

**TOWN OF OCONOMOWOC**

**ZONING ORDINANCE**

**December 27, 2010**

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## **ARTICLE I: IN GENERAL**

### **Section-1: Authority and Intent.**

(A) This Ordinance is adopted under the authority granted by Chapters 59, 60, 62, 87, 145, 236 and 281 of the Wisconsin State Statutes and amendments thereto. Except as otherwise provided in this Ordinance, the current and future provisions of the State Statutes adopted herein are adopted and made a part of this Ordinance by references as if fully set forth herein. A violation of any such provisions shall constitute a violation of this Ordinance. Any further amendments, revisions, modifications, or additions of the current or future statutes incorporated herein are intended to be made part of this Ordinance in order to secure unified statewide regulation.

(B) This Ordinance is enacted to regulate the height, location and size of buildings; to classify and regulate the use of buildings and lands according to their specific characteristics; to regulate the density of population and the use of lot area; to regulate and determine the areas of open space surrounding buildings; to divide the town into districts of such number, shape and area to carry out the regulations of this Ordinance; to provide for the administration and enforcement of this Ordinance; and to prescribe penalties for the violation of the provisions of this Ordinance.

(C) In order to adopt this Ordinance known as the Zoning Ordinance of the Town of Oconomowoc adopted \_\_\_\_\_, 2011, and all amendments thereto, the Town Board of the Town of Oconomowoc, Waukesha County, Wisconsin, does ordain their adoption and does ordain the following:

### **Section-2: Purpose.**

The provisions of this Ordinance shall be held to be minimum requirements adopted to promote the health, safety, morals, comfort, prosperity and general welfare of the town. Among other purposes, such provisions are intended to provide for adequate light, air, sanitation, drainage, convenience of access, conservation of wetlands, and safety from fire and other dangers; to promote the safety and efficiency of the public streets and highways; to aid in conserving and stabilizing the economic values of the community; to preserve and promote the general attractiveness and character of the community environment; to guide the proper distribution and location of populations and of the various land uses; and otherwise provide for the healthy and prosperous growth of the community.

### **Section-3: General information.**

It is not intended by this Ordinance to: repeal, abrogate, annul, impair or interfere with any existing easement, covenants or agreements between parties, or with any rules, regulations or permits previously adopted or issued pursuant to law; provided, however, that where this Ordinance imposes a greater restriction upon the use of building or premises, or upon the height, location, or size of a building, or upon the open space requirements, the provisions of this Ordinance shall govern.

### **Section-4: Definitions.**

(A) **General interpretation.** For the purpose of this ordinance and when not inconsistent with the context; words used in this Ordinance, in the present tense include the future, in the singular number include the plural, and in the plural number include the singular and the term "shall" is always mandatory, not merely permissive.

- (B) **Specific words and phrases.** The following words, terms and phrases, when used in this Ordinance shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

**Administrative Officer:** Any officer such as a Clerk, Building Inspector, Engineer, Attorney, Planner, or Town Administrator, or his agent, who is appointed, elected\ or is officially designated by the Town, and/or County and does not include any Committee, Commission or Board or its individual members.

**Adult book store:** A commercial establishment that has a significant or substantial portion of its stock-in trade, or derives a significant or substantial portion of its revenues from books, magazines and other periodicals, videos, streaming videos, DVDs, tapes, and other similar items, which are distinguished or characterized by their emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment. This definition excludes films, motion pictures, video cassettes, streaming videos, DVDs, slides or other similar photographic reproductions given an "R" or "NC-17" rating by the Motion Picture Association of America.'

**Adult cabaret:** A commercial establishment, such as a nightclub, dance hall, bar, restaurant, or similar establishment, that regularly features (1) persons who appear semi-nude; (2) live performances that are characterized by the exposure of specific anatomical areas or by specified sexual activities; or (3) film, motion pictures, video cassettes, streaming videos, DVDs, slides or other photographic reproductions, which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas. This definition excludes films, motion pictures, video cassettes, slides, or other similar photographic reproductions given an "R" or "NC-17" rating by the Motion Picture Association of America

**Adult entertainment:** Any exhibition of any motion pictures, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated specified sexual activities or specified anatomical areas as defined in this section.

**Adult family home:** A place licensed by the state under s. 50.033(1m), Wis. Stats.

**Adult mini-motion picture theater:** An enclosed building with a capacity of less than 50 persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this Section, for observation by patrons therein.

**Adult motion picture theater:** An enclosed building with a capacity of 50 or more persons used for presenting materials distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this Section, for observation by patrons therein.

**Adult-oriented establishments:** Means, but are not limited to, adult bookstores, adult motion picture theaters, adult mini-motion picture establishments or adult cabarets. The term "adult-oriented establishments" further means any premises to which public patrons or members are invited or

admitted and which are physically arranged to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect.

**Agricultural or farm use:** The use of the land by tilling the ground, and growing, raising, cultivating, fertilizing, producing, and harvesting field crops; feeding, watering, grazing, breeding, managing, pasturing, or producing livestock, poultry, fur-bearing animals, or dairy animals; by the sale, barter or trade of products related to livestock, poultry, fur-bearing animals, or dairy animals; by any other horticultural, floricultural, or viticulture use; by animal or poultry husbandry; or by any combination thereof.

**Agricultural sales and service:** A place where equipment, products, byproducts, or materials primarily associated with agricultural operations are sold, processed, handled, or stored. Examples include agricultural implement sales, storage, or repair operations; feed and seed stores; agricultural chemical dealers and/or storage facilities; animal feed storage facilities; food processing facilities; and canning and other packaging facilities

**Apartment:** A suite of rooms or a room in a multiple dwelling which suite or room is arranged intended or designated to be occupied as a residence of a single family, individual or group of individuals. Such a suite shall also generally define a dwelling unit (DU).

**Apartment house:** See **Dwelling**, multiple.

**Applicant:** Any person or entity applying for any permit, variance, special exception, conditional use, site plan, plan of operation, rezoning, license, or other application for governmental approval under this Ordinance, who should be a landowner, specifically a person or entity holding fee title to the parcel as set forth below:

- (1) In the case of corporation, an officer or member of the corporation who has overall responsibility for the operation of the site for which the permit is sought
- (2) In the case of a limited liability company, a member or manager.
- (3) In the case of a partnership, a general partner
- (4) In the case of sole proprietorship, the proprietor.
- (5) For a unit of government, by an elected official or other duly authorized representative.
- (6) In the case of an individual, by the individual, his attorney, or one allowed to act as power of attorney.

**Arcade:** Any premises containing three or more amusement devices for the primary use and entertainment of the public. Premises for which a license to sell fermented malt beverages and/or intoxicating liquors has been issued may be excluded from this designation.

**Area wide stormwater facilities:** Stormwater facilities designed to provide peak flow reduction, water quality treatment, and/or groundwater recharge for entire watersheds or drainage areas, which may extend across property lines. Area wide stormwater facilities coordinate stormwater management for the watershed, including existing and future land development activities and best management practices for individual sites, and to provide for long-term maintenance and funding of the facilities.

**Base setback line:** The ultimate street line as established by the building location provisions of this

Ordinance, and from which all required setbacks shall be computed.

**Basement:** A story partly underground which, if occupied for living purposes, shall be counted as a story for purposes of height measurement, but limited as to meeting minimum floor area requirements of this Ordinance.

**Bed and breakfast facility:** An owner occupied residence often in a building with landmark or historical significant qualities where lodging for paying guests is offered and which offers breakfast to those guests as its only meal.

**Beekkeeping:** The act of cultivation of bees as a commercial venture or hobby for the production of honey.

**Boarding house:** A building or premises where meals or meals and lodging are offered for compensation for five or more persons, but not more than 12 persons, and having no more than five sleeping rooms for this purpose. An establishment where meals are served for compensation for more than 12 persons shall be deemed a restaurant. An establishment with more than five sleeping rooms shall be deemed a hotel.

**Boathouse:** An accessory structure located close to the ordinary high water mark and designed for the storage of boats, accessory marine equipment and other items normally used by the occupants of the lot in the daily use activities of waterfront property. The structure shall have a large garage type door for primary access on the side of the building facing the water. A boathouse may also be used for the storage of accessory marine and other items used by the occupants of the lot. A boathouse shall be placed on a permanent foundation extending below the frost line or on a concrete slab and contain at least 200 square feet in area. Under no circumstances may the boathouse be used for human habitation human, habitation being defined as utilizing the building for occupancy for overnight living or longer periods of time and including the aggregate of normal living activities such as lounging, cooking, eating, sleeping, etc. This definition includes boat shelters.

**Boat livery:** A tract of land together with associated structures on land and in the water where boat mooring, anchoring and/or dry land boat storage is provided for boat owners for a fee. See *Marina*.

**Breezeway:** An above-ground, roofed area for passage for the purpose of connecting two structures or buildings, as between a house and a garage, with either open or enclosed sides, with or without a foundation, and must be designed and constructed in keeping with the existing structures or buildings.

**Building:** Any structure used designated or intended for the protection, shelter or enclosure of persons, animals or property.

**Building, accessory:** A building or portion of a building subordinate to the principal building and used for a purpose customarily incident to the permitted use of the principal building.

**Building, height of:** The vertical distance from the average established street grade in front of the lot or the finished grade at the building line, whichever is higher, to the highest point of the coping of a flat roof, to the deck line of a mansard roof or to the average height of the highest gable of a gambrel, hip or pitch roof.

**Building inspector:** A person who has been designated, or appointed by the Town Board, to fulfill the obligations of construction inspections within the Town of Oconomowoc.

**Building, principal** The main building on a lot, intended for primary use as permitted by the regulations of the district in which it is located. Any building intended to be used for human habitation shall constitute the principal building. Where the construction of the building constitutes one or more than one structure it shall be determined by the Building Inspector based upon the above-ground elements, if there is a separation between the above-ground elements so that they appear to be separate structures, the above ground elements shall be regulated as separate structures, and such separate structures may be restricted or prohibited as regulated herein. This shall be true even if the above ground elements are connected below ground, or by insubstantial means that do not dispel the above ground appearance of separate structures. Insubstantial means include, without limitation: unenclosed connections; connections that lack a roof or floor; connections that are not heated, ventilated or air conditioned in the manner of the main structure; connections that lack substantial structural elements that are present in the main structure; and connections that lack a foundation or footing.

**Code:** Means the Town of Oconomowoc Zoning Ordinance.

**Community living arrangement:** Any one of the following facilities (1) residential care centers for children and youth, as defined in s. 48.02 (15d), Wis. Stats., operated by a child welfare agency licensed under s. 48.60, Wis. Stats.; (2) group homes for children, as defined in s. 48.02 (7), Wis. Stats.; and (3) community-based residential facilities, as defined in s. 50.01 (l g), Wis. Stats. The term does not include adult family homes, as defined in s. 50.01, Wis. Stats., day care centers, nursing homes, general hospitals, special hospitals, prisons, and jails

**Composting facility:** A place where vegetation (but not food wastes) may be collected and composted. The term includes the storage and manipulation of materials prior to, during, and following composting

**Condominium:** A of ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the he project held in common ownership or use with owners of the other units.

**Contractors yard:** An exterior premises on which construction and maintenance materials (i.e. salt, sand, cement, stone, etc.) or bulk materials (i.e. sand, gravels, stone, timbers, wood chips, etc.) or construction or maintenance equipment (i.e. bulldozers, front-end loaders, backhoes, trucks, trailers, etc.) are stored to be utilized for off-site construction and maintenance purposes. Where landscape materials are stored or sold for retail or wholesale markets, and not as an accessory to an otherwise permitted use by right, such uses shall not be considered a contractors yard.

**Dance hall:** A facility including any room, place or space in which a public dance, public ball with live or amplified music (not including jukebox) and live entertainment including shows, disc jockeys, comedy or dramatic acts, is conducted excluding any public or parochial school or church hall when used for public dances sponsored by the school or church authority or of a parent-teachers association.

**Deck:** A structure characterized by a flat open horizontal surface or platform suspended above the grade of the land it covers and which may be supported by posts, beams, cantilevers and/or by other methods.

**District:** A section of the town for which the regulations governing the height, area and the use of building and premises are the same.

**Dog:** A domestic mammal (*Canis familiaris*) closely related to the common wolf, but not including coyotes, wolf mixes or hybrids of wolves or coyotes.

**Dwelling, multiple:** A building or portion thereof designed for and occupied by more than one family, including duplexes, row houses, condominiums, apartment houses and apartment hotels. (Two + DU).

**Dwelling, one-family:** A detached building designed for and occupied exclusively by one family (one DU).

**Dwelling, two-family:** A detached or semi-detached building designed for and occupied exclusively by two families (two DU).

**Emergency shelter:** A place where primarily indigent, needy, homeless, or transient individuals are temporarily housed and provided with ancillary services

**Entrance gate or entrance monument:** A structure, usually built with a decorative feature or landscape feature located at the entrance to a property such as walls which are often constructed in conjunction with lights, fencing, gates, pillars with lights, property identification signage, or raised planting boxes.

**Environmental corridors (primary and secondary):** Are the composite of the best individual elements of the natural resource base including surface water, streams, and rivers and their associated floodplains and shorelands; woodlands, wetlands and wildlife habitats; areas of groundwater discharge and recharge; organic soils, rugged terrain and high relief topography; and significant geological formations and physiographic features. A description of the process for defining and delineation of Environmental Corridors is set forth in the Southeastern Wisconsin Regional Plan Commission's Technical Record, volume 4, No. 2 and is incorporated herein by reference.

**Environmental significant areas:** Are lands which are zoned as C-1 Conservancy District, A-E Exclusive Agricultural Conservancy District, or E-C Environmental Corridor District or designated as primary environmental corridor, secondary environmental corridor or isolated natural areas on the Waukesha County Development Plan.

**Family:** A person who lives in a dwelling unit as a single housekeeping entity, or a body of persons who live together in one dwelling unit (DU) as a single housekeeping entity.

**Farm or Agricultural Operation:** One or more parcels of land owned and managed by a single entity and zoned for agricultural or farm use upon which natural fibers, animals, or food for human or animal consumption is produced.

**Farm, fur:** A tract of land devoted in whole or part to the raising of fur bearing animals for commercial purposes.

**Farm, general:** A tract of land devoted principally to the raising of crops, livestock and/or farm products not including commercial stables or private stables.

**Farm, pig:** A of land devoted principally to the raising and feeding of pigs and hogs.

**Farm, poultry and/or egg production:** A tract of land devoted in whole or part principally to the raising of poultry and/or egg production for commercial purposes.

**Feed lot:** A lot or facility used or proposed to be used for the confined feeding and/or holding of animals where the number and kind of animals exceed 75 units per acre of confined area. One animal unit shall be equivalent to 1,000 pounds of live animal weight, and the acreage used to compute the density shall include all fenced areas, pens, yards or similar uncovered structures and all covered enclosures where



the animals are enclosed for 30 or more continuous 24-hour days per year. Dairy farm operations utilizing seasonal winter confinement of livestock shall be excluded from this definition unless deemed contrary by the Town Board. The intent of this definition is to clearly distinguish the feed lot type of farming situation which concentrates large numbers of livestock on small acreage from the more general type of farm operation in which cultivation and livestock grazing or feeding is conducted on a smaller scale. It is not the intent of this definition to prohibit these kinds of operations, but to recognize the potential as a pollution source and to effectively control it.

**Finding:** A written conclusion or determination that is considered in reaching a decision.

**Flood:** A temporary rise in the stream flow or change in lake level that results in water over-topping the boundaries of its channel and inundating areas adjacent to the stream channel or lake bed.

**Floodplain:** Those lands, including the floodway subject to inundation by the 100-year reoccurrence flood, or, where such data is not available, the maximum flood of record.

**Flood proofing:** Any combination of structural provisions, changes or adjustments to properties and structures subject to flooding, primarily for the purpose of reducing or eliminating flood damage to the properties, water and sanitary facilities, structures and contents of buildings in flood hazard areas. Any such measures shall be certified by an architect or engineer as conforming to these requirements.

**Flood protection elevation:** The flood protection elevation shall correspond to a point two feet of freeboard above the water surface profile associated with the regional flood and the official floodway lines. Also see **Freeboard.**

**Floodway:** Those floodplain areas including the channel required to carry and discharge the 100-year reoccurrence interval flood.

**Floor area:** The maximum horizontal projected area within the perimeter of the outside surface of walls or supports of the building or structure, and as further described in this Ordinance.

**Floor area ratio (FAR):** An indication of the total floor area of buildings allowed on a given lot, expressed as a percentage ratio to the total area of the lot; i.e., a floor area ratio of 100 percent allows a floor area equal to the total area of the lot, a floor area ratio of 50 percent allows a floor area of one-half the total area of the lot, etc. A floor area ratio of 50 percent could be applied to a one-story building occupying 50 percent of the lot, or a two-story building occupying 25 percent of the lot.

**Foster and treatment home:** 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.

**Freeboard:** A factor of safety expressed in terms of a certain amount of feet above a calculated floor level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated, and include, but are not limited to, ice jams, debris, accumulation, wave action, obstructed bridge openings and the effects of urbanization on the hydrology of the watershed.

**Funeral home:** 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.

**Fur-bearing animals:** Animals which are specifically raised for their pelts, including, but not limited to

badger, beaver, bobcat, coyote, fisher, fox, lynx, marten, mink, muskrat, opossum, otter, raccoon, skunk, weasel and wolf.

**Garage, private:** A private garage is one where private vehicles are kept for storage purposes only and wherein such use is accessory to the residential use of the property on which it is stored.

**Garage, public or commercial:** Any building or premises, other than a private or a storage garage, where motor-driven vehicles are equipped, repaired, serviced, hired, sold or stored for monetary gain as a business.

**Garage, storage:** Any building or premises used for the storage only of motor-driven vehicles, pursuant to previous arrangements and not to transients, and where no equipment, parts, fuel, grease or oil is sold, and vehicles are not equipped, serviced, repaired, hired or sold for monetary gain as a business.

**Grade, established:** The elevation of the finished street at the centerline or curb as fixed by the engineer or by such authority as shall be designated by law to determine such an elevation.

**Greenhouse:** An enclosed building or structure constructed mainly of glass, glasslike or translucent material, cloth or lath, and a support frame and which is devoted to the protection or cultivation of flowers, vegetables, or other tender plants.

**Green space:** A natural or man-made land area not occupied by any structure or impervious surface.

**Group day care center:** 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.

**Guesthouse:** A structure used principally for occasional occupancy by guests of the owners, and shall not be leased or rented for human occupancy.

**Highwater elevation:** The average annual high water elevation of a pond, stream, lake, flowage or wetland referred to an established datum; or where such elevation is not available, the field elevation where the presence of water is so continuous to leave a distinct mark due to erosion, change in or destruction of vegetation, or changes in other easily recognizable topography, geological or vegetative characteristics.

**Highway:** A right-of-way designated by the county established street and highway width map or any other comprehensive system for the principal purpose of providing vehicular thoroughfare and not necessary affording direct access to abutting property.

**Home occupation:** A gainful occupation conducted by a member or members of the family within its place of residence, where the space used is incidental to residential use and no article is sold or offered for sale except such as is produced by such home occupation.

**Horticulture:** The culture of growing and cultivating fruits, flowers and related plant material.

**Hot tub:** An outdoor warm water reservoir usually with hydromassage jets. A hot tub may be built in or portable. The term includes spa

**Hotel:** A building in which lodging, with or without meals, is offered for compensation and which may

have more than five sleeping rooms for this purpose.

**Housekeeping entity:** A housing or lodging unit where all of the amenities of bathing and sanitary facilities, eating, cooking, living, sleeping and storage are provided the person or body of persons occupying and living together as a single entity within the unit. A single-family residence or dwelling units in a multiple family structure are deemed to be a single housekeeping entity.

**Human habitation:** Utilizing a building or structure for overnight living or longer periods of time, and including the aggregate of normal occupancy activities such as lounging, cooking, eating, sleeping, bathing, sanitation, etc.

**Hunting preserve:** A place where the public or those with a membership can, for a fee or other consideration, hunt game animals not confined within a fenced enclosure. This use may include one or more buildings and other structures directly related to operation of this use, such as an office, structures and enclosures for rearing game animals for hunting purposes, and buildings for housing maintenance equipment, supplies, and related materials.

**Infiltration swales:** A shallow grassed or vegetated channel designated to capture detain and treat stormwater and convey larger flows. It takes surface flows from adjacent paved surfaces and allows it to infiltrate through a soil bed into underlying soils. The swale provides conveyance for larger storm events to the storm drain system. Variations on designs include an underlying drain rock reservoir, with or without a perforated under drain.

**Inhabit:** Means any building or structure which is designed or intended to be occupied, used, or inhabited.

**Impervious surface:** Land area and surfaces where precipitation is unable to infiltrate into the soil. Such surfaces include, but are not limited to roadways and pathways that are paved with concrete or asphalt, roofs, patios, and similar surfaces.

**In-law unit:** A room or suite of rooms used or occupied as a separate housekeeping entity and located in a single family dwelling occupied by persons related by blood or marriage to the family or persons occupying the single-family dwelling.

**Junk:** Junk means garbage, waste, refuse, trash, any motor vehicle upon which no current license plate is displayed, any inoperable or abandoned motor vehicle, any used tire or used motor vehicle part, and any scrap material such as metal, lumber, furniture, paper, cans or bottles. Any trailer which is required to be licensed by the State of Wisconsin, but which is unlicensed or any trailer which is abandoned or inoperable is considered junk under this Ordinance.

**Kennel, commercial:** An establishment, structure or premises where dogs or other household pets are raised, sold, bred, boarded, trained or groomed for commercial purposes or exceeds four (4) dogs. The raising and selling of three or more litters of animals per year shall constitute a commercial kennel. This definition includes businesses termed "doggy day care" and dog rescue operations or any similar operations. The training or grooming of dogs without other related kennel activities, as listed above, is not considered a commercial kennel, but those activities are considered commercial type uses which are otherwise regulated in this Ordinance.

**Kennel, hobby:** A noncommercial establishment, structure or premises, accessory to the principal use of the property where more than the number of regulated household pets, six months minimum of age as

are permitted by right are kept for such purposes as pets, field trials, shows or hobbies. The occasional raising of not more than two litters of dogs per year on a premise for sale or disposal of such dogs, within six months of such birth shall not be considered a hobby kennel.

**Land-altering activity:** Any man-made change of the land surface, including removing vegetative cover which changes the land surface, cutting of trees which changes the land surface, excavating, soil removal, filling, grading, dredging and channel improvements in excess of those limits set forth in this Ordinance, but not including agricultural land uses such as planting, growing, cultivating and harvesting of crops, growing and tending of gardens and harvesting of trees, and tree nurseries.

**Landscaping, lawn and garden business:** Means any property on which or from which landscaping equipment ( other than one riding mower and/or one push lawn) consisting of trucks, trailers, materials and equipment to be stored and maintained on the site for the purpose of taking to the clients' properties to perform landscaping construction and landscaping maintenance services, such as lawn installation, plant installation, hardscaping, water feature installation, landscape lighting installation, snow plowing and removal and other traditional landscape construction services, the growing of trees, shrubs, bulbs, annuals, perennials and other plants imported to the site which are to be installed by the business on the clients' properties, storage of bark, mulch, grass seed, cover straw, lawn fertilizer, boulders, modular block, pond and waterfall kits, landscape lighting, natural stone and brick, and other items to be imported to the site and then installed on the clients' properties; wholesale or retail nursery sales of trees, shrubs, bulbs, annuals, perennials and other plant material grown and/or imported and sold to wholesale customers, (i.e., other landscapers) or of hardwood, bulk bark, mulch, grass seed, cover straw, lawn fertilizer, boulders, modular block, pond and waterfall kits, and landscaping natural materials, shall be imported and sold to wholesale customers

**Lighting, high intensity:** Lighting that is considered obtrusive to neighboring properties or traffic.

**Lighting, low intensity:** Lighting that is unobtrusive to neighboring properties or traffic.

**Living area:** The occupied or usable floor area in a building designed and built with necessary ceiling, flooring, and electrical, heating and plumbing facilities to accommodate normal human habitation.

**Lodging house:** A building where lodging only is provided for compensation and having not more than five sleeping rooms for this purpose.

**Lot:** A parcel of contiguous land with described boundaries and abutting or having access via an approved easement to a public street or other approved way. Such parcel shall be exclusive of any land lying in a public right-of-way, mil tax road, navigable streams, or other navigable body of water. Where such navigable streams, navigable body of water, mil tax road, or public rights-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 Ordinance.

**Lot area:** The area of a lot and bounded by lot lines exclusive of land dedicated, reserved, or used for public rights-of-way, any mil tax road, and any navigable streams or other navigable bodies of water.

**Lot depth:** The mean horizontal distance measured between the street line and the opposing rear line or lines of the lot.

**Lot, nonconforming:** A lot that at the time of creation conformed to existing rules and regulations, but is now inconsistent with this chapter.

**Lot lines:** The lines bounding a lot.

**Lot line, side:** A lot line extending from a street line towards the interior of the lot block and separating adjoining lots.

**Lot of record:** A platted lot or lot described in a Certified Survey Map, which has been approved by the Town and has been recorded in the office of the Waukesha County Register of Deeds, or a metes and bounds description of a lot which has been recorded in the Waukesha County Register of Deeds Office prior to the adoption of the original Waukesha County Zoning Code On February 26, 1959.

**Lot width, minimum average:** The mean horizontal distance measured between side lot lines, perpendicular to the lot depth and at a point in relation to the depth where the product of the two would produce the minimum required lot area.

**Lowest floor or level:** The lowest floor or level of the enclosed area in a building, including a basement

**Master grading plan:** A detailed plan that depicts the existing and proposed elevations or topography of a subdivision or other unified development site. A Master Grading Plan contains components that depict site drainage patterns, erosion control measures, road and lot elevations, and other data deemed appropriate by the Planning and Zoning Division, Land Resources Division, or Town Engineer.

**Mobile home:** That which is, or was as originally constructed, designed to be transported by any motor vehicle upon a public highway and designed, equipped and used primarily for sleeping, eating and living quarters, or as intended to be so used; and includes any additions, attachments, annexes, foundations and appurtenances. The term "mobile home" does not include a recreational vehicle nor does it include a manufactured home as defined in Wis. Admin. Code Comm. § 27.10(3).

**Mobile home park:** Any plot or plots of ground upon which two (2) or more units occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodations. Wisconsin Statutes, Section 66.0435 and amendments thereto.

**Modular home:** A principal structure which is partially pre-assembled at a manufacturing plant and placed together or erected on a lot or parcel as a dwelling unit or units (also called a "pre-fabricated" or "pre-cut" homes or "double-wide" units) meeting the requirements of all applicable state and local building codes.

**Motel:** A building or series of buildings in which lodging is offered only for compensation, has more than five sleeping rooms or units, and is distinguished from a hotel primarily by reason of providing direct, independent access and adjoining parking for each rental unit.

**Motor vehicle:** Motor vehicle means any automobile, truck, trailer, tractor, bus, vehicle or other conveyance that is self-propelled by an internal combustion engine or motor, and for the purposes of this zoning Ordinance shall include but not be limited to boats, recreational vehicles, all-terrain vehicles, motorized farm equipment and mobile machinery, motorcycles and snow mobiles.

**Navigable river or stream:** Those intermittent and perennial rivers, streams, ponds, lakes and flowages shown on the U.S.G.S. Topographic Quadrangle 7.5 minutes series maps of Waukesha County (and as

periodically updated) and those stream reaches shown on the large scale topographic mapping control survey project for Waukesha County conducted under Section 87.31 Wisconsin Statutes and amendments thereto. Any water is considered navigable in fact if it meets the tests outlined in state laws. Determinations of navigability are ultimately field determinations and map delineations are merely the best representation of navigable conditions at any particular time.

**Nursery:** Any parcel of land used to cultivate, grow, raise, and harvest trees, bushes, shrubs, vines, ornamental plants, flowers, and other plants in the outdoors or in greenhouses and for sale to retail or wholesale outlets or garden centers.

**Nursery, retail:** The sale of trees, bushes, shrubs, vines, ornamental plants, flowers, and other plants on the premises where they are grown, or the place of business where the nursery stock is received after being transported from an off-site location.

**Nursery, wholesale:** The cultivation of trees, bushes, shrubs, vines, ornamental plants, flowers, and other plants on a property and where the nursery stock is transported to market and is not offered for sale on site.

**Nursing home:** 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 complex

**Occupy:** Means any building or structure which is designed or intended to be occupied, used, or inhabited.

**Offset:** The horizontal distance measured from the side or rear lot line, not along a street, to any roofed or enclosed portion of a building not including an overhang, as defined herein, of 24 inches or less.

**Offsite parking lot:** A place where motor vehicles associated with an offsite use may be parked for a short duration. It may be available to the public or reserved to accommodate parking for a specific purpose or special event.

**Open space:** Land area used for recreation, agriculture, and resource protection, amenities for recreational purposes or buffers.

**Open space, common:** Lands which are open space and owned in common by individuals within a development or land trusts or other private conservation organizations, if access is available to the public, and as may be agreed to in the approval of the development by the Plan Commission or Town Board.

**Open space, public:** Lands which are open space, dedicated and owned by a public entity, such as a town, city, village or other public entity, and used for any public purpose other than streets or highways.

**Ordinance:** Means the Town of Oconomowoc Zoning Ordinance.

**Ordinary highwater mark:** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or

prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

**Outdoor/Indoor recreational facilities:** Land and structures, along with accessory equipment, designed and utilized for leisure time activities of a predominantly “outdoor or indoor” nature and of having a more specific purpose such as tennis courts, swimming pools, basketball or racquetball courts, ice arenas, facilities used for sports orientated and/or cultural events, etc., other than passive park-like open areas, and further classified as follows:

- (1) **Public:** Facilities owned and operated by a governmental agency for limited or general public use.
- (2) **Private commercial:** Facilities owned and operated by an individual, group or corporation for profit as a business whether or not open to the general public use.
- (3) **Private non-commercial group:** Facilities owned and operated by a group for the exclusive use of the members of such group and their guests and not for profit as a business.

**Outdoor shooting range:** An outdoor area where patrons shoot guns, such as pistols, rifles, and shotguns, and bow and arrows for target practice. The term includes archery ranges, trap and skeet clubs, target ranges, and the like

**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.

**Parking space:** An area permanently reserved and maintained for the parking of one motor vehicle which meets the dimensional standards of this chapter

**Patio:** A structure characterized by a flat, open, horizontal surface or platform which is semi- pervious or impervious and usually constructed of materials including, but not limited to concrete, brick, flagstone, crushed stone, compacted stone, gravel, wood, or other natural or man-made materials. A patio is located on the surface of the ground or at the average grade of the ground surface. This definition includes sport courts such as tennis courts, basketball courts, and similar structures that are not associated with normal driveway construction.

**Person:** Means persons, associations, partnerships or corporations.

**Personal storage facility:** A place where individual storage units are offered for rent, lease, sale, or other arrangement. The term includes a tract of land used to store motor vehicles and watercraft

**Plan of operation:** Plan of Operation is a statement of operation, signed by the owner and tenant or operator of the business or use, including a detailed description of the request, number of employees, hours of operation, and types of uses, products or services offered and any special events which are to be conducted on the property.

**Planned unit development (PUD):** A development strategy, process or procedure whereby a relatively large parcel of land is developed for a specific use in such a way as to provide specific benefits to the

community as well as to the developer and future citizens who will reside within the development, and when the normal application of standards and requirements are waived or made more flexible, and which shall contain substantial amounts of common open space for aesthetic, natural preservation or recreational purposes.

**Planned unit development mixed:** A Planned Unit Development which is a mixture of retail, service uses, industrial or residential uses. Buildings associated with open space and recreational uses, either public or private, shall be considered part of the open space use.

**Planting screen:** An area landscaped with natural growing plant material which effectively screens off from vision objects it is intending to hide from view.

**Polystructure:** Means an enclosure having a frame of steel or other materials which is covered with plastic, polyurethane, vinyl, canvas or other flexible sheeting material

**Pool, kiddie/wading:** means an above ground water pool that is designed to be no deeper than twenty four (24) inches at its deepest point, that does not exceed that maximum depth at any time, that is temporarily located on a lot, without electricity, filter, or heater,

**Pool, relaxation/floating:** means a structure above or below ground level, or combination thereof, designed to hold water that is more than twenty four inches and no more than 30 inches deep at its deepest point, which does not exceed that maximum depth at any time, to be used for recreation or relaxation purposes, such as a hot tub.

**Pool, swimming:** means a structure above or below ground level, or combination thereof, designed to hold water more than 30 inches deep at its deepest point, to be used for recreation or relaxation purposes. Also included in this definition is any water pool structure that is not a relaxation/floating pool or kiddie/wading pool as defined herein.

**Porch/Stoop:** A functional element of the ingress/egress of a principal structure allowing for easy and convenient passage between the exterior and interior of said structure. For the purposes of regulation in this Ordinance, a stoop is considered to be twenty (20) feet or less whereas a porch exceeds twenty (20) square feet in area.

**Porous pavement:** A special type of asphalt or concrete pavement that allows rain and snowmelt to pass through it, thereby reducing the runoff from a site and surrounding areas. The porous pavement surface is typically placed over a highly permeable layer of open-graded gravel and crushed stone. A filter fabric is placed beneath the gravel and stone layers to screen out fine soil particles. For the purpose of this Ordinance, permeable pavers, which are blocks with gravel in between them, will also be considered porous pavement.

**Portable on-demand storage structures (PODS and SAM):** Means any container, storage unit, shed-like container or other portable structure that can or is used for the storage of personal property of any kind and which is located for such purposes outside an enclosed building other than an accessory building or shed complying with all building codes and land use requirements

**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.



**Poultry:** Poultry means domesticated birds kept for eggs or meat or as pets.

**Private club or lodge:** A building or grounds used for regular or periodic meetings or gatherings of a group of persons organized for a nonprofit purpose, but not groups organized to render a service customarily carried on as a business.

**Professional office:** The office of a doctor, practitioner, dentist, minister, architect, landscape architect, professional engineer, lawyer, author, musician or other similar recognized profession.

**Public and semi-public structures and uses:** Structures and uses principally of an institutional nature and serving a public need, such as hospitals, rest homes, schools, including private, academic and nursery schools, libraries, post offices, museums, police and fire stations, public and private utility facilities and other public services, not including the operation of a public bar, restaurant or recreational facility as a commercial enterprise.

**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

**Pyramiding:** The act of obtaining or providing access to public bodies of water across private lots or lands in a manner which increases the number of families which have access to the water to a greater degree than would have occurred with individual riparian owners having individual lots fronting on the water. Publicly owned access points shall not fall within this definition.

**Quarrying:** The removal of rock, slate, gravel, sand, topsoil, or other natural material from the earth by excavating, stripping, leveling, or any other such process, including the mining of non-metallic minerals for commercial purposes and personal gain.

**Rain gardens:** A manmade depression in the ground that is used as a landscape tool to improve water quality. The rain garden forms a bio retention area by collecting water runoff and storing it temporarily, permitting it to be filtered and slowly absorbed by the soil.

**Recreational vehicle:** A vehicle that includes a cabin for living accommodations and is commonly used for recreational travel and touring. Vehicles included in this category include travel trailers, tent trailers and camping trailers, all of which must be towed by another vehicle, as well truck campers, motor homes and camper vehicles, all of which have a motor within the body of the vehicle and are self-propelled.

**Recycling center:** A place where recoverable materials, which have been previously removed from the waste stream, may be stored prior to shipment to others who use those materials to manufacture new products. Typical recoverable materials include glass, paper, metal, and plastic.

**Refuse disposal site:** means a tract of land operated, subject to restrictions of use and under supervision, by a public or private agent where more than one family may take all types of refuse, including organic and inorganic wastes (but excluding human excretions and sewage and/or other liquid waste), for compacting and burial by sanitary landfill methods. Hard or clean fill operations involving material such as foundry sand, dirt, gravel, concrete, or other forms of clean fill material shall not be required to conform to the provisions of this Ordinance.

**Regulated household pets:** All dogs, cats, birds and potbellied pigs are regulated household pets.

**Remodeling:** Any structural alterations, additions, modifications, rebuilding or lateral enlargements of any such existing structures, principal or accessory. The term "remodeling" shall also refer to the conversion of living spaces of other floor areas into space for living purposes; such as converting a part of the living into a bedroom or bathroom regardless of whether such changes require structural alterations to the basic structures. Ordinary maintenance repairs, including painting, decorating, paneling, replacement of doors, shingles, siding, windows, and other nonstructural components shall not be considered remodeling.

**Resort:** A place with lodging facilities and on-site amenities primarily intended for the use of overnight guests. Guest rooms may be located in one or more buildings and may include kitchen facilities. In addition to lodging facilities and recreational amenities, such as golf, horseback riding, or lake/beach access, a resort may also include a lodge or other gathering place for guests, dining facilities, administrative facilities, and maintenance and storage facilities

**Restaurant:** Any building, room or place where food and beverages are offered for retail sale for on-site or off-site consumption, and where the on-site consumption of beer, wine, or other liquors, if any, is clearly secondary and subordinate to the sale of food and nonalcoholic beverages. The serving in taverns of free lunches, consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter shall not constitute such taverns to be restaurants. The term "restaurant" shall not apply to structures used by religious, social, fraternal, youth or patriotic organizations which occasionally serve or sell meals to transients or the general public, nor shall it include any private individual selling foods from a movable or temporary stand. 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.

**Retaining wall:** A structure more than 24 inches in height as measured from finished grade or a combination or series of multiple structures more than 24 inches in height from finished grade, constructed of man-made or natural materials for the main purpose of retaining land or stone and resisting the lateral pressure of the land or stone. For the purposes of this Ordinance, outcroppings are also considered retaining walls if they meet the retaining wall definition

**Retirement home:** A place where individuals, generally 62 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.

**Right-of-way:** A strip of land dedicated or acquired for public use.

**Road:** A public or private right-of-way usually affording primary access to abutting property.

**Roadside stand:** A farm building used or intended to be used solely by the owner or tenant of the farm on which such building is located for the sale of the farm products raised on such farm.

**Rural accessory building:** An existing building, which is: (1) set apart from other buildings as being distinct, due to its construction technique, construction materials, age, local historic significance, or design as determined by the Town Board; and (2) is characteristic of past agricultural practices or rural life, whether presently utilized or not for agricultural practice, as determined by the Town Board; and (3) which is sufficiently structurally sound to meet minimum safety requirements for the proposed use, as determined by the Town 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 the Town.

**Salvage yard:** A place where salvage materials, such as scrap metal, rubber tires, and used timber and lumber, may be bought, sold, exchanged, stored, baled, packed, disassembled, or handled. (Note: In contrast see recycling center.)

**Sand or gravel pits.** See **Quarrying.**

**Seasonal product sales:** 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. The term does not include fireworks sales for the Fourth of July.

**Selective vegetative cutting or removal:** The process of selectively cutting or removing vegetation which would include a determination by a forester or naturalist of which plants, including woody vegetation and trees, middle layer species and ground layer vegetation is to be removed or cut based upon the species type, quality, indigenous character (alien, invasive or native) or otherwise of poor quality (dead, diseased, dying).

**Self-service storage facility and mini warehouses:** A building or a portion thereof, or a group of buildings, divided into separate, self-contained, self-service storage units that are rented or leased by the owner and used to meet the storage needs of a household or for the storage of personal property of the general public. The units are not for commercial storage purposes.

**Setback:** The horizontal distance between the "base setback line" and the nearest roofed or enclosed portion of a building, excluding the 24-inch roof overhang defined herein.

**Setback, shore:** The horizontal distance between the average annual high water mark of a lake or stream, the conservancy/wetland district, or the established one hundred year floodplain location if available, to the closest point of a principal or accessory building.

**Service oriented business:** A business operated by a single person or family where personal services are performed or assistance is given, as opposed to products, and involves predominantly professional operations as outlined in this ordinance regarding a limited family business.

**Screening:** A feature such as a wall, fence, hedge, berm, or similar feature used to shield or obscure elements of a development from adjacent sites

**Sign:** means any display of lettering, logos, colors, lights, or illuminated neon tubes visible to the public from outside of a building or from a traveled way, which either conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to goods, products, services, promotions, events, occasions, facilities, persons, property interest, or business either on the lot or on any other premises. The types of signs as used in this Ordinance shall be further defined as follows:

- (1) **Awning/canopy:** A non-illuminated projecting identification sign painted on or affixed flat to the surface of an awning or canopy and which does not extend vertically or horizontally from the awning or canopy.
- (2) **Banner:** A non-illuminated, elongated sign intended to be hung either with or without frames, possessing characters, letters, illustrations, or ornamentation applied to paper, plastic, fabric or any kind usually used for temporary display for the special announcement of a coming event or occasion.

- (3) **Billboard:** Any sign at least 200 square feet but not more than 432 square feet in area per one side, no more than 28 feet in height and generally used to advertise a place of business or product.
- (4) **Bulletin board:** Any sign used by governmental and institutional agencies to publicly display notices of meetings, services, regulations and announcements. Such signs are not necessarily designed to be read from a distance or by the traveling public.
- (5) **Community:** is a temporary sign that conveys information to the public to promote not-for-profit, civic, and community events or functions and to create a sense of community and character.
- (6) **Construction:** is a temporary sign that identifies individuals or companies involved in design, construction, wrecking, financing, or development of a building and/or road and to identify these future uses.
- (7) **Directional:** A sign which advertises or directs patrons to an establishment off the main traveled highway.
- (8) **Electronic message center:** Means a sign that conveys text and/or graphic information that is capable of being changed or manipulated electronically.
- (9) **Flags and pennants:** Devices generally made of flexible materials such as cloth, paper, plastic, and displayed on strings or wires. Such devices may or may not include words, letters, or numbers. This definition does not include the flag of any country or state.
- (10) **Flashing:** is a sign whose illumination is not kept constant in intensity at all times when in use and/or which exhibits changes in light, color, direction, animation, and word/text changes. Illumination signs, which indicate the date, time and temperature, will not be considered as part of a flashing sign.
- (11) **Ground:** A freestanding sign affixed to or placed on the ground and independent of any buildings or other permanent structure.
- (12) **Marquee:** See **Canopy.**
- (13) **Memorial:** Any signs which is cut into any masonry surface or when constructed of metal is affixed flat against a structure and not illuminated.
- (14) **Monument:** A freestanding sign supported by a solid foundation on one base that is as least as wide as the sign's display area.
- (15) **Off-premise direction/sales:** Signs which are intended to advertise places of Business not located on the same parcel or land ownership as the off-premise sign.
- (16) **Pole:** A freestanding sign supported by one or more poles, except a monument sign.
- (17) **Portable:** Any sign that is mounted on wheels or can be readily moved from place to place on the premises. Such signs are generally not permanently attached to the ground or to a permanent structure on the premises.

- (18) **Product:** A sign which offers for sale perishable products produced on the premises.
- (19) **Projecting:** Any sign that is not attached to the ground and projects more than twelve (12) inches from the face of a building or other permanent structure.
- (20) **Real estate:** Any sign primarily used for advertising the sale, lease or transfer of real estate.
- (21) **Roof:** Any sign erected on or over the roof of a building.
- (22) **Sandwich:** See **Ground.**
- (23) **Temporary:** Any sign not permanently attached to the ground, wall or building, designed to advertise a commodity or event for a specific amount of time.
- (24) **Wall sign:** A sign which is attached to a wall of a building or structure and projects not more than twelve (12) inches from such a wall.
- (25) **Window sign:** A sign painted on or affixed to a window. Materials affixed to a window shall be affixed to the inside surface of the window.

**Sign area:** That part of a total sign structure which encompasses the sign message exclusive of a structure upon which the sign area is affixed or which supports the sign area. However, for the purpose of computing square footage of a sign area, any exposed structure which supports a sign may not comprise more than one-third of the visible or exposed surface of one side of a total sign structure.

**Signable area:** The area of the façade of the building facing or abutting upon a street right of way up to the ceiling line of the top floor which is free of windows and doors or major architectural detail on which signs may be displayed.

**Sign structure, total:** The sign area, plus any exposed area or members of the supporting structure on or to which the sign, or sign message, is affixed. Decorative, landscaped earthen berms or structures which are composed principally of exposed earth and/or landscape (plant) materials is not included as part of the total sign structure.

**Significant or high value trees:** Trees that are in good health, are native or indigenous to the area in question (not alien or invasive), and are at least four (4) inches in diameter as measured three (3) feet above the natural ground surface.

**Site plan and/or plat of survey:** A map of the property (in standard engineering or mapping scale which permits a clear representation of the property to a scale not to exceed two hundred (200) feet to one (1) inch), in quadruplicate, showing the location and dimensions of all existing and proposed buildings and structures and other attributes on the site, the location, number and arrangement of parking spaces or loading areas, lighting fixtures, easements, dumpsters, signs, landscaping and screening, and any other factors affecting the development of the site. The site plan shall also indicate all areas which are to be used as special event parking on the parcel.

**Sketch plans:** Means an informal plan to scale indicating the salient existing features of a tract of land and the adjacent land uses, with the general layout of the proposal, including open space areas, lot lines, roads, and outlots designated for stormwater facilities.

**Solid waste landfill:** A place where solid waste from municipal and/or industrial sources may be permanently buried consistent with environmental protection standards. Typically, the solid waste is spread in layers, compacted, and covered with a fresh layer of earth materials each day. The term does not include land application units, surface impoundments injection wells, or waste piles.

**Solid waste transfer station:** A place where solid waste may be temporary stored prior to transport to a processing plant or to final disposal.

**Special event:** An event of limited duration which is open to the public and is not otherwise permitted in the district. Examples include auctions, art fairs, festivals, and fundraisers.

**Special event parking:** place where parking for motor vehicles is allowed when specifically related to a special event of regional significance as designated by the Planning and Zoning Committee.

**Special exception:** specific approval that may be granted by the town Plan Commission as specifically set forth in this Ordinance, to allow a property owner to deviate from otherwise applicable provisions of this Ordinance, in compliance with such procedures, restrictions and conditions as may apply to the special exception as described in this Ordinance.

**Specified anatomical areas means:**

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breasts below the point immediately above the top of the areola;
- (2) Human male genitals in a discernible turgid state, even if opaquely covered.

**Specified sexual activities:** Simulated or actual:

- (1) Showing of human genitals in a state of sexual stimulation or arousal;
- (2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio or cunnilingus;
- (3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

**Stables:**

- (1) Private stable. A tract of land on which horses or other livestock are kept for noncommercial use of the owner or persons residing on the tract of land.
- (2) Commercial or Boarding stable. A tract of land on which horses or other livestock are kept for hire, board, training, sale or any other commercial use.

**Story:** that portion of a building included between the surface of a floor and the surface of the floor next above it; or, if there is no floor above it, then the space between the floor and the ceiling or roof, next above it, including basements that are exposed at least six feet on at least one side.

**Street.** See **Road.**

- (1) **Street, arterial:** Arterial Street means a road providing for efficient, safe and direct connection to or separation of developed areas for circulation to destinations outside the developed area and deemed as such on the "Established Street and Highway Width Map for Waukesha County" or other official map adopted by the town.
- (2) **Street, collector:** Collector Street means a road providing for circulation to serve local traffic moving between minor streets and arterial streets as designated on the "Established Street and Highway Width Map for Waukesha County" or other official map

adopted by the town.

- (3) **Street, minor:** Minor Street means any other road not deemed as a collector or arterial street on the "Established Street and Highway Width Map for Waukesha County" or other official map adopted by the town.

**Street frontage:** means a street contiguous and parallel to a traffic artery and affording direct vehicular access to abutting property.

**Street line:** means a dividing line between a lot, tract, or parcel of land and a contiguous street.

**Structural alteration:** Any change in the supporting members of a building or any substantial change in the roof structure or in the exterior walls.

**Structure:** means any manmade object with form, shape and utility that is constructed or otherwise erected, attached to or permanently or temporarily placed either upon the ground or upon another structure. For the purpose of this Ordinance the term "structure" includes swimming pools, hot tubs, patios, decks, gazebos, radio towers and television towers, but does not include landscaping or earth work including graded areas, filled areas, ditches, berms or earthen terraces. The term "structures" does not include flag poles, mail boxes, fences, basketball hoops, satellite dishes of 18 inches or less in diameter or small objects that are easily moved by hand, such as lawn chairs, portable grills, portable picnic tables, lawn ornaments, temporary fences, bird feeders, birdhouses or birdbaths.

