

## Chapter 36 - ZONING

## ARTICLE I. - GENERAL PROVISIONS

## Sec. 36-1. - Name.

This chapter shall be known as "town zoning" and may be referred to herein as "this code" or "this chapter."

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-2. - Authority.

This chapter is adopted under the authority granted under Wis. Stats. §§ 60.62, 61.35, and 62.23.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-3. - Jurisdiction.

This chapter shall only apply to that land lying within the town, the boundary of which may change over time through annexations and detachments, to the extent the land is not governed by provisions of the county's shoreland jurisdiction.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**Note**— An annexation removes land from a town and adds it to a city or village, while a detachment removes land from a city or village and adds it to a town or another city or village.

## Sec. 36-4. - Legislative findings.

(a) *General findings.* The town board makes the following legislative findings:

- (1) The town board adopted a comprehensive plan on November 19, 2008 pursuant to Wis. Stats. § 66.1001.
- (2) This chapter is intended to be consistent with the overall intent of the town's comprehensive plan, as may be amended.

(b) *Other findings.* Other legislative findings are included in various articles, divisions, and sections of this chapter as may be appropriate.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-5. - Purpose.

(a) *General purpose.* This chapter promotes the public health, safety, and welfare and is intended to:

- (1) Implement the goals, objectives, and policies of the town's comprehensive plan to the greatest extent practicable;
- (2) Establish clear and consistent standards, regulations, and procedures for the review of proposed development as may be regulated by this chapter;
- and
- (3) Establish minimum standards for the use or development of land within the town.

(b) *Specific purposes.* Consistent with Wis. Stats. § 62.23(7), this chapter is also intended to:

- (1) Promote the public health, safety, convenience, and general welfare;
- (2) Encourage planned and orderly land use development;
- (3) Protect property values and the property tax base;
- (4) Permit the careful planning and efficient maintenance of town roads;
- (5) Ensure adequate roadways, utility, health, educational and recreational facilities;
- (6) Recognize the needs of agriculture, forestry, industry and business in future growth;
- (7) Encourage use of land and other natural resources which are in accordance with their character and adaptability;
- (8) Provide adequate light and air, including access to sunlight for solar collectors;
- (9) Conserve soil, water and forest resources;
- (10) Protect the beauty and healthy surroundings for family life; and
- (11) Promote the efficient and economical use of public funds.

(c) *Other purposes.* Other purposes are included in various articles, divisions, and sections as may be appropriate.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-6. - Re-enactment and repeal.

This chapter carries forward by re-enactment some of the provisions of the regulations governing zoning and related matters which the town board adopted under authority of state law prior to the effective date of this chapter. This chapter is not intended to repeal those regulations in their entirety, but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued there under are preserved and may be enforced, unless explicitly surrendered by specific provisions of this chapter. If a provision in the regulations which were in effect on the date this chapter became effective is not specifically carried forward in this chapter, such provision is repealed. As to the effect of this section on existing land uses refer to article XI.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**Note**— The town adopted its first zoning regulations on April 16, 1953.

#### Sec. 36-7. - Compliance.

- (a) *Generally.* Except as specifically provided, the provisions of this chapter shall apply to all development within the town. No development shall be undertaken without the prior authorizations required by this chapter and other applicable rules and regulations of the town.
- (b) *Exception for a previously granted permit or other approval.* If a permit or other approval has been previously granted and the authorized work, in whole or in part, is no longer allowed under the current zoning regulations, the holder of the permit is authorized to establish the use or undertake the authorized work within one year of the date of the approval. If the action, as authorized by the permit or other approval, does not commence within that time period and continue in good faith to completion, such permit shall lapse and be null and void.
- (c) *Exception for the establishment of a use, structure, or building not requiring authorization.* If prior to the adoption of this chapter, or amendment thereto, a lawful land use, structure, or building is actively being established that did not require a permit or other approval under the zoning regulations in effect at that time, said work may continue to completion even when such land use, structure, or building:
  - (1) Now requires a permit or other authorization under this chapter;
  - (2) Is being developed contrary to this chapter; or
  - (3) Is otherwise prohibited under this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-8. - Liability.

The town and its officials, agencies, employees, agents, and assigns shall not be liable for any flood damage, sanitation problems, structural damage, or other damages or loss of property value that may occur as a result of reliance upon and conformance with this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-9. - Severability.

- (a) If any section, clause, provision, or portion of this chapter is determined to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected by such ruling.
- (b) If any application of this chapter to a particular structure or parcel is determined to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such ruling shall not apply to any other structure or parcel not specifically included in the ruling.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-10. - Relationship of this chapter to other regulations.

In addition to meeting the requirements contained in this chapter, development shall comply with all applicable regulations of the county and federal and state agencies. In all cases, the strictest of the applicable provisions shall apply. Regulations adopted by the county that may apply include the following:

- (1) Nonmetallic mining reclamation ordinance.
- (2) Waukesha County animal waste management ordinance.
- (3) Stormwater management.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-11. - Relationship of this chapter to private agreements.

This chapter is not intended to repeal, abrogate, annul, impair, or interfere with any easement, covenant, deed restriction, or other private agreement governing land development. However, when this chapter imposes a greater restriction than the aforementioned, the provisions of this chapter shall apply.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-12. - Additional local regulations.

In addition to meeting the regulations contained in this chapter, development shall comply with all applicable regulations in the municipal code of the town, including the following and any amendments thereto:

- (1) Chapter 6 alcohol beverages.
- (2) Chapter 14 buildings and building regulations.
- (3) Chapter 18 businesses.
- (4) Chapter 32 signs.
- (5) Chapter 34 land division and development control.

In all cases, the strictest of the applicable provisions shall apply.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-13. - No defense to nuisance action.

Compliance with the standards and requirements in this chapter shall not constitute an absolute defense to an action to abate a public or private nuisance.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-14. - Applicability to public entities.

This chapter shall apply to all publicly-owned land to the fullest extent allowed by state and federal law. When a public entity undertakes any development that is exempted by state or federal law from this chapter, in whole or in part, it is strongly encouraged to meet the provisions of this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-15. - Applicability to projects under the purview of the public service commission.

This chapter shall apply to projects under the purview of the state public service commission (PSC) to the fullest extent allowed by state law. The plan commission or the town board, or both, may submit a written request to the PSC outlining those standards and/or requirements of this chapter that the PSC should impose as conditions of project approval, if approval is to be granted.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— See Wis. Stats. § 196.491(3)(i), and also American Transmission Co., LLC v. Dane County, 2009 WI App. 126.

Sec. 36-16. - Website.

The town may create and maintain a website to share the key aspects of this chapter, including the zoning map, in an interactive platform. If there is any discrepancy between such website and this chapter, this chapter controls.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-17—36-30. - Reserved.

## ARTICLE II. - INTERPRETATION, CONSTRUCTION AND DEFINITIONS

Sec. 36-31. - General rules.

- (a) *Generally*. In the interpretation and application of this chapter, all provisions shall be liberally construed in favor of the town so the true intent and meaning of this chapter is carried out as set forth in section 36-5.
- (b) *Minimum requirements*. The interpretation and application of any provision of this chapter shall be held to be the minimum requirement adopted for the promotion of the public health, safety, and general welfare and not be deemed a limitation or repeal of any other power granted by state statute.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-32. - Interpretation.

In the event a question arises concerning any provision or the application of any provision of this chapter, interpretations shall be issued consistent with article V.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-33. - Delegation of authority.

If a provision in this chapter states that an elected official, department supervisor, or some other employee is to perform some act, such individual may designate, delegate, or authorize a subordinate to perform the act unless state law or the provision clearly specifies otherwise.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-34. - Internal conflicts.

More specific provisions of this chapter shall be followed in lieu of more general provisions unless the context otherwise requires. Additionally, the most restrictive provisions shall apply.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-35. - Use of graphics, illustrations, headings, references, statutory citations, and commentary notes.

- (a) *Purpose.* Graphics, illustrations, headings, references, statutory citations, and commentary notes are included to improve the readability of this chapter and increase reader comprehension. Specifically, graphics and illustrations are included to help the reader visualize the meaning of the text. Headings and subheadings generally state the content of that section and are intended to help the reader quickly find information. References and statutory citations are included when the section is related to a state or local law or another section in this chapter. These are included to help the reader understand the relationship among various provisions. Commentary notes are included to supplement and/or further clarify a sentence or provision but are not part of this chapter.
- (b) *Interpretation.* A graphic, illustration, heading, reference, statutory citation, or commentary note shall not govern, limit, modify, or in any manner affect the scope, meaning, or intent of any provision.
- (c) *Effect of deficiency.* Because the text controls, no provision shall be held invalid by reason of any deficiency in any graphic, illustration, heading, reference, statutory citation, or commentary note.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-36. - Reference to state and federal law.

If a requirement in this chapter references a specific state and/or federal law, such reference shall be interpreted to mean the most current version of the referenced section at the time the reference is applied. If a referenced section is repealed and replaced by another section with comparable subject matter, the replacement section shall control. If a referenced section is repealed and not replaced, the repealed section shall control if it is determined by the town attorney that the town has the authority to apply the repealed language.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-37. - Interpretation of boundaries and designations for zoning districts.

- (a) *Boundary line interpretations.* Interpretations regarding boundaries of zoning districts shall be made in accordance with the following rules:
  - (1) *Political boundaries.* Boundaries shown as following, or approximately following, any political boundary shall be construed as following such line.
  - (2) *Section lines.* Boundaries shown as following, or approximately following, a section line, half-section line, or quarter-section line shall be construed as following such line.
  - (3) *Centerlines.* Boundaries shown as following, or approximately following, any railroad, alley, road, street, highway, or similar feature shall be construed as following the centerline of such feature.
  - (4) *Property lines.* Boundaries shown as following, or approximately following, any platted lot line or other property line shall be construed as following such line.
  - (5) *Natural boundaries.* Boundaries shown as following, or approximately following, any natural feature such as a stream, river, canal, other bodies of water, or topographical features, such as a watershed boundary, shall be construed as following such natural feature as verified by field inspection when necessary.

In the event there is a question as to the location of a zoning district boundary, the plan commission shall review such matter at a regular or special meeting and render a decision.

- (b) *Street abandonment.* In the event a public road, street, or alley is officially vacated or abandoned, the zoning provisions applicable to the land to which it reverted shall apply to such vacated or abandoned road, street, or alley, unless otherwise provided by town action.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-38. - General rules of interpretation.

In the construction of this chapter, the following shall be observed, unless such construction would be inconsistent with the text or with the manifest intent of this chapter:



- (1) *Gender.* Words of the masculine gender include the feminine and neuter, and vice versa.
- (2) *Singular and plural words.* Words in the singular include the plural and words in the plural include the singular.
- (3) *Tense.* Words in the present tense include the past and future tense, and the future tense includes the present tense.
- (4) *"Must," "shall" and "will."* The words "must," "shall" and "will" imply a mandatory condition.
- (5) *"May" or "should."* The words "may" and "should" imply a permissive condition.
- (6) *"Includes" or "including."* The words "includes" or "including" shall not limit a provision to the specific example(s) listed, but are intended to extend their meaning to all other instances or circumstances of like kind or character.
- (7) *"Such as."* The phrase "such as" shall not limit a provision to the specific example(s) listed, but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- (8) *Conjunctions.* When used at the end of a series, the word "and" indicates that all listed items apply. When the word "or" is used at the end of a series, it indicates that one or more of the listed items apply.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-39. - Computation of time.

When a time period is specified in this chapter, the first day of the period shall be the first day after the event that triggered the time clock to start. If the last day of the time period is a Saturday, Sunday, or a legal holiday recognized by the state of Wisconsin, that day shall be excluded and the time period shall be extended to the next business day.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-40. - Land use descriptions.

For the purpose of chapter, land uses that are permissible in one or more of the zoning districts are described as set forth in appendix B. For organizational purposes, similar land uses are grouped together to form a series. The first 12 series are for principal land uses, accessory land uses are found in series 13, and temporary land uses are found in series 14.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-41. - General definitions.

- (a) *Words and phrases not defined.* Unless specifically defined in this section, words and phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.
- (b) *Words and phrases defined.* For the purpose of this chapter, certain words and phrases are defined in appendix E and shall have the meaning ascribed to them, except where the context clearly indicates a different meaning. If there is any question in this regard, the procedures set forth in division 19 of article V shall be followed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-42—36-60. - Reserved.

ARTICLE III. - ADMINISTRATIVE BODIES

DIVISION 1. - PLAN COMMISSION

Sec. 36-61. - Establishment.

Pursuant to Wis. Stats. § 62.23(1), a plan commission is established to undertake the responsibilities as defined in this chapter and as allowed by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-62. - Authority.

- (a) *Generally.* The plan commission shall have such powers as may be necessary to enable it to perform its functions and promote the proper planning for the town, whether enumerated in this section or not.
- (b) *Right to enter property.* The plan commission, its individual members and authorized agents, may enter upon land which is the subject of a pending application it has authority to act on as set forth in section 36-134.
- (c) *Staff.* The plan commission may employ, or contract for the services of, such professional planning technicians and staff as are considered necessary for the discharge of the duties and responsibilities of the commission, provided such expense does not exceed the appropriation that may be made for the commission by the town board for such purpose.

- (d) *Comprehensive plan.* The plan commission may by resolution recommend to the town board the adoption of or amendment to a comprehensive plan.
- (e) *Chapter amendments.* The plan commission shall act on proposed amendments of this code as set forth in article V.
- (f) *Interpretation of this chapter.* The plan commission shall act on interpretations of this chapter as set forth in article V.
- (g) *Conditional uses.* The plan commission shall act on conditional uses as set forth in article V.
- (h) *Special exceptions.* The plan commission shall act on special exceptions as set forth in article V.
- (i) *Planned development districts.* The plan commission shall act on planned development districts as set forth in article V.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(4).

Sec. 36-63. - Composition and appointment of members.

- (a) *Number and appointment.* The plan commission shall consist of seven members as appointed by the town board chairman, and confirmed by the town board. The chairman of the town board may appoint himself or herself to the commission and may appoint one town board member, except that the commission shall have at least five citizen members who are not town supervisors. Appointments shall be made by the chairman of the town board during the month of April for terms that expire in April or at any other time of the year if a vacancy occurs during the middle of a term.
- (b) *Terms.* Each citizen member shall be appointed to a three-year term. The term of a town supervisor shall be for one year and can be reappointed for consecutive terms without limitation. The term of the chairman of the town board shall coincide with his or her elected term.
- (c) *Considerations in making citizen appointments.* Citizen members shall be persons of recognized experience and qualifications and shall be residents of the town.
- (d) *Conditions for removal.* A citizen member shall be removed from the plan commission and the member's office declared vacant when the member moves outside of the town. If the chairman of the town board or a town supervisor serving on the commission resigns or is removed from his or her office, or his or her term expires, his or her term on the commission shall automatically terminate.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(1)(a), (1)(d).

Sec. 36-64. - Officers.

The chairman of the town board shall appoint a chairperson from its membership, including himself or herself. If the chairperson is absent for a meeting, another member of the commission shall serve as acting chairperson in his or her absence. The commission may create and fill other offices.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(1)(a).

Sec. 36-65. - Commission procedures.

The plan commission may adopt rules of procedure to carry out its purposes. All such rules shall conform to this chapter, other town regulations, and state law and shall be filed in the office of the town clerk.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(2).

Sec. 36-66. - Meetings.

Meetings of the plan commission shall be open to the public unless conducted in close session as authorized by state law. All meetings, except site visits, shall be conducted in the town hall or in such other public place as may be selected by the commission.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-67. - Meeting minutes.

The plan commission shall keep minutes of its proceedings. The commission may amend previously adopted minutes provided such revision is based on substantive evidence.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-68. - Schedule of meetings.

Meetings of the plan commission shall be held at the call of the chairperson of the commission and at such other times as the commission may determine.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-69. - Voting and quorum.

- (a) *Requirements for quorum.* A quorum of the plan commission shall consist of four voting members.
- (b) *Requirements for voting.* Unless otherwise specifically stated, a decision of the plan commission shall be approved by a majority vote of the members present at a meeting in which a quorum is in attendance and voting.
- (c) *Disqualification or voluntary abstention.* A member of the plan commission shall abstain from voting on a particular issue or shall be disqualified by majority vote of the remaining members present when:
  - (1) The member has a direct financial interest in the outcome of the matter at issue;
  - (2) The member has such close personal ties to the applicant, the project, or to a party opposing the application that the member cannot reasonably be expected to exercise sound judgment in the public interest;
  - (3) The member would violate the code of ethics set forth in Wis. Stats. ch. 19, or any ethics code as may be adopted by the town;
  - (4) Participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
  - (5) Another law precludes participation.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-70. - Compensation of members.

Members of the plan commission may be compensated as determined by the town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-71. - Official oath.

Citizen members of the plan commission shall take the official oath as required by Wis. Stats. § 19.01. The town clerk shall keep a copy of such oaths.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-72—36-80. - Reserved.

DIVISION 2. - ZONING BOARD OF APPEALS

Sec. 36-81 - Establishment

Pursuant to Wis. Stats. § 62.23(7)(e) a zoning board of appeals is established to undertake the responsibilities as defined in this chapter and as allowed by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-82. - Authority.

- (a) *Administrative appeals.* The zoning board of appeals shall hear and decide administrative appeals consistent with the requirements in article V where it is alleged that the zoning administrator or building inspector:
  - (1) Failed to act as required by this chapter;
  - (2) Made an error in issuing a permit or in denying an application;
  - (3) Made an error in enforcement; or
  - (4) Made an error in an interpretation or any other determination.

In exercising these powers, the board may compel the administrative official to act as required or reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination being appealed and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

- (b) *Variances.* The zoning board of appeals shall hear and decide variances consistent with the requirements in article V.
- (c) *Right to enter.* The zoning board of appeals, along with its individual members and authorized agents, may enter upon land which is the subject of a pending application as set forth in section 36-134.
- (d) *Amendments to this chapter.* The zoning board of appeals may recommend amendments to this chapter it deems advisable.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-83. - Authority of chairperson.

The chairperson of the zoning board of appeals or acting chairperson may administer oaths and compel the attendance of witnesses.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(7)(e)(3).

Sec. 36-84. - Composition and appointment of members.

- (a) *Number and appointment.* The zoning board of appeals shall consist of five regular members as appointed by the chairman of the town board, subject to confirmation by the town board.
- (b) *Alternates.* The chairman of the town board shall, subject to confirmation by the town board, appoint two alternates to the zoning board of appeals for staggered three-year terms and annually appoint one of them as the first alternate and the other as the second alternate.
- (c) *Considerations in making appointments.* Regular members and alternate members of the zoning board of appeals shall reside in the town. A town employee shall not serve as a regular member or as an alternate.
- (d) *Terms.* Each regular member on the zoning board of appeals shall be appointed to hold office for a period of three years, except that for regular members two of those first appointed shall serve for one year, two for two years, and the fifth for three years.
- (e) *Vacancies.* Vacancies on the zoning board of appeals shall be filled for the unexpired term of any member or alternate whose term becomes vacant.
- (f) *Removal.* The chairman of the town board may remove a regular member or an alternate from the zoning board of appeals.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(7)(e)(2).

Sec. 36-85. - Officers.

The chairman of the town board shall designate one regular member to be the chairperson. The zoning board of appeals may designate other such officers deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-86. - Board procedures.

The zoning board of appeals may adopt rules of procedure to carry out its purposes. All such rules shall conform to this chapter, other town regulations, and state law and shall be filed in the office of the town clerk.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-87. - Meetings.

Meetings of the zoning board of appeals shall be open to the public unless conducted in close session as authorized by state law. Meetings, except for site visits, shall be conducted in the town hall or in such other public place as may be selected by the board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(7)(e)(3).

Sec. 36-88. - Meeting minutes.

The zoning board of appeals shall keep minutes of its proceedings, showing the vote of each voting member on each question, or, if absent or failing to vote, indicating such fact. The board may amend previously adopted minutes provided such revision is based on substantive evidence.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(7)(e)(3).

Sec. 36-89. - Schedule of meetings.

Meetings shall be held at the call of the chairperson of the zoning board of appeals and at such other times as the zoning board of appeals may determine.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-90. - Voting and quorum.

- (a) *Requirements for quorum.* A quorum shall consist of three voting members.
- (b)

*Requirements for voting.* A decision of the zoning board of appeals shall be by majority vote of the members present at a meeting in which a quorum is in attendance and voting.

(c) *Disqualification or voluntary abstention.* A member shall abstain from voting on a particular issue or shall be disqualified by majority vote of the remaining members present when:

- (1) The member has a direct financial interest in the outcome of the matter at issue;
- (2) The member has such close personal ties to the applicant, the project, or to a party opposing the application that the member cannot reasonably be expected to exercise sound judgment in the public interest;
- (3) The member would violate the code of ethics set forth in Wis. Stats. ch. 19 or any ethics code as may be adopted by the town;
- (4) Participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
- (5) Another law precludes participation.

(d) *Voting by alternates.* The first alternate may vote only when one of the regular members of the board is absent or is not able to vote on a pending matter. The second alternate may vote only when the first alternate is absent or is not able to vote or when more than one regular member is absent is or is not able to vote.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference—** Wis. Stats. § 62.23(7)(e)(3m), (7)(e)(2).

Sec. 36-91. - Compensation of members.

The regular members and alternates of the zoning board of appeals may be compensated as determined by the town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-92. - Official oath.

Members of the zoning board of appeals shall take the official oath as required by Wis. Stats. § 19.01. The town clerk shall keep a copy of such oaths.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-93—36-100. - Reserved.

DIVISION 3. - ZONING ADMINISTRATOR

Sec. 36-101. - Establishment.

The position of zoning administrator is established to undertake the responsibilities as defined in this chapter and as allowed by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-102. - Appointment.

The chairman of the town board shall appoint the zoning administrator, subject to confirmation by the town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-103. - Authority.

The zoning administrator shall administer, supervise, and enforce the provisions of this chapter and in furtherance of those duties shall have the authority to:

- (1) Meet with applicants to advise them of the requirements of this chapter;
- (2) Issue administrative permits;
- (3) Revoke or modify any administratively-issued permit or interpretation with reasonable cause;
- (4) Keep a written record of permits issued, interpretations made, inspections, work approved, enforcement activities, and other similar official actions;
- (5) Prepare staff reports consistent with this chapter and make recommendations as may be required or deemed appropriate;
- (6) Work with the town clerk in the preparation of meeting agendas for the plan commission and zoning board of appeals and submit them to the appropriate chairperson for review and approval;
- (7) Develop, amend, and utilize application forms, checklists, and other forms he or she deems appropriate to administer the development review processes contained in this chapter;
- (8) Recommend amendments to this chapter and to other chapters of the municipal chapter of the town relating to land use and development;
- (9)

Assist the building inspector and town attorney with enforcement proceedings as may be requested; and

- (10) Undertake any other activity not enumerated in this section but necessary to administer and enforce this chapter or any other section of the municipal chapter of the town as may be appropriate.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-104. - Conflict of interest.

The zoning administrator and/or authorized designee of the zoning administrator shall not perform work on a proposed or approved development project in which he or she has a direct financial interest in the outcome of the matter at issue or otherwise has a conflict of interest.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-105—36-130. - Reserved.

#### ARTICLE IV. - GENERAL PROCEDURAL REQUIREMENTS

##### DIVISION 1. - GENERALLY

Sec. 36-131. - Legislative findings.

The town board makes the following legislative findings:

- (1) Development review processes should be easily understood and well-structured, and only involve those steps and requirements that are needed to properly review the application. Excessive procedural requirements add unnecessary costs to development projects.
- (2) The general public, property owners in the area, and affected agencies have a right to know about proposed development projects and have meaningful participation in the review process to the extent allowed or required by this chapter.
- (3) Enforcing the rules and regulations contained in this chapter is an important function of government.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-132. - Purpose.

The development review requirements and procedures in this chapter are intended to:

- (1) Provide efficient and timely review of applications and ensure fairness and due process,
- (2) Ensure that applications are reviewed consistently by establishing criteria in making recommendations and final decisions, and
- (3) Ensure complete and timely compliance.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-133. - Authority to file an application.

Unless otherwise specified in this chapter, the owner of the property or a person having the power of attorney for the property owner shall sign the application submitted for review. A person signing an application under the authority of a power of attorney shall include a copy of the power of attorney with the application.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-134. - Permission to enter subject property.

Submission of an application as may be required in this chapter authorizes town officials and employees, or other designated agents to enter the subject property to verify information in the application and to conduct other site investigations as may be necessary to review the application. This does not authorize any individual to enter any building on the subject property in the absence of the property owner or his or her authorized agent. Failure to allow access to the subject property is sufficient grounds to deny the application.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-135. - Burden of proof.

- (a) *During application review process.* During the application review process, the applicant has the burden of proof to show that the application should be approved based on the decision criteria relating to that application.
- (b) *During appeal of an administrative decision.* During an administrative appeal proceeding, the petitioner has the burden of proof to show that such decision is not consistent with this chapter.
- (c)

*During enforcement proceedings.* During an enforcement proceeding, the zoning administrator or administrative unit taking enforcement action has the burden of proof to show that the action or development is in violation of this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-136. - Effect of an outstanding violation.

If the zoning administrator determines that a parcel is in violation of this chapter, no permit or approval of any kind shall be granted under this chapter that would benefit such parcel, except to correct the violation or as may be required by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-137. - Effect of an outstanding obligation.

No permit or approval of any kind shall be granted under this chapter that would benefit a parcel for which taxes, assessments, special assessments, or other required payments are delinquent and unpaid.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-138. - Concurrent review.

To the extent possible, a development project requiring multiple reviews should be done concurrently. When one approval is a condition precedent to approval of another application, the approvals shall be issued in the requisite order.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-139. - Application fees and other charges.

- (a) *Assessment of fees.* From time to time, the town board may by resolution establish application fees and other charges it deems necessary in the administration of this chapter consistent with Wis. Stats. § 66.0628.
- (b) *After the fact fees.* The town board may establish an "after-the-fact" fee for any procedure it deems appropriate. Payment of such fees shall not release the applicant from full compliance with this chapter nor from prosecution for a violation of this chapter.
- (c) *Timing for payment.* Application fees shall be paid at the time the application is submitted for review.
- (d) *Refunds.* Application fees are nonrefundable, except when the application and fee were accepted by the zoning administrator or town staff in error.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-140. - Charge back of professional service fees.

- (a) *Generally.* When specifically authorized by this chapter and pursuant to Wis. Stats. § 66.0628 an applicant shall be responsible for paying the professional service fees of individuals or private firms the town board elects to hire to assist in the review of a submitted application. Such fees may cover time, materials, and other related expenses of attorneys, planners, engineers, and other specialists, and their support staff. Payment of fees is required whether the application is approved or not.
- (b) *Billing procedure.* The town clerk shall prepare an itemized statement of the professional service fees to be charged and provide a copy to the applicant. Such statement shall be in writing and shall contain, at a minimum, the following information:
  - (1) A statement that the applicant has a specified period of time, not less than 30 days, to pay;
  - (2) A statement that the applicant may appeal one or more of the itemized charges within 15 days of the date of the statement to the town board; and
  - (3) A statement that any unpaid charge will be assessed as a delinquent charge against the subject property.
- (c) *Appeal of charges.* To appeal one or more charges, the applicant shall submit a written appeal to the town clerk within the appeal period stated on the statement. The town board shall consider the matter at its next regular meeting, provided the date of the meeting is ten business days or more from the date the appeal is received. The town board shall have the power to approve the charges as assessed or reduce the amount of charges in whole or in part with cause.
- (d) *Nonpayment.* If the applicant does not appeal the charges within the time period specified in the statement, the town clerk shall automatically charge any unpaid amount as a delinquent tax against the property as provided by state law. In the event the applicant submits an appeal as provided in this section, no charges shall be placed on the tax roll unless and until such time the town board approves the charges against the tax roll in whole or in part. In the event the statement provided to the applicant or the time given for the applicant to pay or following a hearing if the town board approves all or part of the charge, it is too late in the current year for the charge, when it becomes delinquent, to be extended on that year's tax roll, then the delinquent charge shall be extended to the following year's tax roll.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-141. - Non-confidentiality of submitted information.

All written information that an applicant submits to the zoning administrator during a pre-submittal meeting or at any point in the review process is considered part of the public record subject to disclosure under state and local law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-142. - Nature of staff comments.

Statements and recommendations that are made by the zoning administrator, town staff and officials, and other representatives prior to or during the application review process shall not be binding on the decision-making body responsible for making the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-143. - Withdrawal of application.

- (a) *Timing of withdrawal.* An applicant may withdraw an application any time after submittal, but prior to a final decision.
- (b) *Effect of withdrawal.* A request to withdraw an application terminates the review process and no decision shall be rendered.
- (c) *Retention of application materials.* A withdrawn application and related review documents shall be kept as a permanent public record.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-144. - Appeals.

If a development project is approved under this chapter, the applicant may, upon receipt of the decision notice and satisfaction of all precedent conditions of approval, commence the work as authorized under the approval with the understanding that an aggrieved person may file an appeal with the appropriate review body. Prior to the end of the appeal period, all such work proceeds at the risk of the applicant. Similarly, any work that is done while an appeal is pending is done at the risk of the applicant.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-145. - Application review schedule.

- (a) *Authority.* The zoning administrator shall from time to time prepare a schedule establishing deadlines for submitting the various types of applications.
- (b) *Publication of schedule.* The zoning administrator shall make the current review schedule available to the public and may post it on the town's website.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-146. - Application forms.

The zoning administrator shall prepare application forms and may amend them from time to time.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-147. - Other approvals.

It is the responsibility of those undertaking development projects within the town to obtain all applicable permits and other approvals as may be required by the town, and federal and state authorities as may be required.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-148. - Building permit.

A building permit for the construction of a new building or the expansion of an existing building shall not be issued until such time as a zoning permit has been issued or a written determination is made that one is not required.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-149—36-160. - Reserved.

DIVISION 2. - NOTICE REQUIREMENTS

Sec. 36-161. - Generally.



The type of notice that is given for each of the various procedures outlined in this article is dictated by the nature of the decision. Administrative decisions, such as a zoning permit, involve very little discretion. Either the proposed development meets the standards in this chapter or it does not. In contrast, there are other decisions that involve more discretion and judgment based on particular circumstances. The review of a conditional use application, for example, involves discretion on the part of those involved in making recommendations and a final determination whether the application should be approved or not. As a general rule, notice for an application is not given for administrative decisions. More notice is given when a proposed action could potentially affect other parties, including nearby property owners, other governmental bodies, and the general public. This division outlines when notice is to be given and the nature of the notice when it is required.

(Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-162. - When notice is required.

Notice shall be provided as shown in exhibit 4-1.

Exhibit 4-1. Notice

Division in Article V	Type of Action	Public Notice [1]		Property Owner Notice [2]	Distribution List Notice [3]	Meeting Agenda [4]
		Class 1	Class 2			
1.	Code amendment—map amendment—landowner initiated	-	X [5]	X	X	X
1.	Code amendment—map amendment—town initiated	-	X [5]	-	X	X
1.	Code amendment—text amendment	-	X [5]	-	X	X
2.	Zoning map amendment due to annexation	-	-	-	-	X
3.	Planned unit development	-	X	X	-	X
4.	Conditional use	-	X	X	-	X
5.	Wireless telecommunication facility	-	X	X	-	X
6.	Special use permit for specified livestock operations	-	-	[6]	-	X
7.	Determination of unsafe conditions	-	X	X	-	X
8.	Termination of approval	-	X	X	-	X
9.	Conversion of a nonconforming use	-	X	X	-	X
10.	Reserved					
11.	Special exception	-	-	-	-	X
12.	Variance	-	X	X	-	X
13.	Administrative appeal	-	X	-	-	X
14.	Zoning permit	-	-	-	-	-
15.	Reserved					
16.	Building, site, and operation plan	-	-	-	-	X
17.	Rural accessory structure determination	-	-	-	-	X

18.	Registration of a nonconforming use	-	-	X	-	X
19.	Code interpretation	-	-	-	-	X
20.	Reserved					
21.	Expansion of a nonconforming structure	-	-	-	-	X
22.	Change of topography	-	X	X	-	X

Key: An "X" means that the indicated notice is required; a dash "-" means that the indicated notice is not required.

Notes:

1. See [section 36-165](#) for more details.
2. See [section 36-166](#) for more details.
3. See [section 36-167](#) for more details.
4. See [section 36-168](#) for more details.
5. If the proposed amendment would have the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the amendment or a description of the property affected by the amendment and a statement that a map may be obtained from the town clerk.
6. Special requirements apply. See the procedural requirements in division 6 of article V.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

Sec. 36-163. - Content of required notice.

Notices shall include the information listed in Exhibit 4-2.

**Exhibit 4-2. Content of Notice**

	Public Notice	Property Owner Notice	Distribution List Notice
Applicant name	X	X	X
Subject property address or other description by which the public can locate the subject property	X	X	X
Nature of the application	X	X	X
A description of the proposed project	X	X	X
Name of body or official who will consider the application	X	X	X
Date, time and location of the public hearing	X	X	X
Location where the public can view the application	X	X	X
The criteria that will be used to evaluate the proposal	-	X	-
General location map (or available from the town clerk during normal office hours)	-	X	-

Key: An "X" means that the indicated information is required; a dash "-" means that the indicated information is not required

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

## Sec. 36-164. - Cost to provide notice.

The town shall pay the costs related to the provision of notice required under this division, unless otherwise specified by the town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-165. - Public notice.

When required, the official responsible for processing the application shall place public notice in the official newspaper consistent with the following provisions:

- (1) *Time requirements.* A class 1 notice shall be published one time at least seven days before the meeting or hearing. A class 2 notice shall be published once each week for two consecutive weeks, the last one occurring at least seven days before the meeting or hearing.
- (2) *Content.* The notice shall include the information listed in exhibit 4-2.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. §§ 985.01(1m), 985.07

## Sec. 36-166. - Property owner notice.

(a) *Generally.* When required, the zoning administrator shall mail a notice to property owners within 300 feet of the subject property involved in the application consistent with the following provisions:

- (1) *Time requirements.* The notice shall be mailed by regular mail at least ten business days prior to the date of the meeting at which the matter will be considered.
- (2) *Content.* The notice shall include the information listed in exhibit 4-2.

If an outlot or other open lands in a platted subdivision, which is owned by all owners in the subdivision, a corporate entity, the original developer, the town, or otherwise, is located within 300 feet of the subject property, the mailing shall also be sent to all of the owners of land in the subdivision.

- (b) *Source of names and addresses.* The names and addresses of property owners shall be deemed to be those listed on the tax records maintained by Waukesha County.
- (c) *Failure to receive notice.* The failure of a person to receive notice as described in this section shall not invalidate or otherwise have any effect upon a public hearing or other action taken on the application.
- (d) *Additional notice.* When the applicant also owns the land adjoining the subject property involved in the application, the administrator shall mail a notice to those property owners within 300 feet of such property.
- (e) *Affidavit of mailing.* The person sending the notices shall prepare an affidavit of mailing to certify that notice was provided as described in this section.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-167. - Distribution list notice.

- (a) *Establishment of distribution list.* The town clerk shall maintain a list of persons who submit a written request to receive notice of any proposed regulation or amendment thereof that may affect the allowable use of the person's property.
- (b) *When notice is required.* The body conducting the public hearing shall send a notice, which contains a copy of the proposed regulation or amendment, to each person on the distribution list whose property, the allowable use of which may be affected by the proposed regulation or amendment.
- (c) *Method of distribution of notices.* The notice shall be by mail or in any reasonable form that is agreed to by the person and the town clerk.
- (d) *Establishment of charges.* The town board may from time to time adopt a resolution establishing a processing fee that shall be charged to each person on the list who is sent a notice. The amount of such fee shall not exceed the approximate cost of providing the notice to the person.
- (e) *Effect of failure to send notice.* An ordinance or amendment shall take effect if the body conducting the meeting fails to send the notice as required by this section.
- (f) *Affidavit of mailing.* The person sending the notices shall prepare an affidavit of mailing to certify that notice was provided as described in this section.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(7)(d)(4).

## Sec. 36-168. - Meeting agenda notice.

When required, the body responsible for acting on the application shall place the item on its meeting agenda.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-169. - Affidavit of mailing.

An affidavit of mailing provides documentary evidence that a mailing as required in this chapter was mailed. An affidavit of mailing shall be kept as a public record.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-170—36-180. - Reserved.

### DIVISION 3. - PUBLIC HEARINGS

Sec. 36-181. - Legislative findings.

The town board makes the following legislative findings relating to public hearings:

- (1) Public hearings should be conducted in an orderly, timely, and efficient manner.
- (2) Public input is important and should be encouraged.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-182. - General requirements.

- (a) *Meetings to be public.* All public hearings shall be conducted in the town hall or in such other public place as may be selected by the body conducting the hearing.
- (b) *Notice of meetings.* Notice of a public hearing shall be given as provided for in division 2 of this article.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-183. - General procedure.

The presiding officer conducting the public hearing may follow the following procedure listed in this section as a general guideline. For matters of little complexity or controversy, the presiding officer may adjust the procedures as appropriate.

- (1) Announce the purpose and subject of the public hearing.
- (2) Determine whether public notice as required by this chapter has been provided. If notice has not been provided, the hearing shall be postponed until such time as proper notice has been provided.
- (3) Ask if any member of the body conducting the public hearing has a conflict of interest in regard to the matter being discussed and excuse those who do.
- (4) Ask if any member of the body conducting the public hearing believes another member has a conflict of interest in regard to the matter being discussed. If so, and following a discussion of the alleged conflict of interest, the members (except the member with the alleged conflict) shall determine by vote whether a reasonable person may conclude that the member has a conflict of interest and should be removed from the pending decision.
- (5) Ask the applicant to describe the proposal.
- (6) Ask the staff to present a staff report, if required.
- (7) Allow members of the body conducting the public hearing to direct questions to the applicant and staff, if present.
- (8) Ask for statements from the public.
- (9) Read aloud written comments which were submitted when the individual submitting the comments is not in attendance.
- (10) Call for discussion of the members of the body conducting the public hearing during which time they may ask questions of a member of the public, the applicant, and the staff, if present.
- (11) Ask the applicant if he or she wishes to:
  - a. Respond to any comment made by an individual during the proceeding;
  - b. Submit additional information;
  - c. Amend the application; or
  - d. Request a continuance.
- (12) Announce that the body shall not accept any additional comment from the applicant or any member of the public once the public hearing is closed.
- (13) Ask for a motion and second to close the public hearing.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-184. - Continuances.

- (a) *Prior to start of public hearing.* In the event the applicant or the applicant's agent is not present for the public hearing, the body conducting the public hearing may authorize a continuance.
- (b) *During a public hearing.* Prior to the close of the public hearing, the applicant may request a continuance and the body conducting the public hearing may agree to the continuance upon a showing of good cause. Likewise, the body conducting the public hearing may ask the applicant for a continuance, but the applicant is not required to grant such request. If the applicant does not grant a continuance, the body shall act on the information at its disposal.
- (c) *Effect.* A continuance stops the time clock for making a decision.
- (d) *Notice requirements.* A public hearing may be continued to a later date without again providing public notice, provided the location, date, time for the continued hearing are announced at the time of the continuance.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-185. - Public comment.

- (a) *Time limitations on public comment.* The presiding officer may impose a time limit on members of the public who wish to address the body conducting the public hearing to assure completion of the agenda in a timely manner. Under no circumstance shall such time limit be less than three minutes.
- (b) *Written comment.* Prior to the close of the public hearing, members of the public may submit written comments to the body conducting the public hearing. Such documents shall be retained and made part of the public record for the proceeding.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-186—36-190. - Reserved.

DIVISION 4. - SITE VISITS

Sec. 36-191. - Authorization.

The zoning board of appeals, plan commission, and town board may conduct a site visit to inspect a property as it relates to a pending development application.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-192. - Open meeting requirements.

A site visit is a public meeting and must comply with Wisconsin's open meeting requirements and the requirements of the Americans with Disabilities Act (ADA).

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-193. - Rules of conduct.

- (a) *Participation.* To ensure everyone hears what is being said during a site visit, participants should stay together as they tour the subject property.
- (b) *Comments.* No recommendations can be offered, and no decisions can be made during a site visit.
- (c) *Quorum required.* A site visit must be attended by a quorum of the review authority.
- (d) *Overview of site visit.* When the review authority reconvenes their meeting or public hearing, the presiding officer should initiate a discussion of the members to document the major points that were discussed and/or observations made on the site visit.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-194. - Site visit during a public hearing.

If a site visit is conducted as part of a public hearing, discussion is strictly limited to points of clarification, such as:

- (1) The location of features (e.g., property boundary lines),
- (2) Placement of proposed improvements,
- (3) Features to be retained or removed as part of the proposed project, and the like.

The merits of the proposal must not be discussed during the site visit.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-195. - Site visit not part of a public hearing.

If a site visit is not part of a public hearing, the petitioner and plan commission members may engage in a general discussion related to the pending application. Such discussion should however be limited to what is observed during the tour as it relates to the proposed project.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-196—36-200. - Reserved.

#### DIVISION 5. - FINANCIAL GUARANTEES

Sec. 36-201. - Performance bond.

For the purposes of this chapter, a performance bond is not an acceptable financial guarantee.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-202. - Letter of credit.

- (a) *Form.* The letter of credit shall be irrevocable and shall be in a form acceptable to the town attorney.
- (b) *Amount.* The amount of the letter of credit shall conform to the amount established in this chapter. If an amount is not specified in this chapter, the town board shall establish the amount.
- (c) *Acceptance required.* A letter of credit is not accepted by the town until formal action by the town board upon the recommendation of the town attorney.
- (d) *Minimum requirements for issuer.* The bank, savings and loan, or other financial institution issuing the letter of credit must be authorized to do business in the state of Wisconsin and have a financial standing acceptable to the town attorney.
- (e) *Obligation of private party.* The provision of a letter of credit shall not remove the burden of performing the work the letter of credit is intended to guarantee.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-203. - Cash deposit.

- (a) *Generally.* If a cash deposit is provided under this chapter, the town is not obligated to pay interest thereon. Any such cash deposit shall remain in the custody of the town treasurer.
- (b) *Amount.* The amount of the cash deposit shall conform to the amount established in this chapter. If an amount is not specified in this chapter, the town board shall establish the amount.
- (c) *Acceptance required.* A cash bond is not accepted by the town until formal action by the town board.
- (d) *Obligation of private party.* The provision of a cash deposit shall not remove the burden of performing the work the cash deposit is intended to guarantee.
- (e) *Administrative fee.* When a cash deposit is offered as a financial guarantee, the town may charge a fee for the additional work required of the town clerk and town treasurer to monitor and handle the cash deposit. The amount of such fee shall be set by the town board from time-to-time by resolution.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-204. - Insufficient funds.

If the town exercises its right to use a financial guarantee and the cost of performing the authorized work exceeds the amount of the financial guarantee, the town shall send a bill to the property owner for the outstanding balance. If the property owner does not pay such costs within 30 days after billing, such costs shall constitute a special charge under Wis. Stats. § 66.0627, or as otherwise authorized by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-205—36-220. - Reserved.

#### ARTICLE V. - SPECIFIC PROCEDURAL REQUIREMENTS

##### DIVISION 1. - CODE AMENDMENT

Sec. 36-221. - Generally.

From time to time, it may be necessary or desirable to amend the text of this chapter and the zoning map as established in division 2 of article VI. This division describes the procedures and requirements to amend this chapter and the zoning map.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-222. - Initiation.

Any of the following may submit an application to amend the text of this chapter or the zoning map as established in division 2 of article VI:

- (1) A property owner in the area to be affected by the proposed amendment;
- (2) The zoning administrator;
- (3) The plan commission; and
- (4) The town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-223. - Review procedure.

The general steps outlined below shall be used to amend the text of this chapter and the zoning map.

- (1) *Submittal of application materials.* The applicant shall submit a complete application to the zoning administrator along with the application fee as may be established by the town board.
- (2) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (3) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (4) *Special notice to airport.* If the application is for any change in an airport affected area, as defined in Wis. Stats. § 62.23(6)(am)1.b., the zoning administrator mails a copy of the notice by regular mail to the owner or operator of the airport bordered by the airport affected area.
- (5) *Special notice to county supervisor.* If the application would revise the town's zoning map, the zoning administrator sends one copy of the application to each county supervisor whose district would be affected by a revision to the zoning map.
- (6) *General notice by type of application.* If a proposed amendment would revise the text of this chapter, the zoning administrator provides for class 2 public notice, distribution list notice, and meeting agenda notice consistent with division 2 of article IV. If a proposed amendment would revise the zoning map and is initiated by a property owner, the zoning administrator provides for class 2 public notice, property owner notice, distribution list notice, and meeting agenda notice consistent with division 2 of article IV. If a proposed amendment would revise the zoning map and is initiated by the town, the zoning administrator provides for class 2 public notice, distribution list notice, and meeting agenda notice consistent with division 2 of article IV.
- (7) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and town board, the applicant, and any other interested person upon request.
- (8) *Joint public hearing.* Allowing for proper notice, the plan commission and the town board conduct a joint public hearing to review the application consistent with division 3 of article IV. Prior to the close of the public hearing, the applicant, the plan commission, or the town board may request a continuance consistent with division 3 of article IV. The plan commission shall not render its recommendation at this meeting, unless the plan commission, by majority vote, determines that preparation of an updated staff report is not needed.
- (9) *Recommendation.* At a subsequent meeting of the plan commission, but no more than 60 days after the public hearing, the plan commission, after considering the comments and the staff report, if any, makes a recommendation to the town board based on the decision criteria listed in this division to:
  - a. Approve the amendment;
  - b. Approve the amendment with conditions; or
  - c. Deny the amendment.
- (10) *Transmittal of recommendation.* If the plan commission action is favorable, the zoning administrator drafts an ordinance effectuating its determination. If the plan commission action is not favorable, the plan commission reports its determination to the town board including its reasons for denial.
- (11) *Decision.* After considering the plan commission's recommendation, the town board makes a decision based on the decision criteria listed in this division to:
  - a. Approve the amendment;
  - b. Approve the amendment with conditions; or
  - c. Deny the amendment.

(12)

*Required vote with downzoning.* An amendment must be approved by at least two-thirds of the members-elect if the amendment would decrease the development density of the land to be less dense than was allowed under its previous usage or that would reduce the number of permitted uses of the land to fewer uses than were allowed under its previous usage. If the person who owns the land affected by the amendment agrees to the amendment, the ordinance may be enacted by a simple majority of the members-elect.

- (13) *Required vote with protest of airport.* If a proposed amendment would make any change in an airport affected area, as defined under Wis. Stats. § 62.23(6)(am)1.b., and the owner or operator of the airport bordered by the airport affected area files a protest against the proposed amendment, no ordinance which makes such change may be approved except by the affirmative vote of two-thirds of the members of the town board present and voting.
- (14) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the town board.
- (15) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator mails the decision notice to the applicant by regular mail.
- (16) *County notification.* If the town board approves the amendment, the town clerk, within a reasonable time following the town board's decision, sends three copies of the decision notice to the county clerk for approval of the county board.
- (17) *Preparation of new zoning map.* The zoning administrator prepares a new zoning map to be prepared consistent with division 2 of article VI, if the amendment involves a change to the zoning map and the county board approves the amendment.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference—** Wis. Stats. §§ 62.23(7)(d), 66.10015(3), 62.23(7)(d)(2m)(b).

Sec. 36-224. - Effective date of adopted ordinance.

An adopted ordinance shall take effect only after the county board approves the amendment or on the date specified in the ordinance, if any, whichever is later.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-225. - Basis of decision.

- (a) *Text amendment.* If a proposed amendment would revise the text of this chapter, the plan commission in making its recommendation and the town board in making its decision shall consider the following factors:
  - (1) Whether the amendment is consistent with the town's comprehensive plan;
  - (2) Whether the amendment is consistent with other planning documents adopted by the town board;
  - (3) Whether the code with the amendment is internally consistent;
  - (4) Whether the amendment is the least restrictive approach to address issues of public health, safety, and welfare;
  - (5) The extent to which the text amendment will likely increase or decrease the number of nonconforming uses and structures;
  - (6) Whether the proposed amendment is needed to comply with a new or revised state or federal law; and
  - (7) Any other factor not specifically or generally listed, but deemed appropriate by the plan commission or board given the particular circumstances.
- (b) *Zoning map amendment.* If a proposed amendment would revise the zoning map, the plan commission in making its recommendation and the town board in making its decision shall consider the following factors:
  - (1) Whether the amendment is consistent with the town's comprehensive plan, including any future land use maps or similar maps;
  - (2) Whether the amendment is consistent with other planning documents adopted by the town board;
  - (3) The extent to which the amendment will likely increase or decrease the number of nonconforming uses and structures; and
  - (4) Any other factor not specifically or generally listed, but deemed appropriate by the plan commission or board given the particular circumstances.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-226. - Imposition of conditions.

- (a) *Generally.* The plan commission may recommend and the town board may impose one or more conditions of approval as may be necessary to grant approval.
- (b) *Mandatory conditions of approval relating to certain existing land uses.* If a proposed amendment would revise the zoning map and is initiated by a property owner and the subject property hosts a land use that at the time of application is not permitted in the proposed zoning district, such use shall be removed as a condition of approval. If the subject property hosts a land use that at the time of application is classified as a conditional use in the proposed zoning district, the property owner shall as a condition of approval submit a conditional use application and obtain approval for that land use or, if conditional use approval is not granted, remove such use.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)



## Sec. 36-227. - Application content.

(a) *Landowner-initiated map amendment.* An application for a landowner-initiated zoning map amendment shall include the following:

- (1) An application form as used by the town;
- (2) A project map prepared at an appropriate scale depicting the information listed in appendix f; and
- (3) Other supporting information the applicant deems appropriate.

(b) *Other amendments.* For all other types of amendments, the application shall include the following:

- (1) An application form as used by the town, and
- (2) Other supporting information the applicant deems appropriate.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-228. - Staff report content.

The staff report should include the following:

- (1) Information related to the decision criteria listed in this division;
- (2) Proposed revisions, if appropriate; and
- (3) Other information deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-229. - Appeal.

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Secs. 36-230—36-240. - Reserved.

## DIVISION 2. - ZONING MAP AMENDMENT DUE TO ANNEXATION

## Sec. 36-241. - Generally.

From time to time, cities and villages adjoining the town may annex lands. This division describes the procedures and requirements to amend the zoning map following an annexation.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-242. - Initiation.

Following the approval of an ordinance annexing land into a city or village, any of the following may initiate the process to amend the zoning map as described in this division:

- (1) The person owning the annexed land;
- (2) The municipality that annexed the subject property;
- (3) The zoning administrator;
- (4) The plan commission; and
- (5) The town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-243. - Review procedure.

The general steps outlined below shall be used to amend the zoning map following an annexation.

- (1) *Preparation of draft ordinance.* The zoning administrator shall prepare a draft ordinance that if adopted would remove the annexed lands from the town's zoning map.
- (2) *Schedule date of review.* The town board shall schedule the date the board will review the draft ordinance and take action on the same.
- (3) *General notice.* Notice for this review shall consist of meeting agenda notice.
- (4) *Town board meeting.* Allowing for proper notice, the town board shall review the draft ordinance at a regular or special meeting.

(5) *Decision.* The town board shall make a decision based on the decision criteria listed in this division to remove the annexed lands from the town's zoning map or not remove the annexed lands from the town's zoning map. The town board may render its decision at the same meeting the matter was initially considered or at a subsequent meeting.

(6) *Preparation of new zoning map.* If the town board adopts an ordinance removing annexed lands from the town's zoning map, the zoning administrator shall cause a new zoning map to be prepared consistent with division 2 of article VI.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-244. - Basis of decision.

The town board in making its decision shall determine whether a city or village has annexed the subject property. Such determination does not constitute a legal determination, but merely reflects the city's or village's action.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-245. - Appeal.

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the date of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-246—36-250. - Reserved.

### DIVISION 3. - PLANNED DEVELOPMENT DISTRICT

Sec. 36-251. - Generally.

A planned development district is a zoning district that allows for more flexibility in the development of land while ensuring compliance with the basic intent of this chapter and the town's comprehensive plan. As set forth in article VIII, there are two different types of planned development districts (conventional planned development district and conservation subdivision design).

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-252. - Initiation.

The owner of the subject property may submit an application for the establishment of a planned development district.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-253. - Where allowed.

A planned development district is allowed in any zoning district as set forth in article VIII.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-254. - Ownership.

At the time of establishment, all land within a planned development district shall be under single ownership or control.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-255. - Minimum size.

A planned development district at the time of approval shall contain at least 20 acres.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-256. - Development agreement.

Depending on the nature of the planned development district, the developer and town shall enter into a development agreement that specifies the duties and obligations of both parties with respect to the development project.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-257. - Allowable uses.

- (a) *Generally.* Land uses allowed in the underlying (i.e., original) zoning district(s) may be allowed in a planned development district as specified in a general development plan, except as provided below.
- (b) *Exceptions.* When the underlying (i.e., original) zoning district is a residential or business district, a combination of residential, recreational, and/or business uses may be allowed.
- (c) *Prohibited development.* No buildings are allowed in the C-1 district.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-258. - Review procedure.

Establishment of a planned development district involves a two-step process. The review of a proposed project begins with a general development plan. If the general development plan is approved, a precise implementation plan for all or a part of the project is reviewed. If the precise implementation plan is approved, the project is officially approved. The general steps outlined below shall be used in the review of an application for the establishment of a planned development district.

*Step one—General development plan.*

- (1) *Pre-submittal meeting with zoning administrator.* The applicant or the applicant's agent meets with the zoning administrator to review (i) applicable regulations and procedures, (ii) applicable sections of the town's comprehensive plan, and (iii) the proposal. Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the town's zoning requirements.
- (2) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (3) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (4) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (5) *General notice.* Consistent with division 2 of article IV, the zoning administrator shall provide for class 2 public notice, property owner notice, and meeting agenda notice.
- (6) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and town board, the applicant, and any other interested person upon request.
- (7) *Joint public hearing.* Allowing for proper notice, the plan commission and the town board shall conduct a joint public hearing to review the application consistent with division 3 of article IV. Prior to the close of the public hearing, the applicant, the plan commission, or the town board may request a continuance consistent with division 3 of article IV. If the public hearing is adjourned, the plan commission may direct the zoning administrator, the town engineer, and/or town attorney to conduct additional research related to the proposed district and to prepare such documents it deems necessary, including a preliminary decision document.
- (8) *Staff follow-up.* After the close of the public hearing, the plan commission may direct the zoning administrator, town engineer, and/or the town attorney to prepare a preliminary decision document.
- (9) *Recommendation.* At a subsequent meeting of the plan commission, but no more than 60 days after the public hearing, the plan commission shall make a recommendation to the town board based on the decision criteria listed in this division to (i) approve the general development plan, subject to approval of a precise implementation plan; (ii) approve the general development plan with conditions, subject to approval of a precise implementation plan; or (iii) deny the general development plan.
- (10) *Decision.* After considering the plan commission's recommendation, the town board shall make a decision based on the decision criteria listed in this division to (i) approve the general development plan, subject to approval of a precise implementation plan; (ii) approve the general development plan with conditions, subject to approval of a precise implementation plan; or (iii) deny the general development plan.
- (11) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator shall prepare a decision notice consistent with this division.
- (12) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator shall mail the decision notice to the applicant by regular mail.
- (13) *Acceptance by property owner required if approved.* The property owner must sign the decision notice to acknowledge the terms of the approval and return the same to the zoning administrator within two months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which

the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The decision notice shall only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.

*Step two—Precise implementation plan.*

- (1) *Submittal of precise implementation plan.* The applicant shall submit a precise implementation plan and other required materials to the zoning administrator along with the application fee as may be established by the town board. At the discretion of the applicant, such materials may be submitted concurrently with the review of the general development plan.
- (2) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
- (3) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (4) *General notice.* Consistent with division 2 of article IV, the zoning administrator shall provide for a meeting agenda notice.
- (5) *Staff report preparation and distribution.* The zoning administrator may prepare a staff report that evaluates whether the precise implementation plan is consistent with the approved general development plan and the suitability of the proposed plan given the additional information provided in the plan and supplemental materials. The zoning administrator shall provide a copy of it to each member of the plan commission and town board, the applicant, and any other interested person upon request.
- (6) *Joint meeting.* Allowing for proper notice, the plan commission and the town board shall jointly review the precise implementation plan and the staff report, if any.
- (7) *Determination of consistency.* The plan commission shall determine whether the precise implementation plan is generally consistent with the approved general development plan with respect to density/intensity and permissible land uses. If the plan commission determines that the precise implementation plan is not generally consistent, the plan commission shall render that decision in writing and take no further action on the precise implementation plan.
- (8) *Recommendation.* If the precise implementation plan is deemed to be consistent, the plan commission shall make a recommendation to the town board based on the decision criteria listed in this division to (i) approve the precise implementation plan, (ii) approve the precise implementation plan with conditions, or (iii) deny the precise implementation plan.
- (9) *Decision.* After considering the plan commission's recommendation, the town board shall make a decision based on the decision criteria listed in this division to (i) approve the precise implementation plan, (ii) approve the precise implementation plan with conditions, or (iii) deny the precise implementation plan.
- (10) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator shall prepare a decision notice consistent with this division.
- (11) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator shall mail the decision notice to the applicant by regular mail.
- (12) *Acceptance by property owner required if approved.* The property owner must sign the decision notice to acknowledge the terms of the approval and return the same to the zoning administrator within two months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The decision notice shall only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

Sec. 36-259. - Imposition of conditions.

- (a) *Generally.* The plan commission may recommend and the town board may impose conditions as may be necessary to grant approval. Such conditions may relate to any of the factors it considered in reaching its decision. In addition, the plan commission may recommend and the town board may require the provision of off-site exactions that may be necessary to approve the establishment of the planned development district project.
- (b) *Effect on contracts with another party.* The town board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

**State Law reference—** Wis. Stats. § 62.23(7)(gm). The town, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

Sec. 36-260. - Application form and content.

- (a) *General development plan.* The application submittal for a general development plan shall include the following:
- (1) An application form as used by the town;
  - (2) A general development plan prepared at an appropriate scale depicting the information listed in appendix F;
  - (3) A preliminary draft of covenants if any are to be imposed; and
  - (4) A development schedule, if the project is to be constructed in phases, which includes the anticipated beginning date and ending date of each phase and a description of those project-related elements to be completed in each phase.
- (b) *Precise implementation plan.* The application submittal for a precise implementation plan shall include the following:
- (1) An application form as used by the town;
  - (2) A precise implementation plan prepared at an appropriate scale depicting the information listed in appendix F;
  - (3) A final draft of covenants if any are to be imposed;
  - (4) Homeowners association documents, if required;
  - (5) A development agreement, if required; and
  - (6) A development schedule, if the project is to be constructed in phases, which includes the anticipated beginning date and ending date of each phase and a description of those project-related elements to be completed in each phase.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-261. - Staff report content.

The staff report should include the following:

- (1) Information related to the decision criteria listed in this division;
- (2) A preliminary list of recommended conditions of approval; and
- (3) Other information deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-262. - Effect of approval.

If the town approves a planned development district, the approval shall run with the land and is binding on all subsequent property owners.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-263. - Effect of approved planned development district on land division standards.

Development in a planned development district is subject to the town's land division regulations to the extent applicable, except that the plan commission/town board may waive a development standard in the land division regulations as provided therein.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-264. - Review of actual development within an approved planned development district.

If the town approves a planned development district, proposed development in the district is reviewed consistent with the requirements of this article as may apply (e.g., building, site plan, and plan of operation).

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-265. - Amendment of an approved planned development district.

If the town approves a planned development district, the plan commission and town board shall review all proposed changes to the project plan that was approved at the time of approval. If in the opinion of the town board, the proposed change constitutes a minor alteration, the town board may approve the requested change at a regular or special meeting of the town board. If the proposed change constitutes a major alteration, the review procedure in this division must be followed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-266. - Revocation or modification of a prior approval.

Following a public hearing, the town board may revoke or modify an approval issued pursuant to this division if it is determined that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval which were or were not imposed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-267. - Expiration of approval.

If any area of a planned development district that can be developed remains substantially undeveloped and/or unplatted three years after final approval, the town board shall have the authority to unilaterally rescind the approval, in whole or in part, following a public hearing. Upon written petition and with good cause, the town board may grant an extension. In the event the town board rescinds an approval, the town board shall at that time reclassify undeveloped lands in the district based on the zoning regulations in effect at that time. Developed portions of the planned development district may either be allowed to retain the planned development district designation or reclassified based on the zoning regulations in effect at that time.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-268. - Appeal.

An aggrieved person may appeal the final decision of the town board to a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-269—36-280. - Reserved.

#### DIVISION 4. - CONDITIONAL USE

Sec. 36-281. - Generally.

Although each zoning district is primarily intended for a predominant type of land use, there are a number of uses that may be appropriate under certain conditions. These are referred to as conditional uses and are addressed in division 3 of article VI. This division describes the requirements and procedures for reviewing an application to establish a conditional use, renew an existing conditional use, if so required; and amend an existing conditional use.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-282. - Initiation.

The owner of the subject property may submit an application for the establishment of a conditional use.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-283. - Applicability and restrictions.

- (a) *General applicability.* Those land uses designated as a conditional use in the land-use matrix (appendix A) must comply with the requirements in this article, along with other sections of this chapter as applicable.
- (b) *Conditional uses on a nonconforming lot.* In the event a lot is classified as a nonconforming lot (e.g., lot area, lot width), all conditional uses are prohibited, unless the plan commission determines, on a case-by-case basis, that the nature of the nonconformity does not affect the appropriateness of the lot for the conditional use. Any such determination in the affirmative shall have no bearing on the plan commission's recommendation or the town board's decision made under this division.
- (c) *Conditional uses on a lot with a nonconforming use.* In the event a lot has a nonconforming use all conditional uses are prohibited, unless the plan commission determines, on a case-by-case basis, that the nonconforming use and proposed conditional use are compatible. Any such determination in the affirmative shall have no bearing on the plan commission's recommendation or the town board's decision made under this division.
- (d) *Conditional uses on a lot with an existing conditional use.* In the event a lot has an approved conditional, all conditional uses are prohibited, unless the plan commission determines, on a case-by basis, that the existing and proposed conditional uses are compatible. Any such determination in the affirmative shall have no bearing on the plan commission's recommendation or the town board's decision made under this division.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-284. - Review procedure.

