residential districts, and approved are for installation only in windows and on the interior.
 - (h) Official signs which control traffic, parking restrictions, information and notices.
 - (i) Flagpoles shall be regulated as signs not requiring a permit, and are subject to the following:
 - 1. Shall be set back a minimum of 10 feet from all lot lines.
 - 2. Shall not exceed the height restriction for the district in which the flagpole is located.
 - 3. Shall not exceed three flagpoles on any parcel of land.
 - 4. Shall be illuminated if intended for nighttime display, with fixture and wattage approved by the Architectural control Committee.
 - (j) Directional and informational signs directing on-site traffic to loading docks, service or parts departments, or directions to individual tenant suites are allowed with approval by the Architectural Control Committee. Such signage shall be intended to provide direction to internal traffic within a site. It shall be directional in character, without identification graphics or tag lines, and shall be architecturally consistent with the building design concept and other signage of the property. Font size shall not exceed five inches. Total display area shall not exceed eight inches by 30 inches per tenant, unless approved to provide consistency with design features of the development.
 - (k) Temporary promotional window signs which are painted, placed in or affixed to a window are subject to the following restrictions:
 - 1. Shall be placed on the interior of the window surface.
 - 2. Sign display area shall not exceed 25% of the window area in which the sign is displayed.
 - 3. May not be illuminated in any way.
 - 4. Shall be maintained in a neat and orderly conditioned, and removed if faded, worn or damaged.
 - (l) Illuminated "open" signs may be installed in windows, subject to a maximum area of two square feet.
- (4) Signs permitted with architectural approval and permit. Each individual sign proposed in accordance with the provisions of this chapter must be applied for and submitted to the Building Inspector pursuant to § 17.08(11) of this chapter. All applications for permits for such individual signs, except such applications as may be determined by the Architectural Control Committee from time to time, shall be forwarded by the Building Inspector to the Committee for review. The Committee is hereby empowered to:
- (a) Withhold the application pending the submittal of any additional information which the committee may require.
 - (b) Deny the application based upon nonconformance with the provisions of this chapter, or based upon the Committee's determination that the proposed sign will violate the purpose and intent of this chapter.

- (c) Approve the application as presented, or approve with additional conditions or restrictions which the Committee may impose based on the purpose and intent of this chapter. In the interest of architectural integrity, this chapter expressly allows regulation of all signs in the Town to be based upon the finding of the Architectural Control Committee that such signage will not violate the purpose and intent of this chapter. This chapter cannot prevent the Committee from establishing more or less stringent requirements and conditions prior to approval of any sign application. All sign applications will be returned to the Building Inspector with the action of the Committee clearly stamped on said application. Applications which have been approved by the Committee shall be reviewed for its completeness and accuracy by the Building Inspector pursuant to § **17.08(11)** of this chapter. All sign permits, unless otherwise specified by the Architectural Control Committee, shall be issued by the Building Inspector.
[Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
- (5) Signs permitted in all business, manufacturing, institutional, park and nonresidential PUD districts with architectural approval and permit.
- (a) Freestanding signs are self-supporting, monument-type signs, not attached to or reliant upon any other structure for support, and are subject to the following restrictions:
1. Height must be maintained within the geometric shape resulting from a line 10 feet high at a the property line and extending to the building height; or
 - a. Height must be maintained within the geometric shape resulting from a line 12 feet high at the property line and extending to the building height for existing site development conditions where parking is provided immediately adjacent to the proposed sign location, and where the sign could potentially be obstructed by parking.
 - b. A raised landscaping planting bed surrounded by decorative masonry or other high quality finish material, of at least two feet in height, shall form a base for the monument sign.
 2. A five-foot-minimum setback or offset shall be provided.
 3. Shall not exceed 70 square feet of sign display area per side, nor 140 square feet sign display area on all sides, for single-occupant buildings, or up to 120 square feet of sign display area per side for multi-tenant developments. Freestanding signs shall identify the name of the development.
[Amended 4-6-2011]
 4. Placement of the sign on the parcel shall be designed such that it does not obstruct the visibility of signage on adjacent parcels nor result in the appearance of visual clutter.
 5. Shall not exceed one freestanding sign per parcel of land.
 6. The background of internally illuminated, cabinet-type sign faces shall be opaque or a color other than white.
 7. Address numerals shall be included on the sign, of eight inches minimum height.
 8. May be illuminated in accordance with § **17.08(8)**.
- (b) Wall-supported signs which require securement to a building or structure for support are subject to the following restrictions:
1. Shall not extend above the parapet wall or the top of the roof of the building which supports it.
 2. Shall not project more than 12 inches from the wall which supports it.
 3. Area limited to 0.8 square feet of signage for each linear foot of building frontage on a public right-of-way, with a maximum area for any one sign not to exceed 100 square feet.

4. Maximum of two wall-mounted signs per building, subject to the area limits described above, on buildings principally used as offices.
 5. The background of internally illuminated, cabinet-type sign faces shall be opaque or a color other than white.
 6. May be illuminated in accordance with § **17.08(8)**.
- (c) Changeable copy signs which are designed to allow the display message to be manually changed are subject to the following restrictions:
1. Shall require a recommendation for approval from the Architectural Control Committee and Plan Commission, and approval by the Town Board. In granting such approval, the Town Board may impose such conditions as it deems reasonable and necessary so as to carry out the purpose and intent of this chapter.
 2. May be illuminated in accordance with § **17.08(8)**.^[1]
 [1] *Editor's Note: Former Subsection (5)(d), which regarded electronically changeable copy signs, which immediately followed this subsection, was repealed 9-4-2018; see now § **17.08(10)(b)**.*
- (6) Signs permitted in all residential, business, manufacturing, institutional, park, and PUD districts with architectural approval and permit. The following signs are regulated based on the character and nature of the proposed development, as well as the adjacent land uses and context.
- (a) Temporary real estate development signs which are used to designate a new subdivision, development or building are subject to the following restrictions:
1. Shall be set back a minimum of 10 feet from all lot lines.
 2. Shall be regulated in height, size, design and period of display.
 3. Shall not exceed 48 square feet in sign display area.
 4. May not be illuminated in any way.
- (b) Permanent real estate development signs which are placed at the entrance to a subdivision or development are subject to the following restrictions:
1. Shall display only the name of the subdivision or development.
 2. Shall be set back a minimum of 10 feet from all lot lines.
 3. Shall be regulated in height, size and design by the Architectural Control Committee.
 4. May be illuminated in accordance with § **17.08(8)**.
- (7) Temporary signs permitted in all districts with a permit. The Building Inspector may permit the temporary use of signs, banners, flags, searchlights, balloons, tents, or any approvable form of portable signage for the purpose of promotional sales, advertisement, or any short-term event which is not defined under § **17.02(9)** as a special occupancy use, subject to the following restrictions:
- (a) Shall be set back a minimum of 10 feet from all lot lines.
 - (b) Shall not pose a potential hazard to traffic or adjacent properties.
 - (c) Shall be permitted for no more than 30 days in any calendar year.
 - (d) Shall be regulated in location, design and construction by the Building Inspector.
 - (e) May not be illuminated.