**Structure, legal nonconforming:** means a building, structure, or portion thereof, lawfully existing at the time of the passage of the Ordinance from which this Section is derived, but which does not conform in one or more respects to the regulations of this Ordinance.

**Sustained yield forestry:** means the management of forested lands to provide annual or periodic crops of forest products.

**Tavern:** A place where alcoholic beverages 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, microbreweries, and lounges

**Temporary structure:** means a movable structure not designed for human habitation or occupancy, but for the temporary protection of goods or chattels during a period of construction, but not to exceed one year; for the enclosure or screening of goods or property; or for the display of signs and advertising.

**Town attorney:** A person who has been designated or appointed by the Town Board to handle legal obligations or matters of the Town of Oconomowoc.

**Town board:** Means the Town of Oconomowoc board of supervisors under the jurisdiction of this Ordinance

**Town clerk:** Means the Town of Oconomowoc Clerk who is appointed or otherwise designated by the Town Board.

**Town engineer:** A person or engineering firm who has been designated or appointed by the Town Board to handle engineering matters for the Town of Oconomowoc.

**Town park commission:** A body established pursuant to Wis. Stats. § 60.66 or any other agency created by the Town Board and authorized by statute to plan land use.

**Town plan commission:** Means the Town of Oconomowoc Plan Commission established under village powers pursuant to Wis. Stats. § 62.23.

**Town planner:** A person or planning firm who has been designated or appointed by the Town Board to handle planning matters for the Town of Oconomowoc.

**Trailer park and mobile home park:** Mean any tract or parcel of land upon which two or more trailers, camp cabins, house car, or other mobile homes are located, or trailer camp sites are provided, for the purpose of either temporary or permanent habitation.

**Tourist home:** Means a building in which lodging, with or without meals, is offered to transient guests for compensation, and having no more than five sleeping rooms for this purpose with no cooking facilities in any such individual room or apartment.

**Tower:** A structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, and monopole towers. The term includes personal communication service towers, radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

**Traffic artery.** See **Highway.**

**Truck terminal:** A place where goods carried by motor transport are received and temporarily stored until transferred to another truck for delivery.

**Use, accessory:** Means a use subordinate to and customarily incident to the permitted principal use of the property or buildings, and located upon the same lot as the principal use.

**Use, legal nonconforming:** Means the use of a building or land lawfully carried on at the time of the passage of the Ordinance from which this Section is derived or amendments thereto, but which does not conform to the use regulations of this Ordinance.

**Used:** Means any building or structure which is designed or intended to be occupied, used, or inhabited.

**Use, principal:** Means the main or primary use of property or buildings as specified and permitted by the regulations of the district in which it is located.

**Utility cabinets:** Means pedestals, loaders, junction boxes, cross connect boxes and any similar facilities which relate to the provisions of telephone, electric, natural gas, cable television, cable Internet, or similar public services, and which are owned by the providers of such services.

**Utility cabinets, large:** Means pedestals, loaders, junction boxes, cross connect boxes and any similar facilities which relate to the provisions of telephone, electric, natural gas, cable television, cable Internet, or similar public services, and which are owned by the providers of such services, and which are larger than a small utility cabinet, as defined in this definition, but less than six feet in height.

**Utility cabinets, small:** Means pedestals, loaders, junction boxes, cross connect boxes and any similar facilities which relate to the provision of telephone, electric, natural gas, cable television, cable Internet,



or similar public services, and which are owned by the providers of such services, and for which there are no more than three such small utility cabinets on any lot, which shall be no greater than the following: One cable company cabinet being no more than 35 inches (height) by 32 inches (width) by 17 inches (depth), one electrical facility cabinet being no more than 40 inches (height) by 38 inches (width) by 30 inches (depth), and one telephone company.

**Variance:** Variance means an authorization granted by the Board of Adjustment to construct or alter a building, land use or structure in a manner that deviates from this Ordinance.

**Vegetative buffer plan:** means a plan designating native shoreland vegetation which is intended to treat stormwater runoff down slope of impervious surfaces or disturbed areas which is designed to remove sediment, nutrients and other particular pollutants, provide screening and privacy from neighbors and recreational water body users, as well as nesting places and travel corridors for wildlife.

**Vision setback:** means an unoccupied triangular space at the street corner of a corner lot, as established by this Ordinance.

**Vision triangle:** The unoccupied triangular space at the street corner of a corner lot which is created by a line joining points on the lot lines located a minimum 15 feet from the intersection of said lot lines. Corner lots located on arterial streets shall be increased to 30 feet.

**Warehouse:** A place where goods, merchandise, and other materials are temporarily stored for eventual shipment. The term includes moving and storage facilities. The term does not include bulk fuel storage

**Yard sale:** A temporary event where used household items are offered for sale.

**Zoning district, overlay:** A type of zoning district that is superimposed over one or base zoning districts, or portions thereof and which imposes additional requirements, modifies existing requirements of the underlying base zoning district, or both.

## **Section-5: Compliance.**

Except as may be otherwise specifically provided, the use, size, height and location of buildings now existing or hereafter erected, converted, enlarged, or structurally altered, the provisions of open spaces, and the use of land, shall be in compliance with the regulations established herein for the district in which such land or building is located, and the adopted subdivision or development control ordinance.

## **Section-6: Building and zoning permit.**

- (A) **Required.** No building shall be erected, structurally altered, or relocated until a building and zoning permit has been issued by the building inspector, certifying that such building, as proposed, would be in compliance with the provisions of this Ordinance and with the applicable building code, regarding buildings and building regulations.
- (B) **Application.** An application for a building and zoning permit shall be made to the building inspector. Such application shall be in accordance with the building code.
- (C) **Issuance.** Building and zoning permits shall be issued by the building inspector and conform to the provision of this Ordinance and the applicable building code.

## **Section-7: Use permit.**

- (A) **Required.** No vacant land shall be occupied or used except for agricultural purposes, and no building shall be hereafter erected, structurally altered, relocated, used, or occupied until a use permit has been issued certifying that any such building, use, or occupancy complies with the provisions of this Ordinance. This permit shall be obtained before any change is made in the type of use or before any nonconforming use is resumed, changed, extended or granted conditional use status pursuant to this Ordinance.
- (B) **Application.** All permits shall be applied for from the building inspector. Application for a use permit shall be made prior to or at the same time as the application for a building and zoning permit. All necessary permits shall be prepared in triplicate, signed by the applicant and shall include for the purpose of proper enforcement of this Ordinance the following data:
- (1) A statement by the applicant as to the intended use of the premises and of any existing or proposed buildings thereon.
  - (2) An accurate map of the property drawn to a reasonable scale and properly dimensioned showing:
    - (a) The boundaries of the property involved.
    - (b) The location of the centerline of any abutting streets.
    - (c) The location on the lot of any existing buildings, proposed additions or new buildings, including the measured distances between buildings, lot lines and street lines measured to the nearest portion of such buildings.
    - (d) The proposed floor elevation of any proposed buildings in relation to the existing and/or established grade of any abutting streets.
    - (e) The high water line of any stream or lake, conservancy or wetland and/or floodplain which the property abuts.
    - (f) The proposed locations of the septic systems and private wells or the location any soil borings on the property and within fifty (50) feet of the property lines.
  - (3) Where the use involves human occupancy, a plan of the proposed sewage disposal system approved by the county through issuance of a county sanitary disposal permit when a private system is proposed.
  - (4) Fees shall accompany each application for a permit in accordance with the established township fee schedule, and such payment shall be made to the building inspector.
- (C) **Issuance.** Building and zoning and use permits shall be issued by the Building Inspector after adequate investigation as to compliance.
- (D) **Building and zoning permit.** Provided the application is in order and any building, occupancy, or use as proposed would be in compliance with the provisions of this Ordinance, a certification that such permit has been issued shall be posted in a prominent place on the premises during the period of any construction involved in readying the land or buildings for occupancy.
- (E) **Use permit.** Within ten days after the notification of the completion of the erection, alteration, or relocation of a building, or of intent to commence a use, the building inspector or his deputy shall make an inspection of the premises and any buildings thereon, and if such building, use, or occupancy comply with the requirements of this Ordinance and the town building code, regarding buildings and building regulations, a use permit shall be issued.

- (F) **Expiration.** If, within six months of the date of issuance of a building and zoning permit, the proposed construction has not commenced, or if within 24 months a use permit has not been issued, such building and zoning permit shall expire, except that, upon showing of valid cause, the Town Board may grant an extension of such permit for a period not to exceed six months. In the Town's Board's review of the property they must determine that the incomplete construction does not adversely impact the health, safety prosperity and general welfare of the Town and the neighborhood. If the permit is extended the Town Board may enforce conditions of approval of the zoning/building permit including but not limited to, (1) the removal of all construction materials and debris stored outdoors; (b) the removal of all dumpsters; (c) the installation of a driveway meeting the applicable design and construction standards of the Town; (d) the installation of all enclosure systems (i.e. entry doors, windows, garage doors); and (e) the installation of construction materials related to all exterior surfaces. In addition, a Letter of Credit or some other form of financial assurance acceptable to the Town Board is required by the Town in an amount sufficient for the Town to have the construction completed per the conditions of approval for the zoning and building permit. The second and any subsequent permits shall not be eligible for any extensions. Subsequent permits are subject to all fees in effect at the time of permit issuance and are subject to the Ordinance in effect at the time of such subsequent permit issuance.
- (G) **Temporary use permit.** Pending the issuance of a regular permit, a temporary permit may be issued for a period not exceeding six months during the completion of alterations or during partial occupancy of a building pending its permanent occupation. Such temporary permit shall not be issued except under such restrictions and provisions as will adequately ensure the safety of the occupants. A temporary permit shall be voided if the building fails to conform to the provisions of this Ordinance or the town building code.
- (H) **Zoning and Occupancy and Use Permits – Site Plans and Plans of Operation:**  
Certain permitted uses as well as certain conditional uses require the submission of a detailed Site Plan and a Plan of Operation which provides a detailed description of the proposed use and serve as a basis for consideration prior to approval of the Plan Commission. The purpose of said Site Plan and Plan of Operation review is to document the permit file, determine adequacy of the data submitted to describe the permitted and accessory uses and buildings proposed and document the plan and method of operation to enable a determination on compatibility with the requirements of this Ordinance and consideration of approval. A Site Plan and Plan of Operation shall include the following information, as well as any other specific information requested by the Plan Commission, or Town Planner to review the plans and determine compliance with the regulations of this Ordinance.
- (1) A Plan of Operation is a statement of operation, signed by the owner and tenant or operator of the business or use, including a detailed description of the request, number of employees, hours of operation, and types of uses, products or services offered and any special events which are to be conducted on the property.
  - (2) A Site Plan and/or Plat of Survey of the property (in standard engineering or mapping scale which permits a clear representation of the property to a scale not to exceed two hundred (200) feet to one (1) inch), in quadruplicate, showing the location and dimensions of all existing and proposed buildings and structures and other attributes on the site, the location, number and arrangement of parking spaces or loading areas, lighting fixtures, easements, dumpsters, signs, landscaping and screening, and any other

factors affecting the development of the site. The site plan shall also indicate all areas which are to be used as special event parking on the parcel.

- (3) A storm water management and erosion control plan consistent with the requirements of the Waukesha County Construction Site Erosion Control and Storm water Management Ordinance. A Grading plan, where required, shall be submitted in the same scale as the Site Plan, including existing and proposed contours at a maximum of two(2) foot vertical intervals for slopes less than twelve (12) percent and at no more than five (5) foot intervals for slopes twelve (12) percent or greater, existing and proposed features (i.e. berms, swales, ponds, ditches, storm sewers, inlets, etc.), vegetative plan, timetable for completion, the name of the responsible party and a letter of credit, if deemed necessary. The Plan Commission, Town Planner, or Town Engineer have the discretion to request a grading plan in a scale different than the Site Plan in order to show with sufficient detail the contours and features of the property.
- (4) Two (2) sets of building plans, State approved if required, at a standard architectural scale, including exterior elevation drawings of all sides of all buildings proposed.
- (5) A detailed colored rendering of all signs visible from the exterior, along with the location, dimensions, overall height and illumination of the signs.
- (6) Lighting or photometric plan, including cut sheets of each type of exterior light fixture proposed or existing.
- (7) A detailed landscaping plan showing the location, sizes and types of proposed vegetation, including seeding mixtures and the amount of topsoil and mulch, the timetable for completion, and any surfacing plan for parking and loading areas.

## **ARTICLE II: BULK, AREA, HEIGHT AND USE REGULATIONS**

### **Section-8: Site regulations; building must be on a lot.**

Every building hereafter erected, structurally altered, or relocated shall be located on a lot and in no case, except in general business, limited industrial, general industrial, and agricultural districts, and planned unit developments, shall there be more than one principal building on a lot, except as provided below. The principal building, as herein described, 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. The Town Board may allow the issuance of a new residential home building permit and the occupancy of an existing residential structure on a parcel for one continuous two-year period, subject to specific Town Board approval and the following conditions:

- (1) Subject to the occupancy of the existing single-family residential structure being made by the same person who will occupy the new single-family residential structure 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 sixty 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.

### **Section-9: Building or creation of lots on a private street or way:**

The intent of this provision is to discourage the creation of lots and placement of structures which do not have adequate access for emergency vehicles and equipment and to provide a right-of-way width which could accommodate a public right-of-way, if necessitated in the future. Subject to the approval of the Town Plan Commission and the Town Board, a parcel may be created and a building may be permitted on a tract of land which does not abut or have direct frontage on a public street or officially approved way (frontage on a controlled access highway or a freeway where vehicular access is prohibited does not constitute access or frontage for the purposes of this provision) provided such tract

of land is at least three (3) acres in area and has a minimum average width of two hundred (200) feet, has access by a permanent easement at least thirty-three (33) feet in width to a public street or way, will have a paved or gravel driveway width of at least twelve (12) feet and does not conflict with the plans for the future development of streets in the area. Typical or normal lots with lot lines radiating from the terminus or center of a public cul-de-sac street are not affected by this provision that requires minimum road frontage on a public street. In a situation where more than one (1) principal residence or parcel is proposed, the easement for access shall be at least sixty-six (66) feet in width and the paved or gravel drive shall be sixteen (16) feet in width, unless required to be greater, pursuant to a local Town Ordinance. Where such a lot has a narrow strip of land as part of the lot (not as an approved easement) extending to the public road from the main part of the lot where the building could lawfully be placed (flag lot), such a narrow portion shall not constitute frontage or part of the three (3) acre lot size requirement unless that narrow portion of the lot is as wide as the required minimum average width for the district in which it is located. Not more than two (2) such parcels or buildings shall be permitted unless necessitated by exceptional circumstances.

#### **Section -10: Junk or undesirable buildings or structures or uses.**

- (A) **Junk:** as defined by this Ordinance, shall at all times be stored in an enclosed building thereby securing it from the view of the public and adjacent property owners.
- (1) This subsection is not intended to regulate or place limitations on any properly zoned junk yard, salvage dealer, or other junk, waste disposal or storage activity for which a valid license from the State of Wisconsin or other necessary municipal issuing authority is required and proper permits have been issued and all such licenses and permits are in full force and effect and the operation is in full compliance therewith.
  - (2) This subsection is not intended to regulate or place limitations on the storage of idle, but operable farm equipment on farms greater than 35 contiguous acres or the storage of inoperative or abandoned farm equipment on farms greater than 35 contiguous acres if such inoperative or abandoned farm equipment is screened from view of the public and adjacent property owners by a natural or man-made visual barrier.
  - (3) This subsection is not intended to regulate or place limitations on the storage of idle but operative snow removal vehicles or equipment or lawn mowing equipment.
  - (4) This subsection is not intended to regulate or place limitations on the orderly storage of firewood for fuel or personal use.
  - (5) This subsection is not intended to regulate the temporary storage of construction materials which are for use on the site for the project authorized by an active zoning permit and which are stacked, stored and secured on the site in an orderly method.
- (B) **No undesirable structures:** No building or structure shall be erected, structurally altered or relocated in a manner which shall be of such character as to adversely affect the nearby properties or general desirability of the neighborhood.
- (1) If a question arises about a structure, the issue shall be submitted by the Building Inspector to the Plan Commission for their review.
  - (2) A determination by the Plan Commission shall be made and stated in writing, including

the reason for denying a permit or conditions of approval for a permit, and may be based upon considerations that the design or appearance is of such an unorthodox or abnormal character as to have an adverse effect on the nearby properties or general desirability of the neighborhood.

### **Section-11: Street grade.**

Every building erected, structurally altered or relocated shall be at a grade approved by the building inspector as being in satisfactory relationship with the established street grades, or with the existing street grade where one is established, with particular consideration for proper drainage and safe vehicular access.

### **Section-12: Land altering activities.**

- (A) **Purpose.** This Section is adopted in order to protect property owners from possible damage due to change in the existing grade or runoff from adjoining lands and to aid in preserving and protecting the natural resources, natural beauty and the character of the landscape.
- (B) **Compliance.** All land altering or land development activity shall comply with this Section, any zoning permit or other zoning requirements in this Ordinance, and any applicable permit requirements under Waukesha County<sup>1</sup>.
- (C) **General requirements.** Any land altering or land development activity regulated under this Ordinance shall comply with the following minimum requirements and the technical standards:
  - (1) **Site drainage.** Minimize adverse impacts from site drainage, including other property, the general public or natural resources, in accordance with Section 15 of this Ordinance.
  - (2) **Construction site erosion control.** Control soil erosion and off-site sedimentation during construction activities until, final grading is complete.
  - (3) **Site stabilization.** All disturbed areas shall be stabilized within seven (7) days of final grading. Any disturbed area that remains inactive for greater than, 7 days shall be stabilized with temporary soil stabilization measures.
  - (4) **Environmental corridors.** Environmental corridors shall not be disturbed unless a building envelope is designated and unless otherwise permitted by this Ordinance or other official actions by the Town of Oconomowoc and Waukesha County. Disturbance of slopes twelve (12) percent or greater within an environmental corridor shall be prohibited unless no practicable alternative exists.
  - (5) **Slopes.** Proposed activity shall fit the natural terrain of the site, minimizing grade changes, steep slopes and impact on the surrounding landscape to the extent practicable. Slopes steeper than two (2) horizontal to one (1) vertical must be approved in accordance with Subsection (E)(2) below and may require additional soil reinforcement or other slope stabilization measures than required under applicable technical standards.

- (6) **Pond design:**
- (a) The water surface of any pond shall be twenty-five (25) feet or greater from any floodplain and no land altering activity is allowed within the floodplain, The finished grade around the entire pond shall be at least two (2) feet above the 100-year flood elevation.
  - (b) The water surface of any pond shall be twenty-five (25) feet or greater front any wetland, unless otherwise approved by Wisconsin Department of Natural Resources (WDNR) as a wetland enhancement.
  - (c) All permitted ponds shall comply with applicable technical design standards published by the WDNR, the USDA-Natural Resources Conservation Service and the Waukesha County, including but not limited to soil investigations, safety shelf, berm design, compaction specifications, inlet/outlet design and erosion control.
  - (d) Groundwater pumping is a prohibited water source for any pond, unless a public benefit is determined by the Zoning Administrator.
- (5) **Earthen berm design.** Any earthen berm constructed for non-storm water management purposes shall have variable top elevations, if practicable, and include a diversity of landscape plantings to improve aesthetics.
- (6) **Retaining walls.** All retaining walls shall be installed according to manufacturer's recommendations and shall include provisions for adequate soil drainage behind the wall, such as stone aggregate bacilli, weep holes and tile drains. Any plan designs for a retaining wall proposed to be four (4) feet in height or greater from the finished grade must be designed and stamped by an architect, landscape architect, or professional engineer licensed by the State of Wisconsin and shall be approved by the Zoning Administrator.
- (7) **Master grading plan.** A master grading plan may be required under Subsection (E) below, or may have been previously approved by the Town of Oconomowoc or Waukesha County. A new master grading plan shall be approved by the Zoning Administrator, Waukesha County, and Town Engineer and shall contain components that depict site drainage patterns, storm water management and erosion control measures; elevations for roads and lots; building floor elevations that are subject to grade restrictions; drainage and utility easements, setbacks, location of natural areas, including environmental corridors, wetlands, and floodplains, and other information deemed appropriate by the approving authorities. Where an approved master grading plan exists, all grading, erosion control, storm water management and site drainage activity shall comply with the plan, the Town of Oconomowoc or Waukesha County, or applicable agency, may require at the applicant's expense, as-built surveys and verification of compliance with approved master grading plans as a condition of other approvals.
- (8) **Applicable laws.** No land development or land altering activity shall occur that would violate requirements of applicable federal, State of Wisconsin, Waukesha County or local municipal codes, statutes, ordinances, regulations, rules and lawful orders.



(D) **Prohibited activities.** The following land altering or land development activities are prohibited.

- (1) Those that may have significant adverse impacts on the owner, adjoining properties, the general public or natural resources, as determined by the Zoning Administrator.
- (2) Construction or replacement of any retaining wall greater than six (6) feet in height at any point above finished grade.
- (3) Construction or replacement of any retaining wall greater than four (4) feet in height at any point above finished grade within fifty (50) feet of a floodplain or wetland boundary at any point. Averaging of the fifty (50) foot setback in this paragraph is prohibited.
- (4) Increasing or decreasing existing ground surface elevation greater than four (4) feet at any point within fifty (50) feet of a floodplain or wetland boundary at any point;

(E) **Applicability for zoning approvals.** Any proposed land altering or land development activity that meets one of the following criteria shall obtain Town of Oconomowoc and Waukesha County (if applicable) approval in accordance with the procedures and requirements in Subsection (F) through (H) below. This zoning approval is in addition to a stormwater permit, zoning permit and other requirements that may apply.

- (1) **Retaining wall.** Construction of a retaining wall greater than four (4) feet in height at any point above finished grade; or a series of retaining walls greater than six (6) feet in total height at any point above finished grade with less than four (4) feet between each, wall; or any retaining wall proposed to be located ten (10) feet or less from a property boundary. If the Zoning Administrator determines that a proposed retaining wall is replacing an existing retaining wall less than four (4) feet in height and of otherwise equal dimensions, location and setback, the activity shall be exempt from this subsection.
- (2) **Grade changes.**
  - (a) Increasing or decreasing existing ground surface elevation greater than four (4) feet at any point where the top or bottom of the proposed slope is within ten (10) feet of any existing property boundary or within fifty (50) feet of an environmental corridor; or
  - (b) Increasing or decreasing existing ground surface elevation steeper than two (2) horizontal to one (1) vertical or a total elevation change of six (6) feet or greater at any point; or
  - (c) Bringing in fill or removing excavated material from a site in quantities greater than one thousand (1,000) cubic yards, as determined by the Zoning Administrator, unless otherwise approved through a master grading plan.
- (3) **Ponds.** Construction of any pond with a proposed water surface within fifty (50) feet of a property boundary, environmental corridor, wetland or floodplain, at any point. Any pond with a proposed water surface area of 20,000 square feet or greater shall obtain a conditional use permit.

- (4) **Exempt from this section.** The following shall be exempt from this section, but shall require a stormwater permit<sup>2</sup>:
- (a) Any wetland enhancement, restoration or development project approved by the DNR and the top or bottom of a proposed slope is fifteen (15) feet or greater from the nearest existing property boundary at any point; and
  - (b) Any stormwater management practice permitted under the Waukesha County's Stormwater Ordinance if the top or bottom of the proposed slope is located fifteen (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 (4) feet in height at any point, the applicant may be required to complete additional engineering review or meet more restrictive berm design requirements, depending on the Waukesha County's determination of risk for downstream damages.
- (F) **Application.** All applications and associated fees submitted for approval under Subsection (E) above shall include a grading plan prepared and stamped by an Architect, Landscape Architect, or Professional Engineer licensed by the State of Wisconsin. The grading plan shall be of adequate scale, accuracy and clarity, as determined by the Zoning Administrator (survey preferred), and shall include all applicable items listed below:
- (1) Plan view and cross-sections of existing and proposed grades on the subject property, including top and bottom elevations of proposed retaining walls;
  - (2) Existing grade of any adjacent property that is, at any point, closer than twenty (20) feet to any portion of the proposed land altering activity, showing how the proposed grades will tie into the existing adjacent property grades;
  - (3) Proposed cut and fill slopes, total depths and slope ratios (horizontal and vertical);
  - (4) Proposed volume of excavation and fill material involved in cubic yards, including the source and content of any proposed fill;
  - (5) Proposed boundaries of the land disturbance, planned pond water surface area, and the square footage of each arc;
  - (6) Location of natural areas, such as environmental corridors, floodplains, or wetlands;
  - (7) Proposed soil stockpile locations, length of time they will exist and methods of stabilization or sediment control;
  - (8) Proposed temporary erosion and sediment control practices, such as silt fence, mulch, soil treatment and temporary seeding;
  - (9) Proposed permanent vegetation plan, including topsoil application depth, seed mixes, amounts, application methods, timing, and stabilization methods such as mulch, soil treatment, and matting; and

- (10) Any other site drainage, stormwater management, erosion control or other items that may be required under a stormwater permit or by the Zoning Administrator to complete the review process under Subsection (H) below, or to otherwise ensure compliance with this Ordinance.

(G) **Procedures for approval:**

- (1) Upon submission of a complete application to the Town of Oconomowoc and Waukesha County (if applicable), the Town of Oconomowoc and Waukesha County will consider the request at independent scheduled meetings of the Town of Oconomowoc and Waukesha County.
- (2) The Town of Oconomowoc shall provide written notice of the Plan Commission meeting to owners of land within one hundred (100) feet of the subject property, by regular mail that is mailed at least ten (10) days prior to the Plan Commission meeting. This process shall precede the process under Paragraph (3) below, and the Plan Commission shall transmit their decision in writing to Waukesha County, prior to Waukesha County placing the request on a County agenda.
- (3) Waukesha County shall provide the agenda of the County meeting to owners of land within one hundred (100) feet of the subject property, by regular mail that is mailed at least five (5) days prior to the County meeting.
- (4) All property owners notified under Paragraph 1 – 3 above shall have the opportunity to comment on the proposed request during the scheduled Town of Oconomowoc and Waukesha County meetings.

(H) **Zoning review criteria.** When determining whether to authorize any land altering or land development activity under Subsection (E) above, the Town of Oconomowoc and Waukesha County shall consider all of the items listed below, and ensure compliance with the general requirements under Subsection (C) above. The Town of Oconomowoc may make a referral to the Waukesha County for a determination of necessity for a stormwater permit.

- (1) The aesthetic impact;
- (2) The potential for adverse drainage;
- (3) The potential impact upon neighboring properties;
- (4) The potential impact upon environmentally sensitive areas;
- (5) The potential impact upon existing lakes and streams;
- (6) The potential impact on roadways and other infrastructure;
- (7) Public safety;
- (8) The length, height, design and location of any retaining walls or earthen, berms;

- (9) If a retaining wall is needed to stabilize the grade or control soil erosion based on existing topography;
- (10) How the proposed activity fits with the master grading plan, if applicable;
- (11) Proposed landscaping and screening;
- (12) The materials used and source for fill, landscaping and, retaining walls;
- (13) The total area of land disturbance; and
- (14) Proposed pond size, use, location, design, landscaping, and water source.

**Footnotes:**

<sup>1</sup> The following is a summary of land disturbing activities that usually require a stormwater permit. See Waukesha County's Stormwater Ordinance for a more detailed listing of regulated activities.

- Disturbs a total land surface area of 3,000 square feet or more;
- Involves excavation or filling, or a combination of excavation and filling, in excess of 400 cubic yards of material;
- Involves the laying, repairing, replacing, or enlarging of an underground utility, pipe or other facility, or the disturbance of road ditch, grass Swale or other open channel for a distance of 300 feet or more;
- Any new subdivision;
- Any new certified survey map or other land development activity that may ultimately result in the addition of 0.5 acres or greater of impervious surface, including development that may be constructed at different times;
- Involves the construction of any new public or private road or access drive that serves more than two (2) residences or businesses; or
- Is a land disturbing or land development activity, regardless of size, that the Waukesha County determines is likely to cause an adverse impact to an environmentally sensitive area or other property, or may violate any other erosion control or stormwater management standard described in the Waukesha County's Stormwater Ordinance.

<sup>2</sup> The fifteen (15) feet setback for storm water management and wetland practices is required to minimize damage to adjacent property and environmental corridors during practice maintenance activities.

**Section-13. Sedimentation control.**

Any plans for site alterations which disturb the natural cover vegetation must include provision for adequate protection to adjacent properties from sedimentation. Disturbed areas must be seeded or vegetated within one year of commencement of construction.

**Section-14. Junked vehicles.**

A motor vehicle, as defined herein, which is no longer licensed, which has been abandoned, disassembled, is non-operable, disabled, junked, or wrecked shall not be stored anywhere on any premises except in an authorized salvage yard, or is completely enclosed in a structure.

**Section-15. Drainage regulations.**

- (A) **Adequate drainage required:** In no case may a principal building be located in an area zoned Conservancy or in an area considered to be one of the eight (8) types of wetlands (type 1-8) as

described in Circular 39 of the Fish and Wildlife Service, U.S. Department of the Interior, published in 1956 and which are on record on the 1975 aerial maps of the Southeastern Wisconsin Regional Plan Commission. No principal building shall be erected, structurally altered or relocated on land which is not adequately drained, which has an observed or estimated high ground water table condition or having soils which may have a seasonal-zone of water saturation as may be determined by use of a USDA soil survey, an onsite soil investigation by a certified soil tester or other qualified engineer or soil scientist, unless adequate measures are taken to protect the building, its basement and its foundation from such water conditions. The identification of mottled characteristics in the soil profile may be utilized to identify soil conditions which may require additional protective measures as outlined below. Where soil monitoring tests have been made, the data resulting from such testing procedures may also be utilized to assist in establishing soil conditions requiring protection measures. Normally, a few faint mottles or a very low incidence of mottling will not necessitate any special consideration. Basements will be allowed to extend into such soil where those conditions exist as long as appropriate construction measures are provided. Where the incidence of mottling is considered very severe or where ground water is observed in the soil profile, no basement area will be allowed to be placed below the level at which such a condition exists. The building inspector and/or Town Engineer may review such conditions by observation and other evidence at the building site and shall require appropriate measures to be taken beyond normal footing drains as normally required by local building codes to adequately protect the building and its basement and foundation from such potential water related problems. The building inspector may request, at the owner's expense, the advice and assistance of a licensed or professional engineer specializing in soils engineering or other qualified person in fulfilling their duties pursuant to this provision.

- (1) The zoning permit and building permit issued for the erection, structural alteration or relocation of a principal building shall state specific design, engineering and construction requirements, as a condition of the permit, notwithstanding applicable construction codes, which must be incorporated within the improvement to be done on and in soil which has such conditions necessitating additional protection of the building, basement, foundation, occupants and personal property. Such provisions which may be required may include but shall not be limited to the techniques enumerated below: auxiliary power supplies; gravity drainage of foundation footings together with the installation of sump pumps which will be operative in the event of blockage of the gravity drains, gravel backfill and extra drains, waterproof poured concrete basements.
  - (2) Subdivision plats and certified survey maps shall state, on their face, whether protection measures, pursuant to the above, are likely to be required as a condition of a zoning and building permit. The Plan Commission or Town Board may cause such notice to be affixed to the face of the document.
  - (3) In the event a dispute arises as to the necessity for or the adequacy of the protection measures set forth above, the matter shall be reviewed by the Board of Adjustment, upon recommendation of the Town Engineer pursuant to the appeal provisions of this Ordinance.
- (B) **Obstruction to drainage prohibited.** The damming, filling or relocating of any surface water drainage channel or natural watercourse shall not be permitted except with approval of the Town Board and the State Department of Natural Resources and the U.S. Army Corps of Engineers, when applicable.

- (C) **Building restricted adjacent to drainage channels or watercourses.** No building other than a bridge, dam, boathouse, or revetment, subject to approval, shall be erected, structurally altered, or relocated within 75 feet of the 100-year flood level or conservancy line.

#### **Section-16. Sanitation and water supply.**

- (A) **Safe sewage disposal possible.** 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 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 town 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) **Outhouses prohibited.** No outhouse or privy shall be hereafter erected.
- (C) **Water supply required.** No occupancy permit shall be issued for a building used for residence purposes unless provision is made for a safe and adequate supply of water in or within three hundred (300) feet of said dwelling or connection is to be made to an approved municipal or community water system.
- (D) **Reduction in lot size, lot width, road setback, offset, open space and increase in floor area ratio and increase in density in a Planned Unit Development:** In the case of any lot proposed to be served by a municipal or municipally approved communal sewerage 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, lot width, open space, offset and increase the floor area ratio requirements applicable to such lot, upon recommendation of the Plan Commission following a 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. In making such recommendations the Plan Commission shall give particular consideration to the following and shall make written finding of facts 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. 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, lot width, open space, floor area ratio and offset requirements be reduced by more than one-third and in no case reduce the lot size requirements for individual lots to less than twelve thousand (12,000) square feet except as provided and for multi-family type units.

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## ARTICLE III: CONDITIONAL AND SPECIAL USE REGULATIONS

### Section-20. Use regulations.

- (A) **Uses restricted.** In any district, no building or land shall be used and no building shall be hereafter erected, structurally altered or relocated except in conformance with the regulations hereinafter established for the district in which the property is located, or as otherwise provided in this Ordinance. Where a change in use or a new use of a building or premises is proposed in any Business, Industrial District or Public and Institutional District or at the site of a legal non-conforming use or a conditional use, a Site Plan and Plan of Operation shall be prepared for review and approval pursuant to this Ordinance. Where a change in ownership or operator of a building or premises is proposed in any Business, Industrial District or Public and Institutional District or at the site of a legal non-conforming use or a conditional use, a Plan of Operation shall be prepared for review and approval pursuant to this Ordinance.
- (B) **Accessory uses.** In any district, accessory buildings, structures, and uses customarily incident to the permitted uses in that district shall be permitted subject to such requirements as may be designated for that district in which they are located, or as further regulated in this Ordinance.
- (C) **Pyramiding.** No pyramiding as defined in this Ordinance shall be permitted on any lands fronting on a lake or river except as may be specifically permitted accessory to a marina or resort and which may be allowed under the terms of a conditional use permit for a planned unit development.
- (D) **Unclassified uses.** Any use not specifically listed as a permitted use shall be considered to be prohibited except as may be otherwise specifically provided for. In case of question as to the classification of a use, the question shall be submitted to the Plan Commission and Town Board for determination.
- (E) **Additional requirements.** For any use or structure in any district, which becomes hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood, the owner or occupant may be required to correct, improve or abate such conditions by such measures as may be mutually directed by the Plan Commission and Town Board consistent with reasonable technology and economic practicality and in conformance with reasonable standards as may be determined by the Plan Commission and the Town Board as may be contained in this Ordinance. Any building determined to be unfit for human habitation or which may endanger health, safety and welfare of the public as may be determined by the Town Board after recommendation by the Plan Commission shall be removed pursuant to the procedures outlined by the Wisconsin Statutes.

### Section-21: Conditional Uses

- (A) **Approval required.** Certain uses, which are of such a special nature, or are so dependent on the actual contemporary circumstances as to make impractical the predetermination of permissibility or the detailing in this Ordinance of the specific standards, regulations, or conditions which would permit such determination in each individual situation, may be permitted as conditional uses, subject to such requirements as determined by the Town Board or specified in this Section.

- (1) **Application**

- (a) Application for Conditional Use Permits may be made by an individual property owner or group of owners or by a municipality, lake management district, sanitary district or similar agency on behalf of a larger property area where said proposal may benefit a larger group or entire community. Application shall be made in triplicate to the Town Clerk and shall include:
- (b) A map (preferably a topographic map) in triplicate, drawn to a scale of not less than two hundred (200) feet to one (1) inch, showing: the land in question; its legal description and location; location and use of all existing buildings, sanitary systems and private water supplies on such land; the high water elevation of any navigable waters within one hundred (100) feet of the boundaries of the land in question; the 100-year floodplain or any wetlands or environmental corridors; the proposed location and use of any buildings; sanitary systems and water supplies on such land and within one hundred (100) feet of the land in question.
- (c) Names and complete mailing addresses, including zip codes, or the owners of all properties within three hundred (300) feet of any part of the land included in the proposed application unless waived in writing by the Plan Commission and Town Board.
- (d) Additional information as may be required by the Town Planner, Town Engineer or the Plan Commission.
- (e) A fee, as may be established by the Town Board and periodically modified, shall accompany each application. Such fees shall be paid to the Town of Oconomowoc to defray the cost of official notification and posting of the public hearing. Cost incurred by the Town in obtaining legal, planning, engineering, publication, and notice requirements, and other technical and professional advice in connection with review of the Conditional Use applications and preparation of conditions to be imposed on such uses shall be charged to the applicant, and if required by the Town, a pre-payment deposit covering the costs shall accompany the application.
- (f) Where necessary, to comply with certain regulations established by applicable laws, applications shall be required to be submitted to the other governmental bodies having jurisdiction which may include the State Department of Natural Resources and/or the U.S. Army Corps of Engineers.

**(2) Public hearing**

Upon receipt of the application, the foregoing data and fees, the Town Planner shall establish a date for a joint public hearing by the Plan Commission and Town Board, or its designee, and shall publish notice of said hearing once each week for two (2) consecutive weeks in a newspaper of general circulation in the area of the proposed Conditional Use. Notice of the public hearing shall be given by certified mail to the owners of all lands within three hundred (300) feet of any part of the land included in such Conditional Use at least seven (7) days before such public hearing unless waived by the Plan Commission as follows. If the applicant is a governmental entity or group of

property owners and the area affected by the proposed Conditional Use is so large such that the Plan Commission finds the certified mail notice to the owners within three hundred (300) feet to be unnecessarily burdensome, the Plan Commission and Town Board may waive the certified mail notice requirement.

A copy of the notice of public hearing along with pertinent information relative to the specific nature of the matter (copy of application and map) shall be transmitted without delay to any other governmental agencies having jurisdiction by certified mail not less than then (10) days prior to the date of the hearing. Testimony of all interested parties will be received at the public hearing and the Plan Commission shall take action within a reasonable time to either recommend approval or denial of the application along with any recommended conditions of approval or reasons for recommending denial. The action of the Plan Commission, and any conditions made applicable thereto, shall then be sent in writing to the Town Board.

**(3) Final review and approval**

The Town Board shall review the proposal as submitted along with requirements as may be established or recommended by other governing bodies having jurisdiction and the recommendation of the Plan Commission. The Town Board shall approve or deny the application. If the Town Board approves the Conditional Use, any conditions as may be deemed necessary by the Town Board shall be made an integral part of the permit. The applicant shall comply with these conditions, and any failure to comply with the conditions set forth in the permit shall constitute a violation of the terms of the Conditional Use Permit. Such violation shall constitute a violation of this Ordinance and will be subject to prosecution and penalties under the terms of this Ordinance.

**(4) Basis of approval.**

The determination of whether to approve or deny or conditionally approve such Conditional Use shall be made by the Town Board, and shall be based on the consideration of whether or not the proposed use will:

- (a) Violate the spirit or intent of the adopted Town of Oconomowoc Comprehensive Land Use Plan or this Ordinance;
- (b) Be contrary to the public health, safety or general welfare;
- (c) Be hazardous, harmful, noxious, offensive or a nuisance by reason of appearance, noise, dust, smoke, odor or other similar factors.

Except as may be specifically otherwise provided for by this Ordinance, any such use shall conform to any building location, height, and area regulations of the district in which it is located. The Town Board may also require compliance with such other conditions as may be deemed necessary by the specific situation. Where it is required that building plans, site plans and plan of operation be submitted to the Plan Commission or Town Board, such plans shall include such detail as the Town Board and Plan Commission may require, to enable the Town Board and Plan Commission to make their determination.

(5) **Determination**

The action of the Town Board shall include reasons for approval or denial. Any approval shall include: an accurate description of the use permitted, the property on which permitted, and any conditions made applicable thereto. If a Conditional Use Permit is approved, it shall be issued upon compliance with all conditions of approval and the recording of the Conditional Use Agreement in the Waukesha County Register of Deeds Office. The Conditional Use Agreement must be signed by the owner and applicant, and the Town Clerk and Town Chair. The grant of such status shall be applicable solely to the structures, use and property so described. Indication shall also be made on the Zoning Map by the appropriate code number or symbol.

(6) **Application for change or extension of conditional use permits**

Any change, addition, modification, alteration and/or amendment of any aspect of a Conditional Use granted by the Town Board, 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 by the Conditional Use permit conditions, shall require a new permit and all procedures in place at the time must be followed. Unless the Conditional Use permit conditions expressly state otherwise, plans that are specifically required by the 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 finds in its sole discretion to be substantial shall require a permit, and all procedures in place must be followed.

(7) **Termination of conditional use status**

Conditional Use status may be terminated as follows

- (a) The Conditional Use Permit may be terminated on request when the applicant or holder of the Conditional Use and the property owner make a request in writing to the Town Board that the Conditional Use be terminated and the Town Board agrees to terminate said Conditional Use Permit and notice of said termination of the Conditional Use Permit is recorded in the Waukesha County Register of Deeds office; or
- (b) The Conditional Use Permit may be terminated after public hearing and a class 2 notice is published, and notice is provided to the applicant or holder of the Conditional Use Permit and the owner of the subject property, upon the Town Board determining any of the following:
  - (i) The Conditional Use has not continued in conformity with the conditions of the permit.
  - (ii) A change in the character of the surrounding area or if the Conditional Use itself causes it to be no longer compatible with surrounding uses.
  - (iii) The Conditional Use has been discontinued for a period of twelve (12) consecutive or eighteen (18) cumulative months during a three-year

period. A business of seasonal nature shall not be deemed discontinued during periods in which it is normally inactive (i.e., summer camps, ski hills, quarries, marinas, etc.).

Upon determination or finding by the Town Board that the use must be terminated the owner of the premises shall be required to bring all lands and structures into conformity with the permitted use regulation of the Zoning District in which the property is located within sixty (60) days from such determination, unless such time is extended by mutual agreement of the Town Board and the owner. Upon determination or finding by the Town Board that changes in use or conditions of use are found to be more appropriate by the Town, any changes or required improvements or changes to use or operation as set forth by the Town Board, shall be made within sixty (60) days unless such time is specifically extended by mutual agreement of the Town and owner.

- (B) **Conditional uses permitted.** Subject to the foregoing, in addition to such uses enumerated in the district regulations, the following may be permitted Conditional uses in the districts specified, provided that a public hearing per Section 487, shall be held by the Town Board before approval for any such conditional use is granted. All references, in this Section, to residential districts shall include the rural residential density, rural home and suburban estate districts, unless otherwise noted.

- (1) **Adult-oriented establishments.** In the A-B, B-1 and Q-1 districts, subject to the following:

- (a) The building, site plan and plan of operation have been submitted to and approved by the Plan Commission.
- (b) A license to operate an adult-oriented establishment has been issued for the subject property.
- (c) Adult-oriented establishment shall be located in accordance with the requirements of Section 52 B. of this Ordinance and not within 1,000 feet of any public or private school, church, religious institution, daycare center or Public Park. No adult-oriented establishment shall be located within 1000 feet of any residential district or any other adult-oriented establishment. The distances noted in this subsection shall be measured in a straight line without regard to intervening structures or objects from the closest point of the structure or portion of the structure occupied or proposed for occupancy by the adult-oriented establishment to the nearest point of the parcel of property or land use district boundary from which the proposed land use is to be separated.

- (2) **Agricultural businesses including fur farms, pea vineres, creameries, food mills, egg production facilities, commercial greenhouses and condenseries.** In agriculture, business or industrial districts subject to the following:

- (a) The building plans, site plans and plan of operation shall be submitted to and approved by the Plan Commission.
- (b) No such use shall be permitted on a lot less than five acres in area.

- (c) No building other than one used only for residence purposes shall be closer than 50 feet to the lot line of an adjoining lot in a district permitting residential use.
- (3) **Airports, landing field, and take-off strips.** In all agricultural districts, provided the location, building, site plans, and plan of operation have been submitted to and approved by the Town Board. This use shall be permitted in the A-P and A-T districts only when agricultural in character.
- (4) **Animal hospitals, veterinarian clinics, and commercial kennels.** In any district other than residential, restricted business, A-P, A-T, E-C, A-E and C-1 districts, however, animal hospitals and veterinarian clinics shall be permitted uses by right in the A-B Agricultural Business districts and business districts as long as such facilities do not include the operation of a commercial kennel. The following requirements shall be met:
  - (a) The building plans, site plans and plan of operation shall be submitted to and approved by the Plan Commission.
  - (b) Animal hospitals and clinics not involved in the operation of a commercial kennel may be permitted on lots of no less than one (1) acre and shall be in conformance with building location, height regulations and area regulations of the district in which such facilities are located. A commercial kennel operation shall not be permitted on parcels of less than three (3) acres and three hundred (300) feet of minimum average width.
  - (c) No building other than one used only for residence purposes shall be closer than fifty (50) feet to the lot line of an adjoining lot in an Agricultural or Residential Zoning District. Where the buildings are to be used to board or house dogs in a commercial kennel, including outdoor kennel runs, such structures and fenced runs shall not be closer than one hundred (100) feet to an adjoining lot line.
- (5) **Antique Shops, gift shops, arts and craft studios and similar uses.** Such uses are permitted by right in any business district and may be allowed as conditional uses in all agricultural and residential Districts except for A-E, A-P, A-T and C-1 and E-C districts, subject to the following:
  - (a) The site plan, building plans, and plan of operation have been approved by the Plan Commission.
  - (b) The Plan Commission shall make a finding that such use is compatible with surrounding and nearby residential land uses which may be affected by the proposed use.
  - (c) The building plans, site plans and plan of operation shall be submitted to and approved by the Plan Commission.
- (6) **Arcades and other amusement places.** Such uses are permitted uses by right in B-3 business districts, and may be allowed as conditional uses in B-1 and B-2 districts, subject to the following:
  - (a) The site plan, building plans and plan of operation have been approved by the

Plan Commission.

- (b) The Plan Commission shall make a finding that such use is compatible with surrounding and nearby residential land uses which may be affected by the proposed use.
- (7) **Automobile service stations, gasoline sales, and convenience stores associated with gasoline sales:** In B-2 and B-3 business or less restrictive districts, subject to the following:
- (a) The building plans, site plans and plan of operation shall be submitted to and approved by the Plan Commission.
  - (b) No gasoline pump or other accessory equipment shall be closer than 15 feet to the base setback line and 50 feet to the side and rear lot lines. Underground and above ground storage tanks shall conform to state standards.
  - (c) No lighting installation shall be permitted which creates a hazard to traffic or a nuisance to surrounding property and shall be shielded, baffled or shaded to effectuate and avoid hazard or nuisance.
- (8) **Bed and breakfast:** The intent is to provide travelers with temporary accommodations and breakfast, for a fee, on a daily or weekly basis, as an accessory use in any existing structure designed for and occupied as a single family residence in any district permitting single family residences subject to the following:
- (a) The location, building site plans, and plans of operation shall be submitted to and approved by the Plan Commission.
  - (b) Minimal outward modification of the structure or grounds may be made only if such changes are compatible with the character of the area or neighborhood and the intent of the zoning district in which it is located. For buildings with significant architectural or historic value, the architectural integrity and arrangement of existing interior spaces must be maintained and the number of guest rooms shall not be increased except as may be required to meet health, safety, and sanitation requirements.
  - (c) Off street parking shall be provided at the rate of one (1) parking space for each room rented. The front yard shall not be for off-street parking for temporary guests unless the parking area is screened from view with natural plant material, and found to be compatible with the neighborhood.
  - (d) The number of rooms shall be limited to five (5) sleep-in rooms or less, excluding those used by the occupants of the facility, and no room may contain more than two (2) beds. There must be at least five hundred (500) square feet of gross interior floor area for each sleeping room. Those facilities providing service to a greater number of guests are not considered "license exempt" under state law and must comply with state hotel/motel/restaurant licensing procedures administered by the Waukesha County to the State Department of Health. The issuance of such licenses shall not be considered as conferring non-

conforming commercial status to the use which would either allow alteration of the facility or otherwise compel rezoning of the property for commercial use beyond the scope of this Section.