The general steps outlined below shall be used in the review of an application for a conditional use.

- (1) *Pre-submittal meeting.* Before submitting an application, the applicant or the applicant's agent shall meet with the zoning administrator to review applicable regulations and procedures and the proposal. Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the town's zoning requirements.

(2)

*Submittal of application materials.* The applicant shall submit a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.

- (3) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (4) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission and town board consistent with its meeting calendar and allowing for proper notice.
- (5) *General notice.* Consistent with division 2 of article IV, the zoning administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
- (6) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and town board, the applicant, and any other interested person upon request.
- (7) *Joint public hearing.* Allowing for proper notice, the plan commission and town board will conduct a joint public hearing to review the application and to hear from the applicant, town staff, and the public on the application's compliance with the standards of the code. The applicant and each interested person will be given the opportunity to present substantial evidence to rebut or offer countervailing evidence. The purpose of the hearing is to gather the record, for the petitioner to prove with substantial evidence they meet the standards of the code or the public to prove they don't and to address concerns from the public and/or plan commission/town board. At the summation of the public hearing (i.e., not the close of the public hearing) the plan commission/town board may give the following direction to the petitioner and to the public:
  - a. The remaining questions/standards that need to be proved/responded to.
  - b. Additional conditions to include in the conditional use order that the plan commission and/or town board deems appropriate. The petitioner will need to prove they can meet those at the adjourned public hearing date.

In addition, the plan commission may direct staff to prepare a draft conditional use order authorizing the conditional use. Such draft is intended to form the basis for the ongoing review of the conditional use and in no way binds the plan commission/town board in making their recommendation or decision.

- (8) *Adjourned public hearing.* At the adjourned public hearing date if the public hearing was extended for additional evidence collection, the plan commission will hear from the applicant, town staff, and the public on evidence in support or opposition to items from (7)a. and (7)b. above and to the conditional use order itself if one was prepared. The purpose of the hearing is to gather the record on any additional standards imposed by the plan commission/town board from the first public hearing and to gather evidence on the conditional use order itself, if one was prepared. At the summation of the public hearing the plan commission will give direction requesting additional evidence and adjourn the public hearing to a date certain or close the public hearing.
- (9) *Recommendation.* After the public hearing has been closed, the plan commission will make a recommendation to the town board for approval or denial. The recommendation shall state the terms of the approval or reasons for denial as set forth in a draft conditional use order. The burden of proof is on the applicant to prove they have met the standards of the chapter and those set forth by the plan commission/town board during the process.
- (10) *Town board meeting.* Allowing for proper notice, the town board considers the application at a regular or special meeting.
- (11) *Decision.* After considering all of the information submitted by the applicant, public comments received at the public hearing, the staff report, if any, the plan commission's recommendation, the town board makes a decision based on the decision criteria listed in this division to (i) approve the conditional use, (ii) approve the conditional use with conditions, or (iii) deny the conditional use.
- (12) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator will provide the decision notice to the applicant by regular mail and/or email.
- (13) *Acceptance by property owner required if approved.* If the application is approved, the property owner must sign the conditional use order to acknowledge the terms of the approval and return the same to the zoning administrator within six months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the zoning administrator may, with cause, extend the period within which the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The decision notice shall only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.
- (14) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.
- (15) *Recording of decision notice.* If the application is approved and the property owner signs the decision notice within the time periods established above, the town clerk or the zoning administrator will record such document in the county register of deeds office.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-285. - Basis of decision.

The plan commission in making its recommendation and the town board in making its final decision shall consider whether the proposal complies with (i) each of the special conditions of approval set forth in section 36-286, (ii) each of the performance standards set forth in article VI, (iii) each of the development standards prescribed for the requested conditional use set forth in appendix B, (iv) all other applicable sections of the zoning code, and (v) all other applicable sections of the Municipal Code or other adopted ordinance.

In addition, the plan commission in making its recommendation and the town board in making its decision must determine whether the proposed conditional use is compatible with surrounding properties, whether in the same or different zoning districts. In making this determination, the plan commission and town board must determine whether the petitioner has demonstrated there are no adverse effects on surrounding properties or that potentially adverse effects have been eliminated or reduced to an acceptable level. Approaches that could be employed to mitigate potentially adverse effects will depend on the particular circumstances but may include (1) adjusting the location of the use, or parts thereof, on the subject property; (2) limiting hours of operation; (3) limiting the size or scope of the use, or parts thereof; (4) controlling how the use is managed on an on-going basis; (5) providing additional landscaping; (6) providing additional screening; and (7) limiting operations conducted out-of-doors, if otherwise allowed.

The recommendation of the plan commission and the decision by the town board must be based on substantial evidence.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-286. - Imposition of special conditions of approval.

- (a) *Generally.* Based on substantial evidence, the plan commission may recommend and the town board may impose one or more conditions of approval as may be necessary to grant approval. Such conditions and restrictions may relate to the establishment, location, construction, maintenance, operation of the use, off-site impacts, and any other aspect of the use that impacts the public health, safety, or general welfare. Examples of such conditions are listed below.

Issue	Potential Condition
1. Hours of operation	Limit hours of operation to hours to be more compatible with surrounding uses.
2. Buffering	Require more of a buffer than what is otherwise required by this chapter. Buffering may include landscaping, walls or fences, berms, and other features to physically separate adjoining uses.
3. Maximum floor area	Establish a maximum floor area that may be less than what is otherwise allowed.
4. Maximum number of patrons	Limit the size of the use by establishing maximum patron loads, often by seats and/or tables.
5. Uses within buildings	Limit commercial uses to the first floor of a multistory building.
6. Number and/or location of entrances	Design the site and building so that entrances are located in areas away from adjoining properties.
7. Outdoor activity	Restrict locations and/or times of outdoor activity.
8. Outdoor storage	Establish a maximum area for outdoor storage that may be less than what is otherwise allowed.
9. Take-out food service	Prohibit drive-up service windows and/or walk-up service windows in certain areas of the property (e.g., near a residential use). If these are allowed, limitations could be set.
10. Delivery services	Prohibit deliver services that entail frequent trips or establish upper limits on the activity.
11. Signage	Prohibit signage in areas of the property that may cause an impact on surrounding areas.

- (b) *Limitation on imposing conditions.* A condition of approval shall not lessen a development standard or other requirement in this chapter.

(c)



*Effect on contracts with another party.* The town board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference—** Wis. Stats, § 62.23(7)(gm). The town, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

Sec. 36-287. - Reserved.

Sec. 36-288. - Standard terms for an approved conditional use.

The terms and conditions listed below are automatically incorporated into a conditional use order authorizing a use, unless otherwise stated in the conditional use order.

- (1) Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be submitted to the plan commission for determination.
- (2) No use is hereby authorized unless the use is conducted in a lawful, orderly, and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption or exception to any law, ordinance, order or rule of either the municipal governing body, the Waukesha County of, the State of Wisconsin, the United States of America or other duly constituted authority, except only to the extent that it authorizes the use of the subject property above described in any specific respects described herein. This order shall not be deemed to constitute a building permit, nor shall this order constitute any other license or permit required by town ordinance or other law.
- (3) This conditional use hereby authorized shall be confined to the subject property described, without extension or expansion other than as noted herein, and shall not vary from the purposes herein mentioned unless expressly authorized in writing by the plan commission as being in compliance with all pertinent ordinances.
- (4) All buildings and grounds shall be maintained in a neat, attractive and orderly way.
- (5) The property shall comply with all rules and regulations of the town and the local fire department, including submission to routine inspections by the town staff and fire department staff.
- (6) Prior to the execution of the conditional use permit, the applicant must obtain any and all approvals that must be obtained before the use may be established or the commencement of any land-disturbing activity related to the approved conditional use.
- (7) Should the permitted conditional use be abandoned in any manner, or discontinued in use for 12 months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to the town, or should a change in the character of the surrounding area or the use itself cause it to be no longer compatible with the surrounding area or for similar cause based upon consideration of public health, safety or welfare, the conditional use may be terminated by action of the plan commission, pursuant to the enforcement provisions of this conditional use order, and all applicable ordinances.
- (8) Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use, including but not limited to an addition, modification, alteration, and/or amendment to the use, premises, structures, lands or owners, other than as specifically authorized herein, shall require a new permit and all procedures in place at the time must be followed.
- (9) Unless this conditional use order expressly states otherwise, plans that are specifically required by this conditional use order may be amended upon the prior approval of the plan commission if the plan commission finds the plan amendment to be minor and consistent with the conditional use permit. Any change in any plan that the plan commission feels, in its sole discretion, to be substantial shall require a new permit, and all procedures in place at the time must be followed.
- (10) As a condition precedent to the issuance of the conditional use permit, the owner of the subject property shall approve the issuance of this conditional use order upon the terms and conditions described herein in writing, and the petitioner is required to accept the terms and conditions of the same in its entirety in writing.
- (11) Petitioner shall, on demand, reimburse the town for all costs and expenses of any type that the town incurs in connection with this application, including the cost of professional services incurred by the town (including engineering, legal, planning and other consulting fees) for the review and preparation of the necessary documents or attendance at meetings or other related professional services for this application, as well as for any actions the Town is required to take to enforce the conditions in this conditional approval due to a violation of these conditions.
- (12) Any unpaid bills owed to the town by the subject property owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the town; shall be placed upon the tax roll for the subject property if not paid within 30 days of billing by the town, pursuant to Wis. Stats. § 66.0627. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the town, including possible cause for termination of this approval.
- (13) The petitioner is obligated to file with the town clerk a current mailing address and current phone number at which the petitioner can be reached, which must be continually updated by the petitioner if such contact information should change, for the duration of this conditional use. If the petitioner fails to maintain such current contact information, the petitioner thereby automatically waives notice of any proceedings that may be

commenced under this conditional approval, including proceedings to terminate this conditional use.

- (14) Should any paragraph or phrase of this conditional use order be determined by a court to be unlawful, illegal or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the conditional use order and the remainder shall continue in full force and effect.
- (15) If any aspect of this conditional use order or any aspect of any plan contemplated and approved under this conditional use is in conflict with any other aspect of the conditional use or any aspect of any plan of the conditional use, the more restrictive provision shall be controlling as determined by the plan commission.
- (16) If the property owner/operator is a business entity, such as a limited liability company or a corporation, such entity shall for the life of the conditional use continuously maintain a registered office in the state as evidenced by registration with the state department of financial institutions.
- (17) The property owner shall not change the size and/or shape of the subject property by any means without the approval of the town board. If the town board determines that a proposed change is substantial with regard to the overall size of the parcel and/or configuration, such change shall require issuance of a new conditional use approval pursuant to the requirements in effect at the time of application.
- (18) This approval is given under the town's zoning code and is not to be, in any way, interpreted to abrogate any private rights other property owners may have pursuant to deed restrictions or restrictive covenants.
- (19) If this conditional use terminates for any reason, the property owner is obligated to remove any improvements specifically related to the conditional use and which cannot be utilized for an approved use (i.e., a use permitted by right or a different conditional use as approved).

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-289. - Application form and content.

The application submittal shall include an application form as used by the town and a project map depicting the information listed in appendix F.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-290. - Staff report content.

The staff report should include information related to the decision criteria listed in this division and other information deemed appropriate.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-291. - Content of decision notice.

(a) *Approval.* If the application for a conditional use is approved, the decision notice should include the following:

- (1) A statement that the application is approved;
- (2) A description of the conditional use;
- (3) A description of where the conditional use will occur on the subject property;
- (4) Reasons for the decision based on the decision criteria listed in this division;
- (5) A list of conditions of approval that must be satisfied prior to the establishment of the conditional use or complied with during the life of the conditional use, or both;
- (6) A statement indicating that the property owner must sign the decision notice and return it to the zoning administrator to acknowledge acceptance of the same;
- (7) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (8) A statement that an aggrieved person, other than the applicant, may appeal the decision to a court of competent jurisdiction and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (9) A statement indicating the nature of the approval (i.e., personal to the property owner or runs with the land);
- (10) Other information the town board or zoning administrator deems appropriate;
- (11) The signature of the town board chair; and
- (12) The date of the decision.

(b) *Denial.* If the application for a conditional use is denied, the decision notice should include the following:

- (1) A statement that the application is denied;
- (2) A description of the project, including acreage and proposed use characteristics;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration;
- (5) A statement that the decision may be appealed as provided for in this division;
- (6) Other information the town board or zoning administrator deems appropriate;
- (7) The signature of the town board chair; and

(8) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-292. - Effect of approval.

Unless otherwise specified in the conditional use order, approvals are personal to the property owner meaning the approval automatically lapses when the property owner ceases to own the property.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-293. - Term for an approval.

A conditional use order authorizing a conditional use shall generally have five-year terms unless otherwise specified in the conditional use order. The order shall describe an administrative renewal process to allow for streamlined renewal of the conditional use order with a provision that allows the plan commission and/or the town board to remove the conditional use order from automatic renewal if there are concerns with compliance with the conditional use order or concerns raised by the public about the applicant's operations. If the plan commission or the town board pulls the conditional use order from automatic approval the conditional use order shall remain in effect while the plan commission provides due process to the applicant in reviewing the conditional use order and its potential renewal.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-294. - Revocation or modification of a prior approval.

Following a public hearing, the plan commission may revoke or modify an approval issued pursuant to this division if it is determined that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval which were or were not imposed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-295. - Expiration of approval.

- (a) *Non-establishment of use.* If the zoning administrator determines that substantial work as authorized by a conditional use approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to division 8 of this article. Upon written petition and with cause, the zoning administrator may grant a one-time extension not to exceed six months.
- (b) *Cessation of use.* If the zoning administrator determines that a conditional use has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, he or she shall initiate the process to terminate the approval pursuant to division 8 of this article.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-296. - Amendment of an approved conditional use.

Following approval of a conditional use, the plan commission shall review all proposed changes to the approval. If in the opinion of the plan commission, the proposed change constitutes a minor alteration, the plan commission may approve the requested change in writing at a regular or special meeting of the plan commission without following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure in effect at the time of submittal shall be followed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-297. - Violation of a condition of approval.

If a property owner does not comply with the terms of an approval, such action constitutes a violation of this chapter and cause for termination of the approval consistent with division 6 of this article.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-298 - Appeal

An aggrieved person may appeal the final decision of the town board to a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-299—36-300. - Reserved.

DIVISION 5. - WIRELESS TELECOMMUNICATION FACILITY

## Sec. 36-301. - Review procedure.

- (a) *New telecommunication tower and class 1 collocation.* The general steps outlined below shall be used to review an application for a new telecommunication tower and a class 1 collocation as designated in the land-use matrix (appendix A).
- (1) *Submittal of application materials.* The applicant submits a completed application to the zoning administrator along with the application fee as may be established by the town board.
  - (2) *Determination of completeness.* The zoning administrator reviews the application and determines whether the application is complete. If the application includes all of the required information, the application shall be found to be complete. The zoning administrator notifies the applicant in writing within ten days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their application as often as necessary until it is complete. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
  - (3) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
  - (4) *General notice.* Consistent with division 2 of article IV, the zoning administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
  - (5) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report and provide a copy of it to each member of the plan commission and town board, the applicant, and any other interested person upon request.
  - (6) *Public hearing.* Allowing for proper notice, the plan commission conducts a public hearing to review the application consistent with division 2 of article IV. Prior to the close of the public hearing, the applicant or the plan commission may request a continuance consistent with division 3 of article IV.
  - (7) *Staff follow-up.* If the plan commission does not render a decision immediately following the public hearing, the plan commission may direct the zoning administrator to prepare a preliminary decision document.
  - (8) *Recommendation.* After considering all of the information submitted by the applicant, public comments received at the public hearing, and the staff report, if any, the plan commission, no more than 40 calendar days after the public hearing, makes a recommendation to the town board to:
    - a. Approve the application;
    - b. Approve the application with conditions; or
    - c. Deny the application.
  - (9) *Transmittal of recommendation.* If the plan commission action is favorable, the zoning administrator prepares a draft decision document effectuating its determination. If the plan commission action is not favorable, the plan commission reports its determination to the town board including its reasons for denial.
  - (10) *General notice.* Consistent with division 2 of article IV, the zoning administrator places the matter on the meeting agenda of the town board.
  - (11) *Town board meeting.* Allowing for proper notice, the town board considers the application at a regular or special meeting.
  - (12) *Decision.* After considering all of the information submitted by the applicant, public comments received at the public hearing, the staff report, if any, and the plan commission's recommendation, the town board makes a decision to:
    - a. Approve the application;
    - b. Approve the application with conditions; or
    - c. Deny the application.
  - (13) *Preparation of final decision document.* Based on the action of the town board, the zoning administrator prepares a final decision document, subject to the direction provided to the zoning administrator from the town board.
  - (14) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator mails the decision document to the applicant by regular mail. Final action including written notification must be taken within 90 days of the date the application is deemed complete, unless the time is extended by the applicant.
  - (15) *Acceptance by property owner.* If the application is approved, the property owner must sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The applicant shall not proceed until all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
  - (16) *Public record copy.* A duplicate copy of the decision document is retained as a public record.
  - (17) *Recording of decision document.* If the property owner returns the decision document within the required time period with the required signatures, the zoning administrator records the decision document against the subject property in the county register of deeds office.

In the event an applicant believes the town has exceeded its authority as set forth in Wis. Stats. § 66.0404, and other such laws as may apply which may include 47 USCA s. 1455, the applicant shall notify the zoning administrator in writing and the reviewing authority reserves the right to reconsider the matter, to ensure that applicable laws are followed.

- (b) *Class 2 collocation.* The general steps outlined below shall be used to review an application for a class 2 collocation which is allowed in all zoning districts.
- (1) *Submission of application materials.* The applicant submits a completed application to the zoning administrator along with the application fee as may be established by the town board.
  - (2) *Determination of completeness.* The zoning administrator reviews the application and determines whether the application is complete. If the application includes all of the required information, the application shall be found to be complete. The zoning administrator must notify the applicant in writing within five days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their application as often as necessary until it is complete.
  - (3) *Decision.* The zoning administrator makes a decision on the application and notifies the applicant within 45 days of the date the application is deemed complete, unless the time is extended by the applicant. The decision shall be stated in writing. If approval is not granted, the reasons therefor must be stated.
  - (4) *Public record copy.* A duplicate copy of the decision document is retained as a public record.

In the event an applicant believes the town has exceeded its authority as set forth in Wis. Stats. § 66.0404 and other such laws as may apply which may include 47 USCA s. 1455, the applicant shall notify the zoning administrator in writing and the reviewing authority reserves the right to reconsider the matter, to ensure that applicable laws are followed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-302. - Application form.

- (a) *New telecommunication tower and class 1 collocation.* An application form for a new telecommunication tower or a class 1 collocation shall include all of the following information as appropriate:
- (1) The name and business address of, and the contact individual for, the applicant.
  - (2) The location of the proposed tower or affected tower.
  - (3) The location of the proposed mobile service facility.
  - (4) If an application is to substantially modify an existing telecommunication tower, a construction plan which describes the proposed modifications to the tower, and equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
  - (5) If an application is to construct a new telecommunication tower, a construction plan which describes the proposed tower and equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new tower.
  - (6) If an application is to construct a new telecommunication tower, an explanation as to why the applicant chose the proposed location, and why the applicant did not choose collocation, including a sworn statement from the responsible party attesting that collocation within the applicant's service area would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome.
- (b) *Class 2 collocation.* An application form for a class 2 collocation shall include the following information:
- (1) The name and business address of, and the contact individual for, the applicant.
  - (2) The location of the proposed tower or affected tower.
  - (3) The location of the proposed mobile service facility.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-303. - Imposition of conditions.

- (a) *Generally.* The reviewing authority may impose one or more conditions of approval as may be necessary to grant approval. Such conditions may relate to any aspect of the use that impacts the public health, safety, or general welfare, subject to subsection (b) below.
- (b) *Limitations.* The reviewing authority may not impose conditions prohibited by Wis. Stats. § 66.0404(4).

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-304. - Expiration of an approval.

- (a) *Non-establishment of use.* If the zoning administrator determines that substantial work as authorized by the approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to division 8 of this article. Upon written petition and with cause, the zoning administrator may grant a one-time extension not to exceed six months provided:
- (1) The permit holder requests the extension prior to the expiration of the approval;

(2) The permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same; and

(3) The project complies with this chapter in effect at the time the extension is granted.

(b) *Cessation of use.* If the zoning administrator determines that a conditional use has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, he or she shall initiate the process to terminate the approval pursuant to division 8 of this article.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-305. - Amendment of an approval.

Following approval, the plan commission shall review all proposed changes to the approval. If in the opinion of the plan commission, the proposed change constitutes a minor alteration, the plan commission may approve the requested change in writing at a regular or special meeting of the plan commission without following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure in effect at the time of submittal shall be followed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-306—36-320. - Reserved.

#### DIVISION 6. - SPECIAL USE PERMIT FOR SPECIFIED LIVESTOCK OPERATIONS

Sec. 36-321. - Generally.

This division describes the procedural requirements relating to the review of new or expanded livestock operations that will have 500 or more animal units.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-322. - Initiation.

The owner of the subject property may submit an application for the establishment of a livestock operation.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-323. - Review procedure.

The general steps outlined below shall be used in the review of an application for a special use permit for a new or expanded livestock operation.

- (1) *Pre-submittal meeting.* Before submitting an application, the applicant or the applicant's agent may meet with the zoning administrator to review applicable regulations and procedures and the proposed livestock operation.
- (2) *Submittal of application materials.* The applicant submits four copies of the completed application form and worksheets prescribed by Wis. Admin Code § ATCP 51.30, to the zoning administrator along with the application fee as may be established by the town board.
- (3) *Determination of completeness.* Within 45 days of submittal, the zoning administrator determines whether the application is complete or incomplete. If the zoning administrator determines that the application is incomplete, he or she sends the applicant a written notice that describes the reason or reasons why the application is incomplete. If the zoning administrator determines that the application is complete, he or she sends a written notice to the applicant within 14 days of such determination. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (4) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (5) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and town board, the applicant, and any other person upon request.
- (6) *Notice to adjacent property owners.* Within 14 days of a determination of completeness, the zoning administrator mails a completed notice as in Wis. Admin. Code ch. ATCP 51, appendix C, to the recorded owner of each parcel of land that is adjacent to the proposed livestock facility. Such notices are mailed by first class mail. Failure to comply with the notice requirement under this subsection does not invalidate the approval of a proposed livestock facility, or create a cause of action by a property owner against the town or any town committee, board, employee, or other agent.
- (7) *General notice.* Consistent with division 2 of article IV, the zoning administrator provides for meeting agenda notice in addition to the special notice sent to the adjoining property owners in the previous step.
- (8) *Plan commission meeting.* Allowing for proper notice, the plan commission considers the application at a regular or special meeting.
- (9) *Recommendation.* The plan commission makes a recommendation to the town board based on the decision criteria in this division to:
  - a. Approve the application;

- b. Approve the application with conditions; or
  - c. Deny the application.
- (10) *Town board meeting.* Allowing for proper notice, the town board considers the application at a regular or special meeting.
- (11) *Decision.* After considering the plan commission's recommendation, the town board makes a decision based on the decision criteria in this division to (i) approve the application, (ii) approve the application with conditions, or (iii) deny the application. The town board may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 90 days after the zoning administrator determines the application is complete unless the applicant agrees to an extension of a specified duration. The town board may, with or without the consent of the applicant, extend the review period with good cause, including a determination that (i) it needs more time to obtain additional information needed to act on the application, (ii) the applicant materially modified the application following a determination of completeness, or (iii) the applicant requested an extension. If the review period is extended, the zoning administrator provides the applicant with a written notice of such decision that includes a date by which the town board will act on the application.
- (12) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the town board, and gives a copy to the applicant.
- (13) *Recording of approval.* If the application is approved, the applicant may record such decision in the county register of deeds office.
- (14) *DATCP notification of decision.* The zoning administrator sends a copy of the decision notice, within 30 days of such decision, to the state department of agriculture, trade and consumer protection by mail or fax as follows:

Mail:	Wisconsin Department of Agriculture, Trade and Consumer Protection Agricultural Resource Management Division Bureau of Land and Water Resources PO Box 8911 Madison, WI 53708-8911
Fax:	(608) 224-4615

Failure to comply with this notice requirement shall not invalidate such decision.

- (15) *Compilation of public record.* The zoning administrator compiles all of the materials specified in [section 36-333](#).

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Admin. Code §§ ATCP 51.30(5), ATCP 51.30(6), ATCP 51.32, Wis. Admin. Code, ATCP 51.34(5).

Sec. 36-324. - Basis of decision.

The plan commission in making its recommendation and the town board in making its decision shall consider whether the application complies with the supplemental standards for this use in appendix B and other provisions of this chapter as may be applicable.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

Sec. 36-325. - Imposition of conditions.

The plan commission may recommend and the town board may impose one or more conditions of approval provided they are limited to those actions required to comply with the standards related to livestock operations.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

Sec. 36-326. - Application form and content.

The application submittal shall include the application shown in Wis. Admin. Code, ch. ATCP 51, appendix A, along with any related worksheets, maps, or other material.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Admin. Code § ATCP 51.30(1).

Sec. 36-327. - Staff report content.

The staff report should include the following:

- (1)

Information related to the decision criteria listed in this division;

- (2) A recommendation to approve the application, approve the application with conditions, or deny the application; and
- (3) Other information deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-328. - Content of decision notice.

(a) *Approval.* If the application for a livestock operation is approved, the decision notice should include the following:

- (1) A statement that the application is approved;
- (2) Conditions of approval as described in this division, if any;
- (3) Written findings of fact supported by evidence in the record that the approval is warranted;
- (4) A statement that an aggrieved person may appeal the decision to the zoning board of appeals or the state livestock facility siting review board and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (5) Other information the town board or zoning administrator deems appropriate;
- (6) The signature of the zoning administrator on behalf of the town board;
- (7) The date of the decision; and
- (8) A duplicate copy of the approved application, including all worksheets, maps, and other documents (other than engineering specifications) included in the application, marked "approved."

(b) *Denial.* If the application for a livestock operation is denied, the decision notice should include the following:

- (1) A statement that the application is denied;
- (2) Written findings of fact supported by evidence in the record that the denial is warranted;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration;
- (5) A statement that the decision may be appealed as provided for in this division;
- (6) Other information the town board or zoning administrator deems appropriate;
- (7) The signature of the zoning administrator on behalf of the town board; and
- (8) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Admin. Code ch. 51, § ATCP 51.34(3)(a).

Sec. 36-329. - Effect of approval.

An approval granted under this division shall run with the land and is binding on all subsequent property owners.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-330. - Revocation or modification of a prior approval.

- (a) *Generally.* Following a public hearing, the town board may revoke or modify an approval issued pursuant to this division if it is determined that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered the decision to approve the application or the conditions of approval which were or were not imposed.
- (b) *Notification required for termination of approval.* If an approval is terminated under this section, the zoning administrator shall send a copy of the notice, within 30 days of such decision, to the state department of agriculture, trade and consumer protection by mail or fax as follows:

Mail:	Wisconsin Department of Agriculture, Trade and Consumer Protection Agricultural Resource Management Division Bureau of Land and Water Resources PO Box 8911 Madison, WI 53708-8911
Fax:	(608) 224-4615

Failure to comply with this requirement shall not invalidate such decision.



( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Admin. Code §§ ATCP 51.34(4)(b)(1), ATCP 51.34(5).

Sec. 36-331. - Expiration of approval.

If the zoning administrator determines that the livestock operator has not begun to populate the approved livestock facility within two years of approval and the operator has not begun construction on every new or expanded livestock housing structure and every new or expanded waste storage structure proposed in the application within two years of approval, he or she shall initiate the process to terminate the approval pursuant to division 9 of this article. Termination of an approval does not prevent a livestock operator from submitting a new application for review. If an aggrieved person appeals an approval, the date of approval shall be the date the appeal is concluded if the court does not overturn the approval.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Admin. Code §§ ATCP 51.08(2), ATCP 51.08(3).

**Note**— So long as the livestock operator begins the establishment of the authorized use, the approval remains in effect even if the expansion occurs over a period of time chosen by the operator or if the operator does not expand to the full amount of livestock units as authorized by the approval.

Sec. 36-332. - Amendment of an approval.

- (a) *Generally.* At anytime following approval of a livestock operation, the livestock operator may submit a written request to the zoning administrator proposing an amendment to the approval. So long as the proposed amendment complies with the required standards, the plan commission may allow the amendment without following the review procedures in this division. If the plan commission approves the proposed amendment, such decision shall be documented in writing and contain the signature of the chairperson of the plan commission or the zoning administrator. Each approved amendment shall be sequentially identified (i.e., "first amendment," etc.).
- (b) *Recording of decision notice.* If the amendment is approved, the livestock operator may record the decision document in the county register of deeds office.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Admin. Code § ATCP 51.34(4)(b)(2).

Sec. 36-333. - Record of decision-making.

The zoning administrator shall compile the following materials and retain them for at least seven years after the date the town board makes a decision to approve or deny an application:

- (1) The application and all subsequent additions or amendments to the application which were made by the applicant prior to the town board's final decision.
- (2) A copy of the notice sent to the applicant stating that the application was deemed incomplete or complete.
- (3) Copies of any other notices or correspondence that the zoning administrator or town board issued in relation to the application.
- (4) A record of any public hearing related to the application. The record may be in the form of an electronic recording, a transcript prepared from an electronic recording, or a direct transcript prepared by a court reporter or stenographer. The record shall also include any documents or evidence submitted by hearing participants.
- (5) Copies of any correspondence or evidentiary material that the plan commission and board considered in relation to the application.
- (6) Minutes of all meetings when the application was considered.
- (7) The written decision as required under this division.
- (8) Other documents that the town board prepared to document its decision or decision-making process.
- (9) A copy of any local ordinance cited in the town board's final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Admin. Code § ATCP 51.36.

Sec. 36-334. - Violation of a condition of approval.

- (a) *Generally.* If a property owner does not comply with the terms of the approval, such action constitutes a violation of this chapter and cause for termination of the approval consistent with division 8 of this article.
- (b) *Considerations in pursuing enforcement.* The zoning administrator and the town board should exercise sound judgment in deciding whether to take compliance action under this section. The following factors should be considered: whether adverse weather conditions may have affected an operator's ability to comply, the nature and seriousness of the violation, whether the violation was intentional or accidental, the operator's compliance history,

consistency of enforcement, and whether the problem can be resolved without formal enforcement. Before taking compliance action, the town should give the operator notice and a reasonable opportunity to demonstrate compliance.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Admin. Code § ATCP 51.34(4).

Sec. 36-335. - Appeal.

- (a) *Appeal to zoning board of appeals.* Because the decision of the plan commission to approve or deny an application is considered an administrative matter, an aggrieved person, as defined in this section, may appeal the final decision of the plan commission to the zoning board of appeals within 30 days of such decision.
- (b) *Appeals to livestock facility siting review board.* As provided under the Wisconsin Livestock Siting Law, an aggrieved person may appeal the decision of the plan commission to approve or deny an application to the state livestock facility siting review board within 30 days of such decision. An aggrieved person may appeal the decision of the zoning board of appeals to the state livestock facility siting review board within 30 days of such decision.
- (c) *Definition of aggrieved person.* For the purpose of this division, an "aggrieved person" includes the applicant and any person who resides or owns land within two miles of the proposed livestock facility.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**Note**— The Wisconsin Livestock Facility Siting Review Board has the authority to overturn the decision of the plan commission and the zoning board of appeals. The town, however, has the right to appeal such decision to a court of competent jurisdiction within the time period specified by state law.

Secs. 36-336—36-340. - Reserved.

#### DIVISION 7. - DETERMINATION OF UNSAFE CONDITIONS

Sec. 36-341. - Generally.

There may be instances where a land use has become unsafe through neglect or lack of maintenance and has become a threat to the public health, safety, or welfare. This division describes the requirements and procedures for terminating an unsafe situation.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-342. - Initiation.

Any of the following may submit an application for a determination of unsafe conditions:

- (1) The zoning administrator;
- (2) The plan commission, or any member thereof; or
- (3) The town board, or any member thereof.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-343. - Review procedure.

The general steps outlined below shall be used in the review of an application to terminate an unsafe land use authorized under this chapter.

- (1) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator.
- (2) *Completeness determination.* The zoning administrator reviews the submittal within ten days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate
- (3) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (4) *Special notice to property owner.* The zoning administrator mails a written notice to the property owner by certified mail at least 30 days prior to the date of the public hearing. Such notice must state:
  - a. The reason for the public hearing;
  - b. The reasons why the zoning administrator believes the conditions are unsafe;
  - c. The date and time of the public hearing;

- d. Contact information for the zoning administrator, including telephone number; and
  - e. Other information deemed appropriate by the zoning administrator.
- (5) *General public notice.* Consistent with division 2 of article IV, the zoning administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
  - (6) *Public hearing.* Allowing for proper notice, the town board conducts a public hearing consistent with division 3 of article IV. Prior to the close of the public hearing, the applicant or the town board may request a continuance consistent with division 3 of article IV.
  - (7) *Decision.* After the public hearing has been closed, the town board will either approve or deny the application. The town board may render its decision at the same meeting the public hearing is conducted or at a subsequent meeting, but no later than 40 days after the public hearing.
  - (8) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the town board.
  - (9) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator mails the decision notice by regular mail to the property owner.
  - (10) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.
  - (11) *Administrative steps.* If the application is approved, the zoning administrator updates any town records to indicate that the use as specified in the application has been terminated because of unsafe conditions.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-344. - Basis of decision.

The town board in making its decision shall consider the following factors:

- (1) The type and nature of unsafe conditions;
- (2) Potential remedies to correct unsafe conditions; and
- (3) Any other factor that relates to the purposes of this chapter as set forth in section 36-5 or as allowed by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-345. - Staff report content.

The staff report should include the following information:

- (1) The type and nature of the unsafe conditions;
- (2) Potential remedies to correct the unsafe conditions; and
- (3) Other information deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-346. - Content of decision notice.

If a permit or other approval is revoked or suspended, the decision notice should include the following:

- (1) A statement that the permit or other approval is revoked or suspended;
- (2) Reasons for the revocation or suspension;
- (3) Conditions that must be satisfied to reinstate the approval if the permit or other approval is suspended;
- (4) Requirements for the removal of the feature that is determined to be unsafe;
- (5) A statement that the decision may be appealed as provided for in this division;
- (6) The signature of the zoning administrator on behalf of the town board;
- (7) Other information the plan commission or zoning administrator deems appropriate;
- (8) The date of the decision; and
- (9) Other information deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-347. - Compliance with requirements of zoning district.

If the town board revokes a permit or other approval under this division, the property owner shall remove the feature determined to be unsafe. The town board shall establish a timeframe it determines appropriate to comply with this requirement. In making such determination, the town board should consider the type of actions the property owner will need to take to remove the feature and weather conditions. In no event, shall the compliance period be less than 30 days or more than nine months.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-348. - Appeal.

The person having a development interest in the original development order may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-349. - Other remedies.

In addition to the revocation or modification of the development order, the town board may seek other remedies allowed by law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-350—36-360. - Reserved.

#### DIVISION 8. - TERMINATION OF APPROVAL

Sec. 36-361. - Generally.

There are certain situations when the approval for a land use may be terminated. This division describes the requirements and procedures for terminating an approved use. The procedures set forth in this division are optional. Failure to initiate such procedures does not waive any termination by operation of law and the town is not foreclosed from asserting such termination.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-362. - Initiation.

- (a) *Voluntary termination of a conditional use approval by property owner.* The property owner, and no other, is authorized to submit an application to voluntarily terminate a conditional use approval for his or her property, except as authorized in this section.
- (b) *Involuntary termination of a conditional use approval due to cessation.* The zoning administrator or the town board may submit an application to terminate a conditional use approval when there is reason to believe the land use authorized by such approval has ceased to operate for more than 12 months.
- (c) *Involuntary termination of a conditional use approval due to violation.* The zoning administrator or the town board may submit an application to terminate a conditional use approval when there is reason to believe the property owner has violated one or more conditions of approval and action has not been taken to correct the violation.
- (d) *Involuntary termination of a specified land use due to cessation.* The zoning administrator or the town board may submit an application to terminate an approved land use when there is reason to believe such use is no longer in use for the time period specified for such use.
- (e) *Termination of a legal nonconforming use.* The zoning administrator or the town board may submit an application to terminate a legal nonconforming use when there is reason to believe that such use is having a significant harmful effect on the public health, safety, and welfare and/or is causing a public nuisance.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-363. - Review procedure.

The general steps outlined below shall be used in the review of an application to terminate the approval of a land use authorized under this chapter.

- (1) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (2) *Completeness determination.* The zoning administrator reviews the submittal within ten days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (3) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (4) *Special notice to property owner.* If the zoning administrator is the applicant, he or she mails a written notice to the property owner by certified mail at least 30 days prior to the date of the public hearing. Such notice must state:

- a. The reasons why the zoning administrator has submitted an application to terminate the specified use;
- b. The date and time of the public hearing;
- c. Contact information for the zoning administrator, including telephone number; and
- d. Other information deemed appropriate by the zoning administrator.

If the action is intended to terminate a conditional use for a violation, the notice must state the alleged violation along with supporting evidence. If the action is intended to terminate an inactive land use, the notice must state the time period when the land use was not in use along with supporting evidence.

- (5) *General public notice.* Consistent with division 2 of article IV, the zoning administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
- (6) *Public hearing.* Allowing for proper notice, the town board conducts a public hearing consistent with division 3 of article IV. Prior to the close of the public hearing, the applicant or the town board may request a continuance consistent with division 3 of article IV.
- (7) *Decision.* After the public hearing has been closed, the town board will either approve or deny the application. The town board may render its decision at the same meeting the public hearing is conducted or at a subsequent meeting, but no later than 40 days after the public hearing.
- (8) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the town board.
- (9) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator mails the decision notice by regular mail to the property owner.
- (10) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.
- (11) *Administrative steps.* If the application is approved, the zoning administrator updates any town records to indicate that the use as specified in the application has been terminated.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-364. - Basis of decision.

The town board in making its decision shall consider the following factors:

- (1) The nature of those buildings or other structures, if any, on the subject property that relate to the use and the extent to which they are or are not otherwise permitted in the district in which the subject property is located;
- (2) Effects of the existing use on surrounding properties, including detriment to the full and complete use of such properties and potential for concerns related to possible nuisances;
- (3) Effects of the existing use on the normal and orderly development and improvement of the surrounding properties for those uses permitted in the zoning district in which they are located; and
- (4) Any other factor that relates to the purposes of this chapter as set forth in section 36-5 or as allowed by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-365. - Application form and content.

The application submittal shall include an application form as used by the town. The application form shall request the following information:

- (1) The subject property location;
- (2) A description of the original approval, including conditions of approval, if any;
- (3) Verification that the property owner is voluntarily seeking termination of a conditional use approval or evidence supporting the assertion that the use may be involuntarily terminated consistent with this division;
- (4) A description of those buildings or other structures, if any, on the subject property that relate to the use and the extent to which they are or are not otherwise permitted in the district in which the subject property is located; and
- (5) Other information deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-366. - Content of decision notice.

(a) *Approval.* If the application to terminate an approval is approved, the decision notice should include the following:

- (1) A statement that the specified use is terminated,
- (2) A description of the land use being terminated,
- (3) Reasons for the decision based on the decision criteria listed in this division,
- (4) Requirements for the removal of any building or other structure, if any, on the subject property that are related to the terminated use and that are

not otherwise permitted in the zoning district in which the subject property is located,

- (5) A statement that the decision may be appealed as provided for in this division,
- (6) Other information the town board or zoning administrator deems appropriate,
- (7) The signature of the zoning administrator on behalf of the town board, and
- (8) The date of the decision.

(b) *Denial*. If the application to terminate an approval is denied, the decision notice should include the following:

- (1) A statement that the specified use continues to be an approved use,
- (2) A description of the land use,
- (3) Reasons for the decision based on the decision criteria listed in this division,
- (4) A statement that the decision may be appealed as provided for in this division,
- (5) Other information the town board or zoning administrator deems appropriate,
- (6) The signature of the zoning administrator on behalf of the town board, and
- (7) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-367. - Compliance with requirements of zoning district.

If the town board terminates an approval under this division, the property owner shall bring the subject property into conformity with the permitted use regulations of the zoning district in which the property is located. The town board shall establish a timeframe it determines appropriate to bring the property into compliance. In making such determination, the town board should consider the type of actions the property owner will need to take to bring the property into compliance and weather conditions. In no event, shall the compliance period be less than 30 days or more than nine months.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-368. - Appeal.

The property owner or other person having a development interest in the terminated use may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-369—36-380. - Reserved.

#### DIVISION 9. - CONVERSION OF A LEGAL NONCONFORMING USE

Sec. 36-381. - Generally.

Upon written petition, the town board may, on a case-by-case basis, allow the conversion of a legal nonconforming use to another nonconforming use.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-382. - Initiation.

The owner of the subject property may submit an application for a conversion of a legal nonconforming use, but only when the legal nonconforming use has been registered as a nonconforming use pursuant to this article.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-383. - Review procedure.

The general steps outlined below shall be used in the review of an application for a conversion of a legal nonconforming use.

- (1) *Pre-submittal meeting*. Before submitting an application, the applicant or the applicant's agent must meet with the zoning administrator to review:
  - a. Applicable regulations and procedures;
  - b. Applicable sections of the town's comprehensive plan; and
  - c. The proposal.

Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the town's zoning requirements.

- (2) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (3) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (4) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (5) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and town board, the applicant, and any other interested person upon request.
- (6) *General notice.* Consistent with division 2 of article IV, the zoning administrator places the matter on the meeting agenda of the plan commission.
- (7) *Plan commission meeting.* Allowing for proper notice, the plan commission considers the application at a regular or special meeting. The plan commission may direct the zoning administrator, town engineer, and/or the town attorney to submit a follow-up report to the plan commission and/or direct the zoning administrator to prepare such documents it deems necessary, including a preliminary decision document.
- (8) *Recommendation.* At the initial meeting or at a subsequent meeting, the plan commission makes a recommendation to the town board based on the decision criteria listed in this division to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.
- (9) *Town board meeting.* Allowing for proper notice, the town board considers the application at a regular or special meeting.
- (10) *Decision.* After considering the plan commission's recommendation, the town board makes a decision to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.
- (11) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the town board, and a conversion order if approved.
- (12) *Applicant notification.* If the application is denied, the zoning administrator, within a reasonable time following the town board's decision, mails the decision notice to the applicant by regular mail.
- (13) *Acceptance by property owner required.* If the application is approved, the property owner must sign the conversion order and return the same to the zoning administrator within six months of the decision. If the signed decision document is not returned within the aforementioned time period, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit.
- (14) *Recording of decision notice.* If the application is approved and the property owner signs the decision notice, the town clerk or the zoning administrator records the conversion order in the county register of deeds office.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

Sec. 36-384. - Basis of decision.

The plan commission in making its recommendation and the town board in making its decision shall compare the known and anticipated impacts of the existing legal nonconforming use on properties in the area and those of the proposed nonconforming use. The town board shall not approve a conversion when the new nonconforming use would be more of a nonconformity than the existing legal nonconforming use.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

Sec. 36-385. - Imposition of conditions.

- (a) *Generally.* In approving a conversion, the plan commission may recommend and the town board may impose one or more conditions deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping and screening, outdoor lighting, and hours of operation.
- (b) *Effect on contracts with another party.* The town board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

**State Law reference—** Wis. Stats. § 62.23(7)(gm).

**Note**— The town, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

Sec. 36-386. - Application form and content.

The application submittal shall include an application form as used by the town and a site plan depicting the information listed in appendix F.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-387. - Staff report content.

The staff report should include the following:

- (1) A description of the requested conversion;
- (2) Information related to the decision criteria listed in this division;
- (3) A recommendation to approve the application, approve the application with conditions, or deny the application;
- (4) A preliminary list of conditions whether the staff recommendation is for approval or denial; and
- (5) Other information deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-388. - Content of decision notice.

(a) *Approval*. If the application for a conversion is approved, the decision notice should include the following:

- (1) A statement that the application is approved;
- (2) A statement indicating that the property owner must sign the conversion order and return it to the zoning administrator;
- (3) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (4) A statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (5) Other information the town board or zoning administrator deems appropriate;
- (6) The signature of the zoning administrator on behalf of the town board;
- (7) The date of the decision; and
- (8) The copy of the conversion order described in section 36-389.

(b) *Denial*. If the application for a conversion is denied, the decision notice should include the following:

- (1) A statement that the application is denied;
- (2) A description of the proposed conversion;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration;
- (5) A statement that the decision may be appealed as provided for in this division;
- (6) Other information the town board or zoning administrator deems appropriate;
- (7) The signature of the zoning administrator on behalf of the town board; and
- (8) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-389. - Content of conversion order.

If the conversion is approved, a conversion order shall be prepared and adopted that includes the following:

- (1) A description of the subject property's location (e.g., address, tax key number, reference to a parcel in a certified survey map or subdivision plat);
- (2) A description of the existing and of the new nonconforming use;
- (3) Conditions of approval, if any; and
- (4) Other provisions deemed necessary given the nature of the approval.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-390. - Effect of approval.

If the town board approves the conversion, such approval shall run with the land and is binding on all subsequent property owners.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)



## Sec. 36-391. - Revocation or modification of a prior approval.

The town board may revoke or modify the approval of a conversion if it determines that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval which were or were not imposed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-392. - Expiration of approval.

If the zoning administrator determines that substantial work as authorized by a conversion approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to division 8 of this article. Upon written petition and with cause, the zoning administrator may grant a one-time extension not to exceed six months.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-393. - Violation of approval.

If a property owner does not comply with the terms of an approval, such action constitutes a violation of this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-394. - Appeal.

An aggrieved person may appeal a final decision of the town board that is made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Secs. 36-395—36-400. - Reserved.

## DIVISION 10. - RESERVED

## Secs. 36-401—36-420. - Reserved.

## DIVISION 11. - SPECIAL EXCEPTION

## Sec. 36-421. - Generally.

Upon written petition, the plan commission may, on a case-by-case basis, grant a special exception for those development standards specifically noted as special exceptions in this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-422. - Initiation.

The owner of the subject property may submit an application for a special exception.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-423. - Review procedure.

The general steps outlined below shall be used in the review of a special exception application.

- (1) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (2) *Completeness determination.* The zoning administrator reviews the submittal within ten days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning

administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.

- (3) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (4) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and the applicant prior to the meeting at which the matter will be considered. The zoning administrator shall also provide a copy to interested people upon request.
- (5) *General notice.* Consistent with division 2 of article IV, the zoning administrator places the matter on the meeting agenda of the plan commission.
- (6) *Plan commission meeting.* Allowing for proper notice, the plan commission considers the application at a regular or special meeting.
- (7) *Recommendation.* The plan commission makes a recommendation to the town board based on the decision criteria in this division to
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.

The plan commission may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 days after the initial public meeting unless the applicant agrees to an extension of a specified duration.

- (8) *Town board meeting.* Allowing for proper notice, the town board considers the application at a regular or special meeting.
- (9) *Decision.* After considering the plan commission's recommendation, the town board makes a decision based on the decision criteria in this division to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.

The town board may render its decision at the same meeting the matter was initially considered or at a subsequent meeting.

- (10) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the town board.
- (11) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator mails the decision notice to the applicant by regular mail.
- (12) *Acceptance by property owner required.* If an approval includes one or more condition of approval, the property owner must sign the decision notice to acknowledge the terms of the approval and return the same to the zoning administrator within six months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The decision notice shall only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.
- (13) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

Sec. 36-424. - Basis of decision.

The plan commission in making its decision shall consider the following factors:

- (1) The size of the subject property in comparison to other properties in the area;
- (2) The extent to which the issuance of the special exception permit would be in keeping with the overall intent of this chapter;
- (3) Whether there are any unique circumstances and the nature of those circumstances that warrant the issuance of the special exception permit;
- (4) The nature and extent of anticipated impacts to the natural environment that could potentially occur if the special exception permit was granted;
- (5) The nature and extent of anticipated positive and negative effects on properties in the area;
- (6) Actions the applicant will undertake to mitigate the negative effects, if any, of the proposed special exception;
- (7) A factor specifically listed under a section of this chapter authorizing the issuance of a special exception permit; and
- (8) Any other factor that relates to the purposes of this chapter as set forth in section 36-5 or as allowed by state law.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

Sec. 36-425. - Imposition of conditions.

- (a) *Generally.* In approving a special exception, the plan commission may recommend and the town board may impose one or more conditions deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping and screening, outdoor lighting, and hours of operation.
- (b) *Effect on contracts with another party.* The town board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference—** Wis. Stats. § 62.23(7)(gm).

**Note—** The town, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

Sec. 36-426. - Limitations on issuing a special exemption permit.

A special exception shall only be approved in those instances where issuance is specifically authorized in this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-427. - Application form and content.

The application submittal shall include an application form as used by the town and a site plan depicting the information listed in appendix F.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-428. - Staff report content.

The staff report should include the following:

- (1) A description of the requested special exception;
- (2) Information related to the decision criteria listed in this division;
- (3) A recommendation to approve the application, approve the application with conditions, or deny the application;
- (4) A preliminary list of conditions whether the staff recommendation is for approval or denial; and
- (5) Other information deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-429. - Content of decision notice.

(a) *Approval.* If the application for a special exception is approved, the decision notice should include the following:

- (1) A statement that the application is approved;
- (2) A description of the special exception;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) Conditions of approval, if any;
- (5) If one or more conditions of approval are imposed, a statement indicating that the property owner must sign the decision notice and return it to the zoning administrator to acknowledge acceptance of the same;
- (6) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (7) A statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (8) Other information the town board or administrator deems appropriate;
- (9) The signature of the zoning administrator on behalf of the town board; and
- (10) The date of the decision.

(b) *Denial.* If the application for a special exception is denied, the decision notice should include the following:

- (1) A statement that the application is denied;
- (2) A description of the special exception;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration;
- (5) A statement that the decision may be appealed as provided for in this division;
- (6) Other information the town board or zoning administrator deems appropriate;
- (7) The signature of the zoning administrator on behalf of the town board; and

(8) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-430. - Effect of approval.

If the town board approves the special exception, such approval shall run with the land.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-431. - Revocation or modification of a prior approval.

The town board may revoke or modify the approval of a special exception if it determines that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval which were or were not imposed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-432. - Expiration of approval.

If the zoning administrator determines that substantial work as authorized by a special exception approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to division 8 of this article. Upon written petition and with cause, the zoning administrator may grant a one-time extension not to exceed six months.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-433. - Violation of a condition of approval.

If a property owner does not comply with the terms of an approval such action constitutes a violation of this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-434. - Appeal.

An aggrieved person may appeal a final decision of the town board that is made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-435—36-440. - Reserved.

DIVISION 12. - VARIANCE

Sec. 36-441. - Generally.

Recognizing that there may be situations where a zoning regulation that if enforced would cause unnecessary hardship to individual landowners, the state legislature established a mechanism to allow a town to issue a variance in those instances where a minor deviation would be appropriate to alleviate such hardship without circumventing or undermining the intent of the town's zoning regulations. This division describes the requirements and procedures for reviewing variance applications.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-442. - Initiation.

The owner of the subject property may submit an application for a variance.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-443. - Review procedure.

The general steps outlined below shall be used in the review of a variance application.

(1) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.

(2)

*Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.

- (3) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the zoning board of appeals consistent with its adopted calendar.
- (4) *General notice.* Consistent with division 2 of article IV, the zoning administrator provides for class 2 public notice, property owner notification, and meeting agenda notice.
- (5) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy to each member of the zoning board of appeals and the applicant. The zoning administrator will also provide a copy to interested people upon request.
- (6) *Public hearing.* Allowing for proper notice, the zoning board of appeals holds a public hearing consistent with division 3 of article IV. Prior to the close of the public hearing, the applicant or the board may request a continuance consistent with division 3 of article IV.
- (7) *Decision.* After the public hearing has been closed, the zoning board of appeals after considering the comments and the staff report, if any, makes a decision based on the decision criteria listed in this division to:
  - a. Approve the variance;
  - b. Approve the variance with conditions; or
  - c. Deny the variance.

The zoning board of appeals may render its decision at the same meeting the public hearing is conducted or at a subsequent meeting, but no later than 40 days after the public hearing.

- (8) *Preparation of decision notice.* Based on the action of the zoning board of appeals, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the zoning board of appeals.
- (9) *Applicant notification.* Within a reasonable time following the zoning board of appeal's decision, the zoning administrator mails the decision notice to the applicant by regular mail.
- (10) *Acceptance by property owner required.* If the zoning board of appeals grants the variance with one or more condition of approval, the property owner must sign the decision notice to acknowledge the terms of the approval and return the same to the zoning administrator within six months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The decision notice will only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.
- (11) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.
- (12) *Additional procedural steps.* If the zoning board of appeals grants the variance, the applicant must follow other review procedures as may be required.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

#### Sec. 36-444. - Basis of decision.

When making its decision, the zoning board of appeals shall base its decision upon the standard for a variance described in Wis. Stats. § 62.23(7)(e)(7), and applicable judicial interpretations of such statute.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

#### Sec. 36-445. - Limitations on issuing a variance.

- (a) *Prohibitions.* The following actions shall not be allowed by a variance:
  - (1) Expansion of a legal nonconforming use (e.g., expansion of area, increase in operational characteristics, etc.); or
  - (2) Modification to lot size density requirements so as to increase the permitted density or intensity of use.
- (b) *Use variance.* The zoning board of appeals may not issue a variance to allow a use not otherwise permitted under this chapter.
- (c) *Variance type.* In the event there is a question as to whether a variance constitutes a dimensional variance or a use variance, the zoning board of appeals shall have the authority to make a final determination. If a provision contains a number that is the basis for a variance application, the board should consider whether the number is used to control the scope of a land use (i.e., use variance) or to control the location of an otherwise permissible improvement on a property (i.e., dimensional variance).

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**Note**— Although a municipality in Wisconsin may have the implicit authority to issue a use variance, the Town of Mukwonago has determined that use variances should not be issued.

Sec. 36-446. - Imposition of conditions.

In approving a variance, the zoning board of appeals may impose such conditions and restriction as may be necessary to grant approval to preserve the general and specific purposes of this chapter as set forth in section 36-5 and as allowed by law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-447. - Application form and content.

The application submittal shall include an application form as used by the town and a project map depicting the information listed in appendix F.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-448. - Staff report content.

The staff report should include the following:

- (1) Information related to the decision criteria listed in this division;
- (2) A recommendation to approve the application, approve the application with conditions, or deny the application;
- (3) A preliminary list of conditions whether the staff recommendation is for approval or denial; and
- (4) Other information deemed necessary.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-449. - Content of decision notice.

(a) *Approval*. If an application for a variance is approved, the decision notice should include the following:

- (1) A statement that the variance is approved;
- (2) A description of the variance;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) Conditions of approval, if any;
- (5) If one or more conditions of approval are imposed, a statement indicating that the property owner must sign the decision notice and return it to the zoning administrator to acknowledge acceptance of the same;
- (6) A statement that the approval will automatically expire 12 months after the date of approval unless substantial work as authorized by the approval has commenced and continues in good faith to completion and that the zoning board of appeals may, with cause, grant a one-time extension not to exceed six months;
- (7) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (8) A statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (9) Other information the zoning board of appeals or zoning administrator deems appropriate;
- (10) The signature of the chairperson of the zoning board of appeals; and
- (11) The date of the decision.

(b) *Denial*. If the application for a variance is denied, the decision should include the following:

- (1) A statement that the variance request is denied;
- (2) A description of the proposed variance;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration provided there is a substantial change in the circumstances relating to the application;
- (5) A statement that the decision may be appealed as provided for in this division;
- (6) Other information the zoning board of appeals or zoning administrator deems appropriate;
- (7) The signature of the chairperson of the zoning board of appeals; and
- (8) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

## Sec. 36-450. - Effect of approval.

An approved variance merely sets aside the rule or regulation from which relief is sought. All other rules and regulations not part of the variance decision must be followed. The variance runs with the land.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

## Sec. 36-451. - Revocation or modification of a prior approval.

Following a public hearing, the zoning board of appeals may revoke or modify a variance approval if it determines that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval which were or were not imposed.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

## Sec. 36-452. - Effect of denial.

If the zoning board of appeals denies a variance application, the board may not rehear the same, or essentially the same, application unless there has been substantial change in the circumstances relating to the application.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

**Case Law reference**— *Tateoka v. City of Waukesha Bd. of Zoning Appeals*, 220 Wis. 2d 656, 583 N.W. 2d 871 (Ct. App. 1998)

## Sec. 36-453. - Expiration of approval.

If the zoning administrator determines that substantial work as authorized by a variance did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to division 8 of this article. Upon written petition and with cause, the zoning board of appeals may grant a one-time extension not to exceed six months.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

## Sec. 36-454. - Appeal.

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the final decision.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

## Secs. 36-455—36-460. - Reserved.

## DIVISION 13. - ADMINISTRATIVE APPEAL

## Sec. 36-461. - Generally.

Recognizing that there may be situations where a property owner or another party believes that the zoning administrator made an error in administering a zoning code, the state legislature established a mechanism to allow the zoning board of appeals to review alleged administrative errors. This division describes the requirements and procedures for reviewing an alleged administrative error.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

## Sec. 36-462. - Initiation.

Any person aggrieved by a final decision of the zoning administrator may file an appeal with the zoning board of appeals consistent with this division.

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

## Sec. 36-463. - Review procedure.

The general steps outlined below shall be used in the review of an administrative appeal.

- (1) *Submittal of appeal.* The applicant submits a written appeal to the town clerk within 30 days of the date of the administrative decision being appealed, except that an appeal of an interpretation issued under the authority of this chapter may be appealed at any time without limitation.
- (2) *Notification of appeal.* The town clerk provides a duplicate copy of the appeal to the zoning board of appeals and the zoning administrator.

- (3) *Compilation and submittal of record.* The zoning administrator compiles a complete and accurate record relating to the action being appealed and transmits it to the zoning board of appeals in a timely manner.
- (4) *Special notice.* The chairperson of the zoning board of appeals gives notice for the public hearing to the parties in interest, including the applicant and the zoning administrator.
- (5) *General notice.* The chairperson of the zoning board of appeals provides a class 2 public notice and meeting agenda notice consistent with division 2 of article IV.
- (6) *Public hearing.* Allowing for proper notice, the zoning board of appeals conducts a public hearing consistent with division 3 of article IV. Prior to the close of the public hearing, the applicant or the zoning board of appeals may request a continuance consistent with division 3 of article IV.
- (7) *Decision.* After the public hearing has been closed, the zoning board of appeals makes a decision to:
  - a. Affirm the zoning administrator's decision;
  - b. Set aside the decision; or
  - c. Modify the decision.

The zoning board of appeals may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 days after the date of the initial meeting unless the applicant agrees to an extension of a specified duration.
- (8) *Notification of decision.* Within a reasonable time following the zoning board of appeals' decision, the clerk mails the decision notice to the applicant by regular mail and provides a duplicate copy of the same to the zoning administrator and the plan commission.
- (9) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-464. - Basis of decision.

- (a) *Generally.* The zoning board of appeals shall determine if the zoning administrator made an error in judgment as applied to the instance being appealed.
- (b) *Historic property.* In an action involving a historic property, as defined in Wis. Stats. § 1(3), the zoning board of appeals shall consider any suggested alternatives or recommendations submitted by the landmarks commission, if one has been established, or the plan commission.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-465. - Effect of appeal.

An appeal shall stay all legal proceedings in furtherance of the action from which the appeal is made, unless the zoning administrator certifies in writing to the zoning board of appeals that a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the zoning board of appeals or by a court of competent jurisdiction, with notice to the zoning administrator from whom appeal is made.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-466. - Appeal.

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-467—36-470. - Reserved.

DIVISION 14. - ZONING PERMIT

Sec. 36-471. - Permit required.

A zoning permit is required prior to the establishment of the land uses specifically listed in the land-use matrix (appendix A).

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-472. - Initiation.

The owner of the subject property may submit an application for a zoning permit.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-473. - Review procedure.



The general steps outlined below shall be used in the review of an application for a zoning permit.

- (1) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (2) *Completeness determination.* The zoning administrator reviews the submittal within ten days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (3) *Decision.* The zoning administrator makes a decision to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.
- (4) *Applicant notification.* Within a reasonable time following his or her decision to approve or deny the application, the zoning administrator mails the decision notice to the applicant by regular mail.
- (5) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-474. - Basis of decision.

In determining whether to issue a zoning permit or deny the permit, the zoning administrator shall determine whether the proposed use is consistent with this chapter and other town ordinances.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-475. - Expiration of approval.

- (a) *Project involving construction.* For a project involving any construction, a zoning permit shall automatically expire 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension not to exceed 12 months provided:
  - (1) The permit holder requests the extension prior to the expiration of the permit;
  - (2) The permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same; and
  - (3) The project complies with this chapter in effect at the time the extension is granted.
- (b) *Change in use.* For a change in use, the zoning permit shall automatically expire six months after the date of issuance if the applicant does not move into the vacant space.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-476. - Appeal.

An aggrieved person may appeal a final decision made pursuant to this division by filing an administrative appeal with the zoning board of appeals within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Secs. 36-477—36-480. - Reserved.

#### DIVISION 15. - RESERVED

#### Secs. 36-481—36-490. - Reserved.

#### DIVISION 16. - BUILDING, SITE PLAN, AND OPERATION PLAN

#### Sec. 36-491. - Generally.

Because certain land uses have the potential to negatively affect properties in the area they must be reviewed with regard to the layout of such use, design of buildings, and operational characteristics of such use. This division describes the procedural requirements and applicable requirements.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-492. - Applicability.

Those land uses designated as requiring approval in the land-use matrix (appendix A) for a building plan "BP," site plan "SP," and/or plan of operation "PO" must comply with the requirements in this division.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-493. - Initiation.

The owner of the subject property may submit a building, site plan, and operation plan application.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-494. - Review procedure.

The general steps outlined below shall be used in the review of a building, site plan, and operation plan application.