- (f) Parked vehicles with identification graphics shall not be parked or stored on a property so as to present as signage. Commercial sign banner trucks are prohibited.
 - (g) Construction trailers with identification graphics shall be regulated per § **17.08(6)(a)** as temporary development signs.
- (8) Sign illumination and nuisance prevention. Illumination of all signs permitted in the Town must conform to the following restrictions:
- (a) Shall conform to the provisions established in § **10.08** of the Code of the Town of Brookfield relating to nuisance light on residential properties.
 - (b) Signs which are internally illuminated shall not face adjacent lands which are zoned for or used as single-family or duplex use.
 - (c) Shall not resemble, imitate, or approximate traffic or railroad signs, signals, or devices; shall not cause glare, mislead or confuse traffic, or impair driver visibility on public ways, private roadways or adjoining properties; shall not be flashing, revolving, blinking, strobe, or animated, except for the display of the time and temperature as approved by the Town Board.
 - (d) No illuminating element of any kind may be visually exposed, pursuant to the provisions established in § **10.08(4)** of the Code of the Town of Brookfield.
 - (e) The level of illumination as measured at one foot perpendicular to any face of an illuminated sign may not exceed 100 footcandles of daytime (6:00 a.m. to 7:00 p.m.) candle power, nor 45 footcandles of nighttime (7:00 p.m. to 6:00 a.m.) candle power.
 - (f) Shall conform to the requirements of the National Electrical Code, specifically addressing the requirement for an external switch or breaker to open underground conductors (NEC 600-2); every electric sign shall be listed and installed in conformance with that listing (NEC 600-4); and all signs shall be visible marked with the manufacturer's name, input amperes at full load and input voltage (NEC 600-7).
- (9) Sign construction and maintenance standards.
- (a) Wind pressure and dead load requirements. All signs and other advertising structures shall be designed and constructed to withstand wind pressure of not less than 40 pounds per square foot of area.
 - (b) Protection of the public. The temporary occupancy of a sidewalk or street or other public property during construction, removal, repair, alteration or maintenance of a sign is permitted, provided the space occupied is roped off, fenced off, or otherwise isolated.
 - (c) Maintenance. The owner of any sign shall keep it in good maintenance and repair which includes restoring, repainting, or replacement of a worn or damaged legally existing sign to its original condition, and shall maintain the premises on which the sign is erected in a clean, sanitary, and inoffensive condition, free and clear of all obnoxious substances, rubbish, weeds and grass.
 - (d) Supporting members or braces of all signs shall be constructed of galvanized iron, properly treated wood, steel, copper, brass, or other noncorrosive, fire-resistant material. Every means or device used for attaching any sign shall make use of sound engineering practices.
 - (e) No signs or any part thereof or sign anchors, braces, or guy rods shall be attached, fastened, or anchored to any fire escape, fire ladder, or standpipe and so such sign or any part of any anchor, brace or guy rod shall be erected, put up, or maintained so as to hinder or prevent ingress or egress through such door, doorway, or window or so as to hinder or prevent the raising or placing of ladders against such building by the Fire Department of the Town, as necessity therefore may require.
- (10) Measuring sign display area. In calculating the sign display area to determine whether it meets the requirement of this chapter, the Building Inspector shall include the sign copy and any border or

frame surrounding that copy. Supporting members of a sign shall be excluded from the sign display area calculation. Sign display area of irregular shaped signs or signs containing two or more detached elements shall be determined by the area of the smallest regular polygon that will encompass all the elements of the sign.

- (a) Electronic message centers which include all signs or monuments capable of displaying messages by use of words, symbols, numbers, figures, and/or images that are electronically, digitally or mechanically changed by remote or automatic means may be permitted as a conditional use in any mixed-use zoning district. Consistent with the purpose and intent of the Zoning Code, electronic message centers are intended to allow for the advertising or display of business-related activities conducted on the site, or products or services offered, but are not intended to be a substitute for the type of advertising that is typically displayed in weekly sales type publications. Changeable and movable copy signs are not included within the definition of an "electronic message center." A conditional use permit allowing for the construction and operation of an electronic message center for the purpose of advertising the name of any business conducted on the site, as well as the business services or business activities conducted by the owners, tenants or occupants of the site on which the electronic message center is located may be issued, as provided herein, subject to the following conditions and limitations:

[Added 9-4-2018]

1. The conditional use permit shall be granted in accordance with the procedure and requirements of § **17.02(14)(b)** of the Zoning Code. In addition to the requirement for issuance of conditional use permit contained in § **17.02(14)(b)**, when considering the application for approval of an electronic message center, the determination to approve, deny or approve with conditions shall take into consideration the requirements and limitations set forth in this section.
2. There shall be only one electronic message center on each lot or parcel of land. The electronic message center may not be incorporated into a wall or building mounted sign.
3. The electronic message center may be double-faced, but may not exceed 50% of the total sign face area permitted for any lot or parcel of land and must occupy a secondary position to the name of the business or tenant occupying the property.
4. Each electronic message center shall be permanently installed or located.
5. Each electronic message center shall be located so that vehicular traffic on any adjoining public right of way can view the electronic message center, but shall not be located so as to interfere with, confuse or present any hazard to pedestrians or vehicular traffic.
6. Electronic message centers may display static images only. Blinking, flashing, moving, scrolling or animated messages shall not be permitted. Motion display or displays which give the viewer the illusion of motion shall not be permitted.
7. Electronic message centers may not change messages, images or displays more than once every 15 seconds, or at such other and greater interval as determined by the Town Plan Commission and Town Board when reviewing and acting upon the conditional use permit application.
8. Electronic message centers may only be used for the purpose of advertising or display related to the business services or business activities of the owner, tenants or occupants of the parcel on which the electronic message center is located. The content of any message shall not include any display or information relating to the pricing of any product or service.
9. Electronic message centers may not be used for the purpose of displaying political message(s) or any other activity governed by § **12.04**, Wis. Stats.