- (e) One (1) on-premise sign may be allowed provided that such sign is compatible with the residential use of the site and its surrounding areas and is not more than fifteen (15) square feet in size with the letter sizes not more than five (5) inches in height.
  - (f) All necessary State and County permits, certifications, or requirements shall be obtained as a condition of approval of a bed and breakfast service.
  - (g) Room rentals to families or individuals shall not exceed fourteen (14) consecutive days.
  - (h) The bed and breakfast facility must be accessory to and contained within the single family dwelling occupied by the owner (e.g., not a manager) of said premises.
  - (i) The only meal to be provided to travelers/guests shall be breakfast and it shall only be served to guests taking lodging in the facility.
  - (j) The Waukesha County Department of Parks and Land Uses, Division of Environmental Health, shall examine both the water system and the sewage disposal system, and shall conduct a general health and safety inspection of the proposed facility. The Department may impose any conditions required to ensure that all necessary health and safety standards have been met. The applicant shall not initiate any construction activity and other improvements related to the bed and breakfast facility; or begin operation of the facility until receiving a determination, in writing, by the Department that the necessary inspections have been completed and any deficiencies have been corrected. The proprietor shall have a water quality evaluation conducted by a recognized water testing laboratory on an annual basis following the certification of adequacy by the Department. The results of that test shall be submitted to the Department with a copy to the Town. All these requirements must be incorporated into the terms of the conditional use permit.
- (9) **Business park and shopping center uses;** In the B-P and B-4 zoning districts certain uses may be allowed as a conditional use, as those uses or situations are of such a special nature or are so dependent upon the actual circumstances that it is impractical to allow them as a permitted use by right. In evaluating the proposed use the Plan Commission and Town Board shall base their actions on whether or not the proposed use will violate the spirit or intent of the Ordinance, be contrary to the public health, safety or general welfare, be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor, traffic congestion, incompatibility of uses, or other similar factors or for any other reason causes substantial adverse effect on the property values and general desirability of the neighborhood or the center. The following considerations shall be utilized in the determination of the appropriateness of the contemplated uses by the Plan Commission and Town Board:



- (a) The Plan Commission and Town Board must review and approve all existing and proposed uses and the Plan of Operation.
  - (b) The economic practicality of the proposed use.
  - (c) The proposed use shall be served by adequate off-street parking, loading and service facilities in accordance with the provisions of this Ordinance.
  - (d) The proposed use shall not create an adverse effect upon the general traffic patterns, circulation or adjoining property.
  - (e) The architecture, landscaping, lighting and general site development shall be compatible with the surrounding neighborhood and uses.
  - (f) The use may be granted with any reasonable conditions deemed necessary by the Town Board.
  - (g) The proposed development shall have adequate drainage and storm water retention facilities, sewage and water facilities. Restrictions may be placed on uses without public sewer.
  - (h) The intended uses comply with the locally adopted Comprehensive Plan.
- (10) **Cemeteries and mausoleums for the burial of human remains only.** In any district except E-C, C-1, A-P, A-T and A-E districts, subject to approval of the Town Board, following the recommendations of the Plan Commission.
- (11) **Churches, synagogues, and other buildings for religious assembly.** In any district except E-C, C-1 and A-E, A-P, A-T or industrial districts, subject to the following requirements:
- (a) The location building, site plan and plan of operation shall be submitted to and approved by the Plan Commission.
  - (b) A floor area ratio of no more than 50 percent is allowed.
  - (c) Off-street parking is provided for one automobile for each four seats providing the main assembly of the building.
  - (d) Such use shall conform to the setback, height and double the offset requirements of the district in which it is located.
  - (e) The height limitation may be extended to a maximum of 50 feet provided the minimum required setback and offset shall be increased two feet for each additional foot of height in excess of the permitted maximum in the district. The height regulation shall not apply to the spire or belfry of a church except where airport safety zoned regulations specifically limit the maximum height.
- (12) **Commercial fish, bait, ponds or hatcheries.** In any district other than an E-C, A-P or A-T a subject to the following:

- (a) The building plans, site plans, and plan of operation shall be submitted to and approved by the Plan Commission.
  - (b) No such use shall be permitted on a lot less than five acres in area.
  - (c) No building other than one used only for residence purposes shall be closer than 50 feet to the lot line of an adjoining lot in a district permitting residential use.
- (13) **Commercial stables.** Such uses are permitted uses by right in the EFO, A-E, A-P, A-T and A-1 districts on parcels 20 acres or greater in size. Such uses are not permitted uses and may not be allowed as conditional uses on any size parcel in the C-1, R-1, R-2 and R-3 districts. Such uses may be permitted as conditional uses in the EFO, A-E, A-P, A-T and A-1 districts on parcels of less than 20 acres, such uses may be allowed as conditional uses in the R-H, S-E, B-1, B-2, B-3, M-1 and M-2 districts subject to the following:
- (a) The building plans, site plans, plan of operation and refuse disposal plan shall be submitted to and approved by the Plan Commission.
  - (b) No buildings other than one used only for residential purposes shall be closer than 100 feet to the lot line of any adjoining lot in a district permitting residential use.
  - (c) The Plan Commission shall make a finding that such use is compatible with surrounding and nearby residential land uses which may be affected by the proposed use.
  - (d) Generally, not more than one horse or other head of livestock should be kept for each full open acre over two acres of open lot area, unless the Plan Commission makes a specific finding that the subject parcel can maintain a greater number of livestock based on the proposed building plans, site plans, plan of operation and refuse disposal plan.
  - (e) The keeping of hogs, pigs of any type (except potbellied pigs as defined in this Ordinance for which a hobby kennel use permit has been issued), male goats or fur-bearing animals shall not be permitted on less than 20 acres.
- (14) **Commercial truck parking.** In all residential, agricultural, B-1 and B-2 business districts, subject to the recommendation of the Plan Commission following a formal hearing and the following conditions:
- (a) The parking and storage of commercial type vehicles (dump trucks, school buses, construction vehicles, semi-trailers and tractors) may be allowed as long as the vehicle is owned or leased and operated by the owner or occupant of the premises. No such use shall be allowed on any parcel except as may front directly upon and have access to, an arterial or major collector street, as defined in the county established street and highway width map.
  - (b) 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 (backhoes, front end loaders, grading equipment, etc.) shall be allowed. Such

vehicles shall be fully operative and in active use. Where considered appropriate, two trailers may be allowed but in no case may there be more than one semi-tractor or cab unit.

- (c) No such vehicles 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 such truck is parked closer than 500 feet to the nearest neighboring residential property line.
- (d) In determining whether or not the proposed Conditional Use Permit should be issued, a determination of compatibility with adjacent land uses shall be made by the Plan Commission and Town Board in issuing this Conditional Use Permit. If it is determined that it would in any be incompatible and represents an adverse effect or nuisance to adjacent land uses, the Conditional Use Permit will not be issued.
- (e) 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. 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 outlined in this Ordinance.

**(15) Conservation Design Developments.**

**(a) Intent and Purpose**

- (i) The conservation design development shall allow residential development the flexibility of design to preserve in perpetuity unique or sensitive natural areas such as:
  - 1 Groundwater recharge areas;
  - 2 Floodplains;
  - 3 Wetlands;
  - 4 Streams;
  - 5 Steep slopes;
  - 6 Woodlands;
  - 7 Wildlife habitat; and
  - 8 Environmental corridors.
- (ii) Further the design of the development shall endeavor to:

- 1 Preserve historic and archeological sites;
- 2 Reduce the amount of infrastructure, including paved surfaces and utility easements;
- 3 Reduce soil erosion and sedimentation by minimizing land disturbance;
- 4 Limit the amount of vegetation removal;
- 5 Interconnect greenways and corridors;
- 6 Promote contiguous green space with adjacent developments;
- 7 Promote the construction of walking trails and bike paths;
- 8 Conserve scenic views;
- 9 Protect agricultural land; and
- 10 Preserve farming as an economic activity.

(iii) The two types of conservation design developments allowed under the provisions of this subsection 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.

(iv) The number of dwelling units, amount of open space and open space uses in a conservation design development shall be determined by a detailed analysis of the physical features of the site and surrounding land uses.

(v) Conservation design developments are not allowed in the A-T, A-P, A-B, EFO, R-3, R-4, EBDOD, B-1, B-2, B-3, M-1, or M-2 zoning districts. In all other districts the lot size, lot width, offset, setback, open space, and floor area requirements may be modified according to the following conditions:

- 1 All sanitary and water provisions are in conformance with the requirements of the Waukesha County Code Regulating On-site Sewage Disposal Systems or the local sanitary district. Community septic systems are not allowed which require the town to own them or be responsible for them; and

2 The proposed development is:

- a In conformity with the master plan and any local comprehensive plans component;
- b In conformity with the general welfare and economic balance of the community; and
- c The proposed development is such that the benefits and amenities of the resultant development justify the variation from the normal requirements of the district in which it is located.

(vi) Specific project factors; residential density factors.

1 The ultimate allowable density shall be 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:

- a Traffic and capacity of public roads in the area;
- b The terrain of the site and the adjacent properties;
- c The adjacent land uses and their densities;
- d Soil suitability of the site;
- e Drainage patterns and the need for area wide storm water facilities; and
- f Compliance with the town's official map.

(vii) The maximum allowable densities shall not be greater than those permitted in the underlying zoning district and the maximum allowable density shall be 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.

(viii) The following residential density factors shall be utilized to compute the maximum number of dwelling units in accordance with the following table:

## RESIDENTIAL DENSITY FACTOR CHART

<i>Zoning Classification</i>	<i>Maximum Residence Density Factor</i>	<i>Minimum Lot Size</i>
A-5	5 acres/dwelling unit	3/4 Acre
A-1	3 acres/dwelling unit	3/4 Acre
EC	5 acres/dwelling unit	3/4 Acre
A-2	3 acres/dwelling unit	3/4 Acre
A-3	2 acres/dwelling unit	3/4 Acre
R-1	1 acre/dwelling unit	3/4 Acre
R-2, R-3	1 acre/dwelling unit	3/4 Acre

(ix) Other zoning districts not listed above shall not be used to increase the calculation of density of a conservation design development other than the C-1 conservancy and A-E exclusive agricultural district which may be used to augment the otherwise applicable density of a conservation design development in one of the two following ways, whichever allows the least additional density:

- 1 Twenty percent of the area of lands which are zoned conservancy or A-E exclusive agricultural district within the project may be used to augment the conservancy design development; or
- 2 Five percent of that part of the total project area, which is zoned other than conservancy or A-E exclusive agricultural district, may be used to augment the conservation design development project density.

**Example: Total Area of Project = 180 acres**

Total conservancy and exclusive agriculture lands  
Total Protected Area = 60 acres

Total area minus total protected area  
Developable Area = 120 acres

Conservancy and exclusive agriculture zoned lands comparison:

Twenty percent of the total protected area (60 acres) = 12 acres

Five percent of the developable area (120 acres) = 6 acres

**Analysis:**

6 is less than 12, so 6 acres can be added to the developable area.

120 acres developable area + 6 acres = 126 acres. Assuming the developable area is zoned A-1 and A-1 allows one dwelling unit per 3 acres, then  $126 \div 3 = 42$  units.

(x) Required standards as established by the town relative to road design, drainage or other engineering parameters may be modified as part of conditions of approval as long as modifications are consistent with good practice and approval of the Town Board.

(xi) 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 storm water facilities;
- 6 Are compatible with adjacent land uses; and
- 7 Preserve groundwater recharge areas designated by the Southeastern Wisconsin Regional Plan Commission or the State Department of Natural Resources by promoting on-site sustainable land use and integrated water resource management practices.
- 8 Open space in conservation design developments. Conservation design developments shall have a minimum of 40 percent of the site in common or public open space. 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. The open space area shall be conveniently accessible to all residential dwelling units within the conservation design development, 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.

(xii) In a conservation design development the open space must include all the following physical features of the site:

- 1 100-year floodplain;

- 2 Wetlands;
  - 3 A minimum 75-foot buffer along all perennial or intermittent streams or public bodies of waters;
  - 4 All 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.
- (xiii) 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 town 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.
- (xiv) The open space areas may be used for:
- 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 as part of the conditional use grant;
  - 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.
- (xv) 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.

- (xvi) No more than 20 percent of the required open space may be C-1 or A-E zoned lands.
- (xvii) 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). Buildings or uses for noncommercial, recreational or accessory facilities may be permitted in such open space, subject to a conditional use permit. 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.
- (xviii) 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.
- (xix) 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 town Plan Commission, the Town Board and the town attorney.

(b) **Application procedures.**

- (i) **Filing procedure to initiate projects and preapplication conference.** The following information shall be submitted prior to any requests for approval of any type of conservation design development. The applicants are required to submit a site analysis map at the time they submit an application for a preapplication conference. The purpose of the site analysis map is to ensure that the important site features have been adequately surveyed and identified and this information has been or will be incorporated into the site design. This will give the town Plan Commission, Town Board, town planner and the town engineer the necessary information to understand the physical features of the site in their review of the sketch plan and make recommendations for changes before the applicant has invested in the final site design. The site analysis map should show:

- 1 Property boundaries;
- 2 All streams, rivers, lakes, wetlands and other hydrological features;
- 3 Topographic contours with intervals of two feet or less;
- 4 Each primary and secondary environmental corridor labeled by type;
- 5 General vegetation characteristics;
- 6 General soils types by group;
- 7 The planned boundaries of protected open space, in compliance with subsection (15) (i) of this Section;
- 8 Existing roads and streets;
- 9 Open space and trails traversing, or adjacent to the site, whether existing or planned. Any other site information reasonably necessary for the town Plan Commission or the Town Board to make a determination;
- 10 All class I and II soils for agricultural uses;
- 11 Aerial photographs with a scale of one inch equals 100 feet; and
- 12 Any groundwater recharge area designated by the Southeastern Wisconsin Regional Plan Commission or the State Department of Natural Resources

(ii) **Site visit.** The applicant is encouraged to hold a site visit on the subject property, prior to filing an application, as part of the pre-application process. The applicant can make arrangements for a site visit by contacting the town planner. The purpose of the site visit is to provide an opportunity for everyone involved in the subdivision proposal to familiarize themselves with the property's existing conditions and special features, to identify potential site design issues, and to discuss design concepts, including the general layout of designated conservation areas, if applicable, and potential locations for proposed buildings and street alignments. This part of the pre-application conference is optional, but is perhaps the most critical of the entire design and review process; because it enables the applicants, the staff, and the town 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. The goal of the site visit is to ensure that the features mapped on the site analysis maps have been designed around and protected. If a site visit is scheduled, those invited shall include the town staff, the town Plan Commission, and the Town

Board, along with the applicant and the general public. Notice of the site visit shall include all notices as may be required by the state open meetings laws, and the site visit shall be conducted in compliance with such laws. The town, its boards, commissions, officers, agents and staff are not required to attend a scheduled site visit, and a properly noticed site visit can occur even if less than a quorum of any invited governing body attends. Comments made by town officials, agents or staff during a site visit shall be understood and interpreted as being only informal and suggestive, and shall not be binding on either the town or the applicant. It should be understood by all parties that no formal recommendations can be offered, and no decisions can be made at the site visit, which is essentially an outdoor workshop session. Nothing that transpires during the site visit shall relieve the applicant from the obligation to fully comply with the application, submittal and review procedures of this Code and the town land division and development ordinance and other laws. The town, its boards, commissions, officers, agents and staff shall not be deemed to have formal, actual or implied notice of existing features of the property or the surrounding environs that must be shown or disclosed in the application and review process, even if such features were observed or were readily observable during a site visit.

(iii) **Sketch plans.**

- 1 The applicant shall also submit the following sketch plans:
  - a A sketch plan of a conventional subdivision layout, which complies with the zoning district requirements and the town land division and development control ordinance;
  - b A sketch plan of a planned unit development complying with all open space regulations, densities and lot size requirements of this Ordinance and with the town land division and development control ordinance; and
  - c A sketch plan of a conservation design development which shall have of a minimum of 40 percent of the subject property in open space meeting all open space regulations, all density requirements and complies with the town land division and development control ordinance.
- 2 The individual sketch plan shall be prepared by using a four-step process, which includes the following:
  - a A detailed site analysis of all the physical features and resources of the subject property;

- 3 Submit a map showing the number and location of the individual house sites as allowed by the density of the applicable zoning district;
- 4 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
- 5 Designate lot lines for the house sites in accordance with the minimum lot size requirements of this Ordinance.

(iv) **Application.** Following the preapplication conference, an official submittal shall be made to the town clerk and shall include 15 copies each of the conventional layout and proposed conservation design development map, preferably on a topographic map, drawn at a scale of 100:1, showing 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 conservation design development and any adjacent development whether residential or otherwise;
- 5 Existing topography and storm water drainage, and proposed storm water drainage systems, showing basic topographic changes and proposed grading elevations;
- 6 All physical features of the site, such as wetlands, primary and secondary environmental corridors, isolated natural areas, and historic features;
- 7 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;
- 8 A completed town land division review checklist;
- 9 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 town Plan Commission or Town Board;

- 10 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;
- 11 Anticipated amounts of impervious surface including all proposed public and private improvements;
- 12 General outline of intended organizational structure related to property owner's association, architectural review committee, deed restrictions, and provision of utility and other services;
- 13 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
- 14 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.

- (v) **Fees.** A fee, as set by Town Board resolution from time to time, shall accompany each application. Such fee shall be paid by cash, check, or money order to the Town of Oconomowoc to defray the costs of review. The costs incurred by the town in obtaining legal, planning, engineering, and other technical and professional advice in connection with the review of the application and preparation of conditions for such uses shall be charged to the applicant and, if required by the town, a fee covering such costs shall accompany the application.

(c) **Approval procedures.**

- (i) **Referral for action by the town Plan Commission.** The town planner shall, within 30 days after receipt of the application, determine whether the application fulfills the requirements of this Section. If the staff determines that the application is complete and fulfills the requirements of this Section, the staff shall refer the same to the town Plan Commission to schedule a public hearing, in accordance with Section 487. If the staff determines that the application is not complete and does not fulfill the requirements of this Section, they shall return the application to the applicant. When the application meets the staff's approval, it shall be referred to the town Plan Commission and the town

engineering consultants for their report and recommendation. Upon completion of the necessary study and investigation, the town Plan Commission shall make its recommendation, as to the appropriateness and desirability of the proposed project with the density factor requested, the suitability of the proposed development, and any changes or additional conditions applicable to such plans, which they may feel are necessary and appropriate.

(ii) **Basis for approval.** The town 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 Ordinance 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 Ordinance, 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 Ordinance 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.

(iii) **Approval by Town Board.** The Town Board, after receiving the recommendation of the Plan Commission, conducting of public hearing per Section 487, and due consideration, may deny, approve, or approve subject to additional conditions the conditional use permit.

(iv) **Application for residential development permit.** Upon approval and compliance with any conditions of the town Plan Commission and Town Board, the applicant shall be authorized to submit an application for residential development permits and the necessary allotment.

(v) **Preliminary plat or condominium plat approval.** Upon approval of the necessary residential development permits and the required allotment, the preliminary plat or condominium plat may then be submitted for approval.

(vi) **Conditions for preparation of final plat or condominium plat.** After issuance of a conditional use permit, the final plat or condominium plat shall be prepared in accordance with the conditions specified and the following shall be submitted:

1 **Developers agreement:** A contractual agreement between the town and the owners of the development outlining all of the obligations and commitments required by the town.

2 **Rights-of-way, easements, exact net area.** The subdivision plat, condominium plat or certified survey map shall show all rights-of-way, easements, and the exact net area.

3 **Homeowners Association bylaws:** The Homeowners Association documents of incorporation and bylaws shall be submitted to and approved by the town attorney, town planner and the Town Board and placed on record with the town clerk and be recorded in the county register of deeds office. Such documents must conform with all state and local requirements for the protection of the property owners and the town.

4 **Utility and storm water facility easements:** Wherever required by the town, utility companies or the county land resources division and conforming to the specifications of the town and county.

5 **Construction routes:** A map of the development showing the access points to be used by construction vehicles during the course of construction, and which shall become part of the contract between the town and the developer, with such

provisions for enforcement as provided in the contract.

- (vii) **Consultant and legal fees:** If the town incurs consultant or legal fees to prepare or review any aspect of the proposed development, the town will notify the petitioner of what portion of fees shall be charged to petitioner, and all such charges shall be paid in full before signing the final document, in the form of a final plat, certified survey map, or condominium plat.
  - (viii) **Financial guarantee to complete construction of improvements in conservation design developments:** A letter of credit or cash deposit in a state financial institution or other satisfactory financial guarantee approved by the town attorney or Town Board to cover the cost of all improvements and facilities agreed upon in the conditional use permit and final plat, certified survey map or condominium plat.
  - (ix) **Recording:** The conditional use shall be recorded in the county office of the register of deeds to affect the real estate upon which the conditional use is granted.
  - (x) **Subsequent changes or additions:** Any subsequent changes or additions to an approved plan shall first be submitted for approval to the town 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 approved conditional use;
    - 3 The addition of any principal uses not included in the approved conditional use; 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
- (16) **Contractors Yard:** In A-1 Agricultural Districts, A-5 Mini Farm District, B-3 General Business District, Q-1 Quarry District or Industrial Districts subject to the following:
- (a) The minimum lot area shall be at least five (5) acres.
  - (b) All buildings used in the conduct of the business shall be located at least one hundred (100) feet from the lot line of an adjoining lot in residential district or at least fifty (50) feet from a lot line of an adjoining lot in any other district.
  - (c) No such use shall be allowed on any parcel, except as may front directly upon and have access to an arterial or major collector street, as defined in this



Ordinance or within an established industrial park, where the roads can accommodate the heavy equipment.

- (d) A planting screen at least ten (10) feet high in initial height shall be provided between any abutting property line and the proposed use. The Plan Commission or Town Board may increase or decrease the planting screen requirements as may be deemed appropriate.
- (e) In determining whether or not the proposed conditional use should be approved, the Plan Commission and Town Board shall make a determination that the proposed conditional use is compatible with adjacent land uses. If it is determined that the proposed conditional use would in any way be incompatible with the adjacent land uses or represent an adverse effect or nuisance to adjacent land uses, the proposed conditional use shall not be approved.
- (f) A Site Plan and Plan of Operation shall be submitted to the Plan Commission and Town Board for review and approval and must include the type and quantity of equipment and vehicles owned or leased by the property owner, the storage of materials, and hours of operation.

**(17) Conversions.**

- (a) Where permitted, rentals of existing barns and farm buildings for the storage of machinery, equipment, vehicles, boats, furniture and similar items, under the circumstances described in the following sentence, may be permitted as a conditional use in the A-1 agricultural district where the parcel was the original farmstead and is not a lot in a recorded subdivision plat. This conditional use permit is required whenever items that are not owned by the lot owner or by a person lawfully residing on the lot, are stored in existing barns or farm buildings in the A-1 agricultural district, and for which storage the owner of the items pays rent, provides goods or services, or provides other consideration.
- (b) Conditions under which the conversion will be permitted. Conditional use status will not be granted to any conversion for the use of an existing barn or farm building for the storage of machinery, equipment, vehicles, boats, furniture or similar items, unless all of the following conditions are met:
  - (i) No such use shall be permitted on parcels less than ten acres in size.
  - (ii) The use, if it is allowed, will be allowed only in buildings as they exist on the premises on the effective date of the Ordinance from which this Section is derived, except as otherwise described in this Ordinance.
  - (iii) No additional buildings or additions may be made without the expressed approval of the Plan Commission in accordance with the terms of the applicable ordinances. No new buildings will be allowed for the purpose of rental storage.
  - (iv) A certified survey map must be submitted with the application for the

conditional use detailing the size, offsets and use of all existing structures on the subject parcel.

- (v) The parcel must have access to an arterial or collector street as defined on the County Street and Highway Width Map.
- (vi) There shall be no outside storage allowed. Storage of machinery, vehicles, equipment, boats, furniture or other similar items outside overnight shall be considered a violation of the terms of any conditional use permit issued under this subsection and grounds for termination of such permit.
- (vii) Water supply facilities and the necessary septic system shall be in accordance with the rules of the County Department of Parks and Land Use, Environmental Health Division and the State Department of Commerce.
- (viii) There shall be no commercial signs associated with the proposed use.
- (ix) A detailed landscaping plan indicating the size, type, location and time table, for installation shall be submitted and approved by the Plan Commission prior to issuance of the conditional use permit.
- (x) The buildings and grounds shall be maintained in a neat, attractive and orderly way.
- (xi) The property shall comply with all rules and regulations of the town, the appropriate state building code and the local fire department regulations, including submission to routine inspections by the town and fire department.
- (xii) In determining whether or not the proposed conditional use permit shall be recommended, a "determination of compatibility" with adjacent land uses shall be made by the Plan Commission who shall forward that recommendation to the Town Board. The Town Board shall then, upon consideration of the Plan Commission's recommendation and all other relevant factors, make a determination of compatibility. In making this determination both the Plan Commission and the Town Board shall consider the town master plan to determine whether there will be any potential conflicts with future development, which may occur in accordance with the town master plan.
- (xiii) The location, building, and site plan and plan-of-operation must be submitted to and approved by the Plan Commission.
- (xiv) When the proposed use includes the storage of equipment and vehicles normally associated with an ongoing business, the use shall be explicitly for storage. 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.

- (xv) If there are complaints about unusual noise inconsistent with the normal operations of such storage buildings, the Plan Commission may recommend to the Town Board that a public hearing shall be held upon due notice and shall make reasonable rules and regulations in regards to rectifying the conflicts with adjacent land uses or terminate the use.
  - (xvi) Any building used for such storage shall be at least 50 feet from all side and rear lot lines.
  - (xvii) The Town Board may impose additional reasonable conditions upon the issuance of the conditional use permit. As a condition precedent to the issuance of the conditional use permit, the petitioner is required to accept the terms and conditions of the conditional use permit in its entirety, in writing.
- (18) **Drive-in or Drive thru establishments serving food or beverages to customers other than at a booth or table.** In local business or less restrictive districts, provided the building plans, site plans and plan of operation have been submitted to and approved by the Plan Commission.
- (19) **Feed lot operation.** Feed lots, as defined in Section 4, including livestock and poultry of all types, may be permitted as conditional uses in all agricultural districts except A-E agricultural, subject to the following: This conditional use category is created in recognition of the potential which exists in feed lot operations for uncontrolled runoff and animal waste, pollution of surface and groundwater and potential for such use to be a nuisance.
- (a) **General requirements:**
    - (i) No feed lot operation shall be permitted on less than 35 acres of tillable land nor closer than 1,000 feet from any land presently zoned for a residential district.
    - (ii) No accessory residence shall be permitted closer than 100 feet to the feed lot operation.
    - (iii) No part of the feed lot operation shall be closer than 300 feet from the centerline of any public road or closer than 200 feet from the lot lines of the site on which the production unit is situated.
    - (iv) It is important that careful planning and sound management be applied to the operation of manure handling and waste runoff. Farmers are encouraged to seek advice from the county land conservation committee. A conservation plan addressing the proposed methods of manure handling and waste runoff control shall be prepared and made a part of the plan of operation for any proposed feed lot operation.
    - (v) Animal waste shall not be mechanically spread between December 1 and April 1 unless the manner of application has been reviewed by and approved by the Town Board.

(b) **Information to be submitted:**

- (i) A site plan showing drainage, structures and the methods to be employed to control, contain or divert runoff of animal wastes.
- (ii) An operation plan detailing the method of operation and the equipment necessary to accomplish safe and sanitary disposal of animal wastes.
- (iii) A statement of the number of animals to be contained in the proposed animal feed lot. This plan shall include numbers, type and weights. Any change in the number of animal units for a period of more than 30 days shall be reported to the Plan Commission.
- (iv) A statement detailing the method of animal collection, storage and disposal to be employed.
- (v) A conservation plan prepared by the county land conservation committee, with approval by the Plan Commission.

(20) **Fur Farms, Pig Farms, Creameries, Condenseries, Commercial or Custom Grain Drying Operations:** In all agricultural A-1, A-B, A-P, A-T, A-O, A-5, and A-6, AD-10 and RRD-5 districts. Commercial or custom grain drying, poultry and/or egg production are considered permitted uses by right in the A-B Agricultural Business district and conditional uses in all other of the above agricultural districts. The following minimum requirements shall be complied with in the granting of Conditional uses under this Section:

- (a) The location, building and site plans and a plan of operation shall be submitted to and approved by the Plan Commission and Town Board.
- (b) No building other than one used solely for residential purposes shall be located closer than one hundred (100) feet of the lot line of an adjoining lot in a residential district. In all other cases a minimum offset of fifty (50) feet shall be maintained.
- (c) Although the Ordinance does not prescribe exactly how a plan of operation is to be put together, of particular interest to the Plan Commission will be the method by which animal waste will be handled in a safe and healthful manner. No such consideration or approval will be granted on a lot of less than five (5) acres in size.

(21) **In-law units.** In the AD-10, RRD-5, A-5, E-C, A-1, A-1a, A-2, A-3, R-1, R-1a, R-2, R-3, B-1, B-2, B-3 subject to the restrictions as set forth in Section 300, M-1, subject to the restrictions as set forth in Section 430, M-2, subject to the restrictions as set forth in Section 440, and all planned unit developments subject to the following:

- (a) The location, building and site plans shall be submitted to and approved by the Plan Commission.
- (b) The county health department shall certify that the septic system will

accommodate the proposed use.

- (c) 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) There shall be an additional parking space for the in-law unit.
  - (e) The architecture of the residence shall be compatible with the adjacent residential neighborhood and should appear to be a single-family residence. All other appropriate zoning district requirements for the principle living unit shall apply. A common entrance to the residence and in-law unit should be designed into the structure so that a separate front entrance, off of the common entrance, is available and the structure does not appear to be a duplex.
  - (f) The Plan Commission may determine that it is appropriate to have an interior door between the living units.
  - (g) A deed restriction shall be filed in the Waukesha County Register of Deeds' Office prior to issuance of the building permit indicating that this living unit is for family members of the principal dwelling unit only. This Deed Restriction shall state the in-law unit is to be occupied by persons related by blood or marriage to the family occupying the principal unit and that the Conditional Use is not transferable without formal approval of the Town Board without necessity of a public hearing and that the unit will be used as intended.
- (22) **Laboratories for testing, experimental or analytical purposes.** In any district other than residential, environmental corridor, A-P, A-T or restricted business districts, subject to the following:
- (a) The building plans, site plans and plan of operation shall be submitted to and approved by the Plan Commission.
  - (b) No building other than one used only for residence purposes shall be closer than 50 feet to the line of an adjoining lot in a district permitting residential use.
  - (c) Off-street parking shall be provided as required for office building and customer service establishments.
- (23) **Land Altering Activities:** Land-altering activities may be permitted as a conditional use in any district, except the Conservancy district unless rezoned to allow such activity. Highway construction which may be exempted by a written Memorandum of Understanding between the Wisconsin Department of Natural Resources and the Department of Transportation for a specific highway project, home construction and the attendant limited grading and fill necessary to achieve positive drainage away from the foundation and dredging as may be allowed by this Ordinance and minor grading as defined by this Ordinance, shall be excluded from regulation under this provision, but may be regulated elsewhere under this Ordinance. Land altering activities permitted as a conditional use shall be subject to the following:
- (a) Detailed plans, at a scale of not less than 1" = 100 feet, of the project including

areas to be graded, filled or otherwise altered along with seeding and/or vegetation plans and planting schedule and erosion and sedimentation practices to be employed shall be submitted for review and approval.

- (b) No such use, shall create flooding, concentrated runoff, inadequate drainage, unfavorable topography, excessive erosion and sedimentation or restrict navigability in any state water.
  - (c) Such use shall comply with the conditions established by the Plan Commission, the Town Board, and where applicable, the State pursuant to Chapter 87 and Chapter 281 of the Wisconsin Statutes and amendments thereto and any federal regulations.
  - (d) If a rezoning is required, the procedure established in this Ordinance shall be complied with and the amendment to any other appropriate zoning district shall be approved.
  - (e) The proposed grading and land-altering activities shall conform to the Waukesha County Construction Site Erosion Control and Storm water Management Ordinance, and a permit under that Ordinance must be received from the Waukesha County Department of Parks and Land Use, Land Resources Division, prior to the issuance of the conditional use permit.
- (24) **Landscaping, and Lawn and Garden Businesses** In A-1 Agricultural Districts, A-5 Mini Farm District, B-3 General Business District, Q-1 Quarry District or Industrial Districts subject to the following:
- (a) The minimum lot area shall be at least Twenty (20) acres.
  - (b) All buildings used in the conduct of the business shall be located at least one hundred (150) feet from the lot line of an adjoining lot in residential district or at least fifty (50) feet from a lot line of an adjoining lot in any other district.
  - (c) No such use shall be allowed on any parcel, except as may front directly upon and have access to an arterial or major collector street, as defined in this Ordinance or within an established industrial park, where the roads can accommodate the heavy equipment.
  - (d) A planting screen at least ten (10) feet high in initial height and 15 wide shall be provided between any abutting property line and the proposed use. The Plan Commission or Town Board may increase or decrease the planting screen requirements as may be deemed appropriate.
  - (e) In determining whether or not the proposed conditional use should be approved, the Plan Commission and Town Board shall make a determination that the proposed conditional use is compatible with adjacent land uses and the surrounding area as it relates to noise, traffic, dust, hours of operation etc. If it is determined that the proposed conditional use would in any way be incompatible with the adjacent land uses, conflict with future development of the area, or represent an adverse effect or nuisance to adjacent land uses, the

proposed conditional use shall not be approved.

- (f) A Site Plan and Plan of Operation shall be submitted to the Plan Commission and Town Board for review and approval and must include the type and quantity of equipment and vehicles owned or leased by the property owner, the storage of materials, location of all greenhouses, shade houses and storage bins, parking areas for customers and employees, signs, toilet facilities, fuel storage facilities, landscaping and lighting plans, dumpsters, and hours of operation.
  - (g) The Plan Commission and Town Board shall determine the percentage of the property that may be devoted to the landscaping, lawn and garden business and the more restrictive determination shall apply.
  - (h) The landscaping and lawn and garden business is restricted to a service oriented business and is prohibited from manufacturing or assembling products. The sale of products on the premises which are not produced on the subject property are prohibited unless permitted or limited by specific conditions in the conditional use permit (i.e. mulch, fertilizer, decorative stone).
  - (i) The conditional use permit shall restrict the number and types of machinery and equipment the business operator may be allowed to bring onto the premises and whether the machinery and equipment must be stored inside a building and repaired or maintained on the premise.
  - (j) The design and size of the structures used in the operation of the business shall be subject to conditions in the conditional use permit.
  - (k) The conditional use permit shall automatically expire and terminate on the sale of the property. A deed restriction to that effect shall be filed in the Waukesha County Register of Deeds Office prior to conditional use permit being issued.
  - (l) All offices, vehicle storage, greenhouses, shade houses, storage bins, maintenance or service facilities, hazardous chemical or salt storage facilities shall comply with all applicable commercial building codes and regulations of the Town, County, State of Wisconsin and federal governments.
- (25) **Legal nonconforming uses.** In any district as provided by Section 34 of this Ordinance.
- (26) **Limited Family Business:** The purpose and intent of this Section is to provide a listing of procedures and standards of operation for limited family businesses that may operate in an attached garage or detached accessory building under a conditional use permit in residential or agricultural districts except A-P, A-T, or A-E.
- (a) A conditional use permit for a limited family business is designed to accommodate small family businesses without the necessity for relocation or rezoning, while at the same time protecting the interest of the adjacent property owner and any future development of the area. Any expansion of the limited family business will be subject to an amendment to the conditional use permit and, if said amendment is denied, the conditional use permit would either terminate or the expansion could not take place.

- (b) All employees, except one full-time equivalent, shall be members of the family residing on the premises.
  - (c) The Plan Commission and Town Board shall determine the percentage of the property that may be devoted to the limited family business and the more restrictive determination shall apply.
  - (d) The limited family business is restricted to a service oriented business or home occupation business and is prohibited from manufacturing or assembling products. The sale of products on the premises which are not produced by the limited family business is prohibited. The sale of products available for sale as accessories to the business may be permitted or limited by specific conditions in the conditional use permit (i.e. hair care products such as shampoo and conditioners normally associated with a business that cuts or styles hair).
  - (e) The conditional use permit shall restrict the number and types of machinery and equipment the limited family business operator may be allowed to bring onto the premises and whether the machinery and equipment must be stored inside a building.
  - (f) The structures used in the limited family business shall be considered to be residential accessory buildings and shall meet all requirements for such buildings. The design and size of the structures are subject to conditions in the conditional use permit.
  - (g) The conditional use permit shall automatically expire and terminate on the sale of the property or its transfer to a non-occupant of the property. A deed restriction to that effect shall be filed in the Waukesha County Register of Deeds Office prior to conditional use permit being issued.
  - (h) The limited family business shall not operate on a parcel having less than the minimum parcel size for the district in which it is located. For certain uses which are determined by the Plan Commission and Town Board to have a potential adverse effect on adjacent residential zoned properties, additional requirements regarding location and site standards (i.e. screening) may be required as conditions of the use.
- (27) **Marinas and boat deliveries.** To be allowed as a permitted use by right in B-3, M-1 and M-2 districts and a conditional use in all other districts except A-P, AT, A-B, A-E and E-C subject to the following:
- (a) Such use shall be located at least 500 feet from the nearest public bathing beach or park.
  - (b) Such use is designed and constructed so as not to interfere with the adjacent riparian owner's use of the water for swimming, fishing or boating nor interfere or obstruct the public's free navigation.
  - (c) The minimum lot area shall be one acre with a minimum water frontage of not less than 150 feet.



- (d) The building plans, site plans and plan of operation shall be submitted to and approved by the Plan Commission.
  - (e) Sewage disposal field shall be located not closer than 50 feet from the normal high water mark of the body of water.
  - (f) Fuel pumps shall be located two feet above the normal high water mark elevation. Fuel storage tanks shall be located not less than 100 feet from the normal high water mark and shall be located aboveground and shall be adequately screened and fireproofed. The offset requirements for fuel pumps and storage tanks shall be at least 50 feet from any side lot line and all other locational requirements as required by the local fire department.
  - (g) No lighting installation shall be permitted which creates a hazard to traffic or nuisance to surrounding properties.
  - (h) The aggregate length of all piers shall not exceed one-half of the total width of waterfront as measured at the meander line of the premises. Piers shall not be constructed closer to the side lot line than the length of its pier.
  - (i) Mooring of boats shall only be permitted in a way which will not necessitate maneuvering beyond the extended lot lines.
  - (j) Land storage may be permitted based upon the size of the parcel and its compatibility with the other uses of the premises.
  - (k) Any other requirements which may be deemed necessary by the Plan Commission and board.
- (28) **Mobile home parks and trailer camps.** In any district other than C-1, A-E, A-T, E-C, A-P, residential or restricted business districts, provided the site plan and plan of operation have been submitted to and approved by the Plan Commission subject to the following:
- (a) No such use shall be permitted on a parcel less than five acres in area.
  - (b) No buildings shall be located closer than 50 feet to the lot line of an adjoining residential district.
  - (c) The provisions of all county, state and local regulation on trailers, mobile homes and mobile home parks shall be met.
  - (d) No such use shall be allowed unless served by municipal sewage disposal facilities and the density may not exceed that allowed in the sewer reduction provisions of this Ordinance.
  - (e) Mobile home parks developed to permit privately owned lots must be designed and built in accordance with the PUD requirements.
  - (f) The building plans, site plans and plan of operation shall be submitted to and approved by the Plan Commission

- (29) **Motels.** In the B-1 and B-2 Business Districts only, subject to the following:
- (a) The building plans, site plans, and plan of operation shall be submitted to and approved by the Plan Commission.
  - (b) No such use shall be permitted on a lot less than three acres in area.
  - (c) At least one off-street parking space shall be provided for each rental unit.
  - (d) No building shall be closer than 50 feet to the lot line of an adjoining lot in a district permitting residential use.
  - (e) All provisions of the motel ordinance of the town must be complied with.
- (30) **Multifamily units and condominiums.** In AD-10, RRD-5, A-5, R-3, B-1, B-2, planned unit developments or conservation design subdivisions subject to the following:
- (a) The minimum lot area shall be determined by the number of units to be constructed on one parcel. When the units are to be served by private waste disposal system, each unit shall have a minimum of 15,000 square feet of open space on suitable soils for septic system operation. Where the use will be served by municipal sewer, the open space requirements can be reduced to a minimum of 10,000 square feet per unit and eight thousand square feet per unit if both sewer and water service are available. The width of the lot shall be increased as the size of the lot increases in order to avoid excessively long, narrow lots and shall, however, be no less than 180 feet in width. The amount of green space, exclusive of parking areas, sidewalks driveways, roads and other paved areas or impervious surfaces shall be 5000 square feet per unit.
  - (b) The manner in which the units are to be serviced with sewage disposal is subject to the approval of the state department commerce and the county health department, prior to approval by the Town.
  - (c) The minimum floor area per unit shall be nine hundred (900) square feet for one-bedroom units, one thousand (1,000) square feet for two-bedroom units, and one thousand one hundred (1,100) square feet for three-bedroom units.
  - (d) Architectural review of the project may be required by the Plan Commission.
  - (e) There shall be at least two off-street parking spaces per unit, one of which is interior.
  - (f) The offset, setback and landscape requirements are subject to modification by the Plan Commission and board. However, the offset requirements shall not be reduced to less than 20 feet from the lot line of an adjoining residential district. The setback shall be a minimum of 50 feet. The maximum height shall not exceed 35 feet. Additional height may be permitted if the offset and setback requirements are increased by one foot for each additional one foot in height beyond 35 feet.

- (g) Only a duplex (2-family residential use) may be allowed in the AD-10 Agricultural Density District and the RRD-5 Rural Density District.
  - (h) Only a duplex (2-family residential use) may be allowed in an A-5 Mini Farm District and only if the duplex is proposed to be made by conversion of a farm dwelling that existed at the time of the adoption of the original ordinance by Waukesha County in February 26, 1959.
  - (i) The location and building plans, and a Site Plan and Plan of Operation shall be submitted to and approved by the Plan Commission and the Town Board.
- (31) **Other uses.** Other uses or situations not specifically provided for in this conditional use Section and which may be determined to be acceptable under the provisions of this Ordinance. Such determination shall be made by the Plan Commission and Town Board to meet the intent of the conditional use provisions as set forth in this Section.
- (32) **Outdoor theaters.** In any district other than residential, restricted business, C-1, E-C, A-E, A-T or A-P districts, subject to the following:
- (a) The building plans, site plans, and plan of operation shall be submitted to and approved by the Plan Commission.
  - (b) No portion of the theater area shall be closer than 200 feet to the base setback line or closer than 200 feet to the lot line of an adjoining lot in a district permitting residential use.
  - (c) A planting screen at least 6 feet high and 40 feet in width shall be provided along any lot line abutting a district permitting residential use.
  - (d) Additional highway width sufficient to provide for the safe control of traffic at the theater entrance shall be dedicated and the necessary highway improvements constructed to provide for a divided roadway, with adequate reservoir area in the center strip to shelter cars entering the theater.
- (33) **Planned unit development:** Due to increased urbanization and the associated Greater demands for open space and the need to create a more desired and creative Living environment than would result through the strict application of the standard zoning requirements, it is herein provided that there be flexibility in the regulations governing the development of land. This provision is intended to encourage planned unit development in directions which will recognize both the changes in design and technology in the building industry and the new demands in the housing market. It is intended that these provisions create imaginative and interesting communities with substantial open area owned in common or dedicated to the public and for the enjoyment of the residents, and will encourage a more efficient and desirable use of the land and open space areas thereby resulting in more variety of the physical development of the Town. An overall development plan showing how the above objectives are to be achieved must be submitted to the Plan Commission and the Town Board for review and approval. This use is permitted in any district except A-B, A-P, A-T, A-E, and AD-10 and RRD-5 Districts except that no portions of any building lots or structures shall be allowed in the C-1 or A-E Districts, subject to the following:

(a) **Intent and purpose.** Such uses will only be permitted on parcels of 20 acres or more when appropriately located and where the unified and planned development of such tract would allow a more desirable utilization of the site and produce a more aesthetically and economical development than would result from the application of normal district regulation.

(b) **Application and regulations.**

(i) The unified and planned development of a site, in single, corporate ownership, or common ownership under the Condominium Ownership Act (Wis. Stats. § 703.01 et seq.) at the time of development, may be permitted in a planned development without the customary division into individual lots and without requiring strict compliance to the specific district regulations, subject to the requirements of this subsection. Lot size, offset, setback, height, open space, building location, and floor area requirements may be modified according to the following conditions:

1 All sanitary and water provisions are in conformance with the requirements of the State Department of Commerce, the Waukesha County Division of Health Department, and the local sanitary district.

2 The proposed development is in conformity with the town's comprehensive plan, is not contrary to the general welfare or economic balance of the community and that the benefits and amenities of the resultant development justify the variation from the normal requirements of the district in which it is located.

3 All other requirements of the planned development are met as set forth in this Section.

(ii) Required standards as established by the town relative to road design, drainage or other engineering parameters may be modified subject to the conditions of approval as long as such modifications are consistent with good engineering practice and the approval of the Town Board.

(iii) **Residential Planned Unit Development:**

1 The following table may be utilized to compute the maximum dwelling unit density requirements of the P.U.D., except that areas which are Upland or Secondary Environmental Corridors are also subject to (b) below.

A-1	120,000 sq. ft. (2.75 acres) per dwelling unit
A-2	120,000 sq. ft. (2.75 acres) per dwelling unit
A-3	80,000 sq. ft. (1.84 acres) per dwelling unit
A-5	200,000 sq. ft. (4.59 acres) per dwelling unit

Environmental Corridor	5 acres per dwelling unit *
R-1a	39,000 sq. ft. (0.89 acres) per dwelling unit
R-1	39,000 sq. ft. (0.89 acres) per dwelling unit
R-2	25,000 sq. ft. (0.57 acres) per dwelling unit
R-3	15,000 sq. ft. (0.34 acres) per dwelling unit

\*Calculation for Environmental Corridor shall occur as established in (b) below.

- 2 If all of the Upland, Primary and Secondary Environmental Corridor or Environmental Corridor zoned lands are preserved in their entirety within the public open space or common open space and preserved in its natural state, the density of one unit per five (5) acres may be added to the maximum number of dwelling units derived from utilizing the table above.
- 3 Lands currently zoned C-1 or A-E may not be used in formulating the density of the project. When lands border a lake or other public body of water, pyramiding as defined herein, may be allowed if the minimum water frontage at the high water mark is one hundred (100) feet for the first dwelling unit and an additional twenty-five (25) feet for each additional dwelling unit thereafter. No more dwelling units may have access to the water body than would result from the application of this provision irrespective of the overall size of the development parcel.
- 4 Public open space or common open space shall be of a size and shape to provide an integrated system of open spaces to the greatest extent possible and to provide protection of environmentally significant lands: they shall not consist of long, narrow bands or corridors, but shall be larger blocks or wide corridors of land, usually not less than one (1) acre in area. Corridors linking large blocks of public open space or common open space shall be not less than fifty (50) feet in width to provide adequate buffers from adjacent residential lots. The size, shape and location of said public open space or common open space shall be subject to review and approval of the Plan Commission and Town Board in order to qualify the project for consideration as a P.U.D. Public open space or common open space shall be a minimum of forty (40) percent of the entire development, while no more than ten (10) percent of the entire acreage of the development included in the required forty (40) percent open space can be Conservancy or A-E zoned land. In any development, no more than five (5) percent of the public open space may be used for public buildings, such as schools, fire stations, municipal buildings, etc.