- (1) *Pre-submittal meeting.* Before submitting an application, the applicant or the applicant's agent may meet with the zoning administrator to review applicable regulations and procedures and the proposal.
- (2) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (3) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (4) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (5) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and the applicant prior to the meeting at which the matter will be considered. The zoning administrator will also provide a copy to interested people upon request.
- (6) *General notice.* Consistent with division 2 of article IV, the zoning administrator places the matter on the meeting agenda of the plan commission.
- (7) *Meeting.* Allowing for proper notice, the plan commission considers the application at a regular or special meeting.
- (8) *Decision.* The plan commission makes a decision to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.

The plan commission may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 days after the public hearing unless the applicant agrees to an extension of a specified duration.

- (9) *Preparation of decision notice.* Based on the action of the plan commission, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the plan commission.
- (10) *Applicant notification.* Within a reasonable time following the plan commission's decision, the zoning administrator mails the decision notice to the applicant by regular mail.
- (11) *Acceptance by property owner required.* If an approval includes one or more condition of approval, the property owner must sign the decision notice to acknowledge the terms of the approval and return the same to the zoning administrator within six months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The decision notice shall only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.
- (12) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-495. - Basis of decision.

The plan commission in making its decision shall consider the following factors:

- (1) Effects of the project on traffic safety and efficiency and pedestrian circulation, both on-site and off-site;
- (2) Effects of the project on the natural environment;
- (3) Effects of the project on surrounding properties, including operational considerations relating to hours of operation and creation of potential nuisances;
- (4) Compliance with the site design principles and architectural standards enumerated in division 8 of article VI;
- (5) compliance with other applicable requirements in this chapter; and
- (6) any other factor that relates to the purposes of this chapter as set forth in section 36-5 or as allowed by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-496. - Imposition of conditions.

The plan commission may impose one or more conditions of approval as may be necessary to grant approval. Such conditions and restrictions may relate to the establishment, location, construction, maintenance, operation of the use, off-site impacts, and any other aspect of the use that impacts the public health, safety, morals, comfort, or general welfare.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-497. - Application form and content.

The application submittal shall include an application form as used by the town and a site plan depicting the information listed in appendix F.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-498. - Content of decision notice.

(a) *Approval.* If the application for a building, site plan, and operation plan is approved, the decision notice should include the following:

- (1) A statement that the application is approved;
- (2) A description of the project, including acreage and proposed use characteristics;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) Conditions of approval, if any;
- (5) If one or more conditions of approval are imposed, a statement indicating that the property owner must sign the decision notice and return it to the zoning administrator to acknowledge acceptance of the same;
- (6) A statement that the approval will automatically expire 12 months after the date of approval unless substantial work as authorized by the approval has commenced and continues in good faith to completion and that the zoning administrator may, with cause, grant a one-time extension not to exceed 12 months;
- (7) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (8) A statement that an aggrieved person, other than the applicant, may appeal the decision to a court of competent jurisdiction, and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (9) Other information the plan commission deems appropriate;
- (10) The signature of the zoning administrator on behalf of the plan commission; and
- (11) The date of the decision.

(b) *Denial.* If the application for a building, site plan, and operation plan is denied, the decision notice should include the following:

- (1) A statement that the application is denied;
- (2) A description of the project, including acreage and proposed use characteristics;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration;
- (5) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (6) Other information the plan commission deems appropriate;
- (7) The signature of the zoning administrator on behalf of the plan commission; and
- (8) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-499. - Effect of approval.

If the plan commission approves the building, site plan, and operation plan, the approval shall run with the land and is binding on all subsequent property owners.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-500. - Revocation or modification of a prior approval.

The plan commission may revoke or modify an approval issued pursuant to this division if it is determined that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval which were or were not imposed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-501. - Expiration of approval.

The approval of a building, site plan, and operation plan shall automatically expire 12 months after the date of issuance unless substantial work as authorized by the approval has commenced and continues in good faith to completion. Upon written petition and with cause, the zoning administrator may grant a one-time extension not to exceed 12 months.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-502. - Amendment of an approved building, site plan, and operation plan.

Following approval of a building, site plan, and operation plan, the zoning administrator shall review all proposed changes to the approval. If in the opinion of the zoning administrator, the proposed change constitutes a minor alteration, he or she may approve the requested change in writing without following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure shall be followed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-503. - Appeal.

Following the final decision of the plan commission, an aggrieved person may appeal such decision to a court of competent jurisdiction within 30 days of such decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-504—36-510. - Reserved.

DIVISION 17. - RURAL ACCESSORY BUILDING DETERMINATION

Sec. 36-511. - Generally.

As more fully described in this division, the town board is authorized to designate certain existing accessory buildings as a "rural accessory building" in those zoning districts listed in appendix A. If a building is so designated, it is not counted towards the allowable number of accessory buildings permitted on a lot or towards the allowable building square footage permitted on a lot with approval of the town board. This division describes the procedures and requirements for a rural accessory building determination.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-512. - Initiation.

The owner of the subject property may submit an application for a rural accessory building determination.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-513. - Review procedure.

The general steps outlined below shall be used in the review of a rural accessory building determination application.

- (1) *Pre-submittal meeting.* Before submitting an application for formal consideration, the applicant or the applicant's agent may meet with the zoning administrator to review applicable regulations and procedures and the proposal.

- (2) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (3) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (4) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (5) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and the applicant prior to the meeting at which the matter will be considered. The zoning administrator will also provide a copy to interested people upon request.
- (6) *General notice.* Consistent with division 2 of article IV, the zoning administrator places the matter on the meeting agenda of the plan commission.
- (7) *Meeting.* Allowing for proper notice, the plan commission considers the application at a regular or special meeting.
- (8) *Recommendation.* The plan commission makes a recommendation to the town board based on the decision criteria listed in this division to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.

The plan commission may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 days after the initial meeting unless the applicant agrees to an extension of a specified duration.
- (9) *Town board meeting.* Allowing for proper notice, the town board considers the application at a regular or special meeting.
- (10) *Decision.* After considering the plan commission's recommendation, the town board makes a decision based on the decision criteria listed in this division to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.
- (11) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the town board.
- (12) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator mails the decision notice to the applicant by regular mail.
- (13) *Acceptance by property owner required.* The property owner must sign the decision notice to acknowledge the terms of the approval and return the same to the zoning administrator within six months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The decision notice will only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.
- (14) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-514. - Basis of decision.

- (a) In making its decision, the plan commission shall initially determine whether the building meets at least one of the following criteria:
  - (1) The building is set apart from other buildings as being distinct, due to its construction technique, construction materials, age, local historic significance, or design.

Exhibit 5-1. An example of a rural accessory building



- (2) The building is characteristic of past agricultural practices or rural life, whether presently utilized or not for agricultural practice.

- (3) The building is associated with a person of historic significance or with important historical events.
- (4) The building represents a notable work of a master builder, designer, or architect who influenced their age.
- (b) If the plan commission determines that the building meets one of the above criteria, it shall then consider the following factors in making its final decision:
  - (1) Effects of the building on the natural environment;
  - (2) Effects of the building on surrounding properties;
  - (3) The overall appearance of the building; and
  - (4) Any other factor that relates to the purposes of this chapter as set forth in section 36-5 or as allowed by state law.
- (c) No building shall be designated a rural accessory building if it is not structurally sound to meet minimum safety requirements for the proposed use, as determined by the building inspector, provided that such determination shall not relieve the property owner of any responsibility or liability as to the building and shall not form a basis of liability against the building inspector or any other governmental official or entity.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-515. - Imposition of conditions.

The plan commission may impose one or more conditions of approval as may be necessary to grant approval.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-516. - Application form and content.

The application submittal shall include an application form as used by the town and a site plan depicting the information listed in appendix F.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-517. - Content of decision notice.

- (a) *Approval.* If the application for a rural accessory building determination is approved, the decision notice should include the following:
  - (1) A statement that the application is approved;
  - (2) A description of the building or buildings;
  - (3) Reasons for the decision based on the decision criteria listed in this division;
  - (4) Conditions of approval, if any;
  - (5) A determination as to whether additional buildings are allowed and under what circumstances;
  - (6) A statement indicating that the property owner must sign the decision notice and return it to the zoning administrator to acknowledge acceptance of the same;
  - (7) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
  - (8) A statement that an aggrieved person, other than the applicant, may appeal the decision to a court of competent jurisdiction, and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
  - (9) Other information the plan commission or the zoning administrator deems appropriate;
  - (10) The signature of the zoning administrator on behalf of the plan commission;
  - (11) The date of the decision;
  - (12) Any other information deemed appropriate.
- (b) *Denial.* If the application for a rural accessory building determination is denied, the decision notice should include the following:
  - (1) A statement that the application is denied;
  - (2) A description of the building or buildings;
  - (3) Reasons for the decision based on the decision criteria listed in this division;
  - (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration;
  - (5) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
  - (6) Other information the plan commission or the zoning administrator deems appropriate;
  - (7) The signature of the zoning administrator on behalf of the plan commission;
  - (8) The date of the decision;
  - (9) Any other information deemed appropriate.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-518. - Effect of approval.

If the plan commission designates a building as a rural accessory building, such designation shall run with the land and is binding on all subsequent property owners.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-519. - Revocation or modification of a prior approval.

The plan commission may revoke or modify an approval issued pursuant to this division if it is determined that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval which were or were not imposed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-520. - Appeal.

An aggrieved person may file an administrative appeal with the zoning board of appeals within 30 days of such decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-521—36-530. - Reserved.

#### DIVISION 18. - REGISTRATION OF A LEGAL NONCONFORMING USE

Sec. 36-531. - Generally.

There may be now or in the future certain uses of land that are not in compliance with this chapter, but which were legally established. These uses are referred to as "legal nonconforming uses," and consistent with the provisions of article XI are allowed to continue to operate. For this reason, it is necessary to document those uses that are considered legal nonconforming. Registration of a use as a legal nonconforming use provides documentary evidence establishing:

- (1) When the use was first established;
- (2) That the use at the time of establishment was done consistent with the rules and regulations in effect at the time, if any;
- (3) That it has continued continuously, without cessation of more than 12 continuous months; and
- (4) The nature of the use.

The procedures and requirements in this division are intended to comply with Wis. Stats. § 60.61(5)(d).

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-532. - Initiation.

Any of the following may submit an application to register a specific land use as a legal nonconforming use:

- (1) A person having a financial interest in the subject property or in the use occurring on the property;
- (2) The zoning administrator;
- (3) The plan commission, or any member thereof; or
- (4) The town board, or any member thereof.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-533. - Review procedure.

The general steps outlined below shall be used in the review of an application for the registration of a legal nonconforming use.

- (1) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (2) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (3)

*Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar

- (4) *General notice.* Consistent with division 2 of article IV, the zoning administrator places the matter on the meeting agenda of the plan commission.
- (5) *Plan commission meeting.* Allowing for proper notice, the plan commission considers the application at a regular or special meeting.
- (6) *Recommendation.* The plan commission makes a recommendation to the town board based on the decision criteria listed in this division to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.

The plan commission may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 days after the date of the initial meeting unless the applicant agrees to an extension of a specified duration.

- (7) *Town board meeting.* Allowing for proper notice, the town board considers the application at a regular or special meeting.
- (8) *Decision.* After considering the plan commission's recommendation, the town board makes a decision based on the decision criteria listed in this division to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.
- (9) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the town board.
- (10) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator mails the decision notice to the applicant by regular mail.
- (11) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.
- (12) *Inclusion in registry.* If the application is approved, the zoning administrator includes the legal nonconforming use in the registry authorized in article XI.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-534. - Basis of decision.

The plan commission in making its recommendation and the town board in making its decision shall determine whether there is sufficient evidence to show that:

- (1) The use in question was legally established;
- (2) Such use is not now allowed in the zoning district in which it is located either by right or as a conditional use; and
- (3) Such use has continued from the date, or approximate date, of establishment to the current date without an interruption of more than 12 continuous months.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-535. - Application form and content.

- (a) The application submittal shall include an application form as used by the town and scaled drawing of the subject property and the location of the land use on the property. At a minimum, the application shall request the following information:
  - (1) The date, or approximate date, the use was first established or believed to be first established;
  - (2) Evidence showing that the use at the time of establishment was legally established;
  - (3) The date, or approximate date, when the use became nonconforming;
  - (4) The section of the zoning regulation causing the use to be nonconforming;
  - (5) Evidence showing that the use has continued from the date, or approximate date, of establishment to the current date without an interruption of more than 12 continuous months; and
  - (6) The nature of the use and location on the property.
- (b) Sources of such information may be derived from any of the following:
  - (1) Written document (e.g., business license, meeting minutes, reports, planning documents, or a permit or other authorization) maintained by a local, state, or federal governmental body;
  - (2) A newspaper article;
  - (3) A dated photograph;
  - (4) An aerial photograph;
  - (5) A sworn affidavit supplied by the applicant or any other person; and



(6) Any other authoritative source deemed acceptable by the town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-536. - Content of decision notice.

(a) *Approval*. If the application for registering a legal nonconforming use is approved, the decision notice should include the following:

- (1) A statement that the use is a legal nonconforming use as of the date of such determination,
- (2) A description of the use,
- (3) Reasons for the decision based on the decision criteria listed in this division,
- (4) A statement that the applicant may appeal the decision to a court of competent jurisdiction,
- (5) Other information the town board or zoning administrator deems appropriate,
- (6) The signature of the zoning administrator on behalf of the town board, and
- (7) The date of the decision.

(b) *Denial*. If the application for registering a nonconforming use is denied, the decision notice should include the following:

- (1) A statement that the use cannot be classified as a legal nonconforming use;
- (2) A description of the use;
- (3) Reasons for the decision based on the decision criteria listed in this division;
- (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration;
- (5) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (6) Other information the town board or zoning administrator deems appropriate;
- (7) The signature of the zoning administrator on behalf of the town board; and
- (8) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-537. - Effect of decision.

(a) *Generally*. If the town board determines that a land use meets the criteria for a legal nonconforming use, such decision constitutes documentary evidence establishing the legitimacy of the use as a legal nonconforming use as of the date of such determination.

(b) *Expansion not authorized*. If a use was legally established and has been operated without interruption, but has been illegally expanded over time (i.e., area, extent, mode of operation, or other parameter) such expansion must be removed in keeping with a timeline established by the town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-538. - Revocation or modification of a prior approval.

The town board may revoke or modify an approval issued pursuant to this division if it is determined that:

- (1) Information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate;
- (2) New or additional information shows the use does not meet the decision criteria established in this division; or
- (3) The section of the zoning code creating the nonconforming use no longer exists.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-539. - Appeal.

An aggrieved person may file an appeal with a court of competent jurisdiction within 30 days of such decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-540—36-550. - Reserved.

DIVISION 19. - CODE INTERPRETATION

Sec. 36-551. - Generally.

From time to time, there may be instances where a person may have a question concerning a provision of this chapter or the application of a provision of this chapter. To ensure this chapter is consistently interpreted, a mechanism is needed to issue written interpretations. This division describes the procedures and requirements to issue such interpretations.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-552. - Initiation.

Any person, including the zoning administrator, may submit a question for interpretation.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-553. - Responsibility for interpretation.

The zoning administrator shall be responsible for rendering a written interpretation, or the plan commission on appeal.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-554. - Limitations on interpretations.

The responsibility for interpretation shall not be construed as overriding the responsibilities specifically given to any commission, board, or official named in other parts of this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-555. - Review procedure.

(a) *Initial review.* The general steps outlined below shall be used to render an interpretation.

- (1) *Submittal of question.* The individual requesting the interpretation submits the question in writing to the zoning administrator and the application fee as may be established by the town board.
- (2) *Decision.* In consultation with the town attorney, the zoning administrator makes a written decision within 60 business days of the date of receipt of the application.
- (3) *Notification of decision.* Within a reasonable time following completion of the interpretation, the zoning administrator mails a duplicate copy of the interpretation by regular mail to the individual requesting the interpretation and provides a copy of the same to the plan commission, the town attorney, and those town employees and agents involved in the administration of this chapter, as appropriate.
- (4) *Public record copy.* A duplicate copy of the interpretation is retained as a public record.

(b) *Review by plan commission on appeal.* If a final decision of the zoning administrator is appealed as provided for in this division, the general steps outlined below shall be used to render an interpretation.

- (1) *Submittal of application materials.* The zoning administrator forwards the application and other required materials the applicant initially submitted to the plan commission along with the decision document.
- (2) *General notice.* Consistent with division 2 of article IV, the zoning administrator places the matter on the meeting agenda of the plan commission.
- (3) *Meeting.* Allowing for proper notice, the plan commission considers the appeal at a regular or special meeting.
- (4) *Decision.* In consultation with the town attorney, the plan commission makes a written decision within 60 business days of the date when the appeal was submitted to the town clerk.
- (5) *Notification of decision.* Within a reasonable time following completion of the interpretation, the town administrator mails a duplicate copy of the interpretation by regular mail to the individual requesting the interpretation and provides a copy of the same to the zoning administrator, the town attorney, and those town employees and agents involved in the administration of this chapter, as appropriate.
- (6) *Public record copy.* A duplicate copy of the interpretation is retained as a public record.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-556. - Basis of decision.

In consultation with the town attorney and others as appropriate, the zoning administrator, and the plan commission on appeal, shall consider the section of this chapter in question and those which are related, consider the purposes of this chapter as set forth in section 36-5 along with applicable legislative findings in this chapter, and consider other applicable interpretations that have previously been made and make a decision consistent with this division giving this chapter its most reasonable application. If the zoning administrator, or the plan commission on appeal, cannot make a reasonable interpretation, a determination shall not be issued.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-557. - Repeal or revision of an interpretation.

The zoning administrator and the plan commission may rescind or modify an interpretation if such interpretation is deemed to be incorrect in whole or in part.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-558. - Interpretation content.

An interpretation shall be in writing and contain the following:

- (1) The name of the person posing the question;
- (2) The section number of this chapter in question;
- (3) The question or alleged ambiguity;
- (4) The factors that were considered in making the interpretation;
- (5) The interpretation;
- (6) Other information the zoning administrator deems appropriate;
- (7) The signature of the zoning administrator; and
- (8) The date of decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-559. - Effect of interpretation.

An interpretation once rendered shall have full effect as if set forth in this chapter. Where appropriate, interpretations should be addressed through the amendment process. If the zoning administrator determines that it is not possible to make a reasonable interpretation, such decision shall not affect the validity of any section of this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-560. - Compilation of interpretations.

The zoning administrator shall keep a written record of all interpretations in effect and make them available for public inspection.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-561. - Appeal.

An aggrieved person may, without time constraint, appeal an interpretation made pursuant to this division by filing an appeal with the zoning board of appeals as provided for in this article.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-562—36-570. - Reserved.

DIVISION 20. - RESERVED

Secs. 36-571—36-580. - Reserved.

DIVISION 21. - EXPANSION OF A LEGAL NONCONFORMING BUILDING

Sec. 36-581. - Generally.

A legal nonconforming building with a conforming use may be expanded provided the expansion complies with all other requirements in this chapter that apply. This division describes the procedures and requirements to allow such expansion.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-582. - Initiation.

The owner of the subject property may submit an application to expand a legal nonconforming building.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-583. - Review procedure.

The general steps outlined below shall be used in the review of an application to expand a legal nonconforming building.

- (1) *Pre-submittal meeting.* Before submitting an application, the applicant or the applicant's agent may meet with the zoning administrator to review applicable regulations and procedures and the proposal.
- (2) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (3) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (4) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (5) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and the applicant prior to the meeting at which the matter will be considered. The zoning administrator will also provide a copy to interested people upon request.
- (6) *General notice.* Consistent with division 2 of article IV, the zoning administrator places the matter on the meeting agenda of the plan commission.
- (7) *Meeting.* Allowing for proper notice, the plan commission considers the application at a regular or special meeting.
- (8) *Decision.* The plan commission makes a decision to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.

The plan commission may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 days after the initial meeting unless the applicant agrees to an extension of a specified duration.
- (9) *Preparation of decision notice.* Based on the action of the plan commission, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the plan commission.
- (10) *Applicant notification.* Within a reasonable time following the plan commission's decision, the zoning administrator mails the decision notice to the applicant by regular mail.
- (11) *Acceptance by property owner required.* If an approval includes one or more condition of approval, the property owner must sign the decision notice to acknowledge the terms of the approval and return the same to the zoning administrator within six months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The decision notice shall only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.
- (12) *Public record copy.* A duplicate copy of the decision notice is retained as a public record.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-584. - Basis of decision.

The plan commission in making its decision shall consider the following factors:

- (1) The degree of the existing nonconformity (i.e., one foot into the setback area or one foot from the property boundary line);
- (2) The size and configuration of the lot;
- (3) Whether the lot conforms to the dimensional standards of the zoning district in which it is located;
- (4) The size and location of the existing legal nonconforming building;
- (5) The size and location of other existing structures and those structures reasonably anticipated on the lot;
- (6) The impact, if any, that the expansion may have on adjoining properties;
- (7) Whether the proposed expansion would violate the intent of this chapter; and
- (8) Any other factor that relates to the purposes of this chapter as set forth in section 36-5 or as allowed by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-585. - Imposition of conditions.

- (a) *Generally.* In approving an expansion of a legal nonconforming building, the plan commission may impose one or more conditions of approval deemed necessary to further the intent and purposes of this chapter as set forth in section 36-5 and as allowed by law. Such conditions, for example, may relate to landscaping, screening, and the maximum size of the building(s).
- (b) *Effect on contracts with another party.* The plan commission shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(7)(gm)

**Note**— The town, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

Sec. 36-586. - Application form and content.

The application submittal shall include an application form as used by the town and a site plan depicting the information listed in appendix F.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-587. - Content of decision notice.

- (a) *Approval.* If the application for an expansion of a legal nonconforming building is approved, the decision notice should include the following:
- (1) A statement that the application is approved;
  - (2) A description of the use;
  - (3) Reasons for the decision based on the decision criteria listed in this division;
  - (4) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
  - (5) A statement that an aggrieved person, other than the applicant, may appeal the decision to a court of competent jurisdiction, and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
  - (6) Other information the plan commission or zoning administrator deems appropriate;
  - (7) The signature of the zoning administrator on behalf of the plan commission; and
  - (8) The date of the decision.
- (b) *Denial.* If the application for expansion of a legal nonconforming building is denied, the decision notice should include the following:
- (1) A statement that the application is denied;
  - (2) A description of the use;
  - (3) Reasons for the decision based on the decision criteria listed in this division;
  - (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration;
  - (5) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
  - (6) Other information the plan commission or zoning administrator deems appropriate;
  - (7) The signature of the zoning administrator on behalf of the plan commission; and
  - (8) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-588. - Effect of decision.

If the plan commission approves the expansion of a legal nonconforming building, the approval runs with the land and is binding on all subsequent property owners.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-589. - Revocation or modification of a prior approval.

The plan commission may revoke or modify an approval issued pursuant to this division if it is determined that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval where were or were not imposed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-590. - Appeal.

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-591—36-600. - Reserved.

#### DIVISION 22. - CHANGE IN TOPOGRAPHY

Sec. 36-601. - Generally.

In certain circumstances, a permit is needed to alter the topography of a site. This division describes the procedures and requirements to issue change in topography permits.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-602. - Applicability.

(a) This division applies to each of the following:

- (1) Increasing or decreasing existing ground surface elevation greater than four feet at any point where the top or bottom of the proposed slope is within ten feet of any existing property boundary or within 50 feet of an environmental corridor;
- (2) Increasing or decreasing existing ground surface elevation steeper than two horizontal to one vertical or a total elevation change of six feet or greater at any point;
- (3) Bringing in fill or removing excavated material from a site in quantities greater than 1,000 cubic yards, unless otherwise part of an approved master grading plan for a development project;
- (4) Increasing or decreasing existing ground surface elevation greater than four feet at any point within 50 feet of a floodplain or wetland boundary at any point;
- (5) Ponds as denoted in the land-use matrix (appendix A); and
- (6) Major retaining walls.

Material that is excavated for a basement and is taken off-site is not included in the threshold specified in subsection (3) above.

(b) The following are exempt:

- (1) Any wetland enhancement or restoration project approved by the state department of natural resources where the top or bottom of a proposed slope is 15 feet or greater from the nearest existing property boundary at any point; and
- (2) Any stormwater management practice permitted under the county's stormwater ordinance if the top or bottom of the proposed slope is located 15 feet or greater from the nearest existing property boundary or environmental corridor at any point. However, if a proposed berm for a storm water management practice is greater than four feet in height at any point, the applicant may be required to complete an additional engineering review or meet more restrictive berm design requirements, depending on the county's determination of risk for downstream damages.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-603. - Initiation.

The owner of the subject property may submit an application to modify the topography of a site.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-604. - Review procedure.

The general steps outlined below shall be used to review an application to modify the topography of a site.

- (1) *Pre-submittal meeting.* Before submitting an application, the applicant or the applicant's agent may meet with the zoning administrator to review applicable regulations and procedures and the proposal.
- (2) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (3) *Determination of completeness.* The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until

the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.

- (4) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (5) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report as described in this division and provide a copy of it to each member of the plan commission and the applicant prior to the meeting at which the matter will be considered. The zoning administrator will also provide a copy to interested people upon request.
- (6) *General notice.* Consistent with division 2 of article IV, the zoning administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
- (7) *Staff report preparation and distribution.* The zoning administrator may prepare a written staff report and provide a copy of it to each member of the plan commission, the applicant, and any other interested person upon request.
- (8) *Public hearing.* Allowing for proper notice, the plan commission conducts a public hearing consistent with division 3 of article IV. Prior to the close of the public hearing, the applicant or the plan commission may request a continuance consistent with division 3 of article IV. If the public hearing is adjourned, the plan commission may direct the zoning administrator, the town engineer, and/or town attorney to conduct additional research and to prepare such documents it deems necessary, including a preliminary decision document.
- (9) *Decision.* The plan commission shall make a decision to:
  - a. Approve the application;
  - b. Approve the application with conditions; or
  - c. Deny the application.

The plan commission may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 days after the initial meeting unless the applicant agrees to an extension of a specified duration.

- (10) *Preparation of decision notice.* Based on the action of the plan commission, the zoning administrator prepares a decision notice consistent with this division, subject to the direction provided to the zoning administrator from the plan commission.
- (11) *Applicant notification.* Within a reasonable time following the plan commission's decision, the zoning administrator mails the decision notice to the applicant by regular mail.
- (12) *Acceptance by property owner required.* If an approval includes one or more condition of approval, the property owner must sign the decision notice to acknowledge the terms of the approval and return the same to the zoning administrator within six months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the town at the expiration of such time limit. The decision notice shall only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.
- (13) *Public record copy.* A duplicate copy of the decision notice shall be retained as a public record.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-605. - Basis of decision.

The plan commission in making its decision shall consider the following factors:

- (1) The stability of the proposed slope;
- (2) The aesthetic impact;
- (3) The potential for adverse drainage;
- (4) The potential impact upon neighboring properties;
- (5) The potential impact upon environmentally sensitive areas;
- (6) The potential impact upon existing wetlands, lakes and streams;
- (7) The potential impact on roadways and other infrastructure;
- (8) Public safety;
- (9) The length, height, design, and location of any retaining walls or berms;
- (10) Whether a retaining wall is needed to stabilize the grade or control soil erosion based on existing topography;
- (11) How the proposed activity fits with the master grading plan, if applicable;
- (12) Proposed landscaping and screening;
- (13) The materials used and source for fill, landscaping, and retaining walls;

- (14) The amount of land disturbance in relation to the size of the subject property;
- (15) Proposed pond size, use, location, design, landscaping, and water source; and
- (16) Any other factor that relates to the purposes of this chapter as set forth in section 36-5 or as allowed by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-606. - Imposition of conditions.

- (a) *Generally.* In approving a change in topography, the plan commission may impose one or more conditions of approval deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping, screening, preservation of existing vegetation, engineering considerations for excessively steep or unstable slopes, and erosion control.
- (b) *Effect on contracts with another party.* The plan commission shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference—** Wis. Stats. § 62.23(7)(gm).

**Note—** The town, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

Sec. 36-607. - Application form and content.

The application submittal shall include an application form as used by the town and a site plan depicting the information listed in appendix F.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-608. - Content of decision notice.

- (a) *Approval.* If the application for a change in topography is approved, the decision notice should include the following:
  - (1) A statement that the application is approved;
  - (2) A description of the use;
  - (3) Reasons for the decision based on the decision criteria listed in this division;
  - (4) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
  - (5) A statement that an aggrieved person, other than the applicant, may appeal the decision to a court of competent jurisdiction, and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
  - (6) Other information the plan commission or zoning administrator deems appropriate;
  - (7) The signature of the zoning administrator on behalf of the plan commission; and
  - (8) The date of the decision.
- (b) *Denial.* If the application for a change in topography is denied, the decision notice should include the following:
  - (1) A statement that the application is denied;
  - (2) A description of the use;
  - (3) Reasons for the decision based on the decision criteria listed in this division;
  - (4) A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration;
  - (5) A statement that the applicant may appeal the decision to a court of competent jurisdiction;
  - (6) Other information the plan commission or zoning administrator deems appropriate;
  - (7) The signature of the zoning administrator on behalf of the plan commission; and
  - (8) The date of the decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-609. - Effect of decision.

If the plan commission approves a change in topography, the approval runs with the land and is binding on all subsequent property owners.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-610. - Revocation or modification of a prior approval.



The plan commission may revoke or modify an approval issued pursuant to this division if it is determined that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval where were or were not imposed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-611. - Appeal.

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 days of the final decision.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-612—36-650. - Reserved.

## ARTICLE VI. - ZONING DISTRICTS AND LAND USE

### DIVISION 1. - GENERAL PROVISIONS

Sec. 36-651. - Legislative findings.

The town board makes the following legislative findings:

- (1) The use of land in the town has a direct bearing on the public health, safety, and welfare.
- (2) Standards are needed to ensure that new development is done in a coordinated manner.
- (3) The provisions contained in this article are adopted consistent with state statutes.
- (4) Each parcel of land in the town is intended to have a zoning designation.
- (5) In some instances, state and federal law limit the town's ability to regulate certain land uses.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-652. - Purpose.

This article promotes the public health, safety, and welfare and is intended to:

- (1) Promote a sound development pattern by separating the town into various districts where each has uniformly applicable development standards;
- (2) Separate incompatible land uses to the greatest extent possible;
- (3) Encourage the most appropriate use of land throughout the town;
- (4) Regulate and control the erection, construction, reconstruction, alteration, repair, and use of buildings, structures, and land;
- (5) Provide for a variety of housing options;
- (6) Allow different, but compatible land uses (i.e., mixed uses), to occur in specified areas of the town;
- (7) Avoid, or, as a less preferred alternate, minimize congestion;
- (8) Avoid, or, as a less preferred alternate, minimize environmental degradation; and
- (9) Preserve prime agricultural lands and stabilize the economic base of farming in the town as well as to allow for needed urban expansion.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-653—36-660. - Reserved.

### DIVISION 2. - ZONING DISTRICTS AND ZONING MAP

Sec. 36-661. - Generally.

The town is divided into a number of base zoning districts so that each parcel of land is located in at least one district and potentially more than one district. For each of these districts, appropriate types of land uses are identified along with development standards when applicable.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-662. - Establishment and purpose of zoning districts.

- (a) *Base zoning districts.* Recognizing that different areas of the town serve unique functions, the town is divided into a number of zoning districts. Even though some of the districts may share similar characteristics, they possess one or more unique qualities that set them apart from the other districts. Although these districts may not now possess each of the attributes in these descriptions, it is intended that as land uses change over time they more closely reflect the intended uses. Uses are allowed in the various districts consistent with all applicable development standards in this chapter and any development limitations as described in [section 36-741](#). The base zoning districts are listed below.
- (1) *Special purpose districts.*
- a. *Public (P-1) district.* This district is intended to accommodate publicly-owned facilities which serve a public use, such as education, recreation, medical care, or government.
  - b. *Conservancy (C-1) district.* This district is intended to include environmentally sensitive lands. Given the various development constraints associated with these lands, development is restricted to land uses compatible with these constraints.
- (2) *Agricultural districts.*
- a. *Agricultural (A-1) district.* This district is intended to accommodate the needs of agriculture as a primary use and such residential uses as may be normal and necessary in an agricultural district. The primary purpose of this district is to preserve in agriculture use those lands generally suited for such use and which may have the ultimate potential for residential use but at this time are deemed beyond the current land needs for residential use. Residential development is limited to parcels being created by certified survey map per the town land division and development control ordinance, or by a planned unit development or conservation design development conditional uses. When the agricultural use is terminated in an area not developed as described above, those lands shall be rezoned to a different zoning classification that is consistent with the town's adopted comprehensive plan in accordance with the amendment process described in this chapter.
- (3) *Residential districts.*
- a. *Rural home (RH) district.* This district is intended to accommodate primarily single-family residences on scattered lots to foster and maintain the rural character and lifestyle of the surrounding area. The dimensional standards of this district require the largest lot size of all of the residential zoning districts.
  - b. *Suburban estate (SE) district.* This district is intended to accommodate low-density lots primarily for single-family residences and other compatible uses. The district provides a "suburban" arrangement of amenities, services, and facilities on lots generally smaller than what is intended for the RH rural home district.
  - c. *Residential (R-1) district.* This district is intended to accommodate medium-density lots primarily for single-family residences and other compatible uses. This district is intended to provide a "suburban" arrangement of amenities, services, and facilities on lots generally smaller than what is intended for the SE suburban estates district.
  - d. *Residential (R-2) district.* The R-2 residential district is intended to accommodate high density lots primarily for single-family residences and other compatible uses. This district is intended to provide a "suburban" arrangement of amenities, services, and facilities on lots generally smaller than what is intended for the R-1 residential district.
- (4) *Business districts.*
- a. *Local business (B-2) district.* This district is intended to accommodate a single retail or service establishment or a small grouping of such establishments that primarily serve the needs of the surrounding community. Because this district is characteristically located in a residential area along a major roadway, these commercial uses need to be compatible in size, intensity, and scope with a residential area.
- (b) *Overlay zoning districts.* In addition to the base zoning districts enumerated in subsection (a) above, the following overlay zoning districts are established to account for unique conditions or requirements:
- (1) *Environmental corridor (EC) district.* This district includes those lands designated as environmental corridor by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) in 2015 that are not otherwise part of a C-1 conservancy district. Specific provisions are included in article VIII.
  - (2) *Hydric soils (HS) district.* The hydric soils (HS) district includes those lands that are mapped as having hydric soil conditions (i.e., depth to groundwater of one foot or less) according to the Soil Survey of Milwaukee and Waukesha Counties published by the USDA Soil Conservation Service (now known as the Natural Resources Conservation Service (NRCS)). Specific provisions are included in article VIII.
  - (3) *Sending parcel overlay district.* Sending parcel overlay districts are a special type of zoning district that is used to limit development on those parcels where permissible residential density has been transferred from the sending parcel to a receiving parcel. Each district is unique and therefore has its own set of development standards and limitation as set forth herein. SPO districts are to be numbered sequentially (i.e., SPOD-01, SPOD-2, etc.)
- (c) *Planned development district (PDD).* Planned development districts are a special type of zoning district and are established consistent with the procedures and requirements in article V. Each district is unique and therefore has its own set of development standards that are documented in the general development plan, and associated development agreement, if any. PDD districts are to be numbered sequentially (i.e., PDD-01, PDD-02, etc.)

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020)

**Note**— The AP, EFO, R-3, B-1, B-3, M-1, and M-2 districts were removed as part of the 2019 rewrite of the zoning code. Additionally, the environmental corridor (EC) district and the exclusive agricultural conservancy (A-E) district were converted from base zoning districts to overlay districts.

If a parcel is located in one or more overlay districts, the regulations that apply to the underlying zoning district remain in effect, except as modified by the overlay district(s), and if there is any conflict between the overlay districts, the most restrictive shall control.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-664. - Necessity of zoning district designation.

It is the intent of this article that no land shall be without a zoning district designation, unless specifically noted on the zoning map. In the event a parcel of land is for any reason deemed to be without a designation, no land development shall occur until such time as the town board has assigned the parcel an appropriate zoning classification.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-665. - Effect of a boundary line relocation on zoning designation.

Pursuant to Wis. Stats. ch. 236, a lot line between adjoining parcels of land may be relocated in certain circumstances, potentially making one parcel larger and the other smaller. In those situations where the affected parcels are in different zoning districts, a lot line relocation does not alter the location of the zoning district boundary until such time as the zoning map has been amended to reflect the new lot line.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-666. - Zoning map.

- (a) *Title.* The map that depicts the location of the various zoning districts shall be titled "Town of Mukwonago Zoning Map—Waukesha County, Wisconsin."
- (b) *Official zoning map.* The town clerk shall maintain one paper copy of the zoning map as the official map which shall be signed by the town board chairperson and countersigned by the town clerk. If there is a discrepancy between this zoning map and other maps as may be made available, the map maintained by the town clerk shall control in all instances.
- (c) *Availability.* The zoning map maintained by the town clerk shall be available for public inspection upon request. The town clerk and zoning administrator may post the zoning map on the town's website and otherwise make and distribute copies in a manner deemed appropriate.
- (d) *Preparation of a new official map.* In the event the zoning map maintained by the town clerk is damaged, lost, or destroyed and after each amendment, the zoning administrator shall prepare a new zoning map and submit it to the town board chairperson and town clerk for signature.
- (e) *History of amendment.* The zoning map maintained by the town clerk may contain a descriptive history of recent amendments that have been made, indicating the ordinance number and date of action.
- (f) *Archive of superseded maps.* The town clerk shall maintain a permanent archive of superseded zoning maps that are created after January 1, 2020.
- (g) *Amendment.* The procedure and requirements to amend the zoning map are set forth in article V of this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-667. - Groundwater recharge areas.

The zoning map shall also depict the location of very high groundwater recharge areas, or portions thereof, in the town delineated on map 43 of the report entitled "Mukwonago River Watershed Protection Plan" produced by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) as community assistance planning report no. 309. Such areas are not intended to constitute a zoning district but are mapped to show those areas that are subject to additional requirements.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-668—36-680. - Reserved.

DIVISION 3. - ALLOWABLE LAND USES

Sec. 36-681. - Land uses generally allowed within zoning districts.

- (a) *General purpose zoning districts.* For the purposes of this chapter, land uses, as defined in appendix B, are classified as principal, accessory, or temporary. Appendix A lists principal land uses (series 1 to 12), accessory uses (series 13), and temporary uses (series 14). Each of the land uses are designated as one of the following in each of the base zoning districts:
  - (1) "P" indicates that the use is permitted in the zoning district by right provided that all other provisions of this chapter are met.
  - (2) "C" indicates that the use is allowed in the zoning district as a conditional use provided that all other provisions of this chapter are met.
  - (3) "WT" indicates that the use is subject to the special review standards and procedures for wireless telecommunication facilities.
  - (4) "TC" indicates that the use is subject to the special review standards and procedures for change in topography

(5) "-" indicates that the use is not permitted in the zoning district.

Any commercial or industrial land use that is shown as permitted that emits air contaminants, fugitive dust, or potentially offensive odors outside of the building; incinerates any substance; or handles radioactive materials, hazardous substances, hazardous waste, or regulated substances is considered a conditional use.

(b) *Planned unit development districts.* Land uses that are permitted in a planned unit development district are enumerated in the general development plan for the district, along with development standards, if any.

(c) The aboveground storage capacity of materials that produce flammable or explosive vapors shall not exceed 500 gallons unless approved by the plan commission or is located within an agricultural district.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-682. - Similarity of land uses.

Because the list of land uses does not include every conceivable type of activity, those land uses that are listed shall be interpreted to include other land uses that are of a similar nature in terms of operational characteristics, effects on surrounding land, and intensity.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-683. - Land uses not listed.

A land use that is not listed, and which cannot be interpreted to be similar to any listed land use as provided in section 36-682 is prohibited. However, any person may submit a petition to allow a use that is not listed by amending the zoning code as set forth in article V.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-684. - Project classified in more than one land use category.

If a proposed project includes both an allowable land use and a prohibited land use, the prohibited portion of the project shall not occur in the zoning district.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-685. - Wind energy.

This chapter does not include any regulations relating to wind energy systems. The town may however, enact an ordinance to regulate wind energy systems pursuant to the procedures and requirements set forth in Wis. Stats. § 66.0401.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-686. - Special standards for residential land uses.

(a) *Residential parking.* Parking of vehicles accessory to a residential use shall be limited to those actually used by the residents or for temporary parking for guests. Vans, motor homes, recreational vehicles, or pick-up trucks used for private and recreational use, or one similar vehicle used in a business for transportation to and from a place of employment, may be parked on a residential property as long as such use does not become a nuisance to the neighborhood.

(b) *Parking of trucks and equipment as an ancillary use to a residential use.* No other vehicular equipment of a commercial or industrial nature, as excepted in subsection (a) of this section, shall be parked or stored for more than three consecutive hours and six accumulative hours during any 24-hour period on any lot in any zoning district, except business or industrial districts, or as follows:

(1) Agricultural equipment, such as farm tractors, plows, seeders, combines, cultivators, and farm trucks, used in a farm operation and located within an agricultural district or the RH rural home district.

(2) One panel, van, or pick-up truck used in the conduct of a conforming business activity being carried on in a residential or an agricultural district. The plan commission may approve a special exception, consistent with the procedures and requirements of article V, to allow more than one such vehicle if the need is evident. No limitation shall be placed on vans or pick-up trucks if they are used for private nonbusiness or noncommercial recreational purposes.

(3) Vehicular equipment allowed under a conditional use permit as set forth in appendix A.

(c) *On-site storage of a recreational vehicle.* One recreational vehicle may be stored outside of a building provided the following conditions are satisfied:

(1) The overall length of the recreational vehicle including the towing tongue shall not exceed 35 feet.

(2) The recreational vehicle shall be registered or licensed with the state.

(3) The condition of the recreational vehicle does not constitute a nuisance as determined by the plan commission.

(d) *Use of a recreational vehicle for occupancy.* No recreational vehicle shall be used for the purpose of human habitation (human habitation being defined as entering a recreational vehicle for any purpose other than maintenance), except that the town board may allow such habitation for one continuous six-month period while the construction of a principal structure owned by the same person who is the applicant for the permit provided the waste disposal

facilities and water supply facilities for the property upon which the recreational vehicle is to be located have been approved by the county health department.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-687. - Special standards for accessory land uses.

- (a) *Generally.* No accessory building shall be constructed until the principal building is completed or is being constructed.
- (b) *General exemption for farm buildings.* Upon petition, the plan commission may allow farm buildings on a parcel that is 35 acres or larger without the necessity of a residence (i.e., the principal use), provided the commission determines the land is being used for an agricultural pursuit and the farm buildings are directly related to that agricultural pursuit. The owner will provide for proper sanitation and maintenance of the structure.

If the plan commission grants approval, a deed restriction, in a form approved by the town attorney, shall be filed in the county register of deeds office, prior to issuance of a building permit for a farm building.

- (c) *Exemption for a utility cabinet.* For the purpose of this chapter, a utility cabinet may be established on a vacant lot prior to the establishment of a principal use.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-688. - Special provisions for community living arrangements.

- (a) *Limitations.* Under state law, a town may not limit the number of community living arrangements so long as the total capacity of such facilities does not exceed 25 or one percent of the town's population, whichever is greater. When that threshold is exceeded, the town board may prohibit additional community living arrangements from being located in the town. Additionally, when the capacity of community living arrangements in a ward reaches 25 or one percent of the population, whichever is greater, the town board may prohibit additional community living arrangements from being located in the ward. A foster home or a foster treatment home that is the primary domicile of a foster parent or foster treatment parent and that is licensed under Wis. Stats. § 48.62, and an adult family home certified under Wis. Stats. § 50.032(lm)(b), are exempt from this provision.
- (b) *Periodic review of existing facilities.* Not less than 11 months but not more than 13 months after the first licensure of an adult family home under Wis. Stats. § 50.033, or of a community living arrangement and every year thereafter, the town board may make a determination pursuant to Wis. Stats. § 62.23(7)(i)9, as to the effect of such facility on the health, safety, or welfare of residents of the municipality. If the town board determines such facility poses a threat to the health, safety, or welfare of the residents of the municipality, the town board may order such facility to cease operation or obtain a conditional use permit to continue operation. Such facility shall cease operation within 90 days after date of the order, or the date of final judicial review of the order, or the date of the denial of a conditional use permit, whichever is later. The fact that an individual with acquired immunodeficiency syndrome or a positive test for the presences of HIV, as defined in Wis. Stats. § 252.01(1M), antigen or nonantigenic products of HIV or an antibody to HIV resides in a community living arrangement with a capacity of eight or fewer persons may not be used under this subsection to assert or prove that the existence of the community living arrangement in the community poses a threat to the health, safety, or welfare of the residents of the town.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference—** Wis. Stats. § 62.23(7)(i).

Sec. 36-689. - Special provisions for specified foster homes and treatment foster homes.

Foster homes which are owned, operated, or contracted for by the state or a county department are not subject to this article. All other foster homes and treatment foster homes shall comply with this article.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-690. - Map of conditional uses.

The zoning administrator is authorized to prepare a map showing those properties that have an active conditional use permit and to amend the same from time to time.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-691—36-700. - Reserved.

DIVISION 4. - REASONABLE ACCOMMODATIONS

Sec. 36-701. - Legislative findings.

The town board makes the following legislative findings relating to reasonable accommodations for persons with disabilities:

- (1) The federal government has adopted various laws with respect to various rights afforded persons with disabilities.
- (2)

Some of these laws, most notably the Fair Housing Act and the Americans with Disabilities Act, affect how local zoning rules and regulations are administered by municipalities.

- (3) Under the Fair Housing Act, reasonable accommodations must be made in some circumstances so that a person with a disability has an equal opportunity to use and enjoy a dwelling unit.
- (4) Under Title II of the Americans with Disabilities Act, reasonable accommodations must be made in some circumstances to avoid discrimination as provided in the act.
- (5) If a local municipality can demonstrate that a requested modification would fundamentally alter the nature of its service, program, or activity (such as zoning requirements) it is not required to grant the modification.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-702. - Reviewing authority.

- (a) *Wheelchair ramps in setback and offset areas.* The building inspector is authorized to approve the construction of wheelchair access ramps in setback and offset areas pursuant to sections 36-719 and 36-720, respectively. In consideration of the matter, the building inspector shall be the reviewing authority, and shall have the powers to apply the general requirements of this section. In consideration of any such request, the building inspector must determine whether granting the requested accommodation would fundamentally alter the nature of this zoning code and its requirements, and if the building inspector finds that it would not, then the accommodation must be granted subject to all terms and conditions of this division.
- (b) *Other reasonable accommodations.* All requests for reasonable accommodations, other than for wheelchair ramps, under the above-mentioned federal laws shall be accomplished through the variance process described in article V. The zoning board of appeals shall be the reviewing authority concerning such requests, and shall have the power to apply the general requirements of this section. In consideration of any such special exception request, the zoning board of appeals must determine whether granting the requested accommodation would fundamentally alter the nature of this chapter and its requirements, and if the zoning board of appeals finds that it would not, then the accommodation must be granted subject to all terms and conditions of this division.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-703. - General requirements.

- (a) *Identification of disability.* If a person's disability is not obvious or otherwise known, the reviewing authority may request information that:
  - (1) Is necessary to verify that the person meets the federal government's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activity);
  - (2) Describes the needed accommodation; and
  - (3) Shows the relationship between the person's disability and the need for the requested accommodation.
- (b) *Confidentiality of applicant information.* In reviewing petitions for reasonable accommodations, the reviewing authority will attempt to balance the privacy rights and reasonable request of an applicant for confidentiality, with normal procedural requirements relating to public notice, public hearings, written decision documents that may include findings of fact and conclusions of law, and maintaining adequate records. Any document identifying the disability or medical condition of any specific person shall be treated as confidential and shall not be subject to disclosure by the town for any reason, including for compliance with Wisconsin's Open Records Law, unless ordered to do so by a court of competent jurisdiction and notice is given to the person who provided the document to the town. Specifically, any medical records regardless of source, including statements of medical providers, shall not be subject to disclosure. For any other type of document, such as an application or determination, the document may be subject to disclosure, but only after the nature or description of the person's disability or medical condition is redacted by the town's attorney. A statement regarding the town's handling of information subject to this provision should be included in the decision document.
- (c) *Nature of approval.* Any accommodation approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.
- (d) *Imposition of conditions.* The reviewing authority may impose conditions of approval deemed necessary to uphold the overall intent of the zoning regulations. Typical conditions of approval include, but are not limited to, the following:
  - (1) Periodic inspection of the property to verify compliance with this section and any conditions of approval;
  - (2) Removal of the improvements, where removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;
  - (3) Time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;
  - (4) Recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;
  - (5) Measures to reduce the impact on surrounding properties and uses;
  - (6) Measures in consideration of the physical attributes of the property and structures; and
  - (7) Other conditions necessary to protect the public health, safety, and welfare.
- (e) *Written decision.* The reviewing authority shall issue a written decision to document the findings made pursuant to this section, and any conditions imposed on any approval granted pursuant to this section.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-704—36-710. - Reserved.

#### DIVISION 5. - DIMENSIONAL AND RELATED STANDARDS

Sec. 36-711. - Generally.

Lots, buildings, and other structures shall conform to the dimensional standards specified in appendix C and D, except as may be otherwise allowed in this chapter. The standards for lots, buildings, and other structures in a planned unit development district are enumerated in the general development plan for the zoning district.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-712. - Lot area.

- (a) *Generally.* The minimum size of lots shall comply with the standards specified in appendix C, except as allowed in section 36-732, or appendix D. In addition, certain land uses may have a higher minimum lot requirement than what is otherwise established for the various zoning districts.
- (b) *Exemptions.* A parcel created by a land division that is authorized by the town is exempt from the minimum lot size requirements if such parcel is to be dedicated to the public or used for stormwater facilities or other types of development-related infrastructure or common open space, including walking and recreation trails.
- (c) *Measurement of lot area.* Lot area is measured on the horizontal plane and shall not include the area between the front lot line and the base setback line so designated on the county's highway width map. If a parcel of land is located in the county's shoreland jurisdiction and the town's zoning jurisdiction, that portion in the county's shoreland jurisdiction is included in the measurement of lot area. The area of a parcel that is zoned conservancy (C-1) is included in the measurement of lot area. The area of a flag lot constituting the stem is not included in the measurement of lot area.
- (d) *Change in lot, generally.* No existing lot area shall be reduced by any means so as to create a lot of less than the required size or so that the existing offsets, setbacks, or lot area would be reduced below that required by the regulations for the zoning district in which such lot is located.
- (e) *Change in lot with a conditional use.* The property boundary lines of a lot containing a conditional use shall not be modified in any manner without the express authorization of the town board upon recommendation of the plan commission. If the town board determines that the proposed reconfiguration or change in lot area is substantive, the proposed change may only occur if the board grants a new approval with the proposed lot consistent with the review procedures and requirements for a conditional use in effect at the time.
- (f) *Lot area in the context of land divisions.* Minimum lot area requirements are one of many factors that affect how many lots could potentially be created through the land division process.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-713. - Lot configuration.

- (a) *Generally.* Lot lines shall be substantially at right angles or radial to street lines. Lot lines shall not cross municipal boundaries.
- (b) *Depth and width.* The depth to width ratio of a lot shall not exceed 2.5 to 1. The plan commission may approve a special exception, consistent with the procedures and requirements of article V, to exceed this standard to account for special circumstances provided all other requirements can be met. A special exception shall not be granted when doing so will allow an increase in the number of lots that could be created through the land division process.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-714. - Lot density.

- (a) *Generally.* The density of lots in a proposed land division shall comply with the standards specified in appendix C or D. If the zoning district does not specify a density standard, the maximum lot density will be presumed to be one lot per the minimum required lot size.
- (b) *Calculation.* The total number of lots to be created is divided by the total acreage of the parcel(s) to be divided, less any deductions specifically enumerated in this chapter. For example, in a district with a maximum density of one building lot per three acres, no more than ten lots would be allowed to be created from a parcel of 30 acres.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-715. - Lot width.

- (a) *Generally.* The width of a lot shall comply with the standards specified in appendix C, except as allowed in section 36-732, or appendix D.
- (b) *Exemptions.* A parcel created by a land division that is authorized by the town is exempt from the lot width requirements if such parcel is to be dedicated to the public or used for stormwater facilities and other types of development-related infrastructure or common open space including walking and recreation trails.

- (c) *Measurement of lot width.* Lot width is measured along an imaginary line generally parallel to the front lot line and at a point where one half of the minimum lot area is in front of such line.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-716. - Lot frontage.

- (a) *Generally.* A principal building shall not be permitted on a tract of land, which does not abut on a public street unless authorized by subsection (b) of this section. A lot shall only be considered to be abutting on a public street if:
- (1) The lot abuts a public street for at least 60 feet; and
  - (2) Either of the following is true:
    - a. The lot meets the minimum average width requirement of the zoning district in which it is located at the building setback line; or
    - b. One-half the depth of the lot is at least the minimum average width of the zoning district in which it is located; and
  - (3) Provided that a lot which has a narrow strip as part of the lot extending to the public street from the main part of the lot where the building could lawfully be placed, shall only be considered to be abutting on the public street if the narrow portion of the lot is as wide as the required minimum average width for the district in which it is located.
- (b) *Exceptions.* While the town will generally not permit the creation of flag lots, or the utilization of private streets or easements to access tracts of land, there are situations where the town may allow the creation of flag lots, and there are situations existing as of December 1, 1990, in the town that the town may treat as exceptions for the prohibition against the use of private streets and there are situations existing as of January 1, 2002, in the town, or in order to implement the town's park and open space plan or the county development plan park and open space element, may be treated by the town as exceptions from the prohibition against the use of easements or flag lots.
- (1) *Flag lots.* Subject to the approval of the plan commission and town board, a principal building may be permitted on a tract of land which does not abut a public street, if the tract of land abuts the public street by a narrow strip of land which is an ownership strip and a part of the lot as long as, at a minimum, all of the following requirements are satisfied:
    - a. Provided such tract of land excluding the narrow portion of the same tract providing access to the public street conforms to the minimum lot area of the district in which it is located.
    - b. Provided such tract of land which has a narrow strip of land is at least 33 feet wide where it abuts the public street and for its entire length.
    - c. Provided such tract of land is recorded as a certified survey map or subdivision plat in accordance with chapter 34 of the Municipal Code.
    - d. Provided such tract of land has or will have a paved or graveled driveway for a width of 12 feet from the road right-of-way to the area of the proposed residence and said driveway is in compliance with all applicable laws, including with regard to the grade requirements of the town building code, and it does not impact the natural flow of surface water, or if the narrow strip of land is to be used to access a parcel which is designated for public ownership or to be owned by a private conservation organization in order to implement the town's park and open space plan or the county development plan park and open space element.
    - e. Provided such tract of land does not conflict with the plans for the future development of streets in the area or the official map for the town.
    - f. In the case of the access provided to implement the town's park and open space plan or the county development plan park and open space element, the town may place certain restrictions so as to prohibit a conflict with adjacent neighborhoods.
    - g. In order to determine if there is a conflict with plans or future development in the area, the applicant may be required by the plan commission to provide a neighborhood development plan showing street extensions and street patterns as they relate to topography, environmental features, drainage patterns, existing structures and parcels, and soils suitable for development for review by the plan commission. In no case, shall there be more than one residence allowed on such tract of land.
  - (2) *Private streets.* In situations where there is as of December 1, 1990, an existing private street right-of-way of sufficient width as provided below and there are in existence separate recorded tracts of land already created fronting upon said private right-of-way, in that situation the town may permit the private right-of-way to become legal access for these existing separate recorded tracts of land to be served by said right-of-way on the following terms and conditions:
    - a. The plan commission determines that the subject tract of land was a legal lot of record prior to December 1, 1990.
    - b. The plan commission finds that it is in the best interest of the town to certify the tract of land as a legal parcel.
    - c. The plan commission finds that the subject tract of land conforms to the minimum lot area, lot dimensions, lot width, lot sizes, building locations and building sizes of the district in which it is located.
    - d. The plan commission finds that the subject tract of land has access by a permanent easement on said private street of at least 33 feet in width to a public street, or where more than one principal residence or lot is proposed, the easement for such access shall be at least 66 feet in width.
    - e. The plan commission has determined that the property owner has placed a deed restriction on the property in a form as approved by the town attorney giving notice that access is by way of a private street or way. Said deed restriction must be legally recorded in the office of the county register of deeds.
    - f.



The plan commission has determined that the ownership of the private street is clearly determined, that the private street or way will be maintained, that a written property maintenance agreement in a form satisfactory to the plan commission is on file with the town, and that all property owners are advised as to their responsibilities for maintenance of the private street or way. Such agreement must be legally recorded in the office of the county register of deeds.

- g. The town board approves a certified survey map for the subject land, which is then recorded in the office of the county register of deeds, unless the land division was previously made by certified survey map or subdivision plat, which was approved by the town board pursuant to chapter 34 of the Municipal Code.
- (3) *Easements.* In situations where there is as of January 1, 2002, an existing easement of sufficient width as provided below and there is in existence a separate recorded tract of land served by such easement, or where a land division is to occur in order to implement the town's park and open space plan or the county development plan park and open space element, the town may permit the easement to become legal access for such tract of land to be served by said easement on the following terms and conditions:
- a. The plan commission determines that the subject tract of land existed prior to January 1, 2002, as a legally created parcel in accordance with the requirements of this chapter and chapter 34 of the Municipal Code in effect at the time it was created, and was a parcel having a separate tax key number prior to January 1, 2002, or is a parcel which is to be created in order to implement the town's park and open space plan or the county development plan park and open space element.
  - b. The plan commission finds that it is in the best interest of the town to certify the tract of land as a legal parcel.
  - c. The plan commission finds that the subject tract of land conforms to the minimum lot area, lot dimensions, lot width, lot sizes, building locations, and building sizes of the district in which it is located or implements the town's park and open space plan or the county development plan park and open space element.
  - d. The plan commission finds that the subject tract of land has access by a permanent easement of at least 33 feet in width to a public street, or where more than one principal building or lot is proposed, the easement for such access shall be at least 66 feet in width or has adequate width in order to accommodate access to the public or for maintenance equipment on parcels which are created in order to implement the town's park and open space plan or the county development plan park and open space element.
  - e. The plan commission determined that the property owner has placed a deed restriction on the property in a form as approved by the town attorney giving notice that access is by way of an easement. Said deed restriction must be legally recorded in the office of the county register of deeds.
  - f. The plan commission has determined that ownership of the easement is clearly determined, that the easement will be maintained, that a written property maintenance agreement in a form satisfactory to the plan commission is on file with the town, and that all property owners are advised as to their responsibilities for maintenance of the easement. Said agreement must be legally recorded in the office of the county register of deeds.
  - g. The town board approves a certified survey map for the subject land, which is then recorded in the office of the county register of deeds, unless the land division was previously made by certified survey map or subdivision plat, which was approved by the town board pursuant to chapter 34 of the Municipal Code.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-717. - Residential floor area.

A building intended in whole or part for residential purposes shall provide a minimum floor area as specified in appendix C or D. Such minimums are stated in terms of the minimum total floor area required for a building and that portion of the total which must be provided on the first floor level.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-718. - Floor area of attached garages.

- (a) *Generally.* The floor area of an attached residential garage shall comply with the standards in appendix C or D.
- (b) *Exception.* The plan commission may approve a special exception, consistent with the procedures and requirements of article V, to allow a greater floor area, provided:
  - (1) The attached garage has no more than four side-by-side vehicles facing the right-of-way from which the dwelling unit has street access;
  - (2) The attached garage is not used for any commercial or industrial purposes, except as otherwise allowed by the chapter;
  - (3) The attached garage complies with all other requirements of this chapter; and
  - (4) The grant is subject to an equivalent reduction in the total floor area of accessory buildings that are allowed on the lot.

In making their decision, the plan commission shall consider the following factors enumerated in article V and must make the following determinations:

- (1) The architecture of the oversized garage is compatible with the dwelling unit;
- (2) The oversized garage will not be adverse to the public health, safety or welfare;
- (3) The oversized garage will not be in conflict with the spirit or intent of this chapter; and
- (4) The oversized garage will not otherwise be detrimental to the town or the immediate neighborhood where the structure would be located.

The plan commission may impose such conditions it deems necessary including a requirement for screening and/or landscaping.

- (c) *Deed restriction required with approval of special exception.* If the plan commission approves a special exception under subsection (b) above, a deed restriction, in a form approved by the town attorney, shall be filed in the county register of deeds office, prior to issuance of the building permit indicating that a special exception has been granted and recording any conditions of approval, including the reduction in the permitted square footage of accessory buildings and a statement that the attached garage may only be used for personal use and cannot be used for any type of commercial or industrial purpose unless otherwise permitted by this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-719. - Floor area of detached accessory buildings.

- (a) *Generally.* The total floor area of detached accessory buildings, whether temporary or permanent, shall comply with the standards in appendix C or D. As stated in section 36-511, the floor area of rural accessory buildings is not included in this total.
- (b) *Exception.* The plan commission may approve a special exception, consistent with the procedures and requirements of article V, to allow a greater floor area, provided:
- (1) a. The detached building has no more than four side-by-side vehicles facing the right-of-way from which the dwelling unit has street access;
  - b. The detached building is not used for any commercial or industrial purposes, except as otherwise allowed by the chapter; and
  - c. The detached building complies with all other requirements of this chapter.
  - (2) In making their decision, the plan commission shall consider the factors enumerated in article V and must make the following determinations:
    - a. The architecture of the accessory building is compatible with the dwelling unit;
    - b. The accessory building will not be adverse to the public health, safety or welfare;
    - c. The accessory building will not be in conflict with the spirit or intent of this chapter; and
    - d. The accessory building will not otherwise be detrimental to the town or the immediate neighborhood where the structure would be located.
  - (3) The plan commission may impose such conditions it deems necessary including a requirement for screening and/or landscaping.
- (c) *Deed restriction required with approval of special exception.* If the plan commission approves a special exception under subsection (b) above, a deed restriction, in a form approved by the town attorney, shall be filed in the Waukesha County register of deeds office, prior to issuance of the building permit indicating that a special exception has been granted and recording any conditions of approval, including a statement that the accessory building may only be used for personal use and cannot be used for any type of commercial or industrial purpose unless otherwise permitted by this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020; Ord. No. 2021-O-55, § 9, 7-14-2021)

Sec. 36-720. - Building coverage.

The total footprint of all buildings on a lot shall comply with the standards in appendix C or D. For the purposes of this subsection, all buildings are included including accessory buildings. Decks and patios are specifically not included.