10. Displays and images shall not exceed 0.3 footcandle above ambient brightness at a distance of 200 feet from the electronic message center. Light levels must be adjustable to compensate for outdoor lighting levels during the day and evening hours. Any conditional use permit may prohibit the use of white background between the hours of sunset and sunrise.
 11. Approval and use of any electronic message center shall be subject to, and contingent upon, compliance with all local, state and federal regulations, as well as all provisions of the Town of Brookfield Zoning Code.
 12. The location of the electronic message center must meet all offset and setback requirements applicable to any building or structure located on the site and may not be located on any area of the property on which a building or structure would be prohibited.
 13. Any electronic message center must be maintained in a good state of repair. In the event the Building Inspector determines that the electronic message center is not being maintained in a good state of repair, or in accordance with the terms of any conditional use permit, notice of the deficiency or deficiencies shall be provided to the holder of the conditional use permit, and in the event the deficiency is not corrected within 10 days of the issuance of such notice, use of the electronic message center shall be suspended until the deficiency has been corrected.
- (b) Changeable and movable copy signs which are designed to allow the display of messages to be changed, whether manually or electronically, may be allowed as a conditional use in any B-2 or B-3 Zoning District, subject to the following conditions and limitations:
[Added 9-4-2018]
1. The conditional use permit may be granted in accordance with the procedure and requirements of § **17.02(14)(b)** of this chapter. In addition to the requirement for issuance of conditional use permit contained in § **17.02(14)(b)**, when considering the application for approval of a changeable and movable copy sign, the determination to approve, deny or approve with conditions shall take into consideration the requirements and limitations set forth in this section.
 2. There shall be only one changeable and movable copy sign on each lot or parcel of land. the changeable and movable copy sign shall not be incorporated into a wall- or building-mounted sign.
 3. The changeable and movable copy sign may be double-faced, but shall not exceed 50% of the total sign face area permitted for any lot or parcel of land, and must occupy a secondary position to the name of the business or tenant occupying the property.
 4. Each changeable and movable copy sign shall be permanently installed or located.
 5. Each changeable and movable copy sign shall be located so as not to interfere with, confuse or present any hazard to pedestrians or vehicular traffic.
 6. Changeable and movable copy signs shall display static images only. Blinking, flashing, moving, scrolling or animated messages shall not be permitted. Motion display or displays which give the viewer the illusion of motion shall not be permitted.
 7. Changeable and movable copy signs shall not change messages, images or displays more than once every 12 hours, or at such other and greater interval as determined by the Town Plan Commission and Town Board when reviewing and acting upon the conditional use permit application.
 8. Changeable and movable copy signs shall only be used for the purpose of advertising the name of any individual business, or the business services or activities conducted by that individual business, which business is located on the site or parcel of land for which the sign is located. The content of any message shall be limited to display of numerical (0-9)

characters and/or alphabetical (A-Z) characters, and shall not include any display or information relating to any product or service.

9. Changeable and movable copy signs shall not be used for the purpose of displaying political message(s) or any other activity governed by § 12.04 Wis. Stats.
 10. Displays and images must be adjustable to compensate for outdoor lighting levels during the day and evening hours. The sign illumination and nuisance prevention standards set forth in § 17.08(8) of the Zoning Code shall be applicable, and the conditions and requirements of that section are incorporated herein by reference.
 11. Any changeable and movable copy sign must be maintained in a good state of repair. In the event the Building Inspector determines that the changeable and movable copy sign is not being maintained in a good state of repair, or in accordance with the terms of any conditional use permit, notice of the deficiency or deficiencies shall be provided to the holder of the conditional use permit, and in the event the deficiency is not corrected within 10 days of the issuance of such notice, use of the changeable and movable copy sign shall be suspended until the deficiency has been corrected.
 12. No conditional use permit may be issued for a changeable and movable copy sign unless the parcel on which the sign is located contains at least 20,000 square feet, and unless the location of the sign meets all offset and setback requirements of the applicable zoning district.
- (11) Sign permit. Application for a permit shall be made on forms provided by the Building Inspector and made available in the Town Clerk's office, and shall contain or have attached thereto the following information:
- (a) Name, address, and telephone number of the applicant. Location of building, structure, or lot to which or upon which the sign is to be attached or erected.
 - (b) Name of person, firm, corporation, or association erecting the sign.
 - (c) Written consent of the landowner or lessee of the building, structure, or land to which or upon which the sign is to be affixed.
 - (d) A scale drawing (and scale sectional drawing) of such a sign indicating the dimensions, the materials to be used, the type of illumination, if any, and the method of construction and attachment.
 - (e) A scale site survey indicating the location and position of such sign in relation to nearby buildings, structures, vehicular and pedestrian accessways, public and private rights-of-way, and existing signs on the parcel or on adjacent parcels within 150 feet.
 - (f) Copies of any permit required for said sign, including the written approval by the Electrical Inspector in the case of illuminated signs, who shall examine the plans and specification, reinspecting all wiring and connections to determine if the same complies with the Town Electrical Code.
 - (g) Additional Information as may be required by the Building Inspector or the Architectural Control Committee.
 - (h) Sign permit applications shall be filed with the Building Inspector who shall review the application for its accuracy and completeness. The Building Inspector shall submit all applications to the Architectural Control Committee pursuant to § 17.08(4) of this chapter. Applicants shall be notified of the Committee's decision within 30 days after receipt of the application. A sign permit shall become null and void if work authorized under the permit has not been completed with six months of the date of issuance.

(12) Legally existing signs.

- (a) Signs lawfully existing as of 9-2-2008 which do not conform with the provisions of this chapter may be continued as an existing nonconforming use as defined in § 17.09 of this chapter.
- (b) Such signs shall not be structurally altered, enlarged or refaced, except in cases of a new business name under the existing ownership, or new owners of an existing business.

§ 17.09. Nonconforming premises and structures.

[Amended 11-21-2006^[1]]

- (1) Existing nonconforming premises and structures. The continued use of any building, premises, structure, or fixture for which the building, premises, structure, or fixture was used at the time of the adoption or amendment of this chapter may be continued although the use does not conform with the provisions of this chapter; provided, however:
 - (a) The nonconforming use may not be expanded or enlarged.
 - (b) The expansion or addition to any existing building, premises, structure, or fixture used to carry on an otherwise prohibited trade or industry within the zoning district shall be prohibited.
 - (c) If the nonconforming use is discontinued for a period of 12 months, any future use of the land, building, premises, structure, or fixture shall conform to the requirements of this chapter.
 - (d) The total structural repair or alteration of any nonconforming building, premises, structure, or fixture shall not, during its life, exceed 50% of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use.
- (2) Restoration of nonconforming structures.
 - (a) Notwithstanding the restrictions contained in Subsection (2)(b), the restoration of a nonconforming structure which was damaged or destroyed shall not be prohibited if the structure will be restored to the size, location, and use that existed immediately prior to the damage to, or destruction of, the building, premises, structure, or fixture, irrespective of the cost of repair, reconstruction, or improvement, provided all of the following conditions apply:
 1. The nonconforming structure was damaged or destroyed on or after March 2, 2006; and
 2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
 - (b) The size of the structure may be increased where such increase is necessary as a condition of complying with applicable state or federal requirements in effect immediately before the damage or destruction to the structure. Any determination as to the required increase in size shall be determined by the Building Inspector.
- (3) Existing substandard structures. The use of a structure existing at the time of the adoption or amendment of this chapter may be continued although the structure's size or location does not conform with the established building setback line along streets or the yard, height, parking, loading, access and lot area provisions of this chapter; however, such structure shall not be extended, enlarged, reconstructed, moved or structurally altered except when required to do so by law or order or so as to comply with the provisions of this chapter.
- (4) Changes and substitutions. Once a nonconforming use or structure has been changed to conform, it shall not revert back to a nonconforming use or structure. Once the Zoning Board of Appeals has permitted the substitution of a more restrictive nonconforming use for an existing nonconforming use, the substituted use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the Zoning Board of Appeals.
- (5) Purpose.
[Added 10-15-2002]