- 5 In public open space or common open space containing environmentally significant areas, a maximum of 2% of the environmentally significant areas may be used for limited construction of recreational related structures and recreational/trails.
- 6 Public open space or common open space shall contain at least 90% green space. Such public open space or common open space shall not be part of individual residential building lots and all but 5% of the open space shall be free of structures and impervious surface. The Town Board and the Plan Commission may increase as a special exception the maximum requirement in conformance with the overall intent of these provisions while also protecting the public's interest.
- 7 Adequate guarantee shall be provided for permanent retention of the open space resulting from these regulations, either by private reservation for use of the residents within the development or others as may be specifically provided for, i.e.: farmers use of open space, dedication to a public entity or development of a private recreational facility open to the general public in perpetuity for a fee, subject to Plan Commission and Town Board approval. There shall not be any clear cutting or clearing of vegetation other than dead, diseased or dying vegetation or removal of invasive species on any lands being so preserved in public open space or common open space which are considered Primary or Secondary Environmental Corridor or Isolated Natural Areas, as depicted on the Town Land Use Plan, except as provided in 5 for limited trail or recreational related development.
- 8 Perpetual care and maintenance of public open space or common open space shall be provided for by an agreement recorded with the Waukesha County Register of Deeds. Said agreement shall include an operation plan, which shall preserve the natural qualities of the environmentally significant lands. The agreement shall be submitted to and approved by the Plan Commission and the Town Board and may be subject to review by the Waukesha County Naturalist if required by the Plan Commission and/or Town Board and this condition are not satisfied unless all such appropriate approvals are granted.
- 9 Ownership and tax liability of the open space areas shall be established in a manner acceptable to the Plan Commission and Town Board and made part of the conditions of approval.

- (iv) **Commercial P.U.D.:** The use of a Commercial P.U.D. may be authorized only where the underlying zoning is mapped in one or more of the business districts (except the EBROD) on the parcel or a portion thereof. If only a portion is zoned for business, the commercial P.U.D. may only

be used for the same percentage of the site that would result from the normal application of the Business district requirements. The location of the proposed business uses can however, be flexed on the site so long as no more area is devoted to such use than is permitted in the underlying district. The attendant parking areas and service facilities for the commercial areas shall be included in the areas allocated to such non-residential uses.

- 1 The proposed P.U.D. shall be served by adequate off-street parking, loading and service facilities.
- 2 The P.U.D. shall not create an adverse effect upon the general traffic pattern or adjoining property values.
- 3 Architecture, landscaping, lighting and general site development shall be compatible with the surrounding neighborhood.
- 4 The aforementioned requirements shall be certified by the Town as having been fully met.

(v) **Mixed P.U.D.:** A mixed P.U.D. shall consider allowing a mixture of business, residential or other uses as the underlying zoning would allow. The percentage of area in the project shall be the same as would result from the application or the strict adherence of the normal district regulations. The location of the uses can however, be flexed on the site so long as no more area is devoted to the various uses than would be permitted in the underlying zoning district. The attendant parking and service facilities for the non-residential part of the project shall be included in the area allocated to such non-residential uses.

- 1 The proposed mixture of commercial, industrial, residential, and other uses shall produce a unified composite which is comparable both within itself and with the surrounding neighborhood.
- 2 The mixed uses shall conform to the general requirements applicable to each of them as here-in-before set forth.
- 3 The maximum allowable dwelling unit density shall be computed using only the residential area portion of the total P.U.D. area. If residential use and non-residential use occur in the same proposed building, that percentage of the commercial use of the building shall be deducted from said building lot and only the remaining area shall be used in the density computation for the remaining residential units.

(vi) After all conditions of a planned unit development project are certified by the town as being completed, the conditional use status of such

completed development shall be changed to a permitted use in the district in which it is located.

- (vii) **Example - Computing Maximum Dwelling unit Density in a Planned Unit Development:** A developer wishes to divide one hundred (100) acres of land into a planned unit development. Ten (10) of these acres are zoned C-1 Conservancy. The rest is zoned R-1 Residential. The preliminary plan shows an additional ten (10) acres proposed for commercial uses but not zoned for business.

The following computations demonstrate the method of determining how many residential units will be allowed in the project.

Gross acreage	100 acres
Less ten (10) acres zoned C-1- 10 acres	90 acres
Less ten (10) acres zoned for B-2 - 10 acres	Business use 80 acres
Total residential acreage in sq. ft	3,484,800 square feet(80 acres x 43,560)
Divide by square feet per dwelling unit requirement for R-1 Residential districts (3,484,800 divided by 39,000)	89 units

The 10 acres zoned for commercial use cannot be included in the PUD as it is not zoned for residential uses and must be rezoned to be considered.

(c) **Specific project regulations.**

- (i) 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.
- (ii) Use of structures for housing. Use of structures may permit either single-family or multifamily housing, provided the proposed population composition will not result in an adverse effect upon the Town's capability to provide municipal services or school facilities.
- (iii) Agreement with the town. The developer shall enter into a developer's agreement with the town to guarantee the implementation of the development according to the terms of the conditions established as part of the development plan approval.

- (d) **Basis for approval.** The Plan Commission in making its recommendations, and the Town Board in making its determination, as to the approval or denial of the conditional use permit for the planned development, shall give consideration to



the purposes set forth in this subsection, and be satisfied as to the following:

- (i) That the proposed development is consistent with the spirit and intent of this subsection, is in conformity with the general character of the town, and, would not be contrary to the general welfare and economic prosperity of the town or of the immediate neighborhood.
- (ii) The benefits from the anticipated improved design of the resultant development shall justify the variation from the normal requirements of this subsection through the application of this subsection.
- (iii) That the size, quality and architectural design of all buildings in the project will not have an adverse effect upon the general character of the town and surrounding neighborhood.
- (iv) That the provisions and facilities of the open space areas being provided are of such quality, size and aesthetic value to justify the approval of the project.
- (v) That the setbacks shall be maintained along any boundary street of the project area, as required by the existing underlying basic district.
- (vi) That no building shall be 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.
- (vii) The approval of a petition for conditional use shall be based on and include as conditions thereto the basic architectural design, the site plan, the operational plans for the development as approved, as well as all other commitments offered as required in regard to project value, character or other factors pertinent to an assurance that the proposed development will be carried out basically as presented for the project.

(e) **Application procedures.**

- (i) **Filing procedure to initiate projects and pre-application conference.**  
The following information shall be submitted prior to any requests for approval of any type of a planned unit development. The applicants are required to submit a site analysis map at the time they submit an application for a pre-application conference. The purpose of the site analysis map is to ensure that the important site features have been adequately surveyed and identified and this information has been or will be incorporated into the site design. This will give the Plan Commission, Town Board, town planner and the town engineer the necessary information to understand the physical features of the site in their review of the sketch plan and make recommendations for changes before the applicant has invested in the final site design. The site analysis map should show:

- 1 Property boundaries;

- 2 All streams, rivers, lakes, wetlands and other hydrological features;
- 3 Topographic contours with intervals of two feet or less;
- 4 Each primary and secondary environmental corridor labeled by type;
- 5 General vegetation characteristics;
- 6 General soils types by group;
- 7 The planned boundaries of protected open space;
- 8 Existing roads and streets;
- 9 Open space and trails traversing, or adjacent to the site, whether existing or planned. Any other information reasonably necessary for the Plan Commission or the Town Board to make a determination;
- 10 All class I and II soils for agricultural uses;
- 11 Aerial photographs with a scale of one inch equals 100 feet; and
- 12 Any groundwater recharge areas designated by the Southeastern Wisconsin Regional Plan Commission or the State Department of Natural Resources.

(ii) **Site visit.** The applicant is encouraged to hold a site visit on the subject property, prior to filing an application, as part of the pre-application process. The applicant can make arrangements for a site visit by contacting the town planner. The purpose of the site visit is to provide an opportunity for everyone involved in the subdivision proposal to familiarize themselves with the property's existing conditions and special features, to identify potential site design issues, and to discuss design concepts, including the general layout of designated conservation areas, if applicable, and potential locations for proposed buildings and street alignments. This part of the pre-application conference is optional, but is perhaps the most critical of the entire design and review process; because it enables the applicants, the staff, and the town Plan Commission and Town Board to work together to fully understand the site and its potential for carefully designing full density development around an open space network. The goal of the site visit is to ensure that the features mapped on the site analysis maps have been designed around and protected. If a site visit is scheduled, those invited shall include the town staff, the Plan Commission, and the Town Board, along with the applicant and the general public. Notice of the site visit shall include all notices as may be required by the state open meetings laws, and the site visit shall be conducted in compliance

with such laws. The town, its boards, commissions, officers, agents and staff are not required to attend a scheduled site visit, and a properly noticed site visit can occur even if less than a quorum of any invited governing body attends. Comments made by town officials, agents or staff during a site visit shall be understood and interpreted as being only informal and suggestive, and shall not be binding on either the town or the applicant. It should be understood by all parties that no formal recommendations can be offered, and no decisions can be made at the site visit, which is essentially an outdoor workshop session. Nothing that transpires during the site visit shall relieve the applicant from the obligation to fully comply with the application, submittal and review procedures of this Ordinance and the town land division and development Ordinance and other laws. The town, its boards, commissions, officers, agents and staff shall not be deemed to have formal, actual or implied notice of existing features of the property or the surrounding environs that must be shown or disclosed in the application and review process, even if such features were observed or were readily observable during a site visit.

(iii) **Sketch plans.**

- 1 The applicant shall also submit the following sketch plans:
  - a A sketch plan of a conventional subdivision plat, which complies with the zoning district requirements and the town land division and development control ordinance;
  - b A sketch plan of a planned unit development complying with all the open space regulations, densities and lot size requirements of this Ordinance and with the town land division and development control ordinance; and
  - c A sketch plan of a conservation design development which shall have of a minimum of 40 percent of the subject property in open space, meeting all open space regulations, all density requirements and complies with the town land division and development control ordinance.
- 2 The individual sketch plans shall be prepared by using a four-step process, which includes the following:
  - a A detailed site analysis of all the physical features and resources of the subject property;
  - b Submit a map showing the number and location of the individual house sites as allowed by the density of the applicable zoning district;
  - c 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

- d Designate lot lines for the house sites in accordance with the minimum lot size requirements of this Ordinance.

(iv) **Application.** Following the pre-application conference, an official submittal shall be made to the town clerk and shall include 15 copies each of the conventional layout, conservation design, and proposed planned unit development map, preferably on a topographic map, drawn at a scale of 100:1, showing 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 planned unit development and any adjacent development whether residential or otherwise;
- 5 Existing topography and storm water drainage, and proposed storm water drainage systems, showing basic topographic changes and proposed grading elevations;
- 6 All physical features of the site, such as wetlands, primary and secondary environmental corridors, isolated natural areas, and historic features;
- 7 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 area on the site containing trees;
- 8 A completed town land division review checklist;
- 9 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 town Plan Commission or Town Board;

- 10 Anticipated amounts of impervious surface including all proposed public and private improvements;
- 11 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;
- 12 General outline of intended organizational structure related to property owner's association, architectural review committee, deed restrictions, and provision of utility and other services;
- 13 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 provision; and
- 14 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 Plan Commission and Town Board.

(v) **Fees.** A fee, as set by Town Board resolution from time to time, shall accompany each application. Such fee shall be paid by cash, check, or money order to the Town of Oconomowoc to defray the costs of review. The costs incurred by the town in obtaining legal, planning, engineering, and other technical and professional advice in connection with the review of the application and preparation of conditions for such uses shall be charged to the applicant and, if required by the town, a fee covering such costs shall accompany the application.

(vi) **Procedure.**

- 1 **Referral for action by the town Plan Commission.** The town planner shall, within 30 days after receipt of the application, determine whether the application fulfills the requirements of this Section. If the staff determines that the application is complete and fulfills the requirements of this Section, the staff shall refer the same to the town Plan Commission to schedule a public hearing, in accordance with this Ordinance. If the staff determines that the application is not complete and does not fulfill the requirements of this Section, they shall return the application to the applicant. When the application meets the staff's approval, it shall be referred to the town Plan Commission and the town engineering consultants for their report and recommendation. Upon completion of the necessary

study and investigation, the town Plan Commission shall make its recommendation, as to the appropriateness and desirability of the proposed project with the density factor requested, the suitability of the proposed development, and any changes or additional conditions applicable to such plans, which they may feel are necessary and appropriate.

2 **Basis for approval.** The town Plan Commission, in its recommendation shall give consideration to and be satisfied as to the following:

- a The proposed development is consistent with the spirit and intent of this Ordinance and will not be contrary to the general welfare and economic prosperity of the town, but rather that the benefits derived by utilizing the planned unit development and, welfare and economic prosperity of the town, but rather that the benefits derived by utilizing the planned unit development and, in keeping with the current economic and social consideration, justifies the application of the planned unit development technique;
- b Such development conforms to the adopted master plan of the town and its components;
- c 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;
- d 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 Section, 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;
- e The approval shall be based upon satisfaction of standards of this Ordinance 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;
- f 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

- g 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.

3 **Approval by Town Board.** The Town Board, after receiving the recommendation of the Plan Commission, conducting of public hearing per this Ordinance, and due consideration, may deny, approve, or approve subject to additional conditions the conditional use permit.

4 **Conditions for preparation of final plat.** After issuance of a conditional use permit, and approval or conditional approval of the preliminary plat, the final plat shall be prepared in accordance with the conditions specified and the following shall be submitted:

- a **Developers agreement:** A contractual agreement between the Town and the Owners of the development outlining all of the obligations and commitments required by the Town.
- b **Rights-of-way, easements, exact net area:** The subdivision plat or certified survey map shall show all rights-of-way, easements, and the exact net area.
- c **Homeowners Association bylaws:** The Homeowners Association documents of incorporation and bylaws shall be submitted to and approved by the town attorney, town planner and the Town Board and placed on record with the town clerk and be recorded in the Waukesha County Register of Deeds Office. Such documents must conform to all state and local requirements for the protection of the property owners and the town.
- d **Utility and storm water facility easements:** Wherever required by the town, utility companies or Waukesha County Land Resources Division and conforming to the specifications of the town and county.
- e **Construction routes:** A map of the development showing the access points to be used by construction vehicles during the course of construction, and which

shall become part of the contract between the Town and the Developer, with such provisions for enforcement as provided in the contract.

5 **Consultant and legal fees:** If the town incurs consultant or legal fees to prepare or review any aspect of the proposed development, the town will notify the petitioner of what portion of fees shall be charged to petitioner, and all such charges shall be paid in full before signing the final document, in the form of a final plat, certified survey map, or condominium plat.

6 **Financial guarantee to complete construction of improvements in planned unit development:** A letter of credit or cash escrow in a state financial institution or other satisfactory financial guarantee approved by the town attorney or Town Board to cover the cost of all improvements and facilities agreed upon in the conditional use permit and final plat or certified survey map.

7 **Recording:** The conditional use shall be recorded in the Waukesha County Office of the Register of Deeds to affect the real estate upon which the conditional use is granted.

(vii) **Subsequent changes or additions:** Any subsequent changes or additions to an approved plan shall first be submitted for approval to the town 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 contained in the approved conditional use.
- 3 The addition of any principal uses not included in the approved conditional use; and
- 4 Any change in the basic concept of the site development, which would significantly alter the relationship of uses or open space.

(34) **Private clubs and outdoor recreational facilities, such as gun clubs, hunting preserves, outdoor shooting range, recreational camps and centers, indoor/outdoor recreational and athletic facilities, golf courses, bathing beaches, riding academies, resorts.** In any district except A-T, A-B and A-P subject to the following:

- (a) The building plans, site plans, and plan of operation shall be submitted to and approved by the Plan Commission.



- (b) No such use shall be permitted on a lot less than three acres in area, except in a restricted business or less restrictive district.
  - (c) No building, other than one used only for residence purposes, shall be closer than 50 feet to the lot line of an adjoining lot in a district permitting residential use.
  - (d) Off-street parking shall be provided as required by the Plan Commission adequate to meet the particular needs of the proposed use.
  - (e) No such permitted use shall include the operation of a commercial facility such as a bar; arcade or restaurant, except as may be specifically authorized in the grant of permit.
  - (f) No more than 15 percent of the environmental corridor district may be disturbed or vegetation removed, as part of the development of the site for the proposed use. This includes the structures, parking, walkways, recreational uses, septic system location, etc.
- (35) **Private stables.** Such uses are permitted uses by right in the A-P, A-T and A-1 districts on parcels 20 acres or greater in size, and such uses are permitted uses by right in the A-P, A-T and the A-1 districts on parcels of less than 20 acres provided that not more than one horse or other head of livestock are kept for each full open acre over two acres of open lot area. Such uses are not permitted uses and may not be allowed as conditional uses on any size parcel in the R-1, R-2 or R-3 districts. Such uses are permitted uses in the A-5, A-2, and A-3 districts provided that not more than one horse or other head of livestock are kept for each full open acre over two acres of open lot area. Such uses may be allowed as conditional uses in the B-1, B-2, B-3, M-1 and M-2 districts subject to the following:
- (a) The building plans, site plans, plan of operation and refuse disposal plan shall be submitted to and approved by the Plan Commission.
  - (b) No buildings other than one used only for residential purposes shall be closer than 100 feet to the lot line of any adjoining lot in a district permitting residential use.
  - (c) The Plan Commission shall make a finding that such use is compatible with surrounding and nearby residential land uses which may be affected by the proposed use.
  - (d) Generally, not more than one horse or other head of livestock should be kept for each full open acre over two acres of open lot area, unless the Plan Commission makes a specific finding that the subject parcel can maintain a greater number of livestock based on the proposed building plans, site plans, plan of operation and refuse disposal plan.
  - (e) The keeping of hogs, pigs of any type (except potbellied pigs as defined in this Ordinance for which a hobby kennel use permit has been issued), male goats or fur-bearing animals shall not be permitted on less than 20 acres.

- (36) **Public and commercial refuse disposal sites.** In any district other than residential, agricultural land preservation, conservancy, environmental corridor or exclusive agricultural conservancy districts, subject to the following:
- (a) The building plans, site plan, plan of operation (including the description of the types and sources of refuse to be disposed of) and plan of restoration shall be submitted to and approved by the Waukesha County Department of Parks and Land Use, by the Environmental Health Division and Land Resources Division and the State Department of Natural Resources pursuant to state solid waste disposal standards, and the Town Board following recommendation by the Plan Commission.
  - (b) The facility shall in all respects conform to the Wisconsin Administrative Code requirements pertinent to such facilities (i.e., NR180) and in conformance with the applicable Sections of the Wis. Stats. Ch. 281.
  - (c) Such plans shall be approved or disapproved upon consideration of the effect on topography, drainage, water supply, soil conditions, roads and traffic, and present and ultimate land development and use.
  - (d) Only sanitary landfill refuse disposal methods, subject to the standards established and enforced by the Waukesha County Department of Land Use, Environmental Health Division, the Department of Natural Resources and the State Board of Health shall be used. Permission to burn refuse before covering must be specifically included in the zoning permit and may be separately withdrawn at any time the smoke or smell constitutes a health or safety hazard. All garbage must be covered at the specified depth prior to the end of the day during which disposal takes place.
  - (e) A responsible person shall be in attendance during the hours of operation, which hours shall be subject to the approval of the Town Board. No refuse disposal shall take place except during the specified hours of operation, and with the attendant present.
  - (f) A non-flammable fence, with a gate which can be locked, must be erected to encompass the disposal site to prevent refuse disposal and scavenging during non-operating hours, and the attendant shall retain the key.
  - (g) Such fence, and additional auxiliary portable fence, such as snow fence, that will minimize the nuisance of blowing papers shall be approved by the Town Board.
  - (h) **Requirements:**
    - (i) **Setback:** No refuse disposal shall take place, nor shall structures pertinent thereto be constructed closer than two hundred (200) feet to the base of the setback line.
    - (ii) **Offset:** No refuse disposal shall take place closer than two hundred (200) feet to any lot line, nor shall refuse disposal take place closer than five hundred (500) feet to any existing dwelling or the site of a dwelling

for which a building permit has been issued prior to the application date for the conditional use permit, nor closer than five hundred (500) feet to any property zoned R-1, R-1a, R-2, R-3, R-4, A-2, A-3 Residential, at the time of the grant of the permit. No refuse disposal shall take place closer than five hundred (500) feet to a permanent business or industrial structure without the written consent of the owner of that adjacent property and the written approval of the Waukesha County Department of Parks and Land Use, Environmental Health Division and the State Department of Natural Resources.

- (iii) **Additional Requirements:** Restrictions as to the types and sources of refuse, if needed, shall be the responsibility of the Town Board under the advisement of the Waukesha County Department of Parks and Land Use, Environmental Health Division. A planting plan as approved by the Town Board shall be included in the plan of operation.
  - (iv) All existing refuse disposal operations shall be registered by the operator within sixty (60) days after the adoption of this Ordinance with the town clerk, submitting pertinent data relative to present operation, including the boundaries of the actual operation and ownership. A permit shall be granted to such existing operation subject to compliance with a plan of operation satisfactory to the approving bodies. A plan of restoration shall be submitted to the town by the operator with one (1) year of the adoption of this Ordinance, together with a surety bond to insure such restoration. Such operation and restoration plans shall not impose requirements which are economically or engineeringly unreasonable with respect to conditions resulting from operations prior to enactment of this Ordinance.
  - (v) The operation and facilities shall conform to all related requirements for quarrying per Section 21(B) (39), or as otherwise directed by the Town Board. A quarrying permit shall be required.
  - (vi) Submittal of performance maintenance bonds meeting approval of the town attorney covering operations and restoration requirements.
- (37) **Public and semi-public structures and uses.** In any district, except the A-E district and subject to a determination by the Town Board in accordance with Section 93 (D) being made prior to the application for a conditional use being filed in the A-P and A-T districts and subject to the following:
- (a) The building plan, site plan, and plan of operation shall be submitted to and approved by the Plan Commission;
  - (b) Such use or structure shall conform to the setback, height, and double the offset requirements of the district in which it is located; and
  - (c) The height limitation shall be extended to a maximum of 50 feet; provided, the minimum required setbacks and offsets shall be increased 2 feet for every additional foot in height in excess of the permitted maximum of the district.

- (38) **Quarrying.** As defined in this Ordinance in any district except C-1 Conservancy, A-E Exclusive Agricultural, E-C Environmental Corridor, AD-10, RRD-5, P-I Public and Institutional, A-2 Rural Home, A-3 Suburban Estate, R-1, R-1a, R-2, R-3, B-1, B-2, B-3, B-4, BP or M-1 districts, subject to the following:

(a) **Procedure for application.**

- (i) **Permit:** No quarrying operation shall take place in any district until a conditional use permit has been received and approved by the Plan Commission, and Town Board. Except in a quarrying or general industrial district, such permit shall be for an initial period as is deemed appropriate to the specific situation but not to exceed five (5) years, and may be renewed thereafter for periods not to exceed three (3) years provided application thereof shall be made at least sixty (60) and no more than one hundred twenty (120) days before expiration of the original permit. Application after such date shall be treated as an original application.
- (ii) **Application.** Application for a quarry permit shall be made on forms supplied by the clerk and shall be accompanied by:
  - 1 A fee in accordance with the established fee schedule to defray the cost of notification and holding of public hearings, review of application and referrals to affected public agency
  - 2 A description of all phases of the contemplated operation and the type of machinery or equipment which may be necessary to carry on the operation. Where the operation is to include the washing of sand and gravel, the estimated daily quantity of water required, its source and its disposition shall be made part of the description.
  - 3 A legal description of the proposed site with a map showing its location with indications of private access roads, existing or proposed, and of public highways adjacent to the site which will be affected by the operation.
  - 4 A topographic map of the area at a minimum contour interval of five feet extending beyond the site to the nearest public street or highway or to a minimum distance of 300 feet on all sides.
  - 5 A reclamation plan as required by Section 21(B)(39)(g) of this Ordinance, Chapter 14 – Nonmetallic Mining Reclamation, Article XIV, the Waukesha County Code of Ordinances, and any applicable nonmetallic mining reclamation ordinance adopted by the town.
  - 6 An environmental and economic impact assessment for the proposed facilities satisfying local and regional review agency

requirements.

(b) **Procedures for action on applications.**

- (i) **Referral to Plan Commission.** The application and all data pertaining thereto shall be referred to the Plan Commission for review and consideration per standard conditional use procedures.
- (ii) **Public hearing.** Within 65 days after an application has been filed, a public hearing shall be held at which all interested parties may be heard. In addition to the normal posting and publishing as provided in this Ordinance, notices shall be sent through the mail to all land owners within a half-mile radius of the approximate center of the proposed quarrying operation. These notices shall be mailed or delivered at least ten days prior to the date of hearing. Substantial compliance with the notice requirements of this Section shall be deemed sufficient.
- (iii) **Action by Town Board.** The Town Board shall within 35 days after receipt of the recommendation of the Plan Commission, take action to approve or disapprove the application for the proposed quarrying operation. Such determination shall be guided by consideration of the public health, safety and welfare and shall give particular consideration to the following factors:
  - 1 The effect of the proposed operation on existing roads, and traffic movements in terms of adequacy, safety and efficiency.
  - 2 The effect of the proposed operation on drainage and water supply.
  - 3 The possibility of soil erosion as a result of the proposed operation.
  - 4 The effect of dust and noise as a result of the proposed operation.
  - 5 The practical possibility of restoration of the site and its reuse.
  - 6 The effect of the proposed operation on the natural beauty, character, tax base, land value and land uses in the area.
  - 7 The most suitable land use for the area with particular consideration for future residential value.
  - 8 Any other factors deemed necessary by the Town Board.
- (iv) **Additional conditions:** Any conditions accessory to the granting of a permit shall be in writing and copies made a part of the permit and a part of the records of the town.

- (v) **Renewals.** The procedure as designated in subsections (b)(i-iv) of this Section shall apply to applications for renewal of a permit. Determination in regard to renewal shall be based on an evaluation of the effect of the continuance of the use with relation to changing conditions in the area. Where renewal is not granted, the reasons for refusal shall be presented to the applicant in writing and made a part of the records of the town.

(c) **Requirements.**

- (i) **General requirements.** No part of the quarrying operation shall be permitted closer than one thousand (1,000) feet, nor shall any accessory access road, parking area, or office building be permitted closer than five hundred (500) feet to a district zoned A-2, A-3, R-1, R-1a, R-2, or R-3 at the time of the grant of permit except with the written consent of the owners of all A-2, A-3, R-1, R-1a, R-2, or R-3 zoned properties within one thousand (1,000) feet, except in a quarrying or general industrial district, but in no case shall such operation be permitted closer than two hundred (200) feet to any residential district.
- (ii) No quarrying operation shall be permitted except in a quarrying or general industrial district, if thirty (30) or more families reside within a band one-half mile wide around the perimeter of the proposed operation.

- (d) **Setback Requirements;** No part of the quarrying operation other than access roads shall be located closer than two hundred (200) feet, nor shall any accessory parking area, stock pile, or office building be located closer than one hundred (100) feet to the base setback line along any street or highway.

- (e) **Offset requirements:** No part of the quarrying operation shall be permitted closer than two hundred (200) feet, nor shall any accessory access road, parking area, or office building be permitted closer than fifty (50) feet to any property line except with the written consent of the owner of the adjoining property, or except where said line is abutting a quarrying or general industrial district, or abutting an existing quarrying operation, but in no case shall such operation be closer than twenty (20) feet to any property line except by agreement between abutting quarrying operations, or be in conflict with the provisions of this Ordinance relating to preservation of topography.

(f) **Operational requirements:**

- (i) Fencing or other suitable barrier shall be erected and maintained around the site or around portions of the site where in the determination of the Town Board such facilities are necessary for the protection of the public and shall be of a type approved by the Town Board. No part of the quarrying operation or buildings shall be permitted closer than 50 feet to any property line except with the written consent of the owner of the adjoining property.

- (ii) All machinery and equipment used in the operation shall be constructed, maintained and operated in such a manner as to minimize dust, noise and vibration. Access and haulage roads on the site shall be maintained in dust-free condition by surfacing or treatment as directed by the town engineer and approval of the Town Board.
- (iii) The crushing, washing, refining or processing other than the initial removal of material, may be permitted as an accessory use only as specifically authorized under the terms of the grant of permit, or as otherwise provided in a quarrying or general industrial district.
- (iv) In stone quarries the production, manufacturing or storage of veneer stone, sills, lintels, cut flagstone, hearth stones, paving stone and similar architectural or structural stone shall be considered a permissible part of the operation, provided such production does not require the use of crushing or other heavy machinery except as may be otherwise specifically authorized under the terms of the grant of the permit, or as otherwise provided in a quarrying or general industrial district.
- (v) The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready-mixed concrete and any similar production or manufacturing processes which might be related to the quarrying operation shall not be permitted except as otherwise provided in a quarrying or general industrial district.
- (vi) The washing of sand and gravel shall be prohibited in any operation where the source of water is of doubtful capacity or where the quantity of water required will, in the opinion of the town engineer, seriously affect the water supply for other uses in the area.
- (vii) The planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the Plan Commission and/or Town Board to screen the operation so far as practical from normal view, to enhance the general appearance from the public right-of-way, and generally to minimize the damaging effect of the operation on the beauty and character of the surrounding country-side. Such planting shall be started as soon as practicable, but no later than one (1) year after quarrying operations have begun, and shall be done according to the recommendations of the Town Planner.
- (viii) Except in a quarrying or general industrial district, quarrying operations shall not begin before the hour of 7:00 a.m. and shall not continue after the hour of 6:00 p.m. and no operation shall take place on Sundays or legal holidays. During periods of national or unusual emergency, time and hours of operation may be altered at the discretion of the Town Board and through the issuance of a special permit which shall be renewable at thirty-day intervals.

(g) **Restorative requirements.**

- (i) In order to ensure that the area of quarrying operation shall be restored to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall, prior to the issuance of a permit, submit to the Town Board a plan for such restoration in the form of the following: approval of the Waukesha County Department of Parks and Land Use, Land Resources Division, a plan for such reclamation in accordance with Chapter 14 – Nonmetallic Mining Reclamation, Article XIV, Waukesha County Code of Ordinances or any applicable nonmetallic mining reclamation ordinance adopted by the town; an agreement with the town whereby the applicant contracts to restore the premises to a condition and within a time satisfactory to the town; the physical restoration plan approved by the Waukesha County Department of Parks and Land Use, Land Resource Division showing the proposed contours after restoration, plantings and other special features of restoration, and the method by which such restoration is to be accomplished; a cash escrow, certified check or other financial guarantee satisfactory to the town attorney in an amount sufficient in the opinion of the Town Board to secure the performance of the restoration agreement. Such agreement and financial guarantee shall be in a form approved by the town attorney.
- (ii) In the event of the applicant's failure to fulfill this agreement, such check or other financial guarantee shall be deemed forfeited for the purpose of enabling the town to perform the restoration.
- (iii) Restoration shall proceed as soon as practicable, upon order and direction of the Town Board. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than two years.
- (iv) If minor changes are proposed to the adopted reclamation plan, a revised plan shall be submitted to the town engineer and the Waukesha County Department of Parks and Land Use, Land Resources Division, for review and approval prior to proceeding with reclamation. If major changes are proposed to the adopted reclamation plan, a joint informational public hearing, scheduled by the Waukesha County Department of Parks and Land Use, Land Resources Division, shall be held with the town to solicit input on the proposed changes. If the changes are approved, a revised reclamation plan shall be submitted to the town engineer and the Waukesha County Department of Parks and Land Use, Land Resources Division for review and approval prior to proceeding with reclamation. If the changes are not approved, reasons for the decision shall be provided, in writing, to the owner and operator.
- (v) Where there is any backfilling, the material or method used shall not create a health hazard nor be objectionable because of odor, combustibility or unsightliness. In any case the finished grade of the restored area except for rock faces, outcroppings, water bodies or areas



of proposed building or paving construction, shall be of sufficient depth of earth to support plant growth and contain a minimum topsoil thickness of four inches.

- (vi) Within one year after the cessation of the operation, all temporary structures, stock piles, rubbish heaps or other debris shall be removed or backfilled into the excavation to leave the premises in a neat and orderly condition.
- (vii) In any restoration procedure which takes place in sand or gravel pits, no slope shall be left which is steeper than a ratio of two horizontal to one vertical. In no case shall any slope exceed the normal angle of slippage of the material involved.

(h) **Exceptions.**

- (i) The provisions of this subsection shall not apply to the removal of sod.
- (ii) When the operation is limited to the removal of topsoil, the Plan Commission and Town Board may modify any or all of the provisions of this subsection, provided however, that in no case shall such operation be permitted closer than ten feet from any property line, be to a depth in excess of 18 inches or so as to adversely affect the drainage of the area.
- (iii) The provisions of this subsection shall not apply to an operation which is accessory to the legitimate use of the premises; however, where such operation involves the commercial disposal of the material removed, the approval of the Town Board shall be required and such operation shall be limited to a maximum period of six months.
- (iv) In a general industrial district, the Town Board may, consistent with the intent of these regulations, modify the provisions relative to permitted hours of operation; and where the character of the terrain, of surrounding development, or other special conditions would justify such modification, may permit a reduction in the required setback or offset; provided, however, that in no case shall the setback be less than one hundred (100) feet, or the offset be less than one hundred (100) feet for quarrying operations or twenty (20) feet for any accessory access road, parking area, or office building except as may be otherwise provided in this Section.

(i) **Application to existing operations.**

- (i) **Permits.** Within 60 days after the adoption of the ordinance from which this subsection is derived all existing quarrying operations shall be required to register with the clerk submitting pertinent data relative to the present operation, boundaries of the actual operation and of the ownership. A quarrying permit shall be granted to such existing operation subject to compliance with the operational requirements of

this Ordinance where they can be reasonably applied under existing circumstances.

- (ii) **Plan for restoration.** There shall be required within one year after adoption of the Ordinance from which this Section is derived, the submission of a plan for restoration of the site of any existing quarrying operation. The plan for restoration in such case shall not impose requirements which are economically or engineeringly unreasonable with respect to conditions resulting from operations prior to enactment of the Ordinance from which this Section is derived.
  - (iii) **Renewal permits.** Within three (3) years after the date of this Ordinance any such existing operation shall be required to make application for a renewal permit the same as for re-application in the case of a new operation under this Ordinance, except in a quarrying or general industrial district.
- (39) **Restaurants, supper clubs, lake resorts, taverns and similar uses.** In the B-2 and B-3, B-4, B-P districts such uses shall be permitted uses by right. In all other districts except C-1, A-E, A-B, A-5, P-1, A-T and A-P, these uses shall be considered conditional uses subject to the following:
- (a) The minimum lot area shall be at least three acres and at least 200 feet in minimum average width.
  - (b) Adequate off-street parking shall be provided within 200 feet of the building in which such use is occurring, but offset 20 feet from any lot line or adjacent property zoned agricultural or residential. The amount of space shall be in accordance with the parking provisions of this Ordinance.
  - (c) A planting screen or fence of at least six feet in initial height shall be provided and maintained between any abutting residential district and the proposed conditional use. Additional screening may be required by the Plan Commission and/or Town Board.
  - (d) The proposed building shall be offset at least 50 feet from any adjoining residential district and 100 feet from the high water mark of any lake or navigable body of water and all outside food and beverage areas shall meet all the requirements of Section 33 of this Ordinance.
  - (e) No more than 15 percent of the environmental corridor district may be disturbed or vegetation removed, as part of the development of the site for the proposed use. This includes the structures, parking, walkways, recreational uses, septic system location, etc.
  - (f) The building, site plan, and plan of operation are submitted to and approved by the Plan Commission

- (40) **Solid Waste Facilities** which shall include composting facilities, recycling facilities and solid waste transfer stations shall be allowed in A-1, B-3, P-1, M-1 and M-2 zoning districts subject to the following:
- (a) All facilities shall comply with all county, state, and federal regulations.
  - (b) All facilities shall not be located within 600 feet of a residential zoning district, a mixed-use zoning district, an educational facility, a worship facility, or any other place where the public congregates.
  - (c) All buildings, structures, and activity areas shall be located at least 100 feet from the perimeter of the site.
  - (d) When located in an A-1, B-3 or 1-1 zoning district, all materials and activities, except loading and unloading, shall be conducted entirely within the confines of a building.
  - (e) The site plan and plan of operation shall be submitted to and approved by the Plan Commission and Town Board.
- (41) **Special Care Facilities** such as Adult family homes, Community Living arrangements, Emergency Shelters, Foster and Treatment Homes, Group Day Care Centers, Nursing and Retirement Homes in any district except A-E, C-1, A-T and A-P and which are not otherwise exempted by the Wisconsin State Statutes and subject to the following;
- (a) The parcel on which said facility is located must be at least double the lot size and lot width requirements for the district in which they are located.
  - (b) The subject facility shall not be located within 2500 feet of any other special care facility.
  - (c) The site plan and plan of operation must be submitted to and approved by the Plan Commission and Town Board.
  - (d) A minimum of 30% of the site must be in green space.
  - (e) An outdoor activity area associated with a care facility shall not be located within 20 feet of an adjoining property in a residential zoning district
  - (f) When an off-street parking lot is located within 20 feet of a property in a residential zoning district landscaping, fencing, a berm, or any combination shall be used to effectively screen the parking area from the residential property.
  - (g) Principal buildings shall be located at least 35 feet from a property in a residential zoning district.
  - (h) The use and the conditional use on the property shall cease upon sale or transfer.

- (i) Prior to issuance of the conditional use permit any state license required shall be issued and maintained for the life of the use or until the state no longer requires such license.
- (42) **Telecommunication facilities** may be allowed in all zoning districts except C-1, A-E, A-B, and EC as long as the Plan Commission and Town Board determine that the use promotes the public health, safety, and welfare, while at the same time not unduly restricting the development of needed telecommunications facilities, and is intended to accomplish the following purposes, to the full extent permitted by law: protect the visual character of the town from the potential adverse effects of telecommunication facilities; ensure against the creation of visual blight within the town; retain local responsibility for and control over the use of public right-of-ways to protect citizens and enhance the quality of their lives; ensure that a competitive and broad range of telecommunications services and high quality telecommunications infrastructure are provided; and create and preserve telecommunication facilities that will serve as an important and effective part of the town and counties emergency response network.
- (a) The provisions of this section apply to all telecommunication facilities, except for the following:
    - (i) supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water facilities, pump stations, and similar facilities with heights not exceeding 35 feet;
    - (ii) antennas or towers located on property owned, leased or otherwise controlled by the governing authority, provided a license or lease authorizing such antenna or tower has been approved by the Town Board;
    - (iii) amateur radio antennas and support structures that are less than 35 feet in height;
    - (iv) portable antennas that are used in broadcasting public information coverage of news events of a temporary nature for a period not to exceed 3 days, hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers, and similar devices.
  - (b) If the tower operator does not also own the property on which the tower is to be located, the property owner shall submit a copy of a signed agreement between the tower operator and the property owner with the application. Such agreement shall be binding on future property owners and future operators and shall address the requirements for termination of use as specified in this section.
  - (c) A telecommunication facility shall comply with all applicable requirements of the Federal Communications Commission, the Federal Aviation Administration, and 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.

- (d) The tower shall be located on the property so the entire fall zone of the tower is contained on the subject property.
- (e) A tower or antenna and support facilities shall not be located in the yard setback established for the zoning district in which the parcel is located.
- (f) A tower established after the adoption of this Ordinance shall be a monopole. Lattice towers and guy-wire supported towers are specifically prohibited.
- (g) A tower and all related structures, such as equipment buildings, shelters, and cabinets, shall be enclosed by a security fence.
- (h) The exterior surface of a tower and an antenna shall be non-reflective and may be painted blue, white, gray, or other neutral color as approved by the Plan Commission.
- (i) A tower or antenna 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.
- (j) The exterior of equipment buildings, shelters, and cabinets exceeding 200 cubic feet shall be covered with building materials typically used on buildings found in the area.
- (k) A sign no larger than 18 inches by 24 inches shall be placed in a visible location near the base of the tower that lists the following information:
  - (i) the name of the tower owner,
  - (ii) the Federal Communications Commission identification number, and
  - (iii) a telephone number to contact in case of an emergency.
- (l) A tower that is approved after adoption of this Ordinance along with the tower site and all support facilities and appurtenances, shall accommodate at least two additional users, unless the town planner 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 town planner determines the tower operator has made access to the tower and tower site unfeasible, the town planner 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.
- (m) No new unconcealed tower shall be permitted after adoption of this

Ordinance, unless the property owner demonstrates to the reasonable satisfaction of the town planner that no existing tower or structure can accommodate the applicants proposed antenna. Such evidence may consist of the following;

- (i) No existing or planned towers or structures are located within the geographic area required to meet the applicant's engineering requirements.
  - (ii) Existing or planned towers or structures are not of sufficient height to meet applicant's engineering requirements.
  - (iii) Existing or planned towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - (iv) The applicant's proposed antenna would cause electromagnetic interference with the antenna on an existing or planned tower or structure, or the antenna on an existing or planned tower or structure would cause interference with the applicant's proposed antenna.
  - (v) The fees, costs, or contractual provisions required by the owner in order to share an existing or planned tower or structure or to adapt an existing or planned tower or structure for sharing are unreasonable. Costs that exceed the cost of establishing a new tower are presumed to be unreasonable.
  - (vi) The applicant demonstrates that there are other limiting factors that render existing and planned towers and structures unsuitable.
  - (vii) If such evidence is submitted, the town planner may, at the applicant's expense, hire an expert in the field to review the documentation to provide an independent objective analysis.
- (n) Prior to the issuance of a building permit authorizing construction of a tower, the property owner shall provide a financial guarantee in a form and in an amount acceptable to the zoning administrator. Such financial guarantee shall be maintained until the tower is removed and the site restored or at such time that is mutually agreeable to the property owner and the town. If the town exercises its right to use the financial guarantee and the amount of the financial guarantee does not cover the cost of removing the tower and restoring the site, the balance shall constitute a lien against the property as authorized under the Wisconsin State Statutes.
- (o) If the town planner or town engineer determines that a tower is unsafe or otherwise defective, the town shall follow the procedure outlined in article 6 of this chapter relating to unsafe conditions.

- (p) If the Town Planner determines that all of the antennas on a tower have not been operated for a continuous period of 12 months, the Town shall follow the procedure outlined in Section 21 (A) (7) of this Ordinance relating to termination of an approval.
- (q) Towers that are constructed and antennas that are installed in accordance with the provisions of this Ordinance shall not be deemed to constitute an expansion of a nonconforming use or structure.

**(43) Towers.**

- (a) All freestanding licensed amateur radio operator towers, ornamental towers, spires, and masts exceeding the height limit allowed for an accessory structure in the underlying zoning district and all roof-mounted licensed amateur radio operator antennas exceeding ten feet in height from the roof: In any district subject to the tower or structure meeting all industry construction standards and subject to landscaping plan approval by the Plan Commission as deemed necessary and subject to the height regulations contained in Section 23.
- (b) All freestanding towers for use by other than licensed amateur radio operators, cooling towers, elevator bulkheads, fire towers, monuments, penthouses, stacks, scenery lofts, tanks, water towers, and necessary mechanical appurtenances exceeding the height limit allowed for an accessory structure in the underlying zoning district: In agricultural, business, industrial or park districts, subject to the towers and structures meeting all industry construction standards and subject to landscaping plan approval by the Plan Commission as deemed necessary and subject to the height regulations contained in Section 23.

**(44) Wrecking and salvage yards.** In any General industrial district when the site is used for storage or sale of salvageable materials, or the purpose of salvage, wrecking, dismantling, or demolition of salvageable materials subject to the following:

- (a) The building, site plan, and plan of operation have been submitted to and approved by the Plan Commission.
- (b) No such use shall be permitted on a lot less than ten acres in area.
- (c) The junked materials shall be screened from view by a sight-obscuring, unpierced fence at least six feet in height.
- (d) No part of the wrecking operation shall take place closer than 200 feet to any residential district.
- (e) All requirements of the Wisconsin Administrative Code shall be met.

**Section-22. Building location.**

**(A) Setbacks.**

- (1) Base setback lines, from which building setbacks shall be measured, are established for all streets and highways in the township as follows:
  - (a) On all streets or highways for which the ultimate width has been established by the Highway Width Ordinance of Waukesha County, the base setback line shall be located at a distance from the centerline equal to one-half of such established width as designated on the "Established Street and Highway Width Map of Waukesha County."
  - (b) 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.
  - (c) 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.
  - (d) Such setback lines shall be parallel to and measured at right angles to the centerline of the street or highway.
  - (e) There shall be a required setback equal to the offset requirements of the district in which the property is located, from a private right-of-way providing ingress and egress to the subject land or other lands unless such private right-of-way is considered a mill tax road, in which case the normal road setback requirements contained in this Ordinance shall apply.
- (2) Vision setback lines at the intersections of public streets or highways and of a street or highway with a railroad, where the grade is not separated, are established as follows:
  - (a) Across each sector between the intersection of a street or highway 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 these two lines.
  - (b) Across each sector between intersecting streets or highways, one or more of which has an established width of 100 feet or more, a vision setback line shall be established by a straight line connecting two points on the intersecting base setback lines, which are located 60 feet from the intersection.
  - (c) 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 are located 30 feet from the intersection.
- (3) No principal building or its accessory buildings shall be erected, altered, horizontally added to, relocated or placed so that any roofed or enclosed portion is closer to the base setback line than the setback distance hereinafter specified by the regulations for the district in which such building is located with the following exceptions applicable only where the setback requirements of the properties involved are identical:



- (a) If there is a building which is non-conforming with respect to road setback, with a similar use as the proposed building, located on an adjacent parcel on one side of the proposed building or within two hundred (200) feet of the proposed building, the average road setback of that building of similar usage and the required minimum road setback shall apply.
  - (b) If there are two (2) buildings which are non-conforming with respect to road setback, with similar uses as the proposed building, located on adjacent parcels on each side of said building or within two hundred (200) feet of the proposed building, the average of the road setbacks of those buildings of similar usage shall apply.
  - (c) In the case of a proposed addition to an existing building which has less than the required road setback, the road setback of such existing building may be used to determine the required road setback for the proposed addition, as set forth above.
  - (d) On corner lots of record, as of the date of adoption of this Ordinance, the effect of the setback regulations shall not reduce the buildable width of such corner lot to less than thirty (30) feet. Where such reduction would result in an area narrower than thirty (30) feet after applying the offset reduction, the Plan Commission shall have the authority to modify the setback or offset provision to the extent necessary to minimize the encroachment on both the offset and setback standard while maintaining the thirty (30) feet area required herein.
- (4) No other structures of any kind, except as necessary highway and traffic signs, open stairs extending six (6) feet or less from the enclosed portion of the structure, open stairs in combination with stoops and/or porches which are unenclosed and provide no more than twenty (20) square feet in area and extend no more than six (6) feet from the enclosed portion of the structure, public utility lines, rural mailboxes, and those signs permitted in a residential or agricultural district shall be hereafter erected, altered or placed within such base setback area. Monuments and entrance gates are structures which require a zoning permit and shall be located at least ten (10) feet from the base setback line and shall not restrict safe access and visibility of the intersecting drive and the road and shall be subject to review and approval by the Plan Commission, Fire Department and the applicable municipality having jurisdiction over the road or highway.
- (5) In the vision setback area no structure of any kind shall be permitted 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.
- (6) Additions to and replacements of existing structures may be made within the established setback areas, subject to approval of the Town Board and the board of adjustment provided the owner will file, with the Waukesha County Register of Deeds Office 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 expense, when necessary for the improvement

of the highway.