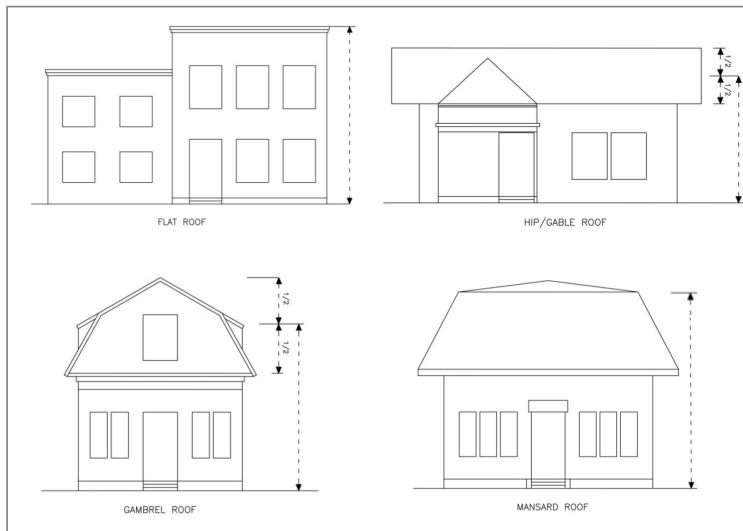
( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-721. - Building and structure height.

- (a) *Generally.* Except as specified in this section, the height of structures shall comply with the standards specified in appendix C or D. (See also section 36-742 regarding the establishment of building grades.)
- (b) *Measurement of building height.* The height of a building shall be measured from the lowest finished grade at the building line to:
- (1) The highest point of a flat roof;
  - (2) The mean height of a gable, gambrel, hip, and pitch roof; or
  - (3) The deck line of a mansard roof as generally depicted in exhibit 6-1.

When one or more dormers with side walls exceeds 50 percent of the lineal wall width immediately below the dormer(s), the dormer(s) is considered a second floor for purposes of measuring building height.

**Exhibit 6-1. Measurement of Building Height by Roof Type**



( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-722. - Setback requirements.

(a) *Establishment of base setback line.* Base setback lines are established parallel to the center line of all streets and highways as follows:

- (1) On all streets or highways for which the ultimate width has been established by the county pursuant to Wis. Stats. § 66.1031, the base setback line shall be located at a distance from the centerline of the street equal to one-half of such established width.
- (2) On all other streets, which shall be designated as "local streets," the base setback line shall be 33 feet from the centerline of such street or 60 feet from the center point of a cul-de-sac unless specifically designated otherwise by action of the town board.
- (3) When a lot abuts a frontage road, the base setback line shall be located at a distance from the centerline equal to one-half the right-of-way width of such frontage road.

In all cases where any of the highways for which setback lines are established by this section are located on municipal boundaries, such establishment shall apply only within the unincorporated area.

(b) *Setback standards.* No building shall be erected, altered, or placed so that any roofed or enclosed portion is closer to the base setback line than the setback distance specified in appendix C or D, except as allowed in this section.

(c) *Setback averaging.* The following exceptions are applicable only where the setback requirements of the properties involved are identical:

- (1) Where the nearest existing building on one side of such building is within 500 feet and has less than the required setback, the average between such existing setback and the required setback shall apply.
- (2) Where the nearest buildings on both sides of such building are within 500 feet of such buildings but not closer than 300 feet to each other and have less than the required setback, the average of such existing setbacks and the required setback shall apply.
- (3) Where the nearest buildings on both sides of such building are within 300 feet of each other and have less than the required setback, the average between such existing setbacks shall apply.
- (4) In the case of a proposed addition to an existing building which has less than the required setback, such existing building may be considered the "nearest existing building" in order to apply the aforesaid exceptions in determining required setback for the proposed addition.

For the purpose of this subsection, the following rules shall apply when applying setback averaging:

- (1) Building projections which may extend into the setback area are not to be included.
  - (2) Setback reductions as allowed by a variance shall not be included.
- (d) *Use of setback areas.* No other structures of any kind, except necessary highway and traffic signs, public utility lines, drainage structures, rural mailboxes and newspaper boxes shall be erected, altered, or placed within such base setback areas. Private retaining walls, guard posts, or other landscape structures shall not be permitted unless placed below the street centerline elevation. Mailboxes and newspaper boxes shall not be permitted on the circle portion of the cul-de-sac.
- (e) *Work on existing structures.* Additions to and replacements of existing structures may be made within the established setback areas, subject to approval of the plan commission and provided the owner will file, with the town an agreement in writing to the effect that the owner will remove all new construction, additions and replacements created after the adoption of the ordinance from which this section is derived at his or her expense, when necessary for the improvement of the highway.
- (f) *Corner lots.* On corner lots of record, as of the date of this chapter, the effect of the setback regulations shall not reduce the buildable width of such corner lot to less than 30 feet.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-723. - Offset requirements.

- (a) *Purpose of offsets.* Offsets are established to define a pattern of development in each of the zoning districts (in conjunction with other dimensional standards). The established setback standards provide for a varying degree of:
  - (1) Privacy between neighbors;
  - (2) Separation to mitigate noise and odor;
  - (3) Space for light and air circulation;
  - (4) Land for landscaping, recreational use, pleasure, and stormwater management;
  - (5) Land for maintaining the exterior of buildings and other structures;
  - (6) Room for the placement and maintenance of underground and above-ground utilities; and
  - (7) Room for emergency vehicles between and around buildings and other structures.
- (b) *Generally.* No building shall be erected, structurally altered, or relocated so that any vertical wall, supporting a roofed or enclosed portion, and excluding a roof overhang measuring 24 inches or less, is closer to any lot line than the offset distance specified in appendix C or D.
- (c) *Specific building types.* In the case of business or manufacturing uses, no building shall be erected, structurally altered, or relocated so that any roofed or enclosed portion is closer to any lot line than the offset distance specified in appendix C or D, except as follows:
  - (1) Two or more buildings on adjoining lots may be erected with common or directly adjoining walls provided the requirements of the state industrial code relative to such construction are complied with and provided that at both ends of such "row" type buildings the applicable offset requirements shall be complied with.
  - (2) The required offset may be reduced on one side of a structure provided the offset on the other side is increased by an equivalent amount and provided the owners of any property adjoining the area of reduced offset shall file with the town a copy of a recorded deed restriction stipulating that no building shall be erected on said property so as to reduce the combined offset in such case to a distance less than that resulting from the normal application of the minimum offset requirements to both properties.
- (d) *Use of offset areas.* The following may be located in a required setback or offset, provided they do not extend into, or are located within, a utility easement or a required fire lane and meet all other requirements of this chapter:
  - (1) Landscaping;
  - (2) Retaining walls;
  - (3) Fences;
  - (4) Freestanding mailboxes and newspaper boxes;
  - (5) Play equipment, except not in a front yard;
  - (6) Small objects easily moved by hand such as birdbaths, birdfeeders, and birdhouses;
  - (7) Portable grills, picnic tables, and yard furniture but not when located on a patio or deck;
  - (8) Gardens;
  - (9) Flag poles;
  - (10) Compost bins;
  - (11) Clotheslines;
  - (12) Sidewalks, but not closer than five feet to a lot line of a parcel;
  - (13) Driveways, but not closer than five feet to a side lot line;
  - (14) Specified building projections as provided for in exhibit 6-2;
  - (15) Components of a private on-site sewage system, including holding tanks (if allowed), leach fields, and septic tanks provided separation requirements in chapter 16 of the General Code of Waukesha County are met;
  - (16) Wellheads not located in a building or other structure, provided separation requirements in state law are met;
  - (17) Those structures and uses where applicable development standards included in appendix B either exempt the structure or use from setback requirements or establish alternate setbacks requirements; and
  - (18) Other structures and land uses when exempted by the zoning administrator, provided such exemption is in keeping with the intent of this chapter.

**Exhibit 6-2. Allowable Building Projections into a Required Setback or Offset**

Feature	Maximum Projection
Sills, belt courses, buttresses, cornices, ornamental features, and the like	8 inches into a required front, side, or rear yard

Eaves	24 inches into a required front, side, or rear yard
Chimneys	36 inches into a required front, side, or rear yard
Open or lattice enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers	5 feet into a required side or rear yard
Balconies	3 feet into a required front or side yard; 5 feet into a required rear yard
Steps, stoops, and porches, provided they are not higher than the ground floor elevation	8 feet into a required front yard; 3 feet into a required side or rear yard

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-724. - Open space.

- (a) No building shall be erected, structurally altered, or placed on a lot so as to reduce the useable open area of such lot to less than that specified by the regulations specified in appendix C, except as allowed in section 36-732, or appendix D.
- (b) To be considered useable, such open area shall be readily accessible and of a size and shape which can be reasonably considered to provide for the amenities and necessities of light, air, play space, drying yard, garden, etc. For the purpose of this requirement on residential lots, open space includes gardens, crops, pastures, woods, wetlands, patios, decks, swimming pools, sport courts, and similar features. Open space does not include buildings, driveways, and parking areas.
- (c) No part of the open space provided for any building shall be included as part of the open space required for another building; except as provided for planned unit developments.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-725. - Vision corner setbacks.

- (a) *Establishment.* Vision setback lines at the intersections of public streets and of a street with a railroad, where the grades are not separated, are established as follows:
  - (1) Across each sector between the intersections of a street with a railroad, a vision setback line shall be established by a straight line connecting points on the base setback line and the railroad right-of-way line, which points are located 120 feet from the intersection of the base setback line and the railroad right-of-way.
  - (2) Across each sector between intersecting streets, where one or more of which has a designated width of 100 feet or greater, a vision setback line shall be established by a straight line connecting two points on the intersecting base setback lines, which points are located 60 feet distant from the intersection of the base setback lines.
  - (3) Across each sector between any other intersecting streets, a vision setback line shall be established by a straight line connecting two points on the intersecting base setback lines, which points are located 30 feet distant from the intersection of said base setback lines.
- (b) *Permissible use.* No structure of any kind shall be permitted in the vision setback area which exceeds a height of three feet above the elevation of the center of the intersection, except for necessary highway and traffic signs, public utility lines, and open fences through which there is clear vision, nor shall any plant material be permitted which obscures safe vision of the approaches to the intersection.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-726. - Separation from environmental corridor (EC) overlay district.

- (a) *Generally.* No land-altering activity, impervious surface, or buildings along with any attached structural improvement, such as stoops and porches, shall be closer than 50 feet to the boundary line of the environmental corridor (EC) district, except as provided for in this section.
- (b) *Special exception.* The plan commission may approve a special exception, consistent with the procedures and requirements of article V, to allow a lesser separation for buildings, but not less than 20 feet. In making such decision, the plan commission shall consider the following factors along with those enumerated in article V:
  - (1) The size and configuration of the buildable area of the subject property taking into account all setback and offset requirements that may apply;
  - (2) The size and location of existing structures and other improvements on the subject property;
  - (3) The impact, if any, of the encroachment on the natural resources within the EC district at the location of the encroachment;
  - (4) The extent and necessity of the encroachment;

- (5) The effect of the encroachment on the structural integrity of the building and any structural improvement and the intended use of the building and any structural improvement;
- (6) the impact, if any, that the encroachment may have upon neighboring properties; and
- (7) Any other factor the plan commission finds to be relevant in the interest of the public health, safety, and welfare.

The plan commission may not approve a special exception when the proposed building or building expansion does not otherwise comply with all other setback and offset requirements that may apply. The plan commission may impose conditions of approval it deems necessary to mitigate the impacts of the encroachment into the setback area. Upon approval, a deed restriction, in a form approved by the town attorney shall be filed in the office of the county register of deeds, prior to issuance of the building permit indicating that a special exception has been granted and recording any conditions of approval, if any.

(c) *Reasonable accommodations.* The building inspector may, pursuant to division 4 of this article, allow the construction of an unenclosed wheelchair access ramp in the EC setback area for an existing building, provided:

- (1) The proposed location for the ramp is the only reasonable location based on the configuration of the existing building; and
- (2) The ramp encroaches into the setback area no more than is necessary to provide access to the existing building.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-727. - Separation from conservancy (C-1) district.

(a) *Generally.* All buildings shall be a minimum of 75 feet from the C-1 conservancy district. Attached open decks shall maintain a minimum setback distance of 80 percent of the distance to the existing principal building or 60 feet, whichever is the shorter distance.

(b) *Reasonable accommodations.* The building inspector may, pursuant to division 4 of this article, allow the construction of an unenclosed wheelchair access ramp in the C-1 setback area for an existing building, provided:

- (1) The proposed location for the ramp is the only reasonable location based on the configuration of the existing building; and
- (2) The ramp encroaches into the setback area no more than is necessary to provide access to the existing building.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-728. - Separation requirements for on-site sewage systems and water wells.

On-site sewage systems and water wells shall comply with all separation requirements as may be established by the county or the state.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-729. - Separation requirements for buildings.

No accessory building shall be erected, structurally altered, or relocated so that any roofed or enclosed portion thereof is closer than ten feet to the principal building on the lot, without a firewall.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-730. - Number of principal buildings on a parcel.

(a) *Generally.* Every building hereafter erected, structurally altered, or relocated shall be located on a single lot. In no case, except in agricultural districts and planned unit development districts, and duplexes and multifamily buildings where allowed and subject to applicable lot density requirements, shall there be more than one principal building on a lot, except as provided in this section. The principal building shall be built first in all districts. In any district where a building other than a residence is considered principal, such construction shall be subject to the prior approval of the town board.

(b) *Distinction between one building and multiple buildings.* In the administration of this section, a person may not claim that two or more buildings should be counted as one building by virtue of any of the following:

- (1) Connection by a breezeway of any length;
- (2) Connection by a deck;
- (3) Connection by a porch;
- (4) Any underground connection of any type;
- (5) Any connection that is not heated, ventilated, or air conditioned in the same manner of the main building;
- (6) Any connection that serves no significant purpose other than a walkway;
- (7) Any connection that is significantly smaller in dimension than the connected parts; or
- (8) Any connection that allows motor vehicles to drive through the connection.

The above distinction is intended to require each building to have a single, integrated configuration of enclosed space and to prohibit the appearance of multiple buildings in excess of established limitations.

(c)

*Exception.* The town board may approve the issuance of a new single-family residential home building permit, and allow the occupancy of an existing residential structure on a parcel, for a period of time not to exceed two years during the construction of the new residence subject to the following conditions:

- (1) Subject to the occupancy of the existing single-family residential building being made by the same person who will occupy the new single-family building for which the new residential home building permit is issued.
  - (2) Subject to the applicant submitting to and receiving approval from the town board written proof that the waste disposal system for the property upon which the current residence exists conforms to the applicable sanitary ordinances of the county environmental health division or is otherwise allowed to be used by the county environmental health division.
  - (3) Subject to the applicant submitting to the town board and receiving approval as to form from the town attorney and as to amount from the town engineer, a letter of credit or cash in the amount of 115 percent of the removal and restoration costs as determined by the town engineer, and also submitting to and receiving approval from the town attorney and the town engineer, an agreement which would allow the town to access the property and remove the existing structure at the applicant's expense if the new applicant fails to do so within 60 days of issuance of an occupancy permit for the new residence; upon either of the following occurrences:
    - a. Prior to the issuance of a new residential home building permit for any lot on which an existing residential home is occupied, or
    - b. Prior to occupancy of any existing residential home on any lot for which a new residential home building permit has been issued.
  - (4) Subject to such additional conditions as the town board may require in the interest of the health, safety, and welfare of the town.
- (d) *Additional standards.* When this chapter allows more than one principal building on a lot, the plan commission or town board may:
- (1) Require a greater setback or offset than what is normally required for the zoning district in which it is located;
  - (2) Require additional landscaping;
  - (3) Establish a minimum separation between principal buildings; and
  - (4) Impose any other condition necessary to account for concerns related to the purposes of this chapter as set forth in section 36-5 or in other sections of this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-731. - Number of accessory buildings on a parcel.

- (a) *Generally.* The number of accessory buildings on a parcel of land shall comply with the requirements set forth in appendix C or D. As stated in section 36-511, rural accessory buildings are not included in this total.
- (b) *Distinction between one building and multiple buildings.* In the administration of this subsection, a person may not claim that two or more buildings should be counted as one building by virtue of any of the following:
  - (1) Connection by a breezeway of any length;
  - (2) Connection by a deck;
  - (3) Connection by a porch;
  - (4) Any underground connection of any type;
  - (5) Any connection that is not heated, ventilated, or air conditioned in the same manner of the main building;
  - (6) Any connection that serves no significant purpose other than a walkway;
  - (7) Any connection that is significantly smaller in dimension than the connected parts; or
  - (8) Any connection that allows motor vehicles to drive through the connection.

The above distinction is intended to require each building to have a single, integrated configuration of enclosed space and to prohibit the appearance of multiple buildings in excess of established limitations.

- (c) *Rural accessory buildings.* Pursuant to the procedures and requirements in division 17 of article V, the town board may allow more accessory buildings than what is specified when one or more of the accessory buildings on a lot are designated as a rural accessory building.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-732. - Special provisions for lots with central water and/or wastewater systems.

- (a) *Generally.* In the case of any lot proposed to be served by a municipal or municipally-approved communal wastewater system or water system, and where such service would be provided prior to any occupancy of such lot, the town board may reduce the lot size, width, open space, floor area ratio and offset requirements applicable to such lot, upon recommendation of the plan commission following public hearing.
- (b) *Public hearing.* Notice of such hearing shall be given by official publication and by direct notice to owners of any contiguous property as listed on the previous tax roll, at least ten and not more than 30 days before such hearing.
- (c) *Decision criteria.* The plan commission in making its recommendation and the town board in making its decision shall give particular consideration to the following and shall make written findings of fact relative thereto:
  - (1)

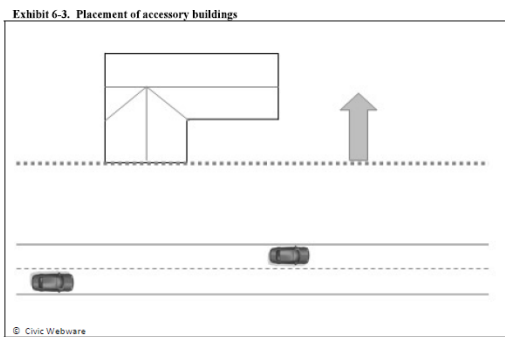
The suitability of soil, terrain and water level conditions with regard to effective provision of individual sewage disposal or water supply, with careful consideration of economic and practical engineering aspects involved in the future probability or necessity of providing municipal sewerage or water service in the area.

- (2) The effect of any reduction in the lot size, width, open space, floor area ratio and offset requirements on the character and value of surrounding development.
- (3) The effect of any such reduction on the overall density pattern and the economic balance of land use in the community.
- (4) In the case of reductions involving two or more lots, different provisions may be established for individual lots to meet special circumstances and to carry out the intent of the considerations listed in this section. In no case, however, shall the lot size, width, open space, floor area ratio, and offset requirements be reduced by more than one-third.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-733. - Placement of detached accessory buildings on a lot.

Except as permitted in this section, a detached accessory building shall be located behind the front face (i.e., face of the building closest to the street) of the principal building (exhibit 6-3). In the case of a corner lot, the detached accessory building shall meet the minimum setback requirements from all streets. Only accessory buildings for agricultural uses are permitted in front of the principal building. Pursuant to the procedures and requirements in article V, the plan commission may approve a special exception to allow an accessory building in front of the principal building on a parcel that is 3 acres or larger. In making such decision, the plan commission and town board shall consider:



- (1) The size of the subject property;
- (2) The character of the area;
- (3) The size of the proposed accessory building;
- (4) The extent to which the proposed accessory building is visible from public and private streets and other properties in the area
- (5) The practical difficulty in placing the proposed accessory building in the location described in this subsection; and
- (6) Other factors related to relevant circumstances.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-734—36-740. - Reserved.

DIVISION 6. - ENVIRONMENTAL AND ENGINEERING REGULATIONS

Sec. 36-741. - Site restrictions.

If the zoning administrator determines that a parcel of land, whether vacant, partially developed, or fully developed, contains one or more development constraints that would preclude the normal use of the parcel for a use that is otherwise permitted in the zoning district in which it is located, he or she shall render a written determination that states the best available facts related to the development constraint and other reasoning as may be appropriate. Examples of development constraints include unfavorable topography, rock formations, shallow depth to bedrock, unstable or otherwise unsuitable soils, stormwater runoff, inadequate drainage, high groundwater, or any other constraint that is harmful to the public health, safety, and welfare. Once such a determination has been made, the zoning administrator, building inspector, or other governmental official or body shall not issue a development order or other approval authorizing the development in the area subject to the development constraint. The property owner shall have the right to appeal such administrative decision consistent with the procedures and requirements in article V. The zoning administrator may reconsider his or her determination at any time and render a new determination if new or additional facts become known or if the facts upon which the determination was made are not accurate.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-742. - Establishment of building grades.



Every building hereafter erected, structurally altered, or relocated shall be at a grade approved by the town building inspector as being in satisfactory relationship with the established street grades, or with the existing street grade where none is established, with particular consideration for proper drainage and safe vehicular access.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-743. - Drainage.

- (a) *Adequate drainage required.* No principal building shall be erected on or moved onto land where the building is subject to periodic flooding or where the land is not adequately drained at all times, or where the first floor level is less than two feet above the highest anticipated floodwater level.
- (b) *Obstruction to drainage prohibited.* The damming, filling, relocating, or otherwise interfering with the natural flow of surface water along any surface water drainage channel or natural water course shall not be permitted except with approval of the plan commission and other agencies as may be required.
- (c) *Building restricted adjacent to drainage channels or water courses.* All buildings or structures shall comply with the county shoreland/floodland ordinance.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-744. - Groundwater separation.

No principal building shall be erected, structurally altered, or relocated on land where the distance between the lowest floor surface and the seasonal high-water table is less than one foot. To ensure compliance with the above standards, the procedures and requirements in "Basement Wetness and Flooding Prevention Standards" adopted by the county land resources division with a revision date of April 2016, and as amended, shall apply. In the administration of the procedures and requirements, the zoning administrator for the town shall serve the same role as the land resource division (LRD) and the town board of adjustment shall serve the same role as the county board of adjustment.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-745. - Sanitation and water supply.

- (a) *Sanitation.* No principal building shall be erected, structurally altered, or relocated unless it has been certified by the building inspector or plumbing inspector that it conforms to all town ordinances and other governmental laws or regulations then applicable to sewage disposal systems, and that satisfactory evidence has been submitted to show that suitable provisions for disposal of sewage is possible. A county septic system permit shall be required for all new private systems. Certification from the county health department verifying the soil's suitability to meet standards shall be furnished when a specific system is not being proposed. (Explanatory note: While every attempt has been made, through control of minimum lot size, building location, and plumbing standards to ensure that proper disposal of sewage will be provided on any lot, it is recognized that no such standard will completely ensure adequate disposal in every situation. This section has been written for the purpose of giving the community the authority to require whatever additional provisions are necessary to prevent a sanitary problem from developing in a situation where the normal requirement will not ensure proper sewage disposal.)
- (b) *Water supply required.* No occupancy permit shall be issued for a building used for a residential purpose unless provision is made for a safe and adequate supply of water, or connection is to be made to an approved municipal or community water system.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-746. - Erosion control and stormwater management.

All land-disturbing activities authorized by this chapter shall comply with the county construction site erosion control and stormwater management ordinance, as may be amended.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-747. - Traffic impact report.

- (a) *When required.* A traffic impact report is required for any land use that is classified as a conditional use and the anticipated number of trips in any given day of operation would exceed 250 trips or any commercial, industrial, or institutional use that would exceed 500 trips in any given day of operation. The town board, in its sole discretion, may require a traffic impact report when circumstances warrant such review and the number of trips is 80 percent or more of the above thresholds.
- (b) *Submittal.* When a traffic impact report is required and relates to a conditional use application, the report must be submitted with the conditional use application and the site plan application. When a report is required for a use not classified as a conditional use, the report must be submitted with the site plan application.
- (c)

*Qualifications of preparer.* A traffic impact report must be prepared by a professional engineer with demonstrated expertise in transportation planning and/or design.

- (d) *Trip generation rates.* Trip generation rates for various land uses must be based on the manual titled "Trip Generation" (latest edition) published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if it can be shown to the satisfaction of the town engineer that the alternative source better reflects local conditions.
- (e) *Form and content.* A traffic impact report must be completed consistent with the most current revision of the traffic impact analysis guidelines published by the state department of transportation.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-748—36-760. - Reserved.

#### DIVISION 7. - GENERAL STANDARDS

Sec. 36-761. - Compliance with building codes.

A building shall comply with all applicable building codes for the intended use.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-762. - Licensing with the town and county.

In addition to meeting the requirements contained in this article, all land uses shall also meet any requirements for licensing with the town and the county, which may now exist or may be adopted.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-763. - Licensing with state agencies.

If a land use or any related activity requires a license from the state, or its agent, to operate, such license shall be obtained prior to the establishment of such use and maintained for the life of the use or until the state, or its agent, no longer requires such license.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-764. - Driveways.

- (a) *Generally.* Every new residence shall have a driveway that connects the dwelling unit to a public or private street. The driveway shall comply with article IV of chapter 14 of the Municipal Code.
- (b) *Number.* No more than one driveway shall access onto a public road. The plan commission may approve a special exception, consistent with the procedures and requirements of article V, to allow a second driveway.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-765—36-770. - Reserved.

#### DIVISION 8. - SITE DESIGN AND ARCHITECTURAL STANDARDS

Sec. 36-771. - Applicability.

Those land uses specified in appendix A requiring site plan review shall provide a site plan for new construction and any modification of an existing site.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-772. - Site design principles.

- (a) *Legislative findings.* The town board makes the following legislative findings regarding site design requirements:
  - (1) The design and layout of a site, including principal and accessory buildings, parking areas and access drives, building service areas, docking and loading areas, and other elements, can have a substantial and long-lasting effect on the utility of the subject property and on surrounding properties and the overall character of a community.
  - (2) The requirements in this section are intended to provide meaningful guidance to applicants, design professionals, and public officials.
  - (3) The requirements in this section are intended to promote the public health, safety, and welfare and are reasonably related to the public purpose of

achieving an attractive, functional, and prosperous community.

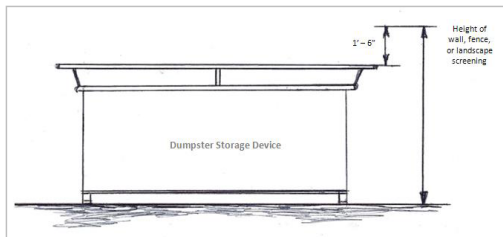
- (b) *Minimum requirements.* Development subject to review under this division shall adhere to the following design principles along with other requirements that may apply:
- (1) A building shall be arranged on the site so as to not impede traffic accessibility and circulation to or from adjacent streets and adjoining sites.
  - (2) The front of the building shall be generally parallel to the street or a public area, such as a courtyard, plaza, or the like.
  - (3) Cross accesses shall be provided between adjoining commercial parcels whenever it is feasible to do so.
  - (4) A docking or loading area or a service area for a commercial, institutional, or industrial building shall be easily accessible to service vehicles, separated from the on-site parking area, and designed to serve multiple establishments and tenants, when possible. Such docking or loading area shall not be readily visible from a public street, an on-site customer parking area, or an abutting property in a business or residential district or in an agricultural zoning district that is designated for future commercial or residential development in an adopted comprehensive plan. Screening from view may be accomplished by (i) integrating such area into the overall design of the building (e.g., inside of the building or use of architectural extension of a building wall) or (ii) using a fence; a berm; landscaping, above what is otherwise required in this chapter; other suitable feature; or any combination thereof.
  - (5) Existing natural resources and topographic features on the site shall be preserved to the greatest extent possible while affording a reasonable use of the property.
  - (6) The project shall not create any hazard.
  - (7) The project shall be designed to avoid existing hazards, whether manmade or natural, and if avoidance is not possible, to mitigate the effects of the hazard to a satisfactory level necessary to protect the public health, safety, and welfare.
  - (8) Parking areas and pedestrian accessways located on the site shall be designed to promote safety and efficient traffic flow.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-773. - Architectural standards.

- (a) *Legislative findings.* The town board makes the following legislative findings regarding architectural requirements:
- (1) The outward design appearance of a building can have a substantial and long-lasting effect on surrounding properties and the overall character of a community.
  - (2) Buildings and especially those within a largely developed area should fit into the context in which they occur.
  - (3) Architectural design standards should allow for a variety architectural styles and be flexible to the greatest extent possible.
  - (4) The standards in this section are intended to provide meaningful guidance to applicants, design professionals, and public officials.
  - (5) This section is not intended to limit or infringe upon reasonable accommodations to afford a person with disabilities equal opportunity to use and enjoy a building.
  - (6) The standards in this section are intended to promote the public health, safety, and welfare and are reasonably related to the public purpose of achieving an attractive, functional, and prosperous community.
- (b) *Minimum requirements.* Buildings subject to review under this division shall adhere to the following architectural standards:
- (1) The scale of the building shall be compatible with the overall massing and the individual parts of adjacent buildings, especially existing and anticipated residential buildings in a residential zoning district or in an agricultural zoning district that is designated for future residential development in an adopted comprehensive plan.
  - (2) Windows, doors, and other openings must form a unified composition in proportion to the building elevation.
  - (3) On any new building constructed for business or manufacturing use, all building exteriors facing a street or approved way shall have 50 percent of the street face constructed with brick, decorative masonry, glass panel, or other appropriate similar finished façade as may be approved by the plan commission.
  - (4) Except as provided in this subsection, the brick, masonry, glass, or other decorative facing used on the front of the building shall extend for a distance of at least 25 feet along the sides of the structure or at least 25 percent of the that side wall distance, whichever is greater. The plan commission may approve a special exception, consistent with the procedures and requirements of article V, to approve a lesser distance. In modifying this standard, the plan commission may consider the intended use of the building and require additional landscaping in-lieu of such exterior materials.
  - (5) Principal buildings with a front elevation of more than 750 square feet in area shall be divided into distinct planes of 500 square feet or less. The following design features can be used to meet this provision:
    - a. Canopies or awnings;
    - b. Arcades;
    - c. Porches;
    - d. Vertical wall offsets having a minimum depth of eight inches and a minimum width of ten feet;
    - e. Horizontal offsets having a minimum depth of two feet;
    - f. Pilasters having a minimum depth of eight inches, a minimum width of 12 inches, and a minimum height of 80 percent of the wall height;

- g. Recessed areas for entryways and the like having a minimum depth of eight inches; and
  - h. Other suitable multidimensional design features.
- (6) Oversized fenestration elements which tend to create a monumental scale shall not be used unless specifically required by the type of building or relationship to its surroundings.
  - (7) Building entrances must be clearly recognizable from parking lots and pedestrian circulation routes.
  - (8) No building regulated by this section shall be permitted where any exposed façade is not constructed or faced with a finished material that is aesthetically compatible with the other facades and presents an attractive appearance to the public and to surrounding properties.
  - (9) Rooftop mechanical equipment shall be positioned so it is not readily visible from a public street or an abutting property in a residential zoning district. Rooftop mechanical equipment may be placed in an enclosure or screened from view provided such enclosure or screening is used as an element of the building's architecture.
  - (10) Fencing shall complement the appearance of buildings onsite.
  - (11) The exterior building materials of an accessory building shall be the same as or similar to those used on the principal building.
  - (12) Overhead doors shall not face a public street. The plan commission may approve a special exception, consistent with the procedures and requirements of article V, to allow an overhead door to face a public street. In making such decision, the plan commission shall consider:
    - a. Whether the overhead door is set back sufficiently from the public street to adequately limit the adverse visual impact of the overhead door;
    - b. Whether the number of overhead doors that are proposed to face the public street, due to their number, would create an adverse visual impact;
    - c. Whether the natural terrain and other existing features of the lot may affect the visual impact of the overhead door;
    - d. Whether the overhead door will be appropriately screened with landscape berms or other landscaping; and
    - e. Any other factor not listed but deemed appropriate.
  - (13) HVAC (heating, ventilating, air conditioning) equipment shall be screened from view by landscaping or decorative screening materials that form an integral part of the design.



- (14) When trash, garbage, and recyclable materials are stored out-of-doors, such materials shall be stored in a container which is concealed or suitably screened from public view. A brick or stone wall, wood fence, chain-link fence with slats, and/or landscaping shall be used to totally obstruct vision into the storage areas. Any wall, fence and gate, and/or vegetative screening shall be installed or erected to a height at least one foot—six inches above the highest point of the dumpster as generally depicted below.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Sec. 36-774. - Outdoor storage areas.

- (a) Outdoor storage areas shall be located behind the front face of the building.
- (b) Outdoor storage areas adjoining residential districts shall be screened with a wall, a non-metallic fence, a berm, landscaping, or any combination, as approved by the plan commission.
- (c) Materials shall not exceed the height of required screening.
- (d) Outdoor storage areas shall consist of concrete, asphaltic concrete, gravel, or other material approved by the plan commission.
- (e) As part of the site plan/operation plan review process, the control of fugitive dust shall be addressed to the satisfaction of the reviewing authority.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

#### Secs. 36-775—36-789. - Reserved.

### DIVISION 9. - PERFORMANCE STANDARDS

#### Sec. 36-790. - Generally.

The performance standards in this division are established to promote the health, safety, and general welfare of the public by creating an objective and equitable basis to control potentially hazardous and nuisance-like effects of various land uses and to ensure that the community is adequately protected. These performance standards may have the effect of limiting, restricting, and prohibiting the ways in which otherwise permissible land uses may operate. In addition to these

established standards, there may be other applicable local, state, and federal codes and standards that also apply.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-791 - Odors

- (a) *Applicability.* The odor control standards established in this section apply to all land uses and activities, except where the odor is created by food cooking; the construction of a principal use on the subject property; the application of fertilizers; or incidental traffic, parking, loading, or maintenance operations. Public utilities and services that are otherwise allowed under this code are essential public services and are therefore also exempt.
- (b) *Standards.* No odors shall be created for periods exceeding a total of 15 minutes per any day that are detectable (by a healthy observer such as the zoning administrator who is unaffected by background odors such as tobacco or food) at the boundary of the subject property, where such property is located in a residential, institutional, or business zoning district.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-792. - Air pollution.

- (a) *Applicability.* The air pollution standards established in this section apply to all land uses and activities, except where the air pollution is created during the construction of a principal use on the subject property, or by incidental traffic, parking, loading, or maintenance operations.
- (b) *Standards.*
- (1) The emission of particulate matter containing a particle diameter larger than 44 microns is prohibited.
  - (2) Emission of smoke or particulate matter of a density equal to or greater than Number 2 on the Ringelmann Chart (U.S. Bureau of Mines) is prohibited at all times.
  - (3) Dust and other types of air pollution borne by the wind from such sources as storage areas, yards, and roads within the boundaries of any lot shall be controlled by appropriate landscaping, paving, oiling, or other acceptable means as determined by the reviewing authority.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-793. - Fire and explosive hazards.

- (a) *Applicability.* The standards for fire and explosive hazards established in this section apply to all land uses and activities.
- (b) *Standards.*
- (1) Any use involving materials which could decompose by detonation shall be located not less than 400 feet from any residential or business zoning district, except that this standard shall not apply to the storage or usage of liquefied petroleum or natural gas for normal residential or business purposes.
  - (2) Flammable and explosive materials at any point shall be provided with adequate safety and fire-fighting devices consistent with all fire prevention codes of the state.
  - (3) All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in completely enclosed buildings which have noncombustible exterior walls and an automatic fire extinguishing system.
  - (4) The storage of fuels and other materials that produce flammable or explosive vapors shall be permitted only after review and approval by the town fire department and in accord with their requirements to minimize fire and explosive hazards.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-794. - Glare and heat.

- (a) *Applicability.* The standards for glare and heat established in this section apply to all land uses and activities, except where glare is created during the construction of a principal use on the subject property, or by incidental traffic, parking, loading, or maintenance operations.
- (b) *Standards.*
- (1) No direct or sky-reflected glare shall be visible at the lot line of the subject property, whether from floodlights or from temperature processes, such as combustion, welding, or otherwise.
  - (2) As determined by the zoning administrator, there shall be no discernible transmission of heat or heated air at the lot line.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-795. - Water quality.

- (a) *Applicability.* The standards for water quality established in this section apply to all land uses and activities.
- (b) *Standards.*
- (1)

No activity shall locate, store, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that might runoff, seep, percolate, or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be harmful to human, animal, plant, or aquatic life.

- (2) No activity shall withdraw water or discharge any liquid or solid materials so as to exceed or contribute toward exceeding the minimum standards and those other standards and the application of those standards set forth in Wis. Adm. Code NR 102 or in other applicable chapters which regulate water quality.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-796. - Noise.

No operation or activity shall transmit any noise beyond the boundaries of the property so that it becomes a nuisance.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-797. - Vibration.

- (a) *Applicability.* The requirements of this section apply to all uses and activities, except those vibrations created during the construction of the principal use on the subject property.
- (b) *Requirements.* No physical vibration emanating on a property that is above the vibration perception threshold of an individual shall pass beyond the property line of such property. Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a reasonable person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-798—36-800. - Reserved.

ARTICLE VII. - OVERLAY DISTRICTS

DIVISION 1. - HYDRIC SOILS OVERLAY DISTRICT

Sec. 36-801. - Generally.

The hydric soils (HS) district includes those lands that are mapped as having hydric soil conditions (i.e., depth to groundwater of one foot or less) according to the Soil Survey of Milwaukee and Waukesha Counties published by the USDA Soil Conservation Service (now known as the Natural Resources Conservation Service (NRCS)).

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-802. - Boundary interpretation.

Where questions arise as to the exact location or boundary of a hydric soils (HS) district, the town building inspector is authorized to use his or her best judgment to establish the boundary of the district. If the location of the district is not readily evident to the building inspector, the property owner will need to hire a certified soil tester to define the extent of the district.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-803. - Use regulations.

- (a) *Within A-1 zoning district.* When located in the A-1 district, land may be cultivated subject to the regulations associated with the underlying zoning district, provided such lands have been historically cultivated. It is not the intent of this provision to promote or permit the conversion of wetlands. Development and other land-disturbing activities are subject to applicable wetland regulations adopted by the state.
- (b) *Other zoning districts.* In all other zoning districts, development and land-disturbing activities are subject to applicable wetland regulations adopted by the state.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-804—36-850. - Reserved.

DIVISION 2. - ENVIRONMENTAL CORRIDOR OVERLAY DISTRICT

Sec. 36-851. - Generally.

The environmental corridor (EC) district includes those lands designated as environmental corridor by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) in 2015 that are not otherwise part of a conservancy (C-1) district. This district is intended to preserve, protect, enhance, and restore those areas, while also affording an opportunity to use the site for limited residential purposes, in concert with the goal and intent of the county development plan and the town comprehensive plan, which suggests that residential densities in such areas not exceed one unit per five acres for all lots, which lie entirely within the environmental corridor.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-852. - Boundary interpretation.

Where questions arise as to the exact location or boundary of an environmental corridor (EC) district, the town building inspector is authorized to use his or her best judgment to establish the boundary of the district. If the location of the district is not readily evident to the building inspector, he or she shall request a field investigation by the Southeastern Wisconsin Regional Planning Commission staff biologist or his or her designee.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-853. - Use regulations.

- (a) *Vegetation management.* Vegetation may be managed in the environmental corridor (EC) district to control invasive plant species and to facilitate other forest management objectives, provided such activity is approved by the plan commission.
- (b) *Development within district.* A building envelope may be established within the environmental corridor (EC) district for (1) a principal building and accessory buildings, as may be allowed; (2) an area for an onsite septic system and well, as may be required; (3) an area around the principal building for outdoor living; and (4) an access from a public roadway to the principal and accessory buildings. The size and configuration of the building envelope shall conform to the following requirements:

- (1) For lots entirely within an environmental corridor (EC) district, the area of the building envelope shall be no larger than the amounts specified in the table below.

Lot Size	Maximum Land Disturbance
3.5 acres or larger	25,900 square feet
2 acres or larger, but less than 3.5 acres	18 percent of lot area
Less than 2 acres	19 percent of lot area

- (2) For lots partially within and partially outside of the environmental corridor environmental corridor (EC) district that are vacant as of September 16, 2020 or where the principal building is located outside of the environmental corridor (EC) district, new development shall be limited to the area outside of the environmental corridor (EC) district (except when such land is in the conservancy (C-1) district), unless a building envelope is shown on the face of an approved certified survey map or subdivision plat or on a site map recorded with a deed restriction as approved by the town board. Land within the environmental corridor (EC) district may be disturbed for driveways but only when such location is the only feasible alternative to provide access from the public roadway to the principal and accessory buildings.

- (3) For lots partially within and partially outside of the EC environmental corridor district that host a principal use as of September 16, 2020 in the EC environmental corridor district, the area of the building envelope shall comply with the amounts specified in the table in this subsection.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-854—36-860. - Reserved.

DIVISION 3. - SENDING PARCEL OVERLAY DISTRICTS (RESERVED)

Secs. 36-861—36-1000. - Reserved.

ARTICLE VIII. - ALTERNATIVE DEVELOPMENT OPTIONS

DIVISION 1. - CONSERVATION SUBDIVISION DESIGN

Sec. 36-1001. - Generally.

The conservation design development option gives design flexibility to preserve unique or sensitive natural areas including groundwater recharge areas, floodplains, wetlands, streams, steep slopes, woodlands, wildlife habitat, and environmental corridors.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1002. - Type of projects.

The two types of conservation design developments that are allowed are as follows:

- (1) A unified and planned development of a site, in single ownership, in a partnership, in corporate ownership, or in common ownership under the Condominium Ownership Act (Wis. Stats. § 703.01 et seq.) at the time of development, without the customary division into individual lots; and
- (2) The development of the parcel into individual lots with common, corporate or public open space.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1003. - Where allowed.

Conservation design developments are only allowed in the following base districts: C-1, A-1, RH, SE, and R-1.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1004. - Ownership.

At the time of establishment, all land within a conservation design project shall be under single ownership or control.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1005. - Residential density.

(a) *Generally*. The ultimate allowable density is determined by the town board based upon recommendations of the plan commission and consultations with the developer and shall not be more than the density allowed in the residential density factor chart with consideration of the following factors:

- (1) Traffic and capacity of public roads in the area;
- (2) The terrain of the site and the adjacent properties;
- (3) The adjacent land uses and their densities;
- (4) Soil suitability of the site;
- (5) Drainage patterns and the need for area-wide stormwater facilities; and
- (6) Compliance with the town's official map.

(b) *Maximum density*. The maximum number of residential units in a conservation subdivision is based on the net buildable acreage and the appropriate residential density, both of which are described herein.

The net buildable acreage is calculated by subtracting the following from the area of the subject property:

80 percent of lands located within a wetland:	___ acres
All of the area located within a pond or lake:	___ acres
40 percent of lands with a slope between 12 and 20 percent:	___ acres
80 percent of lands with a slope of 20 percent or greater:	___ acres
All lands located within an existing public open space easement:	___ acres
Total deduction:	___ acres

The following residential density factors shall be utilized to compute the maximum number of residential units in accordance with the table below. Depending on the size of the lots in the development, a density bonus is possible.



Zoning	Density Factor	Minimum Lot Size	Maximum Lot Size	Small Lot Density Bonus
R-H	5 acres/residential unit	0.75 acre	2.5 acres	1 acre average or less = 1.1
EC	5 acres/dwelling unit	0.75 acre	1.5 acres	1 acre average or less = 1.1
A-1	3.2 acres/residential unit	0.75 acre	1.5 acres	1 acre average or less = 1.1
S-E	3.2 acres/residential unit	0.75 acre	1.5 acres	1 acre average or less = 1.1
R-1	1 acre/residential unit	0.75 acre	1.0 acres	1 acre average or less = 1.1

Furthermore, the density may be increased as a result of transfer of development rights as provided in division 3 of this article.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1006. - Open space.

- (a) *Minimum area without a density transfer.* If the project does not involve a density transfer as allowed in division 3 of this article, at least 40 percent of the subject property must be designated as common or public open space and located in an outlot. No more than 20 percent of the required open space may be zoned C-1.
- (b) *Minimum area with a density transfer.* If the project involves a density transfer as allowed in division 3 of this article, at least 30 percent of the subject property must be designated as common or public open space and located in an outlot. No more than 20 percent of the required open space may be zoned C-1.
- (c) *Ownership.* The open space may be in public ownership, private conservation organization ownership or an undividable interest acceptable to the town board, or private ownership with an open space easement to assure that the open space will be permanent.
- (d) *Lands to be included.* The area set aside for open space must include all the following physical features located on the subject property:
  - (1) 100-year floodplain;
  - (2) Wetlands;
  - (3) A minimum 75-foot buffer along all perennial or intermittent streams or public bodies of waters;
  - (4) Slopes over 20 percent in at least 5,000 square feet of contiguous area;
  - (5) Known populations of endangered or threatened species and habitat;
  - (6) Archeological sites; and
  - (7) Environmental areas as designated on the town master plan and park and open space plan.
- (e) *Proximity to lots.* The open space areas shall be conveniently accessible to all residential dwelling units within the project, and be a meaningful and useful area for such intended open use. It is the intent of this subsection to ensure that all lot owners are in close proximity to the open space, and to maintain a maximum amount of open space.
- (f) *Permissible development.* While every attempt is being made to protect the environmental characteristics of the site, a maximum of two percent of such open space areas may be impervious, which may be used for limited construction of recreationally related structures, roads, parking areas, and trails. The plan commission and the town board may modify this maximum requirement in conformance with the overall intent of these provisions while also protecting the public interest.

Buildings or uses for noncommercial, recreational or accessory facilities may be permitted in such open space, subject to town board approval.

- (g) *Permissible uses in open space areas.* The open space areas may be used for one or more of the following uses as approved by the town board:
  - (1) Conservation type uses;
  - (2) Passive recreational activities;
  - (3) Trails;
  - (4) Preservation of archeological and historical sites;
  - (5) Agricultural, horticultural and other pasture uses, which follow all applicable best management practices to minimize environmental impact, subject to approval of the town board;
  - (6) Dedication to a public entity or nonprofit conservation organization in accordance with the adopted town park and open space plan; and
  - (7) community facilities such as swimming pools, tennis courts, play structures or equestrian facilities.

- (h) Leasing of common open space may require restrictions on the access of the residents. It relieves the homeowners of the responsibility of maintenance of the green space and may generate income. The open space may be leased to a farmer for agricultural activities conducted according to acceptable terms. A conservation easement or restrictive covenants must detail the operation and maintenance responsibilities associated with the ownership and enforcement responsibilities of holders of said easement or restrictions.
- (i) Adequate guarantees shall be provided for permanent retention of the open space resulting from these regulations either by private reservation for the use of the residents of the development or others as may be specifically provided for (i.e., farmer's use of open space, dedication to a public entity or transfer to a conservation organization).
- (j) Perpetual care and maintenance of such open space and structures shall be provided for, and an operational plan shall be submitted for specific approval and inclusion in the terms of the permit. Ownership and tax liability of the open space shall be established in a manner acceptable to the town board and town attorney, and shall be made a part of the conditions of approval.
- (k) The developer shall enter into a developer's agreement with the town to guarantee the implementation of the developments of the open space according to the terms or the conditions established as part of the development plan approval.
- (l) *Perpetual care and maintenance.* Perpetual care and maintenance of the open space shall be provided for by an agreement recorded with the county register of deeds office. The agreement shall include an operation plan, which shall preserve the natural qualities of the environmentally sensitive lands. Agreements shall be submitted to and approved by the plan commission, the town board, and the town attorney.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1007. - Decision criteria.

- (a) The plan commission, in its action, shall give consideration to and be satisfied as to the following:
  - (1) The proposed development is consistent with the spirit and intent of this chapter and will not be contrary to the general welfare and economic prosperity of the town, but rather that the benefits derived by utilizing the conservation design development and, in keeping with the current economic and social consideration, justifies the application of the conservation design development technique;
  - (2) Such development conforms to the adopted master plan of the town and its components;
  - (3) The size, quality, and architectural design of all buildings in the project shall not be of such as to have an adverse effect upon the general character of the town or the surrounding neighborhood;
  - (4) Functional utility and relationship of the lots or units to the common open space and facilities provided shall be of such quality, size, and aesthetic value as to meet the purpose and intent of this chapter, and that all other required preserved areas are preserved or protected unless disturbed to accommodate a road as designated on the town's official map;
  - (5) The approval shall be based upon satisfaction of standards of this chapter and shall include any conditions of approval applicable thereto, regarding the building design, site layout, and operational plans, as well as all other commitments offered and required in regard to project value, character, or other factors pertinent to an insurance that the proposed development will be carried out as approved;
  - (6) The plan will result in preservation of open land in a manner, which will enhance the total environmental setting and desirability of the development and of the neighborhood and that adequate guarantee is provided for permanent retention as common open space of the residential open land areas resulting from the application of these standards. These are by private reservation or by dedication to the public; and
  - (7) Ownership and tax liability of the private open space preservation areas shall be established in a manner acceptable to the town attorney and made a part of the conditions of this specific plan approval.
- (b) A conservation design development, in the judgment of the town board after recommendation by the plan commission, shall meet the following standards:
  - (1) Provide valuable and important open space;
  - (2) Assure attractive and appropriate building improvements and configurations;
  - (3) Allow improvements and facilities necessary to serve the residents and/or users of the development;
  - (4) Have adequate area for on-site sewage disposal and water facilities for each dwelling unit;
  - (5) Provide adequate area for on-site drainage systems such as porous pavement, rain gardens and infiltration swales and area wide stormwater facilities;
  - (6) Are compatible with adjacent land uses; and
  - (7) Preserve groundwater recharge areas designated by the Southeastern Wisconsin Regional Planning Commission or the state department of natural resources by promoting on-site sustainable land use and integrated water resource management practices.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1008. - Review procedure.

The general steps outlined below shall be used in the review of an application for the establishment of a conservation design subdivision.

- (1)

*Site visit.* Prior to filing an application, the applicant is encouraged to hold a site visit on the subject property consistent with the procedures and requirements in article IV. Although a site visit is optional, it could perhaps be the most critical of the entire design and review process, because it enables the applicant, the staff, and the plan commission and town board to work together to fully understand the site and its potential for carefully designing a development around an open space network.

- (2) *Submittal of application materials.* The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the town board.
- (3) *Determination of completeness.* The zoning administrator reviews the submittal within ten days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has three months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- (4) *Review date.* When the zoning administrator determines the application is complete, he or she schedules the review with the plan commission consistent with its adopted calendar.
- (5) *General notice.* Consistent with division 2 of article IV, the zoning administrator shall provide for class 2 public notice, property owner notice, and meeting agenda notice.
- (6) *Staff report preparation and distribution.* The zoning administrator shall prepare a written staff report and provide a copy of it to each member of the plan commission and town board, the applicant, and any other interested person upon request.
- (7) *Joint public hearing.* Allowing for proper notice, the plan commission and the town board shall conduct a joint public hearing to review the application consistent with division 3 of article IV. Prior to the close of the public hearing, the applicant, the plan commission, or the town board may request a continuance consistent with division 3 of article IV. If the public hearing is adjourned, the plan commission may direct the zoning administrator, the town engineer, and/or town attorney to conduct additional research related to the proposed district and to prepare such documents it deems necessary, including a preliminary decision document.
- (8) *Staff follow-up.* After the close of the public hearing, the plan commission may direct the zoning administrator, town engineer, and/or the town attorney to prepare a preliminary decision document.
- (9) *Recommendation.* At a subsequent meeting of the plan commission, the plan commission shall make a recommendation to the town board based on the decision criteria listed in this division to:
  - a. Approve the conservation design subdivision;
  - b. Approve the conservation design subdivision with conditions; or
  - c. Deny the conservation design subdivision.
- (10) *Decision.* After considering the plan commission's recommendation, the town board shall make a decision based on the decision criteria listed in this division to:
  - a. Approve the conservation design subdivision;
  - b. Approve the conservation design subdivision with conditions; or
  - c. Deny the conservation design subdivision.
- (11) *Preparation of decision notice.* Based on the action of the town board, the zoning administrator shall prepare a decision notice consistent with this division.
- (12) *Applicant notification.* Within a reasonable time following the town board's decision, the zoning administrator shall mail the decision notice to the applicant by regular mail.
- (13) *Acceptance by property owner required if approved.* The property owner must sign the decision notice to acknowledge the terms of the approval and return the same to the zoning administrator within two months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the town clerk requesting an extension and the town board may, with cause, extend the period within which the decision notice must be signed. If the signed decision notice is not returned within the initial or extended time period, if any, the decision is null and void without any further action by the town. The decision notice shall only become effective when all required signatures have been obtained and the original signature copy is returned to the town clerk.

If the proposed project is approved, the petitioner must then submit all required applications under the land division regulations and obtain approval.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1009. - Subsequent changes or additions.

Any subsequent changes or additions to an approved plan shall first be submitted for approval to the plan commission and, if it is the commission's opinion such change or addition is not substantial, it may recommend approval to the town board. The following shall automatically be construed to be substantial:

- (1) An increase in the number of dwelling units from that shown in the approved project;
- (2)

A significant change in the size, value, or type of structure from that indicated in the approval;

- (3) The addition of any principal uses not included in the approval; and
- (4) Any change in the basic concept of the site development, which would significantly alter the relationship of uses or open space to adjoining properties.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1010. - Application form and content.

The application submittal for a conservation subdivision design shall include the following:

- (1) An application form as used by the town;
- (2) Site analysis plans prepared at an appropriate scale and as described herein;
- (3) Sketch plans prepared at an appropriate scale and as described herein;
- (4) Conservation design development map prepared at an appropriate scale and as described herein; and
- (5) A development schedule, if the project is to be constructed in phases, which includes the anticipated beginning date and ending date of each phase and a description of those project-related elements to be completed in each phase.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1011. - Site analysis map.

A site analysis depicts important site features to ensure such features have been addressed through the site design process. The site analysis map must show:

- (1) Property boundaries;
- (2) Topographic contours with intervals of two feet or less;
- (3) Streams, rivers, lakes, wetlands, and other hydrological features;
- (4) Primary and secondary environmental corridors and isolated natural areas labeled by type;
- (5) Historic features;
- (6) General vegetation characteristics;
- (7) General soils types by group;
- (8) All class I and II soils for agricultural uses;
- (9) Groundwater recharge areas designated by the Southeastern Wisconsin Regional Planning Commission or the state department of natural resources;
- (10) Existing roads;
- (11) Open space and trails traversing, or adjacent to the site, whether existing or planned;
- (12) The proposed open space areas; and
- (13) Any other site information reasonably necessary for the plan commission or the town board to make a determination.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1012. - Sketch plans.

- (a) A sketch plan shows the conceptual layout of a project. For the purposes of this part, a petitioner must submit a sketch plan for each of the following:
  - (1) A conventional subdivision layout that complies with the zoning district requirements and the town's land division and development control ordinance;
  - (2) A planned unit development that complies with all requirements set forth in this chapter and the town's land division and development control ordinance; and
  - (3) A conservation design development that complies with all requirements set forth in this chapter and the town's land division and development control ordinance.
- (b) The individual sketch plan for the conservation design development must be prepared by using a four-step process, which includes the following:
  - (1) A detailed site analysis of all the physical features and resources of the subject property;
  - (2) Submit a map showing the number and location of the individual house sites as allowed by the density of the applicable zoning district;
  - (3) Locate the proposed roads to accommodate all proposed home sites while preserving the physical features of the site and complying with the road standards in the town land division and development control ordinance; and
  - (4) Designate lot lines for the house sites in accordance with the minimum lot size requirements of this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1013. - Conservation design development map.

A conservation design development map shows the proposed layout of the project and includes the following:

- (1) The size, arrangement, and location of all lots, blocks, and all proposed buildings or building groups located within the common area;
- (2) The pattern of public streets, existing and proposed utility easements, and other public improvements;
- (3) The location of recreational open space and areas reserved or dedicated for use by the residences;
- (4) The general landscape treatment with particular attention given to the treatment and creation of buffer zones between the proposed cluster development and any adjacent development whether residential or otherwise;
- (5) Existing topography and stormwater drainage, and proposed stormwater drainage systems, showing basic topographic changes and proposed grading elevations;
- (6) All types and locations of trees greater than eight-inch caliper in the buildable area. This requirement may be waived by the plan commission if it is determined during a site visit that no public or private improvements will occur on areas on the site containing the trees;
- (7) A completed town land division review checklist;
- (8) Statistical data on the total size of the project area, area of the open space, density computations, proposed number and types of residential units, an economic and market analysis, impact on municipal services, wetlands, groundwater and other environmentally sensitive areas and any other pertinent data required by the plan commission or town board;
- (9) A general summary of financial factors such as value of the structures, estimated improvement costs, amounts proposed for landscaping and special features, and total anticipated development cost of project;
- (10) Anticipated amounts of impervious surface including all proposed public and private improvements;
- (11) General outline of intended organizational structure related to property owner's association, architectural review committee, deed restrictions, and provision of utility and other services;
- (12) A project staging plan which outlines a timetable for project development including, but not limited to, road cutting, utility hookups, building constructions, landscaping, and open space/recreational areas provisions; and
- (13) An environmental impact assessment of loss of plant species and animal habitat, farmland, wetlands, soil erosion, surface and groundwater hydrology, water quality, aquatic species and air resources may be required if deemed reasonably necessary by both the town board and the plan commission.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-1014—36-1100. - Reserved.

## DIVISION 2. - CONVENTIONAL PLANNED UNIT DEVELOPMENT

Sec. 36-1101. - Generally.

A conventional planned unit development allows more flexibility in the development of land while ensuring compliance with the basic intent of this chapter and the town's comprehensive plan.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1102. - Type of projects.

The application of these regulations will be classified as follows:

- (1) *Rural-residential PUD*: Defined as areas that utilize private waste disposal and water systems.
- (2) *Urban-residential PUD*: Defined as areas that utilize public waste disposal and water systems. (A private sewerage disposal plant will not be accepted as an alternative to the public facility required.)
- (3) *Commercial PUD*: Permitted only in areas zoned for these uses and utilizing either public or private waste disposal and water systems.
- (4) *Mixed PUD*:
  - a. The proposed mixture of commercial and residential uses shall produce a unified composite which is compatible both within itself and with the surrounding neighborhood.
  - b. The mixed uses shall conform to the general requirements applicable to each of them as set forth in this subsection.
  - c. The maximum allowable dwelling unit density shall be computed using only the residential portion of the total planned development area.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1103. - Lots.

- (a) *Lot density*. The maximum allowable densities shall not be greater than those permitted in the underlying (i.e., original) zoning district. The ultimate allowable density is determined by the town board based upon recommendations of plan commission and consultations with developer.

The specific allowable maximum number of dwelling units is computed by dividing the total area allowable for density computations by the appropriate residential density factor. Existing public right-of-way or existing public open space easements may not be included in the area for density computation.

The following residential density factors (RDF) are utilized to compute the maximum dwelling units of the planned development district. Land in the C-1 district may be used to augment the otherwise applicable density in one of the two following ways, whichever allows the least additional density:

- (1) Twenty percent of the area of lands which are zoned C-1 conservancy district within the project may be used to augment the project density; or
- (2) Five percent of that part of the total project area which is zoned other than C-1 conservancy district may be used to augment the project density.

Zoning District	Residential Density Factor (RDF)
A-1	139,392 square feet/DU
RH	217,800 square feet/DU
SE	130,680 square feet/DU
R-1	130,680 square feet/DU
R-2	130,680 square feet/DU
B-2	20,000 square feet/DU

(b) *Lot size.* The following table shall be utilized to determine the minimum lot size which may be utilized for the platting of lots in the planned development. The plan commission shall have the right to require selected lots to be substantially larger than the minimum for the purposes of blending into and with surrounding subdivisions and other developments. In addition, a diversity of lot sizes is encouraged, provided there is a consistent quality among the different lot sizes, and that the diversity of lot sizes does not detract from each specific lot size and from the development as a whole.

Zoning District	Minimum Lot Size
Rural-Residential PUD	
RH	65,340 square feet/DU
A-1	65,340 square feet/DU
SE	65,340 square feet/DU
R-1	30,000 square feet/DU
R-2	30,000 square feet/DU
Urban Residential PUD	15,000 square feet/DU
Commercial PUD	15,000 square feet/DU

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1104. - Setbacks.

The setbacks shall be maintained along any boundary street of the project area, as required by the underlying (i.e., original) basic district. No building is permitted closer to a side or rear boundary lot line of the project area than required by the applicable side or rear yard requirements of the adjoining underlying basic district.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1105. - Common open space.

- (a) *General.* A residential planned development shall provide permanent common open space. Common open space does not include private lots, street rights-of-way (public or private), public lands, or land determined unsuitable by the town board due to accessibility, common benefit, or proposal intent.
- (b) *Ownership.* Ownership and tax liability of the open space shall be established in a manner acceptable to the town and made a part of the conditions of the project approval. Ownership options include public ownership, corporate ownership, or in private ownership with an open space easement to assure that the open space will be permanent.
- (c) *Location.* The open space area shall be conveniently accessible to all residential dwelling units within the project so as to ensure equitable distribution.
- (d) *Buildings and uses.* Buildings or uses for noncommercial, recreational, public, or accessory facilities may be permitted in an open space area, subject to a specific grant in the approval.
- (e) *Maintenance.* Perpetual care and maintenance of an open space areas and structures shall be provided for, and an operational plan shall be submitted for specific approval and inclusion in the approval.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1106. - Design considerations.

- (a) The town enjoys a rural character and desires to maintain it to the extent possible as land is developed. In the design of a planned development district, farm fields, pastures, orchards, and natural open spaces should be preserved either as common open spaces or as farm operations. This may be accomplished by leaving vistas of farming activity along the main town roads, by grouping home-sites in farm-like clusters surrounded by fields and pasture, or by preserving complete farm operations.
- (b) Grouping lots on interior streets and courts to provide higher densities on smaller areas of land in order to allow other areas to remain preserved as common space. The most favorable consideration will be given to a development plan that includes roads and building sites based upon the most appropriate relationship to existing terrain conditions, preservation of natural vegetation, and minimizes the potential impact upon the surrounding area.
- (c) For mixed use planned developments districts:
  - (1) The architecture, landscaping, lighting, and general site development must be compatible with the surrounding neighborhood;
  - (2) The proposed mix of uses must produce a unified composite which is compatible both within itself and with the surrounding neighborhood;
  - (3) The proposed mix of uses must meet the general requirements applicable to the underlying zoning district for each use except as specifically stated in the approval; and
  - (4) The project must be served by adequate off-street parking and loading and service facilities as may be required.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1107. - Basis of decision.