- (a) The purpose of this subsection is to establish legal, conforming status to certain residential structures which would otherwise be nonconforming structures because those structures were constructed within the offset or setback areas of a residential lot.
- (b) The owner of any property on which a structure, which would otherwise be deemed a nonconforming structure because of its failure to meet the offset and/or setback requirement, may submit a survey establishing the actual offset and/or setback measurements to the Building Inspector.
- (c) In the event the Building Inspector determines that the existing structure fails to meet the offset and/or setback requirements, but that the encroachment into the offset and/or setback areas is less than 10% of the minimum offset or setback required for that zoning classification, the Building Inspector may, after providing notice as set forth in Subsection (5)(d)3, certify the structure as a legal, conforming structure. In the event the Building Inspector determines that the encroachment into the offset and/or setback area is more than 10%, but less than 20%, the Plan Commission, after providing notice as set forth in Subsection (5)(d)3, may certify the structure as a legal, conforming structure.
- (d) Modification of offset and setback requirements. Notwithstanding anything contained herein to the contrary, the status of any structure within any portion of a lot designated as the offset or setback area of the lot, may be deemed a conforming structure, provided the construction or erection of the structure meets the following conditions:
 1. The structure was constructed or erected prior to January 1, 1980; and
 2. The property on which the structure is located is zoned for residential uses; and
 3. Prior to certifying any nonconforming structure as a legal, conforming structure under the provisions of this section, notice of the proposed certification shall be provided to all property owners whose properties are located within 300 feet of the property on which the structure is located, and those property owners shall be afforded a reasonable opportunity to object to the certification. In the event the Building Inspector receives any objection to the proposed certification, the Building Inspector shall then refer the request for certification to the Plan Commission for its review and a recommendation to the Town Board for approval. Upon certification, the offset and/or setback requirements, which apply to such structures, shall be those offsets depicted on the survey in the direction of encroachment into the established minimums, and in all other directions, to the offset and/or setback requirements which would otherwise be applicable to the zoning classification.

[1] *Editor's Note: This ordinance was approved 11-28-2016.*

§ 17.10. (Reserved)

§ 17.11. Zoning Board of Appeals.

- (1) Established. There is hereby established a Zoning Board of Appeals for the Town for the purpose of hearing appeals and applications and granting variances and exceptions to the provisions of this chapter.
- (2) Membership. The Zoning Board of Appeals shall consist of five members appointed by the Town Chairperson and confirmed by the Town Board.
 - (a) Terms. Terms shall be for staggered three-year periods.
 - (b) Chairperson. The Chairperson shall be designated by the Town Chairperson.
 - (c) Alternate members. The Town Chairperson shall appoint a first alternate and second alternate member to act only when a regular member is absent or refuses to vote because of interest.

The second alternate member may act only when the first alternate is unable to act or is already sitting.

- (d) **Qualifications.** One member shall be a Town Plan Commissioner and one member shall be a registered architect, registered professional engineer, builder, or real estate appraiser.
 - (e) **Secretary.** The Board Secretary and Board office shall be the Town Clerk and the Town Clerk's office.
 - (f) **Building Inspector.** The Building Inspector shall attend all meetings for the purpose of providing technical assistance when requested by the Board.
 - (g) **Oaths.** Official oaths shall be taken by all members in accordance with § 19.01, Wis. Stats., within five days of receiving notice of their appointment.
[Amended 12-7-2021 by Ord. No. 2021-004]
 - (h) **Vacancies.** Vacancies shall be filled for unexpired terms in the same manner as appointments for full terms.
- (3) **Organization.** The Zoning Board of Appeals shall organize and adopt rules of procedure for its own government in accordance with the provisions of this chapter.
- (a) **Meetings.** Meetings shall be held at the call of the Chairperson and shall be open to the public.
 - (b) **Minutes.** Minutes of the proceedings and a record of all actions shall be kept by the Secretary or other designated person, showing the vote of each member upon each question, the reasons for the Board's determination and its findings of fact. These records shall be immediately filed in the office of the Board and shall be a public record.
 - (c) **Vote.** The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official; grant a variance; or make an interpretation.
- (4) **Powers.** The Zoning Board of Appeals shall have the following powers:
- (a) **Errors.** To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by any administrative official.
 - (b) **Variances.** To hear and grant appeals for variances as will not be contrary to the public interest, when, owing to unique property limitations, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of this chapter shall be observed and the public safety, welfare and justice secured. Use variances shall not be granted.
[Amended 12-7-2021 by Ord. No. 2021-004]
 - (c) **Substitutions.** To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses if no structural alterations are to be made and the Plan Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
 - (d) **Permits.** The Board may reverse, affirm wholly or partly modify the requirements appealed from and issue or direct the issue of a permit.
 - (e) **Assistance.** The Board may request assistance from other Town officers, departments, commissions, and boards.
 - (f) **Oaths.** The Chairperson may administer oaths and compel the attendance of witnesses.
- (5) **Appeals and applications.** Appeals of the decision of the Building Inspector or any administrative official concerning the literal enforcement of this chapter may be made by any person aggrieved or by any officer, department, board, or bureau of the Town. Such appeals shall be filed with the Secretary within 30 days after the date of written notice of the decision or order of the Building Inspector or any administrative official. Applications may be made by the owner or lessee of the

structure, land, or water to be affected at any time and shall be filed with the secretary. Such appeals and applications shall include the following:

- (a) Name and address of the appellant or applicant and all abutting and opposite property owners of record.
 - (b) Plat of survey prepared by a registered land surveyor showing all of the information required under § 17.02(8) for a building permit.
 - (c) Additional information required by the Town Plan Commission, Town Engineer, Zoning Board of Appeals or Building Inspector.
- (6) Hearings. The Zoning Board of Appeals shall fix a reasonable time and place for the hearing, give public notice as required under § 17.13 of this chapter and give due notice to the parties in interest, the Building Inspector and the Plan Commission. At the hearing, the appellant may appear in person, by agent or by attorney.
- (7) Findings. No variance to the provisions of this chapter shall be granted by the Board unless it finds that all the following facts and conditions exist and so indicates such in the minutes of its proceedings:
[Amended 12-7-2021 by Ord. No. 2021-004]
- (a) Preservation of intent. No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted use, accessory use or conditional use in that particular district.
 - (b) Exceptional circumstances. There shall be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties of uses in the same district and the granting of the variance shall not be of so general or recurrent nature as to suggest that this chapter should be changed.
 - (c) Economic hardship and self-imposed hardship not grounds for variance. No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.
 - (d) Preservation of property rights. The variance shall be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and vicinity.
 - (e) Absence of detriment. No variance shall be granted that will create substantial detriment to adjacent property or that will materially impair or be contrary to the purpose and spirit of this chapter or the public interest.
- (8) Decision. The Zoning Board of Appeals shall decide all appeals and applications within 30 days after the public hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Building Inspector, and each Town Plan Commission member within five days following the decision.
- (a) Conditions may be placed upon any building permit ordered or authorized by this Board.
 - (b) Variances substitutions, or use permits granted by the Board shall expire within six months unless substantial work has commenced pursuant to such grant.
- (9) Review by court of record. Any person aggrieved by any decision of the Zoning Board of Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Zoning Board of Appeals.

§ 17.12. Changes and amendments.