- (7) 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.
- (8) Shore setback lines shall be a minimum of 75 feet from the established floodplain line, conservancy line, or the average annual high water mark whichever is greater, except:
  - (a) Where structures were erected prior to February 26, 1959 and are located closer than seventy-five (75) feet but not closer than fifty (50) feet from a navigable body of water or the Conservancy District boundary line, such structures may be considered in a conforming location. Additions or alterations to such existing structures not closer than fifty (50) feet from a navigable body of water or the Conservancy District boundary line may be allowed, so long as such additions or alterations do not result in an encroachment closer to the ordinary high water mark of the navigable body of water or the Conservancy District Boundary than currently exists.
  - (b) Boathouses may be permitted within fifty (50) feet of the ordinary high water mark of a navigable body of water or a Conservancy District boundary line, but not closer than five (5) feet from the ordinary high water mark or within a wetland.
  - (c) The Plan Commission may grant a special zoning permit for a structure that extends closer than seventy five (75) feet to the ordinary high water mark of a navigable body of water if all of the following requirements are met, but in no case is a structure exempt from the shore setback requirements from the Conservancy District boundary line:
    - (i) The part of the structure that is nearest to the water is located at least thirty-five (35) feet landward from the ordinary high water mark.
    - (ii) The total floor area of all structures in the shore setback area of the property shall not exceed two hundred (200) square feet. In calculation of the square footage, boathouses shall be excluded.
    - (iii) The structure that is subject to the request for approval has no sides or has open or screened sides.
    - (iv) The Plan Commission shall review a plan submitted by the applicant which shall be subject to the Building Inspector's approval and which will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers a least seventy (70) percent of half of the shore setback area that is nearest to the water.
- (9) In the case of a lot abutting a dedicated but unimproved right-of-way that terminates at a public water body, the Plan Commission may grant a special exception as to the setback from such dedicated but unimproved right-of-way, subject to the following procedures, requirements and conditions:

(a) **Procedure.** A property owner may apply for a special exception and the special exception may be considered as follows:

- (i) The property owner shall submit a petition to the town clerk. The petition shall include building and site plans, which include elevations along with such additional information as may be required by the building inspector and the Plan Commission. The building and site plan shall depict the proposed construction and the location of the proposed construction on the lot, including its location in relationship to existing structures on the lot and on adjacent lots within 100 feet. If the petition is for an addition to an existing structure, the application shall include recent photographs of all structures on the parcel. The petition shall be accompanied by payment of such application fees as may be established from time to time by the Town Board by separate resolution and shall be submitted to the town clerk no later than 3 weeks prior to the town Plan Commission meeting at which they are to be scheduled.
- (ii) Upon receipt of the complete application, required plans and application fees, the town clerk shall provide a copy of the petition and plans to the town building inspector, who shall place the matter on an upcoming town Plan Commission agenda for consideration.
- (iii) Prior to the Plan Commission meeting when the matter will be heard, the town planner and/or building inspector shall review the request, view the proposed location, and shall submit a written recommendation to the Plan Commission. Along with the recommendation, the town planner and/or building inspector shall advise the Plan Commission as to whether the proposed construction would be in full compliance with all applicable federal, state, county, and town codes, statutes, rules, regulations and Ordinances if the special exception were granted.
- (iv) The Plan Commission shall consider the matter at the scheduled Plan Commission meeting. The petitioner shall be given an opportunity to be heard regarding the matter at that meeting.
- (v) The Plan Commission shall approve, deny, or conditionally approve the special exception petition, in accordance with the requirements and conditions of the subsequent subsection. The Plan Commission shall issue its decision in writing.

(b) **Requirements and conditions.** In order to approve or conditionally approve a special exception petition, the Plan Commission must find all of the following to be true regarding the proposed construction:

- (i) The proposed construction must be at least five feet from the dedicated but unimproved right-of-way setback line.
- (ii) The proposed construction must be in compliance with all applicable federal, state, county, and town codes, statutes, rules, regulations and Ordinances, if the special exception is granted.

- (iii) The proposed construction must be compatible with the surrounding neighborhood.
  - (iv) If the property for which the special exception is requested contains legal non-conforming structures, legal nonconforming use of structures or lands, or is a legal nonconforming lot, the Plan Commission shall require the petitioner to file a deed restriction, as follows. The deed restriction shall state that if the structure that is the subject of the special exception petition is damaged or repaired beyond 50 percent of the full equalized assessed value at the date of completion of the construction, the structure can only be repaired or rebuilt in full compliance with all then-current requirements of the this Ordinance. Such deed restriction shall be recorded with the Waukesha County Register of Deeds Office in a form that is subject to the approval of the town attorney.
  - (v) The Plan Commission must find that the special exception will not be adverse to the public health, safety or general welfare, and will not be in conflict with the spirit and intent of the town zoning code, and will not otherwise be detrimental to the town or the immediate neighborhood where the constructions would be located.
  - (vi) The Plan Commission may require additional conditions and restrictions, including but not limited to conditions related to screening and landscaping.
  - (vii) If approved, a deed restriction in a form approved by the town attorney shall be filed in the Waukesha County Register of Deeds Office prior to the issuance of any building permit, indicating the special exception has been granted and recording any conditions of approval, including a statement that the structure may only be used for personal use and cannot be used for any type of commercial purposes unless otherwise permitted by this Ordinance.
- (10) A retaining wall shall be setback at least seventy-five (75) feet from the ordinary high water mark of a navigable body of water and outside of the conservancy district and wetlands and may be allowed if the Plan Commission determines that the retaining wall is necessary to abate a known and identified soil erosion and sedimentation problem.
- (11) A stairway and walk, determined by the Building Inspector to be necessary for access to a lake, pond, or river shall be permitted to have a shore setback of less than seventy-five (75) feet provided the width of the stairway or walk does not exceed three (3) feet.
- (12) Where there is an existing pattern of development with principal buildings having shore setbacks less than seventy-five (75) feet from the ordinary high water mark of a navigable body of water or the Conservancy District boundary line, the setback requirements for new principle buildings or addition to the principle building shall be allowed to be reduced in accordance with the following setback averaging formula, however, in no case shall the minimum shore setback from the ordinary high water mark or Conservancy District boundary is reduced to less than thirty (30) feet.

- (a) If there is a building which is non-conforming with respect to the shore setback with a similar use as the proposed building and located on an adjacent parcel on one side of the proposed building and within two hundred (200) feet of the proposed building, the average of the shore setback of that building of similar use and the required minimum shore setback apply.
  - (b) If there are two buildings which are non-conforming a respect to the shore setback with similar uses and the proposed building and allocated on adjacent parcels on each side of said building and within two hundred (200) feet of the proposed building, the average of the shore setbacks of those buildings of similar use shall apply.
  - (c) In the case of a proposed addition to an existing building which has less than the required shore setback, the shore setback of such existing building may be used to determine the required shore setback for the purpose of the addition, as set forth above
  - (d) In applying these shore setback averaging provisions, the shore setback measurements shall be taken from the principal buildings only and the measurements shall not be from any immediately adjacent structures, such as decks or patios.
- (13) An addition to a principal building or a deck or patio immediately adjacent to principal building, may be located as close as forty (40) feet from Conservancy District boundary if it is in conformity with the required setback from the ordinary high water mark and if the existing natural ground elevation adjacent to the lowest level of the building is at least three (3) feet above the one-hundred year flood plain elevation or the high water mark of the conservancy or wetland area.
- (14) In the case of an addition to a principal building into the minimum required road or shore setback area and where such addition would not extend closer to the established setback line, shoreline, one-hundred year floodplain or Conservancy District boundary than the existing building to which it is attached or immediately adjacent and said addition may be closer than the required distance would allow when using the setback averaging formula set forth in this Section above, the board of adjustment may grant a special exception to the addition so long as the extension does not encroach closer to the setback line, one-hundred year floodplain or Conservancy District than the existing building to which it is attached.
- (15) In the case of an extension or addition of a structure into the minimum required road or shore setback area and where such extension would not extend closer to the established setback line, shore line, one-hundred year floodplain or Conservancy district than the existing structure to which it is attached and said extension may be closer than the required distance would allow, using the averaging formula, a Special Exception may be allowed by the Board of Adjustment for such an extension or addition, as long as said extension or addition does not encroach closer to the setback line, shore line, one-hundred year floodplain, or Conservancy District than the existing structure to which it is attached.
- (16) Where an overhang exceeds two (2) feet as defined herein, the additional overhang is

not allowed unless the building is relocated the additional distance from the base setback line or lot line that the amount the overhang exceeds two (2) feet unless a variance is granted by the Board of Adjustment.

- (17) Retaining walls do not need to meet the road setback requirements of the individual zoning district.

**(B) Offsets.**

- (1) No principal building or its accessory buildings shall be erected or altered so that any roofed or enclosed portion thereof is closer to any lot line than the offset distance hereinafter specified by regulations for the district in which such building is located, with the following exceptions:
- (a) On a waterfront lot one boathouse may be permitted not within five feet of the ordinary high water line.
  - (b) In the case of any lot of record which has a minimum average width of less than the required minimum average width of the district in which it is located, the side lot offset may be reduced proportionately to the ratio between the actual minimum average width and the required minimum average width, provided that no offset shall in any case be less than ten 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 five feet; provided, that no detached accessory building shall be located closer than ten feet to any structure used for residential purposes. Further reduction in offsets of detached accessory buildings to less than five feet must be approved by the Plan Commission; but in no case shall the offset be reduced to less than three feet. Attached open decks and patios shall be permitted to within 40 percent of the limits in this subsection.
  - (c) The offset may be reduced on lots 1 1/2 acres or less for one detached accessory building, which is less than 200 square feet to a minimum of five feet from the lot line, unless otherwise regulated under any other provisions of this Ordinance.
- (2) A lot that abuts a district boundary line; the offset from such lot line shall be not less than the offset applicable to the district in which the lot is located, or the offset applicable in the abutting district, whichever offset is larger.
- (3) Minimum offsets for buildings housing livestock, fur bearing animals, pigeons, swine, goats and poultry shall be not less than fifty (50) feet from an adjacent property line. This does not include dog houses.
- (4) When a detached accessory structure lies on an adjacent lot and closer than five(5) feet of the common lot line, a new detached accessory structure may be located the same distance from the common boundary as the existing detached structure on the adjacent lot, as long as they are within ten (10) feet of each other. In such a case, the new detached accessory structure shall contain a firewall sufficient to meet the one-hour fire rating contained in the building code. However, unless a common wall with a one-hour

fire rating is constructed with agreement of both property owners, building sidewalls may be no closer than three (3) feet in order to accomplish proper maintenance. A deed restriction shall be recorded prior to issuance of the zoning permit prohibiting the construction of fences between said buildings and permitting maintenance of said buildings from adjacent properties.

- (5) One detached accessory building on any parcel which is less than two hundred (200) square feet in area may be located five (5) feet to the side lot line unless otherwise accepted under any other provision.
  - (a) In the case of an extension or addition of a structure into the minimum offset distance, and where such extension would not extend closer to the side lot line than the existing structure to which it is attached, a Special Exception may be granted by the Board of Adjustment to allow such an extension or addition as long as said extension or addition does not encroach closer to the side lot line than an existing structure to which it is attached.
  - (b) Offsets on decks and patios may be reduced to 60% of the distance between the principal structure and the lot line, otherwise required for the principal structure, but shall in no case be located closer than five (5) feet of a lot line. This includes any reduction allowed in other provisions of this Ordinance.
  - (c) Retaining walls do not need to meet the offset requirements of the individual zoning districts if they comply with the provisions of this Ordinance.
- (6) In the case of multiple family or commercial use structures, the offsets may be modified as follows:
  - (a) Two or more buildings on adjoining lots may be erected with common or directly adjoining walls, provided the requirements of the applicable state administrative 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.
  - (b) 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 Board a copy of a recorded deed restriction stipulating that no building shall be erected on such property 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, except as permitted under subsection (B).
  - (c) Maintenance and use of setback and offset areas. Any such required setback or offset area shall be landscaped and kept clean and free from the accumulation of debris or refuse and shall not be used for placement of compost bins, storage or display of equipment, products, vehicles or any other material.
  - (d) Accessory building location. No detached accessory building shall be erected, structurally altered, or placed on a lot so that any roofed or enclosed portion

thereof is closer than ten feet to the principal building on such lot, or as otherwise permitted by the building code, relative to buildings and building regulations.

- (e) **Vertical Locations:** No building intended for human habitation shall be located so that its lowest floor, including any basement floor, is less than two (2) foot above the highest seasonal ground water level.

### **Section 23 - Height regulations.**

- (A) **Maximum height restricted.** In any district, no building or structure shall be, after the effective date of the Ordinance from which this subsection is derived, erected or structurally altered to a height in excess of that specified by the regulations for that district except as otherwise set forth in this Section.
- (B) **Exceptions; no Plan Commission approval required.** The following should be accepted from the height regulations of all districts, but are subject to all other regulations of the town:
  - (1) Chimneys and flues.
  - (2) Accessory farm buildings, not to exceed 60 feet in height, on lots of three acres or more in area.
  - (3) Electrical transmission and distribution facilities.
  - (4) Roof-mounted television and radio receiving antennas not exceeding ten feet in height from the roof and roof-mounted licensed amateur radio operator antennas not exceeding ten feet in height from the roof.
- (C) **Exemptions; Plan Commission approval required.** The following shall be exempted from the height regulations of all districts, subject to the approval of the Plan Commission, but are subject to all other regulations of the town: 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 ten feet or more in height from the roof, aerial and necessary mechanical appurtenances.
- (D) **Increase permitted.** All other buildings or structures not exempted by subsections (B) and (C) of this Section may be increased by not more than ten (10) feet, subject to satisfying the following conditions:
  - (1) All required offsets and setbacks are increased by one foot for each foot which such building or structure exceeds the height limit of the district in which it is located.
  - (2) Subject to approval of the Plan Commission.
  - (3) Subject to all other regulations of the town.

### **Section - 24. Area regulations.**

- (A) **Floor area.**



- (1) Any building intended in whole or part for residential purposes shall provide a minimum floor area as specified by the regulations for the district in which such building is located. 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. Such minimum total shall be increased by 200 square feet for any building not having a basement of at least 300 square feet in area.
- (2) The maximum total floor area of the buildings on a lot shall not exceed that permitted under the floor area ratio as specified by the regulations for the district in which such buildings are located unless allowed per other Sections of this Ordinance. The finished basement or exposed basement area used for living space shall not be computed in the maximum floor area ratio requirements but the floor area of an exposed basement may be used in computing the minimum floor area requirement. Garage space in an exposed basement is not required to be computed in the maximum floor area ratio.
- (3) Floor area shall be measured at each level from the outside edge of a wall to the outside edge of wall and for purposes of computing total minimum floor area shall not include garages; other outbuildings, open porches or basements. Breezeways, exposed basements, split levels and the secondary floors of multistoried residences may be included in computing total minimum floor area according to the following schedule:
  - (a) All of the breezeway may be included if walled-in from floor joists to rafters and heated by the central heating system. Open breezeways shall not be included.
  - (b) That portion of the basement of an exposed basement residence or split level which has been designed as an integral part of the living area of the home may be included in computing total minimum floor area when at least one side is exposed and access has been provided to the outside at grade level by means of at least one door. Such computations shall maintain a minimum basement floor area of 300 square feet.
  - (c) That portion of the secondary floors of multistoried buildings, which have a minimum distance between the ceiling face and the top of the lower floor ceiling joist of seven feet, may be included in computing the total minimum floor living area, provided there are permanent stairways leading from each floor to the next floor.
  - (d) In a split level building the first floor area shall include all area which is not over another living area of the building.
- (4) In split level units, the floor area shall be computed as follows:
  - (a) If less than one-half of the lower level(s) is above ground, such level shall be considered a basement and cannot be included in total floor area of the building unless such basement qualifies as an exposed basement.
  - (b) If more than one-half of the lower level(s) is above ground, such areas can be included in determining floor area. If there is no basement below this level(s), two hundred (200) square feet of floor area shall be required in addition to the floor area requirement of the zoning district. This required floor area shall be

finished as an integral part of the dwelling unit within six (6) months of the date upon which the building permit is issued.

- (5) The board of adjustment may grant an exception to permit a building of less than the required minimum floor area; where such grant would not be contrary to the spirit or intent of the Ordinance, would not be of such character or quality as to depreciate the property values of the surrounding area, and provided that in no case shall a minimum floor area of less than 1000 square feet be permitted.

**(B) Lot size.**

- (1) No lot shall be created, and no building shall be erected on a lot of less area or of minimum average width less than specified by the regulations of the district in which such building is located, unless permitted by a Planned Unit Development Conditional Use, or Subsection-16(D) of this Ordinance or is a preexisting legal lot of record.
- (2) For the purpose of this Section, the lot area shall be measured from the base setback line.
- (3) The lot shall be at least as wide as the specified minimum average width for a distance of at least one-half the lot depth.
- (4) No lot area shall be reduced by any means to create a lot of less than the required size, or so that the existing offsets, setbacks, open space or lot area would be reduced below that required by the regulations for the district in which such lot is located, except as provided by Subsection 16(D).
- (5) Where a lot has less land area or width than required for the district in which it is located and was of record as of February 26, 1959, such lot may be used for any purpose permitted in such district, but not for residential purposes for more than one family; provided, however, that in no case shall the setback and offset requirements be reduced except by order of the board of adjustment after due hearing or as otherwise provided in this Ordinance. It shall be further required that a minimum of 10,000 square feet of open space shall be provided on such lots of record. Such substandard lot shall also be in separate ownership from abutting lands. If abutting lands and the substandard lot are in the same ownership, the substandard lot shall not be sold or developed without full compliance with the minimum lot area requirements of the R-3 Residential District or as close to that minimum as possible.

**(C) Open space.**

- (1) 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 for that district, except as provided by Subsection 16(D) or on a lot which was created by a Planned Unit Development Conditional Use.
- (2) 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. Crop, pasture and wooded land may be included in computing such open area.

- (3) 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.

## **Section-25. Accessory Uses and structures.**

### **(A) Size and location.**

- (1) No accessory buildings shall be erected, structurally altered or placed on a lot in any district so that any portion thereof is closer than ten feet to the principle building or other accessory buildings and structures on such lot unless it complies with all local building code requirements.

### **(2) Square Footage and Number of Accessory Buildings**

- (a) In all Districts, the aggregate floor area of accessory buildings shall not exceed the maximum per lot square footage as outlined in the following table. Accessory buildings shall also not exceed the floor area ratio requirements for the applicable district. Temporary buildings shall be included in calculating the square footages for any lot.

EFO	500 square feet
AE	500 square feet
AT	500 square feet
A-5	2,000 square feet
EC	720 square feet
A-1,A-2	1,300 square feet
A-3	1,000 square feet
R-1, R-1a, RRD-5, A-1a, AD-10	720 square feet
R-2	500 square feet
R-3,R-4	500 square feet
B-1	1,000 square feet
B-2	1,000 square feet

- (b) Exceptions: The maximum square footage for accessory buildings set forth in Subsection (a) above shall be subject to adjustment as follows:

- (i) Except in the "EC" Environmental Corridor District and subject to the applicable district floor area ratio requirements, the maximum square footage for accessory buildings shall be increased by 50 sq. ft. for every ½ acre of land that the subject property exceeds the district minimum lot size.

- (ii) For parcels of three (3) acres or more in size in any zoning district other than the Environmental Corridor District, the accessory building areas may be greater than those requirements set forth in subsection 2(a), if the Town Board in its discretion, upon consideration of a recommendation from the Plan Commission, grants a special exception and makes all of the following findings:

- 1 That one or more rural accessory buildings(s) as defined herein,

are located on the property;

- 2 That such rural accessory buildings(s) is (are) not a nuisance or detriment to the existing neighborhood;
- 3 That the property is in compliance with the floor area ratio requirements of the District in which it is located; and
- 4 That the total floor area of all accessory buildings, excluding the floor area of such rural accessory building(s), is in compliance with the requirements set forth in subsection 2(a).

(iii) Environmental Corridor District Accessory Buildings

- 1 For any size parcel in the EC Environmental Corridor District, the Town Board, may in its discretion, grant a special exception to the maximum square footage requirements for accessory building set forth in subsection 2(a) after receiving a recommendation from the Plan Commission where all of the following criteria have been met;
  - a The Building Inspector determines that no more than 32,600 sq. ft. of land disturbance has or will occur for all structures, septic systems, driveways and parking areas, patios, decks, pools, lawns and play areas. For purposes of this Section, the areas of disturbance shall include any area where, due to development, the natural vegetation has previously been removed or land altering activities have previously occurred and areas where, due to any proposed accessory building(s), natural vegetation will be removed or land altering activities will occur.
  - b Only one accessory building will be allowed on a parcel which is entirely within the Environmental Corridor District.
  - c The use of the accessory building is for personal use only by the person(s) occupying the subject parcel.
  - d The location of the proposed accessory building is not high quality environmental corridor or wildlife habitat area. The Town Board or Plan Commission may require the applicant to provide an environmental assessment by a qualified professional as to the impact the proposed accessory building and any associated vegetative disturbance or land altering may have on the environmental quality of the corridor.

- 2 If a special exception is granted under subsection (2) (b) above for a parcel in the EC Environmental Corridor District, the Board may designate a specific location for the accessory building to eliminate any unnecessary vegetative disturbance or land altering activity.
  - 3 If a special exception is granted under subsection (2)(b). above, a Deed Restriction shall be filed in the Waukesha County Register of Deeds Office prior to the issuance of a building permit setting forth the square footage of the allowable disturbance along with a detailed map designating the allowable area of disturbance for all improvements. Said Deed Restriction shall also restrict and set forth any additional conditions of approval of the special exception by the Plan Commission and/or Town Board and shall be approved by the Town Attorney as to form.
- (iv) On parcels of 15-acres or more, in area, the building areas may be greater than those set forth in subsection 2(a) when used solely for agricultural purposes and when consistent with the floor area ratio requirements of the Zoning Ordinance.

**(B) Number of Accessory Structures.**

- (1) No more than (2) accessory buildings per parcel are permitted in any district except as follows:
  - (a) On parcels of 15-acres or more, in area used solely for agricultural purposes, more than two accessory buildings may be permitted by the Plan Commission subject to compliance with the floor area ratio requirements of the Zoning Ordinance.
  - (b) In the B-3 and all Industrial Districts, the Plan Commission may approve more than two accessory buildings as part of a site plan and plan of operation when such accessory buildings are accessory to the principal use and constructed and used in accordance with the approved site plan and plan of operation.
  - (c) Where a Conditional Use Permit has been issued for the lot that expressly permits more than two accessory buildings/structures.
- (2) On parcels of three (3) acres or more in size, more than two (2) accessory buildings may be permitted by the Town Board, upon consideration of a recommendation from the Plan Commission, if the Town Board makes all of the following findings:
  - (a) That there are one or more rural accessory building(s), as defined herein, on the property;
  - (b) That such rural accessory building(s) is (are) not a nuisance or detriment to the existing neighborhood; and

- (c) That, excluding any rural accessory building(s), there are not more than two (2) accessory buildings on the property.
- (3) In no case shall any accessory structure in any agricultural or residential zoning district be used for commercial or industrial purposes except with a conditional use permit.
- (4) A polystructure, subject to the dimensional regulations of the this Ordinance, shall only be allowed for the purposes of housing plant materials associated with a nursery or greenhouse operation, whether retail, wholesale or private and shall not be used for storage of any other types of materials not directly related to the nursery or greenhouse operation unless otherwise specifically authorized as part of a conditional use.. This subsection does not apply to the use of a polystructure as part of a general farm operation as defined in this Ordinance on a parcel of 35 acres or more.

(C) **Garages.**

- (1) **Required.** A private garage at least 240 square feet in area shall be required for each dwelling unit hereinafter erected. Such structures shall be either attached or detached and conform to the offset and setback requirements of the district involved.
- (2) **Attached garage maximum size.** Attached residential garages hereinafter erected shall be no larger than 50 percent of the first floor square footage of a ranch-style residence and no larger than 70 percent of the first floor square footage of a two-story style residence, unless a special exception is granted as described in subsection (2)(b), below.
- (3) **Special exception.** Upon petition from a property owner, the Plan Commission may grant a special exception to the maximum attached garage size limitations of subsection (2)(b) of this Section or maximum accessory building square footages allowed in the table in subsection (2)(a) of this Section as follows:
  - (a) The petitioner shall submit a petition to the town clerk. The petition shall include building and site plans, which include elevations, along with such additional information as the Plan Commission may require. The building and site plans shall depict the proposed construction and the location of the proposed construction on the lot, including the location in relation to existing structures on the lot and adjacent lots. The petition shall be accompanied by payment of such application fees as may be established from time to time by the Town Board by separate resolution.
  - (b) Upon receipt of the complete petition, required plans, and application fees, the town clerk shall provide a copy of the petition and plans to the building inspector and the Plan Commission, and shall place the matter upon an upcoming Plan Commission agenda for consideration. The town clerk shall notify the petitioner of the date. The notification of neighbors is not required unless the Plan Commission so directs. If the Plan Commission so directs, notice shall be provided in such manner as the Plan Commission may require and a public hearing must be held prior to a decision being made.
  - (c) Prior to the Plan Commission meeting where the matter will be heard, the building inspector shall review the request, shall view the proposed location,

and shall submit a written recommendation to the Plan Commission. Along with the recommendation, the building inspector shall advise the Plan Commission whether detached accessory structures are prohibited on the lot by applicable laws and deed restrictions.

- (d) The following limitations apply:
  - (i) Special exceptions may be granted under this subsection only in regard to the maximum size limitation of subsections (2)(a) and (2)(b) of this Section.
  - (ii) Special exceptions are prohibited if the requested location, structure, or use thereof, would conflict with any applicable federal, state, county codes, statutes, rules, ordinances or lawful orders, or with any town ordinances other than the maximum size limitations of subsection (2)(a) or (2)(b) of this Section. A special exception may be allowed by the Plan Commission if the county board of adjustment has varied the square footage requirements of the Waukesha County Shoreland and Floodland Protection Ordinance where applicable.
  - (iii) Special exceptions are prohibited from allowing garages that would have doors for more than four side-by-side vehicles facing the right-of-way from which the dwelling unit has street access.
  - (iv) The architecture of the attached or detached structure shall be compatible with the residence. Special exceptions are prohibited if the Plan Commission finds that the architecture is not compatible.
  - (v) In no case shall any attached garage or detached accessory structure in any agricultural or residential zoning district be used for commercial or industrial purposes, except with the granting of a conditional use permit by the Town Board.
- (e) After reviewing the petition, the plans submitted, the building inspector's recommendation, and all additional information received in the matter, the Plan Commission shall either grant or deny the special exception, or grant the special exception upon specified reasonable conditions including screening and landscaping if appropriate. To grant or conditionally grant the special exception, the Plan Commission must find that the requested attached garage or accessory structure will not be adverse to the public health, safety or welfare; will not be in conflict with the spirit or intent of this Ordinance; and will not otherwise be detrimental to the town or the immediate neighborhood where the structure would be located. The Plan Commission shall issue its decision in writing, including any conditions of approval, and shall provide a copy of the decision to the petitioner. The decision of the Plan Commission shall be final, and cannot be appealed to the board of adjustment.
- (f) In the case of the granting of a special exception to the square footage requirements of an attached garage, the grant shall be subject to an equivalent reduction being made in the square footage of accessory structures that are

allowed on the lot, in accordance with subsection (2)(a) of this Section.

- (g) Upon approval, 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 the reduction in the permitted square footage of accessory structures and a statement that the attached or detached accessory structure may only be used for personal use and cannot be used for any type of commercial or industrial purpose unless otherwise permitted by this Ordinance.

(D) **Boathouses.**

- (1) **Use permitted.** Boathouses, as defined by this Ordinance, are permitted in any district in which a single-family dwelling is permitted and where the property fronts on a lake, river or stream.
- (2) **Human habitation prohibited.** A boathouse must not be used for human habitation or occupancy and for only occasional maintenance. Such facilities shall not be leased or rented for human occupancy nor contain sanitary sewer facilities.
- (3) **Accessory to a single-family dwelling.** No boathouse is permitted unless a single-family dwelling is already present or under construction on the lot. Only one boathouse per lot is allowed, and it must contain a minimum of 200 square feet of boat storage area.
- (4) **Locational requirements.** Boathouses shall conform to the setback and offset requirements of the district and be of permanent construction. The one boathouse shall not be permitted within five feet of the ordinary high-water line. No metal buildings shall be permitted.

(E) **Swimming pools.**

- (1) **Uses Permitted:** Above and below ground Swimming Pools, as defined herein, are permitted in any district except A-E, EFO or C-1 as accessory to a residential use, upon the issuance of a building/zoning permit, and an electrical permit if applicable, subject to the following:
  - (a) All swimming pools shall be surrounded by a fence (that is not merely a planting or hedge) not less than four (4) feet nor more than six (6) feet in height designed to prevent unguarded entry to the swimming pool. Sidewalls of above-ground swimming pools which are at least four (4) feet high above ground all around the swimming pool may be used in lieu of a fence and decks extending at least five (5) feet from the walls of the pool. but only if entry to the swimming pool or swimming pool deck can only be made by a tip up ladder that prevents unsupervised access by young children. If an access ladder is provided, it shall be so designed that it can be locked, tipped or otherwise placed to prohibit access to the pool by children.
  - (b) Access to swimming pools shall be controlled to prevent unguarded entry to the swimming pool. Access to in-ground swimming pools shall be controlled by a



self-closing and self-latching gate and all such gates shall be kept securely closed and locked at all times when the owner is not present at the swimming pool. For an above-ground swimming pool, if a tip-up ladder is used to prevent unsupervised access by young children, such tip-up ladder shall be kept up in a position that prevents access by young children at all times when the owner is not present at the swimming pool.

- (c) The application for a building permit shall include a plat of survey drawn to scale showing the location of the swimming pool, the location of any fence, deck, patio and any accessory heating, pumping and filtering units that may be placed outside the swimming pool. The survey shall also show the lot lines of the lot, the location of the residence on the lot, the location of the well and septic system, the location of any other structure(s) on the lot, the location of any electrical transmission lines on the lot and the location of residences and structures on neighboring lots.
- (d) Swimming pools shall not be constructed directly under or over electric transmission lines or within 15 feet of such lines. The Plan Commission may permit a swimming pool to be located within 5 feet of an underground electric transmission line when the permit applicant has written approval from Wisconsin Electric Power Company. All electrical connections to a swimming pool shall be properly grounded so that no electrical current can be discharged into any part of the swimming pool or surrounding fence and in full compliance with all applicable aspects of the electrical code.
- (e) No water drained from swimming pools shall be discharged onto adjacent properties, without written consent of the adjacent property owner, or on to a public road right-of-way, or into a municipal sewerage system, or directly into a navigable body of water.
- (f) Equipment shall be provided by the owner for the disinfection of all swimming pool water. No gaseous chlorination shall be permitted.
- (g) Heating units, pumps, and filter equipment shall be adequately housed and muffled in such a manner as not to create a nuisance. Such equipment shall be located in compliance with the setback and side yard requirements for a building in the district in which it is located and no closer than 10 feet to a lot line, whichever requirement is greater.
- (h) There shall be an unobstructed areaway around all swimming pools of at least three (3) feet in width.
- (i) No swimming pool shall be located closer than 10 feet to a principal building and shall be in compliance with the setback and side yard requirements for a building in the district in which it is located and no closer than 10 feet to a lot line, whichever requirement is greater and not be located on the street side of a residence.
- (j) No areaway, patio or deck surrounding a swimming pool shall be located closer than the required offset to a lot line.

- (k) Swimming pools are accessory structures, subject to all provisions of this Ordinance that regulate accessory structures. In the event of a conflict between the requirements of this Section and any other requirements of this Ordinance, the more restrictive shall apply.
  - (l) Swimming pools, together with other accessory structures regulated by Section 25 of this Ordinance, shall not occupy more than 20 percent of the rear yard area.
  - (m) The swimming pool must be intended to be used solely by the occupants of the principal use of the property on which the swimming pool is intended to be located and their guests. Operation of a business, including but not limited to swimming lessons, is prohibited unless allowed by the district regulations for the district in which the swimming pool is located and all approvals required by this Ordinance and other applicable laws are granted.
  - (n) All applicable Town of Oconomowoc, County of Waukesha and State of Wisconsin codes, ordinances, regulations and rules must be strictly followed at all times, including but not limited to any setback and offset requirements and sanitary and environmental regulations.
- (2) **Relaxation/floating pools**, as defined herein, are permitted in any district except A-E, EFO, or C-1 as accessory to a residential use, subject to the issuance of a building/zoning permit, issuance of an electrical permit if applicable and subject to the following:
- (a) Access to relaxation/floating pools shall be controlled to prevent unguarded entry to the relaxation/floating pool. This shall be done by completely covering the relaxation/floating pool in a manner that is secure and prevents unauthorized access, or by any manner that would be required by this Ordinance if this were a swimming pool.
  - (b) No water drained from relaxation/ floating pools shall be discharged onto adjacent properties, without written consent of the adjacent property owner, or on to a public road right-of- way, or into a municipal sewerage system, or directly into a navigable body of water.
  - (c) The relaxation/floating pool shall be located in compliance with the setback and side yard requirements for a building in the district in which it is located and not closer than 10 feet to a lot line, whichever requirement is larger and not on the road side of a residence.
  - (d) Relaxation/floating pools are accessory structures, subject to all provisions of this Ordinance that regulate accessory structures. In the event of a conflict between the requirements of this Section and any other requirements of this Ordinance, the more restrictive shall apply.
  - (e) Heating units, pumps, and filter equipment shall be adequately housed and muffled in such a manner as not to create a nuisance. Such equipment shall be located in compliance for a building in the district in which it is located, and not closer than 10 feet to a lot line, whichever requirement is greater.

- (f) Relaxation/floating pools, together with other accessory structures regulated by Section 25 of this Ordinance, shall not occupy more than 20 percent of the rear yard area.
  - (g) The relaxation/floating pool must be intended to be used solely by the occupants of the principal use of the property on which the relaxation/floating pool is intended to be located and their guests. Operation of a business, including but not limited to swimming lessons, is prohibited unless allowed by the district regulations for the district in which the relaxation/floating pool is located and all approvals required by this Ordinance and other applicable laws are granted.
  - (h) All applicable Town of Oconomowoc, County of Waukesha and State of Wisconsin codes, ordinances, regulations and rules must be strictly followed at all times, including but not limited to any setback and offset requirements and sanitary and environmental regulations.
- (3) **Kiddie/Wading Pools** as defined herein, are permitted in any district except A-E, EFO, or C-1 as an accessory to a residential use, without the issuance of a Building/zoning permit, and are not subject to the regulations of this Ordinance that apply to swimming pools and relaxation/floating pools.
- (F) **Fuel tanks.** All accessory structures involving the utilization or storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and comply with all the requirements of the fire department and/or building inspector. All range from active to intense burning shall be utilized and stored only in completely enclosed structures which have incombustible exterior walls. The above ground storage capacity of materials that produce flammable or explosive vapors shall not exceed 500 gallons unless approved by the Plan Commission or located within an agricultural or industrial district.
- (G) **Special use systems.**
- (1) **Use permitted.** Special use systems are permitted in any district other than A-E, EFO or C-1, when used solely by the occupants of the principal use, and subject to the following:
  - (2) **Permit required.** A separate special use permit shall be required for each system. Such permit shall be applicable solely to the systems, structures, use and property described in the permit.
  - (3) **Basis of approval.** The Town Board shall base their determination on general considerations as to the effect of such grant on the health, general welfare, safety and economic prosperity of the town and specifically of the immediate neighborhood in which such use would be located. These considerations shall include the effect on the established character and quality of the area, its physical attractiveness, the demand for related services, the possible hazardous, harmful, noxious, offensive, or nuisance effect as a result of noise, glare, dust, smoke or odor, and such other factors as would be appropriate to carrying out the intent of this Ordinance.
  - (4) **Types of special uses.**

- (a) **Solar energy conversion system.** Solar energy conversion system commonly referred to as "active" or "passive" solar collection and heating systems and including systems defined by Wis. Stats. § 13.48.
  - (b) **Wind energy conversion systems.** Wind energy conversion systems commonly referred to as "windmills" which are used to produce electrical power and as regulated by chapter PSC 128 and amendments thereto.
  - (c) **Communication systems.** Communication systems commonly referred to as private cable televisions (disks, dishes, devices) unless exempt by federal law.
  - (d) **Exterior Fuel-Fired heating Devices,** Any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space or water source that is not located in the structure for which it is producing heat or energy.
- (5) **Fees.** The Town Board shall by resolution establish fees for the processing and issuance of special use permits.
- (6) **Permit procedure.**
- (a) The Town Board is the agency which approves special use permits and further designates the building inspector as the official to receive, process and, following approval by the Town Board, issue special use permits.
  - (b) The permit application shall be made to the building inspector on forms provided by the town and include the name and address of the applicant, a site plan, a plan of operation, proposed improvements to site, and any additional information deemed necessary by the building inspector for proper review of the application.
  - (c) The building inspector shall review the application and, if the application is complete and contains all required information, shall refer it to the Town Board.
  - (d) **Determination:** Following public hearing per Section 487, when deemed necessary by the Town Board, and necessary study and investigation, the Town Board shall as soon as practical render its decision in writing. Such decision shall include an accurate description of the special use permitted, of the property on which permitted and any and all conditions made applicable thereto, or if disapproved, shall indicate the reasons for disapproval. The Town Board may impose any conditions or exemptions necessary to minimize any burden on any persons affected by granting the special use permit.
  - (e) **Termination:** When a special use does not continue in conformity with the conditions of the original approval, or where a change in the character of the surrounding area or of the use itself cause it to be no longer compatible with surrounding areas, or for similar cause based upon consideration for the public welfare, the special grant may be terminated by action of the Town Board following a public hearing per Section 487.

(f) Special Requirements:

- (i) No Exterior Fuel-Fired Heating Devices shall be allowed on any parcel one (1) acre or less in size.
- (ii) In addition to the general standard requirements as stated in this Section, such Special Uses shall be subject to more specific standards and requirements pertinent to the particular use, which standards and requirements may be set in a supplementary guide for a Special Use regulation adopted by the Town Board, and modified from time to time in order that they reflect the best and most contemporary regulatory practices.

(7) **Standard requirements.**

- (a) Except as may be specifically otherwise provided, any such special use shall conform to the building location, height, building size and open space regulations of the district in which it is located.
- (b) Building, site and operation plans of the proposed use shall be submitted for approval of the Town Board. Such plans shall be in sufficient detail to enable the board to evaluate the suitability of architectural and landscape treatment; the proper location of the building or buildings on the lot; the satisfactory provision for parking and circulation needs, for drainage and sewage disposal, for adequate planting screens where necessary, and for operational control devices where necessary to eliminate noise, glare, dust, odor, smoke or other objectionable operating condition; and the general compatibility of the proposed use with the area in which it is located.

(8) **Modification of regulations.** Requirements applicable to uses by the regulations of this Ordinance may be modified or waived by the Town Board, if in the board's opinion they are not appropriate or necessary to the proper regulation of the special use, and where such modification or waiver would not, in the board's opinion, result in adverse effect upon the surrounding properties.

(9) **Approval does not waive permit requirements.** The approval of a permit under this Section shall not be construed to waive the requirement to obtain a building or plumbing permit prior to installation of any system.

(H) **Guesthouses** in any district in which a single family dwelling is permitted.

- (1) **Permanent habitation prohibited:** A guesthouse must be used only for occasional occupancy by guests of the owner, and shall not be leased or rented for human occupancy.
- (2) **Accessory to a single family dwelling:** No guesthouse is permitted unless a single family dwelling is already present on the lot. Only one (1) guesthouse per lot is allowed.
- (3) **Area requirements:** No guesthouse is allowed unless the lot upon which the guesthouse is to be located is at least double the minimum area and lot width

requirements of the district. This requirement is intended to prevent the creation of a non-conforming lot in the event that the guesthouse is sold.

- (4) **Building location:** A guesthouse must be able to meet minimum setback, offset and open space requirements of the district in which it is located. This requirement is intended to prevent the creation of a non-conforming structure in the event that the guesthouse is sold.
- (5) **Floor area:** The floor area of a guesthouse may be any size. In order to sell a guesthouse as a separate unit, its floor area must conform to the district regulations in which it is located.
- (6) In the event that a guest house is sold as a parcel separate from the single family dwelling, there must be direct access to a public road. If this is impossible, the Plan Commission and Town Board may approve a private easement to a public road if the following requirements are met:
  - (a) The private easement is at least thirty-three (33) feet wide for one (1) family and sixty-six (66) feet wide for two families.
  - (b) The creation of a private drive would not adversely affect the existing or future development of the area.

(I) **Portable-on-demand storage structures (PODS or SAM)**

- (1) A portable-on-demand storage structure may be utilized as a temporary structure within the Town when in compliance with the standards of this subsection. Any use of such structures within the Town not in compliance with this subsection shall be unlawful.
- (2) Length of time structures may be on property;
  - (a) A portable on-demand storage structure may be located as a temporary structure on property within the Town for a period not exceeding 72 hours in duration from time of delivery to time of removal. No more than two portable on-demand storage structures may be located on a specific piece of property within the Town at one time; such structures shall be individually limited to the duration time period established herein. Such temporary structure may not be located on a specific property more than two times in any given thirty-calendar-day period. Such structure may not exceed eight feet six inches in height, 10 feet in width or 20 feet in length. It shall be the obligation of the owner or user of such temporary structure to secure it in a manner that does not endanger the safety of persons or property in the vicinity of the temporary structure. In the event of high winds or other weather conditions in which such structure may become a physical danger to persons or property, the appropriate law enforcement officers may require the immediate removal of such temporary structure.

- (b) In the event of fire, tornado, flood or natural disaster causing substantial damage to the structure, the property owner may apply to the Town for permission to extend the time that a portable on-demand storage structure may be located as a temporary structure on the property. Application for such extended duration shall be made in writing and filed with the Town Clerk's office and shall give sufficient information to determine whether such extended duration should be granted. The Town Chairperson shall determine whether or not to grant such extended duration and the length of such extension. In the event of an adverse decision by the Town Chairperson, the applicant may appeal such decision to the Town Board. In the event of such appeal, the decision of the Town Board shall be final.
  - (c) Any portable on-demand storage structure which is not removed at the end of the time for which it may lawfully remain in place, or immediately upon the direction of a law enforcement officer for removal of such temporary structure for safety reasons, may be removed by the Town immediately, without notice, and the cost of such removal, together with the cost of administration of its removal, may be assessed against the property on which the temporary structure was located and may be filed as a lien against such property by the Town Clerk. Such lien shall be superior in dignity to all other liens or encumbrances upon the property, including the lien of a mortgage, and shall be equal in dignity to the lien of ad valorem taxes.
- (3) Placement of portable on-demand storage structures shall only be placed the property owner's driveway or a parking area or, if access exists at the side or rear of the site, the side or rear yard. Such storage structure shall be located no closer than 10 feet to the property line unless placed on an existing impervious driveway. The required parking space(s) shall at all times be maintained if temporary portable –on-demand storage structures are placed in parking areas.
  - (4) The owner, as well as the Supplier, shall be responsible for ensuring that the portable-on-demand storage structures is maintained in good condition, free from evidence of deterioration, weathering, discoloration, graffiti, rust, ripping, tearing or other holes or breaks, at all times
  - (5) No portable-on-demand storage structures shall be used to store solid waste, construction debris, demolition debris, recyclable m materials, business inventory, commercial goods, goods for property other that at the residential property where the portable-on-demand storage structures is located (i.e. used for retail sales) or any other illegal or hazardous material. Upon reasonable notice to the owner of the property the Town may inspect the contents of any portable-on-demand storage structures at any reasonable time to ensure that it is not being used to store said materials. At no time shall temporary portable-on-demand storage structures be used for any of these purposes.

**(J) Hobby Kennels**

- (1) Number of dogs limited. The keeping of dogs by right, and the keeping of dogs by hobby kennel use permit, is limited to the number of dogs described as follows:
  - (a) One acre or less. On parcels one acre or less in size, no more than two dogs required to be licensed by statute shall be kept on the parcel. Hobby kennel use permits cannot be issued for parcels one acre or less in size.
  - (b) One to three acres. On parcels more than one acre in size, but less than three acres in size, no more than two dogs required to be licensed by statute shall be kept on the parcel. Hobby kennel use permits may be issued for parcels more than one acre in size.
  - (c) Three acres or larger. On parcels three acres or larger in size, no more than three dogs required to be licensed by statute shall be kept on the parcel. Hobby kennel use permits may be issued for parcels three acres or larger in size.
- (2) Number of potbellied pigs limited. Potbellied pigs are prohibited in the town, regardless of the size of the parcel on which the pigs would be located, except upon the issuance of a hobby kennel use permit. Hobby kennel use permits may be granted to allow keeping of potbellied pigs, up to the numbers described as follows:
  - (a) Less than three acres. Hobby kennel use permits for potbellied pigs shall not be issued for parcels less than three acres in size.
  - (b) Three acres or larger. Hobby kennel use permits for potbellied pigs may be issued for parcels three acres or larger in size, subject to the regulations described in subsection (J)(3).of this Section, and subject to the numbers of potbellied pigs being restricted to the following: the hobby kennel use permit may allow no more than two potbellied pigs on a parcel that is three acres but less than four acres in size; and no more than three potbellied pigs on a parcel that is four acres or larger.
- (3) Potbellied pig's regulations. The keeping of potbellied pigs by hobby kennel use permits is subject to the following regulations, in addition to any specific conditions that may be imposed by the Plan Commission:
  - (a) Potbellied pigs (as defined in this Ordinance) must be spayed or neutered prior to four months of age.
  - (b) Commercial activities such as sale or breeding of potbellied pigs (as defined in this Ordinance) are prohibited.
  - (c) Potbellied pigs (as defined in this Ordinance) may only be allowed by hobby kennel use permit if they are kept as household pets, residing in the residence, with only limited periods of time outdoors.
  - (d) Prior to the issuance of a hobby kennel use permit, all owners of potbellied pigs (as defined in this Ordinance) shall present proof that the potbellied pigs have been tested to be free from Pseudo rabies and Brucellosis.



- (e) Potbellied pigs (as defined in this Ordinance) must be vaccinated no less than annually by a veterinarian who is licensed in the state.
  - (f) The keeper of any potbellied pig (as defined in this Ordinance) shall cause litter and droppings to be collected in a container or receptacle that when enclosed shall be vermin proof and fly tight, and after every such collection shall cause such container or receptacle to be kept closed. At least once a week, every such keeper shall cause all litter and droppings so collected to be disposed of in such a manner as to not permit the presence of a nuisance to the surrounding neighborhood.
- (4) Hobby kennel use permits procedures. All hobby kennel use permits are subject to the following application procedures and requirements:
- (a) A hobby kennel must be accessory to an otherwise permitted use.
  - (b) A hobby kennel must have the specific approval of the Plan Commission.
  - (c) Prior to approval of a hobby kennel use permit, the Plan Commission must hold a public hearing.
  - (d) The application fee for a hobby kennel use permit shall be set by separate resolution of the Town Board.
  - (e) Written notice of the public hearing shall be sent by regular mail to the last known address of all landowners within 300 feet of the subject property.
  - (f) The issuance of the hobby kennel use permit is subject to the Plan Commission finding that such hobby kennel will not adversely affect the use of adjacent lands and is compatible with surrounding and nearby land uses.
  - (g) The Plan Commission may require such measures or provisions by the applicant as may be deemed necessary to provide adequate protection of surrounding property.
  - (h) The Plan Commission may deny the request for a hobby kennel use permit on the basis of a finding that such use would be incompatible with surrounding and nearby land uses, a possible nuisance, and/or not in the public interest.
  - (i) Any person aggrieved by a decision of the Plan Commission relative to a hobby kennel use permit may appeal such decision to the board of adjustment within 30 days of the decision.
- (5) One hobby kennel use permit per parcel. There shall be no more than one hobby kennel use permit allowed on any one parcel in the town.
- (6) Nuisances. In all cases, regardless of the number of dogs or potbellied pigs on a parcel, if the keeping of any number of dogs or potbellied pigs accessory to the principal use becomes a nuisance to the neighborhood as may be determined by the Plan Commission or Town Board, such use shall be terminated or the nuisance abated. The

keeping of a potbellied pig without a hobby kennel use permit, and the keeping of more dogs than are permitted by right on a property without a hobby kennel use permit, is declared to be a public nuisance. Where necessary, the Plan Commission or Town Board may take appropriate steps to abate such nuisance.