In the review of a general development plan and the precise implementation plan, the plan commission in making its recommendation and the town board in making its decision shall consider the following factors:

- (1) Whether development in the proposed project is in keeping with the spirit and intent of this chapter;
- (2) Whether development in the proposed project is consistent with the town's comprehensive plan;
- (3) The effects of development in the proposed project on traffic safety and efficiency, both within and outside of the district;
- (4) Whether the proposed plan for development in the proposed project is properly planned and is properly coordinated with the existing and anticipated land uses on properties in the immediate and surrounding area;
- (5) The extent to which the natural features, open space, and/or farmland on the site are preserved;
- (6) The extent to which the rural character of the area is preserved;
- (7) Whether development in the proposed project complies with provisions of this chapter and other land development regulations of the town that may apply;
- (8) The effects of development in the proposed project on public services and facilities;
- (9) Whether adequate water and sanitary sewer facilities can be provided to development in the proposed project;
- (10) The proposed means of maintaining any undeveloped areas of the proposed project for the purpose for which it was set aside;
- (11) Effects of the proposed use on surrounding properties, including operational considerations relating to hours of operation and creation of potential nuisances;
- (12) Effects of the proposed use on the normal and orderly development and improvement of the surrounding properties for uses permitted in the zoning district and adjoining districts;
- (13) Whether the proposed open space in the project, in terms of quality, size, location, and aesthetic value, justify the approval of the project;
- (14) Whether the size, quality, and architectural design of all buildings in the project will have an adverse effect upon the general character of the town and surrounding neighborhood;
- (15)

Whether the proposed development is consistent with the general character of the town and the immediate neighborhood;

(16) Whether the plan for development is superior to development that is permitted based on the design and development standards of the underlying zoning district; and

(17) Any other factor that relates to the purposes of this chapter as set forth in section 36-5 or as allowed by state law.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-1108—26-1200. - Reserved.

### DIVISION 3. - TRANSFER OF DEVELOPMENT RIGHTS

Sec. 36-1201. - Generally.

The provisions in this article relating to the transfer of development rights set forth the regulations, conditions, and limitations under which residential development rights may be transferred from one tract of land to another.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1202. - Legislative intent.

The provisions in this chapter relating to the transfer of development rights are intended to create potential opportunities for more flexibility in the design of residential subdivisions and to protect in perpetuity the preserved lands.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1203. - Purpose.

The town may allow the transfer of development rights to:

- (1) Encourage the permanent preservation of land for agriculture;
- (2) Discourage residential development on environmentally sensitive areas while still providing some marketability for such lands;
- (3) Encourage more economical use of land suited to residential development by permitting more intensive use of such lands without changing the overall population density of the town as established by this chapter; and
- (4) Reduce town costs of maintaining town roads by clustering homes while not exceeding the overall development potential of the sending and receiving parcels.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1204. - Applicability.

The transfer of development rights may only be done in conjunction with a conservation subdivision design.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1205. - Ownership requirements.

For purposes of transferring residential development rights, the sending parcel and receiving parcel must be in the same ownership at the time of such transfer.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1206. - Proximity of transferring and receiving lands.

The receiving parcel must be located within 400 feet of the sending parcel.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1207. - Limitations.

The overall density of the receiving parcel shall not be increased by more than 35 percent. For example, if zoning for the receiving parcel allows 100 residential lots, not more than 35 additional lots may be developed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1208. - Development restrictions imposed on sending parcel.



In the event the town approves a density transfer, the following provisions shall apply:

- (1) The town shall establish an overlay district over the sending parcel to limit the number of new lots that can be done on the subject property, if any, and/or to designate the area of the sending parcel that will be protected as preserved lands.
- (2) The sending parcel may not be reduced in size by transferring any part to an adjoining parcel as may be otherwise allowed under state law and/or the town's zoning code and/or land division regulations.
- (3) The sending parcel may not at a later date be considered a receiving parcel for a different development project.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1209. - Amendment of an approved sending parcel overlay district.

In the event there are unused residential development rights on a sending parcel, the town board, with a recommendation by the plan commission, may reduce the number of parcels that may be allowed on the sending parcel as lots are created. Such reduction and a change to the extent of the overlay district boundary is not considered to be an amendment of the overlay district per se, but an administrative tool to control any remaining development potential of the sending parcel.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1210. - Review criteria.

The plan commission in making its recommendation and the town board in making its decision to allow a developer to transfer residential density must consider the following factors.

- (1) The reason why the developer would like to transfer the residential density from one parcel to another and the benefits created.
- (2) The extent to which the overall development of both the sending and receiving parcels represents a better or more unified development pattern or reduces impacts, and/or public costs.
- (3) The extent to which a variety of lot sizes are incorporated into the receiving parcel.
- (4) The compatibility of the proposed transfer of residential density to the general development pattern desired for the town.
- (5) The suitability of the receiving parcel to accommodate the additional development density in terms of location, physical characteristics, traffic patterns and loads, and relationship to surrounding uses.
- (6) How the preserved lands will be managed and by whom. Ownership options include by developer, by owners within the receiving parcel, by a public body, or by a conservation organization.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1211. - Preserved lands.

To qualify as preserved lands, any such land must fall in one or more of the following categories of use along with customary and reasonable accessory uses:

- (1) Natural areas such as woods, meadows, marshes, lakes, streams and ponds providing either an environmental amenity or serving a useful ecologic purpose.
- (2) Agricultural areas, including crop land, pasture, orchards, and tree nurseries contributing to the preservation of the agricultural land resource or contributing to the rural environmental character of the area.
- (3) Recreational areas such as parks, parkways, green belts, playfields and golf courses provided such use also contributes to the environmental desirability of the area.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-1212—26-1300. - Reserved.

ARTICLE IX. - PARKING AND LOADING

Sec. 36-1301. - General standards for parking lots.

- (a) *Parking design.* Any building erected or placed on a lot shall be provided with off-street vehicle parking space, not greater than 350 feet from the principal use.
- (b) *Dimensional requirements of a parking space.* A standard parking space shall be nine feet in width by 18 feet in length for 30 degree, 60 degree, or 90 degree (angled) parking. A standard parking space shall be ten feet in width by 24 feet in length for zero degree (parallel) parking. There shall be an ingress and egress aisle at least 24 feet in width if there is parking on both sides of the aisle, and at least 16 feet in width if there is parking on only one side of the aisle.

- (c) *Surfacing.* Any off-street parking area, other than that provided for a single-family residence or an agricultural use, which has a capacity of four or more vehicles, shall be hard surfaced.
- (d) *Screening.* Any off-street parking area, other than that provided for a residence or agricultural use, which abuts or faces a property containing a residential dwelling, shall provide a planting screen, landscaped fence, or wall, at least four feet in height along the side abutting or fronting on a residential dwelling. Plans for such screen shall be submitted to the plan commission for approval before installation.
- (e) *Setback.* In any parking area, which abuts a lot with a residential dwelling, other than the parking provided for a residence, no vehicle shall be parked closer than ten feet to the base setback line.
- (f) *Offset.* In any parking area, which abuts a lot with a residential dwelling, other than the parking provided for a residence, no vehicle shall be allowed to park closer than ten feet to the abutting residential lot line.
- (g) *Lighting.* Lights provided in any parking area, other than that provided for a residence or agricultural use, shall be designed as full cut-off fixtures, so that the luminaire is totally shielded from view at the centerline of the street, and located so that the cut-off line is at least ten feet within the lot line.
- (h) *Accessibility.* Parking spaces shall be accessible at all times from a street, alley, or driveway intended to serve such parking.
- (i) *Use of required parking spaces.* The required off-street parking shall be for occupants, employees, visitors, and patrons. The storage of merchandise, supplies, motor vehicles for sale, or the repair of vehicles on such parking area is prohibited. In addition, the use of a parking lot for overnight camping, including recreational vehicle camping, is prohibited.
- (j) *Drainage.* Parking areas shall be properly graded for drainage.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1302. - Number of required parking spaces.

- (a) *Specified uses.* Off-street parking spaces shall be provided in the number specified in appendix B.
- (b) *Mixed uses.* The plan commission shall determine the parking requirements for developments that include more than one type of use. In its determination, the plan commission shall blend together the requirements for parking spaces for each of the various uses in appendix B.
- (c) *Unspecified uses.* The requirements for parking spaces for uses not otherwise included in appendix B shall be determined by the plan commission on a case-by-case basis using the schedule in appendix B as a guide.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1303. - Accessible parking.

- (a) *Generally.* When required by the Americans with Disability Act, as may be amended, accessible parking spaces shall be provided.
- (b) *Number required.* If parking spaces are required, then accessible spaces shall be provided in addition to the required number of regular spaces in the quantity as shown in exhibit 9-1. One of eight accessible parking spaces, but always at least one, must be van-accessible.

**Exhibit 9-1. Minimum Number Of Required Accessible Parking Spaces**

Number of Required Parking Spaces	Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total

1,001 and over	20; plus 1 for each 100 over 1,000
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- (c) *Location.* Accessible spaces serving a particular building shall be located on the shortest accessible route of travel between the parking and the accessible entrance. When there are multiple entrances to a building of similar prominence (e.g., shopping mall) with near-by parking, accessible spaces shall be dispersed and provided at each location. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility.
- (d) *Dimensions.* Accessible parking spaces shall be at least 96 inches wide.
- (e) *Vertical clearance.* For van-accessible parking spaces, a 98-inch high clearance shall be maintained above the space, access aisle, and on the route to and from the van-accessible space.
- (f) *Maximum slope.* Accessible spaces and adjoining access aisles shall have a maximum slope of 1:50 in all directions. When accessible spaces are provided in an existing parking lot, the spaces shall be located on the most level surface close to the accessible building entrance.
- (g) *Signage.* Each accessible space shall be so designated with a sign identified by the international symbol of accessibility mounted on a vertical pole. In addition, van-accessible spaces shall be so designated with a sign indicating "van accessible." Such signs shall be located so they cannot be obscured by a vehicle parked in the space (at least six feet in height).
- (h) *Pavement striping and markings.* The boundary of the access aisle must be marked and the end of which may be squared or a semicircle. Additional pavement markings denoting the space are optional.
- (i) *Accessible route.* An accessible route must be provided from the accessible parking space to the accessible entrance of the building. It shall be at least 36 inches wide, without steps or curbs. It shall be paved and not contain any feature that would restrict, inhibit, or unreasonably impeded the movement of a physically disabled individual.
- (j) *Access aisle.* An access aisle for an accessible space shall be the same length as the adjacent parking space it serves and be at least 60 inches wide for car access and 96 inches wide for van-accessibility. Two adjoining accessible parking spaces may share a common access aisle. An access aisle for a passenger loading zone shall be 60 inches wide and 20 feet long and adjacent and parallel to the space.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1304. - Off-street loading.

- (a) *Generally.* Off-street loading berths are required for new buildings and building expansions with any use that receives deliveries or makes shipments from large trucks including retail stores, manufacturing, warehousing, processing, offices, health care centers, and schools.
- (b) *Dimensional standards.* A loading berth shall comply with the dimensional standards in exhibit 9-2. The minimum vertical clearance also applies to all areas providing access to the loading berth.

Exhibit 9-2. Dimensions of Loading Berths by Type

Type	Minimum width	Minimum length	Minimum overhead clearance
Small berth	10 feet	25 feet	14 feet
Large berth	12 feet	50 feet	14 feet

- (c) *Location.* A loading berth shall not be located on the front of the building, except when entirely located within the building and the access door is integrated into the overall design of the building. A loading berth shall not be located within a required side yard setback area. A loading berth shall not be located within a public road right-of-way or interfere with the intended use of a public road right-of-way. A loading berth or access to a loading berth shall not interfere with onsite traffic or pedestrian circulation or on-site parking.
- (d) *Surfacing.* A loading berth shall be hard surfaced (e.g., pervious concrete, asphaltic concrete, pavers, or similar product).
- (e) *Marking.* A loading berth shall be clearly marked.
- (f) *Use.* A loading berth shall only be used for loading and unloading of vehicles.
- (g) *Drainage.* A loading berth shall be graded for proper drainage.
- (h) *Signage.* All signage related to a loading berth shall comply with the requirements set forth in chapter 84 of the Municipal Code.
- (i) *Screening.* The reviewing authority may require screening (e.g., landscaping, berm, fence, or any combination) when the use of the loading berth has the potential of negatively impacting adjoining residential uses.
- (j) *Minimum number of loading berths.* Those buildings subject to this section shall provide one or more loading berths as specified in exhibit 9-3.

Exhibit 9-3. Minimum Number of Loading Berths

Floor area	Minimum number of loading berths
6,000 to 12,499 square feet	1 small berth
12,500 to 24,999 square feet	2 small berths
25,000 to 39,999 square feet	1 large berth
40,000 to 99,999 square feet	2 large berths
100,000 square feet or more	2 large berths plus 1 large berth for each additional 80,000 square feet over 100,000 square feet

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-1305—36-1400. - Reserved.

ARTICLE X. - LANDSCAPING AND BUFFERYARDS

DIVISION 1. - GENERAL PROVISIONS

Sec. 36-1401. - Legislative findings.

The town board makes the following legislative findings:

- (1) A healthy environment is an indication of a healthy community.
- (2) Landscaping helps to maintain and increase property values, which helps to protect public and private investment in a community.
- (3) Landscaping provides lasting social, economic, environmental, and aesthetic benefits to the community.
- (4) Landscaping helps to reduce the "heat-island" effect by shading parking lots, streets, and other hard-surfaced areas.
- (5) Flexible standards allow alternative design options that may better fit the needs of the landowner and that may be needed to address unique site characteristics.
- (6) Xeriscape planting techniques help promote water and energy conservation.
- (7) A variety of landscape plants is needed to ensure that the effect of a single disease (e.g., Dutch elm disease) or pest (e.g., emerald ash borer) on landscape plants is minimized.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1402. - Purpose.

This article is established to promote the public health, safety, and welfare and is intended to accomplish the following purposes:

- (1) Make the developed areas of the town more attractive and aesthetically pleasing;
- (2) Provide flexible standards where possible, rather than overly prescriptive requirements;
- (3) Promote and improve public health and safety through the abatement of noise, the glare of lights, dust, and air pollution;
- (4) Improve the aesthetic appearance of the built environment;
- (5) Promote economic development by providing a high quality of life;
- (6) Enhance ambient environmental conditions by providing shade, air purification, oxygen regeneration, groundwater recharge, storm water runoff retardation, and noise, glare, and heat abatement; and
- (7) Encourage the preservation, expansion, protection, and proper maintenance of the community forest.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1403 - Landscape plan

A landscape plan shall consist of a completed worksheet as may be used by the zoning administrator and a plan view drawing that shows where the required plants will generally be planted. Such drawing shall be drawn at the same scale as the site plan drawing. A landscape plan should be prepared or reviewed by a landscape professional to ensure compliance with this article.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1404. - Description of landscape points and classification of plant species.

- (a) *Generally.* The required level of landscape plants is stated in terms of landscape points. As shown in exhibit 10-1, a different number of points are assigned to each of the plant categories depending upon its typical growth rate, its mature height, and whether it is a deciduous or evergreen species. Species generally suitable for use in southern Wisconsin are listed and those native to the state are denoted.
- (b) *Plants not listed.* The species list in exhibit 10-1 is not meant to be exhaustive. Therefore, the zoning administrator shall review proposals for, and the applicability of, species not contained in this list, and is authorized to approve appropriate similar species using the most current edition of "A Guide to Selecting Landscape Plants for Wisconsin" as a guide.
- (c) *Prohibited plants.* Plants specifically designated as invasive by the state department of natural resources or other state agency shall not be planted and shall not be used to meet the requirements of this article. The town reserves the right to prohibit any plant listed in exhibit 10-1 upon a determination that it is susceptible to infection (e.g., emerald ash borer).
- (d) *Plant hardiness.* Selected plants should be hardy in the area where they are planted (zone 4).

**Exhibit 10-1. Classification of Plants**

Type and Point Value	Botanical Name	Common Name
Tall deciduous trees (30 points) (40-100 feet)	Acer spp.	maple: Norway, red [1], sugar [1] (Note: Silver maple is not recommended)
	Celtis occidentalis	hackberry [1]
	Ginkgo biloba	ginkgo
	Gleditsia triancanthos	honey locust [1]
	Gymnocladus dioicus	espresso Kentucky coffeetree
	Quercus spp.	oak: red [1], white [1], pin, bur [1]
	Tilia spp.	linden: basswood [1], littleleaf, redmond
	Ulmus spp.	accolade, cathedral, new horizon (hybrids only)
.....		
Medium deciduous trees (15 points) (30-40 feet)	Aesculus glabra	Ohio buckeye
	Betula spp.	birch: river [1], paper [1]
	Phellodendron amurense "Macho"	Macho amur corktree
	Prunus spp.	cherry: choke [1], pin [1]
	Prunus Mackii	amur chokecherry
.....		

Low deciduous trees (10 points) (15-30 feet)	Acer ginnala	amur maple
	Amelanchier spp.	serviceberry
	Crataegus spp.	hawthorn: cockspur [1], dotted [1], downy [1], Washington
	Malus spp.	crabapple spp.
	Sorbus spp.	mountain ash: European, showy [1]
	Prunus americana	American plum
	Ostrya virginiana	Ironwood
.....		
Tall evergreen trees (40 points)	Abies concolor	white fir
	Picea spp	Spruce: Norway, white
	Pinus spp.	pine: red [1], white [1], Scots
	Tsuga canadensis	Canada hemlock
.....		
Medium evergreen trees (20 points)	Thuja occidentalis	American arborvitae
.....		
Low evergreen trees (12 points)	Juniperus spp.	juniper: mountbatten, redcedar [1]
	Thuja spp.	arborvitae: pyramidal, techny
.....		
Tall deciduous shrubs (5 points)	Cornus spp.	dogwood: gray [1], pagoda, red [1]
	Rhus spp.	sumac: smooth [1], staghorn [1]
	Syringa spp.	lilac: Chinese, hyacinth
	Viburnum spp.	viburnum: arrowwood, wayfaringtree, nannyberry [1]
.....		
Medium deciduous shrubs (3 points)	Corylus americana	American filbert, hazelnut
	Cotoneaster spp.	cotoneaster

	Forsythia spp.	forsythia: border, early, weeping
	Rosa spp.	rose: Virginia, rugosa
.....		
Low deciduous shrubs (1 point)	Berberis thunbergii	Japanese barberry
	Spirea spp.	spirea: froebel, snowmound
.....		
Medium evergreen shrubs (5 points)	Juniperus chinensis	juniper: Pfitzer
	Taxus spp.	yew: Japanese
.....		
Low evergreen shrubs (3 points)	Juniperus spp.	juniper: sargent, creeping, andorra
.....		

Notes:

1. Native to Wisconsin.
2. Only those species that are not susceptible to the emerald ash borer may be used.
3. See "A Guide to Selecting Landscape Plants for Wisconsin," E.R. Hasselkus, University of Wisconsin-Extension, Publication A2865 for more plants.
4. The above table may include plants that are not suitable for zone 4.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1405. - Specifications for landscaping materials.

- (a) *Generally.* All plant material shall be healthy, vigorous, and free of disease and insects.
- (b) *Minimum planting size.* Trees and shrubs shall meet the minimum planting size established in exhibit 10-2. Further, trees and shrubs shall meet the specifications contained in the most current edition of "American Standard for Nursery Stock" for the corresponding planting size.

**Exhibit 10-2. Minimum Planting Size**

Plant category	Minimum planting size
Tree	
Tall deciduous tree	2-inch caliper
Medium deciduous tree	2-inch caliper
Low deciduous tree	1-inch caliper
Tall evergreen tree	5 feet tall
Medium evergreen tree	4 feet tall
Low evergreen tree	3 feet tall

Shrub	
Tall deciduous shrub	36 inches tall
Medium deciduous shrub	24 inches tall
Low deciduous shrub	18 inches tall
Tall evergreen shrub	24 inches tall
Medium evergreen shrub	18 inches tall
Low evergreen shrub	12 inches tall

- (c) *Turf.* Turf areas may be sodded or seeded. In areas subject to erosion, sod shall be used. Sod shall be commercially grown and clean and free of weeds, noxious pests, and diseases.
- (d) *Mulch.* Where mulch is used as a ground treatment, it shall be applied to a maximum depth of four inches. A landscape fabric may be placed between the soil and mulch to impede weed growth.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**Note—** This publication is published by the American Nursery and landscape Association and is an approved American National Standard (ANSI Z60.1-2004).

Sec. 36-1406. - Credit for preserving trees and shrubs.

- (a) *Generally.* Landscape plantings as required by this article may be satisfied in whole, or in part, by preserving existing trees and shrubs on the subject property.
- (b) *Allocation of credits.* An existing tree shall be credited based on its size as shown in exhibit 10-3. An existing shrub shall be credited on a one-for-one basis regardless of size.

**Exhibit 10-3. Allowable Tree Credits**

Caliper of existing tree	Number of trees credited
2 inches up to 6 inches	1
6 inches up to 12 inches	2
12 inches up to 16 inches	3
16 inches and greater	4

- (c) *Location of trees and shrubs.* A tree eligible for credit shall be located within ten feet of the location where the tree credit is to be applied. A shrub eligible for credit shall be located within the area to which the credit is to be applied.
- (d) Condition of trees to be used as credit. In order to use an existing tree or shrub as credit, the following conditions shall be satisfied:
  - (1) The area within the drip line or six feet away from the tree trunk, whichever is greater, shall be preserved in its natural state or covered with pervious landscape material and shall be retained at original grade with no trenching, cutting of any roots, or compaction of soil.
  - (2) During construction, a temporary barrier shall be placed around the tree at the drip line or six feet away from the tree trunk, whichever is greater.
  - (3) The existing stock shall not be damaged from skinning, barking, and the like.
  - (4) The existing stock shall be healthy and free from disease, damage, and active insect infestation potentially lethal to the tree.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1407. - Design and placement guidelines.

- (a) *Public safety.* Landscaping shall not result in the creation of a safety or visibility hazard.
- (b) *Random placement.* To the extent possible, plants shall be randomly placed so as to give a natural appearance.



- (c) *Planting beds.* Where required, shrubs shall be placed in planting beds with mulch.
- (d) *Proximity to overhead utility lines and the like.* Trees and shrubs shall not be placed where they will require frequent pruning in order to avoid interference with overhead utility lines, buildings, or other structures.
- (e) *Integration with natural amenities.* When a site abuts a natural amenity such as a stream, park, or other open space, the landscape plan shall integrate with, and respect the natural integrity of the amenity.
- (f) *Integration with stormwater facilities.* Detention and retention ponds shall be designed to be physically, functionally, and visually integrated into adjacent landscape areas.
- (g) *Landscaping in relation to berms and fences.* Where plant materials are used in conjunction with a berm or a fence to meet the requirements or guidelines of this article, the fence or berm shall be located toward the interior of the subject property and the plant material shall be located toward the exterior of the subject property.
- (h) *Utility easements.* Landscaping materials, fences, and berms that are located within a duly-recorded utility easement and/or a pedestrian easement shall not count toward meeting a landscape requirement.
- (i) All disturbed areas shall be seeded with lawn or native ground cover unless such vegetation is already fully established.
- (j) *Storage of landscape materials.* Landscape debris and topsoil and gravel piles shall be removed from the site 60 days after occupancy, unless it was reviewed and approved by the plan commission as part of a site plan and plan of operations review. This includes, but is not limited to piles of topsoil, gravel, stone, sand, dead vegetation, branches, stumps, leaves, brush and similar materials.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1408. - Plant diversity.

- (a) *Tree species.* The maximum number of required trees in the same genus shall comply with the proportions established in exhibit 10-4. For example, if three tree species are required, a species in three different genuses must be used (e.g., Quercus—oaks, Acer—maples, Pinus—pines).

**Exhibit 10-4. Plant Diversity Requirements and Recommendations**

Required Number of Plants	Maximum Proportion of Tree Species in Same Genus	Recommended Proportion of Same Species for Shrubs
11 to 20	30 percent	25 percent
21 to 30	25 percent	20 percent
<u>31</u> to 40	20 percent	15 percent
41 to 50	15 percent	10 percent
51 and more	10 percent	10 percent

- (b) *Shrub species.* It is recommended that the proportion of required shrubs and ground cover follow the standards established in exhibit 10-4, except that different species within the same genus may be used.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1409. - Maintenance.

- (a) *Generally.* All landscaping shall be maintained in good condition so as to present a healthy, neat, and orderly appearance, free from refuse, weeds, and debris.
- (b) *Responsibilities.* The current landowner shall be responsible for maintaining the vegetation and other landscape components as may be required by this article.
- (c) *Maintenance practices.* Maintenance shall consist of regular and normal maintenance practices of landscaping including weeding, irrigation, fertilizing, pruning, and mowing. Plant materials that exhibit significant levels of insects, pests, diseases, or damage shall be treated as appropriate.
- (d) *Replacement, generally.* Plant materials which were planted as required by this article or which were used as a credit and which die or are irreparably damaged shall be removed and replaced with living plant materials consistent with the approved landscape plan or as required by this article.
- (e) *Replacement following a natural disaster.* Plant materials that were planted as required by this article or which were used as a credit and which die or are irreparably damaged due to a natural disaster, such as area-wide flooding or high wind, shall, within two years of such event, be removed and replaced with plant materials consistent with the approved landscape plan or as required by this article. With just cause, the plan commission may on a case-by-

case basis grant an extension of two additional years upon written request, or pass a resolution granting a blanket extension to all affected properties in the town.

(f) *Staking.* It is recommended that stakes and cables used to support a tree be removed within 24 months of planting.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1410. - Timing for installation of landscape materials.

All required landscaping materials shall be installed prior to issuance of a permanent occupancy permit for any building on the subject property. However, if the subject property is to be occupied prior to the installation of all required landscaping material, the property owner shall only receive a temporary occupancy permit from the building inspector for up to six months provided the property owner provides a financial guarantee subject to the requirements in article IV in an amount acceptable to the building inspector to ensure the installation of the landscaping materials.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1411. - Berms.

(a) *Maximum slope and form.* In order to facilitate maintenance and efficient irrigation water usage, a berm shall not exceed a slope of 3:1 (i.e., for every three feet of horizontal run the vertical height is one foot). A berm shall be graded to appear as a curvilinear, naturalistic form.

(b) *Construction.* A berm shall be compacted during the construction process so as to minimize settling.

(c) *Stabilization.* A berm shall be covered with turf or mulch along with required plant materials.

(d) *Effect on stormwater flow.* A berm may not be designed or placed so as to divert the normal flow of stormwater to the detriment of surrounding properties.

(e) *Placement with respect to existing trees and shrubs.* No portion of a berm shall be placed within the critical root zone (one and one-half feet for every diameter inch) of a tree.

(f) *Placement within vision triangle.* Placement of a berm within a vision triangle shall be consistent with the standards as may be established.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1412. - Stockpile of topsoil.

An earth materials stockpile is subject to the requirements in appendix B.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-1413—36-1440. - Reserved.

DIVISION 2. - LANDSCAPING

Sec. 36-1441. - Applicability.

The requirements and guidelines contained in this article apply to the:

- (1) Construction of a new institutional, commercial, and industrial building;
- (2) Expansion of an existing institutional, commercial, or industrial building when such improvement costs exceed 25 percent of the assessed value of the building; and
- (3) Construction or expansion of a parking lot for an institutional, commercial, or industrial use.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1442. - Street frontage landscape requirements.

(a) *Minimum amount required.* A minimum of 60 landscape points shall be provided along a public street right-of-way on a prorated basis for every 100 linear feet of frontage.

(b) *Placement on lot.* Plants required by this section shall be located within ten feet of the public right-of-way. In no instance shall such landscaping be located within a public right-of-way.

(c) *Use of various plant types.* Only tall trees may be used for street frontage plantings. The following trees shall not be used as street trees because of undesirable traits (e.g., weak wood, form, fruit/nut litter):

- (1) Silver maple.

**Exhibit 10-5. An example of a foundation planting**



- (2) Box elder.
- (3) Butternut.
- (4) Black walnut.
- (5) Any other tree so designated by the zoning administrator.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1443 - Building foundation landscape requirements

- (a) *Minimum amount required.* A minimum of 25 landscape points shall be provided on a prorated basis for every 100 feet of building foundation perimeter. For example, a building with a perimeter of 180 feet must provide a minimum of 45 landscape points  $((180/100)*25)=45$ .
- (b) *Placement on lot.* Plants required by this section shall be placed so that, at maturity, the dripline of each plant is generally located within ten feet of the building foundation. As a general rule, plants shall be distributed around the entire perimeter of the building. Such landscaping shall not be located in those areas required for landscaping as street frontages or parking areas.
- (c) *Use of various plant types.* Tall and medium trees shall not be used to meet building foundation landscape requirements. The intent of this section is to require a visual break in the mass of buildings and to require a visual screen of a minimum of five feet in height for all exterior perimeter appurtenances, such as ground-mounted HVAC units and utility boxes.
- (d) *Anticipated future development.* Where an approved site plan depicts a future building extension, the foundation landscaping requirement shall be calculated by measuring the length of the total perimeter. However, foundation plantings need only be installed based on the landscape points calculated from the portions of the building perimeter that will not be affected by building extension. If this results in point requirements which are not met through the initial planting, then such requirement shall be met within five years of building permit issuance, or as extended in writing by the zoning administrator.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1444. - Parking lot landscape requirements.

- (a) *Minimum amount required.* A minimum of 120 landscape points shall be provided on a prorated basis for every 10,000 square feet of paved area. For example, a minimum of 264 landscape points are required within a parking area consisting of 22,000 square feet (approximately 64 stalls) as follows:  $((22,000/10,000)*120)=264$ .
- (b) *Use of various plant types.* A minimum of 60 percent of all landscape points shall be devoted to tall trees and a minimum of 20 percent of all points shall be devoted to shrubs.
- (c) *Placement within a landscaped area.* A minimum of 325 square feet of landscaped area shall be located within ten feet of the perimeter of the paved area for the placement of every 100 landscape points, or fraction thereof. A landscape island consisting of a minimum of 380 square feet shall be located at the end of a parking isle (i.e., two rows of stalls). In addition, an intermediate island consisting of a minimum of 180 square feet per row of stalls shall be used to separate a continuous run of 20 parking stalls in a single row.
- (d) *Bioretention areas.* Bioretention areas that are used to treat stormwater runoff from parking areas should be integrated into landscape areas as may be required in this section.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1445. - Lot interior landscape requirements.

- (a) *Minimum amount required.* A minimum of ten landscape points shall be provided within the interior of the lot on a prorated basis for every 1,000 square feet of building floor area. For example, a minimum of 23 landscape points are required on the interior of a lot having a building floor area of 2,300 square feet  $((2,300/1,000)*10)=23$ .
- (b) *Placement on lot.* Plants required by this section shall be located away from required landscaping for building foundations, street frontages, and parking lot areas.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1446. - Landscaping around exterior features.

Exterior perimeter appurtenances, such as HVAC/utility boxes, standpipes, storm water discharge pipes and other pipes, shall be screened from sight by landscape plantings of a minimum of five feet in height.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1447. - Landscaping for outdoor storage areas.

When a permitted land use includes an outdoor storage area, such area shall be screened from view from public streets and public use areas on adjoining properties. Such screening may consist of a berm, non-metallic fencing, a decorative wall, landscaping, or any combination, as determined by the plan commission.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-1448—36-1460. - Reserved.

### DIVISION 3. - BUFFERYARDS

Sec. 36-1461. - General description.

A bufferyard consists of a strip of undeveloped land with landscaping or other visual screening and is intended to provide a physical and visual separation between different land uses as more particularly described herein.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1462. - Applicability.

- (a) *Generally.* A bufferyard shall be required at the time of development along the side and rear lot lines of the lot being developed when it abuts another lot in a different zoning district and when the lot being developed was:
  - (1) Created by a land division of any type approved after January 1, 2020,
  - (2) Rezoned to another zoning classification after January 1, 2020.
- (b) *Conditional use.* As a condition of approving a conditional use, the plan commission may require that a bufferyard be incorporated into the project's overall design. The standard imposed shall be based on the degree of incompatibility between the adjoining use and the conditional use.
- (c) *Dual responsibility.* When two adjoining parcels are vacant and they are located in different zoning districts, one half of the required bufferyard shall be located on each parcel (i.e., one half of the required width and one half of the required plants).
- (d) *Single responsibility.* When a vacant parcel adjoins a developed parcel and each are located in different zoning districts, the bufferyard shall be located on the vacant parcel.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1463. - General provisions.

- (a) *Relationship of fencing and plantings.* When a fence or berm is used in conjunction with plantings, one-half of the required number of landscape points shall be planted between the fence or berm and the property line.
- (b) *Use of bufferyard.* A bufferyard shall be undeveloped, except that the zoning administrator may allow the following in a bufferyard:
  - (1) An unpaved fire lane;
  - (2) Utility boxes and cabinets when necessary;
  - (3) A paved bicycle/pedestrian path or a paved sidewalk when necessary to allow for proper on-site and off-site pedestrian circulation;
  - (4) A paved vehicular access between the adjoining parcels provided it is located in the least intrusive location and is located generally perpendicular to the property boundary line;
  - (5) Stormwater management facilities; and
  - (6) Other structures and features deemed compatible by the administrator.

If a utility easement is located along the property boundary line where a bufferyard is also required, the width of the easement may be used to satisfy the width requirement of the bufferyard, in whole or in part, provided none of the required landscaping and/or fencing is located within the utility easement.

- (c) *Multi-use developments and mixed use.* For multi-use developments on a single lot, the use nearest the property line shall determine the bufferyard requirement for that area. For mixed uses (two or more uses in the same structure), the higher intensity use shall be used to determine the bufferyard requirement.
- (d) *Recording of easement.* The bufferyard shall be shown on the face of the final plat or certified survey map (CSM) with the following narrative:

"The bufferyard(s) shown on the face of this [plat/certified survey map] was established to comply with the Town of Mukwonago's zoning code in effect at the time of approval. A bufferyard shall not be developed or used, except in conformance with Article X of the zoning code, and the property owner shall be responsible for maintaining a level of landscaping that meets the bufferyard requirements in effect at the time of filing of this [plat/certified survey map]. This bufferyard may only be removed by the Town of Mukwonago consistent with Article X."

- (e) *Longevity.* Bufferyards shall be maintained in perpetuity. However, the plan commission may terminate a bufferyard when:
  - (1) The parcel containing the bufferyard is rezoned to the same zoning classification as the adjoining parcel; or
  - (2) When the adjoining parcel is rezoned to the same zoning classification as the parcel with the bufferyard. Such termination shall reference the original document depicting the bufferyard and be recorded with the register of deeds for the county.
- (f) *Ownership.* When a bufferyard is required in a subdivision, it shall be held in common by a homeowners association or shall be incorporated into the adjoining lots.



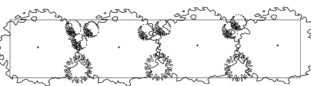
( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**Note**— A number of products have been introduced in recent years that allow grass to grow in a plastic-type mesh that is capable of supporting a fire truck

Sec. 36-1464. - Required bufferyard.

When a B-2 parcel abuts a parcel designated as RH, SE, R-1, or R-2, a type A bufferyard shall be provided as set forth in this article (exhibit 10-7).

**Exhibit 10-7. Detailed Bufferyard Requirements**

A	Width	Points per 100 feet	Required fence or berm [1]	Example schematic [2]
A-1	8'	150	Fence [3,4]	
A-2	10'	200		
A-3	15'	150		
A-4	20'	125		
<b>B</b>				
B-1	15'	100	Fence [3,4]	
B-2	15'	300		
B-3	20'	200		
B-4	25'	150		
B-5	30'	125		
<b>C</b>				
C-1	15'	100	Fence [3,4]	
C-2	15'	350		
C-3	20'	250		
C-4	25'	200		
C-5	30'	175		
C-6	30'	125	4' berm	

## Notes:

1. A dash "-" means not applicable.
2. All schematics are intended to be illustrative.
3. When a fence is used, at least 50 percent of the required plant materials shall be located on the exterior side (the side away from the center of the subject property) of the fence. If at the time of development, there is a fence on the adjoining property, this planting requirement shall not apply.
4. When a fence is used to enclose an activity or storage area, a fence may not be used in the bufferyard.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-1465—36-1500. - Reserved.

## ARTICLE XI. - NONCONFORMITIES

Sec. 36-1501. - Legislative findings.

The town board makes the following legislative findings relating to nonconformities:

- (1) There may exist lots, structures, and uses in the town that were lawfully established but that do not now comply with one or more provisions of the district in which they are located.
- (2) It is reasonable to generally allow, but not encourage, legal nonconforming uses to continue until such time as they are removed or discontinued.
- (3) State law permits the reconstruction of legal nonconforming structures under certain circumstances.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1502. - Official registry of legal nonconforming lots, structures, signs, and uses.

(a) *Content of registry.* The zoning administrator is authorized to develop and maintain a registry of:

- (1) Lots known by him or her to be considered legal nonconforming;
- (2) Structures known by him or her to be considered legal nonconforming;
- (3) Signs known by him or her to be considered legal nonconforming; and
- (4) Land uses registered as a legal nonconforming use consistent with the requirements in article V.

(b) *Form of registry.* At the discretion of the zoning administrator, the registry may consist of either a written list or digital records.

(c) *Disclaimer.* Given the nature of the registry, the town does not warrant that such information is complete and/or accurate in all respects.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1503. - Legal nonconforming lots.

(a) *Generally.* A legal nonconforming lot may be used for an allowable use, provided such use complies with all other development standards of the zoning district in which the lot is located.

(b) *Alteration of property boundary lines.* The location of a property boundary line of a legal nonconforming lot shall not be modified by any means, except as follows. When the new property boundary line location will make the legal nonconforming lot to be conforming or lessen the nonconformity, any such change in a property boundary location, may be approved upon application of the property owner to the town board, if the town board finds the change to be consistent with the intent of this chapter after first having received a recommendation of the plan commission. All requirements of the town's land division regulations shall also be followed, which may be more restrictive. If the boundary change is made and the resulting lot still does not conform to the requirements of this chapter, the lot shall continue to be legal nonconforming.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1504. - Legal nonconforming structures.

(a) *Generally.* A legal nonconforming structure may be used for any conforming use.

(b) *Enlargement.* A legal nonconforming structure that is used for a conforming use may be enlarged consistent with the requirements in division 21 of article V provided the expansion complies with all other requirements of this chapter.

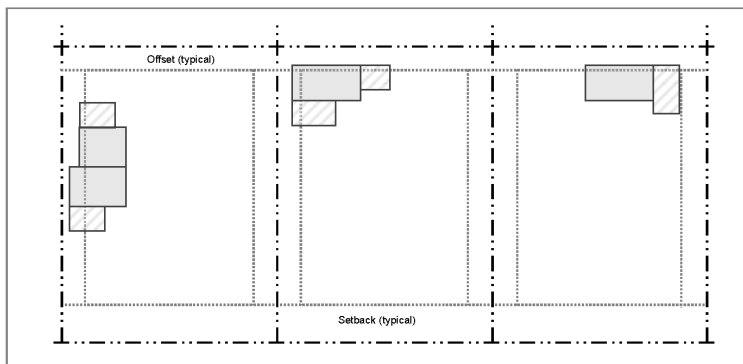
(c) *Building addition within offset.*

(1) The plan commission may grant a special exception, pursuant to the procedures outlined in division 11 of article V, authorizing the construction of a building addition within an offset area provided:

- a. The building to which it is attached is located within an offset area;

- b. The existing building was legally established;
  - c. The use of the building is legal conforming;
  - d. The addition is in compliance with the height limitations of the zoning district in which it is located, and is not greater in height than the contiguous portion of the existing building;
  - e. The addition does not extend closer to the side or rear lot line than the existing building to which it is attached;
  - f. The addition does not extend into an offset area the building does not currently encroach upon;
  - g. The addition is not within an area of a shore setback or a setback from the C-1 zoning district; and
  - h. The addition complies with all other dimensional standards that may apply.
- (2) See figure 11-1 for examples of permissible additions. In making its decision, the plan commission should consider the following factors, in addition to those factors listed in subsection 36-424.
- a. The size and location of the existing legal non-conforming structure.
  - b. The size and location of any other structure on the subject property.
  - c. The size and location of the proposed expansion.
  - d. The necessity of constructing the addition within the offset.
  - e. The proximity of buildings and other structures on adjoining properties.

Figure 11-1. Examples of permissible expansions within an offset area



- (d) *Reconstruction following damage.* A legal nonconforming structure that is damaged by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation on or after March 2, 2006, may be restored to its condition (size, location, and use) prior to the damage, except the structure may be larger when necessary to comply with state or federal requirements.
- (e) *Unsafe conditions, ordinary maintenance, and remodeling.* Nothing in this article shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof, ordinary repair and maintenance, or remodeling that does not change any exterior physical dimension to the structure provided that the work conforms to the provisions in this chapter.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

State Law reference— Wis. Stats. § 62.23(7)(hc).

Sec. 36-1505. - Legal nonconforming uses.

- (a) *Generally.* A legal nonconforming use may continue to exist so long as it remains otherwise lawful, subject to the provisions in this section.
- (b) *Conditional use.* Any conditional use approval granted pursuant to conditional use authority that has since been repealed and that was in effect, and the use was in operation on the date of such repeal, that is no longer an allowed use of the property, shall be allowed to continue as a conditional use subject to all conditions stated in the conditional use approval. Any such conditional use approval that requires compliance with a section of the town's zoning regulations that has since been repealed, shall continue to require compliance with the referenced code section as it existed immediately prior to such repeal and the repeal of such provision is stayed solely for such existing conditional use permit(s). These continuation provisions are intended to preserve the status quo for all rights and responsibilities incurred or accrued prior to the adoption of any ordinance that changes a conditional use to a prohibited use. Nothing herein shall be interpreted to prevent existing conditional use permit holders from applying to amend their conditional use pursuant to all laws in effect at the time of the application, or as set forth in the conditional use permit including those amendments requiring a public hearing.
- (c) *Cessation of use.* If a legal nonconforming use ceases for any reason, whether intentional or otherwise, for more than 12 continuous months such use shall not be reestablished. A business of a seasonal nature shall not be deemed to be discontinued during periods in which it is normally inactive (e.g., marinas, summer camps). If the zoning administrator determines that a legal nonconforming use has ceased to operate for more than the aforementioned time period, he or she may initiate the process established under article V to terminate the legal nonconforming use. Regardless of whether the town formally terminates the use, however, the use shall not be reestablished if the use has ceased to operate for more than the aforementioned time period. If a temporary structure houses a legal nonconforming use, such use shall terminate when the temporary structure is removed.

- (d) *Change in extent.* Except as may be provided in this article or in state law, a legal nonconforming use shall not be enlarged, increased, or expanded and shall not occupy a greater area than what existed on the effective date of this chapter or any amendment thereto that created the nonconforming use.
- (e) *Limitation on structural alterations.* Structural alterations to a structure housing a legal nonconforming use shall not exceed, on an accumulative percentage basis, 50 percent of the assessed value of such structure. For example, if a property owner makes structural alterations, the cost of which equals 40 percent of the current assessed value of the structure, any additional structural alterations are limited to 10 percent of the assessed value at the time of the work.
- (f) *Damage to structure housing nonconforming use.* If a structure housing a legal nonconforming use is damaged beyond 50 percent of its present assessed value, such structure shall be razed and removed, and not be rebuilt.
- (g) *Change of location.* A legal nonconforming use shall not be moved in whole or in part to any other portion of the lot or to another structure than what was occupied on the effective date of this chapter or any amendment thereto that created the nonconforming use.
- (h) *Casual, occasional, accessory, or incidental use.* Casual, occasional, accessory, or incidental use after the primary legal nonconforming use has terminated, shall not be deemed to perpetuate a nonconforming use.
- (i) *Change of production.* A change in the method or quantity of production and the incorporation of new technology into a legal nonconforming use is permitted provided the original character of the use remains the same.
- (j) *Termination due to effects on public health, safety and welfare.* In the event the zoning administrator determines that a legal nonconforming use, regardless of its duration, is harmful to the public health, safety, or welfare, or creates a public nuisance, he or she shall follow the procedure outlined in article V relating to termination of a use.
- (k) *Unsafe conditions.* Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof, provided that such work conforms to the provisions in this chapter and the cost of such work does not exceed the limits established in (d) or (e) above.
- (l) *Licensing.* The operator of a legal nonconforming use shall obtain such licenses as may be required by the state, or its designated agent; the county; or the town, and maintain such licenses for the life of the use or until the entity no longer requires such license.
- (m) *Other limitations.* If a property contains a nonconforming use, no new land uses are allowed, including those that are otherwise permitted by right in the zoning district, except with the approval of the town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

**State Law reference**— Wis. Stats. § 62.23(7)(h).

**Case Law reference**— Town of Delafield v. Sharpley, 212 Wis. 2d 332, 568 N.W.2d 779 (Ct. App. 1997, 96-2458).

Sec. 36-1506. - Conversion of a legal nonconforming use.

- (a) *Generally.* Subject to the requirements in division 9 of article V, a legal nonconforming use may be converted to a different nonconforming use.
- (b) *Effect of conversion approval.* Any legal nonconforming use that has been converted shall continue to be subject to all applicable provisions related to legal nonconforming uses and to the conversion order as approved by the town board.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Secs. 36-1507—36-1600. - Reserved.

## ARTICLE XII. - ENFORCEMENT

Sec. 36-1601. - Actions constituting a violation.

Each action that is not in full compliance with this chapter and/or with a condition or requirement of an approval issued pursuant to this chapter shall constitute a separate and distinct violation. Each day that a violation continues is considered a separate offense.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1602. - Other remedies.

The town or any aggrieved person may seek an injunction, restraining order, or other equitable relief in court to stop any violation of this chapter and/or an order requiring the property owner to restore the property to the condition that existed prior to the violation. This remedy shall be in addition to, and not to exclusion or prejudice of any other penalty or remedy that may be available, and specifically it shall not be necessary to prosecute for a fine or imprisonment before resorting to these other remedies.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1603. - Continuation.



Nothing in this chapter shall prohibit the continuation of previous enforcement actions undertaken by the town pursuant to previous and valid ordinances and laws.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1604. - Penalties.

Any person who violates, disobeys, omits, neglects, or refuses to comply with, or who resists the enforcement of, any of the provisions of this chapter, shall be subject to a forfeiture of not less than \$10.00 and not to exceed the sum of \$2,000.00 for each offense, together with the costs of the action, and in default of the payment thereof, shall be imprisoned in the county jail, for a period of not to exceed six months, or until such forfeiture and the subsequent costs have been paid.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

Sec. 36-1605. - Declared nuisances.

Any building erected, structurally altered, or placed on a lot, or any use carried on in violation of the provisions of this chapter, is declared to be a nuisance per se.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

APPENDIX A. - LAND USE MATRIX

Series/Land Use		Secondary Review	P-1	C-1	A-1	RH	SE	R-1	R-2	B-2
1 Agriculture										
1.01	Agriculture support services	SP, PO, ZP	-	-	C	C	-	-	-	-
1.02	Animal production, general	-	-	-	P	-	-	-	-	-
1.03	Animal production, intensive	SP, PO, ZP	-	-	C	-	-	-	-	-
1.04	Aquaculture	SP, PO, ZP	-	-	P	P	-	-	-	-
1.05	Crop production	-	-	-	P	P	P	-	-	-
1.06	Greenhouse	SP, PO, ZP	-	-	P	P	-	-	-	-
1.07	Horticulture	ZP	-	-	P	P	-	-	-	-
2 Agri-Tourism										
2.01	Agro-ecology center	BP, SP, PO, ZP	-	C	C	-	-	-	-	-
2.02	Bird hunting preserve	SP, PO, ZP	-	C	C	-	-	-	-	-
2.03	Craft brewery, winery, or distillery	BP, SP, PO, ZP	-	C	C	C	-	-	-	-
2.04	Farm education	BP, SP, PO, ZP	-	C	C	-	-	-	-	-
2.05	Farm inn	BP, SP, PO, ZP	-	-	C	-	-	-	-	-
2.06	Farm recreation	BP, SP, PO, ZP	-	C	C	-	-	-	-	-
2.07	Farm restaurant	BP, SP, PO, ZP	-	-	C	-	-	-	-	-
2.08	Farm store	BP, SP, PO, ZP	-	-	C	-	-	-	-	-
2.09	Fee fishing	SP, PO, ZP	-	C	C	-	-	-	-	-

2.10	Glamorous camping (glamping)	BP, SP, PO, ZP	-	C	C	-	-	-	-	-
2.11	Health spa	BP, SP, PO, ZP	-	C	C	-	-	-	-	-
2.12	Petting farm	SP, PO, ZP	-	-	C	-	-	-	-	-
2.13	U-Cut Christmas tree operation	SP, PO, ZP	-	P	P	C	-	-	-	-
2.14	U-Pick operation	SP, PO, ZP	-	P	P	C	-	-	-	-
3 Resource-Based Uses										
3.01	Dam	SP, PO, ZP	C	C	C	C	C	C	-	C
3.02	Forestry	-	P	P	P	P	P	P	P	P
3.03	Limited nonmetallic mine	SP, PO, ZP	C	-	C	-	-	-	-	-
3.04	Open lands	-	P	P	P	P	P	P	P	P
4 Residential										
4.01	Duplex	ZP	-	-	-	-	-	-	P	P
4.02	Multifamily housing	BP, SP, ZP	-	-	-	-	-	-	C	P
4.03	Single-family dwelling	ZP	-	-	P	P	P	P	P	-
5 Special Care Facilities										
5.01	Adult family home	BP, SP, ZP	-	-	P	P	P	P	P	-
5.02	Community living arrangement, 8 or fewer residents	ZP	-	-	P	P	P	P	P	-
5.03	Community living arrangement, 9 to 15 residents	BP, SP, PO, ZP	-	-	-	-	-	-	C	-
5.04	Foster home and treatment foster home	ZP	-	-	P	P	P	P	P	-
5.05	Group day care center	BP, SP, PO, ZP	P	-	-	-	-	-	-	P
5.06	Hospice care center	BP, SP, ZP	P	-	-	-	-	-	-	P
5.07	Nursing home	BP, SP, ZP	P	-	-	-	-	-	-	P
5.08	Retirement home	BP, SP, ZP	P	-	-	-	-	-	C	C
6 Group Accommodations										
6.01	Campground	BP, SP, PO, ZP	P	C	C	-	-	-	-	-
6.02	Group recreation camp	BP, SP, PO, ZP	P	C	C	-	-	-	-	-
6.03	Overnight lodging	BP, SP, ZP	-	-	-	-	-	-	-	C

7 Food and Beverage Sales											
7.01	Brewpub	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
7.02	Restaurant	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
7.03	Tavern	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
8 Vehicle Rental, Sales, and Service											
8.01	Vehicle fuel station	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
8.02	Vehicle repair shop	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
8.03	Vehicle sales and rental	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
8.04	Vehicle service shop	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
9 General Sales and Services											
9.01	Administrative services	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.02	Adult-oriented establishment	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
9.03	Artisan shop	BP, SP, PO, ZP	-	-	C	C	-	-	-	-	P
9.04	Commercial kennel	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
9.05	Commercial stable	BP, SP, PO, ZP	-	-	C	-	-	-	-	-	-
9.06	Equipment rental	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.07	Financial services	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.08	Funeral home	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.09	Garden center	BP, SP, PO, ZP	-	-	C	-	-	-	-	-	P
9.10	General repair	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.11	General services	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.12	Health care center	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	C
9.13	Health care clinic	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.14	Instructional services	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.15	Landscape business	BP, SP, PO, ZP	-	-	C	-	-	-	-	-	C
9.16	Professional services	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.17	Retail sales, convenience	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.18	Retail sales, general	BP, SP, PO, ZP	-	-	-	-	-	-	-	-	P
9.19	Specialty retail sales	BP, SP, PO, ZP	-	-	C	-	-	-	-	-	P

9.20	Veterinary clinic	BP, SP, PO, ZP	-	-	C	-	-	-	-	P
10 Recreation and Entertainment										
10.01	Driving range	BP, SP, PO, ZP	C	-	C	-	-	-	-	C
10.02	Golf course	BP, SP, PO, ZP	C	-	C	C	C	C	-	C
10.03	Indoor entertainment	BP, SP, PO, ZP	-	-	-	-	-	-	-	P
10.04	Indoor recreation	BP, SP, PO, ZP	-	-	-	-	-	-	-	P
10.05	Outdoor recreation	BP, SP, PO, ZP	C	-	-	-	-	-	-	C
11 Government and Community Services										
11.01	Administrative government center	BP, SP, PO, ZP	P	-	-	-	-	-	-	-
11.02	Cemetery	BP, SP, PO, ZP	P	-	C	C	-	-	-	-
11.03	Community center	BP, SP, PO, ZP	P	-	-	-	-	-	-	-
11.04	Community cultural facility	BP, SP, PO, ZP	P	-	-	-	-	-	-	-
11.05	Educational facility, pre-K through 12	BP, SP, PO, ZP	P	-	-	-	-	-	-	-
11.06	Maintenance garage	BP, SP, PO, ZP	P	-	-	-	-	-	-	C
11.07	Park	BP, SP, PO, ZP	P	C	C	C	C	C	C	C
11.08	Public safety facility	BP, SP, PO, ZP	P	-	-	-	-	-	-	-
11.09	Recreation trail	BP, SP, PO, ZP	P	P	P	P	P	P	P	P
11.10	Worship facility	BP, SP, PO, ZP	P	-	-	-	-	-	-	-
12 Telecommunications and Utilities										
12.01	Radio broadcast facility	BP, SP, PO, ZP	C	-	C	-	-	-	-	-
12.02	Stormwater management facility	-	P	C	P	P	P	P	P	P
12.03	Telecommunication collocation, class 1	ZP	WT	WT	WT	WT	WT	WT	WT	WT
12.04	Telecommunication collocation, class 2	ZP	P	P	P	P	P	P	P	P
12.05	Telecommunication tower	ZP	WT	WT	WT	WT	WT	WT	WT	WT
12.06	Utility installation, major	SP, PO, ZP	C	C	C	C	C	C	C	C
12.07	Utility installation, minor	ZP	P	C	P	P	P	P	P	P
13 Accessory Uses										
13.01	Accessory building, non-residential	SP,ZP	P	-	P	P	P	P	P	P
13.02	Accessory building, residential	ZP	-	-	P	P	P	P	P	-

13.03	Adult family home	ZP	-	-	P	P	P	P	-	-
13.04	Amateur radio and/or citizens band antenna	ZP	-	-	P	P	P	P	P	P
13.05	Backyard chickens	-	-	-	P	P	P	P	P	-
13.06	Bed and breakfast	SP, PO, ZP	-	-	P	P	P	-	-	-
13.07	Bus parking	SP, PO, ZP	-	-	C	C	C	-	-	-
13.08	Commercial truck parking	SP, PO, ZP	-	-	C	C	C	-	-	-
13.09	Exterior communication device	-	P	-	P	P	P	P	P	P
13.10	Family day care home	ZP	-	-	P	P	P	P	P	P
13.11	Farm building for non-farm storage	BP, SP, PO	-	-	C	C	-	-	-	-
13.12	Federal firearms license	PO,ZP	-	-	C	C	C	C	C	-
13.13	Foster home and treatment foster home	ZP	-	-	P	P	P	P	P	-
13.14	Home occupation	SP, PO, ZP	-	-	P	P	P	P	P	-
13.15	Household livestock	ZP	-	-	P	P	P	P	-	-
13.16	In-law dwelling unit	BP, SP, ZP	-	-	P	P	P	P	P	-
13.17	Play structure	-	-	-	P	P	P	P	P	-
13.18	Pond	ZP	TC	TC	TC	TC	TC	TC	TC	TC
13.19	Private kennel	-	-	-	P	P	P	P	P	-
13.20	Retaining wall, major	ZP	TC	TC	TC	TC	TC	TC	TC	TC
13.21	Retaining wall, minor	-	P	P	P	P	P	P	P	P
13.22	Rural accessory building	-	-	-	P	P	P	P	-	-
13.23	School dormitory	BP, SP, ZP	C	-	-	-	-	-	-	-
13.24	Solar energy system, building-mounted	ZP	P	-	P	P	P	P	P	P
13.25	Solar energy system, free-standing	SP,ZP	P	-	P	P	P	P	P	P
13.26	Swimming pool	ZP	-	-	P	P	P	P	P	-
13.27	Utility cabinet	ZP	P	P	P	P	P	P	P	P
14 Temporary Uses										
14.01	Earth materials stockpile	SP, PO, ZP	P	-	C	C	-	-	-	-
14.02	Farmers market	SP, PO, ZP	P	-	P	P	P	-	-	P

14.03	Farmstand, off-site	ZP	-	-	P	P	P	-	-	P
14.04	Farmstand, on-site	-	-	-	P	P	P	-	-	-
14.05	Livestock for vegetation management	ZP	P	P	P	P	P	P	P	P
14.06	Off-site construction yard	SP, PO, ZP	C	-	C	C	C	-	-	C
14.07	Party tent	-	P	-	P	P	P	P	P	P
14.08	Portable storage container	-	P	-	P	P	P	P	P	P
14.09	Relocatable building (school)	BP, SP, PO, ZP	P	-	P	-	-	-	-	-
14.10	Seasonal product sales	ZP	-	-	C	C	C	-	-	C
14.11	Wind test tower	ZP	P	P	P	P	P	P	P	P
14.12	Yard sale	-	P	-	P	P	P	P	P	-

**Zoning Districts**

P-1 Public; C-1 Conservancy; A-1 Agriculture; RH Rural Home; SE Suburban Estates; R-1 Residential; R-2 Residential; B-2 Local Business

**Key for Land Uses**

"-" indicates that the use is not permitted in the zoning district.

"C" indicates that the use is permitted in the zoning district as a conditional use subject to all other provisions in the chapter. (Refer to Article V)

"P" indicates that the use is permitted in the zoning district by right subject to all other provisions in the chapter.

"WT" indicates that the use is subject to the special review standards and procedures for Wireless Telecommunication Facilities. (Refer to Article V)

"TC" indicates that the use is subject to the special review standards and procedures for Topography Change. (Refer to Article V)

**Key for Secondary Review**

"BP" indicates that the use is subject to building plan review. (Refer to Article V)

"PO" indicates that the use is subject to plan of operation review. (Refer to Article V)

"SP" indicates that the use is subject to site plan review. (Refer to Article V)

"ZP" indicates that the use is subject to zoning permit review. (Refer to Article V)

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)

APPENDIX B. - LAND USES

**1 Agriculture**



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**1.01 Agriculture support services**

**Description:** A place primarily involved in (1) providing agricultural supplies, agricultural equipment, agricultural inputs, or agricultural services; (2) storing, processing, or handling raw agricultural commodities; (3) slaughtering livestock; (4) marketing livestock; and/or (5) processing agricultural byproducts or wastes. Examples include (1) a grain warehouse, potato warehouse, or other warehouse that stores raw agricultural commodities received from farms; (2) a dairy plant that processes or handles milk from farms; (3) a meat slaughter establishment; (4) a food processing plant that processes raw agricultural commodities received from farms; (5) a feed mill that processes raw agricultural commodities or agricultural by-products received directly from farms, or supplies animal feed directly to farms; (6) communal manure digester, pelletizing plant, or other facility that processes raw agricultural commodities, agricultural by-products or agricultural wastes (received directly from farms) to produce fuel or other products; (7) a facility that provides farm inputs such as fertilizer, pesticides, seed, or feed directly to farms; and (8) a facility that is primarily engaged in providing agronomic or veterinary services to farms. The term does not include a sawmill, an ethanol plant, a rendering plant, or a bio-diesel plant.

**Parking Requirements:** 1 space for each employee on the largest work shift.

**Supplemental Standards:**

- (a) **Location.** Such use shall not be located in, or adjacent to, an existing or platted residential subdivision. If such use is established prior to September 16, 2020, the adjoining lands may be platted for residential subdivisions after that date.
- (b) **Long-term use.** This use shall be located in an area of the town that is anticipated to remain commercially viable for agricultural land uses over the long term.
- (c) **Offsets.** All buildings, structures, and outdoor storage areas shall be located at least 100 feet from all side and rear lot lines.
- (d) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (e) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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**1.02 Animal production, general**

**Description:** An agricultural operation where animals not exceeding 500 animal units are kept.

**Parking Requirements:** 1 space for each employee on the largest work shift.

**Supplemental Standards:**

- (a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (b) **Number of animals.** The number of livestock and fowl is based on the lot area, but not exceeding 500, as follows: 1 head for the first 3 acres and 1 head for each additional acre over 3 and 10 fowl for the first 3 acres and 10 fowl for each additional acre over 3.
- (c) **Location of new buildings.** A building that houses domestic livestock, poultry, or horses shall not be located within a floodplain or closer than 50 feet to any existing dwelling unit or any lot line.
- (d) **Fencing.** Any area where poultry, domestic livestock, or horses are allowed to pasture or run shall be adequately fenced to keep them confined to such area.



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**1.03 Animal production, intensive**

**Description:** An agricultural operation where animals, 500 animal units or more, are kept.

**Parking Requirements:** 1 space for each employee on the largest work shift.

**Supplemental Standards:**

- (a) **Legislative findings.** The town board makes the following legislative findings regarding livestock facilities:

(1) The state legislature adopted Wis. Stats. § 93.90, (Livestock Facility Siting Law) to govern livestock facilities, which is implemented by administrative rule under Wis. Admin. Code ch. ATCP 51.

(2) The Livestock Siting Law gives local jurisdictions the authority to review livestock facilities with 500 animal units or more as a conditional use.

(b) **Minimum lot area.** The facility shall only occur on a parcel of land that is 40 acres or larger. Once this use is established, the parcel shall not be made smaller through a lot line relocation or other means, except as may be approved by the plan commission as a special exception consistent with the procedures and requirements in article of this chapter.

(c) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(d) **Road access.** The property shall front on and have direct vehicle access to a major road as depicted on the zoning map.

(e) **Location of livestock structures, except livestock waste storage structures.** A livestock structure approved after September 16, 2020, except livestock waste storage structures, shall comply with the standards in Table 1 based on the number of animal units associated with the facility.