- (1) Authority. Whenever the public necessity, convenience, general welfare or good zoning practice requires, the Town Board may, by ordinance, change the zoning district boundaries or amend, change or supplement the regulations established by this chapter or amendments thereto. Such change or amendment shall be submitted to the Plan Commission for review.
- (2) Initiation. A change or amendment may be initiated by the Town Board or Plan Commission or by a petition of one or more of the owners or lessees of property within the area proposed to be changed.
- (3) Petitions. Petitions for any change to the district boundaries or amendments to the regulations shall be filed with the Town Clerk, describe the premises to be rezoned or the regulations to be amended, list the reasons justifying the petition, specify the proposed use and have attached the following:
 - (a) Plot plan drawn to a scale of one inch equals 100 feet showing the area proposed to be rezoned, its location, its dimensions, the location and classification of adjacent zoning districts and the location and existing use of all properties within 300 feet of the area proposed to be rezoned.
 - (b) Owner's names and addresses of all properties lying within 300 feet of the area proposed to be rezoned.
 - (c) Additional information required by the Town Plan Commission or Town Board.
- (4) Review and recommendation. The Town Plan Commission shall review all proposed changes and amendments within the corporate limits and shall recommend that the petition be granted as requested, modified and granted, or denied.
- (5) Hearings. The Town Board shall hold a public hearing upon each petition giving public notice thereof as specified in § 17.13 of this chapter, listing the time, place, and the changes of amendments proposed. The Town Board shall also give at least 10 days' prior written notice to the Clerk of any municipality within 1,000 feet of any land to be affected by the proposed change or amendment.
- (6) Town Board's action. As soon as possible after such public hearing, and after careful consideration of the Town Plan Commission's recommendations, the Town Board shall act on the petition either approving, modifying and approving or disapproving of the same.^[1]

[1] *Editor's Note: Former Subsection (7), Protest, of the 2005 Code, which immediately followed this subsection, was repealed 12-7-2021 by Ord. No. 2021-004. This ordinance also redesignated former Subsection (8) as Subsection (7).*

- (7) County Board approval. No change or amendment to this chapter shall be effective until approved by the Waukesha County Board. The Town Clerk shall transmit three signed and attested copies of any change adopted by the Town Board to the Waukesha County Clerk for County Board approval.

§ 17.13. Public hearings.

- (1) Notice. Notice of any public hearing which the Town Board, Plan Commission or Zoning Board of Appeals is required to hold under the terms of this chapter shall specify the date, time and place of hearing and the matter to be presented at the hearing. Under Ch. 985, Wis. Stats., the notice shall be published as a Class 2 notice in a newspaper of general circulation in the Town at least once each week for 2 consecutive weeks, the last publication of which shall be at least one week before the public hearing.
- (2) Parties-in-interest. Notice of the public hearing shall be mailed to all parties-in-interest at least 10 days before the hearing. Parties-in-interest shall be defined as the petitioner, the Clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the petition and the owners of all lands included in the petition and all lands lying within 300 feet of lands included in the petition. Failure to give any notice to any property owner shall not invalidate the action taken by one of the above-mentioned bodies.

§ 17.14. Wireless telecommunications facilities in the right-of-way.

[Added 4-8-2020]

(1) Definitions.

(a) For the purposes of this chapter, the terms below shall have the following meanings:

ADMINISTRATOR

The Zoning Administrator or his or her designee.

APPLICANT

A person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.

APPLICATION

A formal request, including all required and requested documentation and information, submitted by an applicant to the Town for a wireless permit.

BASE STATION

The same as in 47 CFR § 1.6100(b)(1), which defines the term to mean a structure or wireless telecommunications equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This definition does not include towers.

ELIGIBLE FACILITIES REQUEST

The same as in 47 CFR § 1.6100(b)(3), which defines the terms to mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower base station, involving i) co-location of new transmission equipment; ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

FCC

The Federal Communications Commission.

RIGHT-OF-WAY

The surface of, and the space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the Town exercises any rights of management and control or in which the Town has an interest.

SMALL WIRELESS FACILITY

Consistent with 47 CFR § 1.6002(l), means a facility that meets each of the following conditions:

[Amended 12-7-2021 by Ord. No. 2021-004]

1. The structure on which antenna facilities are mounted:
 - a. Is 50 feet or less in height; or
 - b. Is no more than 10% taller than other adjacent structures; or
 - c. Is not extended to a height of more than 50 feet or by more than 10% above its preexisting height, whichever is greater, as a result of the co-location of new antenna facilities.
2. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume;

3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;
4. The facility does not require antenna structure registration;
5. The facility is not located on Tribal lands; and
6. The facility does not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified by federal law.

SUPPORT STRUCTURE

Any structure capable of supporting wireless telecommunications equipment.

TOWER

The same as in 47 CFR § 1.6100(b)(9), which defines the term as any structure built for the sole or primary purpose of supporting any Federal Communications Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and the associated site. This definition does not include utility poles.

UNDERGROUND AREAS

Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right-of-way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages more than 35,000 volts.

UTILITY POLE

A structure in the right-of-way designed to support electric, telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole.

WIRELESS INFRASTRUCTURE PROVIDER

A person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.

WIRELESS PERMIT or PERMIT

A permit issued pursuant to this chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way, and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

WIRELESS REGULATIONS

Those regulations adopted pursuant to Subsection (5)(b)1 to implement the provisions of this chapter.

WIRELESS SERVICE PROVIDER

An entity that provides wireless services to end users.

WIRELESS TELECOMMUNICATIONS FACILITY or FACILITY

A facility at a fixed location in the right-of-way consisting of a base station, antennas and other accessory equipment, and a tower and underground wiring, if any, associated with the base station.

- (b) Definitions in this section may contain quotations or citations to 47 CFR §§ 1.6100 and 1.6002. In the event that any referenced section is amended, creating a conflict between the definition

as set forth in this chapter and the amended language of the referenced section, the definition in the referenced section, as amended, shall control

- (2) Purpose. In the exercise of its police powers, the Town has priority over all other uses of the right-of-way. The purpose of this chapter is to provide the Town with a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the Town's obligation to promote the public health, safety, and welfare; to manage the right-of-way; and to ensure that the public's use is not obstructed or incommoded by the use of the right-of-way for the placement of wireless telecommunications facilities. The Town recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the Town. The Town also recognizes its obligation to comply with applicable federal and state laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012,^[1] Wis. Stat. § 182.017, and Wis. Stat. § 196.58, and this chapter shall be interpreted consistent with those provisions.

[1] *Editor's Note: See 47 U.S.C. § 1455(a).*

- (3) Scope.

(a) Applicability. Unless exempted by Subsection (3)b, below, every person who wishes to place a wireless telecommunications facility in the right-of-way or modify an existing wireless telecommunications facility in the right-of-way must obtain a wireless permit under this chapter.

(b) Exempt facilities. The provisions of this section [other than Subsections (10) through (14)] shall not be applied to applications for the following:

1. Installation of a small wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed one cubic foot, and provided further that the installation does not require replacement of the strand, or excavation, modification, or replacement of either of the utility poles.
2. Installation of a mobile cell facility (commonly referred to as "cell on wheels" or "cell on truck") for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
3. Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the Town. See Subsection (13) of this section.
4. Placement or modification of a wireless telecommunications facility by Town staff or any person performing work under contract with the Town.
5. Modification of an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

- (4) Nondiscrimination. In establishing the rights, obligations, and conditions set forth in this section, it is the intent of the Town to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situation, and legal status of each applicant or request for use of the right-of-way.