- (K) **Home Occupations** Home occupations and professional offices as defined in this Ordinance, when incident to the residential use and when situated in the same dwelling, subject to the following conditions:
- (1) No nameplate exceeding three (3) square feet in area shall be permitted.
  - (2) Such home occupation or professional office shall not occupy more than twenty (20) percent of the floor area of the dwelling.
  - (3) Such home occupation shall not employ more than one (1) person not a resident on such lot.
  - (4) Adequate off-street parking facilities are provided adjacent to the building housing such occupation or office.
  - (5) Such permitted uses shall not include the conduct of any retail or wholesale business on the premises, or the removal of sand, gravel or stone for commercial purposes.
  - (6) Such use shall not include the use of any machinery, tools or appliances which can reasonably be construed as creating a nuisance to surrounding property owners.
  - (7) Such use conducted in an attached garage or accessory building requires a Conditional Use to be granted in accordance with Section 21(B) (28) of this Ordinance.

## **Section-26. Utility cabinets.**

- (A) **Definitions.** The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this Section 4 of this Ordinance, except where the context clearly indicates a different meaning:
- (B) **Small utility cabinets.** Small utility cabinets shall be considered a permitted use by right regardless of whether they are in fact accessory to other uses on the property or whether there are principal structures on the lots where they will be located; and will not require a building permit; and will not have to meet the setback and offset requirements of this Ordinance; provided that the small utility cabinet shall either
- (1) Be placed within a town road right-of-way in compliance with the town right-of-way regulations, including any amendments that may be made thereto in the future; or
  - (2) Be placed 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; or
  - (3) Be placed within a private road right-of-way with the proper easements; or

- (4) Be placed on private property with proper lease or easements.
- (C) **Large utility cabinets.** Large utility cabinets shall be considered a special use, will require a special use permit as described in this subsection, and building permit; and will be prohibited within any public or private right-of-way, except with Town Board approval, except that the Town Board may grant specific approval on a case-by-case basis provided that the large utility cabinet shall either:
- (1) Be placed within a town road right-of-way in compliance with right-of-way regulations, including any amendments that may be made thereto in the future; or
  - (2) Be placed 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; or
  - (3) Be placed within a private road right-of-way with the proper lease or easements. Large utility cabinets will not have to meet the offset and setback requirements of the zoning district in which any such large utility cabinet is proposed to be located, but shall be subject to vision corner easement requirements, and must not interfere with safe sight distances from public streets accesses. Large utility cabinets may be allowed by the Town Board in any district as described in this subsection and may require screening from existing, adjacent residential uses.
- (D) **Permit required.** A separate special use permit shall be required for each property on which one or more large utility cabinet is proposed. Such permit shall be applicable solely to the cabinet, structure, use and property described in the permit.
- (E) **Basis of approval.** The Town Board shall base their determination on general considerations as to the effect such grant may have on the health, general welfare, safety and economic prosperity of the town and specifically on the immediate neighborhood where such use will be located. These considerations shall include the effect on the established character and quality of the areas, physical attractiveness, the demand for related services, the possible hazards, harmful, noxious, offensive or nuisance effect as a result of noise, glare, dust, smoke or odor and other factors as may be appropriate to carry out the intent of this Ordinance.
- (F) **Fees.** The Town Board shall establish fees for the processing and issuance of special use permits on an annual basis by separate resolution.
- (G) **Permit procedure.**
- (1) The Town Board is the designated agency, which approves special use permits and further designates the building inspector as the official to receive, process and following approval by the Town Board, issue special use permits.
  - (2) The permit application shall be made to the building inspector on forms provided by the town and contain the following:
    - (a) The name and addresses of the applicant, the owner of the property, and all contiguous properties.

- (b) A site plan specifying the exact location of the easement or leased area, cabinets, cross boxes, loaders, junction boxes, power pedestals or any other associated facilities.
  - (c) A detailed description of the cabinets and facilities.
  - (d) Specifications for screening or fencing, which is to surround the subject cabinet facilities, or a landscaping plan, as may be required by the Town Board.
  - (e) A plan of operation.
  - (f) Proof of an easement or lease agreement with the property owner.
  - (g) An erosion control permit issued from the county department of parks and land use land resource division, if necessary.
  - (h) Documentation from the building inspector whether the facility requires state approved plans.
  - (i) An abandonment plan, which shall clearly state that within 90 days after discontinuance of the use of the facilities, the access roads, concrete paths and all other appurtenances will be removed and the site will be restored to its natural condition.
  - (j) A schematic of the cabinet that shows where on the utility cabinets there will be a permanent placard that identifies the carrier and provides an emergency telephone number where accidents or public concerns may be reported.
- (3) The building inspector shall review the application and if the application is complete and contains all required information shall refer it to the Town Board.
- (4) Following a public hearing per Section 487, if deemed necessary by the Town Board and after the necessary study and investigation, the Town Board shall as soon as practicable render its decision in writing. Such decision shall include an accurate description of the special use permitted, of the property on which it is permitted and any and all conditions made applicable thereto or if disapproved, shall indicate the reasons for disapproval. The Town Board may impose any conditions or exemptions necessary to minimize any burden on any person affected by granting a special use permit.
- (H) **Standard requirements.** Except as may be specifically allowed otherwise by this Ordinance, any such large utility cabinet shall not have to conform to the building location, and open space, requirements of the zoning district in which it is located and be no more than six feet high. Any cabinet more than six feet high may be authorized under the provisions of the conditional Use provisions of this Ordinance.
- (I) **Modification of regulations.** Requirements applicable to large utility cabinets by the regulations of this Section may be modified and/or waived by the Town Board in their review of an application for a special use if in the board's opinion they are not appropriate or necessary to the proper regulation of the special use and where such modification would not, in the board's opinion, result in an adverse effect on the surrounding properties.

- (J) **Termination.** When a special use permit has been issued for a large utility cabinet and it does not continue in conformity with the conditions of the original approval, or of the use itself causes the original special use permit to no longer be compatible with the surrounding areas or for similar cause, based upon consideration of the public welfare, a special use permit may be terminated or amended by action of the Town Board following a public hearing per Section 487.

## Section-27. Off-street parking.

In all districts and in connection with every use, there shall be provided at the time any use is converted, relocated, enlarged or moved from one location to another or a building is erected, converted, relocated, enlarged, structurally altered or moved from one location to another, off street parking stalls for all vehicles in accordance with the following:

(A) **Parking Requirements:**

- (1) All business, industrial, or multi-family residential parking area plans shall obtain approval of the Plan Commission.
- (2) **Adequate Access:** A driveway access to a public street, road or highway shall be provided for each lot and every driveway access shall be at least 10 feet wide for one and two family dwellings and a minimum of 22 feet wide for all other land, buildings and structures.
- (3) **Location:** Parking shall be located on the same lot as the principal use unless the Plan Commission specifically approves the parking being located on an adjoining parcel with the recording of appropriate access and parking easements and any necessary maintenance agreements and also providing that all parcels involved meet the requirements of this Section.
- (4) **Dimensional Requirement:** parking spaces, driveways and aisles for access to parking spaces shall have the following minimum dimensions unless specifically varied by the Plan Commission.

Stall width:	9 feet
Stall depth:	20 feet
Parking aisle width:	
Two-Way Traffic (90 degrees)	25 feet
One-Way Traffic (60 degrees)	18 feet
Driveway (no parking stalls)	
Two-Way Traffic	22 feet
One-Way Traffic	12 feet

- (5) **Parking Spaces for use by the Physically Disabled Persons:** Parking spaces for use by physically disabled persons shall be in accordance with State and Federal requirements.
- (6) **Surfacing:** All off-street parking areas, and driveways, except parking areas accessory to single-family and two-family dwellings, shall be surfaced with a bituminous, pervious surfaces, or Portland cement concrete pavement. Such parking areas shall be kept free of dust, loose stones, and gravel. Such parking areas shall be so arranged and marked

to provide for orderly and safe parking and storage of vehicles and must be completed within one (1) year of issuance of the building and zoning permit.

(7) **Flexibility in Application:**

- (a) The Town recognizes that, due to the particulars of any given development, the inflexible application of the parking standards set forth in this Section may result in a development either with inadequate parking space or parking space far in excess of its needs. The former situation may lead to traffic congestion or parking violations on adjacent street as well as unauthorized parking in nearby lots. The latter situation wastes money as well as space that could more desirably be used for valuable development or environmentally useful open space. Therefore, the Plan Commission may allow deviations from the requirements of this Section whenever it finds that the deviation will not adversely impact traffic circulation or public safety.
- (b) The site plan must, subject to Plan Commission approval, be designed to provide sufficient open space on the subject site to accommodate the additional parking spaces otherwise required by this Section. Such open space shall be in addition to required yards, setbacks, driveways, private streets, loading and service areas and open space requirements. Sufficient open space shall be provided which, if converted to parking spaces, would provide off-street parking to meet the full requirements of this Section at the time of application for a deviation from the requirements of this Section.
- (c) The Plan Commission may at any time, and at its sole discretion, require that all off street parking as required by this Section be constructed.

(8) **Changes in occupancy or intensity of use:** When parking needs of a building, structure or site is increased due to additional employees, gross floor area, seating capacity or due a change of occupancy, additional parking spaces shall be constructed in the amount necessary to conform to this Section, as determined by the Plan Commission.

(9) **Required number of stalls:**

(a) **Number of Parking spaces:**

- (i) Unless waived or modified by the Plan Commission parking spaces shall be provided on the same lot in sufficient number to accommodate the motor vehicles of all occupants, employees, suppliers, customers, and persons normally visiting the premises at any one time or as specified in the table below.
- (ii) In the Existing Business Redevelopment Overlay District the Plan Commission shall consider the availability or provisions of onsite parking spaces, off street parking spaces and parking spaces provided on nearby sites in determining compliance with the parking requirement.
- (iii) The Commission shall determine the required number of parking spaces for all uses not included in the table based on those criteria.

- (iv) Where two or more different principal or accessory uses are located on the same premises the parking requirements for the different uses shall be computed separately and cumulatively.
- (v) When computation of required parking spaces results in a fraction of a car space the required number of the spaces shall be increased to next whole number of spaces.
- (vi) No area shall be credited as a parking space that is in any part credited or used as a loading space or travel way.
- (vii) No required parking space shall be used for the sale, storage, or display of goods.
- (viii) In the Existing Business Redevelopment Overlay District, on street parking shall be improved to the extent possible along the lot frontage before adding parking spaces off street. On street parking must be available for general public use. Improved parking must be contiguous and consistent with parking from adjoining lots where it exists.
- (ix) Off street parking lots shall be placed in the rear of the building. If they cannot be placed in the rear, then they may be placed on the side of the lot. Parking spaces shall be placed in the front of the lot only as on street parking. Parking lots may be placed in the front of the lot only by specific grant of a waiver.

(b) **PARKING REQUIREMENT TABLE:**

<b>USE</b>	<b>MINIMUM PARKING REQUIRED</b>
Automobile Repair garages	1 space per 200 ft. of gross floor area used And service garages (see for repair work, plus 1 per employee Fuel stations)
Bowling Alleys	4 spaces for each alley, plus any required for other uses such as restaurant or bar.
Churches, theaters auditoriums,	1 space per 3 seats
Community centers and other places of public assembly, Colleges, secondary schools, Elementary schools, vocational and night schools	1 space for each employee plus one for each 5 students 16 yrs. of age or older.
Daycare facilities	1 space per 10 children and 1 space per Employee
Financial Institutions, business, Government and professional office	1 space per 200 ft. of gross floor area
Funeral Homes	25 spaces for each viewing room
Fuel Stations	1 space per 300 sq. ft. of gross floor area plus any required for other uses such as Repair garages or restaurants.
Golf courses	4 spaces per golf hole and an additional 6 spaces for every 9 holes, plus any additional spaces required for other uses which is part of the facility such as restaurants, bars or banquet facilities.
Health Clubs	1 space per 150 sq. ft. of gross floor area
Hospitals, sanitariums, Institutions, rest and	1 space for each 3 beds plus 1 space for each day

nursing homes	shift employee
Lodges, clubs and banquet facilities	1 space for every 3 persons allowed within the maximum occupancy load
Manufacturing and processing plants(including meat and food processing plants, laboratories, and warehouses)	1 space per each employee or 1 space per 200 sq. ft. of gross area.
Medical or dental clinics	6 spaces for each doctor or professional service provider
Motels, hotels, rooming houses, and boarding houses, fraternities, and sorority houses, dormitories, and rectories	1 space for each guest room, and 1 space for every 3 employees, plus any required spaces for other uses such as restaurant, bars or banquet facility
Motor vehicle sales (new/used)	1 space for each 600 sq. ft. of gross floor area plus 1 space per 300 sq. ft. of outdoor display area for each motor vehicle to be displayed, plus any required spaces for other uses such as service garages
Repair shops and retail and Service Stores	1 space per 150 sq. ft. of gross floor area
Restaurants, bars and places	1 space per 50 sq. ft. of gross floor area of entertainment
Retirement homes, orphanages, Convents and monasteries	1 space per 1,000 sq. ft. of gross floor area
Shopping Centers	1 space per 175 sq. ft. of gross floor area

(10) **Reduction of parking facilities:**

- (a) **Temporary change in use reduction:** The Plan Commission may waive the requirement for the installation of additional spaces when a change in the use of the premises results in a parking deficit of less than 15 percent of the number of required spaces.
- (b) **Temporary Installation Reduction:** The Plan Commission may waive the immediate installation of up to 25% of the required parking spaces where sufficient evidence has been presented, in the judgment of the Plan Commission, to show that the reduced parking facilities will adequately serve the proposed use. Before approval of a waiver by the Plan Commission, the applicant shall show upon the Site Development Plan the complete layout for the full parking requirements. The owner shall file that plan in the Office of the Town Clerk, stipulating that the owner, or the successor and assigns of the owner will install as many of the waived parking spaces as the Plan Commission deems necessary within six months of the Plan Commission's request, when, in the opinion of the Plan Commission, such installation is needed.
- (c) **Permanent Shared Use Reduction:** The Plan Commission may allow a reduction of up to 50% of the required parking spaces due to shared use of parking facilities when the parking needs of the joint users occur at different hours of the day.
- (d) **Permanent Compact Space Reduction:** In parking lots in excess of 50 spaces in the Industrial Zoning Districts, the Plan Commission may allow the installation of compact spaces, not to exceed 25% of the total number of spaces installed, at 8 feet by 16 feet. These spaces shall be clearly designated as compact car parking.



This reduction may only be considered for single-tenant buildings where there is reasonable assurance of private control.

- (11) **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.
- (12) **Parking of trucks and equipment.** No other vehicular equipment of a commercial or industrial nature, as excepted in subsection (12)(b) 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:
- (a) Agricultural equipment (such as farm tractors, plows, seeders, combines, cultivators, farm trucks, etc.) used in a farm operation and located within an agricultural or rural home district.
  - (b) One panel, van or pick-up truck used in the conduct of a conforming business activity being carried on in a residential or agricultural district. Such truck and any attached extraneous material shall not exceed 20 feet 6 inches in length, 8 feet in height or 7 feet in width. The board of adjustment may, if the need is evident, permit more than one such vehicle if the Town Board and Plan Commission indicates it has no objection to the increase in the number of such vehicles. No limitation shall be placed on vans or pick-up trucks if they are used for private non-business or noncommercial recreational purposes.
  - (c) Consideration for issuance of a conditional use permit, pursuant to this Ordinance, may be given to allow the parking of commercial or industrial type vehicles in any zoning district, except C-1 conservancy and A-E exclusive agricultural. This determination shall be made by the Plan Commission and Town Board after conducting an informal hearing and notifying all property owners within 300 feet of such a hearing. In business or industrial districts where such vehicles are accessory to an otherwise permitted business or commercial use, a conditional use permit will not be required and there are no limitations as to the number of such vehicles which may be parked on the property except as may be established under the provisions of the applicable zoning district.
  - (d) No bus, truck (other than light duty pick-up trucks), or other equipment shall be parked regularly on a road rights of way.
  - (e) Recreation vehicles shall be kept in a garage or shall have a planting screen, landscaped fence or wall at least four feet in initial height along a side abutting or fronting a residential district.
  - (f) Recreational equipment parked or stored shall not have fixed connections to electricity, water gas, or sanitary sewer facilities and at no time shall this equipment be used for living or housekeeping purposes

- (g) If camping or recreational equipment is parked or stored outside a garage, it shall be parked or stored subject to the following: There shall be a minimum setback of 50 feet when parked or stored adjacent to a public street or highway. It shall be parked or stored in the rear yard of the lot and it shall be parked or stored not closer than 20 feet from a side or rear lot line. Notwithstanding the above, camping or recreational equipment may be parked anywhere on the premises for loading or unloading purposes for a period of not more than 48 hours.
- (h) There shall be no parking or storage anywhere in a residential zoned district of any equipment which is no longer capable of the use intended or requiring repair over and above ordinary maintenance. All recreational equipment shall be kept in good condition. The ground area under and immediately surrounding where such recreational equipment is stored shall be maintained free of noxious weeds, debris or undergrowth.
- (13) **Surfacing.** Any off-street parking area, other than that provided for a residence, having a capacity for more than four vehicles shall be surfaced and maintained in a dustless condition.
- (14) **Screening.** Any off-street parking area, other than that provided for a residence, which abuts or faces a residence district shall provide a planting screen, landscaped fence, or wall at least four feet in height along the side abutting or fronting on a residence district.
- (15) **Offset.** In any off-street parking area, other than that provided for a residence, which abuts a residence district, no vehicle shall be allowed to park closer than ten feet to the abutting residential lot line.
- (16) **Setback.** No vehicle shall be parked closer than ten feet to the base setback line.
- (17) **Lighting.** Lights provided in any parking area shall be hooded or beamed so as not to create undesirable glare or illumination of adjacent residential property.
- (18) **Storage Prohibited:** The unenclosed parking or storage of unlicensed, registered, inoperable or junk vehicles is expressly prohibited within the Town except in an authorized salvage yard.

## **Section-28. Off-street loading and unloading.**

- (A) **Required.** In any business or industrial district an off-street loading space shall be provided, in addition to the defined off-street parking area, for every 10,000 square feet or fraction thereof in excess of 3,000 square feet of building area, exclusive of storage areas, used for commercial purposes. The number of such spaces provided shall be based upon the operating characteristics of the individual use and shall be subject to approval by the Plan Commission upon the submittal of the building site and operational plan.
  - (1) **Areas.** An individual loading space shall be at least ten (10) feet wide by thirty (30) feet long and have a minimum height clearance of fourteen (14) feet.

- (2) No building for commercial or industrial purposes shall be hereinafter erected on the lot in a manner which requires servicing directly from the abutting public street.
- (3) The use of a public street for the maneuvering of trucks to service industrial or commercial buildings is expressly prohibited, except in the Existing Business Redevelopment Overlay District when it is determined by the Plan Commission that there is no maneuvering area available on site. Sufficient onsite space shall be provided for such maneuvering in all other zoning districts.

## Section-29. Signs

(A) **Purpose:** The Town of Oconomowoc regulates the type, number, location, size and lighting of signs to ensure a balance of the visual environment of the Town. While the Town recognizes that the purpose of signs is to identify businesses and/or promote products and services to generate business, Town of Oconomowoc also knows that traffic safety, economic welfare, and aesthetic harmony must be considered. All applications for sign permits are, therefore, reviewed for compliance with this Ordinance as well as the applicable building code.

- (1) **Use restricted:** Signs are prohibited in all zoning districts in the Town except:
  - (a) One or more sign may be specifically authorized by a duly issued Conditional Use Permit.
  - (b) One or more sign is permitted to the extent specifically authorized by the Applicable zoning district regulations or Section 29 (A)(3).
- (2) **Definitions:** The types of signs, words, terms, and phrases when used in this Section will have the meanings ascribed to them in Section 4 of this Ordinance, except where the context clearly indicates a different meaning.
- (3) **Signs permitted without a permit:** The following signs are permitted in all zoning districts without a permit, subject to the following regulations:
  - (a) Product signs not exceeding ten square feet in sign area for any one premise that pertain to the seasonal sale of perishable products produced on the premises.
  - (b) Real estate signs not exceeding ten square feet in sign area that advertise the sale, rental or lease of the premise upon which such signs are temporarily located.
  - (c) Bulletin boards for public, charitable or religious institutions shall not exceed thirty-two (32) square feet in sign area. Such signs shall be set back from the property line at least one-quarter of the building setback requirements of the district in which they are located and may be illuminated only to the extent necessary to permit reading of the sign from a maximum distance of ten feet.
  - (d) Memorial signs, tables, name of building, and date of erection signs when cut into any masonry surface or when constructed of metal and affixed flat against a

structure and not illuminated.

- (e) Parking lot signs shall include signs which are placed or displayed in parking lots to supply information to people using lots, including such information in respect to liability, entry, exit and directional information as necessary to facilitate the safe movement of vehicles served by the parking area. Handicap parking provision signs are also covered under this subsection. Such signs are not intended to be advertising signs and shall not display any advertising matter. Parking lot signs shall conform to the following specifications:
  - (i) **Location:** Parking lot signs shall be permitted in all business, commercial, industrial, and institutional zones.
  - (ii) **Maximum area:** Incidental parking lot signs shall not exceed four (4) square feet in area.
  - (iii) **Maximum Height:** Incidental parking lot signs shall not exceed four (4) feet in height provided that signs identifying handicapped stall locations are mounted high enough to permit visibility of such signs while a vehicle is parking in the space.
  - (iv) **Setbacks:** Parking lot signs shall be subject to a five (5) foot setback from the right-of-way and adjacent property lines. These signs shall be installed so as not to present a hazard to traffic entering or leaving the premises.
  - (v) **Illumination:** Parking lot signs may be internally illuminated in accordance with provisions of this Ordinance.
- (f) Rummage, estate or neighborhood sale signs must not be erected on or off the premises for more than three (3) days, and/or be removed one (1) day after the sale. Such signs must not exceed six (6) square feet in size.
- (g) Home occupation and professional home office, where allowed, wall or window signs not exceeding six (6) square feet in sign area, mounted flush against the dwelling and only internally illuminated.
- (h) Metal or masonry nameplates attached to a building and not exceeding four squares feet in sign area.
- (i) The display of any political sign shall be permitted in any district without a permit, subject to the following restrictions:
  - (i) The sign area of political signs in other than residential districts shall not exceed twelve (12) square feet unless otherwise permitted under Wis. Stats. 12.03(4) (b) and approved by the Town Board. The sign area of such signs displayed in residentially zoned districts shall not exceed six (6) square feet. Campaign or political signs shall not be displayed earlier than thirty (30) days before a primary, general or special election. No such sign shall have an electrical, mechanical or audio auxiliary

component.

- (ii) Political campaign signs shall not be displayed on any building or grounds that are owned, operated, or maintained by any public agency, or on any Town-owned post or traffic control device or on any pole, post or appurtenance owned or operated by any utility. Such signs shall be located only on private property or privately maintained Town right-of-way adjacent to the private property and only with the property owner's or renter's prior consent. Such signs shall be located so as not to constitute a danger to the travelling public.
- (iii) The candidate or entity responsible for the erection or distribution of any political campaign sign shall be jointly and severally liable for the removal of such signs. All political signs must be removed within forty-eight hours of said election
- (iv) The Clerk, Election Inspector, Building Inspector and Law Enforcement Officers of the Town may remove signs or posters and other advertising which are placed in violation of this article or the laws governing elections.
- (j) Community signage to promote not-for-profit, civic, or community events and functions are permitted in all districts. Said signage must comply with all other conditions as stated in this ordinance.
- (k) Address signs that display address numbers shall not exceed two (2) square feet.
- (l) Flags. Flags shall not exceed sixty (60) square feet. Flagpoles accompanying such flags shall meet all setback requirements and shall be limited to a height of thirty (30) feet in residential districts and forty (40) feet in non-residential districts. Any flag not meeting the criteria of this subsection shall be subject to height and area regulations as a ground pole sign and shall be included when figuring the amount of signage on a lot.
- (m) Signs for property designated by a Federal, State or local governments as a historic location, site or landmark, provided such sign does not exceed twelve (12) square feet, with Town Board approval.
- (n) Signs established by, or by order of, any governmental agency with Town Board approval.
- (o) Signs of a non-commercial nature and in the public interest erected by or on the order of public officers in performance of the officer's public duty, such as safety signs, danger signs, trespassing signs, traffic signs, memorial plaques, signs directing the traveling public to public and quasi-public facilities, or signs on public buildings or structures and the like are permitted.
- (p) No trespassing signs, warning signs, and other such signs regulating the use of property when such signs do not exceed two (2) square feet in area.

- (q) Off-premise signs indicating the names and locations of churches, charitable organizations, and community service organizations are permitted, provided that the sign area shall not exceed four (4) square feet, shall be located off of the street right-of-way, and shall in no way obstruct the view of pedestrians or vehicular traffic. The signs must have a minimum spacing of five hundred (500) feet between any two (2) signs in this category, except where there is a community service central display.
- (r) Signs suspended above a walkway to identify a business, profession or industry conducted on the premises, provided:
  - (i) Such signs shall not exceed twelve (12) square feet in sign area per face.
  - (ii) Such sign shall extend no lower than eight (8) feet above the area over which it is suspended.
  - (iii) Such signs shall identify only a building, business, profession or industry and bear no commercial message. Only one (1) such sign shall be displayed per building entrance.
- (s) Construction signs which identify the architects, engineers, contractors and other individuals or firms involved with construction taking place on the Premises, but not including any advertisement of any product, and signs announcing the character of the building enterprise or the purpose for which the building is intended. Such signs shall be permitted during the construction period to a maximum of thirty-two (32) square feet. The minimum setback shall be ten (10) feet from any street right-of-way. The sign shall be confined to the site of construction and shall be removed within thirty (30) days after the end of construction or issuance of an occupancy permit whichever occurs first.
- (t) Incidental signs, if they do not exceed two (2) square feet in surface area, and is a sign, emblem or decal designated to inform the public of goods, facilities or services available on the premises, and includes, but is not limited to, restrooms, hours of operation, acceptable credit cards, property ownership or management, phone booths, recycling containers.

(4) **Prohibited Signs**

- (a) Signs shall not resemble, imitate or approximate the shape, size, form or color of railroad or traffic signs, signals or devices.
- (b) Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals or devices.
- (c) Signs shall not be erected, relocated or maintained so as to prevent free ingress to or egress from any door, window, or fire escape, and no sign shall be attached to a standpipe or fire escape.
- (d) Signs shall be placed so as not to obstruct or interfere with traffic visibility and shall not be lighted in a way which causes glare or impairs driver visibility upon

public ways.

- (e) Decorative or wall art shall only be allowed after a public hearing and affirmative action by the Town Plan Commission and Town Board.
- (f) Banners, pennants, streamers, balloons, inflatable signs, and other gas-filled figures are not permitted, except as a temporary sign, as may be permitted per this Ordinance
- (g) Billboard signs are not permitted in any district, unless otherwise stated in this Ordinance.
- (h) All signage promoting products and/or services integral to the use of a business or service, located off the premise of said business, is not permitted, unless otherwise specified by this Ordinance.
- (i) No sign shall be permitted which is animated by means of flashing, scintillating, blinking, or traveling lights or any other device or means not providing constant illumination. Public service information signs and other electronic message center signs are permitted under special provisions of this Ordinance.
- (j) Unprofessional hand-painted signs erected as permanent outdoor advertising signs are not permitted.
- (k) The tacking, pasting, or otherwise affixing of signs of a miscellaneous character, visible from a roadway, located on the walls of buildings, barns, sheds, trees, poles, posts, fences or other structures are prohibited unless otherwise permitted by this Ordinance.
- (l) No sign or any portion thereof shall be permitted which moves or assumes any motion or gives the illusion of moving
- (m) No portable signs shall be permitted, including but not limited to A or T frame signs and signs on trailer frames, whether or not the trailer wheels or the type face have been removed, except where permitted as temporary signs set forth in this Ordinance.
- (n) Any sign on top of a roof is prohibited.
- (o) Overhead swinging signs, except those meeting the requirements for suspended signs are prohibited.
- (p) No sign shall be placed on any communication, radio, or cell tower without the approval of the Plan Commission and Town Board.
- (q) No signs placed on parked vehicles, boats, trucks or utility trailers which are visible from the public right-of-way for which the apparent purpose is to advertise a product or to direct the public to a business or activity are prohibited. This paragraph is not intended to apply to standard advertising or identification practices where signs or advertising is painted on or permanently

attached to business or commercial vehicles which are used in the daily operation of the business and parking in designated parking spaces designed for their particular vehicle type.

(r) No signs are allowed which operate or employ any stereopticon or motion picture projection or media in conjunction with any advertisements, have visible moving parts, or give the illusion of movements, except as permitted by this Ordinance.

(s) No signs which emit audible sound, odor, or visible matter is permitted.

**(5) Non-conforming Signs**

(a) Signs which were lawful prior to the time this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance shall be deemed legal nonconforming signs. Such signs shall be permitted to continue until such time as major change is made to the sign. Major changes include the changing the name or size, adding lights, refurbishing and/or relocation.

(b) All nonconforming signs shall be kept in good repair and in safe, neat, clean, and attractive condition. In the event signs are not kept in good condition or are demolished by any force whatsoever to the extent of fifty (50) percent or more of its replacement cost at the time of the damage, any replacement signs shall then conform to this Ordinance, except in circumstances where rebuilding is allowed by State Statute. Nothing herein shall prevent maintenance, repainting or normal repair of legally established non-conforming signs.

(c) In any zoning district, where any sign does not comply with the provisions of this Ordinance, such sign and any supporting structures may be maintained in their existing conditions. Non-conforming signs can be repainted or refaced provided the height and landscaping requirements are met in the underlying zoning district. Non-conforming signs may not be enlarged, extended, moved, modified, reconstructed or structurally altered except in accordance with this Section and without first obtaining the necessary permits from the Town.

(d) A non-conforming sign must be removed if the structure, building, or use to which it is accessory is destroyed, or demolished to an extent exceeding fifty (50) percent of the appraised value of the principle structure, building, or use, except in circumstances where rebuilding is allowed per State statute.

(e) A non-conforming sign which is destroyed or damaged to an extent exceeding fifty (50) percent of its appraised value may be altered, replaced, or reinstalled as a special exception approved by the Plan Commission. If the damage or destruction is fifty (50) percent or less of the appraised value, the sign may be restored within sixty (60) days of the damage, but shall not be enlarged in any manner.

(f) Supporting structures for non-conforming signs may continue in use for a conforming sign if said supporting structures comply in all respects to the



applicable requirements.

- (6) **Billboards:** In addition to the signs allowed in this Section, billboards may be allowed in specific zoning districts, only when in conformance with the following:
- (a) No billboard shall be located closer than fifty (50) feet to any property line, and at least two hundred (200) feet from the property line of any property which is zoned for residential use.
  - (b) No billboard shall exceed twenty-eight (28) feet in height above the ground level where they are erected.
  - (c) No billboard shall exceed four thirty-two (432) square feet in area.
  - (d) No billboard shall be erected within five hundred (500) feet of another billboard.
  - (e) A billboard sign may be either single face or back-to-back, with no more than one face visible and readable from the same direction. Back-to-back would permit a "V" shaped sign provided the angle is no more than 30 degrees.
- (7) **Setbacks and offsets.** In any district, no sign other than those permitted in a residence, Existing Business Redevelopment Overlay District or agricultural district shall be permitted closer than 20 feet to the base setback line or to any other lot line, and any sign not directly related to the use of the premises on which it is located shall conform to the setback and offset requirements as would apply to a building in that district, unless otherwise approved by the Town Board upon recommendation of the Plan Commission. The location of billboards shall be as designated above.
- (8) **Hazards or nuisances prohibited.** No sign, billboard or other advertising media which creates a hazard or dangerous distraction to vehicular traffic, or a nuisance to adjoining residential property, shall be permitted in any district.
- (9) **Directional signs.** A sign, not to exceed 12 square feet in area for the purpose of advertising and directing patrons to an establishment off the main traveled highway may be permitted in any district other than a residential district upon recommendation of the plan commission and approval of the Town Board.
- (10) **Heights.** No free standing sign other than a billboard shall exceed 20 feet in height from the ground, and no sign shall in any case exceed the maximum height limit for the district in which it is located.
- (11) **Temporary signs.** All portable signs used for commercial purposes shall conform to the standards of this Section and receive Plan Commission and Town Board approvals if installed for a continuous period of at least 14 days but less than six months.

### **Section-30. Airport safety zone.**

- (A) **Maximum height.** No buildings or objects of natural growth located within two miles of the boundaries of any existing airport landing field or landing and take-off strip, and within a band

500 feet on each side of the centerline extended of any runway, shall be erected, altered, or permitted to grow after the effective date of the Ordinance from which this Section is derived to a height above the elevation of the nearest point of such runway greater than one-fifteenth of the distance from such point.

- (B) **Control of use.** No building or land located within two miles of the boundary of any airport, landing field or landing and take-off strip shall be so used that by reason of the emission of smoke, gas or other emanation it shall produce a hazard to the operation of aircraft.
- (C) **Exceptions.** The regulation in this Section shall not apply to growing field crops which are harvested at least once a year, or to fences not over five feet high.

### **Section-31. Mobile homes and recreational vehicles.**

- (A) **Human habitation prohibited.** Except within an approved mobile home park or camp, no mobile home or recreational vehicle shall be used for the purpose of human habitation (human habitation being defined as entering a mobile home or recreational vehicle for any purpose other than maintenance).
- (B) **Human habitation allowed.** A permit for one continuous six-month period allowing the human habitation of a mobile home or a recreational vehicle on lands other than an approved mobile home park may be granted by the Town Board provided:
  - (1) The habitation is an accessory to the current construction of a principal structure owned by the same person who is the applicant for the permit; and
  - (2) The waste disposal facilities and water supply facilities for the property upon which the mobile home or recreational vehicle is to be located have been approved by the county health department.
- (C) **Storage prohibited.** No mobile home or recreational vehicle in excess of thirty-five (35) feet in length shall be located or stored on property except in an approved mobile home park, unless completely enclosed in a structure.

### **Section - 32 Personal Storage Facilities**

- (A) **Minimum lot size.** The lot on which a personal storage facility is located shall be at least one acre in size.
- (B) **Access.** The access to a cubicle shall not open directly onto a public road right of way
- (C) **Surfacing of travel ways. Driveways, interior aisles, and walkways** shall be concrete or asphalt. The Plan Commission may allow gravel surfaces as a special exception and require, as a condition of approval, additional buffer yard and landscaping requirements deemed necessary to provide adequate screening between this use and adjoining properties.
- (D) **Storage of prohibited substances.** No cubicle shall be used to store explosives, toxic substances, hazardous materials, or radioactive materials.

- (E) **Uses.** Only uses that are accessory to storage shall occur. No portion of the site shall be used for fabrication, repair, or any similar use or for human habitation.
- (F) **Design.** The personal storage facility shall be designed so as to minimize adverse visual impacts on nearby properties. The color, exterior materials, and orientation of proposed buildings and structures shall complement existing and anticipated development in the surrounding area.
- (G) **Fencing of outdoor storage area.** An area used for outdoor storage of operational vehicles, watercraft, and the like shall be enclosed by a security fence.
- (H) **Setback of outdoor storage area.** Outdoor storage areas shall comply with the building setback standards for the zoning district in which it is located.

### **Section - 33 Outdoor Food and Beverage Service Areas**

- (A) **Maximum size of service area.** The size of the outdoor service area shall not be more than 30 percent of the floor area of the restaurant or tavern as permitted in the business districts of this Ordinance and as authorized by a conditional use.
- (B) **Location of service area.** The outdoor service area shall be located on the same parcel of land as the restaurant or tavern. The outdoor service area shall not be located in a public right-of-way, a required landscape area, a buffer yard, or within the road setback, offset or shore setback areas.
- (C) **Special restrictions when adjacent to a residentially-zoned parcel.** If the outdoor service area is within 100 feet of a property in a residential zoning district, the following restrictions shall apply:
  - (1) **Alcoholic beverages.** Alcoholic beverages shall only be served with a meal.
  - (2) **Hours of use.** No person shall occupy the outdoor service area after 9:30 p.m.
- (D) **Consistency with state liquor license.** No alcoholic beverages shall be served or consumed within the outdoor service area unless the liquor, beer, or wine license, whichever is applicable, as issued by the town, explicitly states that consumption is permitted within the outdoor service area.
- (E) **The entrance to service area if alcoholic beverages are served.** If alcoholic beverages are served, the entrance or entrances to the outdoor service area shall be exclusively through the restaurant or tavern, and a barrier such as a rope or fence shall be erected to prevent entry to the outdoor service area by any other means.
- (F) **Restroom requirements.** The restroom facilities in the restaurant or tavern shall be of sufficient capacity to serve both the indoor and outdoor patrons. Temporary toilet facilities are not permitted except in an approved site plan and plan of operation for special events.

### **Section - 34 Legal non-conforming uses, structures and lots.**

- (A) **Continuance of Use, Generally,**

- (1) Any lawfully established construction of a building or structure at the time of the enactment of this Ordinance or any amendment applicable thereto that does not conform to the dimensional regulations for the District in which it is located shall be deemed a legal nonconforming structure and may be continued, except as otherwise provided herein.
  - (2) Any lawfully established use of a building, structure or land at the time of the enactment of this Ordinance or any amendment applicable thereto that does not conform to the use regulations for the District in which it is located shall be deemed to be a legal nonconforming use and may be continued, except as otherwise provided herein.
  - (3) Any lawfully established lot or parcel of land at the time of enactment of this Ordinance or any amendment thereto which does not meet the requirements for the District in which it is located shall be deemed to be a legal nonconforming lot and may be used in accordance with this Ordinance and as provided herein.
- (B) **Regulation.** For the purposes of administration, legal nonconforming structures, uses and lots shall be classified and regulated as follows:
- (1) **Existing Non-conforming Structures.** A lawful structure which existed at the time of the adoption or amendment of this Ordinance may be continued as a legal non-conforming structure, although the structure size or location does not conform to all the requirements of this Ordinance, however:
    - (a) A legal non-conforming structure containing conforming uses may be totally rebuilt if, and only if, such reconstruction is identical in all respects to the size, shape, height, location, footprint, style and use of the original structure.
    - (b) A legal non-conforming structure containing conforming uses, subject to approval of the Plan Commission, may be reduced in size, may have its shape modified, may have its height lowered, and may have its style modified, as long as the proposed structure is identical in all respects to the location, footprint and use of the original structure.
    - (c) A legal non-conforming structure containing conforming uses, subject to the grant of a variance from the Board of Adjustment, may be increased in size, may be increased in shape, may be increased in height, and the location and footprint may be modified.
    - (d) Regardless of the foregoing provisions in this subsection, the footprint of a legal non-conforming primary residence with conforming uses, subject to the Plan Commission approval, may be expanded into areas of the lot where the expansion fully complies with all offset and setback requirements of the district in which it is located, provided that the expansion is otherwise in compliance with all other applicable laws. In passing upon such matter, the Plan Commission shall consider all the following factors: the size of the lot; the size and location of the existing legal non-conforming structure; the size and location of any other structure on the lot; the size and location of the proposed expansion; the impact, if any, that the expansion may have upon neighboring

properties; whether the proposed expansion would violate the intent of this Ordinance and such other matters as the Plan Commission finds to be relevant in the interest of the public health, safety, welfare, and be compatible with other properties in the area of the Town.

- (2) **Nonconforming Use of Structures and Lands.** A lawful use which existed at the time of the adoption or amendment of this Ordinance may be continued as a legal non-conforming use, although the use of the structure and land does not conform with the provisions of this Ordinance, however:
- (a) No such use shall be expanded or enlarged.
  - (b) Upon petition to and approval of the Town Board, such use may be changed to another use provided the Town Board determines that the new use would not result in a greater degree of non-conformity than the current use.
  - (c) When any such use is discontinued for twelve (12) consecutive months or eighteen (18) cumulative months during a three-year period, any future use of the land or structure shall conform to the use regulations of the applicable district. Seasonable uses shall be excluded from this provision.
  - (d) When a structure which houses such non-conforming use is damaged beyond 50 percent of its present equalized assessed value, it shall be restored for any use in conformity with the applicable district regulations.
  - (e) Total structural repairs or alterations to a structure housing a non-conforming use shall not exceed, on an accumulative percentage basis, 50 percent of the present equalized assessed value of the structure.
- (3) **Nonconforming lots.** The size and shape of such lots shall not be altered in any way which would increase the degree of such non-conformity to the applicable district regulations.
- (C) **Conditional use status.** Subject to the provisions of Section 21, Conditional Use Status may be granted to existing legal non-conforming uses, structures or lots upon petition of the owner and where such use, structure or lot is determined by the Plan Commission and Town Board to be: not adverse to the public health, safety, or welfare; not in conflict with the spirit or intent of the Ordinance; and not otherwise detrimental to the community and particularly the surrounding neighborhood. Such conditional use status shall be granted only with the recommendation of the Plan Commission and approval of the Town Board following a joint public hearing in the manner provided in Section 487.
- (D) **State Law:** Any applicable restriction in this Ordinance which prohibits restoration of a damaged or destroyed non-conforming structure shall not apply to the extent that 2005 Wisconsin Act 112 applies to such restoration, including such amendments and renumbering of the applicable statutes referred to therein as may be made from time to time.

### **Section-35. Prior permit.**

- (A) **Construction permitted.** Nothing contained in this Ordinance shall require any change in the

plans, construction, size or designated use of any building or part thereof for which a building permit has been issued before the effective date of the Ordinance from which this Section is derived and the construction of which shall have been substantially started within six months from the date of such permit.

- (B) **Subsequently nonconforming.** Any such use which does not conform to the use regulations of the district in which it is located shall, however, subsequently be considered a legal nonconforming use.

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## ARTICLE IV DISTRICTS

### Division - 1 Generally

#### Section - 50 Establishment of Districts

For the purpose of this Ordinance the town is hereby divided into zoning districts which shall be designated as follows:

C-1	Conservancy District.
EFO	Existing Floodplain Overlay District
A-E	Exclusive Agricultural Conservancy District.
A-P	Agricultural Land Preservation District.
A-B	Agricultural Business District.
A-O	Existing Agricultural Overlay District.
A-T	Agricultural Land Preservation Transition District.
AD-10	Agricultural Density District.
A-5	Mini-farm District.
E-C	Environmental Corridor District.
A-1	Agricultural District.
A-1a	Agricultural District.
A-2	Rural Home District.
A-3	Suburban Estate District.
RRD-5	Rural Residential Density District
R-1	Residential District.
R-1a	Residential District
R-2	Residential District.
R-3	Residential District.
R-4	Residential District
P-1	Public and Institutional District.
EBROD	Existing Business Redevelopment Overlay District
B-1	Restricted Business District.
B-2	Local Business District.
B-3	General Business District.
B-4	Community Business District.
BP	Mixed Use Business Park District.
Q-1	Quarrying District.
M-1	Limited Industrial District.
M-2	General Industrial District.

#### Section - 51 Zoning Map

- (A) **Districts mapped:** The boundaries of said districts are shown upon zoning maps of the town, which maps are made part of this Ordinance, and all the notations, references and other information shown thereon shall be as much a part of this Ordinance as if the matters and information set forth by said maps were all fully described herein. Said maps shall be kept on file in the offices of the town clerk and the copies attached hereto are correct only as of the date of publication and are for general informational purposes only. For the purpose of local administration a copy of the map shall also be kept on file in the office of the town building inspector and town planner.

- (1) The A-O agricultural overlay and EBROD existing business redevelopment overlay districts are a special kind of zoning districts established to provide for superimposing upon basic districts additional permissive uses and regulatory standards without disturbing the basic underlying district regulations. As special districts, the applicable procedures for mapping amendments are those found in Section 484, changes and amendments.
- (B) **Determination of boundaries:** District boundaries shall be determined by measurement from and as shown on the official zoning maps and in case of any questions as to the interpretation of such boundary lines, the Plan Commission shall interpret the map according to the reasonable intent of this Ordinance.
  - (1) Unless otherwise specifically indicated or dimensioned on the maps, the district boundaries are normally lot lines; Section, quarter Section or sixteenth Section lines; or the center lines of streets, highways, railways or alleys.
  - (2) The boundaries of conservancy, existing floodplain overlay and exclusive agricultural districts as drawn are intended to represent the edge of swamp, wetlands, marsh, and floodland or the high water line along a stream or watercourse, and shall be finally determined by the actual conditions in each specific situation, provided, however, that along a stream or watercourse, such line shall not be less than one hundred (100) feet from the center of such stream or watercourse.
  - (3) The boundaries of the environmental corridor district are intended to include all non-wetland/floodplain primary or secondary environmental corridors, such as significant woodlands, upland wildlife habitat areas, scenic overlooks and slopes exceeding 12 percent. Where questions arise as to the exact location or boundary of an environmental corridor district, the extent and location of such corridor shall be finally determined by an infield investigation by the Southeastern Wisconsin Regional Planning Commission Staff Biologist or his designee.

## **Section - 52 First amendment protected adult-oriented establishments**

- (A) **Finding of fact.**
  - (1) The Board finds that Adult-Oriented Establishments, as defined in this Ordinance, require special zoning in order to protect and preserve the health, safety, and welfare of the town.
  - (2) Based on its review of studies conducted in Phoenix, AZ, Garden Grove, CA, Los Angeles, CA, Whittier, CA, Indianapolis, IN, Minneapolis, MN, St. Paul, MN, Cleveland, OH, Oklahoma City, OK, Amarillo, TX, Austin, TX, Beaumont, TX, Houston, TX, Seattle, WA and the findings incorporated in City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986), Colman A. Young v. American Mini-Theaters, Inc., 427 U.S. 50 (1976), the Board finds that there is convincing evidence that the secondary effects of Adult-Oriented Establishments include an increased risk of prostitution, high-risk sexual behavior, crime, and other deleterious effects upon existing businesses and surrounding residential areas, and decreased property values.
  - (3) The Board intends to control the impact of these secondary effects in order to protect



the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and areas.

- (4) It is not the intent of the Board to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of Adult-Oriented Establishments while providing an outlet for First Amendment protected activities.
- (5) In order to minimize and control the secondary effects of Adult-Oriented Establishments upon the town, it is the intent of the Board to prevent the concentration of Adult-Oriented Establishments within a certain distance of each other and within a certain distance of other specified locations which are incompatible with and would suffer from the secondary effects of Adult-Oriented Establishments.
- (6) Based upon its review of materials linking alcohol consumption and high-risk sexual behavior and materials linking alcohol consumption and crimes such as sexual assault, the Board finds that a geographic separation of Adult-Oriented Establishments from alcohol beverage licensed premises are warranted.

**(B) Location of first amendment protected adult-oriented establishments.**

- (1) The First Amendment and other provisions of the United States Constitution, as interpreted by the United States Supreme Court and other courts, require that Adult-Oriented Establishments, as defined by this Ordinance, are entitled to certain protections, including the opportunity to locate in shorelands and floodlands governed by this Ordinance. Therefore, an Adult-Oriented Establishment shall be an allowed use in the A-B, B-4 and Q-1 zoning districts and shall be a prohibited use in any other zoning district. The Adult-Oriented Establishment may locate in the specified districts only if an Adult-Oriented Establishment License has been granted by a town or municipality which is subject to this Ordinance, and all the requirements of this Section and the applicable zoning district's regulations are met.

**(2) Adult-Oriented Establishments.**

- (a) shall be located at least 1,000 feet from: any residential district line, playground lot line, or public park lot line;
  - (b) any structure used as a residence, place of religious worship, public or private school, or "Youth Facility" as defined in this Ordinance;
  - (c) any other structure housing an Adult-Oriented Establishment;
  - (d) any structure housing an establishment which holds an alcohol beverage license.
- (3) Distance requirements are to be measured in a straight line in any direction regardless of intervening structures, from the structure housing the Adult-Oriented Establishment to the residential district boundary lines, to the lot line of any lot used for a park, playground, or any structure listed in (B) (2)(a-d) above.

- (4) The measurements from a structure shall be taken from the farthest point a structure extends in the direction of the measurement, including overhanging roofs or similar projections.
- (5) For Adult-Oriented Establishments located in conjunction with other buildings such as in a shopping center, and clearly separate from other establishments, measurements shall be taken from the boundaries of the space occupied by the Adult-Oriented Establishment.
- (6) For any Adult-Oriented Establishment located above ground level in a multi-story structure and clearly separate from other establishments within the structure, the distance measurements shall be taken from the ground floor public entrance/exit nearest the Adult-Oriented Establishment (excluding emergency exits).
- (7) A licensed Adult-Oriented Establishment is not disqualified from holding an Adult-Oriented Establishment License by the subsequent location of any of the establishments described in (2), above, within 1,000 feet of the licensed premises after the grant or renewal of its license. This provision applies only to renewal of an existing license and does not apply when an application for a license is submitted after a license for that location has not been renewed or has been revoked.