Table 1. General siting standards

Facility Size	Minimum Distance to a Lot Line, Other Than a Public Road Right-of-Way	Minimum Distance to a Public Road Right-of-Way
Less than 1,000 animal units	100 feet	100 feet
1,000 animal units or more	200 feet	150 feet

(e) **Location of livestock waste storage structures.** A livestock waste storage structure approved after September 16, 2020, shall be located at least 350 feet from a property boundary. If any portion of an existing structure is closer than 350 feet from a lot line, such structure may be expanded, provided the expansion is not located any closer to the lot line than the existing structure. A single new livestock waste storage structure may be constructed closer than 350 feet if such structure (1) is located on the same tax parcel as a livestock waste storage structure in existence before May 1, 2006, (2) is not larger than the existing structure, (3) is no further than 50 feet from the existing structure, and (4) is no closer to the lot line than the existing structure. An existing structure that does not meet the setback standards in this subsection may be expanded provided such expansion is not located any closer to the lot line than the existing structure.

(f) **Wells.** All water wells located within a livestock facility shall comply with Wis. Admin. Code chs. NR 811 and 812.

[1] New or substantially altered livestock structures shall be separated from existing wells by the distances required in Wis. Admin. Code chs. NR 811 and 812, regardless of whether the livestock facility operator owns the land on which the wells are located. A livestock structure in existence on May 1, 2006 may be altered as long as the alteration does not reduce the distance between the livestock structure and an existing well.

(g) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

[1] Commentary: These administrative rules include standards for water well placement and construction.

**1.04 Aquaculture**

**Description:** A place where fish, bait, and other aquatic animals are produced for a commercial purpose.

**Parking Requirements:** 1 space for each employee on the largest work shift.

**Supplemental Standards:**

(a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.



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**1.05 Crop production**

**Description:** A place where fruit, vegetables, agricultural crops and forage, and other plants are grown out of doors.

**Parking Requirements:** On-site parking is not required.



**Supplemental Standards:**

- (a) **Location.** The raising of crops may occur within setbacks and/or offsets.
- (b) **Buildings.** A building related to the raising of crops shall only be allowed in an agricultural zoning district.



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**1.06 Greenhouse**

**Description:** A place where fruit, vegetables, flowers, and other types of plants are grown within an enclosed building for commercial purposes, whether using sunlight or artificial lighting. Plants grown on site may be sold at retail along with other related merchandise provided the sale of such merchandise is clearly subordinate to the sale of plants.

**Parking Requirements:** 1 space for each employee on the largest work shift.

**Supplemental Standards:**

- (a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (b) **Light shades.** When a greenhouse uses supplemental lighting for growing purposes, shades must be used from sundown to sunrise to prevent sky glow.

**1.07 Horticulture**

**Description:** A place where trees, shrubs, vegetables, and flowers are grown out of doors for commercial purposes.

**Parking Requirements:** 1 space for each employee on the largest work shift.

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.

**2 Agri-Tourism****2.01 Agro-ecology center**

**Description:** A facility designed for the purpose of providing training in the techniques of agro-ecology, sustainable agricultural systems, and similar disciplines. An agro-ecology center generally conducts (theoretical and applied) research and community outreach while offering academic education, practical experience/training, and public service/instruction opportunities for audiences ranging from local school children to international agencies. Such a facility may provide meals and overnight lodging facilities for faculty, staff, and/or students/apprentices.

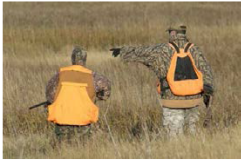
**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

**Supplemental Standards:**

- (a) **Minimum lot size.** The minimum lot size for an agro-ecology center is 40 acres.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Limitation on guest rooms.** An agro-ecology center is limited to a maximum of 20 guest rooms.
- (d) **Limitations on other uses.** A property with an agro-ecology center shall not include any other type of overnight accommodation.
- (e) **Proximity.** A building housing guest rooms shall not be located closer than 150 feet to any perimeter boundary line and in no case located closer than 300 feet to an existing dwelling on an adjoining parcel of land.
- (f) **Parking.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (g) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (h) **Buildings.** Any building associated with an agro-ecology center shall not be located in a C-1 district.
- (i) **Road access.** The property must front on and have direct vehicle access to a major road as depicted on the zoning map.

(j) **On-site access drive.** The facility shall be served by an on-site access drive that meets the design and construction standards for a town road (e.g., two lanes each 12 feet wide). The plan commission may waive the requirement for a two-lane drive and allow a single-lane drive when the commission deems the wider drive unnecessary given the location of the use on the subject property, the number and type of vehicles using the drive, and other related considerations. If the plan commission allows a single-lane drive, the commission reserves the right to require a two-lane drive at a later date and may require intermediate turnarounds/turnouts every 1,200 feet and impose other design features it deems necessary to ensure public safety.

(k) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



## 2.02 Bird hunting preserve

**Description:** A place where game birds are released into the wild for commercial hunting purposes.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

### Supplemental Standards:

(a) **Minimum lot area.** The minimum lot area for bird hunting preserve is 60 acres. The acreage of adjoining parcels, which are part of a single farm entity as determined by the Plan Commission, may be combined for the purpose of meeting the minimum lot size requirements.

(b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(c) **Other approvals.** The operator shall obtain and maintain all approvals as may be required by the state of Wisconsin.

(d) **Location of hunting areas.** Areas open to hunting must be at least 300 feet from surrounding properties and otherwise configured to minimize potential conflicts with surrounding properties.

(e) **Parking.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.

(f) **Buildings.** Any building associated with a bird hunting preserve shall not be located in a C-1 district.

(g) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

## 2.03 Craft brewery, winery, or distillery

**Description:** An establishment where beer, malt beverages, wine and/or spirits are made on the premises in comparatively small batches and then sold onsite and/or distributed off-site.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

### Supplemental Standards:

(a) **Minimum lot area.** If the operator resides on the premises, the minimum lot area for a craft brewery, winery, or distillery is 10 acres. If the operator does not reside on the premises, the minimum lot area for a craft brewery, winery, or distillery is 20 acres.

(b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(c) **Other licenses/approvals.** The property owner shall obtain all required liquor licenses/permits from the Town of Mukwonago and all necessary permits and approvals from the state of Wisconsin as may be required.

(d) **Tasting room.** A craft brewery, winery, or distillery may also include a tasting room as may be specified in an approval by the town board.

(e) **Parking areas.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.

(f) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property, proximity to other existing and potential land uses.

(g) **Road access.** The property shall front on and have direct vehicle access to a major road as depicted on the zoning map.

(h) **On-site access drive.** The facility shall be served by an on-site access drive that meets the design and construction standards for a town road (e.g., two lanes each 12 feet wide). The plan commission may waive the requirement for a two-lane drive and allow a single-lane drive when the commission deems the wider drive unnecessary given the location of the use on the subject property, the number and type of vehicles using the drive, and other related considerations. If the plan commission allows a single-lane drive, the commission reserves the right to require a two-lane drive at a later date and may require intermediate turnarounds/turnouts every 1,200 feet and impose other design features it deems necessary to ensure public safety.

(i) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

#### 2.04 Farm education

**Description:** A place where farm tours and how-to clinics or classes are conducted which are directly related to farming, farm life, or food (e.g., gardening, cooking, canning produce, jam-making, candle making, soap making, flower arranging, quilting).

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

##### Supplemental Standards:

(a) **Validity of use.** Farm education must be operated as an ancillary use in conjunction with an active farm operation.

(b) **Minimum lot area.** The minimum lot area for farm education is 10 acres. The acreage of adjoining parcels, which are part of a single farm entity as determined by the Plan Commission, may be combined for the purpose of meeting the minimum lot size requirements.

(c) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(d) **Subordinate to other farm uses.** Any buildings that are constructed to house clinics or classes shall be clearly subordinate to the other farm buildings on the property.

(e) **Parking.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.

(f) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

(g) **Buildings.** Any building associated with farm education shall not be located in a C-1 district.

(h) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

#### 2.05 Farm inn

**Description:** A place where guest rooms are offered to agri-tourists who are able to observe or participate in farm chores and learn how a farm functions through practical day-to-day experience. Guests may work on the farm, for recreational purposes, in exchange for free or discounted accommodations. A farm inn may also include a common dining area for overnight guests and non-guests.

**Parking Requirements:** 1 space for each guest room.

##### Supplemental Standards:

(a) **Validity of use.** A farm inn must be operated as an ancillary use in conjunction with an active farm operation.

(b) **Minimum lot size.** The minimum lot size for a farm inn is 40 acres. The acreage of adjoining parcels, which are part of a single farm entity as determined by the Plan Commission, may be combined for the purpose of meeting the minimum lot size requirements.

(c) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(d) **Limitation on guest rooms.** A farm inn is limited to a maximum of 4 guest rooms.

(e) **Length of stay.** The maximum stay for any occupant is 14 consecutive days.

(f) **Limitations on other uses.** A property with a farm inn shall not include any other type of overnight accommodation.

(g) **Proximity.** A building housing guest rooms shall not be located closer than 150 feet to any perimeter boundary line and in no case located closer than 300 feet to an existing dwelling on an adjoining parcel of land.

(h) **Parking.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.

(i) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

#### 2.06 Farm recreation

**Description:** One or more of the following or similar activities: sleigh/hay rides, corn maze, haunted house, ropes course, pumpkin cannons, zip lines, paint ball courses, and obstacle courses.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

##### Supplemental Standards:

(a) **Validity of use.** Farm recreation must be operated as an ancillary use in conjunction with an active farm operation.

- (b) **Minimum lot area.** The minimum lot area for farm recreation is 20 acres. The acreage of adjoining parcels, which are part of a single farm entity as determined by the Plan Commission, may be combined for the purpose of meeting the minimum lot size requirement.
- (c) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (d) **Activity areas.** Activity areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (e) **Parking.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (f) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (g) **Road access.** The property must front on and have direct vehicle access to a major road as depicted on the zoning map.
- (h) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

#### 2.07 Farm restaurant

**Description:** A place where food and beverages are offered for retail sale primarily for on-site consumption, and where the on-site consumption of fermented malt beverages, wine, or liquor, if any, is clearly secondary and subordinate to the sale of food and nonalcoholic beverages. A farm restaurant may also prepare food as part of a catering business.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

##### Supplemental Standards:

- (a) **Validity of use.** A farm restaurant must be operated as an ancillary use in conjunction with an active farm operation.
- (b) **Minimum lot area.** The minimum lot area for a farm restaurant is 20 acres. The acreage of adjoining parcels, which are part of a single farm entity as determined by the Plan Commission, may be combined for the purpose of meeting the minimum lot size requirements.
- (c) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (d) **Subordinate to other farm uses.** Any building that is constructed for a farm restaurant shall be clearly subordinate to the other farm buildings on the property.
- (e) **Road access.** The property must front on and have direct vehicle access to a major road as depicted on the zoning map.
- (f) **Parking areas.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (g) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (h) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

#### 2.08 Farm store

**Description:** A retail outlet that features agricultural products and goods derived from the farm on which the farm store is located and other farms in the region. Non-agriculturally related products such as T-shirts, other clothing, and knick-knacks, may be offered so long as such products are clearly subordinate in number and scale to the featured agricultural products and goods.

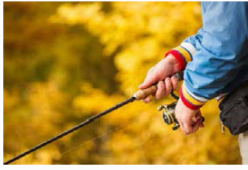
**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

##### Supplemental Standards:

- (a) **Validity of use.** A farm store must be operated as an ancillary use in conjunction with an active farm operation.
- (b) **Minimum lot area.** The minimum lot area for a farm store is 20 acres. The acreage of adjoining parcels, which are part of a single farm entity as determined by the Plan Commission, may be combined for the purpose of meeting the minimum lot size requirements.
- (c) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (d) **Subordinate to other farm uses.** Any building that is constructed for a farm store shall be clearly subordinate to the other farm buildings on the property.
- (e) **Parking areas.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (f) **Road access.** The property shall front on and have direct vehicle access to a major road as depicted on the zoning map.

(g) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

(h) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



#### 2.09 Fee fishing

**Description:** An operation that provides the opportunity for anglers to pay a fee for the right to fish on a farm.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

#### Supplemental Standards:

- (a) **Minimum lot area.** The minimum lot area for fee fishing is 5 acres.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Buildings.** Any building that is constructed for a fee fishing operation shall be clearly subordinate to the other farm buildings on the property.
- (d) **Activity areas.** Activity areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (e) **Parking areas.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (f) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

#### 2.10 Glamorous camping (Glamping)

**Description:** A facility that is an integral part of an ongoing agricultural operation that provides the opportunity for agri-tourists to rent, on a nightly basis, fully furnished tents and/or rustic cabin sites that are characterized by furnishings, amenities, and comforts typically offered in a luxury hotel room. Furnishings, amenities, and comforts may include luxurious décor, beds, linens, baths, veranda, spa services, concierge, dining, and chef.

**Parking Requirements:** 1 space for each site.

#### Supplemental Standards:

- (a) **Validity of use.** Glamping must be operated as an ancillary use in conjunction with an active farm operation.
- (b) **Minimum lot area.** The minimum lot area for glamping is 40 acres. The acreage of adjoining parcels, which are part of a single farm entity as determined by the Plan Commission, may be combined for the purpose of meeting the minimum lot size requirements.
- (c) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (d) **Limitations on other uses.** A property with glamping shall not include any other type of overnight accommodation.
- (e) **Maximum number of tents or cabins.** The maximum number of tents or cabins is limited to 12, plus 2 for each 10 acres in excess of 40 acres.
- (f) **Maximum occupancy.** Occupancy shall not exceed 6 persons per tent or cabin.
- (g) **Length of stay.** The maximum stay for any occupant is 14 consecutive days.
- (h) **Meals.** Meals, if provided by the operator, shall only be served to overnight guests.
- (i) **Location of tents and cabins.** Tents and cabins shall (1) be completely screened from street view, (2) not located closer than 300 feet to any perimeter boundary line, and (3) not located in a C-1 district.
- (j) **Buildings.** Any building associated with a glamorous camping operation shall not be located in a C-1 district.
- (k) **State permit.** Prior to the establishment of a glamping operation, the operator shall obtain a permit from the Wisconsin Department of Health and Family Services, or the department's agent, as required by state law and maintain such permit for the life of the use or until the state no longer requires such permit. [1]
- (l) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

[1] **Commentary:** See Wis. Admin. Code ch. DHS 178.

### 2.11 Health spa

**Description:** A facility offering proactive health and wellness education and/or physical exercise and diet regimens that can, in a rural environment, improve one's quality of life. Health and wellness opportunities may consist of general and specialized exercise, wellness, and nutritional classes/consultations, organic cooking classes/workshops, yoga, meditation, and massage. A health spa may include overnight lodging and may serve meals only when served to participating clientele.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

**Supplemental Standards:**

- (a) **Minimum lot area.** The minimum lot area for a health spa is 40 acres.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Limitation on guest rooms.** A health spa is limited to a maximum of 10 guest rooms.
- (d) **Limitations on other uses.** A property with a health spa shall not include any other type of overnight accommodation.
- (e) **Length of stay.** Any guest is limited to a maximum of overnight stays 14 in a calendar year.
- (f) **Proximity.** A building housing guest rooms shall not be located closer than 150 feet to any perimeter boundary line and in no case located closer than 300 feet to an existing dwelling on an adjoining parcel of land.
- (g) **Buildings.** Any building associated with a health spa shall not be located in a C-1 district.
- (h) **Activity areas.** Activity areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (i) **Parking areas.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (j) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (k) **Road access.** The property must front on and have direct vehicle access to a major road as depicted on the zoning map.
- (l) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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### 2.12 Petting farm

**Description:** An operation where the public is invited to pet and touch farm animals, but not exotic animals.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

**Supplemental Standards:**

- (a) **Validity of use.** A petting farm must be operated as an ancillary use in conjunction with an active farm operation.
- (b) **Minimum lot size.** The minimum lot size for a petting farm is 20 acres.
- (c) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (d) **Location of buildings.** A building that houses animals shall be located at least 50 feet from any lot line.
- (e) **Parking areas.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (f) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (g) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

### 2.13 U-Cut Christmas tree operation

**Description:** A place where customers can harvest their own Christmas tree.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

**Supplemental Standards:**

- (a) **Minimum lot size.** The minimum lot size for a U-cut Christmas tree operation is 5 acres.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Parking areas.** Parking areas shall be located and configured to minimize potential conflicts with surrounding properties.
- (d) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.



**2.14 U-Pick operation**

**Description:** A farm operation where customers can pick or harvest fruits, flowers, and vegetables directly from the plants grown on the premises.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis.

**Supplemental Standards:**

- (a) **Minimum lot area.** The minimum lot area for a u-pick operation is 5 acres.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Parking areas.** Parking areas shall be located and configured so as to minimize potential conflicts with surrounding properties.
- (d) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

**3 Resource-based Uses**

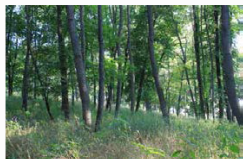
**3.01 Dam**

**Description:** An artificial barrier in or across a navigable watercourse which has the primary purpose of impounding or diverting water. A dam may include appurtenant works, such as dikes, canals, and a powerhouse.

**Parking Requirements:** 1 space for each employee on the largest work shift.

**Supplemental Standards:**

- (a) **State and federal compliance.** A dam shall comply with all state and federal rules and regulations.
- (b) **Removal.** A dam may be removed, provided the standards and requirements of Wis. Stats. ch. 31, are met.
- (c) **Safety.** The owner of the dam shall comply with the safety measures required in Wis. Admin. Code § NR 33.07(3).
- (d) **Unsafe conditions.** If it is determined that a dam is unsafe or otherwise defective, the administrator shall follow the procedure outlined in article 5 of this chapter relating to unsafe conditions.
- (e) **Termination of use.** If the zoning administrator determines that a dam has not been operational for a continuous period of 12 months, the administrator shall follow the procedure outlined in article 5 of this chapter relating to the termination of an approval.
- (f) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.



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**3.02 Forestry**

**Description:** The harvesting, thinning, and planting of trees and related forest management activities whether for commercial or noncommercial purposes. The term includes temporary skidding yards necessary to store and sort logs harvested on the premises. The term does not include on-site processing and permanent skidding yards.



**Parking Requirements:** On-site parking is not required.

**Supplemental Standards:**

(a) **Generally.** Forest management operations shall be consistent with generally accepted forestry management practices as described in the most recent version of "Wisconsin Forest Management Guidelines," published by the Wisconsin Department of Natural Resources and identified as publication number PUB-FR-226.

(b) **Removal of a tree or shrub within a defined open space area in a development project.** Trees and shrubs within an area set aside as open space as part of a development project shall not be removed except as follows:

- (1) A dead or dying tree or shrub may be removed when it poses a threat to public health and safety.
- (2) The removal of trees and shrubs is done consistent with a landscape management plan as prepared by a registered landscape architect, an arborist, or a forester and as approved by the zoning administrator.
- (3) Vegetation listed by the Wisconsin Department of Natural Resources as an invasive species under Wis. Admin. Code ch. NR 40 may be removed without prior approval.



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**3.03 Limited nonmetallic mine**

**Description:** A place where nonmetallic minerals are removed from the ground by any method for use on-site or off-site for no more than 5 years. The following activities may be associated with a nonmetallic mine: excavating and transporting nonmetallic minerals, stockpiling of nonmetallic minerals, blending of nonmetallic minerals, blasting, grading, crushing, screening, scalping, and dewatering. The term does not include (i) operations affecting less than 5 acres and for the exclusive on-site use of the property owner; (2) pre-mining activities, such as site surveying, coring, mapping and other functions necessary solely for proper preparation of the permit application; (3) excavation in conjunction with a utility installation, which is to be backfilled; (4) excavation within the limits of a public right-of-way in conjunction with road construction or reconstruction, when construction plans have been approved by the Wisconsin Department of Transportation or other governmental authority; (5) excavation which by nature is of limited duration, such as graves, septic tanks, and swimming pools; (6) agricultural drainage work incidental to agricultural operations and irrigation/stock watering ponds, if no material is removed from the property; (7) excavation for structures and parking areas; (8) stripping of up to 1.5 feet of topsoil for the development of subdivisions, following subdivision approval; (9) regrading of property for aesthetic purposes that does not affect existing drainage, if no material is removed from the property; (10) dredging operations under the jurisdiction of the U.S. Army Corps of Engineers or other governmental authority; (11) ponds developed for wildlife purposes in conjunction with the Natural Resources Conservation Service or the Waukesha County Land and Water Conservation Department; (12) excavation related to sod farming; (13) any mining operation, the reclamation of which is required in a permit obtained under Wis. Stats. §§ 144.80—144.94, pertaining to metallic mining; (14) activities conducted at a solid or hazardous waste disposal site required to prepare, operate, or close a solid waste disposal facility under Wis. Stats. §§ 144.435—144.445, or a hazardous waste disposal facility under Wis. Stats. §§ 144.60—144.74, for the exception of mineral extraction operations conducted for the purpose of lining, capping, or covering such disposal site; and (15) any other use determined to be exempt by the plan commission.

**Parking Requirements:** 1 space for each employee on the largest work shift.

**Supplemental Standards:**

- (a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (b) **Air quality.** The operator of a limited nonmetallic mine shall comply with Wis. Admin. Code ch. NR 415, with regard to particulate emissions.
- (c) **Blasting.** Blasting is prohibited.
- (d) **Reclamation.** The operator shall comply with chapter 20 of the general code of Waukesha County (Non-metallic mining reclamation).
- (e) **Minimization of noise, dust, and vibrations.** Roads, machinery, and equipment shall be located, constructed, and used in such a manner as to minimize noise, dust, and vibrations.
- (f) **Hours of operation.** A limited nonmetallic mine shall not be operated on Sunday and may be operated Monday through Saturday during the standard hours of operation specified below based on the proximity of the site to a residence or commercial establishment open to the public. Upon written request, the plan commission may authorize specific activities past the standard hours or operation but no later than the hour specified for limited or temporary



periods taking into account the proximity and nature of adjoining uses and the extent of noise, dust, and vibration associated with the activity. Such approval shall be in writing and shall specify the time period the extended hours of operation are in effect, the activities that are permitted, and conditions, if any, the commission may impose to address off-site effects.

Permissible hours of operation for a nonmetallic mine.

Proximity of Site to Specified Uses	Day	Standard Hours of Operation	Extended Hours of Operation With Approval of Plan Commission
Lot line of the site is located within 500 feet of a residence or commercial establishment open to the public	Monday through Friday	From 6:00 a.m. to 6:00 p.m.	From 6:00 p.m. to 10:00 p.m.
	Saturday	From 6:00 a.m. to 2:00 p.m.	From 2:00 p.m. to 7:00 p.m.
Lot line of the site is not located within 500 feet of a residence or commercial establishment open to the public	Monday through Friday	From 6:00 a.m. to 6:00 p.m.	From 6:00 a.m. to 10:00 p.m.
	Saturday	From 6:00 a.m. to 6:00 p.m.	From 6:00 a.m. to 10:00 p.m.

**(g) Locational requirements.** A nonmetallic mine shall comply with the following distance requirements:

- (1) 1,000 feet minimum from any dwelling
- (2) 500 feet minimum from a residential zoning district
- (3) 200 feet minimum from all other zoning districts
- (4) 100 feet minimum from all access roads, parking, and office buildings
- (5) 200 feet from all property boundary lines
- (6) 50 feet minimum from all on-site access roads, parking areas, and office buildings

**(h) Plan of operation.** A nonmetallic mine, including those that existed before September 16, 2020, shall prepare a plan of operation for the site that includes the following:

- (1) A statement of ownership of the parcel and control of the operations.
- (2) A site plan, drawn to scale, showing the lateral extent of existing and proposed excavations; the location and width of all easements and right-of-way on or abutting the site; existing water bodies, water courses and drainageways and proposed modifications; estimated direction of flow or groundwater; the location of existing and proposed buildings, structures, machinery and equipment; and the location of all existing and proposed storage and stockpiling areas.
- (3) Cross sections of the site, drawn to scale, that show the vertical extent of existing and proposed excavations.

**(i) Transfer of permit.** When an operator succeeds to the interest of another in an uncompleted site, the town board shall release the present operator of the responsibilities imposed by the permit only if:

- (1) Both operators are in compliance with the requirements and standards of this section, and
- (2) The new operator assumes the responsibility of the former operator's permit requirements.

**(j) Financial guarantee.** Prior to the establishment of a limited non-metallic mine, the property owner shall submit a financial guarantee to the town pursuant to the requirements in article 4 of this chapter in an amount equal to 110 percent of the estimated cost of site restoration identified in the restoration plan that is approved for the project.

**(k) Berm.** There must be a berm along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

**(l) Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

**3.04 Open lands**

**Description:** Land generally not in forestry or in agricultural production and may include wetland complexes and land kept undeveloped for conservation purposes. Land may be enrolled in a federal agricultural commodity payment program or in a state or federal agricultural land conservation payment program, or a similar program.

**Parking Requirements:** On-site parking is not required.

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.

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**4 Residential**



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**4.01 Duplex**

**Description:** A building containing 2 dwelling units that is situated on one lot. The units may be rented or owned as in a condominium.

**Parking Requirements:** 2 spaces for each dwelling unit.

**Supplemental Standards:**

- (a) **Minimum lot area.** The minimum lot area for a duplex is double the minimum lot size for the zoning district in which the property is located.
- (b) **Number of principal dwellings per parcel.** No more than one duplex shall occupy any single parcel of land except as allowed under this chapter.
- (c) **Occupancy.** A dwelling unit shall be occupied by no more than one family.
- (d) **Design and construction.** A duplex shall meet the following standards:

- (1) The roof shall have a minimum pitch of 4 to 12, except when a flat roof is integral to the architectural style of the building.
- (2) Suitable roof coverings include slate, concrete, clay, or ceramic tiles; wood shingles or shakes; or metal, fiberglass, or asphalt shingles; or standing seam panels.
- (3) Exterior wall surfaces shall be covered with stucco, wood siding, cement-fiber siding, vinyl siding, metal horizontal lap siding, wood shingles, or a masonry veneer.
- (4) An overhang shall extend at least 12 inches beyond the face of the exterior wall, except when integral to the architectural style of the dwelling (e.g., saltbox).
- (5) The building shall be set on and anchored to a continuous permanent foundation that extends around its perimeter.

The plan commission may approve a special exception, consistent with the procedures and requirements of article 5 of this chapter, to authorize the use of an exterior material not specifically allowed in this subsection.

- (e) **Additional offset.** The minimum offset is twice the offset requirement for the zoning district in which this use is located.



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**4.02 Multifamily housing**

**Description:** A building with three to five dwelling units. The units may be rented or owned as in a condominium.

**Parking Requirements:** 2 spaces for each dwelling unit.

**Supplemental Standards:**

- (a) **Minimum lot area.** The minimum lot area for a multifamily dwelling is equal to the minimum lot size for the zoning district in which the property is located times the number of dwelling units.

(b) **Number of principal dwellings per parcel.** No more than one principal residential building shall occupy any single parcel of land except as allowed under this chapter.

(c) **Occupancy.** A dwelling unit shall be occupied by no more than one family.

(d) **Design and construction.** A multifamily building shall meet the following standards:

- (1) The roof shall have a minimum pitch of 4 to 12, except when a flat roof is integral to the architectural style of the building.
- (2) Suitable roof coverings include slate, concrete, clay, or ceramic tiles; wood shingles or shakes; or metal, fiberglass, or asphalt shingles; or standing seam panels.
- (3) Exterior wall surfaces shall be covered with stucco, wood siding, cement-fiber siding, vinyl siding, metal horizontal lap siding, wood shingles, or a masonry veneer.
- (4) An overhang shall extend at least 12 inches beyond the face of the exterior wall, except when integral to the architectural style of the dwelling (e.g., saltbox).
- (5) The building shall be set on and anchored to a continuous permanent foundation that extends around its perimeter.

The plan commission may approve a special exception, consistent with the procedures and requirements of article 5 of this chapter, to authorize the use of an exterior material not specifically allowed in this subsection.

(e) **Garage required.** A garage containing at least 240 square feet for each dwelling unit shall be built at the same time the principal building is being constructed. Such garage may be attached or detached.

(f) **Access drive.** The developer shall provide a two-lane road, built to town road standards, from the public road to the multi-family building.

(g) **Additional offset.** The minimum offset is twice the offset requirement for the zoning district in which this use is located.

(h) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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#### 4.03 Single-family dwelling

**Description:** A building containing one dwelling unit that is situated on one lot and is not attached to any other dwelling unit by any means. The term includes manufactured homes, modular homes, panelized homes, pre-cut homes, and site-built homes, but excludes mobile homes.

**Parking Requirements:** 2 spaces for each dwelling unit

##### Supplemental Standards:

(a) **Number of principal dwellings per parcel.** No more than one principal residential building shall occupy any single parcel of land except as allowed under this chapter.

(b) **Occupancy.** A dwelling unit shall be occupied by no more than one family.

(c) **Design and construction.** A single-family dwelling shall meet the following standards:

- (1) The roof shall have a minimum pitch of 4 to 12, except when a flat roof is integral to the architectural style of the dwelling.
- (2) Suitable roof coverings include slate, concrete, clay, or ceramic tiles; wood shingles or shakes; or metal, fiberglass, or asphalt shingles; or standing seam panels.
- (3) Exterior wall surfaces shall be covered with stucco, wood siding, cement-fiber siding, vinyl siding, metal horizontal lap siding, wood shingles, or a masonry veneer.
- (4) An overhang shall extend at least 12 inches beyond the face of the exterior wall, except when integral to the architectural style of the dwelling (e.g., saltbox).
- (5) The building shall be set on and anchored to a continuous permanent foundation that extends around its perimeter.

The plan commission may approve a special exception, consistent with the procedures and requirements of article 5 of this chapter, to authorize the use of an exterior material not specifically allowed in this subsection.

(d) Garage required. A garage containing at least 240 square feet shall be built at the same time the single-family dwelling is being constructed. Such garage may be attached or detached.

## 5 Special Care Facilities

### 5.01 Adult family home

**Description:** A place licensed by the state under Wis. Stats. § 50.033(1m).

Note: An adult family home can either be a principal use or an accessory use. If the operator does not live in the residence with the adults, it is considered a principal use.

**Parking Requirements:** 1 space for each 2 adults the facility is licensed by the state to accommodate; plus 1 space for each employee on the largest work shift.

#### Supplemental Standards:

An adult family home described in Wis. Stats. § 50.01(l)(b), shall not be established within 2,500 feet of another such facility or any community living arrangement. An agent of a proposed adult family home may apply for an exception to this requirement, and the town board at its discretion may grant the exception.[1] An adult family home certified under Wis. Stats. § 50.032(1m)(b), is exempt from this provision.[2]

[1] Commentary: See Wis. Stats. § 56.69(15)(br)(1).

[2] Commentary: See Wis. Stats. § 59.69(15)(br)(2).

### 5.02 Community living arrangement, 8 or fewer residents

**Description:** Any one of the following facilities with 8 or fewer residents (1) residential care centers for children and youth, as defined in Wis. Stats. § 48.02(15d), operated by a child welfare agency licensed under Wis. Stats. § 48.60; (2) group homes for children, as defined in Wis. Stats. § 48.02(7); and (3) community-based residential facilities, as defined in Wis. Stats. § 50.01(lg). The term does not include adult family homes, as defined in Wis. Stats. § 50.01.

**Parking Requirements:** 3 spaces.

#### Supplemental Standards:

(a) **State license.** Prior to the establishment of a community living arrangement, the operator must obtain a license from the state as may be required by state law and maintain such license for the life of the use or until the state no longer requires such license. [1]

(b) **Occupancy.** All residents of the adult family home, other than the operator or care provider and the operator or care provider's immediate family, must be disabled persons as indicated in the required state license application.

(c) **Advisory committee.** Prior to initial licensure of the community living arrangement by the state of Wisconsin, the applicant shall make a good faith effort to establish an ad hoc advisory committee consisting of representatives from the community living arrangement, the neighborhood in which the proposed facility will be located, and a local unit of government, in accordance with Wis. Stats. § 48.68(4), or Wis. Stats. § 50.03(4)(g), as applicable.

[1] Commentary: See Wis. Stats. subch. VII of chapter 254, and Wis. Admin. Code ch. DHS 197.

### 5.03 Community living arrangement, 9 to 15 residents

**Description:** Any one of the following facilities with 9 to 15 residents (1) residential care centers for children and youth, as defined in Wis. Stats. § 48.02(15d), operated by a child welfare agency licensed under Wis. Stats. § 48.60; (2) group homes for children, as defined in Wis. Stats. § 48.02(7); and (3) community-based residential facilities, as defined in Wis. Stats. § 50.01(lg). The term does not include adult family homes, as defined in Wis. Stats. § 50.01.

**Parking Requirements:** 4 spaces.

#### Supplemental Standards:

(a) **State license.** Prior to the establishment of a community living arrangement, the operator must obtain a license from the state as may be required by state law and maintain such license for the life of the use or until the state no longer requires such license. [1]

(b) **Occupancy.** All residents of the adult family home, other than the operator or care provider and the operator or care provider's immediate family, must be disabled persons as indicated in the required state license application.

(c) **Advisory committee.** Prior to initial licensure of the community living arrangement by the state of Wisconsin, the applicant shall make a good faith effort to establish an ad hoc advisory committee consisting of representatives from the community living arrangement, the neighborhood in which the proposed facility will be located, and a local unit of government, in accordance with Wis. Stats. § 48.68(4), or Wis. Stats. § 50.03(4)(g), as applicable.

(d) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

[1] Commentary: See Wis. Stats. subch. VII of chapter 254, and Wis. Admin. Code. ch. DHS 197.

#### 5.04 Foster home/treatment foster home

**Description:** A place licensed by the state for the care of foster children and which is operated by a corporation, child welfare agency, church, or other such entity.

Note: See Wis. Stats. § 48.62. A foster home and treatment foster home can either be a principal use or an accessory use. If the operator lives in the residence with the children, it is considered an accessory use.

**Parking Requirements:** 1 space for each employee on the largest work shift.

#### Supplemental Standards:

(a) **State license.** Prior to the establishment of a foster home or treatment foster home, the operator shall obtain a license from the state as provided for in Wis. Stats. § 48.75, and maintain such license for the life of the use or until the state no longer requires such license.

(b) **Proximity to other such facility.** A foster home or treatment foster home that is operated by a corporation, a child welfare agency, a religious association, as defined in Wis. Stats. § 157.061(15), an association, or a public agency, shall not be established within 2,500 feet of another such facility. An agent may apply for an exception to this requirement, and the town board at its discretion may grant the exception. [1]

[1] Commentary: See Wis. Stats. § 59.69(15)(bm).



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#### 5.05 Group day care center

**Description:** A place licensed as a day care by the state where care is provided for 9 or more children. This use may include outdoor play areas, playhouses, and related recreational equipment, such as swings, slides, basketball hoops, and jungle gyms.

Note: A family day care home (4—8 children) is considered an accessory use and is therefore listed in the 14 series.

**Parking Requirements:** 1 space for each 2 children the facility is licensed by the state to accommodate; plus 1 space for each employee on the largest work shift.

**Supplemental Standards:** An outdoor activity area associated with a group day care center shall not be located within 20 feet of an adjoining property in a residential zoning district.

#### 5.06 Hospice care center

**Description:** A place licensed by the state that provides palliative and supportive care and a place of residence to individuals with terminal illness and provides or arranges for short-term inpatient care as needed.

Note: See Wis. Stats. § 50.90(1).

**Parking Requirements:** 1 space for each 2 residents at capacity; plus 1 space for each employee on the largest work shift.

#### Supplemental Standards:

(a) **License.** Prior to the establishment of a hospice care center, the operator shall obtain a license from the state as provided for in Wis. Stats. § 50.92, and maintain such license for the life of the use or until the state no longer requires such license.

(b) **Minimum lot size.** If this use is not located in a business zoning district, the minimum lot area is 5 acres.

#### 5.07 Nursing home

**Description:** A place where 5 or more persons who are not related to the operator or administrator reside, receive care or treatment and, because of their mental or physical condition, require 24-hour nursing services, including limited nursing care, intermediate level nursing care, and skilled nursing services. The term does not include (1) a convent or facility owned or operated exclusively by and for members of a religious order that provides reception and care or treatment of an individual, (2) a hospice as defined in state law, or (3) a residential care apartment complex as defined in state law.

Note: See Wis. Stats. § 50.01(3).

**Parking Requirements:** 1 space for each 3 beds; plus 1 space for each employee on the largest work shift.

**Supplemental Standards:**

- (a) **Required green space.** If a nursing home is not located in a business zoning district, a minimum of 30 percent of the parcel shall remain undeveloped (i.e., landscaped).
- (b) **Parking lot screening.** When an off-street parking lot is located within 20 feet of a parcel in a residential zoning district, a type "A" bufferyard must be used to screen the parking area from the residential property. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (c) **On-site access drive.** The facility shall be served by an on-site access drive that meets the design and construction standards for a town road (e.g., two lanes each 12 feet wide). The plan commission may waive the requirement for a two-lane drive and allow a single-lane drive when the commission deems the wider drive unnecessary given the location of the use on the subject property, the number and type of vehicles using the drive, and other related considerations. If the plan commission allows a single-lane drive, the commission reserves the right to require a two-lane drive at a later date and may require intermediate turnarounds/turnouts every 1,200 feet and impose other design features it deems necessary to ensure public safety.

**5.08 Retirement home**

**Description:** A place where individuals, generally 60 years of age or older, may occupy independent dwelling units. The units may be rented or owned as in a condominium. This use may include limited on-site commercial and medical facilities for the exclusive use of residents.

**Parking Requirements:** 0.5 space for each dwelling unit, plus 1 space for each employee on the largest work shift.

**Supplemental Standards:**

- (a) **Required green space.** If a retirement home is not located in a business zoning district, a minimum of 30 percent the parcel shall remain undeveloped (i.e., landscaped).
- (b) **Parking lot screening.** When an off-street parking lot is located within 20 feet of a parcel in a residential zoning district a type "A" bufferyard must be used to screen the parking area from the residential property. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (c) **Road access.** The property must front on and have direct vehicle access to a major road as depicted on the zoning map.
- (d) **On-site access drive.** The facility shall be served by an on-site access drive that meets the design and construction standards for a town road (e.g., two lanes each 12 feet wide). The plan commission may waive the requirement for a two-lane drive and allow a single-lane drive when the commission deems the wider drive unnecessary given the location of the use on the subject property, the number and type of vehicles using the drive, and other related considerations. If the plan commission allows a single-lane drive, the commission reserves the right to require a two-lane drive at a later date and may require intermediate turnarounds/turnouts every 1,200 feet and impose other design features it deems necessary to ensure public safety.
- (e) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

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**6 Group Accommodations**



**6.01 Campground**

**Description:** A place where members of the general public may set up tents, campers and trailers of all types, and recreational vehicles for camping and sleeping purposes. Accessory uses may include individual cabins, a dwelling unit for the manager of the campground, and one or more buildings to house a laundromat and retail sales for the convenience of campground guests, an office, maintenance equipment, supplies, and related materials.

**Parking Requirements:** 1 space at each camping space; plus 1 space at the office, if one is provided, for each 15 camping spaces.

**Supplemental Standards:**

- (a) **Minimum lot size.** The minimum lot size for a campground is 10 acres.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Continuing maintenance.** The owner of the campground shall maintain the campground in a clean and sanitary manner.

- (d) **Accessory facilities.** Accessory facilities (e.g., laundry and food sales) may be allowed as a service to the occupants of the campground but shall be designed, operated, and located to inhibit use by nonoccupants.
- (e) **Density.** The density shall not exceed 2.5 campground spaces per acre (gross).
- (f) **On-site recreation.** At least 8 percent of the gross site area or 2,500 square feet, whichever is greater, shall be dedicated for on-site recreational purposes and shall be accessible from all camping spaces.
- (g) **Setback from lot line.** A campground space shall be no closer than 40 feet to the perimeter lot line of the site.
- (h) **Design considerations.** Campground spaces shall be arranged to permit the safe and practical placement and removal of vehicles from a private roadway internal to the development.
- (i) **Solid waste collection.** An off-street area for the collection of solid waste (trash) shall be provided within a campground.
- (j) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (k) **Limitation on addition of features.** Storage sheds, decks, patios, and similar structures within a camping space, whether permanent or temporary, are prohibited. Structural additions to a recreational vehicle within a camping space, whether permanent or temporary, are prohibited. Tent platforms are permitted.
- (k) **State permit.** Prior to the establishment of a campground, the operator shall obtain a permit from the Wisconsin Department of Health and Family Services, or the department's agent, as required by state law and maintain such permit for the life of the use or until the state no longer requires such permit. [1]
- (l) **Road access.** The property must front on and have direct vehicle access to a major road as depicted on the zoning map if the number of campsites is 100 or more.
- (m) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

[1] Commentary: See Wis. Admin. Code ch. DHS 178.

## 6.02 Group recreation camp

**Description:** A place where members of an association or other similar group, which operates the premises, and their invited guests may set up tents, campers and trailers of all types, and recreational vehicles for camping and sleeping purposes or stay overnight in a lodge, cabin, or other similar accommodation. Accessory uses may include a dwelling unit for the manager of the camp, sleeping accommodations for resident staff, and one or more buildings to house guest services, administrative offices, recreational facilities, maintenance equipment, supplies, and related materials. The term includes youth camps and church camps.

**Parking Requirements:** 1 space at each camping space; plus 1 space at the office, if one is provided, for each 15 camping spaces.

### Supplemental Standards:

- (a) **Minimum lot size.** The minimum lot size for a group recreation camp is 10 acres.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Continuing maintenance.** The owner of the group recreation camp shall maintain the group camp in a clean and sanitary manner.
- (d) **Accessory facilities.** Accessory facilities (e.g., laundry and food sales) may be allowed as a service to the occupants of the group recreation camp but they shall be designed, operated, and located to inhibit use by nonoccupants.
- (e) **Density.** If campground spaces are provided, the density shall not exceed 2.5 campground spaces per acre (gross).
- (f) **Access.** If campground spaces are provided, they shall be arranged to permit the safe and practical placement and removal of vehicles from a private roadway internal to the development.
- (g) **Setbacks from lot line.** If campground spaces are provided, they shall be no closer than 40 feet to the perimeter lot line of the site.
- (h) **Solid waste collection.** An off-street area for the collection of solid waste (trash) shall be provided within a group recreation camp.
- (i) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

(j) **Limitation on addition of features.** Storage sheds, decks, patios, and similar structures within a camping space, whether permanent or temporary, are prohibited. Structural additions to a recreational vehicle within a camping space, whether permanent or temporary, are prohibited. Tent platforms are permitted.

(k) **State permit.** Prior to the establishment of a group recreation camp, the operator shall obtain a permit from the Wisconsin Department of Health Services, or the department's agent, as required by state law and maintain such permit for the life of the use or until the state no longer requires such permit. [1]

(l) **Road access.** The property must front on and have direct vehicle access to a major road as depicted on the zoning map if the capacity of the camp is 200 guests or more.

(m) **On-site access drive.** The facility shall be served by an on-site access drive that meets the design and construction standards for a town road (e.g., two lanes each 12 feet wide). The plan commission may waive the requirement for a two-lane drive and allow a single-lane drive when the commission deems the wider drive unnecessary given the location of the use on the subject property, the number and type of vehicles using the drive, and other related considerations. If the plan commission allows a single-lane drive, the commission reserves the right to require a two-lane drive at a later date and may require intermediate turnarounds/turnouts and impose other design features it deems necessary to ensure public safety.

(n) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

[1] Commentary: See Wis. Admin. Code ch. DHS 175.

### 6.03 Overnight lodging

**Description:** A place where individual guest rooms with private bathrooms are offered to transient guests for rent. This use may also include (1) recreational/fitness rooms and a food service area for the exclusive use of guests and (2) banquet facilities for meetings and other gatherings. The term includes hotels and motels but does not include bed and breakfasts.

**Parking Requirements:** 1 space for each guest room and 1 space for each employee on the largest work shift, plus any required spaces for other uses such as restaurants or banquet facilities.

#### Supplemental Standards:

(a) **Minimum lot size.** The minimum lot size for overnight lodging is 3 acres.

(b) **Setbacks.** No building shall be closer than 50 feet to the lot line of an adjoining lot in a district permitting a residential use or the setback established for the zoning district, whichever is greater.

(c) **Location of customer entrance.** No customer entrance to the building shall be located within 75 feet of a parcel in a residential zoning district.

(d) **Local license.** Prior to the establishment of overnight lodging, the operator shall obtain a license from the Waukesha County Health Department and maintain such license for the life of the use or until the department no longer requires such license.

(d) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

## 7 Food and Beverage Sales



### 7.01 Brewpub

**Description:** A place where fermented malt beverages are manufactured and those beverages, along with other beverages and food, are offered for retail sale and on-site consumption.

**Parking Requirements:** 1 space for each 3 patron seats or 1 space for each 300 square feet of gross floor area devoted to patron service, whichever is greater; plus 1 for each employee on the largest work shift.

#### Supplemental Standards:

(a) **Lot requirements.** When a brewpub is allowed in a nonbusiness zoning district, the minimum lot area is 3 acres with at least 200 feet in minimum average width.

(b) **Special dimensional standards.** The building housing this principal use shall be no closer than 50 feet to an agricultural or residential zoning district.



- (c) **On-site parking.** On-site parking shall be provided within 200 feet of the building housing this principal use. No portion of the parking area shall be located closer than 20 feet to a parcel in any agricultural or residential zoning district.
- (d) **Local license.** Prior to the establishment of a brewpub, the operator shall obtain a license from the county, as may be required, and maintain such license for the life of the use or until the county no longer requires such license.
- (e) **State license.** Prior to the establishment of a brewpub, the operator shall obtain a license from the state, as may be required, and maintain such license for the life of the use or until the state no longer requires such license.
- (f) **Limitation on floor area devoted to production.** No more than 40 percent of the floor area shall be devoted to the production of fermented malt beverages, including storage of raw materials and finished products.
- (g) **Limitation on production.** Not more than 10,000 barrels (310,000 gallons) of fermented malt beverages may be manufactured in a calendar year.
- (h) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

## 7.02 Restaurant

**Description:** A place where food and beverages are offered for retail sale for on-site or off-site consumption, and where the on-site consumption of fermented malt beverages, wine, or liquor, if any, is clearly secondary and subordinate to the sale of food and nonalcoholic beverages. A restaurant may also prepare food as part of a catering business. The term does not include a grocery store with a food service section.

**Parking Requirements:** 1 space for each 3 patron seats or 1 space for each 300 square feet of gross floor area devoted to patron service, whichever is greater; plus 1 for each employee on the largest work shift.

### Supplemental Standards:

- (a) **Lot requirements.** When a restaurant is allowed in a nonbusiness zoning district, the minimum lot area is 3 acres with at least 200 feet in minimum average width.
- (b) **Special dimensional standards.** The building housing this principal use shall be no closer than 50 feet to any residential zoning district.
- (c) **On-site parking.** On-site parking shall be provided within 200 feet of the building housing this principal use. No portion of the parking area shall be located closer than 20 feet to a parcel in an agricultural or residential zoning district.
- (d) **Local license.** Prior to the establishment of a restaurant, the operator shall obtain a license from the Waukesha County Health Department and maintain such license for the life of the use or until the department no longer requires such license.
- (e) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.



## 7.03 Tavern

**Description:** A place where fermented malt beverages, wine, or liquor are offered for retail sale for on-site consumption and where food consumption, if any, is clearly secondary and subordinate to the sale of alcoholic beverages. The term includes bars, drinking establishments, sports bar, and lounges.

**Parking Requirements:** 1 space for each 3 patron seats or 1 space for each 300 square feet of gross floor area devoted to patron service, whichever is greater; plus 1 for each employee on the largest work shift.

### Supplemental Standards:

- (a) **Lot requirements.** When a tavern is allowed in a nonbusiness zoning district, the minimum lot area is 3 acres with at least 200 feet in minimum average width.
- (b) **Special dimensional standards.** The building housing this principal use shall be no closer than 50 feet to any residential zoning district.
- (c) **On-site parking.** On-site parking shall be provided within 200 feet of the building housing this principal use. No portion of the parking area shall be located closer than 20 feet to a parcel in an agricultural or residential zoning district.
- (d) **Local license.** Prior to the establishment of a tavern, the operator shall obtain an alcohol license from the town and maintain such license for the life of the use or until the license is no longer required.
- (e) **Compliance with state requirements.** A tavern shall comply with requirements as may be adopted by the state of Wisconsin.

(f) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

**8 Vehicle Rental, Sales, and Service**



**8.01 Vehicle fuel station**

**Description:** A place where fuels for cars, motorcycles, and light trucks are offered for retail sale. Ancillary uses are limited to the retail sale of food and beverages and light maintenance activities, such as engine tune-ups, lubrication, and minor repairs. The term does not include truck stops or similar uses.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:**

- (a) **Restroom facilities.** If a vehicle fuel station provides restroom facilities, the door to each restroom shall be accessed from within the interior of the building in which they are located.
- (b) **Pump island canopies.** Pump island canopies shall not exceed 22 feet in height.
- (c) **Special setbacks.** The following setbacks shall apply to a vehicle fuel station:
  - (1) A fuel pump shall be located at least 50 feet from a parcel in a residential zoning district and at least 30 feet from a parcel in a nonresidential zoning district.
  - (2) A fuel pump shall be located at least 15 feet from the base setback line.
  - (3) A pump island canopy shall be located at least 18 feet from all lot lines.
- (d) **Outdoor lighting.** Outdoor lighting shall not create a hazard to traffic or be a nuisance to surrounding property, as determined by the plan commission.
- (e) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.



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**8.02 Vehicle repair shop**

**Description:** A place where motor vehicles, such as cars, motorcycles, and light trucks, are typically left overnight for maintenance, service, or repair. Typical services include transmission repair, body work and painting, vehicle upholstery, engine repair and overhauls, and similar activities.

**Parking Requirements:** 2.5 spaces for each service bay; plus 1 for each employee on the largest work shift.

**Supplemental Standards:**

- (a) **Work area.** Motor vehicles shall not be serviced or repaired outside of the principal structure intended for such use, except when this use is located in an industrial zoning district.
- (b) **Vehicle storage.** When a vehicle repair shop is located in a business zoning district, no more than 10 motor vehicles shall be stored out-of-doors overnight. When located in an industrial zoning district, there is no limitation on the number of motor vehicles that can be stored overnight. Storage of unlicensed vehicles is prohibited.
- (c) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.



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**8.03 Vehicle sales and rental**

**Description:** A place where new and used cars, light trucks, motorcycles, mopeds, snowmobiles, recreational vehicles, and all-terrain vehicles (ATVs) are offered for rent, sale, lease, or exchange, or are taken on consignment. This use may include the repair of such vehicles as a subordinate use.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area, plus 1 space for each employee on the largest work shift.

**Supplemental Standards:**

(a) **Show room.** An indoor vehicle display area shall be provided that is at least 12 feet by 20 feet. If only motorcycles are sold, the indoor vehicle display area shall be large enough to display at least 3 motorcycles. [1]

(b) **State license.** Prior to the establishment of this use, the operator shall obtain a license from the state as required by state law and maintain such license for the life of the use or until the state no longer requires such license.

(c) **Setback for display area.** Display areas and other activity areas shall be located at least 30 feet from a parcel in a residential zoning district and 10 feet from a parcel in a business zoning district.

(d) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

[1] Commentary: See Wis. Admin. Code § TRANS 138.03(a).



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**8.04 Vehicle service shop**

**Description:** A place where motor vehicles, such as cars, motorcycles, and light trucks, are serviced while the owner waits and typically are not left overnight. Examples include quick lube/oil change facilities, tire stores, car washes, and vehicle detailing.

**Parking Requirements:** 1 space for each service bay; plus 1 for each employee on the largest work shift.

**Supplemental Standards:**

(a) **Use restriction.** Motor vehicles shall not be serviced or repaired outside of the principal structure intended for such use, except when this use is located in an industrial zoning district.

(b) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

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**9 General Sales and Services**



**9.01 Administrative services**

**Description:** A place where employees primarily perform administrative functions and where customers are infrequent. The term includes data processing centers, customer service centers via telecommunications, architectural firms, and engineering firms.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.

**9.02 Adult-oriented establishment**

**Description:** A place where no more than one of the following are located: adult arcade, adult bath house, adult body painting studio, adult book/video store, adult cabaret, adult massage parlor, adult modeling studio, or adult theater.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:**

(a) **Legislative findings.** The town board makes the following legislative findings regarding adult-oriented establishments:

- (1) Negative secondary effects associated with adult, sexually-oriented establishments have been confirmed by the United States Supreme Court in its decisions in, for example, *City of Renton v. Playtime Theatres, Inc.* (475 U.S. 41 (1986)) and by the United States Court of Appeals in its decisions in, for example, *Hang On, Inc. v. City of Arlington* (65 F.3d 1248 (5th Cir., 1995)), *Fantasy Ranch v. City of Arlington Texas* (459 F.3d 546 (5th Circuit, 2006)), and *Andy's Restaurant and Lounge, Inc. v. City of Gary* (466 F.3d 550 (7th Cir., 2006)) and such negative secondary effects include, for example, personal and property crimes, prostitution, lewd behavior, assault, public indecency, obscenity, illicit drug use and drug trafficking, potential spread of disease, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (2) The decisions issued by the appellate courts constitute reliable sources of information that may be reasonably relied upon by the Town Board.
- (3) Each of the foregoing negative secondary effects constitutes a harm that the Town has a substantial governmental interest in preventing and/or abating.
- (4) Continued regulation of adult-oriented establishments is necessary to limit the aforementioned negative secondary effects associated with adult-oriented establishments and thereby promote the health, safety, and welfare of the Town of Mukwonago.
- (5) The Town Board intends, via this chapter, to establish reasonable regulations on adult-oriented establishments, while preserving free speech pursuant to the First Amendment to the United States Constitution and Article I, Section 3 of the Wisconsin Constitution.

(b) **Purpose.** This section is intended to regulate adult-oriented establishments in order to promote the health, safety, and general welfare of citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult-oriented establishments within the town. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. Similarly, it is neither the intent nor effect of this section to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment of the United States Constitution, or to deny access by the distributors and exhibitors of adult-oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

(c) **Applicability.** Upon any of the following events, an adult-oriented establishment shall comply with the provisions of this section:

- (1) The opening or commencement of an adult-oriented establishment;
- (2) The conversion of an existing business, whether or not a adult-oriented establishment, to an adult-oriented establishment;
- (3) The addition of a new adult-oriented establishment to an existing adult-oriented establishment;
- (4) The relocation of an adult-oriented establishment;
- (5) The sale, lease, or sublease of an adult-oriented establishment;
- (6) The transfer of securities which constitute a controlling interest in an adult-oriented establishment, whether by sale, exchange, or similar means; or
- (7) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of an adult-oriented establishment, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(d) **Exclusions.** The provisions of this section do not apply to the following:

- (1) Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed masseuse, licensed vocational nurse, registered nurse, licensed athletic trainer, licensed cosmetologist, or licensed barber provided such licensed individual is only engaged in performing the normal and customary functions authorized under the license held;
- (2) Any business operated by, or employing a licensed physician or licensed chiropractor while engaged in practicing the healing arts;
- (3) Any retail establishment whose principal business is the offering of wearing apparel for sale to customers and that does not exhibit merchandise on live model(s); or
- (4) An activity sponsored by a school licensed by the State of Wisconsin or a college, junior college or university supported entirely or partly by taxation; or a private college or university that maintains or operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

Any activity conducted or sponsored by an entity identified in subsection (4) above must meet all of the following requirements:

- (1) The activity must be situated in a structure that has no sign or other advertising visible from the exterior of the structure indicating a nude person is available for viewing; and
- (2) All students participating in the class must be enrolled at least 3 days in advance of the class; and
- (3) Not more than one (1) nude model is on the premises at any one time.

(e) **Proximity to another adult-oriented establishment.** An adult-oriented establishment shall not be located within 500 feet of another adult-oriented establishment.

(f) **Proximity to other specified land uses.** An adult-oriented establishment shall not be located within 600 feet of any of the following:

- (1) Public library;
- (2) Public playground or park, including nature trails, pedestrian/bicycle paths, or other public lands open for recreational activities;
- (3) Educational facility, including K-12 and post-secondary, but not including facilities used primarily for another purpose and used only incidentally at a school;
- (4) State-licensed family day care home, group day care home, or day care center;
- (5) Worship facility;
- (6) Any youth-oriented establishment;
- (7) Tavern; or
- (8) Any commercial business, other than a tavern, holding a valid liquor license.

If one of these specified uses locates within this area of separation after the adult-oriented establishment has been granted a building permit or occupancy permit, the adult-oriented establishment shall not be required to relocate. This provision only applies to a renewal of a valid permit or other license. It does not apply when a license or permit expires or when the town terminates this use due to a violation of this chapter.

(g) **Measurement of distances.** For the purpose of this section, specified distances are measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure containing the adult-oriented establishment, to the nearest lot line of the parcel with the specified use or to the specified zoning district. If an adult-oriented establishment is located on the first floor of a multi-tenant building (e.g., shopping center), the measurement shall be taken from the outer boundary of such space (i.e. from the outer edge of the party wall or the outer wall). If an adult-oriented establishment is located above the first floor of a multi-tenant building (e.g., shopping center), the measurement shall be taken from the exterior door on the first floor that is nearest to the adult-oriented establishment, excluding emergency exists. The presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of applying the separation requirements of this section.

(h) **Licensing.** Adult-oriented establishments shall comply with any licensing requirements established by the Town of Mukwonago.

(i) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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### 9.03 Artisan shop

**Description:** A place where handmade craft items or works of art are made on a small-scale and offered for retail sale. Examples of such items include paintings, textiles, photography, sculptures, pottery, leather products, handmade paper, jewelry, hand-blown glass, small wooden items, candles, soaps, and lotions.

**Parking Requirements:** 1 space for each 300 square feet of display area; plus 1 space for each employee on the largest work shift.

#### Supplemental Standards:

- (a) **Indoor operation.** All materials and activities, except loading and unloading, shall be conducted entirely within the confines of a building.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Limitation.** If this uses is not located in a business zoning district, it must be located on a property with a single-family residence of the operator.
- (d) **Special events.** Special events related to this use may be allowed if otherwise permitted by the Town.
- (e) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.
- (f) **Road access.** The property must front on and have direct vehicle access to a major road as depicted on the zoning map.
- (g) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.



#### 9.04 Commercial kennel

**Description:** A place not qualifying as a private kennel where dogs, cats, or other domesticated animals over 6 months of age are housed for the purpose of boarding, breeding, training, or sale. The term includes boarding kennels, dog motels, and dog training centers. The term does not include animal hospitals, animal grooming parlors, or pet shops.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

#### Supplemental Standards:

- (a) **Minimum lot size.** The minimum lot size for a commercial kennel is 3 acres.
- (b) **Location.** No building housing a commercial kennel shall be closer than 100 feet to the lot line of an adjoining lot in a district permitting residential use except as follows. The plan commission may approve a special exception, consistent with the procedures and requirements of article of this chapter, to allow a lesser offset, but not less than 50 feet or the minimum offset established for the zoning district, whichever is greater. In making such decision, the plan commission shall consider the following factors along with those enumerated in article:
  - (1) The maximum number and type of animals to be kept in the building.
  - (2) The nature of the building including type of construction and measures taken to contain noise associated with the commercial kennel.
  - (3) The presence and type of vegetation between the building and the adjoining property that will help to ameliorate noise associated with commercial kennel.
  - (4) Any other factor reasonably related to the purposes of this zoning code.
- (c) **Special events.** Special events related to a commercial kennel, such as dog shows, exhibitions, field trials, and contests, may be allowed if otherwise permitted by the town.
- (d) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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#### 9.05 Commercial stable

**Description:** A place where horses, donkeys, and other similar domesticated animals are kept for boarding, instructional purposes, or hire on trail rides.

**Parking Requirements:** 1 space for each 4 stable stalls (or equivalent).

#### Supplemental Standards:

- (a) **Minimum lot size.** The minimum lot size for a commercial stable is 20 acres.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Number of animals.** The number of livestock is based on the lot area as follows: 1 head for the first 3 acres and 1 head for each additional acre over 3.
- (d) **Buildings.** Nonresidential buildings and other structures related to a commercial stable, such as barns, stables, riding arenas, and sheds, are allowed subject to compliance with all other requirements of this chapter.
- (e) **Location of buildings.** A building that houses livestock shall be located at least 100 feet from any lot line of any adjoining lot in a district permitting a residential use.
- (f) **Manure management plan.** The property owner shall submit a manure management plan to the plan commission for review and obtain approval of the same.
- (g) **Special events.** Special events related to a commercial stable, such as horse shows, exhibitions, and contests, may be allowed if otherwise permitted by the Town.
- (h) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

### 9.06 Equipment rental

**Description:** A place where equipment is offered for rent and related supplies are offered for retail sale or rent. Items for rent or sale are predominantly stored indoors and may include hand tools, party equipment, and lawn and yard equipment.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area, plus 1 space for each employee on the largest work shift.

**Supplemental Standards:**

Outdoor display and storage areas and other activity areas shall be located at least 50 feet from a residential zoning district and 10 feet from a business zoning district.



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### 9.07 Financial services

**Description:** A place where financial and banking services are offered. The term includes banks, savings and loan institutions, other lending institutions, auto title loan businesses, and payday loan businesses.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:**

A payday loan business or auto title loan business shall not be located within 5,000 feet of another payday loan business or auto title loan business or within 150 feet of a residential zoning district. For the purpose of this section, such distance shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the exterior wall of the building containing the payday loan business or auto title loan business to the outer wall of the building containing the other specified land use or, as appropriate, to the nearest lot line of a parcel in the specified zoning district. The presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of applying the separation requirements of this section. If a payday loan business or auto title loan business is operating on January 1, 2011 and does not comply with the locational standards in this section, such business may continue to operate at that location. [1]

[1] Commentary: See Wis. Stats. § 59.69(4h).

### 9.08 Funeral home

**Description:** A place where the deceased may be prepared for burial or cremation and people may gather for visitation or funeral ceremonies. The indoor display of funeral equipment may also occur. The term includes mortuaries.

**Parking Requirements:** 1 space for each 3 patron seats at the maximum capacity; plus 1 space for each employee on the largest work shift.