- (5) Administration.

(a) Administrator. The Administrator is responsible for administering this section.

(b) Powers. As part of the administration of this chapter, the Administrator may:

1. Adopt wireless regulations governing the placement and modification of wireless telecommunications facilities in addition to but consistent with the requirements of this section, including regulations governing co-location, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards.
2. Interpret the provisions of this section and the wireless regulations.
3. Develop forms and procedures for submission of applications for wireless permits consistent with this section.
4. Collect any fee required by this section.
5. Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.
6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations.
7. Issue notices of incompleteness or requests for information in connection with any wireless permit application.
8. Select and retain an independent consultant or attorney with expertise in telecommunications to review any issue that involves specialized or expert knowledge in connection with any permit application.
9. Coordinate and consult with other Town staff, committees, and governing bodies to ensure timely action on all other required permits under Subsection (6)(b)8 of this section.
10. Subject to appeal as provided in Subsection (8)(d) of this chapter, determine whether to grant, grant subject to conditions, or deny an application.
11. Take such other steps as may be required to timely act upon wireless permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

(6) Application.

- (a) Format. Unless the wireless regulations provide otherwise, the applicant must submit both a paper copy and an electronic copy (in a searchable format) of any application, as well as any amendments or supplements to the application or responses to requests for information regarding an application, to the Administrator. An application is not complete until both the paper and electronic copies are received by the Administrator.
- (b) Content. In order to be considered complete, an application must contain:
 1. All information required pursuant to the wireless regulations.
 2. A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.
 3. The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.
 4. A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.
 5. A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to

detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit. Before and after 360° photo simulations must be provided for each facility.

6. Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the Town for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include i) the proposed location of the facility, ii) a description and scale image of the proposed facility, and iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.
 7. A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.
 8. To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.
 9. A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.
 10. Payment of all required fees.
 11. If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the Town from complying with any deadline for action on an application.
 12. If the application is an eligible facilities request, the application must contain information sufficient to show that the application qualifies as an eligible facilities request under 47 CFR § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the Town. Before and after 360° photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.
- (c) Waivers. Requests for waivers from any requirement of this Subsection (6) shall be made, in writing, to the Administrator. The Administrator may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the Town will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.
- (d) Fees. Applicant must provide an application fee and shall be required to pay all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically and raised or lowered based on the costs the Town expects to incur, with a review commencing by the first anniversary of the effective date of this chapter.
- (e) Public records. Applications are public records that may be made publicly available pursuant to state and federal public records law. Notwithstanding the foregoing, the applicant may

designate portions of the application materials that it reasonably believes contain proprietary or confidential information by clearly marking each portion of such materials accordingly, and the Town shall endeavor to treat the information as proprietary and confidential, subject to applicable state and federal public records law and the Administrator's determination that the applicant's request for confidential or proprietary treatment of the application materials is reasonable. The Town shall not be required to incur any costs to protect the application from disclosure.

(7) General and aesthetic standards.

(a) Generally. Wireless telecommunications facilities shall meet the minimum requirements set forth in this chapter and the wireless regulations, in addition to the requirements of any other applicable law or regulation.

(b) Regulations. The wireless regulations and decisions on wireless permits shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of a telecommunications or personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this chapter and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.

(c) General standards.

1. Wireless telecommunications facilities shall be installed and modified in a manner that:

- a. Minimizes risks to public safety;
- b. Ensures that placement of facilities on existing structures is within the tolerance of those structures;
- c. Avoids placement of aboveground facilities in underground areas, installation of new support structures or equipment cabinets in the public right-of-way, or placement in residential areas when commercial areas are reasonably available;
- d. Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;
- e. Ensures that installations are subject to periodic review to minimize the intrusion on the right-of-way;
- f. Ensures that the Town bears no risk or liability as a result of the installations; and
- g. Ensures that applicant's use does not inconvenience the public, interfere with the primary uses of the right-of-way, or hinder the ability of the Town or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.

2. No wireless permit shall be issued unless i) the wireless service provider applicant has immediate plans to use the proposed facility or ii) the wireless infrastructure applicant has a contract with a wireless service provider that has immediate plans to use the proposed facility.

3. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic and at all times must comply with the requirements of the Americans with Disabilities Act of 1990.^[2]

[2] *Editor's Note: See 42 U.S.C. § 12101 et seq.*

(d) Aesthetic and location standards. Wireless communication facilities shall be installed subject to the following aesthetic and location standards.

1. Preferred locations. The following locations, in the order listed from most to least preferred, are the preferred locations for installations of facilities in public rights-of-way:
 - a. Industrial area;
 - b. Commercial areas; and,
 - c. Other nonresidential areas.
2. Nonpreferred locations. The applicant should avoid locating new support structures, towers, or utility poles within residential neighborhoods, designated open space, conservation areas, or historic districts. A facility may be permitted in a location other than a preferred location if the applicant provides evidence showing that:
 - a. Adequate coverage can be maintained, existing services can be improved, or new services can be added only if facilities are placed in a nonpreferred location; or
 - b. The proposed facility will meet all applicable requirements for the nonpreferred location and will complement the character of the surrounding area.
3. Co-location.
 - a. Co-location generally. Subject to the provisions of this section, co-location of facilities is generally preferred over new support structures if it can be accomplished in a way that better complements the character of the surrounding area.
 - b. Co-location with nonmunicipal facilities. Co-location on facilities or support structures owned by parties other than the Town is subject to the following:
 - i. Where an existing facility or support structure can potentially accommodate co-location of a new wireless facility, co-location will be required unless:
 - [i] The applicant submits substantial evidence supporting the unsuitability of the co-location;
 - [ii] The owner of the existing facility or support structure is unwilling to accommodate the applicant's equipment and cannot be required to cooperate; or
 - [iii] The Administrator determines that installing a new support structure or co-location with a Town facility is preferable to co-location with another facility or support structure.
4. General location restrictions. In addition to regulating location among districts, site-specific restrictions and requirements shall be followed:
 - a. Obstruction of traffic. Facilities and support structures, towers, and utility poles must be at least three feet from the curb or nearest traffic lane edge to reduce the risk of being struck by a motor vehicle or bicycle. No aboveground equipment may be placed within five feet of the back of curbs or edge of the nearest traffic lane.
[Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
 - b. Obstruction. To the extent possible, a facility, support structure, tower, or utility pole should be located and designed so as to avoid interference with right-of-way maintenance activities, such as:
 - i. Grass mowing, brush collection, tree trimming, and landscaping maintenance;
 - ii. Trash collection;
 - iii. Maintenance of streets, pavement, sidewalks, and bicycle lanes; and
 - iv. Maintenance of other facilities in the rights-of-way.