## **DIVISION - 2C-1 CONSERVANCY DISTRICT**

### **Section - 60 Permitted uses**

- (A) Grazing.
- (B) The harvesting of any wild crops such as marsh hay, ferns, moss, berries, tree fruits, and tree seeds.
- (C) Hunting and fishing unless prohibited by other Ordinances or laws.
- (D) Sustained yield forestry. Where such sustained yield forestry practices will take place on areas larger than five (5) acres in size, a forest management plan prepared in cooperation with a state forester shall be submitted to and approved by the Waukesha County Department of Parks and Land Use, Land Resources Division and the town clerk prior to its implementation. Where such sustained yield forestry practices will take place on areas smaller than five (5) acres in size, the requirements of Ordinance shall be met.
- (E) Dams and hydro-electric power stations.
- (F) Telephone, telegraph and power transmission lines.
- (G) Non-residential buildings used solely in conjunction with the raising of waterfowl, minnows, and other similar animals or fish.
- (H) Telephone and electric distribution substations.
- (I) Park and recreational structures or facilities

- (J) Beekeeping on parcels which are a minimum of five (5) acres in size and where all cultivation activities are at least fifty (50) feet from a property line and one hundred (100) feet from any residence.

#### **Section - 61 Specific Prohibited Uses:**

Filling or drainage of wetlands, removal of topsoil or peat, or damming or relocating of any watercourse shall not be permitted except with recommendation of the Plan Commission and approval of the Town Board.

#### **Section - 62 Area Regulations:**

There are no specific minimum lot size requirements although conservancy/wetland zoned lands that lie within a larger parcel or tract of land, the remainder of which is zoned in any other district shall have a minimum area required in that non-conservancy district.

### **DIVISION - 3. EFO EXISTING FLOODPLAIN OVERLAY DISTRICT**

#### **Section-70. Purpose and intent.**

- (A) The purpose and intent of the EFO existing floodplain overlay district is to provide for the continued use of improved properties that lie within the floodplain and which are considered prohibited structures. It is recognized that these improvements represent the substance of many families' estates and principal residences. Therefore, the principal intent of this division is to recognize existing uses and structures and regulate them in accordance with sound floodplain management practices while protecting the overall water quality of the river system.
- (B) Another intent of the provisions in this division is to regulate and diminish the proliferation of nonconforming structures and uses in floodplain areas through control of reconstruction, remodeling, conversion and repair. The basis behind these controls is to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods.
- (C) The provisions for the EFO existing floodplain overlay district shall apply to all floodplains where the general area is specifically mapped and where structures are in existence as of the date of adoption of this provision of this Ordinance. If there is a question if a property and its improvements are within the floodplain, the determination shall be based upon an actual survey prepared by a professional engineer establishing the location of the improvements and the elevation of the 100 year floodplain.
- (D) The degree of flood protection intended to be provided by this division is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. This division does not imply that areas outside the 100-year recurrence interval floodplain or land uses permitted within such areas will always be totally free from flooding or flood damages, nor shall this division create a liability on the part of or a cause of action against the town or any officer or employee thereof for any flood damage that may result from reliance on this Ordinance.

#### **Section-71. Permitted uses.**

The following shall be permitted uses in the EFO existing floodplain overlay district:

- (A) Any use as permitted in the C-1 conservancy district or the A-E exclusive agricultural district.
- (B) Structures and uses, including principal as well as accessory uses and structures existing at the time of adoption of the ordinance from which this provision is derived, subject to compliance with the following:
  - (1) In the event of damage, including fire, wind or other natural causes, to any such existing structures, the valuation of which to repair such damage would exceed 50 percent of its present equalized assessed value (as computed over the life of the structure and including past improvements) such structure may be reconstructed, remodeled or rebuilt if the following standards are met:
    - (a) The structure is not located in a floodway as defined in this Ordinance.
    - (b) The first floor of the structure shall be placed at or above the flood protection elevation and reconstruction may occur on the same foundation or newly constructed foundation which represents no greater an encroachment or extension of the previously existing structure other than vertically. Such foundation shall be flood proofed and certified as set forth herein.

Fill shall be used to elevate the first floor to meet the requirements of this subsection. This fill shall not be less than one foot below the flood protection elevation for the particular area and shall extend at such elevation for a distance of at least 15 feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, such fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties.

Where the 15 feet of fill cannot be achieved as set forth in this subsection, the structures shall be flood proofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the state. Other methods may be used, as long as they are certified as set forth in this Section. All flood proofing measures shall provide anchorage to resist flotation and lateral movement, and ensure that the structural walls and floors are watertight. To ensure that adequate measures are taken, the applicant shall submit a certified plan or document verifying that the proposed flood proofing measures are adequately designed to protect the structure to the flood protection elevation for the subject area.

- (c) There shall be dry land access to all structures affected by the regulations in this division. Such lands shall be contiguous lands outside or above the floodplain elevation where the depth and duration of floodwaters do not adversely affect rescue and relief operations during a flood. Normally inundations of not more than one foot of water above the roadways is considered adequate to meet the intent of this requirement.

- (d) All on-site waste disposal systems and private wells shall be flood proofed to the flood protection elevation and shall conform with the provisions of the Waukesha County Sanitary Code and/or Wisconsin Administrative Codes where applicable to such facilities.
  - (e) The basement or crawl space elevation shall not be more than two feet below the flood protection elevation; unless a community-wide exemption allowing flood proofing of basements has been granted by the Federal Insurance Administration (FIA) of the Federal Emergency Management Administration (FEMA). Heating and electrical equipment shall be at or above the flood protection elevation.
  - (f) A structure may be reconstructed or rebuilt where the offset, setback, building footprint and impervious surface regulations outlined in the R-4 district can be met. If the offset, setback and building footprint requirements do not allow a minimum of a 1,140 square foot building envelope to accommodate a 900 square foot first floor and a 240 square foot garage, the applicant may apply for a special exception in accordance with Section 255.
  - (g) Where more than one principal building, as defined in this Ordinance, exists on a single property and one or more of such buildings would be destroyed or damaged beyond 50 percent of their present equalized assessed value as heretofore set forth, the reconstruction, rebuilding or repair of only one of such buildings would be allowed. Where only one principal building on a property where more than one principal building exists, is destroyed or damaged as set forth in this subsection, the reconstruction or repair of that building would not be allowed unless all other principal buildings were removed. The intent of this provision is to allow for the reasonable use of the developed floodplain lands but not to the degree of intensity which may have existed prior and so that the intensity of use of floodplain lands will be diminished.
- (2) Where a structure lies within the floodplain but outside of the floodway, no modification or addition to such structure shall be permitted unless it conforms, with the following standards: (For the purpose of this Section, the words "modification" and "addition" shall include, but not be limited to, any structural alteration, addition, modification, conversion of space for living purposes, rebuilding or lateral enlargement of any such existing structure, principal or accessory. Ordinary maintenance repairs, including painting, decorating, paneling, replacement of doors, windows and other nonstructural components, shall not be subject to these provisions.)
- (a) The modification or addition to a structure may not decrease floodwater storage capacities. Such modification or addition to a structure shall not extend laterally from the structure so as to extend into the floodplain but may be allowed to go above existing floors of the structure. An accessory building may be permitted on existing grades, as long as it is not enclosed on its sides. It shall, however, meet all other offset, setback and floor area ratio requirements.

A garage may be permitted accessory to the existing principal use. When attached, the garage floor shall be at or above the flood protection elevation and when detached shall be at least one foot below the flood protection

elevation and shall meet the fill requirements, per subsection (B)(1)(b) of this Section, locational and floor area ratio or footprint requirements of the R-4 zoning district criteria of this Ordinance whichever is more restrictive.

- (b) The building footprint and impervious surface limits in Section 254 A. and the building location requirements in Section 252 must be met.
  - (c) The provisions of subsection (B)(1)(b-g) of this Section, shall be complied with. Only one principal structure on a lot will be allowed to be modified or altered in accordance with the intent of subsection (B)(1)(g) of this Section.
  - (d) The provisions of subsection (B)(1)(d) of this Section shall be complied with. Where a modification or addition requires a larger waste disposal system than what exists (i.e., additional bedrooms), it shall be demonstrated to the building inspector that a new or expanded waste disposal system can be provided which complies with the requirements of the Waukesha County Sanitary Code and the Wisconsin Administrative Code. Such documentation shall be provided prior to the issuance of a building permit for such alterations to the structure. The new, improved or enlarged waste disposal system shall be installed concurrently with the construction or prior to occupancy of the altered structure. The intent of this provision is to allow only those additions and modifications which can be accommodated with an onsite or public waste disposal system which will comply with contemporary standards, be adequately protected from flooding and will accommodate such structures.
- (3) Conversion of residences from seasonal use to year round use will not be allowed unless all of the conditions set forth in subsection (2)(b) of this Section are met. Conversions of this nature will require a building permit and inspection to determine conformance with subsection (2)(b) of this Section.
  - (4) The provisions set forth in this Section and related to reconstruction, modification, remodeling and additions, shall conform to all other requirements and provisions of this Ordinance.
  - (5) Lateral extension of buildings or other exceptions which may be prohibited in this Section may be allowed only with approval by the board of adjustment in accordance with the procedures established in this Ordinance. The board of adjustment in granting such extension shall determine whether the spirit and intent of the Ordinance will be upheld.

## **Section -.72. Height regulations.**

Height regulations for the EFO existing floodplain overlay district shall be as follows:

### **(A) Principal building**

- (1) A point measured from the lowest point of the exposed structure to the highest floor line shall not exceed 12 ft.

- (2) A point measured from the lowest point of the exposed structure to any eave line shall not exceed 24ft.
- (3) A point measured from the lowest point of the exposed structure to the highest point of any roof shall not exceed 34 ft.
- (4) It is the intent of this Section that no more than 2 stories of habitable space shall exist when viewed from the waterfront.

(B) **Accessory buildings:** 15 feet maximum.

#### **DIVISION - 4 A-E EXCLUSIVE AGRICULTURAL CONSERVANCY DISTRICT**

##### **Section - 80 Purpose**

This district is intended to apply to those areas of the town presently in agricultural use either by virtue of cultivation, pasture or in some other way and which if they were not being used for agricultural purposes would be classified as conservancy lands due to inherent wet soil characteristics and the presence of natural vegetation indicative of wet soils. The intent of the district is to preserve and maintain agricultural uses on lands suited for such purposes. They often include lands poorly suited for urban or suburban development while being particularly well suited for some types of agricultural use either with or without a higher level of soil management. In this district structures related to farm operations, including dwellings, are deemed consistent with the purpose of this Section where the location of buildings associated with the permitted agricultural operation is found to conform with health, sanitation and safety provisions of this and any other state regulation or local Ordinance. Determination of such suitability shall be evidenced by onsite examination and evaluation. The intent for mapping purposes is that lands within this district shall have exhibited those agricultural uses in the past. It is not the intent of this Section to promote or permit the conversion of wetlands.

##### **Section. 81 Permitted uses**

- (A) Any use permitted in the C-1 Conservancy District.
- (B) Ordinary farm uses, including dairying, livestock, poultry raising and truck farming.
- (C) Accessory uses within buildings normally associated with permitted agricultural operations, including single family dwellings and shelters for housing animals except that no structure shall be located in a floodplain or upon lands not suited due to soil limitations. Any structures within floodlands must conform to Section 71 of this Ordinance.
- (D) Nurseries, greenhouses and hatcheries limiting the retail sales of such product to that which is produced by the farm operator, subject to review and approval of a Site Plan and Plan of Operation by the Plan Commission in accordance with this Ordinance. Roadside stands do not require review and approval of a Site Plan and Plan of Operation.
- (E) Roadside stands and seasonal product sales when raised on the subject property.
- (F) Signs in accordance with Section 29 of this Ordinance displaying the name of the farm or farm organization.

- (G) Sod farming in conformance with the provisions of this Ordinance.
- (H) Private stables and commercial stables subject to the following:
  - (1) Private stables on parcels of less than 20 acres subject to a written refuse disposal plan being submitted to and approved by the Plan Commission if requested by the town, provided that not more than one horse or other head of livestock are kept for each full open acre over two acres of lot area and provided that the keeping of hogs, pigs of any type (except potbellied pigs as defined in this Ordinance for which a hobby kennel use permit has been issued), male goats or fur-bearing animals shall not be permitted on less than 20 acres.
  - (2) Private stables on parcels 20 acres or greater in size subject to a written refuse disposal plan being submitted to and approved by the Plan Commission if requested by the town.
  - (3) Commercial stables on parcels 20 acres or greater in size subject to a written refuse disposal plan being submitted to and approved by the Plan Commission if requested by the town.
  - (4) Commercial stables on parcels of less than 20 acres are not permitted but may be allowed as conditional uses under the provisions of this Ordinance and provided that the keeping of hogs, pigs of any type (except potbellied pigs as defined in this Ordinance for which a hobby kennel use permit has been issued), male goats or fur-bearing animals shall not be permitted on less than 20 acres.

#### **Section - 82. Conditional uses.**

Commercial stables on parcels less than 20 acres in size shall be a conditional use in the A-E Exclusive Agricultural Conservancy district pursuant to Section 21(B) (13) provided that the keeping of hogs, pigs of any type (except potbellied pigs as defined in this Ordinance for which a hobby kennel use permit has been issued), male goats or fur-bearing animals shall not be permitted on less than 20 acres.

#### **Section-83. Building location.**

Building location requirements for the A-E exclusive agricultural conservancy district shall be as follows:

- (A) Setback: 50 feet minimum.
- (B) Offset: 50 feet minimum.

#### **Section-84. Height regulations.**

Height regulations for the A-E exclusive agricultural conservancy district shall be as follows:

- (A) Principal building: 35 feet maximum.
- (B) Accessory structures: Farm, 60 feet; other, 15 feet, except that this height limit may be increased to allow structures up to 100 feet where the setback and offset are equal to or exceed the height of the structure itself.



## **Section-85. Area regulations.**

- (A) **Floor area:** Minimum required for single family dwelling where permitted:
  - (1) **Minimum required:**
    - (a) First floor, nine hundred (900) square feet
    - (b) Total one (1) family, one thousand (1,000) square feet
  - (2) **Maximum floor area ratio permitted:** Ten (10) percent.
- (B) **Lot size.** The lot size requirements in the A-E exclusive agricultural conservancy district shall be as follows:
  - (1) Minimum parcel size: 35 acres, except as may be provided in Sections 93 (A) and (B) of this Ordinance. .
  - (2) Minimum average width: 600 feet, except as provided in Sections 93(A) or (B) of this Ordinance.

### **DIVISION – 5 A-P AGRICULTURAL LAND PRESERVATION DISTRICT**

#### **Section - 90 Purpose and intent**

The purposes of the A-P agricultural land preservation district are:

- (A) To preserve productive agricultural lands for the production of food and fiber.
- (B) To preserve productive farms by preventing land use conflicts between incompatible uses.
- (C) To control the cost of public services through efficient extension of those services.
- (D) To maintain a viable agricultural base and associated agricultural supportive uses.
- (E) To pace and shape development in the changing rural landscape.
- (F) To implement the provisions of the Waukesha County Agricultural Land Preservation Plan.
- (G) To comply with the provisions of the Wisconsin Farmland Preservation Act which permits eligible landowners to receive tax credits under Section 71.09(11) of the Wisconsin State Statutes and amendments thereto.

#### **Section - 91 Lands to be included in district**

Lands to be included within the A-P agricultural land preservation district are as follows:

- (A) Lands historically exhibiting good crop yields or those capable of such good crop yields by virtue of their good soil characteristics.

- (B) Lands which have been demonstrated to be productive for dairying, livestock raising and grazing and have records of good production levels.
- (C) Other lands which form an integral part of such farm operations.
- (D) Lands used for the production of specialty crops such as onions, herbs, sod, fruits and vegetables.
- (E) Lands which are capable of productive use through economically feasible improvements such as irrigation or tile draining when wetlands are not thereby disturbed or converted.

#### **Section - 92 Permitted uses**

- (A) Agricultural uses
- (B) Accessory uses
- (C) Agricultural related uses
- (D) Non-farm residences constructed in a rural residential cluster in accordance with approval of the cluster as a conditional use under Section 91.46(1) (e) of the Wisconsin State Statutes.
- (E) Undeveloped natural resource in open space areas
- (F) A transportation, utility, communication, or other use that is required under state or federal law to be located in a specific place or that is authorized to be located in a specific place under a state or federal law that preempts the requirement of a conditional use permit for that use.
- (G) Other uses identified by the Department of Agriculture, Trade and Consumer Protection by rule.

#### **Section - 93. Conditional uses.**

- (A) **Non-Farm residences:** A proposed new non-farm residence or a proposal to convert a farm residence to a non-farm residence through a change in occupancy qualifies if the Town determines that all the following apply:
  - (1) The ratio of the non-farm acreage to farm acreage on the base farm tract on which the residence is or will be located will not be greater than 1:20 after the residence is constructed or converted to a non-farm residence.
  - (2) There shall not be more than four dwellings units in non-farm residences or more than five dwelling units or residences of any kind on the base farm tract after the residence is constructed or converted to a non-farm residence.
  - (3) The location and size of the proposed non-farm residential parcel for the new non-farm residence shall not do any of the following:
    - (a) Convert prime farmland from agricultural use or convert land previously used as a cropland other than a wood lot from agriculture use if on the farm there is reasonable alternative location or site for a non-farm residential parcel or non-

farm residence.

- (b) Significantly impairs and limits the current and future agricultural use of other productive farmland.

(B) **Nonfarm agriculture clusters:** The Town may issue one conditional use permit that covers more than one non-farm residence in a qualified non-farm residential cluster. A non-farm residential cluster qualifies for the purposes of this Ordinance if all of the following apply:

- (1) The parcels on which the non-farm residence would be located are contiguous.
- (2) The Town imposes legal restrictions on the construction of the non-farm residences so that all the non-farm residences that were constructed, each would satisfy the requirements under subsection (A) above.

(C) **Transportation, communication, pipeline, electrical transmission, utility or drainage uses:** The transportation, communication, pipeline, electrical transmission, utility or drainage use shall be considered a conditional use for the purposes as stated above, if the Town determines that all the following apply:

- (1) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
- (2) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- (3) The use is reasonably designed to minimize conversion of land, in and around the site of the use, from agriculture use or open space use.
- (4) The use does not substantially impair or limit the current or agricultural use on surrounding parcels of land that are zoned for or legally restricted to agricultural use.
- (5) Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.

(D) **Governmental, institution, religious or nonprofit community use.** The governmental, institutional, religious or nonprofit community use qualifies as a conditional use and may be authorized as a conditional use by the Town if all the following apply:

- (1) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
- (2) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- (3) The use is reasonably designed to minimize the conversion of land in and around the site of the use from agricultural use or open space.

- (4) The use does not substantially impair or limit the current or future agriculture use of surrounding parcels of land that are zoned for or legally restricted to agriculture use.
  - (5) Construction damage to the land remaining in agricultural use is minimized and repaired to the extent feasible.
- (E) **Non-metallic mining extraction.** Non-metallic mining extraction may be authorized by a conditional use by the Town if all the following apply:
- (1) The operation complies with subsection i of Chapter 295 of the Wisconsin State Statutes and amendments thereto, and rules promulgated under that subchapter with applicable provisions of local ordinances under Section 295.13 or 295.14 and applicable requirements of the Department of Transportation concerning the restoration of non-metallic mining sites.
  - (2) The operations location in the farmland preservation zoning district is consistent with the purposes of the farmland preservation zoning district.
  - (3) The operation and its location in farmland preservation zoning district are reasonable and appropriate in considering alternative location outside the farmland preservation zoning district and/or specifically approved under state or federal law.
  - (4) The operation is reasonably designed to minimize the conversion of land around the extractions site from agriculture use or open space use.
  - (5) The operations does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
  - (6) The farmland preservation zoning ordinance requires the owner to restore the land to agricultural use consistent with any required locally approved reclamation plan when extraction is complete.

#### **Section - 94 Building location**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Fifty (50) feet minimum.

#### **Section - 95 Height regulations**

- (A) **Principal building:** Thirty-five (35) feet maximum.
- (B) **Accessory building:** Sixty (60) feet maximum, except that both principal and accessory buildings may be increased to not more than one hundred (100) feet where the setback and offset equals or exceeds the height of the structure.

#### **Section - 96 Area regulations**

- (A) **Floor area:** Minimum required.

- (1) **First floor:** Nine hundred (900) square feet.
- (2) **Total:** one (1) family: One thousand one hundred (1,100) square feet.
- (B) **Maximum floor area ratio permitted:** Ten (10) percent.

#### **Section - 97 Lot size**

- (A) Minimum parcel size, thirty-five (35) acres, except as may be provided in Section 93(A-B) above.
- (B) Minimum average width, six hundred (600) feet except as provided in Section 93(A-B) above.

### **DIVISION - 6 A-B AGRICULTURAL BUSINESS DISTRICT**

#### **Section - 100 Purpose**

The primary purpose of this district is to maintain, encourage and promote agriculturally related business endeavors on appropriate lands within the community. Such endeavors properly located and regulated serve to support and enhance the viability of agriculture as an economic activity.

For mapping purposes-It is the intent of this Ordinance that suitable areas be described to provide for buffering from adjacent uses and that the minimum size of any proposed establishment of the A-B district be five (5) acres in extent. Existing uses which may come under the A-B agricultural business district shall be considered on a case by case basis and may be less than five (5) acres, with the Plan Commission making a determination as to compatibility with the existing site and the surrounding or adjacent uses.

#### **Section - 101 Permitted uses**

All the following uses permitted by right in the A-B Agricultural Business District are subject to Site Plan and Plan of Operation approval of the Plan Commission.

- (A) Warehousing, transfer and transport services of agricultural commodities.
- (B) Horticultural services, including the retail sale of nursery landscape material and other agricultural crops and related commodities, subject to review and approval of a Site Plan and Plan of Operation by the Plan Commission. Roadside stands do not require review and approval of a Site Plan and Plan of Operation.
- (C) Feed milling operations.
- (D) Agricultural sales and services.
- (E) Cheese factories.
- (F) Bulk milk collection, storage and distribution facilities.
- (G) Veterinarian services.
- (H) Custom grain drying.

- (I) Poultry and/or egg production.
- (J) Residential use may be permitted only in connection with or accessory to otherwise permitted uses.
- (K) Any other use consistent with stated intent of this district subject to approval of the Plan Commission.

### Section - 102 Conditional uses

Conditional uses as provided in Sections 21(B)(2), 21(B)(3), 21(B)(4), 21(B)(10), 21(B)(11), 21(B)(12), 21(B)(14), ( B)(20), 21(B)(22), 21(B)(25), 21(B)(31), 21(B)(34), 21(B)(36), 21(B)(37), 21(B)(38),

### Section - 103 Building locations

- (A) **Setback:** Fifty (50) feet minimum
- (B) **Offset:**
  - (1) Buildings used for commercial purposes which include the housing of livestock, one hundred (100) feet minimum unless adjacent district is the A-P, A-B, A-O or A-E agricultural districts, in which case twenty (20) feet minimum shall apply.
  - (2) Buildings used for commercial purposes not involving livestock housing or animal waste storage, ten (10) feet minimum.
  - (3) The integrated site plan will relate buildings, parking areas and any loading dock facilities that may be necessary and accessory to the use and shall be governed by suitable contemporary design criteria.

### Section - 104 Height regulations

- (A) **Principal building:** Thirty-five (35) feet maximum.
- (B) **Accessory building:** Sixty (60) feet maximum, except that both principal and accessory buildings may be increased to more than one hundred (100) feet when the setback and offset equals or exceeds the height of the structure.

### Section - 105 Area regulations

- (A) **Floor area:** Minimum required.
  - (1) **Minimum required for residential purposes:** Nine hundred (900) square feet per dwelling unit.
  - (2) **Maximum floor area ratio:** Fifty (50) percent of the site.
- (B) **Lot size:**

- (1) **Minimum area:** Five (5) acres, unless the Plan Commission determines that an existing use on a smaller parcel is appropriate and consistent with Section 101.
- (2) **Minimum average width:** three hundred (300) feet.

#### **DIVISION - 7 A-O EXISTING AGRICULTURAL OVERLAY DISTRICT**

##### **Section - 110 Purpose**

The purpose of this district is to allow for the continued agricultural use of land while recognizing that other land uses of a rural or semi-rural nature other than farming or agricultural may be needed in the general area. It is anticipated that the assignment of this overlay district to specific parcels of land will provide a greater degree of freedom for farm operators and for town Plan Commissions, and Town Boards in dealing with situations where present owners are committed to continuing the agricultural use and the potential of incompatibility is present. The basic intent of the district is similar to that upon which conditional uses in this Ordinance are premised. This district will grant the uses permitted in the A-P district as well as the uses of the underlying basic district.

#### **DIVISION - 8 A-T AGRICULTURAL LAND PRESERVATION TRANSITION DISTRICT**

##### **Section - 120 Purpose and intent**

The purpose of this district is to protect and encourage farming in areas that are anticipated to develop consistent with adopted plans for the community. The district will serve as a holding or transition zone enabling farmers to continue in the practice of farming and making qualified farmers eligible to claim income tax credits under the State of Wisconsin's Agricultural Land Preservation Program. Because lands in this district are recognized as possessing development potential consistent with adopted Comprehensive Plan for the town, it is the policy of the town to conduct a periodic comprehensive review of all A-T agricultural land preservation transition district lands at least every (5) years beginning in 2010. Additional stated purposes of the district are as follows:

- (A) To preserve productive agricultural lands for the production of food and fiber.
- (B) To preserve productive farms by preventing land use conflicts between incompatible uses.
- (C) To control the cost of public services through efficient extension of those services.
- (D) To maintain a viable agricultural base and associated agricultural supportive uses.
- (E) To pace and shape development in the changing rural landscape by preventing premature development of lands intended to be served by municipal services or when such land is determined to be necessary for growth and development by the community and by virtue of other factors.
- (F) To implement the provisions of the Town's Comprehensive Plan.
- (G) To comply with the provisions of the Wisconsin Farmland Preservation Act which permits eligible landowners to receive tax credit under Section 71.09(11) of the Wisconsin Statutes.

### **Section - 121 Lands to be included in district**

Lands to be included within the A-T agricultural land preservation transition district are as follows

- (A) Lands historically exhibiting good crop yields or those capable of such good crop yields by virtue of their good soil characteristics.
- (B) Lands which have been demonstrated to be productive for dairying, livestock raising and grazing and have records of good production levels.
- (C) Other lands which form an integral part of such farm operations.
- (D) Lands used for the production of specialty crops such as onions, herbs, sod, fruits and vegetables.
- (E) Lands which are capable of productive use through economically feasible improvements such as irrigation or tile draining when wetlands are not thereby disturbed or converted.
- (F) Lands suited for development but which for the present lie beyond recognized needs to provide land for growth and development but do lie within areas recognized as needed for growth and development in the long term.

### **Section - 122 Permitted uses**

Any permitted use as described in the A-P agricultural land preservation district.

### **Section - 123 Conditional uses**

- (A) **Non-farm residences:** A proposed new non-farm residence or a proposal to convert a farm residence to a non-farm residence through a change in occupancy qualifies if the Town determines that all the following apply:
  - (1) The ratio of the non-farm acreage to farm acreage on the base farm tract on which the residence is or will be located will not be greater than 1:20 after the residence is constructed or converted to a non-farm residence.
  - (2) There shall not be more than four dwellings units in non-farm residences or more than five dwelling units or residences of any kind on the base farm tract after the residence is constructed or converted to a non-farm residence.
  - (3) The location and size of the proposed non-farm residential parcel for the new non-farm residence shall not do any of the following:
    - (a) Convert prime farmland from agricultural use or convert land previously used as a cropland other than a wood lot from agriculture use if on the farm there is reasonable alternative location or site for a non-farm residential parcel or non-farm residence.
    - (b) Significantly impairs and limits the current and future agricultural use of other productive farmland.



- (B) **Non-farm agriculture clusters:** The Town may issue one conditional use permit that covers more than one non-farm residence in a qualified non-farm residential cluster. A non-farm residential cluster qualifies for the purposes of this Ordinance if all of the following apply:
- (1) The parcels on which the non-farm residence would be located are contiguous.
  - (2) The Town imposes legal restrictions on the construction of the non-farm residences so that all the non-farm residences that were constructed, each would satisfy the requirements under subsection (A) above.
- (C) **Transportation, communication, pipeline, electrical transmission, utility or drainage uses:** The transportation, communication, pipeline, electrical transmission, utility or drainage use shall be considered a conditional use for the purposes as stated above, if the Town determines that all the following apply:
- (1) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
  - (2) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
  - (3) The use is reasonably designed to minimize conversion of land, in and around the site of the use, from agriculture use or open space use.
  - (4) The use does not substantially impair or limit the current or agricultural use on surrounding parcels of land that are zoned for or legally restricted to agricultural use
  - (5) Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.
- (D) **Governmental, institution, religious or nonprofit community use.** The governmental, institutional, religious or nonprofit community use qualifies as a conditional use and may be authorized as a conditional use by the Town if all the following apply:
- (1) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
  - (2) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
  - (3) The use is reasonably designed to minimize the conversion of land in and around the site of the use from agricultural use or open space.
  - (4) The use does not substantially impair or limit the current or future agriculture use of surrounding parcels of land that are zoned for or legally restricted to agriculture use.
  - (5) Construction damage to the land remaining in agricultural use is minimized and repaired to the extent feasible.

(E) **Non-metallic mining extraction.** Non-metallic mining extraction may be authorized by a conditional use by the Town if all the following apply:

- (1) The operation complies with subsection i of Chapter 295 of the Wisconsin State Statutes and amendments thereto, and rules promulgated under that subchapter with applicable provisions of local ordinances under Section 295.13 or 295.14 and applicable requirements of the Department of Transportation concerning the restoration of non-metallic mining sites.
- (2) The operations location in the farmland preservation zoning district is consistent with the purposes of the farmland preservation zoning district.
- (3) The operation and its location in farmland preservation zoning district are reasonable and appropriate in considering alternative location outside the farmland preservation zoning district and/or specifically approved under state or federal law.
- (4) The operation is reasonably designed to minimize the conversion of land around the extractions site from agriculture use or open space use.
- (5) The operations does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
- (6) The farmland preservation zoning ordinance requires the owner to restore the land to agricultural use consistent with any required locally approved reclamation plan when extraction is complete.

#### **Section - 124 Building location**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Fifty (50) feet minimum.

#### **Section - 125 Height regulations**

- (A) **Principal building:** Thirty-five (35) feet maximum.
- (B) **Accessory building:** Sixty (60) feet maximum, except that both principal and accessory buildings may be increased to not more than one hundred (100) feet where the setback and offset equals or exceeds the height of the structure.

#### **Section - 126 Area regulations**

- (A) **Floor area, minimum required:**
  - (1) **First floor:** Nine hundred (900) square feet;
  - (2) **Total, one (1) family:** One thousand one hundred (1,100) square feet.

- (B) **Maximum floor area ratio permitted:** Ten (10) percent.

#### **Section - 127 Lot size**

- (A) **Minimum parcel size:** Thirty-five (35) acres, except as may be provided in Section 93(A-B).
- (B) **Minimum average width:** Six hundred (600) feet, except as provided in Section 93(A-B).

### **DIVISION - 9 AD-10 AGRICULTURAL DENSITY-10**

#### **Section - 130 General regulations**

- (A) **Purpose and Intent:** The purpose of this zoning district is to protect and encourage the preservation of Prime Agricultural tillable land, (U.S.D.A. Class I and II soils) in minimum twenty (20) acre contiguous areas, to discourage residential development on agriculturally productive and environmentally sensitive areas, provide for some marketability of such lands, to encourage more economical use of lands suited to limited and controlled residential development by permitting more intensive use of such lands without changing the overall rural character of the Town or population density of the Town as set forth in the adopted Land Use Plan. Additional stated purposes of the district are as follows:
- (1) To transfer residential density opportunities to promote the preservation of the rural character of the Town by encouraging farm fields, pastures, orchards, and natural open spaces to be retained either as common open spaces, or as part of a farm operation known as "agricultural preserved land".
  - (2) To achieve the optimum residential environment while recognizing the rural character of the Town. The density transfer technique is designed to permit variable lot sizes in the utilization of the most desirable terrain for housing sites while encouraging preservation of prime agricultural tillable lands worthy of such preservation.
  - (3) This district encourages the transfer of residential development rights from one area of a parcel to another, from one tract of land to another, and from the RRD-5, AD-10, A-E and C-1 districts thereby allowing the increase in density of development on suitable lands for development in exchange for establishing the preservation of more desirable agriculturally productive lands known as "agricultural preserved lands."
  - (4) The transfer of development rights may only take place between the RRD-5, the AD-10, C-1 and A-E districts, except that only a maximum of 20% of the transferring land zoned C-1 Conservancy or A-E Exclusive Agricultural Conservancy may be counted toward the overall density to be provided for the receiving land.
- (B) **Review of Proposed Development** - Where a development is to occur involving the transfer of development rights and establishment of "preserved lands", approval by the Town Planning Commission and the Town Board shall be required. The development proposed shall conform to the following standards:
- (1) The shape and arrangement of preserved lands designated for agricultural use should be consistent with practical requirements for an agricultural activity, and be of a justifiable value for farm use, or as a contribution to the goal of preserving the rural environmental

character. The preserved areas must be at least twenty (20) acres of contiguous area, not necessarily on the same parcel, and consist of U.S.D.A. Class Prime or statewide classified Agricultural soils unless a Town Land Use Plan has been adopted which further limits the classification to a specific classification of soils, and be tillable without the necessity of removing mature vegetation.

- (2) Only 20% of the C-1 or A-E zoned areas may be used when calculating the overall density. Where more than 50% of the site is zoned in the C-1 or A-E category, only that amount of acreage up to the 50% amount may be used in the above calculation for purposes of computing allowed density. Where the calculation results in a fraction of .5 or greater, the density may be "rounded up". This rule shall apply only when the Town Land Use Plan has been adopted and specifically addresses the issue of crediting such areas for development purposes.

EXAMPLE:

100 acres	Tract of Land
90 acres	Zoned C-1
10 acres	Zoned AD-10
50% of 90 acres	45 acres
20% of 45 acres	9 acres
Total qualifying area considered for Density limits	19 acres
Number of dwelling units allowed	1.9 rounded up to 2.

- (3) The preserved lands shall be retained in one of the following manners:
  - (a) Development would occur at the allowable densities with the larger parcels having the building site outside of the agriculturally significant and tillable area and the open area or agricultural lands (preserved lands) could be owned and retained by the party transferring the rights and would be protected through a deed restriction or covenants recorded with the Waukesha County Register of Deeds so noting the part that development rights have been utilized for the subject land. No additional development rights would accrue to that site until such time as it could be served with municipal sewer and a zoning change is approved by the Town and County in accordance with the adopted Town's Land Use Plan.
  - (b) All lot owners within the developed area for which the preserved lands are protected could own an undividable interest in said preserved land. Development of those lands may not occur until such time as sewer is available and a zoning change is approved by the Town and County in accordance with an adopted local Land Use Plan. This can be accomplished without requiring a conditional use for a Planned Unit Development.
  - (c) The preserved lands, when noted in the adopted Park and open Space Plan, may be retained in public ownership.
- (4) On a parcel which is zoned AD-10, the development density shall not exceed ten (10) acres for each dwelling unit with credit for the C-1 or A-E zoned lands in accordance with Section 130 (B)(2).

- (5) In order to encourage development in areas designated for residential growth on the adopted Town Land Use Plan, development rights may be transferred from this zoning district (AD-10) to an RRD-5 district at a rate of 1.2 dwelling units per ten (10) acres.
- (6) In order to preserve the rural character as well as the efficiency and safety of existing road systems, the inappropriate development of lots strung out along such roads with individual driveway accesses from each lot will be minimized. The goal of this provision is to encourage grouping of lots on an interior street which will then access the existing road system.
- (7) For the purpose of transferring residential development rights, the petitioner shall provide documentation at the time of submittal of the preliminary plat indicating that he is the owner of the subject property or has the authority under the terms of a written contract (Offer to Purchase), to make commitments on the transferring land.
- (8) No building intended in whole or part for residential use shall be erected or relocated unless the lot on which it is located meets the required density factor, or has allocated to it, through the transfer program, sufficient additional preserved lands to meet the required density factor for the district in which it is located. Where the total area, or the prorated factor involved includes more than one zoning district, the density factor, as calculated using the entire project, shall apply.
- (9) Any land claimed in addition to the actual described residential lots, for credit toward meeting the density factor requirement, shall have its status permanently established, and guaranteed, either by dedication to the public, or by appropriate covenants running with the lands, in conveyance of agricultural easements. Such covenants and easements shall be recorded in the office of the Register of Deeds and shall restrict the property against any development or use except as is consistent with its preservation as agricultural land or as a form of common open space unless sewer becomes available, and the zoning of the property is changed in accordance with the adopted local Land Use Plan. The preserved land status of any parcel shall be indicated on the official zoning map.
- (10) In addition to requiring an appropriate open space or an agricultural easement on the transferring lands in favor of the town and/or county, covenants shall be placed in the title of each dwelling unit, giving the owner enforceable rights to prevent the future development of the transferring lands until such time as sewer is available and the subject property is rezoned to allow additional development.

#### **SECTION - 131 Use regulations:**

##### **(A) Permitted Uses:**

##### **(1) Residential**

- (a) Single family uses.
- (b) Only a duplex as a two family residential use pursuant to issuance of a conditional use permit pursuant to Section 21 (B) (30) and compliance with the floor area requirements contained herein.

- (2) **Agricultural or farm uses on parcels having a minimum of five (5) acres.** There shall be no more than one head of livestock or twenty (20) poultry for the first three (3) acres of land. There may be one additional head of livestock or twenty (20) additional poultry for each additional one (1) acre of land.
- (3) **Accessory uses and buildings normally associated with an agricultural operation including garages, stables, and poultry houses, buildings used for housing animals** shall maintain a minimum offset of fifty (50) feet from all adjacent lot lines.
- (4) **Signs:**
  - (a) Sign in accordance with Section 29 of this Ordinance displaying the name of the farm or farm organization.
  - (b) Subdivision signs in accordance with Section 29 of this Ordinance.
- (5) **Wholesale nurseries, greenhouses and hatcheries,** subject to review and approval of a Site Plan and Plan of Operation by the Plan Commission.
- (6) **Roadside stands** subject to the following:
  - (a) Offstreet parking for a minimum of five (5) vehicles shall be permitted.
  - (b) No such stands should be closer than thirty (30) feet to the base setback line or closer than twenty (20) feet to any lot line.
- (7) **Home occupation and professional offices** as regulated herein in Section 25 (K) of this Ordinance.
- (8) **Hobby kennels** as regulated in Section 25 (J) of this Ordinance.

#### **Section - 132 Building location**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Twenty (20) feet minimum.

#### **Section - 133 Height regulations**

- (A) **Principle structure:** Thirty-five (35) feet maximum.
- (B) **Accessory Buildings:**
  - (1) Farm buildings: Sixty (60) feet maximum.
  - (2) Other accessory buildings: Fifteen (15) feet maximum.

#### **Section - 134 Area regulations**

- (A) **Floor area:**

- (1) **Single family residential:** Minimum required first floor-- Nine hundred (900) square feet. Total: Fifteen hundred (1,500) square feet.
  - (2) **Two family:** Minimum required first floor - Seven hundred and fifty (750) square feet. Total per family: Fourteen hundred (1,400) square feet.
  - (3) **Maximum floor area ratio:** 15%.
- (B) **Lot size:**
- (1) **Minimum required area** - one (1) acre.
  - (2) **Minimum average width** - one hundred and fifty (150) feet.
- (C) **Open space:** Thirty thousand (30,000) square feet per family.
- (D) **Density Division Standards and Lot Size:**
- (1) On a parcel which is zoned AD-10, it may be developed at no more than a ten (10) acre density per dwelling unit and no individual lot may be less than one (1) acre nor have less than a minimum average width of one hundred and fifty (150) feet and on open space of thirty thousand (30,000) square feet per family.
    - (a) Only 20% of the C-1 or A-E zoned areas may be calculated in the overall density. Where more than 50% of the site is zoned in the C-1 or A-E categories, only that amount of acreage up to the 50% amount may be used in the above calculations for purposes of computing allowed density.
    - (b) Residential development shall be allowed on non-prime agricultural soils, (U.S.D.A. Class III and below) and non-tillable or mature vegetated areas consisting of Class I and II soils, unless prime agricultural soils are less than twenty (20) contiguous acres.
    - (c) All farm fields which must be preserved are those which are a minimum of twenty (20) acres in contiguous area and consist of U.S.D.A. Class I and II prime agricultural tillable soils. The twenty (20) acre minimum area must be on the subject parcel or contiguous to prime agricultural tillable areas on an adjacent parcel
  - (2) In the event of a transfer of development rights from AD-10 to RRD-5, the following shall apply:
    - (a) In any RRD-5 zoned district, development shall occur at a 1.2 dwelling units per ten (10) acres of AD-10 zoned land.
    - (b) Only 20% of the C-1 or A-E zoned areas may be calculated in the overall density. Where more than 50% of the site is zoned in the C-1 or A-E categories, only that amount of acreage up to the 50% amount may be used in the above calculations for purposes of computing allowed density.

- (c) In the RRD-5 Residential district, development shall only be allowed on non-prime agricultural soils, (U.S.D.A. Class III and below) or Class I and II soils which are not tillable because of natural vegetation, unless prime agricultural soils are less than twenty (20) contiguous acres.
- (d) All farm fields in the RRD-5 district which must be preserved are those areas which are a minimum of twenty (20) acres in contiguous area and consist of U.S.D.A. Class I and II prime agricultural soils and are tillable. The twenty (20) acre minimum area may be on the subject parcel or contiguous to prime agricultural areas on an adjacent parcel.

## **DIVISION - 10 A-5 MINI-FARM DISTRICT**

### **Section - Intent and purpose**

This District is intended to provide for very low-density single-family residential development and the conversion of older farm dwellings to two-family units in predominantly rural areas in order to maintain, to some degree, the agricultural character of the property. These lands are best suited for small farm units, i.e., truck farms, horse farms, hobby farms, orchards and other similar agriculturally-related activities and usually contain a predominance of U.S.D.A. defined statewide significant category soils or prime category soils on parcels which do not qualify for agricultural preservation zoning or in areas which have an existing pattern of scattered or low-density residential development. Such a district is intended to be used to implement the Town Land Use Plan category entitled "other Agricultural or Rural Land".

### **Section - 141 Use regulations**

#### **(A) Permitted Uses:**

- (1) Any use permitted in the A-1 Agricultural District.
- (2) Two-family uses in converted farm dwellings existing on February 26, 1959 subject to issuance of a Conditional Use Permit contained in Section 21(B) (30).

#### **(B) Permitted Accessory Uses:**

Any of those accessory uses in the E-C Environmental Corridor District.

### **Section - 142 Building location**

#### **(A) Setback:** Fifty (50) feet minimum.

#### **(B) Offset:**

- (1) Thirty (30) feet minimum.
- (2) Not less than fifty (50) feet from an adjacent property line for any building housing livestock, poultry or other animals. This does not include doghouses.

### **Section - 143 Height limitations**



(A) **Principal Building:** Thirty-five (35) feet maximum.

(B) **Accessory Building:**

(1) **Farm:** Sixty (60) feet maximum.

(2) **Other:** Fifteen (15) feet maximum.

#### **Section - 144 Area regulations**

(A) **Floor Area:**

(1) **Minimum required:**

(a) **First floor:** Nine hundred (900) square feet.

(b) **Total:** Fifteen hundred (1,500) square feet.

(2) **Maximum F.A.R. permitted:** 10%

(B) **Lot Size:**

(1) **Minimum area:** Five (5) acres.

(2) **Minimum average width:** Three hundred (300) feet.

(C) **Open Space:** Four (4) acres.

### **DIVISION – 11 EC ENVIRONMENTAL CORRIDOR DISTRICT**

#### **Section - 150 Purpose and intent**

Environmental Corridor District, as mapped or intended to be mapped, includes non-wetland/floodplain primary or secondary environmental corridors as defined herein, and is intended to be used to preserve, protect, enhance, and restore significant woodlands, upland wildlife habitat areas, scenic overlooks, slopes exceeding 12%, and upland wooded areas, while also affording an opportunity to use the site for the limited residential purposes, in concert with the goal and intent of the Town's adopted Land Use Plan, which suggests that residential densities in such areas not exceed one unit per five acres for all parcels which lie entirely within the Environmental Corridor. Where questions arise as to the exact location or boundary of an environmental corridor, the extent and location of such corridors shall be finally determined by infield investigation by the town planner or his/her designee.

#### **Section - 151 Use regulations**

(A) **Permitted Uses:**

(1) Any uses permitted in C-1 Conservancy District.

(2) Single family dwellings.

- (3) Keeping of poultry and livestock on not less than five (5) acres of land where there shall be no more than one head of livestock or twenty (20) poultry for the first three (3) acres of land, and one additional head of livestock or twenty (20) additional poultry for each additional one (1) acre of land thereafter. The grazing of livestock and the keeping of poultry shall be prohibited in environmental corridors areas on parcels of land which contain areas outside of the corridor. The keeping of hogs, male goats or fur-bearing animals shall not be permitted.
  - (4) The following accessory buildings and uses, subject to the conditions specified:
    - (a) Private garages, when located on the same lot, and not involving the conduct of a business; provided, however, that no private garage shall be erected unless that principal building to which such garage is an accessory use has been erected or is to be erected simultaneously with said garage.
    - (b) Quarters for household or farm employees; provided, however, that such quarters shall be occupied only by individuals employed full time on the premises and their families.
    - (c) Stables, barns, or poultry houses, which house livestock or poultry, shall not be less than fifty (50) feet from an adjacent property line.
  - (5) A sign in accordance with Section 29.
  - (6) Hobby kennel in accordance with Section 25 (J) of this Ordinance.
  - (7) Community living arrangements and community based residential facilities which have a capacity of eight (8) or fewer persons, subject to the limitations set forth in Section 62.23 (7) (I) of the Wisconsin Statutes and amendments thereto.
  - (8) Family daycare home or foster family home of eight (8) or fewer persons.
- (B) **Prohibited Uses:**
- (1) Guesthouses.

#### **Section - 152 Building location**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Thirty-five (35) feet minimum.
- (C) **Shore Setback:** Seventy-five (75) feet minimum

#### **Section - 153 Height regulations**

- (A) **Principal Building:** Thirty-five (35) feet maximum.
- (B) **Accessory Building:**

- (1) **Farm:** Sixty (60) feet maximum.
- (2) **Other:** Fifteen (15) feet maximum.

## **Section - 154 Area regulations**

### **(A) Floor Area:**

#### **(1) Minimum required:**

- (a) **First floor:** Nine hundred (900) square feet.
- (b) **Total:** Fifteen hundred (1,500) square feet.

### **(B) Floor Area Ratio:** The maximum floor area ratio permitted shall be ten percent.

### **(C) Lot size.** Lot size requirements in the EC environmental corridor district shall be as follows:

- (1) **Minimum area.** The overall density of lots lying entirely within the environmental corridor district shall be not less than one dwelling unit per five acres of corridor, with no lot being less than two acres in size. For lots which lie partially within and partially outside of the environmental corridor district, if the lot size of the adjoining districts would permit a minimum lot size of less than five acres, the five-acre density requirement shall not apply and the lot can be the size permitted in the adjacent zoning district, as long as any earth altering activity and/or building envelopes are located outside of the environmental corridor district and appropriately restricted as such on the face of the certified survey map, subdivision plat or other deed restrictions subject to the review and written approval of the Town Board and recorded along with the Town Board's written approval in the office of the register of deeds. The overall goal of this requirement is to obtain a maximum density of building activity within the environmental corridor of not more than one dwelling unit for each five acres of environmental corridor land.
- (2) Notwithstanding the provisions of subsection (C)(1) of this Section, for lots, which are partially within and partially outside the environmental corridor district, if the area in the adjoining district is zoned A-P agricultural land preservation district, the lot shall have a minimum gross lot size of 35 acres.