**Supplemental Standards:** The parcel with this use shall not be located in a platted subdivision.

### 9.09 Garden center

**Description:** A place where nursery stock, plants, and lawn and garden supplies are sold at retail. A garden center may also offer the following provided they are collectively incidental to the primary use: lawn furniture, playground equipment, garden tractors, utility vehicles, lawn mowers, and similar powered lawn and garden equipment. This use may also include servicing of motorized equipment sold on the premises is allowed as a subordinate use.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area, plus 1 space for each employee on the largest work shift.

**Supplemental Standards:**

(a) **Minimum lot size.** The minimum lot size for a garden center is 10 acres.

(b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(c) **Setbacks.** Outdoor work areas, parking areas, and storage of equipment and materials related to a landscape business shall not be located within the setbacks established for the zoning district in which the use is located.

(d) **Screening.** Outdoor work areas and equipment and materials stored out of doors shall be screened from view from any adjoining parcel in a residential zoning district with a type "B" bufferyard. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

(e) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



**9.10 General repair**

**Description:** A place where consumer goods such as shoes, bicycles, appliances, and business equipment are repaired. The term does not include repair of motor vehicles or industrial equipment.

**Parking Requirements:** 1 space for each 450 square feet of gross floor area.

**Supplemental Standards:** All activities related to this use shall occur within a building, except when the parcel of land is located in an industrial zoning district.

**9.11 General services**

**Description:** A place where services not otherwise included in any other service type category are offered. The term includes photography studios, weight loss centers, commercial postal services, beauty shops, pet grooming shops, photocopying and printing services, linen services, dry cleaning services, and diaper services.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.



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**9.12 Health care center**

**Description:** A place where medical treatment, or nursing, rehabilitative, or preventative care is offered. The term includes ambulatory surgical facilities, hospitals, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, and rehabilitation facilities.

**Parking Requirements:** 1 space for each 1.5 patient beds; plus 1 space for each employee on the largest work shift; plus 1 space for each doctor on the largest work shift.

**Supplemental Standards:**

- (a) **Road access.** The property shall front on and have direct vehicle access to a major road as depicted on the zoning map.
- (b) **Transition when allowed as a conditional use.** When a health care center is allowed as a conditional use, an appropriate transition shall be required between this use and an adjoining use.
- (c) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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**9.13 Health care clinic**

**Description:** A place where medical services are offered and patients do not stay overnight. The term includes dental clinics, medical offices, chiropractic offices, acupuncture centers, and sports medicine facilities. The term does not include those uses as classified as a health care center.

**Parking Requirements:** 1 space for each examination room or equivalent; plus 1 space for each 300 square feet of gross floor area not devoted to examinations.

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.

**9.14 Instructional services**

**Description:** A place where instruction, training, or tutelage is offered in such areas as gymnastics, dance, art, music, and martial arts.

**Parking Requirements:** 1 space for each student during the largest period of attendance; plus 1 space for each employee on the largest work shift.

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.

**9.15 Landscape business**



**Description:** A place where a landscape contractor may establish a base of operation, which may include one or more of the following: office space; indoor and outdoor storage of materials, equipment, and machinery, such as trucks and heavy equipment; and shops for the repair of machinery and equipment owned by the operator. The retail sale of plant and landscape materials is strictly prohibited.

**Parking Requirements:** 1 space for each employee on the largest work shift; plus 1 space for each fleet vehicle parked on site.

**Supplemental Standards:**

(a) **Minimum lot size.** The minimum lot size for a landscape business is 20 acres.

(b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(c) **Setbacks.** Outdoor work areas, parking areas, and storage of equipment and materials related to a landscape business shall not be located within the setbacks established for the zoning district in which the use is located.

(d) **Screening.** Outdoor work areas and equipment and materials stored out of doors shall be screened from view from any adjoining parcel in a residential zoning district with a type "B" bufferyard. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

(e) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

#### 9.16 Professional services

**Description:** A place where services involving predominantly professional, clerical, or similar operations are preformed and where customers may or could come on a regular basis. The term includes law offices, real estate offices, insurance offices, and travel agencies.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.



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#### 9.17 Retail sales, convenience

**Description:** A place where a limited product line of frequently needed personal items is offered for retail sale. The term includes convenience stores and small grocery stores.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.



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#### 9.18 Retail sales, general

**Description:** A place where a diverse product line is offered for retail sale. The term includes grocery stores, retail outlets, comparison shopping stores, full-line department stores, and dollar stores.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.

#### 9.19 Specialty retail sales

**Description:** A place where specialty gifts and/or antiques are offered for retail sale.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:**

(a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(b) **Road access.** The property shall front on and have direct vehicle access to a major road as depicted on the zoning map.

(c) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any adjoining parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

(d) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



**9.20 Veterinary clinic**

**Description:** A place where medical services for small and large animals are offered. This use may include office space, medical labs, appurtenant facilities, and indoor and outdoor enclosures for animals under the immediate medical care of a veterinarian.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area.

**Supplemental Standards:**

(a) **Minimum lot size.** The minimum lot size for a veterinary clinic is 3 acres.

(b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(c) **Location.** No building housing a veterinary clinic shall be closer than 100 feet to the lot line of an adjoining lot in a district permitting residential use except as follows. The plan commission may approve a special exception, consistent with the procedures and requirements of article 5 of this chapter, to allow a lesser offset, but not less than 50 feet or the minimum offset established for the zoning district, whichever is greater. In making such decision, the plan commission shall consider the following factors along with those enumerated in article 5:

- (1) The maximum number and type of animals to be kept in the building.
- (2) The nature of the building including type of construction and measures taken to contain noise associated with the veterinary clinic.
- (3) The presence and type of vegetation between the building and the adjoining property that will help to ameliorate noise associated with the veterinary clinic.
- (4) Any other factor reasonably related to the purposes of this zoning code.

(d) **Operations.** All animals must be kept inside of the enclosed building from sundown to sunrise.

(e) **Screening.** When allowed as a conditional use, there must be a type "B" bufferyard along any parcel in a residential zoning district. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

(f) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

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**10 Recreation and Entertainment**



**10.01 Driving range**

**Description:** A place where golfers practice driving golf balls from a fixed central location. This use may include one or more buildings and other structures directly related to the operation of this use, such as an office, snack bar, and buildings for housing maintenance equipment, supplies, and related materials.

**Parking Requirements:** 1 space for each driving station.

**Supplemental Standards:**

(a) **Minimum lot size.** The minimum size for a driving range is 15 acres.

(b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(c) **Outdoor lighting.** The use of outdoor lighting is prohibited.

(d) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.



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**10.02 Golf course**

**Description:** A place where individuals, for a fee or other consideration, play golf outdoors. A golf course may be a standalone facility in an A-1, B-2, or P-1 zoning district or integrated with a residential subdivision in an RH, SE, or R-1 zoning districts. This use may include one or more buildings and other structures directly related to the operation of this use, such as an office, game room with snack bar, and buildings for housing maintenance equipment, supplies, and related materials. The term does not include miniature golf.

**Parking Requirements:** 36 spaces for each 9 holes of golf; plus 1 space for each employee on the largest work shift. If a tavern or restaurant is also part of the golf course facility, the parking requirements of such use shall be 50 percent of the requirement.

**Supplemental Standards:**

(a) **Location of buildings.** Club houses and maintenance buildings with a floor area exceeding 1,200 square feet shall be located at least 300 feet from a parcel in a residential zoning district.

(b) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

**10.03 Indoor entertainment**

**Description:** A place where indoor entertainment is offered. The term includes theaters, movie theaters, dance halls, and theaters for performing arts. The term does not include adult-oriented establishments.

**Parking Requirements:** 1 space for each 3 patron seats; plus 1 for each employee on the largest work shift

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.

**10.04 Indoor recreation**

**Description:** A place where indoor recreational activities are offered. The term includes bowling alleys, skating rinks, billiard and pool halls, and arcades.

**Parking Requirements:** 1 space for each 3 patron seats; plus 1 for each employee on the largest work shift

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.



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**10.05 Outdoor recreation**

**Description:** A place where outdoor recreational activities are offered. The term includes miniature golf, batting cages, water parks, sports arenas, archery ranges (but no guns), and amusement parks. The term does not include driving ranges and golf courses, parks, shooting ranges, and recreational trails.

**Parking Requirements:** 1 space for each 3 patrons at design capacity; plus 1 for each employee on the largest work shift

**Supplemental Standards:**

(a) **Hours of operation.** The plan commission may recommend and the town board may establish hours of operation for this use when the operation may negatively affect surrounding properties.

(b) **Site design considerations.** The site shall be designed to minimize the effects of outdoor lighting and noise on surrounding properties.

(c) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

## 11 Government and Community Services

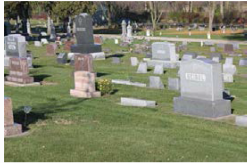
### 11.01 Administrative government center

**Description:** A place where government employees perform administrative functions on behalf of the public. The term includes administrative offices, post offices, and courthouses.

**Parking Requirements:** 1 space for each 300 square feet of gross floor area

**Supplemental Standards:**

(a) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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### 11.02 Cemetery

**Description:** A place where human remains may be buried or interred. Accessory uses may include columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such area.

**Parking Requirements:** 1 space for each 3 patron seats at the maximum capacity for a funeral home; plus 1 space for each employee on the largest work shift

**Supplemental Standards:**

(a) **Minimum size.** The minimum lot size for a cemetery is 3 acres.

(b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(c) **Location of burial plots.** Burial plots shall not be located within 20 feet of a public street right-of-way or a proposed right-of-way so designated on an adopted highway width map, in a designated floodplain, or in a wetland area, nor shall internment occur below the groundwater table.

(d) **Marker required.** A permanent marker stating the name of the deceased and the birth and death dates, if known, shall identify the location of each occupied burial plot unless the zoning administrator allows an unmarked grave due to exceptional circumstances.

(e) **Casket required.** The deceased shall be enclosed in a casket or other durable container or buried at a depth below the ground surface to prevent scavenging.

(f) **Name required.** The cemetery shall have a formal name, which shall be placed on a permanent sign located by the main entrance to the cemetery.

(g) **Financial guarantee.** Prior to the establishment a cemetery, the property owner shall submit a financial guarantee to the town, consistent with any requirement the town board may adopt. This financial guarantee shall relate to the long-term upkeep of the cemetery.

(h) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

### 11.03 Community center

**Description:** A place where short-term and intermittent meetings or gatherings of individuals are held for purposes of sharing information, entertainment, social service, or similar activities. The term includes senior centers; neighborhood recreational centers; fraternal, social, or civic clubs; lodges; and union halls.

**Parking Requirements:** 1 space for each 250 square feet of gross floor area or 1 space for each 4 patrons at maximum design capacity, whichever is greater; plus 1 space for each employee on the largest work shift

**Supplemental Standards:**

(a) **Road access.** The primary access to a community center with 600 seats or more shall be off of a road classified as a major road as depicted on the zoning map.

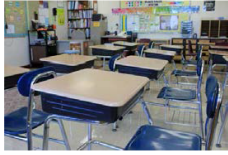
(b) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

### 11.04 Community cultural facility

**Description:** A place where people may gather for studying, reading, personal education, or viewing the visual arts. The term includes libraries, museums, art galleries, and observatories. The term does not include performing arts.

**Parking Requirements:** 1 space for each 250 square feet of gross floor area or 1 space for each 4 patrons at maximum capacity, whichever is greater; plus 1 space for each employee on the largest work shift

**Supplemental Standards:** The primary access to a community cultural facility with 600 seats or more shall be off of a major road as depicted on the zoning map.



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**11.05 Educational facility, pre-K through 12**

**Description:** A place where primary and secondary educational opportunities are offered. The term includes preschools, elementary schools, junior high schools, and high schools.

**Parking Requirements:** 0.5 space for each (K-8) classroom; 1 space for each 8 students (grades 9-12) at maximum design capacity; plus 1 space for each employee on the largest work shift

**Supplemental Standards:**

- (a) **Minimum lot size.** The minimum lot size for an educational facility, pre-K through 12 is 10 acres.
- (b) **Road access.** The property shall front on and have direct vehicle access to a major road as depicted on the zoning map.
- (c) **On-site access drive.** The facility shall be served by an on-site access drive that meets the design and construction standards for a town road (e.g., two lanes each 12 feet wide). The plan commission may waive the requirement for a two-lane drive and allow a single-lane drive when the commission deems the wider drive unnecessary given the location of the use on the subject property, the number and type of vehicles using the drive, and other related considerations. If the plan commission allows a single-lane drive, the commission reserves the right to require a two-lane drive at a later date and may require intermediate turnarounds/turnouts and impose other design features it deems necessary to ensure public safety.
- (d) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

**11.06 Maintenance garage**

**Description:** A place where a municipal government maintains administrative offices, equipment, and supplies necessary for maintaining public roadways, parks, and other types of public facilities.

**Parking Requirements:** 1 space for each employee on the largest work shift

**Supplemental Standards:**

- (a) **Outdoor storage.** Outdoor storage areas and other activity areas shall be located at least 50 feet from a parcel in a residential zoning district and 25 feet from a parcel in a business zoning district.
- (b) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

**11.07 Park**

**Description:** A place where primarily outdoor recreational activities may occur. A park may be operated by a public entity for the benefit of the general public or by a homeowners association for a subdivision for the benefit of its members. A park may be developed with recreational facilities or undeveloped. The term includes dog parks and neighborhood recreation centers.

**Parking Requirements:** 1 space for each 3 patrons at the peak use period

**Supplemental Standards:**

- (a) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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**11.08 Public safety facility**

**Description:** A place where public safety services are offered. The term includes ambulance services, fire stations, police stations, and jails. The term does not include correctional facilities.

**Parking Requirements:** 1 space for each 500 gross square feet of office area; 1 space for each employee on the largest work shift; plus 1 space for each vehicle normally parked on the premises

**Supplemental Standards:**

(a) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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**11.09 Recreation trail**

**Description:** A place where a linear path may be dedicated to a single recreational use or multiple uses. Examples include hiking trails, bike trails, cross-country ski trails, and horse trails.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.



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**11.10 Worship facility**

**Description:** A place where people can regularly assemble for religious worship and associated activities and which is operated by an entity with tax-exempt status. The term includes sanctuaries, chapels, cathedrals, churches, synagogues, and temples and other onsite accessory buildings such as parsonages, friaries, convents, fellowship halls, and rectories. The term does not include day care centers, community recreation facilities, dormitories, private educational facilities, emergency shelters, and health care facilities.

**Parking Requirements:** 1 space for each 4 patrons at maximum design capacity; plus 1 space for each employee on the largest work shift

**Supplemental Standards:**

- (a) **Floor area ratio.** The maximum floor area ratio for a worship facility is 50 percent.
- (b) **Road access.** The property shall front on and have direct vehicle access to a major road as depicted on the zoning map if there is 600 seats or more.
- (c) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

**12 Telecommunications and Utilities**



**12.01 Radio broadcast facility**

**Description:** A free-standing tower with or without an equipment compound and other structures that is intended for the regular provision of a commercial or noncommercial service involving the transmission, emission, or reception of radio waves for the transmission of sound or images in which the transmissions are intended for direct reception by the general public.

Note: This definition is based on provisions in Wis. Stats. § 66.0406.

**Parking Requirements:** 1 space for each employee on the largest work shift

**Supplemental Standards:**

(a) **Legislative findings.** The town board makes the following legislative findings with regard to radio broadcast facilities:

- (1) The state legislature passed 2013 Wisconsin Act 20 (Section 1269(K)) that imposed limits on local municipalities with respect to regulating radio broadcast facilities within their jurisdictions.
- (2) The regulations in this section are intended to promote the public health, safety, and welfare, while at the same time not unduly restricting the development of needed radio broadcast facilities.
- (3) The regulations in this section are intended to accomplish the following purposes, to the fullest extent permitted by law: (i) protect the visual character of the town from the potential adverse effects of radio broadcast facilities; and (ii) avoid damage to adjoining properties by establishing setback standards.

(b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(c) **Federal requirements.** A radio broadcast facility shall comply with all applicable requirements of the Federal Communications Commission, the Federal Aviation Administration, and any other federal agency with authority to regulate radio broadcast facilities. In the event of a conflict between federal law and this section, federal law shall prevail.

(d) **Single parcel.** The fall zone and all structures related to the radio broadcast facility shall be located on a single parcel, including the tower, equipment compound, and anchor points for a guyed tower.

(e) **Fall zone and other setbacks.** To ensure the fall zone for the tower is located entirely on the subject property, the center of the tower shall not be located closer to a property boundary line than height of the tower. If an applicant submits an engineering certification with the application that show the fall zone is smaller than this distance, the fall zone shall be the smaller calculated area, unless the town provides the applicant with substantial evidence that the engineering certification is flawed. In all cases, the tower and equipment compound and any related buildings shall be located no closer to a property boundary line than 50 feet or the setback requirements for the zoning district, whichever is greater. The fence around anchor points for a guyed tower shall be located at least 25 feet from a property boundary line.

(f) **Security fencing.** A tower and related equipment compound (but not buildings for offices or production), shall be enclosed by a security fence (height and material to be established through the site plan review process). If the tower is a guyed tower, each of the anchor points shall be enclosed by a security fence.

(g) **Lighting.** A tower or any attachment shall not be artificially lighted, except when specifically required by a state agency, the Federal Aviation Administration, or another federal authority. Such required lighting shall be the least obtrusive to the surrounding views.

(h) **Equipment buildings.** The exterior of equipment buildings, shelters, and cabinets exceeding 1,500 cubic feet shall be covered with building materials typically used on buildings found in the area.

(i) **Emergency power system.** A backup generator may be placed within the equipment compound.

(j) **Landscaping.** A type "B" bufferyard, shall be placed around the equipment enclosure and anchor points for guyed towers consistent with a landscaping plan as approved by the plan commission. After reviewing the location of the facility and the visibility of the facility from public rights-of-way and adjoining properties, the plan commission may waive this landscape requirement or defer the requirement to a later date.

(k) **Lease agreement.** If the operator of the radio broadcast facility does not own the land where the facility is to be located, the property owner and the operator shall execute a lease agreement prior to any land-disturbing activity. Such agreement shall be binding on future property owners and future operators and shall address the rights and responsibilities of each party with respect to subs. (l) and (m) of this section.

(l) **Ongoing maintenance.** The subject property shall be maintained and kept in a good condition, so as not to become a nuisance as determined by the plan commission. Proper maintenance includes regular lawn and landscaping care, and painting and regular care of building(s), fences, towers, and other improvements. Additionally, the site shall be kept clear of junk and debris.

(m) **Termination of approval.** If the zoning administrator determines that the radio broadcast facility is unsafe or otherwise defective or that the radio broadcast facility has not been operating a for a continuous period of 12 months, the administrator shall follow the procedure outlined in article 5 relating to termination of the approval. Within 90 days after the date of termination, the property owner shall remove the radio broadcast facility and restore the site to the satisfaction of the zoning administrator. In the event such work is not done within the specified period, the town shall have the right to use the financial guarantee as required by this section to pay for such work.

(n) **Financial guarantee.** Prior to issuance of a building permit authorizing construction of a radio broadcast facility, the applicant shall submit a financial guarantee in the amount of \$20,000.00 to the town subject to the requirements in division 5 of article 4 of this chapter. [1] The financial guarantee shall be held until the radio broadcast facility is removed and the site restored to the satisfaction of the zoning administrator.

(o) **Third-party consultant.** The zoning administrator may, at the applicant's expense, hire a third party consultant to conduct an objective analysis of the submitted materials including the application and calculation of the fall zone. The third party consultant may not charge the applicant for any travel expenses incurred in such review.



(p) **Duration of approval.** The approval authorizing a radio broadcast facility shall run with the land and shall be binding on successors in interest.

(q) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

[1] **Commentary:** See Wis. Stats. § 66.0404(4)(f).



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**12.02 Stormwater management facility**

**Description:** A natural or manmade feature that collects, conveys, channels, holds, infiltrates, inhibits, or diverts the movement of stormwater.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

(a) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

**12.03 Telecommunication collocation (class 1)**

**Description:** The placement of a new mobile service facility on an existing support structure which constitutes a substantial modification.

**Note:** This definition is based on the corresponding definition in Wis. Stats. § 66.0404.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.



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**12.04 Telecommunication collocation (class 2)**

**Description:** The placement of a new mobile service facility on an existing support structure which does not constitutes a substantial modification.

**Note:** This definition is based on the corresponding definition in Wis. Stats. § 66.0404.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.

**12.05 Telecommunication tower**

**Description:** A free-standing tower with or without an equipment compound that is intended for the placement of one or more mobile service facilities.

**Note:** This definition is based on the corresponding definition in Wis. Stats. § 66.0404.

**Parking Requirements:** 1 space

**Supplemental Standards:**

(a) **Legislative findings.** The town board makes the following legislative findings with regard to telecommunication towers providing mobile telecommunication services:

- (1) The state legislature passed 2013 Wisconsin Act 20 (Section 1269(1)) that imposed limits on local municipalities with respect to regulating telecommunication facilities within their jurisdictions.
- (2) The federal government adopted the Telecommunications Act of 1996 which established various requirements relating to telecommunication facilities.
- [1]
- (3) The regulations in this section are intended to promote the public health, safety, and welfare, while at the same time not unduly restricting the development of needed telecommunications facilities.
- (4) The regulations in this section are intended to accomplish the following purposes, to the fullest extent permitted by law:



- (i) Protect the visual character of the town from the potential adverse effects of telecommunication facilities;
- (ii) Ensure that a competitive and broad range of telecommunications services and high quality telecommunications infrastructure are provided;
- (iii) Create and preserve telecommunication facilities that will serve as an important and effective part of the town's emergency response network;
- (iv) Minimize the number of towers by requiring collocation; and
- (v) Avoid damage to adjoining properties by establishing setback standards.

**(b) Federal requirements.** A telecommunication tower shall comply with all applicable requirements of the Federal Communications Commission, the Federal Aviation Administration, and any other federal agency with authority to regulate telecommunication facilities. In the event of a conflict between federal law and this section, federal law shall prevail.

**(c) Single parcel.** The fall zone and all structures related to the telecommunication facility shall be located on a single parcel, including the tower, equipment compound, and anchor points for a guyed tower.

**(d) Setbacks.** The center of the tower shall not be located closer to a property boundary line than the height of the tower. If the lot hosting the proposed tower is not located adjacent to a parcel where a single-family residence may be located and the applicant submits an engineering certification with the application that show the fall zone is smaller than this distance, the fall zone shall be the smaller calculated area, unless the town provides the applicant with substantial evidence that the engineering certification is flawed. [2] The fence around anchor points for a guyed tower shall be located at least 25 feet from a property boundary line.

**(e) Security fencing.** A tower and related equipment compound consisting of equipment buildings, shelters, and cabinets, shall be enclosed by a security fence (height and material to be established through the site plan review process). If the tower is a guyed tower, each of the anchor points shall be enclosed by a security fence.

**(f) Lighting.** A tower or any attachment shall not be artificially lighted, except when specifically required by a state agency, the Federal Aviation Administration, or another federal authority. Such required lighting shall be the least obtrusive to the surrounding views.

**(g) Aesthetic requirements.** All users of the town right-of-way shall comply with the following aesthetic standards:

- (1) In areas where facilities are currently nonexistent or underground, undergrounding is required.
- (2) No new above ground structures, including co-locations on existing structures, shall be placed within 500 feet of historic structures or historic districts designated by the National Register of Historic Places in Wisconsin or listed on the State Register of Historic Places. The 500-foot separation is waived for installations that are completely concealed from view, or are not visible from locations where the historic structure can be observed.
- (3) Attachments to existing structures shall be designed to be flush with the existing structure as much as can reasonably be done, shall be a color that matches the existing structure and shall be the smallest size possible to reasonably accommodate the intended purpose. If the structure to which the attachment is made changes color due to repainting, resurfacing or other means, the attachment shall be modified to match the new color.
- (4) Any party objecting to the requirements of this subsection shall have an opportunity to demonstrate that the requirement constitutes an effective prohibition in violation of State or Federal law as set forth in section 36-301.

**(h) Equipment buildings.** The exterior of equipment buildings, shelters, and cabinets exceeding 1,500 cubic feet shall be covered with building materials typically used on buildings found in the area.

**(i) Emergency power system.** A backup generator may be placed within the equipment compound. [3]

**(j) Identification sign.** An identification sign no larger than 18 inches by 24 inches shall be placed in a visible location near the base of the tower that lists (1) the name of the tower owner, (2) the Federal Communications Commission identification number, and (3) a telephone number to contact in case of an emergency.

**(k) Accommodation of other users on new towers (co-location).** A tower over 150 feet in height, along with the tower site and all support facilities and appurtenances, shall accommodate at least two additional users, unless the zoning administrator determines that evidence presented by the tower operator demonstrates it is not technically feasible to do so. Further, the tower operator and their successors in interest shall allow other users to use the tower, the tower site, support facilities, and appurtenances at fair market rates as negotiated by those parties. If the plan commission determines the tower operator has made access to the tower and tower site unfeasible, the zoning administrator shall notify the tower operator via registered mail of such determination. If the tower operator does not take corrective action within 45 days of such determination, the permit for that tower shall become null and void and the tower shall be removed and the site restored within 90 days of such determination.

**(l) Requirement for collocation.** A new tower shall only be permitted if the applicant demonstrates with a sworn statement that collocation on an existing or planned tower 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. [4] If the applicant does not provide such analysis and sworn statement, the application for a new tower shall be denied. [5]

**(m) Collocation review.** The collocation of an antenna or antenna array on an existing tower is permitted subject to site plan, building plan, and plan of operation review.

**(n) Landscaping.** A type "B" bufferyard must be placed around the equipment enclosure and anchor points for guyed towers consistent with a landscaping plan as approved by the plan commission. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

**(o) Lease agreement.** If the operator of the telecommunication tower does not own the land where the facility is to be located, the property owner and the operator shall execute a lease agreement prior to any land-disturbing activity. Such agreement shall be binding on future property owners and future operators and shall address the rights and responsibilities of each party with respect to subs. (p) and (q) of this section. If it is located on Town property, the agreement shall be in the form of a license that is subject to the approval of the town attorney.

**(p) Ongoing maintenance.** The subject property shall be maintained and kept in a good condition, so as not to become a nuisance as determined by the plan commission. Proper maintenance includes regular lawn and landscaping care, and painting and regular care of building(s), fences, towers, and other improvements. Additionally, the site shall be kept clear of junk and debris.

**(q) Termination of approval.** If the zoning administrator determines that the tower is unsafe or otherwise defective or that the tower has not hosted an operational antenna for a continuous period of 12 months, the administrator shall follow the procedure outlined in article 5 relating to termination of the approval. Within 90 days after the date of termination, the property owner shall remove the tower, equipment cabinets, and all related equipment and improvements that are part of its communication facilities and restore the site to the satisfaction of the zoning administrator. In the event such work is not done within the specified period, the town shall have the right to use the financial guarantee as required by this section to pay for such work.

**(r) Financial guarantee.** Prior to issuance of a building permit authorizing construction of a tower, the applicant shall submit a financial guarantee in the amount of \$20,000.00 to the town subject to the requirements in division 5 of article 4 of this chapter. [6] The financial guarantee shall be held until the tower and related improvements are removed and the site restored to the satisfaction of the zoning administrator.

**(s) Third-party consultant.** The zoning administrator may, at the applicant's expense, hire a third-party consultant to conduct an objective analysis of the submitted materials including the application, calculation of the fall zone, and certification that collocation is not possible. The third-party consultant may not charge the applicant for any travel expenses incurred in such review. [7]

[1] Commentary: In particular see § 704 of the Act.

[2] Commentary: See Wis. Stats. § 66.0404(2)(g).

[3] Commentary: See Wis. Stats. § 66.0404(4)(j).

[4] Commentary: See Wis. Stats. § 66.0404(2)(b)6.

[5] Commentary: See Wis. Stats. § 66.0404(2)(e).

[6] Commentary: See Wis. Stats. § 66.0404(4)(i).

[7] Commentary: See Wis. Stats. § 66.0404(4)(f).



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## 12.06 Utility installation, major

**Description:** A place, building, and/or structure, or portion thereof, whether public or private, used or is intended for providing basic infrastructure or utility services and which could potentially have a moderate to high impact on neighboring property. The term includes pipeline pumping stations, sewage treatment plants, electric substations, water towers, electric transmission lines with a design capacity of 110 kilowatts or more, and underground pipelines.

**Parking Requirements:** 1 space for each on-site employee on the largest work shift

### Supplemental Standards:

**(a) Building.** If a major utility installation involves a building of any type and is located in a residential zoning district or a planned development district that allows residential uses, such building shall be compatible with residential buildings in regard to design and exterior materials.

**(b) Screening.** If a major utility installation involves a building of any type and is located in a residential zoning district or a planned development district that allows residential uses, a type "A" bufferyard must be provided on all sides of the building. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to

other existing and potential land uses.

(c) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.

#### 12.07 Utility installation, minor

**Description:** A utility installation generally having low impact on neighboring property. The term includes public water system wells, without a tower; below ground sewer lift stations; and stormwater pumping stations. The term does not include utility cabinets, which are classified as an accessory use (Series 14).

**Parking Requirements:** 1 space, although the Zoning Administrator may grant a waiver

**Supplemental Standards:** There are no supplemental development standards that apply to this specific land use.

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### 13 Accessory Uses



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#### 13.01 Accessory building, nonresidential

**Description:** A building intended to house motor vehicles, yard equipment, and/or items related to the principal use of the premises. The term includes detached garages, storage sheds, and the like.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

(a) **Number and floor area.** The number of nonresidential accessory buildings and the floor area must comply with the standards set forth in Appendix C.

(b) **Type of construction.** A garage shall be of conventional wood-frame, metal-frame, or masonry construction. Soft-sided structures and canopies are specifically prohibited.

(c) **Exterior materials.** Exterior materials shall be the same as, or substantially the same as, those used on the principal building.

#### 13.02 Accessory building, residential

**Description:** A detached building customarily found with a residential use as an accessory use. The term includes greenhouses, detached garages, sheds, gazebos, pool cabanas, and the like.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

(a) **Number and floor area.** The number of residential accessory buildings and the floor area must comply with standards set forth in Appendix C.

(b) **Exterior materials.** Exterior materials for a residential accessory building with a floor area of more than 192 square feet (but not greenhouses) shall be the same as, substantially the same as, or complement those materials used on the principal building.

(c) **Prohibition on specific materials.** Soft-sided structures and canopies are specifically prohibited.

(d) **Rooflines.** The roof lines of a residential accessory building with a floor area of more than 192 square feet (but not greenhouses) shall match the roof lines of the principal building to the greatest practical extent.

(e) **Plumbing fixtures.** A residential accessory building may include a single compartment bar sink and a half bath (e.g., sink and toilet). A pool house may include a standup shower provided access to the shower is via an exterior door.

#### 13.03 Adult family home

**Description:** A private residence licensed by the state under Wis. Stats. § 50.032 (1m).

**Note:** An adult family home can either be a principal use or an accessory use. If the operator lives in the residence with the adults, it is considered an accessory use.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** Prior to the establishment of an adult family home, the operator shall obtain a license from the state as required by state law and maintain such license for the life of the use or until the state no longer requires such license.

#### 13.04 Amateur radio and citizens band antenna

**Description:** An antenna and related support structure used to send and receive telecommunications for noncommercial purposes.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

(a) **Legislative findings.** The town board makes the following legislative findings regarding amateur radio antennas: The placement of amateur radio antennas and support structure of unregulated height and type could have a negative impact on surrounding properties and especially on the smallest of lots allowed in the town. Pursuant to Wis. Stats. § 59.69(4f), the regulations in this section constitute the least restrictive measures needed to promote community aesthetics, public health, and safety while allowing amateur radio communications.

(b) **Number.** Antennas shall be placed on no more than 2 support structures, such as a tower or on top of a building.

(c) **Type of tower.** An antenna may be placed on a monopole or lattice tower.

(d) **Anti-climbing measures required.** If a tower is used to support the antenna, the tower shall have anti-climbing measures to prevent unauthorized climbing.

(e) **Setback.** An antenna shall not be located in a front yard.

(f) **Setback requirements.** The center of the antenna shall be no closer than 110 percent of the total height of the antenna to a lot line and overhead electric lines.



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#### 13.05 Backyard chickens

**Description:** A place where chickens are kept for the use and enjoyment of those living on the premises.

Note: Also see household livestock, which is considered a separate and distinct accessory use.

**Parking Requirements:** On-site parking is not required

**Development Requirements:**

(a) **Legislative intent.** Legislative intent. The keeping of chickens on residential lots in the Town of Mukwonago is consistent with the Town's rural character and desire to foster sustainable agriculture while addressing issues related to public health, safety, and welfare.

(b) **Generally.** Backyard chickens are allowed as an accessory use to a single-family residence on lots that are 3 acres or smaller.

(c) **Number.** No more than 5 female chickens may be kept. The keeping of roosters is prohibited.

(d) **Enclosure requirements.** Chickens shall be provided with a covered enclosure that is (1) predator-proof; (2) thoroughly ventilated; (3) of sufficient size to allow the free movement of the chickens; and (4) designed to be easily accessed, cleaned, and maintained by the owners. Chickens must be kept in the covered enclosure or a fenced enclosure at all times.

(e) **Enclosure considered a structure.** A covered enclosure is considered a structure and is subject to all applicable restrictions in this chapter.

(f) **Setback requirements.** The covered enclosure housing chickens shall be located at least 25 feet from all property boundary lines and shall not be located in the front yard. In addition, the covered enclosure shall be located at least 50 feet from all existing dwelling units on adjoining properties. In the event a dwelling unit is constructed on an adjoining property after the covered enclosure is established under this chapter and the new dwelling is less than 50 feet from the enclosure, the enclosure is not required to be moved.

(g) **General care and maintenance.** The keeping of chickens shall not cause any nuisance or unhealthy condition, or otherwise interfere with the normal use of any property.

(h) **Registration required.** The owner, operator, or tenant shall register the premise where chickens are kept with the Wisconsin Department of Agriculture, Trade and Consumer Protection as required by state law and maintain such registration for so long as may be required.

(i) **Storage of feed.** Feed for the chickens shall be kept indoors or in a sealed container if kept out of doors.

(j) **Licensing.** The keeping of chickens under this section shall comply with any licensing requirements established by the Town of Mukwonago.

(k) **Status as a building.** One free-standing chicken coop with a roof not exceeding 48 square feet shall not be counted as an accessory building.



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**13.06 Bed and breakfast**

**Description:** A single-family residence that offers overnight accommodations for a daily charge and that also serves as a primary residence of the operator or owner.

**Parking Requirements:** 1 space for each guest room

**Supplemental Standards:**

- (a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (b) **State license.** Prior to the establishment of a bed and breakfast, the operator shall obtain a license from the state as may be required by state law and maintain such license for the life of the use or until the state no longer requires such license. [1]
- (c) **Type of dwelling.** A bed and breakfast shall only occur within a single-family dwelling.
- (d) **Number of allowable guest rooms.** No more than 6 guest rooms shall be offered.
- (e) **Residency requirement.** The operator of a bed and breakfast shall reside within the single-family dwelling during the time period when one or more of the rooms are occupied.
- (f) **Exterior character of the dwelling unit.** The exterior appearance of the building shall not be altered from its single-family appearance.
- (g) **Food preparation.** No food preparation or cooking shall be allowed in guest rooms.
- (h) **Meals.** Meals shall only be offered to overnight guests.
- (i) **Maximum stay.** The maximum stay for any occupant shall be 14 consecutive days.
- (j) **Record of guests.** The operator shall keep a listing showing the names of all guests. This list shall be kept on file for a period of one year. Such list shall be available for inspection by town officials at any time upon request.

[1] Commentary: See Wis. Stats. subch. VII of chapter 254, and Wis. Admin. Code ch. HFS 197.



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**13.07 Bus parking**

**Description:** The parking of a school bus on a residential parcel overnight as an accessory use.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

- (a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (b) **Ownership.** The school bus shall be operated by an occupant of the premises. The school bus may be owned or leased by the occupant of the premises or owned or leased by a business for which the occupant of the premises is an employee or is otherwise contracted to provide such services.
- (c) **Vehicle requirements.** The school bus shall be licensed by the state of Wisconsin and fully operational.
- (d) **Road access.** The parcel shall front on and have access to a major road as depicted on the zoning map.
- (e) **On-site movement.** The school bus operator must be able to turn the school bus around on the premises so that it is not backed into the road or backed into the driveway. This standard does not obligate the jurisdiction with access control over the roadway to permit more than one access point to meet this requirement.

- (f) **Number.** No more than one (1) school bus shall be allowed to be parked or stored on the occupant's property.
- (g) **Location.** A school bus shall not be parked or stored closer than 50 feet to any adjacent lot line and closer than 100 feet to the base setback line.
- (h) **Limitations when not in use.** The bus shall not be parked or stored on the occupant's property when school is not in session for four or more cumulative days (e.g., over Christmas vacation or summer break).
- (i) **Limitation on other land uses.** If a parcel is allowed to have this use, the parcel may not also obtain approval for commercial truck parking.
- (j) **Periodic review.** The conditional use permit shall be reviewed every two years by the plan commission in order to determine conformance with the terms of the permit and its compatibility with the adjacent land uses. Failure to conduct such review shall not invalidate any subsequent review or any enforcement proceeding. If it is determined that the conditional use permit is no longer compatible, or that the provisions of the permit have not been complied with, the conditional use permit may be revoked or amended in accordance with the procedures set forth in article 5.
- (k) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

### 13.08 Commercial truck parking

**Description:** The parking and the storage of commercial type vehicles such as dump trucks, construction vehicles, and semi-trailers and tractors, and related equipment on a parcel as an accessory use.

**Parking Requirements:** On-site parking is not required

#### Supplemental Standards:

- (a) **Generally.** Commercial vehicles include those vehicles not otherwise allowed under section 82-656 such as dump trucks, construction vehicles, semi trailers and tractors and other unspecified vehicles as determined by the plan commission.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Ownership requirements.** The commercial vehicle must be owned or leased and operated by an occupant of the premises.
- (d) **Vehicle and equipment requirements.** All commercial motor vehicles and related equipment authorized under this section shall be licensed, if required by the state of Wisconsin or federal government; fully operational; and in active use. Where considered appropriate, one trailer may be allowed but in no case may there be more than one semi-tractor or cab unit.
- (e) **Road access.** The parcel shall front on and have direct vehicle access to a major road as depicted on the zoning map.
- (f) **Weight limits.** The owner/operator must comply with all applicable weight limits imposed by the state, county, and/or town.
- (g) **On-site movement.** The operator must be able to turn the commercial vehicle around on the premises so that it is not backed into the road or backed into the driveway. This standard does not obligate the jurisdiction with access control over the roadway to permit more than one access point to meet this requirement.
- (h) **Number.** No more than one such vehicle shall be allowed to be parked or stored on the occupant's property and no more than two additional construction vehicles (e.g., backhoes, front-end loaders, grading equipment) shall be allowed. Such vehicles shall be fully operational and in active use. Where considered appropriate, one trailer may be allowed but in no case may there be more than one semi-tractor or cab unit.
- (i) **Location.** No such vehicle shall be allowed to be parked or stored closer than 50 feet to any adjacent lot line, and not closer than 100 feet from the base setback line. In the case of a refrigerator truck, the refrigeration unit may not be operated in the open if said truck is parked closer than 500 feet to the nearest neighboring residential property line.
- (j) **Limitation on other land uses.** If a parcel is allowed to have this use, the parcel may not also obtain approval for bus parking.
- (k) **Periodic review.** The conditional use permit shall be reviewed every two years by the plan commission in order to determine conformance with the terms of the permit and its compatibility with the adjacent land uses. Failure to conduct such review shall not invalidate any subsequent review or any enforcement proceeding. If it is determines that the conditional use permit is no longer compatible, or that the provisions of the permit have not been complied with, the conditional use permit may be revoked or amended in accordance with the procedures in article 5.
- (l) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

### 13.09 Exterior communication device

**Description:** An antenna used to capture wireless telecommunication signals.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** A ground-mounted radio/television antenna shall not exceed a height of 25 feet as measured from the ground surface. A building-mounted radio/television antenna shall not extend more than 15 feet above the roofline.

**13.10 Family day care home**

**Description:** A private residence licensed as a day care center by the state where care is provided for 4 to 8 children.

Note: See Wis. Stats. § 66.1017, A group day care (9 or more children) is considered a principal use and is therefore listed as a special care facility (4.0 series).

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** Prior to the establishment of a family day care home, the operator shall obtain a license from the state as may be required by state law and maintain such license for the life of the use or until the state no longer requires such license.



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**13.11 Farm building for non-farm storage**

**Description:** A building once used for agricultural purposes in which motor vehicles, construction equipment and vehicles, recreational vehicles, boats, and other related items not owned by the property owner may be stored, with or without a fee. Minor repair and maintenance of those objects in storage is permitted, provided such activity is for noncommercial purposes.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

- (a) **Minimum lot size.** The minimum lot size for this use is 10 acres.
- (b) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (c) **Location.** A building housing this use shall be at least 50 feet from side and rear lot lines.
- (d) **Road access.** The property must front on and have direct vehicle access to a major road as depicted on the zoning map.
- (e) **Expansion.** The building housing this use may not be enlarged to increase the storage area.
- (f) **Exterior storage prohibited.** All storage shall occur within the farm building (i.e., no outside storage).
- (g) **Alteration of building.** The building may not be altered to accommodate this use, except as may be specifically permitted by the reviewing authority as part of the review process.
- (h) **Signs.** There shall be no signs associated with this use.
- (i) **Offices prohibited.** There shall be no office permitted on such premises, nor shall the building be occupied for any reason other than periodic pickup and return of equipment on a seasonal basis.
- (j) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

**13.12 Federal firearms license**

**Description:** Any activity regulated under a federal firearms license when accessory to a single-family residential use.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

- (a) **License required.** The operator shall obtain a federal firearms license (FFL) from the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, and maintain such license for the duration of the use. Upon issuance, the operator shall provide a copy of the license to the town clerk.
- (b) **Compliance with FFL.** The operator shall comply with all requirements related to the federal firearms license. Any violation of such license constitutes a violation of this zoning code.
- (c) **Employees.** Employees working under the federal firearms license on the premises shall be limited to only those persons living on the premises.
- (d) **Hours of operation.** The hours of operation shall be by appointment only. There shall be no appointments before 8:00 am or after 8:00 pm.
- (e) **Test firing.** Test firing into an indoor bullet trap is allowed. All other test firing is prohibited.



(f) **Transfer of approval prohibited.** An approved conditional use is personal to the person or the business listed on the federal firearms license and is therefore not transferrable to a subsequent property owner.

(g) **Conditions of approval.** Although a federal firearms license issued by U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives allows for certain activities to occur under said license, the plan commission may recommend and the town board may restrict or place conditions on the activities allowed under the license. For example, the town may establish a limit on the number of number of transactions occurring on the premises (i.e., to address customer traffic) to ensure the use is in keeping with the character of the surrounding area. If the town board does not establish such a limit at the time of approval, the town board reserves the right to establish a limit at any time with written notice to the operator. Additionally, the town board reserves the right to change any such limitation with written notice to the operator if it determines that the amount of customer traffic is having a detrimental effect on the surrounding area.

(h) **Periodic review.** The conditional use permit shall be reviewed every two years by the plan commission in order to determine conformance with the terms of the permit and its compatibility with the adjacent land uses. Failure to conduct such review shall not invalidate any subsequent review or any enforcement proceeding. If it is determined that the conditional use permit is no longer compatible, or that the provisions of the permit have not been complied with, the conditional use permit may be revoked or amended in accordance with the procedures set forth in article 5.

(i) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

### 13.13 Foster home and treatment foster home

**Description:** A facility licensed by the state for the care of foster children and which is operated by a foster parent who lives with the children.

**Note:** See Wis. Stats. § 48.62. A foster home and treatment foster home can either be a principal use or an accessory use. If the operator lives in the residence with the children, it is considered an accessory use.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** Prior to the establishment of a foster home or treatment foster home, the operator shall obtain a license from the state as provided for in Wis. Stats. § 48.75, and maintain such license for the life of the use or until the state no longer requires such license.



### 13.14 Home occupation

**Description:** An occupation, profession, enterprise, or similar commercial activity that is conducted by a person residing on the residential premises as accessory use with no more than one non-resident worker. The term does not include hobbies or similar noncommercial activities.

**Parking Requirements:** 1 space for a company vehicle, as may be permitted, and one space for each non-resident employee as may be permitted

**Supplemental Standards:**

(a) **Validity of use.** The individual primarily responsible for operation of the home occupation shall reside in the dwelling unit on the parcel.

(b) **Location and space limitation.** The home occupation shall only occur within the dwelling unit. The space specifically designated for use of the home occupation shall occupy no more than 20 percent of the total floor area of the dwelling unit.

(c) **Exterior character of building.** The exterior character of the building housing the home occupation shall not be altered to accommodate such use.

(d) **Limitation on number of on-site workers.** The number of individuals working on-site shall be limited to those individuals living in the dwelling unit and one individual not living in the dwelling unit.

(e) **On-site sales.** On-site sales of merchandise are prohibited.

(f) **Prohibited uses.** The following uses do not qualify as a home occupation: veterinary services; medical offices; animal boarding or grooming; barber or hair care with 2 or more chairs; restaurant; vehicle repair; motor vehicle body work; removal of sand, gravel, or stone for commercial purposes; or other similar activities.

(g) **Nuisance.** Such permitted use shall not include the use of any machinery tools or other appliances which can reasonably be construed as creating an abnormal nuisance to the surrounding residential area.

(h) **Special exception for an operator with a disability.** The plan commission may approve a special exception, consistent with the procedures and requirements of article 5 of this chapter, for any of the requirements in this section when the operator has a temporary or permanent disability and the home occupation is or would be his or her primary livelihood and such deviation is needed to facilitate the operation of the home occupation in a reasonable manner.



(i) **Multiple home occupations.** Multiple home occupations may be permitted on a single lot provided all of the general requirements set forth in this section can be met based on an accumulation of activities.



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### 13.15 Household livestock

**Description:** A place where livestock are kept primarily for the use and enjoyment of those living on the premises and occasional commercial purposes.

Note: Also see backyard chickens, which is considered a separate and distinct accessory use.

**Parking Requirements:** On-site parking is not required

#### Development Requirements:

- (a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (b) **Number of animals.** On parcels smaller than 20 acres, the number of livestock shall not exceed one head for each full acre over 2 acres of land the number of poultry shall not exceed 20 fowl for each full acre over 2 acres. This means that there must be at least 3 acres to have any household livestock.
- (c) **Prohibited animals.** The following are not permitted on parcels smaller than 20 acres: roosters, pigs, male goats, or fur-bearing animals.
- (d) **Buildings.** Nonresidential buildings and other structures for the keeping of household livestock, such as barns, stables, riding arenas, and sheds, are allowed subject to compliance with all other requirements of this chapter.
- (e) **Location of buildings.** A building that houses livestock and/or poultry shall be located at least 50 feet from any lot line.
- (f) **Manure management plan.** The property owner shall submit a manure management plan to the plan commission for review and obtain approval of the same, if so requested by the plan commission.
- (g) **Buildings not a structure.** A loafing shed is not counted as an accessory building, provided (1) the floor area is not more than 240 square feet, (2) it is located within a fenced enclosure, (3) it is constructed so it can be easily moved to another location (i.e., its moveable), (4) it is constructed of exterior building materials similar to the barn/stable, and (5) the number of loafing sheds is limited to the following: 3 to 5 acres: 1; 5.1 to 10 acres: 2; 10.1 to 20 acres: 3; and 20.1 to 35 acres: 4. In the event there are no livestock kept on the property for 6 consecutive months or more, all loafing sheds must be moved off the subject property.

### 13.16 In-law dwelling unit

**Description:** A room or suite of rooms having a separate kitchen facility, located in a single-family dwelling, occupied by not more than two persons related by blood or marriage to the family occupying the primary portion of the dwelling.

**Parking Requirements:** 1 space

#### Supplemental Standards:

- (a) **Compliance with sanitation requirements.** Prior to the establishment of an in-law dwelling unit, the Waukesha County Health Environmental Resource Department shall certify that the existing on-site sewage disposal system can accommodate the proposed use in accordance with county sanitation requirements.
- (b) **Compliance with building codes.** Prior to establishment of an in-law dwelling unit, the town building inspector shall certify that the single-family dwelling meets all applicable building codes.
- (c) **Limitation on floor area and bedrooms.** The maximum living area in an in-law unit shall not exceed 800 square feet for a one-bedroom unit and 900 square feet for a two-bedroom unit.
- (d) **Exterior appearance.** The architecture of the residence shall be compatible with the adjacent residential neighborhood and appear to be a single-family residence.
- (e) **Exterior doors.** An in-law dwelling unit shall not have a primary exterior door. A patio-type door is allowed as a secondary exterior door if it opens onto a deck or patio and does not face the front of the lot.
- (f) **Interior door between units.** The plan commission may determine that it is appropriate to have an interior door between the living units.

(g) **Deed restriction.** Prior to the establishment of an in-law dwelling unit, the property owner shall file a deed restriction in the Waukesha County register of deeds office, acceptable to the town planner, that includes a statement that the living unit is for family members of the principal dwelling unit only and the approval of an in-law dwelling unit is not transferable to another property owner without formal approval of the plan commission, and other provisions deemed appropriate by the reviewing authority.

(h) **Required actions following termination of use.** At such time as the in-law dwelling unit is no longer occupied by a person that is related by blood or marriage to the family occupying the primary portion of the single-family dwelling, the property owner shall remove the stove and/or oven in the in-law dwelling unit or in the other dwelling unit and the interior door separating the two units, if allowed, shall be removed.



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### 13.17 Play structure

**Description:** A playhouse and recreational equipment, such as swings, slides, basketball hoops, and jungle gyms, normally found in a residential setting or with a group day care center.

**Parking Requirements:** On-site parking is not required

**Development Requirements:**

(a) **Status as a building.** One play structure with a roofed area not exceeding 64 square feet shall not be counted as an accessory building.

### 13.18 Pond

**Description:** A manmade body of water with a surface area observed or recorded within the last ten years of at least 5,000 square feet that is not otherwise required to meet stormwater requirements of a development project.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

(a) **Minimum lot size.** The minimum lot size for a pond is 3 acres.

(b) **County review authority.** A pond may also be subject to the Waukesha County Shoreland and Floodland Protection Ordinance.

(c) **Pond design.** A pond shall not create flooding, concentrated runoff, inadequate drainage, or unfavorable topography, or restrict navigation in navigable waters.

(d) **Placement.** A pond shall be located at least 50 feet from the lot line.



### 13.19 Private kennel

**Description:** A place where dogs or other pets are kept for the occupant's private, non-commercial purposes. The term also includes the sale and training of up to 2 litters per year.

**Parking Requirements:** On-site parking is not required

**Development Requirements:**

(a) **Limitation.** The number of dogs is limited based on the parcel size as follows: Less than one acre - 2 dogs; one acre or more but less than 3 acres - 3 dogs; three acres or more but less than 5 acres - 4 dogs; five or more acres - 6 dogs.

(b) **Status as a building.** One free-standing dog enclosure with a roof not exceeding 48 square feet shall not be counted as an accessory building.

### 13.20 Retaining wall, major

**Description:** A single retaining wall that is more than 5 feet in height above finished grade, a series of retaining walls that are more than 8 feet in total height and the distance between the top of the lower wall and the base of the next higher wall is less than twice the height of the higher wall, or a series of retaining walls that are more than 12 feet in total height. (verify)

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

(a) **Offset.** The base of a major retaining wall must be setback from the side or rear lot line a distance that is equal to or greater than twice the height of the retaining wall. For example, if a retaining wall is 3 feet in height, it must be at least 6 feet from the lot line. If an existing retaining wall does not comply with this setback requirement, it may be reconstructed provided it is not enlarged.

(b) **Setback.** A major retaining wall located in the front yard must be setback from the front lot line at least 6 inches. If an existing retaining wall does not comply with this offset requirement, it may be reconstructed provided it is not enlarged.



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**13.21 Retaining wall, minor**

**Description:** A single retaining wall that is 5 feet or less in height above finished grade, a series of retaining walls that are 8 feet or less in total height and the distance between the top of the lower wall and the base of the next higher wall is at least two times the height of the second wall, or a series of retaining walls that are 12 feet or less in total height.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** A minor retaining wall must comply with the standards for a major retaining wall as set forth in Appendix B.



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**13.22 Rural accessory building**

**Description:** A structure so designated consistent with Division 17 of Article 5 of this chapter.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** The property owner shall comply with those requirements in division 17 of article 5 of this chapter and each of the conditions of approval as may be imposed.

**13.23 School dormitory**

**Description:** A building and related facilities to house students associated with a school and/or employees of such school.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis

**Supplemental Standards:**

- (a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (b) **On-site access drive.** The facility shall be served by an on-site access drive that meets the design and construction standards for a town road (e.g., two lanes each 12 feet wide). The plan commission may waive the requirement for a two-lane drive and allow a single-lane drive when the commission deems the wider drive unnecessary given the location of the use on the subject property, the number and type of vehicles using the drive, and other related considerations. If the plan commission allows a single-lane drive, the commission reserves the right to require a two-lane drive at a later date and may require intermediate turnarounds/turnouts every 1,200 feet and impose other design features it deems necessary to ensure public safety.
- (c) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



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**13.24 Solar energy system, building-mounted**

**Description:** An installation that is attached to the roof or walls of a building that uses sunlight to produce electricity or provide heat or hot water to a building.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

- (a) **Maximum surface area.** No portion of a panel used to collect solar energy may extend beyond the roof surface or the wall surface to which it is attached.
- (b) **Maximum height.** A building-mounted solar energy system shall comply with the maximum height requirements of the zoning district in which the building is located.
- (c) **Placement on a flat roof.** The panels of a solar energy system that are mounted on a flat roof may be either fixed or movable and may be placed at an angle to optimize efficiency of the system.
- (d) **Placement on a pitched roof.** A solar energy system mounted on a pitched roof shall be designed and installed to match the shape, proportion, and slope of the roof.
- (e) **Placement on a façade.** A solar energy system may be mounted on the façade of a commercial building if integrated into the overall design of the building. Such installations shall not project more than 4 feet from the face of the wall.
- (f) **Certification.** A solar panel shall be certified by one of the following: Underwriters Laboratories, Inc.; National Renewable Energy Laboratory; Solar Rating and Certification Corporation; or other recognized body as approved by the zoning administrator. The building inspector may approve the use of a homemade panel.
- (g) **Approval by electric utility company.** If the solar energy system is designed to produce electricity, the property owner shall submit documentation acceptable to the building inspector indicating that the system meets all applicable regulations and requirements of the affected electric utility company.
- (h) **Termination of use.** If the zoning administrator determines that more than 50 percent of the panels (measured by total area) have not been operational for a continuous period of 12 months, the administrator shall follow the procedure outlined in article 5 of this chapter relating to the termination of an approval.
- (i) **Compliance with state law.** The provisions in this section are intended to satisfy the requirements of Wis. Stats. § 66.0401(1m). On a case-by-case basis, if the restrictions of this subsection are found not to comply with the authority of Wis. Stats. § 66.0401(1m), they shall not be required. The Plan Commission shall have the ability to add additional restrictions on a case-by-case basis, provided they are within the authority of the Town pursuant to Wis. Stats. § 66.0401(1m), and in particular the restriction must satisfy one of the following conditions:
  - (1) Serves to preserve or protect the public health or safety.
  - (2) Does not significantly increase the cost of the system or significantly decrease its efficiency.
  - (3) Allows for alternative system of comparable cost and efficiency.



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### 13.25 Solar energy system, free-standing

**Description:** An installation that is mounted on the ground and uses sunlight to produce electricity or provide heat or hot water to a building.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

- (a) **Surface area.** The surface area of a free-standing solar energy system shall not exceed 120 square feet.
- (b) **Number.** There shall be no more than one free-standing solar energy system on a parcel of land.
- (c) **Maximum height.** A free-standing solar energy system in any position shall not exceed 15 feet in height as measured from the surrounding grade.
- (d) **Setback.** A free-standing solar energy system in any position shall not extend into the setback of a front yard, side yard, shore yard, or rear yard as established for the zoning district in which the parcel is located. The plan commission may approve a special exception, consistent with the procedures and requirements of article 5 of this chapter, to allow a free-standing solar energy system to extend into a setback or offset when no other location on the parcel is acceptable and the encroachment is the least necessary to allow the system to operate.

(e) **Placement in yards.** A free-standing solar energy system located in a residential or business zoning district shall only be located in the rear or side yard. The plan commission may approve a special exception, consistent with the procedures and requirements of article 5 of this chapter, to allow a free-standing solar energy system in the front yard when no other location on the parcel is acceptable and the encroachment is the least necessary to allow the system to operate. A solar panel in an agricultural or industrial zoning district may be located in any yard area.

(f) **Certification.** A free-standing solar energy system shall be certified by one of the following: Underwriters Laboratories, Inc.; National Renewable Energy Laboratory; Solar Rating and Certification Corporation; or other recognized body as approved by the zoning administrator. The building inspector may approve the use of a homemade panel.

(g) **Approval by electric utility company.** If the solar energy system is designed to produce electricity, the property owner shall submit documentation acceptable to the building inspector indicating that the system meets all applicable regulations and requirements of the affected electric utility company.

(h) **Termination of use.** If the zoning administrator determines that a free-standing solar energy system has not been operational for a continuous period of 12 months, the administrator shall follow the procedure outlined in article 5 of this chapter relating to the termination of an approval.

(i) **Compliance with state law.** The provisions in this section are intended to satisfy the requirements of Wis. Stats. § 66.0401(1m). On a case-by-case basis, if the restrictions of this subsection are found not to comply with the authority of Wis. Stats. § 66.0401(1m), they shall not be required. The Plan Commission shall have the ability to add additional restrictions on a case-by-case basis, provided they are within the authority of the Town pursuant to Wis. Stats. § 66.0401(1m), and in particular the restriction must satisfy one of the following conditions:

- (1) Serves to preserve or protect the public health or safety.
- (2) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (3) Allows for alternative system of comparable cost and efficiency.

### 13.26 Swimming pool

**Description:** A structure placed on the ground surface or below-ground that is filled with water for swimming. The term does not include those pools that are less than 15 feet in diameter and which are taken down and stored in the off-season.

**Parking Requirements:** On-site parking is not required

#### Supplemental Standards:

- (a) **Use.** The pool must be intended to be used solely by the occupants of the principal use of the property on which the pool is intended to be located and their guests.
- (b) **Location.** A pool, together with its surrounding walks, patios, diving platforms, bathhouses, and accessory structures, shall comply with the setback and offset requirements of the zoning district in which located. A swimming pool shall not be located in a front yard or closer than 10 feet to the principal building. A swimming pool shall have a horizontal separation distance of at least 15 feet from any septic tank or soil absorption field. The inside wall of the pool shall be located at least 10 feet from the vertical plane formed by the electrical wire perpendicular to the ground surface. Pumps and filter equipment shall be located at least 20 feet from a lot line.
- (c) **Walls or fences.** Walls or fences of at least 4 feet, but not more than 6 feet, in height shall be provided to restrict access by children. All gates shall be equipped with self-closing and self-latching devices placed at the top of the gate.
- (d) **Draining of water.** Water that is drained out of a swimming pool shall not flow onto adjoining property, into a wetland, or into a sanitary sewer without the approval of the public works director or equivalent.



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### 13.27 Utility cabinet

**Description:** A ground-mounted pedestal, junction box, cabinet, or similar feature that a service provider uses to provide telephone, electric, natural gas, cable television, cable Internet, or similar public service to properties in the area. A utility cabinet may be located within a public right-of-way or on private property.

**Parking Requirements:** Determined on a case-by-case basis

#### Supplemental Standards:

(a) **Location.** A utility cabinet may be placed (1) within a town road right-of-way in compliance with right-of-way regulations in chapter 62, article II, of the municipal code; (2) within a public road right-of-way under the jurisdiction of the county or the state in compliance with all applicable laws and subject to obtaining all necessary approvals as required by the governing bodies having jurisdiction; (3) within a private road right-of-way with the proper lease or easements; or (4) on private property within a leased area.

(b) **Offsets and setbacks.** Utility cabinets will not have to meet the offset and setback requirements of the zoning district in which it is located, but shall be subject to vision corner easement requirements, and must not interfere with safe sight distances from public streets accesses.

(c) **Screening.** A type "A" bufferyard must be provided. The plan commission may waive this requirement, defer the requirement to a later date, or lessen the standard when deemed unnecessary given the location of the use on the subject property and/or proximity to other existing and potential land uses.

14 Temporary Uses



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14.01 Earth materials stockpile

**Description:** A place where an earth material, such as topsoil and gravel, is piled and temporarily stored for no more than 5 years. The earth material must be derived from an on-site land development project and/or be used on site.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

(a) **Hours of operation.** When the earth materials stockpile is located in a residential zoning district, equipment used to load, move, or process materials shall only be used between the hours of 7:00 a.m. and 7:00 p.m.

(b) **Term of use.** The plan commission may grant a special exception to allow the use to operate an additional 2 years (beyond the 5-year term) if the operation has complied will all applicable terms of the approval, the zoning code, and any other rule or regulation.

(c) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

14.02 Farmers market

**Description:** A place where agricultural producers gather on a regular basis to offer their agricultural products directly to retail consumers. This use must be operated on public property, or with a school, worship facility, public library, or other similar principal use.

**Parking Requirements:** 1.5 space for each vendor space when sufficient on street parking is not available

**Supplemental Standards:**

(a) **Hours of operation.** The display of products and sales shall only occur between the hours of 8:00 a.m. and 30 minutes past sunset.

(b) **Removal and clean up.** Within 24 hours following the close of the farmers market, all features solely associated with the farmers market shall be removed and all trash and debris shall be removed.



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14.03 Farmstand, off-site

**Description:** A place where agricultural products not produced on the premises are offered for sale at retail.

**Parking Requirements:** 2 spaces

**Development Requirements:**

(a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.

(b) **Location.** An off-site farmstand shall be located at least 30 feet from the base setback line and at least 20 feet from any other lot line.