- c. ADA. Facilities and support structures, towers, and utility poles at all times must comply with the requirements of the Americans with Disabilities Act of 1990.^[3]
[3] Editor's Note: See 42 U.S.C. § 12101 et seq.
 - d. Alignment. Facilities and support structures, towers, and utility poles must be located in alignment with existing trees, facilities, support structures, towers, utility poles and streetlights.
 - e. Spacing. A support structure, tower, or utility pole for a wireless facility must be at least 500 feet from any other support structure in a public right-of-way.
[Amended at time of adoption of Code (see Ch. 25, General Provisions, Art. II)]
 - f. Frontage. Facilities and support structures, towers, and utilities poles must not be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.
 - g. Use of lighting elements. A combination support structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a new location where the Town has identified that a streetlight is necessary.
5. Height restrictions and requirements. The wireless telecommunication facilities shall be installed in accordance with the following height restrictions and requirements:
 - a. Support structures, towers, and utility poles. The height of a support structure, tower, or utility pole in the right-of-way may not exceed the greater of 50 feet above ground level or 10 feet above the tallest existing support structure, tower, or utility pole that is in place on the effective date of this chapter and that is located in the same right-of-way and within 500 feet of the facility that is the subject of the application.
 - b. Small wireless facility. The height of a small wireless facility in the right-of-way may not exceed the greater of 50 feet above ground level or 10 feet above the tallest existing support structure, tower, or utility pole that is in place on the effective date of this chapter and that is located in the same right-of-way.
 6. Underground and ground-mounted equipment. The wireless telecommunication facilities shall be installed in accordance with the following height restrictions and requirements:
 - a. Underground equipment. To conceal the nonantenna equipment, applicants shall install all nonantenna equipment underground when proposed in an area where utilities or other equipment or in the right-of-way is primarily located underground. In all other areas, applicants shall underground its nonantenna equipment to the extent feasible. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services. Nothing in this subsection is intended to require the applicant to install any electric meter required by the applicant's electrical service provider underground.
 - b. Ground-mounted equipment. To the extent that the equipment cannot be placed underground as required, applicants shall install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The Town may require landscaping as a condition of approval to conceal ground-mounted equipment. Ground-mounted equipment shall not be permitted in connection with a streetlight, traffic signal, utility pole or other similar infrastructure in the public right-of-way. In the event that the Town approves ground-mounted equipment, the applicant shall conform to the following requirements.
 - i. Self-contained cabinet or shroud. The equipment shroud or cabinet shall contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment shall be concealed from view.

- ii. Concealment. The Town may require the applicant to incorporate concealment elements into the proposed design, including but not limited to public art displayed on the cabinet, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.
7. Concealment. Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law;
 - a. Antennas located at the top of support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure.
 - b. Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.
 - c. Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, located to avoid interfering with, or creating any hazard to, any other use of the public rights-of-way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.
 - d. Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.
 - e. Ground-mounted equipment associated with a wireless communications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be underground, located in alleys or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.
 - f. No support structures, towers, or utility poles shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted aboveground, in underground areas, provided that the Town may permit placements where all elements of the wireless communications facility are concealed and the facility does not appear to a causal observer as a wireless telecommunications facility.
 - g. Unless appropriately placed, and concealed, so that the size of the facility cannot be increased except with the discretionary approval of the Town, no wireless telecommunications facility is permitted in rights-of-way in alleys.
 - h. Wireless communication facilities must be designed to minimize visual impacts. When feasible, the facilities must be concealed or camouflaged, and shall have subdued colors and nonreflective materials that blend with the materials and colors of the surrounding area and structures so as to minimize visibility and obstruction of views.
 - i. Facilities may not be illuminated except in accordance with state or federal regulations or if incorporated as part of a streetlight pole.
 - j. Signage is not permitted except to comply with FCC or Wisconsin regulations to provide safety warnings.
- (e) Standard permit conditions. All wireless permits under this chapter are issued subject to the following minimum conditions:

1. Compliance. The permit holder shall at all times maintain compliance with all applicable federal, state, and local laws, regulations, and other rules.
2. Term. A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance unless revoked pursuant to § 17.14(9)(b).
3. Contact information. The permit holder shall at all times maintain with the Town accurate contact information for the permit holder and all wireless service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.
4. Emergencies. The Town shall have the right to support, repair, disable, or remove any elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.
5. Indemnities. The permit holder, by accepting a permit under this chapter, agrees to indemnify, defend, and hold harmless the Town, its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the "indemnified parties") from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the permit holder or anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on one or more of the Indemnified parties. The obligation to indemnify, defend, and hold harmless the indemnified parties shall be applicable even if the liability results from an act or failure to act on the part of one or more of the indemnified parties. However, the obligation does not apply if the liability results from the willful misconduct of an indemnified party.
6. Adverse impacts on adjacent properties. The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.
7. Graffiti removal. All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the Town.
8. Relocation. At the request of the Town pursuant to Subsection (10) of this section, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.
9. Abandonment. The permit holder shall promptly notify the Town whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Subsection (11) of this chapter.
10. Restoration. A permit holder who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Section (12) of this chapter.
11. Record retention. The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the Town cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.
12. Radio frequency emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emissions, and failure to comply with such

regulations shall be treated as a material violation of the terms of the permit.

13. Certificate of insurance. A certificate of insurance sufficient to demonstrate to the satisfaction of the Administrator that the applicant has the capability to cover any liability that might arise out of the presence of the facility in the right-of-way.
- (8) Application processing and appeal.
- (a) Rejection for incompleteness. Notices of incompleteness shall be provided in conformity with state, local, and federal law, including 47 CFR § 1.6003(d), as amended.
 - (b) Processing time line. Wireless permit applications [including applications for other permits under Subsection (6)(b)8 necessary to place or modify the facility] and appeals will be processed in conformity with the shot clocks set forth in state, local, and federal law, as amended.
 - (c) Written decision. In the event that an application is denied [or approved with conditions beyond the standard permit conditions set forth in Subsection (7)(d)], the Administrator shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.
 - (d) Appeal to the Town Board. Any person adversely affected by the decision of the Administrator may appeal that decision to the Town Board, which may decide the issues de novo, and whose written decision will be the final decision of the Town. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.
 - (e) Deadline to appeal.
 - 1. Appeals that involve eligible facilities requests must be filed within three business days of the written decision of the Administrator.
 - 2. All other appeals not governed by Subsection (8)(e)1, above, must be filed within 10 business days of the written decision of the Administrator, unless the Administrator extends the time therefor. An extension may not be granted where extension would result in approval of the application by operation of law.
 - (f) Decision deadline. All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.
- (9) Expiration and revocation.
- (a) Expiration. A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance. Upon expiration of the wireless permit, the permit holder must either:
 - 1. Remove the wireless telecommunications facility; or
 - 2. Submit an application to renew the permit at least 90 days prior to its expiration. The facility must remain in place until the renewal application is acted on by the Town and any appeals from the Town's decision are exhausted.
 - (b) Revocation for breach. A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations. Upon revocation, the wireless telecommunications facility must be removed within 30 days of receipt of written notice from the Town. All costs incurred by the Town in connection with the revocation, removal, and right-of-way restoration shall be paid by the permit holder.
 - (c) Failure to obtain permit. Unless exempted from permitting by Subsection (3)(b) of this chapter, a wireless telecommunications facility installed without a wireless permit must be removed within 30 days of receipt of written notice from the Town. All costs incurred by the Town in

connection with the notice, removal, and right-of-way restoration shall be paid by entities who own or control any part of the wireless telecommunications facility.