- (c) **Hours of operation.** If this use is located in a residential zoning district or a planned unit development district that allows residential uses, the hours of operation are limited to sunrise to sunset.
- (d) **Number.** No more than one stand is allowed on any one premises.
- (e) **Size limitation.** If a structure or building is used, the ground area shall not exceed 100 square feet.
- (f) **Road access.** The parcel shall front on and have direct vehicle access to a major road as depicted on the zoning map.
- (g) **Removal and clean up.** Within 24 hours following the close of the off-site farmstand, all features solely associated with the off-site farmstand shall be removed and all trash and debris shall be removed.
- (h) **Status as a building.** One free-standing building with a roof not exceeding 100 square feet shall not be counted as an accessory building.



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#### 14.04 Farmstand, on-site

**Description:** A place where agricultural products produced exclusively on the premises are offered for sale at retail.

**Parking Requirements:** 2 spaces

**Development Requirements:**

- (a) **Limitation on sales.** Products offered for sale shall be produced on the premises.
- (b) **Location.** An on-site farmstand shall be located at least 30 feet from the base setback line and at least 20 feet from any other lot line.
- (c) **Hours of operation.** If this use is located in a residential zoning district or a planned unit development district that allows residential uses, the hours of operation are limited to sunrise to sunset.
- (d) **Number.** No more than one stand is allowed on any one premises.
- (e) **Use of structure.** A structure may be used to store or display products and for sales, provided the following conditions are met:
  - (1) **Term of use.** The structure is only used from April 1 through November 30 and is removed no later than December 10.
  - (2) **Floor area.** The floor area of the structure shall not exceed 500 square feet.
  - (3) **Structure height.** The height of the structure shall not exceed 12 feet.
- (f) **Removal and clean up.** Within 24 hours following the close of the on-site farmstand, all features solely associated with the on-site farmstand shall be removed and all trash and debris shall be removed.
- (g) **Status as a building.** One free-standing building with a roof not exceeding 100 square feet shall not be counted as an accessory building.

#### 14.05 Livestock for vegetation management

**Description:** Keeping of sheep and/or goats on a temporary basis for controlling undesirable plant species such as buckthorn, honeysuckle, wild rose, garlic mustard, and reed canary grass.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

- (a) **Vegetation management plan.** A vegetation management plan must be prepared and approved by the zoning administrator which describes the areas to be treated, the number of livestock being used, the time periods when livestock will be used, the type of fencing used, and other operating characteristics.
- (b) **Buildings.** No permanent buildings may be erected or installed on the subject property for housing the livestock.
- (c) **Fencing.** Fencing may be temporarily installed while livestock are kept on the subject property.

#### 14.06 Off-site construction yard

**Description:** A place where construction materials and equipment may be stored, prepped, or staged for an off-site construction project (e.g., highway reconstruction project or construction of an electric transmission line or pipeline) for no more than 12 consecutive months.

**Parking Requirements:** 1 space for each employee on the largest work shift; plus 1 space for each fleet vehicle parked on site

**Supplemental Standards:**

- (a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (b) **Setback requirements.** Outdoor storage areas and other activity areas shall be located at least 40 feet from a parcel in a residential zoning district and 20 feet from a parcel in a business zoning district.
- (c) **Site restoration.** As part of the review process, the applicant shall prepare and submit a restoration plan and obtain the approval of the same. Such restoration plan shall identify those areas of the parcel that will be disturbed and how those areas will be restored following the cessation of this temporary use.
- (d) **Financial guarantee.** Prior to the establishment of an off-site construction yard, the property owner shall submit a financial guarantee to the town pursuant to the requirements in article 4 of this chapter in an amount equal to 110 percent of the estimated cost of site restoration identified in the restoration plan that is approved for the project.
- (e) **Application fee.** This use is classified as a Type 2 conditional use in the fee schedule.



**14.07 Party tent**

**Description:** A nonpermanent tent that is associated with a temporary event that is permitted under this chapter.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

- (a) **Generally.** A party tent permitted under this chapter does not count as a building.
- (b) **Duration.** A party tent shall not be erected for more than a cumulative total of 7 days in any calendar year.



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**14.08 Portable storage container**

**Description:** An enclosed metal container that is used to temporarily store household items and similar goods.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

- (a) **Duration.** A portable storage container shall not be located on a parcel of land for more than 90 days during any 9-month period.
- (b) **Location.** A portable storage container shall not be located in the front or side yard setback established for the zoning district in which this use occurs, except when placed in a driveway.
- (c) **Maximum floor area.** The cumulative floor area of one or more portable storage containers shall not exceed 250 square feet. [1]
- (d) **Limitation on use.** When located in a residential zoning district, a portable storage container shall only be used to store household goods during an on-site construction/remodeling project or when used to move household goods to another location.

[1] Commentary: Although portable storage containers come in different sizes, units are generally 10 feet by 10 feet and 10 feet by 15 feet.

**14.09 Relocatable building (school)**

**Description:** A portable building or enclosed trailer temporarily placed on a parcel that may be used in conjunction with the principal use of the property. For example, relocatable buildings are used to house students during a construction project or accommodate enrollment in excess of the principal building's design capacity. A mobile home or manufactured home is not considered a relocatable building.

**Parking Requirements:** Established by the Plan Commission on a case-by-case basis



**Supplemental Standards:**

- (a) **Required principal use.** A relocatable building may only occur with a governmental or institutional use, such as worship facility, library, or school.
- (b) **Location.** A relocatable building shall conform to all setback requirements for the zoning district in which it is located.
- (c) **Building code.** A relocatable building shall conform to all applicable building code requirements.



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**14.10 Seasonal product sales**

**Description:** An outdoor area where merchandise typically associated with a seasonal holiday or festival is displayed and offered for sale at retail immediately before the event. Examples of such merchandise include Christmas trees and wreaths for Christmas and pumpkins for Halloween.

**Parking Requirements:** Determined on a case-by-case basis, but not less than 2 when on street parking is not available

**Supplemental Standards:**

- (a) **Not in a subdivision.** The parcel with this use shall not be located in a platted subdivision.
- (b) **Duration.** Merchandise shall not be sold any sooner than 45 days prior to the date of the seasonal event. Cleanup and removal of all related items shall be completed within 2 days following the date of the seasonal event.
- (c) **Removal and clean up.** Within 24 hours following the termination of the sale, all features associated with the sale and trash and debris of all kinds shall be removed from the site.
- (d) **Application fee.** This use is classified as a Type 1 conditional use in the fee schedule.

**14.11 Wind test tower**

**Description:** A temporary tower on which equipment is attached that measures parameters needed to assess the site's suitability for a wind energy system.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:** Pursuant to Wis. Stats. § 66.0401(3), there are no standards or requirements for the establishment of a wind test tower or similar testing facility. If the plan commission and/or town board determines that the anticipated or actual testing is detrimental to the public health, safety, or welfare, such bodies may, individually or jointly, submit a written petition to the Public Service Commission requesting the imposition of reasonable restrictions on such use.



**14.12 Yard sale**

**Description:** A temporary event where used household items are offered for sale.

**Parking Requirements:** On-site parking is not required

**Supplemental Standards:**

- (a) **Required principal use.** A yard sale shall only occur with a principal residential use or with a governmental or institutional use, such as a worship facility, library, or school.
- (b) **Duration.** A yard sale shall not be operated for more than 4 consecutive days. There shall be at least 30 days between the last day of a yard sale and the first day of a subsequent yard sale.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020; Ord. No. 2021-O-55, §§ 1—6, 7-14-2021)

Zoning District	Minimum Lot Area [1,2]	Lot Density	Minimum Lot Width [1]	Minimum Residential Living Area	Maximum Floor Area of Attached Garage [3]	Maximum Floor Area of Detached Accessory Buildings [3,4,5]	Maximum Building Coverage [1]	Maximum Height [12,13,14]	Minimum Setback [6]	Minimum Offset [1,6,8,9,10]	Minimum Open Space
Section in Zoning Code	<u>s. 36-712</u>	<u>s. 36-714</u>	<u>s. 36-715</u>	<u>s. 36-717</u>	<u>s. 36-718</u>	<u>s. 36-719</u>	<u>s. 36-720</u>	<u>s. 36-721</u>	<u>s. 36-722</u>	<u>s. 36-723</u>	<u>s. 36-724</u>
Conservancy (C-1)	No restriction	Not applicable	No restriction	Not applicable	Not applicable	Not applicable	Not applicable	Principal: 60 feet Accessory: 60 feet	50 feet	50 feet	No application
Agricultural (A-1)	3 acres	3.2 acres	200 feet	See note 15	See note 20	1,300 square feet [11]	10 percent	Nonfarm principal: 35 feet Nonfarm accessory: 18 feet Farm: 60 feet or 100 feet when the setback and offset are equal to or exceed the height of the structure	50 feet	20 feet	2 acres per lot
Rural Home (RH)	5 acres	5 acres	300 feet	See note 15	See note 20	2,000 square feet [11]	10 percent	Principal: 35 feet Accessory: 18 feet	50 feet	50 feet	4 acres per lot

Suburban Estates (SE)	3 acres	3.2 acres	200 feet	See note 15	See note 20	1,300 square feet [11]	10 percent	Principal: 35 feet Accessory: 18 feet	50 feet or 35 feet if lot is in a residential subdivision established after January 1, 2018, and the lot is served by a town road	30 feet	2 a pe
Residential (R-1)	1 acre	1 acre	150 feet	See note 15	See note 20	720 square feet [11]	10 percent	Principal: 35 feet Accessory: 18 feet	50 feet or 35 feet if lot is in a residential subdivision established after January 1, 2018, and the lot is served by a town road	20 feet	30, sq fee far
Residential (R-2)	30,000 square feet	30,000 square feet	120 feet	See note 16	See note 20	500 square feet [11]	15 percent	Principal: 35 feet Accessory: 15 feet	50 feet	20 feet	25, sq fee far
Local Business (B-2)	20,000 square feet	30,000 square feet	120 feet	See note 17	See note 20	1,000 square feet [11]	50 percent	Principal: 35 feet Accessory: 15 feet	50 feet	Commercial: 10 feet Residential: 20 feet	15, sq fee far
Public (P-1)	No restriction	Not applicable	No restriction	Not applicable	Not applicable	Not applicable	Not applicable	Principal: 60 feet Accessory: 60 feet	50 feet	50 feet	No ap

## Notes:

1. The town board may modify the lot size, lot width, building coverage, offset, and open space requirements pursuant to [section 36-732](#) if the lot is served by a municipal or municipally-approved communal wastewater system or water system.
2. Some land uses may only occur on lots that are larger than the minimum lot area listed in this table. Such land uses are listed in Appendix B.
3. The plan commission may allow more floor area pursuant to [section 36-718](#).
4. Pursuant to article V, the town board may designate an existing building as a rural accessory building, which is not included in the total. In order to qualify as a rural accessory building, the subject property must be 3 acres or larger.
5. Temporary buildings, if allowed, are counted as a building for the purpose of this restriction, unless specifically exempted.
- 6.

In addition, there are standards for development within 50 feet of the EC overlay district and 75 feet of the conservancy (C-1) district. See sections 36-726 and 36-727, respectively.

7. Reserved.
8. In the case of any lot of record which has a minimum average width of less than 120 feet, the side lot offset may be reduced proportionately to the ratio between the actual minimum average width and 120 feet, provided that no offset shall in any case be less than 10 feet. Exceptions to these offsets may be permitted for detached accessory buildings on lots of 100 feet in width or less which may be reduced to 5 feet; provided, that no detached accessory building shall be located closer than 10 feet to any structure used for residential purposes. Further reduction in offsets of detached accessory buildings to less than 5 feet must be approved by the plan commission; but in no case shall the offset be reduced to less than 3 feet. Attached open decks and patios shall be permitted to within 40 percent of the limits established in this subsection.
9. The offset may be reduced on lots 1.5 acres or less for one detached accessory building, which is less than 200 square feet to a minimum of 5 feet from the lot line, unless otherwise regulated under any other provisions of this chapter.
10. Some land uses may have more restrictive offset requirements. Examples include hobby kennels and household livestock. Such land uses are listed in Appendix B.
11. The maximum floor area is increased by 50 square feet for every one-half acre of land that the subject property exceeds the district minimum lot size.
12. The following are exempt from the height regulations of all districts, but are subject to all other applicable regulations: (1) chimneys and flues, (2) accessory farm buildings, not to exceed 60 feet in height, on lots of 3 acres or more in area, (3) electrical transmission and distribution facilities, and (4) roof-mounted television and radio receiving antennas not exceeding 10 feet in height from the roof and roof-mounted licensed amateur radio operator antennas not exceeding 10 feet in height from the roof.
13. Pursuant to the procedures and requirements for special exceptions in article V of this chapter, the plan commission may exempt the following from the height regulations of all districts: cooling towers, elevator bulkheads, fire towers, monuments, penthouses, stacks, scenery lofts, tanks, water towers, ornamental towers, spires, masts, free standing towers, roof-mounted licensed amateur radio operator antennas 10 feet or more in height from the roof, aerial and necessary mechanical appurtenances.
14. Pursuant to the procedures and requirements in article V of this chapter, the plan commission may grant a special exception to exceed the stated maximum height for an accessory building provided the setback is increased one foot for each additional foot in height up to a maximum of 10 additional feet. The plan commission may require screening to break up the view of the building from adjacent properties or from a public road.
15. Minimum of 900 square feet on first floor and total floor area based on number of bedrooms as follows: one bedroom: 1,200 square feet, two bedrooms: 1,300 square feet, three bedrooms: 1,400 square feet, four or more bedrooms: 1,500 square feet. The minimum total is increased by 200 square feet for any building not having a basement of at least 300 square feet in area.
16. Minimum of 900 square feet on first floor and total floor area based on number of bedrooms as follows: one bedroom: 1,000 square feet, two bedrooms: 1,100 square feet, three bedrooms: 1,200 square feet, four or more bedrooms: 1,400 square feet. The minimum total is increased by 200 square feet for any building not having a basement of at least 300 square feet in area.
17. Minimum of 800 square feet on first floor and total floor area based on number of bedrooms as follows: one bedroom: 900 square feet, two bedrooms: 1,100 square feet, three bedrooms: 1,200 square feet, four or more bedrooms: 1,400 square feet. The minimum total is increased by 200 square feet for any building not having a basement of at least 300 square feet in area.
18. Reserved.
19. Pursuant to article V, the town board may designate an existing building as a rural accessory building, which is not included in the total. In order to qualify as a rural accessory building, the subject property must be 3 acres or larger.
20. One-story residence: 50 percent of floor area on first floor; bi-level residence: 60 percent of floor area of the first floor entirely above grade; two-story residence: 70 percent of floor area on first floor

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020; Ord. No. 2021-O-55, § 11, 7-14-2021)

Appendix D. - Dimensional Standards in Planned Development Districts

District Name (Zoning Map Number)	Special Standards
Jericho Ridge (PDD-01)	Unspecified standards: per A-1 zoning district

<p>Valley Woods (PDD-02)</p>	<p>Lot size, minimum: 1 acre                  Lot width, minimum: 150 feet                  Offset, minimum: 20 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 1,600 square feet                  Floor area ratio (FAR), maximum: 10 percent                  Accessory buildings floor area, maximum: 150 square feet                  Open space per lot, minimum: 33,000 square feet                  Unspecified standards: per SE zoning district</p>
<p>Whispering Oaks (PDD-03)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Offset, minimum: 50 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 1,600 square feet                  Floor area ratio (FAR), maximum: 10 percent                  Accessory buildings are not allowed                  Open space per lot, minimum: 60,000 square feet                  Note: Some lots have a 30-foot building envelope—see final plat                  Unspecified standards: per SE zoning district</p>
<p>Oak Ridge Meadows (PDD-04)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Offset, minimum: 50 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and Floodland, minimum: 75 feet                  House floor area, minimum: 1,800 square feet                  Floor area ratio (FAR), maximum: 10 percent                  One accessory building per lot is allowed as follows:</p> <ul style="list-style-type: none"> <li>• No more than 1% of the lot area can be an accessory building with no more than a maximum of 1,300 square feet</li> <li>• The accessory building may not be setback less than the residence from the road ROW.</li> <li>• Offset, minimum: 20 feet</li> <li>• No accessory building in which an animal is kept shall be closer than 50 feet to a lot line</li> <li>• All exterior construction must be of wood, masonry, aluminum, or vinyl siding</li> <li>• No variances are allowed</li> </ul> <p>Open space, minimum: 60,000 square feet                  Unspecified standards: per SE zoning district</p>

<p>Clydesdale West (PDD-05)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Offset, minimum: 30 feet (but 50' per covenants)                  Setback, minimum: 50 feet (but 75' per covenants)                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 1,800 square feet                  Floor area ratio (FAR), maximum: 10 percent                  Accessory buildings are not allowed.                  Open space per lot, minimum: 60,000 square feet                  Unspecified standards: per SE zoning district</p>
<p>Clydesdale South (PDD-06)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Offset, minimum: 30 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 1,800 square feet                  Floor area ratio (FAR), maximum: 10 percent                  Accessory buildings are not allowed on lots or outlots.                  Open space per lot, minimum: 60,000 square feet                  Unspecified standards: per SE zoning district</p>
<p>Clydesdale North (PDD-07)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Offset, minimum: 30 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 1,800 square feet                  Floor area ratio (FAR), maximum: 10 percent                  Accessory buildings are NOT allowed on lots, allowed on Town-owned outlot.                  Open space per lot, minimum: 60,000 square feet (1.38 ac)                  Unspecified standards: per SE zoning district</p>
<p>Clydesdale East (PDD-08)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Setback, minimum: 50 feet (may be more in deed restrictions)                  Offset, minimum: 30 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  Attached garage floor area, maximum: 600 square feet                  House floor area, minimum: 1800 square feet                  Floor area ratio (FAR), maximum: 10 percent                  Open space per lot, minimum: 60,000 square feet (1.38 ac)                  Accessory buildings are NOT allowed, except on lots 4 and 23 per the conditional use order                  No livestock or poultry except on lots 4 and 23 per the conditional use order                  Note: There are drainage easements on Lots 3, 4, 23, and 24                  Unspecified standards: per SE zoning district</p>

<p>Harvest Acres (PDD-09)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Offset, minimum: 30 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  Setback from basin in Outlot 2, minimum: 50 feet                  House floor area, minimum: 1,800 square feet                  Floor area ratio (FAR), maximum: 10 percent                  One accessory building per lot is allowed as follows:</p> <ul style="list-style-type: none"> <li>• Maximum floor area: 350 square feet</li> <li>• All accessory buildings shall be erected a minimum of 50 feet from the front lot line, 30 feet from the side lot lines and 50 feet from the rear lot line. All accessory buildings must be equal to or greater than the distance from the road right-of-way than the residential structure on said parcel and shall not be in the front yard.</li> <li>• No accessory buildings, where animals are kept, shall be closer than 50 feet to any side lot line.</li> <li>• No variances are allowed</li> </ul> <p>Open space per lot, minimum: 60,000 square feet                  Unspecified standards: per SE zoning district</p>
<p>Woodmont (PDD-10)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Offset, minimum: 30 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 1,800 square feet                  Floor area ratio (FAR), maximum: 10 percent                  Open space per lot, minimum: 58,000 square feet                  Note: Some lots have building envelopes—see final plat                  Unspecified standards: per SE zoning district</p>
<p>Butterwick Ponds (PDD-11)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Offset, minimum: 30 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 2,000 square feet                  Floor area ratio (FAR), maximum: 15 percent                  Accessory buildings are not allowed                  Open space per lot, minimum: 1.25 acres                  Unspecified standards: per SE zoning district</p>

<p>West Pointe Estates (PDD-12)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Offset, minimum: 30 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 2,000 square feet                  Floor area ratio (FAR), maximum: 15 percent                  Accessory buildings: no more than 2, totaling a maximum of 1,100 square feet                  Open space per lot, minimum: 1.25 acres                  Unspecified standards: per SE zoning district</p>
<p>Stone Brook Hollow (PDD-13)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Side yard offset, minimum: 20 feet                  Rear yard offset, minimum: 75 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 2,000 square feet                  Garage with 2 stalls required but not more than 4 stalls                  Floor area ratio (FAR), maximum: 15 percent                  Accessory buildings are not allowed, except on Lots 1 and 33                  Open space per lot, minimum: 1.25 acres                  Unspecified standards: per SE zoning district</p>
<p>Lakewood Farms Preserve (PDD-14)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Side yard offset, minimum: 50 feet                  Rear yard offset, minimum: 50 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 2,200 square feet for ranch, 2,800 square feet for 2-story                  Garage floor area, minimum: 600 square feet                  Floor area ratio (FAR), maximum: 15 percent                  Accessory buildings are not allowed except for one pool cabana, accessory to inground pools, and one gazebo provided they are placed in the building envelope of the lot and within 100 feet of the main residence. The footprint of the same shall be no more than 160 square feet.                  Accessory structures as specified in this part are included towards the impervious surface and floor area calculations.                  Open space per lot, minimum: 1.25 acres                  Impervious surface, maximum: 10,000 square feet, except 7,500 square feet on Lots 4-9                  Note: The property owner can apply for a permeable waiver up to 30 percent as set forth in the conditional use order as amended                  Note: There are building envelopes on lots 4-9, 11-15, and 27-31                  Note: There is a no-mow zone on lots 4-9                  Unspecified standards: per SE zoning district</p>



<p>Stone Brook Hollow, First Addition (PDD-15)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 200 feet                  Side yard offset, minimum: 20 feet                  Setback, minimum: 50 feet                  Setback from conservancy, wetlands, and floodland, minimum: 75 feet                  House floor area, minimum: 2,000 square feet                  Garage floor area, minimum: 600 square feet                  Floor area ratio (FAR), maximum: 15 percent                  Open space per lot, minimum: 1.25 acres                  Impervious surface, maximum: 6,000 square feet for Lots 43 and 68; 6,500 square feet for Lots 38, 44, 69, and 70; 7,000 square feet for Lots 71, 76-79, 91, and 92; 7,500 square feet for Lots 34-37, 39, 40, 45-64, 66, 67, 72-75, 87-90, and 93-99; 9,000 square feet for Lot 65; 10,000 square feet for Lots 80-86; 12,000 square feet for Lots 41 and 42                  Note: The property owner can apply for a permeable waiver up to 30 percent as set forth in the conditional use order as amended (Document #3602297)                  Note: There are building envelopes on lots 6-12 and 64-66 and possibly others                  Unspecified standards: per SE zoning district</p>
<p>Agape Agrihood (PDD-16)</p>	<p>Lot size, minimum: 1.5 acres                  Lot width, minimum: 150 feet                  Setback, minimum: 50 feet from all roads                  Offset, minimum: 20 feet                  Open space per lot, minimum: 1.25 acres for Lots 1-4 and 6-10; 3.4 acres for Lot 5                  Maximum floor area of accessory buildings: 1,000 square feet for Lots 1-4 and 6-10                  Unspecified standards: per SE zoning district</p>
<p>Heritage Hill Estates (PDD-17)</p>	<p>Lot density, maximum: 11 residential lots and 1 outlot                  Lot size, minimum: 1.5 acres                  Lot width, minimum: 120 feet, except 80 feet for lots on the cul-de-sac bulb                  Setback, minimum: 35 feet                  Offset, minimum: 20 feet                  Maximum floor area of accessory buildings: 1,000 square feet (special exceptions for floor area are not allowed)                  The design and exterior building materials for accessory buildings must match the principal building.                  Unspecified standards: per Suburban Estates (SE) zoning district</p>

( [Ord. No. 2020-O-48](#), § 1(Exh. A), 9-16-2020; [Ord. No. 2020-O-51](#), § 2, 12-16-2020; [Ord. No. 2021-O-55](#), § 10, 7-14-2021)

Appendix E. - General Definitions

A

- (1) **Accessory building.** See building, accessory.
- (2) **Accessory land use.** See land use, accessory.
- (3) **Active farm operation.** A property where the principal current and ongoing use of the property is crop production, animal production, or growing Christmas trees or ginseng. Land that was engaged in the preceding activities, but has been harvested at the end of the last possible production season, continues to be an active farm operation unless and until it fails to engage in production in the next production season or after a period of 12 months, whichever occurs first.
- (4) **Adult arcade.** An establishment wherein coin, slug, electronically, or mechanically controlled or operated still or motion picture machines, projectors, computers, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas.

- (5) **Adult bath house.** An establishment that provides a bath as a service, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the state of Wisconsin and which provides to its patrons an opportunity for engaging in specified sexual activities.
- (6) **Adult body painting studio.** An establishment wherein patrons are afforded an opportunity to be painted or to paint images on specified anatomical areas. The term does not include a tattoo parlor.
- (7) **Adult book/video store.** An establishment having as its stock in trade the sale, rental, or lease for any form of consideration, any one or more of the following:
- Books, magazines, periodicals or other printed or electronic matter, photographs, films, motion pictures, recordings, video cassettes, DVDs, video reproductions, slides, closed-circuit transmission, cable/satellite transmission, subscriber programming, or other visual representations or physical medium which are distinguished or characterized by their emphasis on any actual or simulated specified sexual activities or specified anatomical areas, the removal of articles of clothing, or partial or totally nude appearance;
  - Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities;
  - Facilities or premises to which public patrons or members are invited or admitted for the presentation or viewing of adult entertainment as defined herein, including, but not limited to, adult-oriented films, motion pictures, video cassettes, video reproductions, slides, closed-circuit transmission, cable/satellite transmission, subscriber programming, or other visual representation or physical medium that allows an image to be displayed or transmitted; and/or any live performance, display, or dance of any type.
- (8) **Adult cabaret.** An establishment, such as a nightclub, dance hall, bar, restaurant, or similar establishment, that regularly features (i) persons who appear nude or semi-nude; (ii) live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities; or (iii) film, motion pictures, video cassettes, streaming videos, DVDs, slides or other photographic or video reproduction, or closed-circuit transmission, cable/satellite transmission, subscriber programming, or other visual representation or physical medium which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas.
- (9) **Adult entertainment.** Any exhibition of any motion picture, video cassette or recording, photographic reproduction, closed-circuit transmission, cable/satellite transmission, subscriber programming, or other physical medium that allows an image to be displayed or transmitted; live performance, display, or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on any one or more of the following: (i) specified anatomical areas, (ii) specified sexual activities, or (iii) removal of articles of clothing or partial or total nude appearance.
- (10) **Adult massage parlor.** An establishment with or without sleeping accommodations that provides the service of massage or body manipulation, including exercise, heat, and light treatment of the body, and any form or method of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the state of Wisconsin and which also provides its patrons with the opportunity to engage in specified sexual activities.
- (11) **Adult modeling studio.** An establishment that provides the services of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing, or other means.
- (12) **Adult motel.** An establishment that (i) offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, film, motion pictures, video cassettes, video reproductions, slides, closed-circuit transmission, cable/satellite transmission, subscriber programming, or other visual representation or physical medium characterized by depicting or describing specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this type of adult entertainment; (ii) offers a sleeping room for rent for a period of time that is less than 10 hours; or (iii) allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than 10 hours.
- (13) **Adult theater.** An enclosed building such as a theater, concert hall, auditorium, or other similar business establishment which is used for presenting adult entertainment.
- (14) **Antenna.** Communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.  
Note: This definition is based on the corresponding definition in Wis. Stats. § 66.0404.
- (15) **Appeal.** A process initiated by an aggrieved party to review a decision made pursuant to this chapter or an alleged failure to act as required by this chapter.
- (16) **Applicant.** A person that submits an application as required by this chapter.



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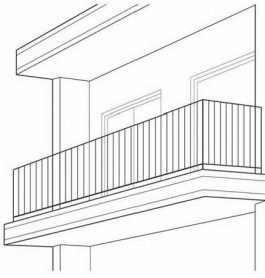
- (17) **Arbor.** A structure over a walkway or other open area often supporting vines or other plants.

(18)

**Assessed value.** The dollar amount assigned to taxable real and personal property by the assessor for the purpose of taxation.

- (19) **Auto title loan business.** Any person licensed pursuant to Wis. Stats. § 139.09, who makes a loan that is secured by an interest, other than a purchase money security interest, in the borrower's motor vehicle.

**B**



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- (20) **Balcony.** A floor area that projects beyond the exterior wall of an upper story, is enclosed by a half wall or railing, and is only accessible from the building's interior. A balcony can be supported by columns or brackets or be cantilevered.
- (21) **Base setback line.** An imaginary line that is parallel to the centerline of certain roadways depicted on the highway width map adopted by Waukesha County.
- (22) **Base zoning district.** See zoning district, base.
- (23) **Basement.** That portion of a building below the first floor or ground floor with its entire floor below grade.  
Note: This definition is based on the corresponding definition in Wis. Admin. Code § SPS 320.07(8).
- (24) **Berm.** A mound or embankment of earth typically installed to provide screening or for aesthetic effect.
- (25) **Board of appeals.** See Zoning board of appeals
- (26) **Body piercer.** An individual who performs body piercing on another upon his or her request.  
Note: This definition is based on the corresponding definition in Wis. Admin. Code § DHS 173.03.
- (27) **Body piercing.** The perforating of any human body part or tissue, except an ear, and placing a foreign object in the perforation to prevent the perforation from closing.  
Note: This definition is based on the corresponding definition in Wis. Admin. Code § DHS 173.03.
- (28) **Building.** A structure having a roof supported by columns or walls that is used or intended for the shelter or enclosure of people, animals, equipment, or property of any kind.
- (29) **Building codes.** Those regulations adopted by a municipality or the state that regulate the construction, repair, alteration, and maintenance of buildings.
- (30) **Building coverage.** The area of a lot that is occupied by buildings. Depending on the context, building coverage could refer to the actual or proposed amount, or the maximum amount that is permitted in a particular zoning district.  
Note: See section 36-720 that describes how building coverage is measured.
- (31) **Building height.** As the context would indicate, building height could refer to the actual or proposed height, or the maximum height that is permitted in a particular zoning district.  
Note: See section 36-721 that describes how building height is measured.
- (32) **Building permit.** A permit issued by the town that authorizes an applicant to conduct a specified construction activity that is consistent with the town's building code. (In contrast see zoning permit)
- (33) **Building, accessory.** A building or portion of a building used for a purpose customarily incidental to the permitted use of the lot and located on the same lot as the principal use.
- (34) **Building, principal.** The building on a lot in which is conducted the principal use as permitted on such lot by the regulations of the district in which it is located.
- (35) **Burden of proof.** The obligation of a party to establish a fact by evidence.

**C**

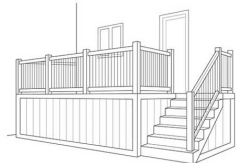
- (36) **Campgroundspace.** A designated portion of a campground that is rented for the exclusive use of its occupants. A campground space may include a parking area, fire ring, table, and other amenities.
- (37) **CFR.** An abbreviation for Code of Federal Regulations
- (38) **Clear vision triangle.** See vision clearance triangle.



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- (39) **Co-location.** The location of multiple antennas of more than one commercial wireless communication service provider or governmental entity on a single tower or alternative tower structure.
- (40) **Common open space.** *In a planned unit development, that portion of the project that will remain undeveloped and which is jointly owned and maintained by those owning property in the development.*
- (41) **Comprehensive plan.** *The document adopted by the town board consistent with Wis. Stats. § 66.1001.*
- (42) **Conditional use.** *See land use, conditional*
- (43) **Conditional use order.** *A written decision issued by the town board authorizing the zoning administrator to issue a conditional use permit provided those conditions imposed by the board precedent to the issuance of the permit have been satisfied.*
- (44) **Conditional use order.** *A written decision issued by the town board that indicates whether the conditional use is approved or denied, and the terms of the approval if so granted. The conditional use may only be established on the subject property when the zoning administrator issues a conditional use permit indicating that all initial conditions of the approval have been satisfied.*
- (45) **Conditional use permit.** *A permit issued by the zoning administrator indicating that the conditional use may be established following a determination that all initial conditions of the conditional use order have been satisfied.*
- (46) **Condominium.** *A form of property ownership where multiple owners individually own specified portions of a building along with any common elements.*
- (47) **Conversion order.** *A written decision issued by the town board authorizing the property owner to convert an existing nonconforming use to a different nonconforming use that is determined to be of the same or lesser degree of nonconformity.*
- (48) **Corner lot.** *See lot, corner.*

## D



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- (49) **Deck.** A structure characterized by a flat, unroofed, horizontal surface or platform suspended above the grade of the land it covers and which may be supported by posts, beams, cantilever, or other similar methods. (In contrast see stoop.)
- (50) **Density.** As the context would indicate, the number of existing, proposed, or permitted dwelling units in a given area. For example, a 40-acre parcel with 7 dwelling units has a density of one dwelling unit per 5.7 acres.
- (51) **Developer agreement.** A contract between a developer and a municipality that describes the obligations of both parties regarding a private development project.
- (52) **Development.** Any activity that must comply with, or is anyway regulated by, this chapter.
- (53) **Disability.** A mental or physical impairment that substantially limits one or more life activity.
- (54) **Distinguished or characterized by.** The dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of specified sexual activities or specified anatomical areas.
- (55) **District.** See zoning district.
- (56) **Domesticated animal.** An animal that is not wild and is kept as a pet or to produce food.
- (57) **Double frontage lot.** See lot, through.
- (58) **Driveway, private.** A private route of ingress and egress from a private or public right-of-way, which provides access to residential dwellings/units, business buildings, or properties.
- (59) **Dwelling unit.** A building, or portion thereof, that provides complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

## E

- (60)

**Easement.** A non-possessory legal interest a person has in the property of another for a specific use. An easement may apply to the entire property or a portion thereof and may be perpetual or temporary, expiring after a period of time or after a certain event occurs. A utility easement, for example, gives any person with a right to use the easement the right to install and maintain utilities across, over, or under the subject land. A road easement would likewise allow the installation and maintenance of a driveway or roadway along with ancillary utilities.



- (61) **Equipment compound.** When used in the context of telecommunication facilities, the area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.
- (62) **Established road grade.** The elevation of the finished road at the centerline or curb as fixed by the town engineer, or by such authority as shall be designated by law to determine such an elevation.

#### F

- (63) **FAA.** An abbreviation for Federal Aviation Administration
- (64) **Fall zone.** When used in the context of telecommunication facilities, the area over which a mobile support structure is designed to collapse.  
Note: This definition is based on the corresponding definition in Wis. Stats. § 66.0404.
- (65) **Family.** An individual living alone in a dwelling unit, or 2 or more individuals living together in a dwelling unit who are related by blood, marriage, adoption, or other legal means, or a group of not more than 4 individuals who are not so related who live together as a single housekeeping unit in a dwelling unit. A single housekeeping entity infers the use in common of all spaces, household services, and utilities with a single source of food preparation for all occupants.
- (66) **FCC.** An abbreviation for Federal Communications Commission
- (67) **Flag lot.** See lot, flag.
- (68) **Flood.** A general and temporary condition or partial or complete inundation of normally dry land areas caused by the overflow or rise of inland waters or the rapid accumulation of stormwater runoff or surface waters from any source.
- (69) **Floodplain.** Those lands subject to inundation by the 100-year reoccurrence flood, or, where such data is not available, the maximum flood of record.
- (70) **Floor area.** The maximum horizontal projected area of a building measured at each level from outside wall to outside wall.
- (71) **Front yard.** See yard, front.
- (72) **Fugitive dust.** Solid airborne particulate matter resulting from any activity conducted on a parcel.

#### H

- (73) **Hazard.** A condition, whether manmade or natural, that presents a tangible danger to the public health, safety, and general welfare.
- (74) **Hazardous substance.** A material regulated by the Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 1101-11050, as may be amended.
- (75) **Hazardous waste.** A waste or combination of wastes that because of its quantity, concentration, or physical, chemical, or infectious characteristics, may (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.
- (76) **Highway.** A State or County highway.

#### I

- (77) **Impervious surface.** The portion of a lot that substantially reduces or prevents the infiltration of stormwater into the ground. It includes areas of compacted soil, buildings, and nonporous surfaces such as sidewalks, parking lots, driveways, and similar features.
- (78) **Interior lot.** See lot, interior.

#### L

- (79) **Land.** The earth, water, and air, above, below, or on the surface.
- (80) **Land use.** As the context indicates (i) the development that has occurred on the land, (ii) development that is proposed for the land, or (iii) the use permitted for the land under this chapter.
- (81) **Land use, accessory.** A land use that is subordinate to, and customarily incidental to, the permitted principal use of the property or buildings and located upon the same lot as the principal use.

- (82) **Land use, conditional.** A land use, which by its nature, character, or circumstance, is so unique or so dependent upon specific conditions that permissibility by right is not practical, but which may be permitted subject to certain conditions and requirements as determined by the reviewing authority.
- (83) **Land use, permitted by right.** A land use that is allowed throughout a specified zoning district. Land uses permitted by right may be reviewed to ensure that all provisions of local, state, and federal regulations are met.
- (84) **Land use, principal.** The main or primary use of a property as may be allowed under this chapter.

Note: In some situations, a parcel of land can have more than one principal land use.

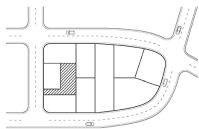
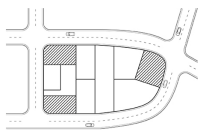
- (85) **Land use, temporary.** A land use which is on a parcel of land for a limited and specified period of time.
- (86) **Legal nonconforming building.** A building that at the time of construction conformed to existing regulations including size, location, and other dimensional standards, but is now inconsistent with this chapter.
- (87) **Legal nonconforming conditional use.** A use that was classified as a nonconforming use but which has since been reviewed and approved as a conditional use using the procedures and requirements specified in this chapter.
- (88) **Legal nonconforming lot.** A lot that at the time of creation conformed to existing regulations including lot size, dimensions, lot configuration, and other dimensional and design standards, but is now inconsistent with this chapter.
- (89) **Legal nonconforming structure.** A structure that at the time of construction or placement conformed to existing regulations including size, location, and other dimensional standards, but is now inconsistent with this chapter.
- (90) **Legal nonconforming use.** A use of land that at the time of establishment conformed to existing regulations, but is now inconsistent with this code.
- (91) **Livestock.** When used in the context of livestock facility siting, "livestock" shall only include cattle, swine, poultry, sheep, and goats. When not used in the context of livestock facility siting, "livestock" shall include bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids (alpacas, lamas, camels), ratites (emus, ostriches), and farm-raised fish.

Note: This definition is based on the corresponding definition in Wis. Admin. Code § ATCP 51.01.

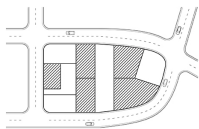
- (92) **Loading area.** An off-street area set aside for the purpose of unloading or loading a motor vehicle, trailer, or truck.
- (93) **Loafing shed.** A building open on one side that is placed in a pasture or other similar area to provide shelter for livestock.
- (94) **Lot.** A land area having a definable location based on a survey or similar legal instrument recorded by the Waukesha County register of deeds. Where a navigable stream, navigable body of water, mill tax road, or public right-of-way divides a single described parcel into two or more parts, such severed portions shall be considered separate individual lots provided they meet the use, building location, and area regulations of the zoning district in which they are located. Where such separate parcels do not meet such use, building, location, and area regulations they, in combination, shall be considered to be a single lot for regulatory purposes, computation of area requirements, and other locational provisions of this chapter.
- (95) **Lot area.** As the context indicates, lot area can refer to the minimum required area, actual area, or proposed area.

Note: See section 36-712 that describes how lot area is measured.

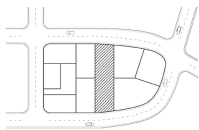
- (96) **Lot line.** A line dividing one parcel of land from another.



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- (97) **Lot line, front.** The lot line described for each of the following types of lots. (1) For an interior lot, the property boundary line abutting a road right-of-way. (2) For a corner lot, the line abutting a street providing physical access (i.e., driveway) to the property. (3) For a through lot, the property boundary line abutting the road providing the primary access to the lot. (4) For a flag lot, the interior lot line most parallel to and nearest the road from which physical

access is obtained.

- (98) **Lot line, rear.** A lot line that does not intersect a front lot line and that is most distant from and most closely parallel to the front lot line.
- (99) **Lot line, side.** A lot line that is not a front or rear lot line.
- (100) **Lot width.** As the context would indicate, lot width can refer to the minimum required distance, actual distance, or proposed distance.

Note: See section 36-715 that describes how lot width is measured.

- (101) **Lot, corner.** A lot situated at the junction of and fronting on two or more streets. A lot abutting on a curved street shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.
- (102) **Lot, flag.** A lot which has a narrow strip of land that extends from the main part of the lot where a building could be lawfully constructed to the road.
- (103) **Lot, interior.** A lot that abuts only one street.
- (104) **Lot, through.** A lot having a frontage on two streets that are more or less parallel to one another.

#### M

- (105) **Maintenance and repair.** See ordinary maintenance and repair.
- (106) **Major road.** A road so designated on the zoning map.
- (107) **Manufactured home.** A dwelling unit that is constructed in an off-site facility in conformance with the federal construction and safety standards established by the Secretary of Housing and Urban Development pursuant to the Manufactured Housing Construction and Safety Standards Act of 1974, as amended.

Note: A manufactured home bears a red insignia which certifies that it meets all applicable federal construction and safety standards.

- (108) **Mitigate.** To take an action designed to offset or rectify a negative effect.
- (109) **Mobile home.** A dwelling unit that was originally constructed prior to June 15, 1976, and that is (i) constructed off-site, (ii) equipped with the necessary utility service connections, (iii) made to be readily movable as a unit or units on its (their) own running gear, and (iv) designed to be used with or without a permanent foundation.

Note: No mobile homes have been constructed after June 15, 1976.

- (110) **Mobile service.** A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (i) both one-way and two-way radio communication services; (ii) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and (iii) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

Note: This definition is based on the corresponding definition in Wis. Stats. § 66.0404.

- (111) **Mobile service facility.** The set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.
- (112) **Mobile service provider.** A person who provides mobile service.

Note: This definition is based on the corresponding definition in Wis. Stats. § 66.0404.

- (113) **Modular home.** A dwelling unit that meets local building codes and which was constructed off site in a factory as separate modules which are joined together and set on a permanent foundation.
- (114) **Municipal code.** The compilation of laws as adopted by the Town of Mukwonago town board.

#### N

- (115) **Natural Resources Conservation Service (NRCS).** A federal agency created in 1935 within the U.S. Department of Agriculture to work with private land owners and managers to conserve their soil, water, and other natural resources by providing technical and financial assistance. From 1935 to 1994, it was known as the Soil Conservation Service (SCS).
- (116) **Navigable waterway.** All natural inland lakes, streams, ponds, sloughs, flowages, and other waters, which are navigable under the laws of this state. The term does not include farm drainage ditches if (i) such lands are not adjacent to a natural navigable stream or river, (ii) those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching, and (iii) such lands are maintained in nonstructural agricultural use.

Note: In Wisconsin, a navigable body of water is capable of floating the lightest boat or skiff used for recreation or any other purpose on a regularly recurring basis. See *DeGayner and Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975) and *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987)

- (117) **Nonconforming building.** See legal nonconforming building.
- (118) **Nonconforming lot.** See legal nonconforming lot.
- (119) **Nonconforming structure.** See legal nonconforming structure.



(120) **Nonconforming use.** See legal nonconforming use.

O

(121) **Offset.** The horizontal distance between any structure and any lot line (other than a street setback line), measured from the nearest point of the structure to the nearest point of any lot line. (In contrast see setback)

(122) **Operating standards.** Regulations governing the ongoing operation of a land use, including related business practices.

(123) **Ordinary maintenance and repair.** Those activities related to the general day-to-day maintenance of a building or other similar structure including interior remodeling; painting, decorating, paneling, plumbing, insulation, the repair of cracks in a foundation wall, the application of waterproof coatings to a foundation wall, and the replacement of windows, doors, electric wiring, siding, roofing materials, and other nonstructural components. (In contrast see structural alteration)

(124) **Overhang.** That portion of a roof over a structure and designated as an integral part of the structure, which extends from the outer wall of the structure to the eave. Rain gutters are not included or considered part of the overhang.

(125) **Overlay zoning district.** See zoning district, overlay.

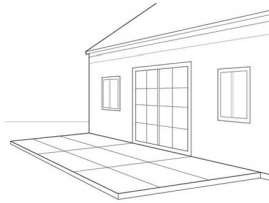
P



(126) **Panelized home.** A dwelling unit that meets local building codes and which was constructed off site in a factory as flat panels (e.g., walls, roof, and floor) which are joined together and set on a permanent foundation.

(127) **Parking space.** An area permanently reserved and maintained for the parking of one motor vehicle that meets the dimensional standards of this chapter.

(128) **Patio.** An at-grade surfaced area intended for outdoor living that may be next to a building or separated from a building.



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(129) **Payday loan business.** Any person licensed pursuant to Wis. Stats. § 218.05, or a person licensed pursuant to Wis. Stats. § 139.09, who accepts a check, holds the check for a period of time before negotiating or presenting the check for payment, and pays to the issuer an agreed-upon amount of cash, or who refinances or consolidates such a transaction.



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(130) **Permanent foundation.** A foundation wall under the entire perimeter of a building.

(131) **Permitted use.** See land use, permitted by right.

(132) **Person.** An individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(133) **Plan commission.** The commission established by the town board to make recommendations and decisions relating to planning and land use issues as authorized by Wisconsin Statutes.

(134) **Plan of operation.** A document describing the operation of a particular enterprise and other related matters as may be required by this chapter. (Also see site plan)

(135) **Planned unit development district (PUD).** A zoning district established pursuant to this chapter that has "PUD" followed by a number as its abbreviation (e.g., PUD-01).

(136) **Platted subdivision.** A subdivision meeting the definition set forth in Wis. Stats. § 236.02.

(137) **Playhouse.** An accessory building, either at ground level or elevated, or supported by a tree, characteristically used by children for play.





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- (138) **Porch.** A part of a building with a roof of its own that covers an entrance.
- (139) **Potbellied pig.** A pig that is white, black, or pinto in color, stands less than 14 inches at the shoulders and less than 30 inches in length when grown, weighs less than 220 pounds, that is distinguished by having erect ears, a straight tail with a plume at the end, and hair on the back that does not part, and is kept by its owners as a household pet.
- (140) **Pre-cut home.** A dwelling unit that meets local building codes and which was largely constructed off site in a factory and then disassembled and transported to the site where it is reassembled and set on a permanent foundation.
- (141) **Preserved lands.** When used in the context of transfer of development rights, the sending parcel or part thereof that will be protected in perpetuity from any development or use except as consistent with its preservation as agricultural land or as a form of common "preserved lands" for the environmental or recreational benefit of the area.
- (142) **Principal building.** The primary building on a lot housing a principal use.
- (143) **Principal land use.** See land use, principal.
- (144) **Property boundary line.** See lot line.
- (145) **Public notice.** The means that a governmental body uses, or is required to use, to formally notify people and other interested entities of a pending governmental hearing or proposed action.
- (146) **Public utility.** A public utility as defined in Wis. Stats. § 196.01.

Note: This definition is based on the corresponding definition in Wis. Stats. § 66.0404.

## R

- (147) **Rear yard.** See yard, rear.
- (148) **Receiving parcel.** The tract of land to which the additional residential development potential is added.
- (149) **Recreational vehicle.** A motorized or nonmotorized vehicle that includes a cabin for living accommodations, commonly used for recreational travel and touring. Vehicles included in this category come in several forms: travel trailers, tent trailers and camping trailers, all of which must be towed by another vehicle; and truck campers, motor homes and camper vehicles, all of which have a motor within the body of the vehicle and are self-propelled.
- (150) **Regularly features or regularly shows.** A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as part of the ongoing business of the adult establishment.
- (151) **Repair and maintenance.** See ordinary maintenance and repair
- (152) **Reviewing authority.** As the context would indicate, the zoning administrator, plan commission, town board, or zoning board of appeals.
- (153) **Right-of-way.** A strip of land dedicated to or acquired by the Town of Mukwonago, Waukesha County, or state of Wisconsin for public use. (In contrast see easement)
- (154) **Road.** A hard-surfaced travelway, generally within a public right-of-way or an easement, that is open to the public for vehicular travel.
- (155) **Road, private.** A road not maintained by the Town of Mukwonago, Waukesha County, the state of Wisconsin, or the federal government.
- (156) **Road, public.** A road maintained by the Town of Mukwonago, Waukesha County, the state of Wisconsin, or the federal government.

## S

- (157) **Screen.** A feature, such as a wall, fence, hedge, berm, or similar feature used to shield or obscure elements of a development from adjacent sites.
- (158) **Search ring.** When used in the context of telecommunication facilities, a shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.
- Note: This definition is based on the corresponding definition in Wis. Stats. § 66.0404.
- (159) **Seasonal high-water table.** The upper limit of the zone of saturation caused by underlying groundwater at its highest level.
- (160) **Semi-nude or nude condition.** The showing of the human male or female genitals, pubic area, vulva or anus, with not more than a complete opaque covering, or the showing of the female breast with not more than a complete opaque covering of any part of the nipple or areola.
- (161) **Sending parcel.** The tract of land from which residential development rights are transferred.
- (162) **Setback.** The horizontal distance between any structure and the base setback line, measured from the nearest vertical wall to the nearest point of the base setback line. (In contrast see offset)

(163)

**Setback averaging.** An approach to determining the minimum setback when the subject property is in an area of previously developed lots and the actual setbacks on those lots are less than the required setback for the district in which the subject property is located.

- (164) **Setback, base.** See base setback line.
- (165) **Side yard.** See yard, side.
- (166) **Sight triangle.** See vision clearance triangle.
- (167) **Site plan.** A drawing of a subject property that shows existing and proposed conditions and other features required by this chapter. (Also see plan of operation.)
- (168) **Site-built home.** A dwelling unit that meets the Wisconsin Uniform Dwelling Code standards and which was largely constructed on-site. Also known as a "conventional home" or "stick-built home."
- (169) **Special exception.** An approval that may be granted by the Plan Commission to deviate from otherwise applicable provisions of this chapter when certain circumstances apply. (In contrast see variance.)
- (170) **Specified anatomical areas.** The human male genitals in a discernibly turgid state, whether simulated or in fact, even if completely and opaquely covered; or less than completely and opaquely covered human genitals, pubic region, pubic hair, vulva, anus, buttocks, and/or the nipple and areola of the human female breast.
- (171) **Specified sexual activity.** Any of the following (i) the fondling or erotic touching of human genitals, pubic region, anus, or female breasts; (ii) the act of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, cunnilingus, or anilingus; or (iii) excretory functions as part of, or in connection with any of the activities described in (i) or (ii).



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- (172) **Sport court.** A hard-surfaced area located out of doors used exclusively for basketball, tennis, or other similar sports-related activity. This term does not include any portion of a driveway that is also used for a sport-related use.
- (173) **State.** The state of Wisconsin.



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- (174) **Stoop.** A raised platform in front of an entrance to a building with one or more steps. (In contrast see deck, which is intended for outdoor living.)
- (175) **Stormwater.** Water from a rainfall event or melting snow or ice.
- (176) **Stream.** A natural body of running water flowing continuously or intermittently in a channel on or below the surface of the ground.
- (177) **Street.** See road.
- (178) **Structural alteration.** Any change in a supporting member of a structure such as foundation, bearing wall, column, beam or girder, footing, or pile, or any substantial change in the roof structure or in an exterior wall. (In contrast see ordinary maintenance and repair.)
- (179) **Structure.** A manmade object with form, shape, and utility that is either permanently or temporarily placed on or into the ground, a stream bed, or a lake bed or on another structure. Examples include buildings, decks, patios, stoops, play structures, swimming pools, hot tubs, bridges, storage tanks, fences, towers, flag poles, utility poles, pipelines, transmission lines, smokestacks, and signs.
- (180) **Substandard lot.** A lot, with or without a structure, having a lesser dimension or area, or both, than what is required for the zoning district in which it is located.
- (181) **Substantial evidence.** Facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

Note: This definition is based on the definition in Wis. Stats. § 62.23(7)(de).

- (182) **Substantial modification.** When used in the context of telecommunication facilities, the modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:
- For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet, except as provided below.
  - For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more, except as provided below.
  - Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by 20 feet or more, unless a larger area is necessary for collocation, except as provided below.
  - Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

An activity is not a substantial modification under subs. (a) and (b) above, if a greater height is necessary to avoid interference with an existing antenna. Furthermore, an activity is not a substantial modification under sub. (c) above, if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable.

Note: This definition is based on the corresponding definition in Wis. Stats. § 66.0404.

- (183) **Support structure.** An existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

Note: This definition is based on the corresponding definition in Wis. Stats. § 66.0404.

#### T

- (184) **Tattoo.** To insert pigment under the surface of the skin of an individual by pricking with a needle or other instrument or technique so as to produce an indelible mark or figure through the skin.

Note: This definition is based on the corresponding definition in Wis. Admin. Code § DHS 173.03.

- (185) **Tattooist.** An individual who tattoos another upon his or her request.

Note: This definition is based on the corresponding definition in Wis. Admin. Code § DHS 173.03.

- (186) **Temporary use.** See land use, temporary.

- (187) **Through lot.** See lot, through.

- (188) **Trellis.** A structure consisting of lattice with supporting posts and rails often supporting vines or other plants and used for aesthetic purposes or as a visual screen or barrier, or both.

#### U

- (189) **Utility pole.** In the context of telecommunication facilities, a structure owned or operated by an alternative telecommunications utility, as defined in Wis. Stats. § 196.01(1d); a public utility, as defined in Wis. Stats. § 196.01(5); a telecommunications utility, as defined in Wis. Stats. § 196.01(10); a city, village, town, or county; or a cooperative association organized under Wis. Stats. ch. 185; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in Wis. Stats. § 182.017(1g)(cq); for video service, as defined in Wis. Stats. § 66.0420(2)(y); for electricity; or to provide light.

Note: This definition is based on the corresponding definition in Wis. Stats. § 66.0404.

#### V

- (190) **Variance.** A grant of relief, as approved by the zoning board of appeals, from the strict application of a rule or regulation that would permit development in a manner otherwise prohibited. (In contrast see special exception)
- (191) **Vision clearance triangle.** The area in the shape of a triangle located at the intersection of two roads or at the intersection of a road and a driveway within which the type and placement of structures and vegetation are controlled to ensure adequate sight distances for pedestrians and motorists. The configuration and size of this area is based on standards included in this chapter.

#### W

- (192) **Wetland.** An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
- (193) **Written or in writing.** Any representation of words, letters, drawings, graphics, or pictures.

#### Y

- (194) **Yard.** The area of a lot that is required to be unoccupied and unobstructed from the ground upward, except by trees, shrubbery, or as otherwise provided in this chapter.
- (195)

**Yard, front.** A yard as described for each of the following types of lots. (1) For an interior lot, that area that extends across the front of a lot between the side lot lines from the front lot line to the front of the principal building. (2) For a corner lot, that area that extends across the front of a lot between the side lot lines from the front lot line to the front of the principal building and that area that extends between the rear lot line to the front lot line from the side lot line to the side of the building. (3) For a double frontage lot, that area that extends across the front of a lot between the side lot lines from the front lot line to the front of the principal building and also that area that extends across the rear of a lot between the side lot lines from the rear lot line to the rear of the principal building.

(196) **Yard, rear.** A yard as described for each of the following types of lots. (1) For an interior lot, that area that extends across the rear of a lot between the side lot lines from the rear lot line to the rear of the building. (2) For a corner lot, that area that extends between the front yard abutting the street right-of-way and the opposing side lot line from the rear lot line to the rear of the principal building.

(197) **Yard, side.** A yard as described for each of the following types of lots: (1) interior lot, the area that extends between the front yard and rear yard from the side lot line to the side of the building; (2) corner lot, that area that extends between the front yard and the rear yard from the side lot line to the side of the principal building; (3) and double frontage lot, that area that extends between the front yard from the side lot line to the side of the principal building.

Z

(198) **Zoning administrator.** The individual so designated by the town board chairman to perform those duties as enumerated in this chapter and as authorized by state law.

(199) **Zoning board of appeals (ZBA).** A board created by the town board to render decisions relating to variances and administrative appeals and other matters enumerated in this chapter and in state law.

(200) **Zoning district.** An area on the zoning map within which the zoning code is uniformly applied to all properties. Zoning districts can be classified as base zoning districts or overlay zoning districts.

(201) **Zoning district, base.** A type of zoning district that establishes uniform regulations for the use and development of land. (In contrast see zoning district, overlay)

(202) **Zoning district, overlay.** A type of zoning district that is superimposed over one or more base districts, or parts of districts, and that modifies the requirements of the base district or imposes additional requirements, or both. (In contrast see zoning district, base)

(203) **Zoning permit.** A written permit issued for a specified parcel of land prior to the issuance of a building permit to ensure that the proposed use is consistent with the zoning requirements of the zoning district in which it is to be located.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020; Ord. No. 2021-O-55, §§ 7, 8, 7-14-2021)

Appendix F. - Map Requirements

The following information should be provided for each type of application to the extent applicable to the project. Much of the information for existing conditions may be obtained from Waukesha County's online GIS mapping feature.

Type of Information	Site Plan	General Development Plan	Precise Implementation Plan	Project Maps		
				Conditional Use	Zoning Map Amendment	Special Exception and Variance
<b>Background Project Information</b>						
Project name	X	X	X	X	X	X
Applicant name	X	X	X	X	X	X
Preparation date	X	X	X	X	X	X
Name of preparer	-	X	X	-	-	-
<b>Survey Information</b>						
North arrow and graphic scale	X	X	X	X	X	X
Address of subject property or legal description	X	X	X	X	X	X
Property boundaries	X	X	X	X	X	X

Acreeage of subject property	X	X	X	X	X	X
<b>Project Development Information</b>						
Land use summary table by density/intensity and acreage	-	X	X	-	-	-
Easements/rights-of-ways (location, width, purpose, ownership)	X	X	X	X	-	X
Common areas/conservancy areas (location, purpose, ownership)	-	X	X	-	-	-
Land to be dedicated to the public (boundaries, area, purpose)	-	X	X	-	-	-
<b>Setting</b>						
Property boundaries within __ feet of the subject property	X (50')	X (150')	X (150')	X (150')	X (150')	X (50')
Land uses within __ feet of the subject property	X (50')	X (150')	X (150')	X (150')	X (150')	X (50')
Zoning district boundaries within __ feet of the subject property	X (50')	X (150')	-	X (150')	X (150')	X (50')
Municipal boundaries within __ feet of the subject property	X (50')	X (150')	X (150')	X (150')	X (150')	X (50')
<b>Site Features (existing and proposed)</b>						
Ground contours when any slope exceeds __ percent	X (10)	X (10)	X (2)	X (10)	-	X (10)
Wetlands	X	X	X	X	-	X
Woodlands	X	X	X	X	-	X
Wildlife habitat, including critical wildlife habitat	X	X	X	X	-	X
Environmentally sensitive features	X	X	X	X	-	X
Water resources (rivers, ponds, etc.)	X	X	X	X	-	X

Internally drained basins	X	X	X	X	X	X
Floodplain boundaries	X	X	X	X	-	X
Environmental and manmade development constraints and hazards including brownfields, contaminated sites, unstable soils, high groundwater, bedrock, and high-pressure natural gas lines	X	X	X	X	-	X
<b>Buildings and Outdoor Storage/Activity Areas</b>						
Existing and proposed	X	X	X	X	X	X
Existing within __ feet of subject property	X (50')	X (150')	X (150')	X (150')	X (150')	X (50')
<b>Required Setbacks</b>						
Yard setbacks (front, side, rear and shore)	X	-	X	X	-	X
On-site septic systems	X	-	-	X	-	X
On-site wells and off-site wells within 10 feet of the perimeter of the subject property	X	-	-	X	-	X
<b>Landscaping Features (existing and proposed)</b>						
Fences, buffers, and berms	X	-	-	X	-	-
Pervious and impervious surfaces by type	X	-	-	-	-	-
Site amenities (benches, fountains, etc.)	X	-	-	-	-	-
Existing trees and other prominent vegetation	X	-	-	-	-	-
Trees/shrubs to be planted, including a plant list and specs.	X	-	-	-	-	-
Trees/shrubs to be retained	X	-	-	-	-	-
<b>Outdoor Lighting (existing and proposed)</b>						
Location	X	-	X	-	-	-

Fixture specifications	X	-	X	-	-	-
<b>Stormwater Facilities (existing and proposed)</b>						
Location	X	-	X	-	-	-
Specifications for each facility	X	-	X	-	-	-
<b>Utilities (existing and proposed)</b>						
Location	X	X	X	-	-	X
Type (sewer, telephone, etc.) (buried or overhead, if applicable)	X	X	X	-	-	X
Size/capacity, if applicable	-	X	X	-	-	-
<b>Transportation Facilities (existing and proposed)</b>						
Streets	X	X	X	X	-	X
Driveways and road access onto public and private roads	X	X	X	X	-	X
Parking areas and access aisles	X	-	-	-	-	X
Sidewalks and trails	X	-	X	X	-	X
Fire lanes (i.e., fire apparatus access)	X	-	-	-	-	X
Clear visibility triangles (location and dimensions)	X	-	X	-	-	X
<b>On-Site Parking (existing and proposed)</b>						
Drive aisles and parking stalls by size	X	-	X	-	-	-
Location of accessible parking stalls	X	-	X	-	-	-
Location and specifications/dimensions for accessibility ramps	X	-	X	-	-	-
Type and location of on-site parking signs and traffic control signs	X	-	X	-	-	-

Surface materials for parking lot (e.g., concrete, bituminous concrete, pavers)	X	-	X	-	-	-
Snow storage areas	X	-	X	-	-	-
Areas designated for queuing of vehicles for drive-through facilities (e.g., car washes, drive-up service windows, etc.)	X	-	X	-	-	-
Pedestrian walks between the parking lot and the building	X	-	X	-	-	-
Designated areas of a parking area for pedestrian walks	X	-	X	-	-	-
Loading lanes and loading docks	X	-	X	-	-	-
Stormwater drainage	X	-	X	-	-	-
Distance between parking areas and adjoining properties if less than 20 feet	X	-	X	-	-	-
Areas designated for bicycle parking	X	-	X	-	-	-
<b>Signs (existing and proposed)</b>						
Location	X	optional	optional	-	-	-
Specifications for each sign including type, height, dimensions, lighting, and other factors considered during the review process	X	optional	optional	-	-	-

**Note:** In many respects, a general development plan and precise implementation plan are similar, except that a precise implementation plan is more refined and detailed.

( Ord. No. 2020-O-48, § 1(Exh. A), 9-16-2020)