(10) Relocation. Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate any of its wireless telecommunications facilities in the right-of-way whenever the Town requests such removal and relocation. The Town may make such a request to prevent the facility from interfering with a present or future Town use of the right-of-way; a public improvement undertaken by the Town; an economic development project in which the Town has an interest or investment; when the public health, safety, or welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in favor of a nongovernmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder.

(11) Abandonment.

(a) Cessation of use. In the event that a permitted facility within the right-of-way is not in use for a continuous period of 60 days or longer, the permit holder must promptly notify the Town and do one of the following:

1. Provide information satisfactory to the Administrator that the permit holder's obligations for its facilities under this chapter have been lawfully assumed by another permit holder.
2. Submit to the Administrator a proposal and instruments for dedication of the facilities to the Town. If a permit holder proceeds under this Subsection (11)(a)2, the Town may, at its option:
 - a. Accept the dedication for all or a portion of the facilities;
 - b. Require the permit holder, at its own expense, to remove the facilities and perform the required restoration under Subsection (12); or
 - c. Require the permit holder to post a bond or provide payment sufficient to reimburse the Town for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Subsection (12).
3. Remove its facilities from the right-of-way within one year and perform the required restoration under Subsection (12), unless the Administrator waives this requirement or provides a later deadline.

(b) Abandoned facilities. Facilities of a permit holder who fails to comply with Subsection (11)(a) and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the Town may, at its option:

1. Abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;
2. Take possession of the facilities; and/or
3. Require removal of the facilities by the permit holder or the permit holder's successor in interest.

(12) Restoration. In the event that a permit holder removes or is required to remove a wireless telecommunications facility from the right-of-way under this chapter [or relocate it pursuant to Subsection (10)], the permit holder must restore the right-of-way to its prior condition in accordance with Town specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restorations required by this

Subsection **(12)**, the Town at its option may do such work. In that event, the permit holder shall pay to the Town, within 30 days of billing therefor, the cost of restoring the right-of-way.

- (13) Placement on Town-owned or-controlled structures. The Town may negotiate agreements for placement of wireless telecommunications facilities on Town-owned or-controlled structures in the right-of-way. The agreement shall specify the compensation to the Town for use of the structures. The person or entity seeking the agreement shall reimburse the Town for all costs the Town incurs in connection with its review of and action upon the request for an agreement.
- (14) Severability. If any section, subsection, clause, phrase, or portion of this chapter is for any reason held to be illegal or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion shall be severable and shall not affect or impair any remaining portion of this chapter, which shall remain in full force and effect.

§ 17.15. Mobile tower siting regulations.

[Added 12-16-2003; amended 8-5-2017]

- (1) Purpose. The purpose of this section is to regulate by zoning permit 1) the siting and construction of any new mobile service support structure and facilities; 2) with regard to a Class 1 co-location, the substantial modification of an existing support structure and mobile service facilities; and 3) with regard to a Class 2 co-location, co-location on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.
- (2) Authority. The Town Board has the specific authority under §§ 62.23 and 66.0404, Wis. Stats., to adopt and enforce this section.
- (3) Definitions. All definitions contained in § 66.0404(1), Wis. Stats., as the same currently exist or as the same may be amended hereafter, are hereby incorporated by reference.
- (4) Siting and construction of any new mobile service support structure and facilities.
- (a) Application process.
1. A Town zoning permit is required for the siting and construction of any new mobile service support structure and facilities. The siting and construction of any new mobile service support structure and facilities is a conditional use in the Town obtainable with this permit.
 2. A written permit application must be completed by any applicant and submitted to the Town Planner. The application must contain the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed or affected support structure.
 - c. The location of the proposed mobile service facility.
 - d. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - e. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.

- f. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose co-location, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that co-location within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
 3. A permit application will be provided by the Town upon request to any applicant.
 4. If an applicant submits to the Town an application for a permit to engage in an activity described in this section, which contains all of the information required under this section, the Town shall consider the application complete. If the Town does not believe that the application is complete, the Town shall notify the applicant, in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
 5. Within 90 days of its receipt of a complete application, the Town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Town may agree, in writing, to an extension of the ninety-day period:
 - a. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
 - b. Make a final decision whether to approve or disapprove the application.
 - c. Notify the applicant, in writing, of its final decision.
 - d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
 6. The Town may disapprove an application if an applicant refuses to evaluate the feasibility of co-location within the applicant's search ring and provide the sworn statement described under Subsection (4)(a)2.f.
 7. If an applicant provides the Town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the Town provides the applicant with substantial evidence that the engineering certification is flawed.
 8. The fee for the permit is \$3,000.
- (5) Class 1 co-location.
- (a) Application process.
 1. A Town zoning permit is required for a Class 1 co-location. A Class 1 co-location is a conditional use in the Town obtainable with this permit.
 2. A written permit application must be completed by any applicant and submitted to the Town Planner. The application must contain the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed or affected support structure.
 - c. The location of the proposed mobile service facility.
 - d. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the

equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

- e. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
 - f. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose co-location, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that co-location within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
3. A permit application will be provided by the Town upon request to any applicant.
 4. If an applicant submits to the Town an application for a permit to engage in an activity described in this section, which contains all of the information required under this section, the Town shall consider the application complete. If the Town does not believe that the application is complete, the Town shall notify the applicant, in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
 5. Within 90 days of its receipt of a complete application, the Town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Town may agree, in writing, to an extension of the ninety-day period:
 - a. Review the application to determine whether it complies with all applicable aspects of the political subdivision's Building Code and, subject to the limitations in this section, zoning ordinances.
 - b. Make a final decision whether to approve or disapprove the application.
 - c. Notify the applicant, in writing, of its final decision.
 - d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
 6. The Town may disapprove an application if an applicant refuses to evaluate the feasibility of co-location within the applicant's search ring and provide the sworn statement described under Subsection (5)(a)2.f.
 7. If an applicant provides the Town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the Town provides the applicant with substantial evidence that the engineering certification is flawed.
 8. The fee for the permit is \$3,000.

(6) Class 2 co-location.

(a) Application process.

1. A Town zoning permit is required for a Class 2 co-location. A Class 2 co-location is a conditional use in the Town obtainable with this permit.

2. A written permit application must be completed by any applicant and submitted to the Town Planner. The application must contain the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed or affected support structure.
 - c. The location of the proposed mobile service facility.
 3. A permit application will be provided by the Town upon request to any applicant.
 4. A Class 2 co-location is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject.
 5. If an applicant submits to the Town an application for a permit to engage in an activity described in this section, which contains all of the information required under this section, the Town shall consider the application complete. If any of the required information is not in the application, the Town shall notify the applicant, in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
 6. Within 45 days of its receipt of a complete application, the Town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Town may agree, in writing, to an extension of the forty-five-day period:
 - a. Make a final decision whether to approve or disapprove the application.
 - b. Notify the applicant, in writing, of its final decision.
 - c. If the application is approved, issue the applicant the relevant permit.
 - d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
 7. The fee for the permit is \$500.
- (7) Penalty provisions. Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this section shall, upon conviction, pay a forfeiture of not less than \$100 nor more than \$500, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this section. In addition, the Town board may seek injunctive relief from a court of record to enjoin further violations.
- (8) Severability. If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and, to this end, the provisions of this section are severable.