### **(D) Lot width.** Lot width requirements in the EC environmental corridor district shall be as follows:

- (1) **Less than five-acre lot:** Minimum average width, 175 feet.
- (2) **Five-acre lot or more:** Minimum average width, 300 feet.

### **(E) Preservation of open space.** Requirements for the preservation of open space in the EC environmental corridor district shall be as follows:

- (1) For lots lying entirely within an environmental corridor zoning district, regardless of lot size, no open space regulations shall apply. However, all earth altering activities and vegetative removal including building sites and driveways (area of disturbance) shall be

no more than 15 percent of five acres (32,600 square feet) in the environmental corridor district.

- (2) For lots which lie partially within and partially outside of the environmental corridor district, the area of disturbances shall be limited to the area outside of the environmental corridor district, unless otherwise expressly permitted by a building envelope shown on the certified survey map, subdivision plat or other deed restriction that has been approved, in writing, by the Town Board and recorded along with the Town Board's written approval in the Waukesha County Register of Deeds Office.

## **DIVISION - 12 A-1 AGRICULTURAL DISTRICT**

### **Section - 160 Permitted uses**

- (A) Any use permitted in the A-E exclusive agricultural district.
- (B) One-family dwelling.
- (C) Agricultural or farm uses on not less than five (5) acres of land, including the keeping of poultry and livestock, except that the keeping of hogs, unneutered male goats or fur-bearing animals shall not be permitted on less than twenty (20) acres. Those practicing agricultural uses under this Section must comply with standard manure disposal practices.
- (D) Horticulture, including greenhouses and nurseries.
- (E) The following accessory buildings, subject to the conditions specified:
  - (1) Private garages when located on the same lot, and not involving the conduct of a business. No garage shall be erected until its principal building is present or under construction.
  - (2) Quarters for household or farm employees, provided, however, that such quarters shall be occupied only by those individuals employed by the farm or household.
  - (3) Private boat houses providing no human habitation is permitted. Only one (1) boathouse per lot is allowed.
  - (4) Stables, barns, or poultry houses, which house livestock or poultry, shall not be less than fifty (50) feet from an adjacent property line.
- (F) Home occupations and professional offices as regulated in Section 25 (K) of this Ordinance
- (G) Signs pertaining to the lease or sale of a building or land provided such signs do not exceed twenty (20) square feet in area. Signs displaying the name of the owner or occupant and trespass warning signs are permitted provided they are no greater than 6 square feet in area and in accordance with Section 29 of this Ordinance.
- (H) Hobby kennel as regulated in Section 25 (J) of this Ordinance.

- (I) Private stables subject to a written refuse disposal plan being submitted to and approved by the Plan Commission if requested by the town, provided that not more than one horse or other head of livestock are kept for each full open acre over two acres of open lot area and provided that the keeping of hogs, pigs of any kind (except potbellied pigs as defined in this Ordinance for which a hobby kennel use permit has been issued), male goats or fur-bearing animals shall not be permitted on less than 20 acres.
- (J) Yard sales which shall be limited to 3 consecutive days. There shall be at least 60 days between the last day of a yard sale and the first day of a subsequent yard sale.
- (K) Community living arrangements and community based residential facilities which have a capacity of eight (8) or fewer persons, subject to the limitations set forth in Section 62.23 (7) (I) of the Wisconsin Statutes and amendments thereto.
- (L) Family daycare home or foster family home of eight (8) or fewer persons

#### **Section-161. Conditional uses.**

Commercial stables on parcels five acres or greater in size may be allowed as conditional uses in the A-1 mini farm district pursuant to Section 21(B) (13) provided that the keeping of hogs, pigs of any type (except potbellied pigs as defined in this Ordinance for which a hobby kennel use permit has been issued in accordance with Section 25 (J) of this Ordinance), male goats or fur-bearing animals shall not be permitted on less than 20 acres.

#### **Section-162. Building location.**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Twenty (20) feet minimum.

#### **Section - 163 Height regulations**

- (A) **Principal building:** Thirty-five (35) feet maximum.
- (B) **Accessory buildings:**
  - (1) **Farm:** Sixty (60) feet maximum.
  - (2) **Other:** Fifteen (15) feet maximum.

#### **Section - 164 Area regulations**

- (A) **Floor area:**
  - (1) **Minimum required:**
    - (a) **First floor:** Nine hundred (900) square feet.
    - (b) **Total, one (1) family:** One thousand one hundred (1,100) square feet.

- (2) **Maximum F. A. R. permitted:** Ten (10) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** Three (3) acres.
  - (2) **Minimum average width:** Two hundred (200) feet.
- (C) **Open space:** Two (2) acre minimum per family.

## **DIVISION – 13 A-la AGRICULTURAL DISTRICT**

### **Section - 170 Use regulations**

**Permitted uses:** Any use as permitted and regulated in A-1 district.

### **Section - 171 Building location**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Twenty (20) feet minimum.

### **Section - 173. Height regulations**

- (A) **Principal building:** Thirty-five (35) feet maximum.
- (B) **Accessory buildings:**
  - (1) **Farm:** Sixty (60) feet maximum.
  - (2) **Other:** Fifteen (15) feet maximum.

### **Section - 174 Area regulations**

- (A) **Floor area:**
  - (1) **Minimum required:**
    - (a) **First floor:** Nine hundred (900) square feet.
    - (b) **Total, one (1) family:** One thousand one hundred (1,100) square feet.
  - (2) **Maximum F A. R. permitted:** Ten (10) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** One (1) acre.
  - (2) **Minimum average width:** One hundred fifty (150) feet.

- (C) **Open space:** Thirty thousand (30,000) square feet minimum per family.

## **DIVISION – 14 A-2. RURAL HOME DISTRICT**

### **Section - 180 Use regulations**

(A) **Permitted uses:**

- (1) Any use permitted in the A-1 Agricultural District, except that the keeping of poultry or livestock shall not be permitted on any lot less than three (3) acres, and the keeping of hogs, male goats or fur-bearing animals shall not be permitted. There shall be no more than one head of livestock or twenty (20) poultry for the first three (3) acres of land. There may be one additional head of livestock or twenty (20) additional poultry for each additional one (1) acre of land. All lands to be utilized for the keeping of livestock or poultry must be under the same ownership or additional leased lands may be used to increase the maximum permitted livestock or poultry if contiguous to the owners' property. Where such use lawfully existed prior to the date of this Ordinance, such use may be continued subject to the limitations regulating non-conforming uses as regulated in Section 34 of this Ordinance.
- (2) Nurseries and greenhouses for the private and exclusive use of the dwelling occupant are permitted.

### **Section - 181 Building location**

- (A) **Setback:** Fifty (50) feet minimum.

(B) **Offset:**

- (1) Those buildings used to house any animals other than the usual household pets shall have a 50-foot minimum offset.
- (2) Those buildings authorized to house hobby or commercial kennels shall have a 50-foot offset.
- (3) All other buildings and structures shall have a 30-foot minimum offset.

### **Section - 182 Height regulations**

- (A) **Principal building:** Thirty-five (35) feet maximum.
- (B) **Accessory buildings:** Fifteen (15) feet maximum.

### **Section - 183 Area regulations**

(A) **Floor area:**

(1) **Minimum required:**

- (a) **First floor:** Nine hundred (900) square feet.

- (b) **Total:** One thousand five hundred (1,500) square feet.
- (2) **Maximum F. A. R. permitted:** Ten (10) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** Three (3) acres.
  - (2) **Minimum average width:** Two hundred (200) feet.
- (C) **Open space:** Two (2) acres minimum per family.

#### **DIVISION - 15 A-3 SUBURBAN ESTATE DISTRICT**

##### **Section - 190 Use Regulations – Permitted Uses**

Any use as permitted in the A-2 Rural Home District.

##### **Section - 191 Building location**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Twenty-five (25) feet minimum.

##### **Section - 192 Height regulations**

- (A) **Principal building:** Thirty-five (35) feet maximum.
- (B) **Accessory buildings:** Fifteen (15) feet maximum.

##### **Section - 193 Area regulations**

- (A) **Floor area:**
  - (1) **Minimum required:**
    - (a) **First floor:** Nine hundred (900) square feet.
    - (b) **Total:** One thousand five hundred (1,500) square feet.
  - (2) **Maximum F. A. R. permitted:** Ten (10) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** Two (2) acres.
  - (2) **Minimum average width:** One hundred seventy-five (175) feet.
- (C) **Open space:** Seventy-five thousand (75,000) square feet minimum per family.



## DIVISION - 16 RRD-5 RURAL RESIDENTIAL DENSITY DISTRICT 5

### Section - 200 General regulations

- (A) **Purpose and Intent:** The purpose of this zoning district is to allow the development of land at densities not greater than one (1) unit for each five (5) acres on all non-prime agricultural areas, in order to encourage the preservation of Prime Agricultural tillable land, (U.S.D.A. Class I and II soils) to discourage residential development on environmentally sensitive areas, provide some marketability for such lands, and to encourage a more economical use of land which is suited to residential development by permitting more intensive use of such lands without changing the overall rural character of the Town and the population density of the Town as set forth in the adopted Land Use Plan. Further, only 20% of the lands in the C-1 Conservancy or A-E Exclusive Agricultural Conservancy zoning district may be used when calculating the allowable living units.

This district encourages the transfer of residential development rights from one area of a parcel to another, and from one tract of land to another, thereby increasing the density of development in exchange for establishing the preservation of other lands as "agricultural preserved lands."

- (1) **Development Goals:** The stated intent of the density regulations where preserved lands will be established can be implemented in the following manner:
- (a) Development would occur at five (5) acre densities with the buildable parcels having the building site outside of the prime agricultural tillable area and the open area (transferring lands) would be retained through a deed restriction or covenants with no development rights until such time as it could be served with municipal sewer and a zoning change is approved by the Town and County Boards, in accordance with the Town's adopted Land Use Plan.
  - (b) All lot owners would own an undividable interest in the large open space area with development rights transferred and only to be developed at such time as sewer is available and a zoning change is approved by the Town and County Boards in accordance with the adopted Town Land Use Plan.
  - (c) The land owner or his heirs and assign who sold the development rights could retain those lands with the original farmstead; however, no development rights of that parcel beyond those available under this provision would be allowed to be transferred until such time as sewer became available and rezoning of the parcel is approved by the Town and County Board in accordance with the adopted Town Land Use Plan.
- (2) **Preservation of Rural Character:** A basic goal of this density transfer technique is to promote the preservation of the rural character of the Town by encouraging farm fields, pastures and orchards and natural open spaces to be retained, either as common open spaces or as part of a farm operation under the "preserved land" category.
- (3) **Preservation of Agricultural Lands:** The shape and arrangement of preserved lands designated for agricultural use should be consistent with practical requirements for an agricultural activity and be of justifiable value for farm use or as a contribution to the goal of preserving the rural environmental character. The preserved areas must be at

least twenty (20) acres of contiguous area, not necessarily on the same parcel, and consist of U.S.D.A. Class I and II soils for prime agricultural use, and be tillable without the necessity of removing mature vegetation.

- (4) **Relationship of Development to Agricultural Area:** Consideration shall be given as to whether the development plans for roads, building sites and preserved agricultural areas is based upon the careful consideration of the most appropriate relationship to the existing terrain conditions, suitable capacity for onsite sewage disposal systems, provisions for storm water drainage and retention, the potential impact upon surrounding areas, the size, location and the agricultural viability of the agricultural lands being preserved.
- (5) **Access to Town and County Roads:** In order to preserve the rural character, as well as the efficiency and safety of existing road systems, it will be required to minimize the development of lots strung out along such roads with individual driveway accesses from each lot. One goal of density control is to encourage the grouping of lots on interior streets which will access the existing road system.

(B) **Principles and Guidelines:**

- (1) The portion of a tract of land from which development rights are transferred is hereby termed the "transferring land" and the tract to which the additional dwelling unit development potential is added are termed the "receiving land."
- (2) The transfer of development rights may only take place between RRD-5, the AD-10, A-E Exclusive Agricultural Conservancy and C-1 Conservancy Zoning Districts except that only a maximum of 20% of the transferring land zoned C-1 Conservancy/Wetland or A-E Exclusive Agricultural Conservancy may be counted towards the overall density to be provided for the receiving land. Where more than 50% of the site is zoned in the C-1 or A-E category, only that amount of acreage up to the 50% amount may be used in the above calculations for density purposes.
- (3) For the purpose of transferring residential development rights, the petitioner shall provide documentation at the time of submittal of the preliminary plat indicating that he is an owner of the subject property or has the authority under the terms of a written contract (Offer to Purchase) to make commitments on the transferring land.
- (4) In addition to requiring an appropriate open space or an agricultural easement on the transferring lands in favor of the Town and/or County, covenants shall be placed in the title of each dwelling unit, giving the owner enforceable rights to prevent the future development of the transferring lands until such time as sewer is available and the subject property is rezoned to allow additional development.
- (5) This zoning category is designed to control the intensity of use in relationship to the natural, physical and ecological characteristics of the land, to implement the local Land Use Plans, allow development where soils can accommodate sewage disposal systems, discourage intense development where there is an inability to provide appropriate municipal services, basic economic factors and achievement of the desirable residential and environmental character and preservation of prime agricultural tillable areas consisting of U.S.D.A. Class I and II soils on a minimum of twenty (20) acres of

contiguous area. To achieve the optimum residential environment in a rural character for the Town, the density technique is designed to permit variable lot sizes in the utilization of the most desirable terrain for housing sites while encouraging the preservation of prime agricultural tillable lands and lands worthy of such preservation.

- (6) The density factor is expressed in terms of the amount of gross land area required for each dwelling unit. Such gross area includes the area of the lots and any other lands preserved in agricultural use where those areas are termed "preserved lands." The minimum lot size is expressed in terms of minimum area, and average width for the actual privately owned lot intended as the home site.
- (7) No building intended in whole or part for residential use shall be erected or relocated unless the lot on which it is located meets the required density factor or has allocated to it through the transfer program, sufficient additional preserved lands to meet the required density factor for the district in which it is located. Where "transferred lands" are to be established, no more than 20% of the total for computation may be in the C-1 Conservancy or A-E Exclusive Agricultural Conservancy Zoning Districts and in accordance with Section 130(B) of this Ordinance. Where the total area (or the pro-rated factor) involved includes more than one zoning district, the overall density factor shall apply. In any such case involving the establishment of "preserved lands" approval by the Plan Commission and the Town Board shall be required, pursuant to the criteria and development goals set forth herein.
- (8) Any land claimed in addition to the actual described residential lots for credit toward meeting the density factor requirement shall have its status permanently established and guaranteed either by dedication to the public or by appropriate covenants running with the lands in conveyance of agricultural easements, such covenants and easements shall restrict the property against any development or use, except as is consistent with its preservation as agricultural land, or as a form of common open space, unless sewer becomes available and the zoning of the property is changed in accordance with the adopted Town Land Use Plan. The preserved land status of any parcel shall be indicated on the official zoning map.

(C) **Use Regulations**

(1) **Permitted Uses:**

- (a) Single-family uses and not more than one two-family residential dwelling (duplex) pursuant to issuance of a conditional use permit under Section 21 (B) (30).
- (b) Ordinary farm uses, including dairy and livestock, poultry raising, raising of crops, and truck farming or parcels having a minimum of five (5) acres.
- (c) Accessory uses and buildings normally associated with an agricultural operation, including garages, stables and poultry houses. Buildings used for housing of animals shall maintain a minimum offset of fifty (50) feet from all adjacent lot lines.
- (d) **Signs:**

- (i) Signs not to exceed twelve (12) square feet in area, displaying the name of the farm or farm organization.
  - (ii) Subdivision signs, in accordance with Section 29 of the Ordinance.
- (e) Wholesale nurseries, greenhouses and hatcheries, subject to review and approval of a Site Plan and Plan of Operation by the Plan Commission accordance with Section 7 (H) of this Ordinance.
- (f) Roadside stands; subject to the following:
  - (i) Off-street parking for a minimum of four (4) vehicles shall be provided.
  - (ii) No such stand shall be closer than thirty (30) feet to the base setback line, or closer than twenty (20) feet to any lot line.
- (g) Home occupation and professional in accordance with Section 25 (J) of this Ordinance.
- (h) Community living arrangements and community based residential facilities which have a capacity of eight (8) or fewer persons, subject to the limitations set forth in Section 62.23 (7) (I) of the Wisconsin Statutes and amendments thereto.
- (i) Family daycare home or foster family home of eight (8) or fewer persons.

#### **Section - 201 Building location**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Twenty (20) feet minimum.

#### **Section - 202 Height regulations**

- (A) **Principal structure:** Thirty-five (35) feet maximum.
- (B) **Accessory buildings:**
  - (1) **Farm Building:** Sixty (60) feet maximum.
  - (2) **Other Accessory Building:** Fifteen (15) feet maximum.

#### **Section - 203 Area regulations**

- (A) **Floor area:**
  - (1) **Minimum required first floor:** Nine hundred (900) square feet. Total minimum one-family: Fifteen hundred (1,500) square feet.

- (2) **Two-family minimum required first floor:** Seven hundred and fifty (750) square feet.  
Total minimum per family: Fourteen hundred (1,400) square feet.
- (3) Maximum floor area ratio: 15%
- (B) **Lot size:**
  - (1) Minimum: one (1) acre.
  - (2) Minimum average width: one hundred and fifty (150) feet.
- (C) **Open space:** Thirty thousand (30,000) square feet per family.
- (D) **Density Division Standard:**
  - (1) For parcels less than twenty (20) acres in size, the property must be developed in accordance with one of the two following methods:
    - (a) The land may be divided into parcels with five (5) acre minimum lot sizes only if the parcel contains no prime tillable land or the prime farmland on the subject parcel is not contiguous to other prime farmland on an adjacent parcel which would meet the twenty (20) acre minimum size.
    - (b) The land may be developed at a five (5) acre overall density, as long as no more than one (1) living unit for each five (5) acres would be allowed and the prime tillable area is preserved where it is contiguous to an adjacent parcel where the prime agricultural area is a minimum size of at least twenty (20) acres.
  - (2) Parcels greater than twenty (20) acres in size must conform to the following standards:
    - (a) They must be developed at no more than a five (5) acre density, taking into account only 20% of any C-1 Conservancy or A-E Exclusive Agricultural Conservancy zoned lands. Where more than 50% of the site is zoned C-1 or A-E, only the amount of acreage up to the 50% amount may be used in the calculation of allowable density.
    - (b) Residential development would be allowed only on non-prime agricultural soils (U.S.D.A. Class III and below) which are tillable.
    - (c) All farm fields which must be preserved, are those areas which are a minimum of twenty (20) acres in contiguous area and consist of U.S.D.A. Class I and II prime agricultural soil and are tillable. The twenty (20) acre minimum area may be on the subject parcel or contiguous to prime agricultural areas on an adjacent parcel.

## **DIVISION - 17 R-1 RESIDENTIAL DISTRICT**

### **Section - 210 Use regulations**

- (A) **Permitted uses:**

- (1) Any use as permitted in the A-2 Rural Home District.
- (2) The keeping of usual household pets and hobby kennels but not including the operation of a commercial kennel unless a conditional use permit is obtained.

### **Section - 211 Building location**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Twenty (20) feet minimum.

### **Section - 212 Height regulations**

- (A) **Principal building:** The maximum height of a residential structure shall meet the following requirements:
  - (1) A point measured from the lowest exposed point of the structure to the highest floor line shall not exceed 27 feet, and
  - (2) A point measured from the lowest exposed point of the structure to any eave shall not exceed 36 feet, and
  - (3) A point measured from the lowest exposed point of the proposed structure to the highest point of any roof shall not exceed 46 feet, and
  - (4) On waterfront lots, no building or structure shall contain more than three (3) stories when viewed from the waterfront.
- (B) **Accessory buildings:** Eighteen (18) feet maximum.

### **Section 213 Area regulations**

- (A) **Floor area:**
  - (1) **Minimum required:**
    - (a) **First floor:** Nine hundred (900) square feet.
    - (b) **Total:** One thousand three hundred (1,300) square feet.
  - (2) **Maximum F. A. R. permitted:** Ten (10) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** One (1) acre.
  - (2) **Minimum average width:** One hundred fifty (150) feet.
- (C) **Open space:** Thirty thousand (30,000) square feet minimum per family.

## **DIVISION - 18 R-1a RESIDENTIAL DISTRICT**

### **Section - 220 Use regulations**

Any use as permitted and regulated in the R-1 district.

### **Section - 221 Building location.**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Twenty (20) feet minimum.

### **Section - 222 Height regulations.**

- (A) **Principal building:** The maximum height of a residential structure shall meet the following requirements:
  - (1) A point measured from the lowest exposed point of the structure to the highest floor line shall not exceed 27 feet, and
  - (2) A point measured from the lowest exposed point of the structure to any eave shall not exceed 36 feet, and
  - (3) A point measured from the lowest exposed point of the proposed structure to the highest point of any roof shall not exceed 46 feet, and
  - (4) On waterfront lots, no building or structure shall contain more than three (3) stories when viewed from the waterfront.
- (B) **Accessory buildings:** Eighteen (18) feet maximum.

### **Section - 223 Area regulations.**

- (A) **Floor area:**
  - (1) **Minimum required:**
    - (a) **First floor:** Nine hundred (900) square feet.
    - (b) **Total:** One thousand five hundred (1,500) square feet.
  - (2) **Maximum F. A. R. permitted:** Ten (10) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** One (1) acre.
  - (2) **Minimum average width:** One hundred fifty (150) feet.
- (C) **Open space:** Thirty thousand (30,000) square feet minimum per family.

## DIVISION - 19 R-2 RESIDENTIAL DISTRICT

### Section - 230 Use regulations.

**Permitted uses:** Any use as permitted in the R-1 residential district.

### Section - 231 Building location.

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Twenty (20) feet minimum.

### Section - 232 Height regulations.

- (A) **Principal building:** The maximum height of a residential structure shall meet the following requirements:
  - (1) A point measured from the lowest exposed point of the structure to the highest floor line shall not exceed 27 feet, and
  - (2) A point measured from the lowest exposed point of the structure to any eave shall not exceed 36 feet, and
  - (3) A point measured from the lowest exposed point of the proposed structure to the highest point of any roof shall not exceed 46 feet, and
  - (4) On waterfront lots, no building or structure shall contain more than three stories when viewed from the waterfront.
- (B) **Accessory buildings:** Eighteen (18) feet maximum.

### Section - 233 Area regulations.

- (A) **Floor area:**
  - (1) **Minimum required:**
    - (a) **First floor:** Nine hundred (900) square feet.
    - (b) **Total:** One thousand two hundred (1,200) square feet.
  - (2) **Maximum F. A. R. permitted:** Fifteen (15) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** Thirty thousand (30,000) square feet.
  - (2) **Minimum average width:** One hundred twenty (120) feet.
- (C) **Open space:** Twenty-five thousand (25,000) square feet minimum per family.



## **DIVISION - 20 R-3 RESIDENTIAL DISTRICT**

### **Section - 240 Use regulations.**

(A) **Permitted uses:**

- (1) Any use as permitted in the R-2 residential district.
- (2) Multiple family dwellings, pursuant to Section 21(d) (30).

### **Section - 241 Building location.**

(A) **Setback:** Fifty (50) feet minimum.

(B) **Offset:** Twenty (20) feet minimum.

### **Section - 242 Height regulations.**

(A) **Principal building:** The maximum height of a residential structure shall meet the following requirements:

- (1) A point measured from the lowest exposed point of the structure to the highest floor line shall not exceed 27 feet, and
- (2) A point measured from the lowest exposed point of the structure to any eave shall not exceed 36 feet, and
- (3) A point measured from the lowest exposed point of the proposed structure to the highest point of any roof shall not exceed 46 feet, and
- (4) On waterfront lots, no building or structure shall contain more than three (3) stories when viewed from the waterfront.

(B) **Accessory buildings:** Eighteen (18) feet maximum.

### **Section - 243 Area regulations.**

(A) **Floor area:**

(1) **Minimum required:**

- (a) **First floor:** Eight hundred fifty (850) square feet.
- (b) **Total:** One thousand one hundred (1,100) square feet.

(2) **Maximum F. A. R. permitted:** Fifteen (15) percent.

(B) **Lot size:**

- (1) **Minimum area:** Twenty thousand (20,000) square feet.

- (2) **Minimum average width:** One hundred twenty (120) feet.
- (C) **Open space:** Fifteen thousand (15,000) square feet minimum per family.

## **DIVISION - 21 R-4 RESIDENTIAL DISTRICT**

### **Section - 250 Statement of intent.**

The R-4 district is a district intended to provide for redevelopment or development of substandard lots of record in areas of the town which were created prior to February 26, 1959 and which are to be used for single family residential use.

### **Section - 251. Use regulations.**

The following are permitted uses in the R-4 district:

- (A) Single-family residences.
- (B) Accessory uses. The following accessory uses shall be permitted in the R-4 district:
  - (1) Private detached garages not to exceed 500 square feet not involving the conduct of a business and not including any sanitary facilities or living quarters.
  - (2) Accessory buildings not to exceed 200 square feet. No more than two detached accessory buildings shall be permitted. The total composite area of all accessory buildings and detached garages shall not exceed 500 square feet.
- (C) Keeping of household pets.
- (D) Home occupations and professional offices as defined in Section 4 when incidental to the residential use in accordance with Section 25 (K) of this Ordinance.

### **Section - 252. Building location.**

- (A) **Road setback.** Principal buildings and accessory buildings shall be erected, altered or placed so that any roofed or enclosed portion is no closer than 50 feet to the base setback line with the following exceptions applicable only where the setback requirements of the properties involved are identical and the use of the buildings is identical, and the existing buildings are legally nonconforming as to road setback.
  - (1) Where the nearest existing building with an identical use as the proposed building on an adjacent lot on one side of said building is within 100 feet of the proposed building or building addition and has less than the required setback, the average between the existing setback of such adjacent building and the required 50-foot setback shall apply.
  - (2) Where the nearest buildings with an identical use as the proposed building on adjacent lots on both sides of said building are less than 200 feet from each other and have less than the required setback, the average between such existing setbacks shall apply.

- (3) In the case of a proposed addition to an existing building which has less than the required setback, such existing building may be considered to be the nearest existing building for purposes of the exception described in subsection (A)(1) or (2), above, in determining the required setback for the proposed addition.

**(B) Shore setback.**

- (1) Seventy-five feet from the ordinary high water mark of a body of water with the following exceptions applicable only where the setback requirements of the properties involved are identical.
  - (a) Where the nearest existing building with an identical use as the proposed building on an adjacent lot on one side of said building is within 100 feet of the proposed building or building addition and has less than the required setback, the average between the existing setback of such adjacent building and the required 75-foot setback shall apply.
  - (b) Where the nearest buildings with an identical use as the proposed building on adjacent lots on both sides of said building are less than 200 feet from each other and have less than the required setback, the average between such existing setbacks shall apply.
  - (c) In the case of a proposed addition to an existing building which has less than the required setback, such existing building may be considered to be the nearest existing building for purposes of the exception described in subsection (B)(1)(a). or (b), above, in determining the required setback for the proposed addition.
- (2) Forty feet from the conservancy/wetland zoning district boundary if the original grade of the proposed building site is two feet above the 100-year floodplain or wetland boundary, with the following exceptions applicable only where the setback requirements of the properties involved are identical.
  - (a) Where the nearest existing building with an identical use as the proposed building on an adjacent lot on one side of said building is within 100 feet of the proposed building or building addition and has less than the required setback. The average between the existing setback of such adjacent building and the required conservancy setback shall apply.
  - (b) Where the nearest building with an identical use as the proposed building on adjacent lots, on both sides of said building are less than 200 feet from each other and have less than the required conservancy setback. The average between such existing setbacks shall apply.
  - (c) In the case of a proposed addition to an existing building which has less than the required setback, such existing building may be considered to be the nearest existing building for the purpose of the exception described in subsection (B)(2)(a) or (b), above, in determining the required setback for the proposed addition.

- (3) Seventy-five feet from the conservancy/wetland district boundary if the original grade at the proposed building site is less than two feet above the 100-year floodplain or the wetland boundary.

(C) **Offset.** Twenty (20) feet.

### Section - 253. Height regulations.

(A) **Principle building.**

- (1) A point measured from the lowest point of the exposed structure to the highest floor line shall not exceed 12 feet.
- (2) A point measured from the lowest point of the exposed structure to any eave line shall not exceed 24 feet.
- (3) A point measured from the lowest point of the exposed structure to the highest point of any roof shall not exceed 34 feet.
- (4) It is the intent of this Section that no more than two stories of habitable space shall exist when viewed from a waterfront.

(B) **Accessory building.** A vertical distance of 15 feet maximum, measured from the lowest grade of the structure to the highest point of the roof.

### Section - 254. Area regulations.

(A) **Building footprint and impervious surface.** When a lot has less land area or minimum average width than required in the R-3 zoning district, and was of record at the time of the original adoption of the Waukesha County Zoning Code (February 26, 1959), unless the owner of said lot owns contiguous property and/or an adjacent lot of record, such lot may be used for any purpose permitted in such district but not for residential purposes for more than one single-family residence. The total building footprint for all buildings and impervious surface on the subject lot shall not exceed the following:

<i>Lot Size (square feet)</i>	<i>Total Building Footprint</i>	<i>Total Impervious Surface</i>
Less than 5,000	1,140 sq. ft.	30% of total lot area
At least 5,000 and less than 10,000	1,300 sq. ft.	30% of total lot area
At least 10,000 and less than 15,000	1,400 sq. ft.	30% of total lot area
At least 15,000 and less than 20,000	1,550 sq. ft.	30% of total lot area
At least 20,000 and less than 25,000	1,800 sq. ft.	30% of total lot area
At least 25,000 and less than 30,000	1,900 sq. ft.	30% of total lot area
More than 30,000	15% floor area ratio	30% of total lot size

- (B) **Vegetative buffer plan.** When a building permit is issued on any lot in the R-4 zoning district, a vegetative buffer plan must be submitted for review and approval by the town building inspector for 70 percent of all areas between 15 feet from the foundation of the principal building and the ordinary high water mark or 70 percent of the area draining towards a water body on any lot which does not abut the public water. The vegetative buffer plan must consist of ground cover, shrubs and canopy type vegetation. No impervious surfaces or decks shall be allowed in the vegetative buffer area. The vegetative buffer area must be planted and established prior to an occupancy permit being issued for the building or addition, or a cash bond or letter of credit must be posted in an amount equal to 120 percent of the cost of implementing said plan, which shall include the cost of the plant material, its installation and compliance with the maintenance schedule. The town building inspector in his review shall have the authority to require a storm water infiltration system, rain garden or other approved best management practice (BMP), which will promote the water quality draining into the adjacent water body.
- (C) **Boathouses.** No boathouses shall be allowed on any lot less than 15,000 square feet in area or having a minimum average width or water frontage of less than 100 feet.

### **Section - 255. Special exception.**

On any parcel in the R-4 district, where the offsets, setbacks, and building envelope requirements do not allow a minimum of a 1,140-square foot building envelope to accommodate a 900-square foot first floor and a 240-square foot garage, the town Plan Commission may grant a special exception to allow a building envelope of no more than 1,140 square feet subject to the following procedures, requirements and conditions.

- (A) **Procedure.** A property owner may apply for a special exception and a special exception may be considered as follows:
- (1) The property owner shall submit a petition to the town clerk. The petition shall include a vegetative buffer plan, all areas of impervious surfaces, and building and site plans, which include all elevations along with such additional building information and house designs as may be required by the building inspector and the Plan Commission. The building and site plan shall depict the proposed construction, the location of the proposed construction on the lot, the location of the planting of the vegetative buffer, all areas of proposed impervious surfaces, implementation timetable and types of plant material, the existing and proposed grades and contour on the lot and adjacent lots, the ordinary high water mark of the adjacent water body and the 100-year floodplain or wetland boundary and its location in relationship to all existing structures on the lot and adjacent lots within 100 feet of proposed structure or addition. If the petition is for an addition to an existing structure, the application shall include recent photographs of all the structures on the parcels. The petition shall be accompanied by payment of such application fees as may be established from time to time by the Town Board by separate resolution and shall be submitted to the town clerk no later than three weeks prior to the town Plan Commission meeting at which they are to be scheduled.
  - (2) Upon receipt of the complete application, required plans and application fees, the town clerk shall provide a copy of the petition and plans to the town building inspector and town planner and shall place the matter on an upcoming Plan Commission agenda for considerations.

- (3) Prior to the town Plan Commission meeting when the matter will be heard, the town planner shall review the request and discuss the matter with the town building inspector, view the proposed location and shall submit a written recommendation to the town Plan Commission. Along with the recommendation the town planner shall advise the town Plan Commission as to whether the proposed construction will be in compliance with all applicable state, federal, county and town codes, statutes, rules, regulations and ordinances if the special exception was granted.
  - (4) The town Plan Commission shall consider the matter at the next scheduled Plan Commission meeting provided said application is filed at least 21 days prior to said meeting. The petitioner shall be given an opportunity to be heard regarding the matter at the scheduled meeting.
  - (5) The town Plan Commission shall approve, deny or conditionally approve the special exception petition in accordance with the requirements and conditions of this Section. The town Plan Commission shall issue its decision in writing.
- (B) **Requirements and conditions.** In order to approve or conditionally approve a special exception petition, the town Plan Commission must find all the following to be true regarding the proposed construction:
- (1) The proposed construction must be outside of the 100-year floodplain and the first floor must be at least two feet above the 100-year floodplain. Note: Any lands within the floodplain are zoned C-1 conservancy district or EFO (existing floodplain overlay district).
  - (2) The proposed construction must be in compliance with all applicable state, federal, county and town codes, statutes, rules, regulations and ordinances if the special exception is granted.
  - (3) The proposed construction must be aesthetically compatible with the surrounding neighborhood.
  - (4) The town Plan Commission shall require the petitioner to file a deed restriction stating that the proposal has been authorized through the special exception procedure in the town zoning ordinance. Such deed restrictions shall be recorded with the Waukesha County Register of Deeds Office in a form that is subject to the approval of the town attorney.
  - (5) The town Plan Commission must find that the special exception will not have an adverse impact on the health, safety or general welfare, will not conflict with the spirit and intent of the town zoning ordinance, and will not otherwise be detrimental to the town or the immediate neighborhood where the construction would be located.
  - (6) The town Plan Commission may require additional conditions and restrictions, including but not limited to conditions related to screening and landscaping.
  - (7) 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 any building permit, indicating a special exception has been granted and recording any conditions of approval, including the statement that the structure may only be used for personal use

and cannot be used for any type of commercial purposes unless otherwise permitted by the town zoning ordinance.

- (8) A vegetative buffer plan of at least 35 feet in depth over 70 percent of the width of the lot from the residence to the ordinary high water mark, or if there is less than a 35-foot distance from the residence to the ordinary high water mark, 70 percent of the width of the lot or on the down slope side of the area draining towards the water body on lots which do not abut a public body of water consisting of ground cover, shrubs and canopies must be planted prior to an occupancy permit being issued on the new structure or addition or a cash bond or letter of credit must be posted in an amount equal to 120 percent of the cost of implementing said plan, which shall include the cost of the plant material, its installation and compliance with the maintenance schedule and a deed restriction preserving said buffer must be recorded in the Waukesha County Register of Deeds Office prior to issuance of the building permit.
- (9) No special exceptions shall be allowed from the height requirements of this R-4 zoning district.

## **DIVISION - 22 P-I PUBLIC AND INSTITUTIONAL DISTRICT**

### **Section - 260 Intent of district.**

This district is intended to provide for those uses which serve a public need and/are principally of an institutional, educational, medical, or governmental nature (whether public or privately owned and either "for profit" or "not for profit") and serving a public need, (but not including the operation of a bar, restaurant, or recreational facility as a commercial enterprise) unless authorized as a Conditional Use under Sections 21 (B) (34) and 21 (B) (37). Group homes as regulated by Statute, shall not be included as they are either allowed in other districts, or regulated pursuant to Section 21 (B)(41) of this Ordinance.

### **Section - 261 Permitted uses.**

The following uses are permitted by right subject to review and approval of the Site Plan and Plan of Operation by the Plan Commission.

- (1) Hospitals and clinics or rehabilitation facilities or centers.
- (2) Nursing home.
- (3) Schools.
- (4) Mental health or substance abuse treatment, training, or counseling or rehabilitation facilities.
- (5) Residential treatment, training or education facilities.
- (6) Municipal buildings
- (7) Museums.

- (8) Police and Fire stations.
- (9) Libraries.
- (10) Penal reform institutions.
- (11) Military installations.
- (12) Public service yards.
- (13) Publicly owned and operated parks, recreational uses, golf courses, and open space uses.
- (14) Other similar uses as determined by the Plan Commission.

#### **Section - 262 Permitted accessory uses.**

- (A) Garages and buildings for storage of vehicles and/or equipment, which is used in conjunction with the operation of a permitted use.
- (B) Residential quarters used for other than a permitted use under Section 261 shall be occupied only by individuals employed full-time on the premises and their families.
- (C) Stables, barns, or poultry houses provided that no building which houses said livestock or poultry is closer than one hundred (100) feet to any lot line.
- (D) Horticulture, including greenhouses and nurseries, and roadside stands to the extent associated with an otherwise permitted use. Horticulture, including greenhouses and nurseries, are subject to review and approval of a Site Plan and Plan of Operation by the Plan Commission in accordance with Section 7 (H) of this Ordinance. Roadside stands do not require review and approval of a Site Plan and Plan of Operation.
- (E) Signs in accordance with Section 29 of this Ordinance displaying the name of the institution or facility provided they are no greater than fifty (50) square feet in area.
- (F) Parking in accordance with Section 27.
- (G) Satellite dishes or other communication equipment apparatus.
- (H) **Temporary Uses:** Lands and buildings within the district may be used on a temporary basis for private and commercial uses usually not more than 1 week in duration. Such uses might consist of carnivals, rental of said buildings for private gatherings, use of buildings for temporary commercial displays or trade fairs and similar functions for the purpose of fundraising or other special and unique events in conjunction with the permitted use. Approval must be granted by the Town Board for such temporary use and subject to any condition that may be imposed.

#### **Section - 263 Building location.**

- (A) **Setback** - Fifty (50) feet minimum.



- (B) **Shore setback** - Seventy-five (75) feet minimum.
- (C) **Conservancy District Setback** - Seventy-five (75) feet minimum.
- (D) **Offset** - Fifty (50) feet minimum.

#### **Section - 264 Height regulations.**

- (A) **Principal Buildings** - Thirty-five (35) foot maximum, unless fire and emergency apparatus adequate to service a taller building is available to service the building on the subject parcel and verification of such apparatus' availability from the community providing fire and emergency services to or for the subject parcel is filed with the Town Building Inspector to issuance of a zoning permit, in which event the maximum height of a principal building in the subject parcel shall be the maximum height which such available apparatus can service (but such maximum height shall not be greater than sixty (60) feet).
- (B) **Farm Buildings** - Sixty (60) feet maximum.
- (C) **Other** - Fifteen (15) feet maximum.

#### **Section - 265 Area regulations.**

No minimum required. The use will dictate the size of the parcel. However, no more than 60% of the subject parcel shall be of impervious surfaces, consisting of roof tops, paved or gravel surface parking or service areas, and 40% of the subject parcel shall be in vegetative cover or tillable soil.

### **DIVISION - 23 EBROD EXISTING BUSINESS REDEVELOPMENT OVERLAY DISTRICT**

#### **Section - 270 Intent of district**

In the Town there are older commercial properties, particularly narrow strip commercial properties on arterial roadways impacted by road widening and many commercial properties that were developed prior to the establishment of off-street parking, landscape buffering, storm water management and other land development standards. The rehabilitation and redevelopment of such properties is a vital component to maintaining a thriving urban area with adequate services for residents. Often redevelopment efforts have been constrained by current land development regulations. This Section provides an optional set of flexible regulations to facilitate the redevelopment of older commercial properties in the B-1, B-2, and B-3 districts.

#### **Section - 271 Purpose**

- (A) **Purpose**
  - (1) Improvements to older commercial properties required by this Section will increase the quality and aesthetics of development in the Town, provide an economic stimulus to the immediate area, increase property values, provide employment opportunities and strengthen the Town economic base.
  - (2) Successful implementation of this Section will require recognition and balance of private and public purposes. The developer is asked to correct or improve existing traffic

circulation and access problems, to make sure the site is safe, well landscaped, and well drained and to improve the appearance of structures on the site.

- (3) The redevelopment of older commercial properties presents greater challenges than the development of an undeveloped site. Fixed development standards are typically designed for undeveloped sites and are difficult to meet in a redevelopment effort. This Section establishes a series of performance standards that can be met in multiple ways and balanced against one another to achieve a positive community outcome. The standards prescribe a series of desired outcomes. The performance standards allow the developer to design a project around opportunities and constraints of the individual site as opposed to adhering to specific standards that may not encourage a quality redevelopment project.
- (4) This Section provides standards to address the incompatibility of abutting commercial and residential uses by improving the management of storm water, improving pedestrian and vehicular access and circulation, and improving the safety and appearance of older commercial properties.

**(B) Applicability.**

- (1) The provisions of this Ordinance are available as an optional set of development standards for developed commercial /residential properties currently zoned B-1, B-2, and B-3.
  - (a) All commercial redevelopment plans, including Site and Development plans, Construction Plans, and Building Permit applications, pursuant to this Section shall be submitted to the Town Planner for distribution to the Town Plan Commission and Town Board for review and compliance with the regulation of this Section.
  - (b) A meeting with neighbors is required for a redevelopment plan. The applicant shall send certified letters to the owners of the abutting properties and to the owners of the property directly across any street or right of way advising them of the neighborhood meeting date, time, location and purpose of the meeting. The applicant may find the names and addresses based upon the latest available tax records maintained by Waukesha County. The applicant shall send the letter to the property owners at least ten (10) days in advance of the meeting. The meeting shall be held on the proposed redevelopment site. The meeting shall occur no earlier than six (6) pm on weekdays and between nine (9) am and five (5) pm on weekends. A Town staff member shall attend the meeting. No posting or addressing, advertising the meeting is required. The neighborhood meeting shall take place prior to submission of the redevelopment plan.
  - (c) A stormwater management plan shall be submitted for the proposed redevelopment of commercial properties with a lot area of less than ten (10) acres and an existing impervious surface coverage in excess of fifty (50) percent of the lot area.

**Section - 272 Permitted uses.**

- (A) Permitted uses in the applicable underlying zoning shall apply.
- (B) Permitted Accessory Uses and Structures. Accessory uses and structures in the underlying district shall apply. The following accessory uses or structures shall not be located in the minimum required side and/or rear yard where those yards abut a residential zoning district or a residential area on Town's comprehensive plan.
  - (1) Solid waste storage and collection area.
  - (2) Air conditioning compressors and any other mechanical equipment that generates noise that is incompatible with an abutting residential use.
  - (3) All delivery and loading and unloading areas and activities.
  - (4) Drive-Through lanes and windows.

### **Section - 273 Area regulations**

- (A) Maximum residential density. The allowable density in the underlying district shall apply.
- (B) Maximum yard requirements.
  - (1) Street yards.
    - (a) Provision for street buffers shall apply where required under this Ordinance.
    - (b) The building shall be designed to comply with the Town, County or State clear site distance standards at all abutting street intersections and all intersections of the driveway and streets.
    - (c) A five foot setback for building of one story, not exceeding twenty (20) feet in height with provision of the following: Trees and shrubs and other ornamental plants provided in front of twenty (20) percent of the length of the front building walls.
    - (d) Ten foot setbacks for buildings of two stories and no exceeding 35 feet in height.
    - (e) Fifteen (15) foot setbacks for buildings with three or more stories and exceeding thirty-five (35) feet in height.
  - (2) Side Yard and Rear Yards. None, except as below:
    - (a) When abutting a nonresidential zoning district, there shall be no minimum side or rear yard as long as the project complies with the standards of the Town and State building codes and is approved by the Fire Chief and Building Inspector.
    - (b) When abutting a residential zoning district the minimum required side and rear yard shall be as is required in the applicable zoning district. NO reduction in the minimum required side yard will be allowed for fire resistive construction.

- (c) When an exterior building wall of an upper story residential dwelling unit is within fifty (50) feet of a residentially zoned area, all windows in the wall shall be clerestory windows or windows designed to not allow outside objects to be seen (translucent).

(C) Maximum building height.

- (1) Except for the following provisions, the maximum building height of the applicable zoning district shall apply.
- (2) For structures including upper story residential that abut a residential zoning district, the following shall apply:
  - (a) For any part of the structure located within fifty (50) feet of any residential property line, the maximum building height of the applicable zoning district shall apply.
  - (b) For any part of the structure with two stories of upper story residential located more than fifty (50) feet from a residential lot line, the maximum building height shall be forty-five (45) feet.
  - (c) The provisions of a and b above shall not apply if the property of the subject redevelopment plan and the property of the abutting residential zoning district are under common ownership.

## Section - 274 Site and building improvements.

A commercial redevelopment project provides the opportunity for various site improvements including building improvements, improved pedestrian access and landscaping improvements to be made to a commercial property. To ensure that the appearance of a commercial site and building is noticeably improved, this subsection requires a commercial redevelopment project to provide a minimum combination of site and/or building improvements. Compliance with this Section is required and does not constitute the full extent of the improvement that may be required as part of the approval of the redevelopment plan.

Improvement Type	Minimum Credits Required	Maximum Credits Applied
Building Improvements <ul style="list-style-type: none"> <li>• Create or enhance a prominent building entrance</li> <li>• Create or enhance exterior building walls that are visibly articulated when viewed from the street right-of-way</li> <li>• Create new building surfaces (paint shall not be considered a new building surface)</li> <li>• Enlarge existing windows or add windows to the front building façade</li> <li>• Increase the height of the front building façade and improve its articulation</li> </ul>	3	4

<ul style="list-style-type: none"> <li>• Install awnings, canopy, porch, arcade or other structure to shade pedestrians</li> </ul>		
<b>Roof</b> <ul style="list-style-type: none"> <li>• Create or enhance an articulated roof line with a minimum vertical change of 2 feet that faces a street right-of-way</li> <li>• Apply new roofing materials that will be visible from the street right-of-way</li> </ul>	0	1
<b>Site Design</b> <ul style="list-style-type: none"> <li>• Unified site and architectural design</li> <li>• Add accent landscaping between the building and Street right-of-way</li> <li>• Provide or improve off-site sidewalks along abutting street frontages where such improvements are not required by other Ordinance Regulations</li> </ul> <b>Development Regulations</b> <ul style="list-style-type: none"> <li>• Walkways and Islands in the parking lot</li> <li>• Entry drive and cross-walk decoration (pavers, stamped concrete)</li> <li>• Other hardscaped improvements in outside seating area</li> </ul>	0	4
<b>Other</b> <ul style="list-style-type: none"> <li>• Building or site improvements considered equivalent in nature, scope and impact to the public to those improvements listed above, as determined by the Town Board</li> </ul>	0	1

Total of 8 Credits Required

A commercial redevelopment project consisting of multi-tenant buildings with more than sixty thousand square feet of proposed floor area may provide the improvements identified in the redevelopment plan by phase. The phasing plan for the improvements to the entire property shall not exceed three years from the date of the first plan approval.

#### **Section - 275 Off street parking and loading, access and circulation.**

(A) Application of this subsection shall require maintenance of public safety and the identification of opportunities for any improvements in access, circulation, and pedestrian accessibility. When the provisions of this subsection conflicts with other applicable provisions contained in these zoning regulations, the provisions of this subsection shall prevail. On-site and off-site parking and loading facilities, access and safety-related improvements shall be required to comply with the following performance standards:

- (1) Safe circulation for vehicles, including delivery vehicles and solid waste pick up vehicles, bicyclists, and pedestrians shall be provided.
- (2) The minimum number of off street parking spaces as required by the parking provisions of this Ordinance shall be provided, except for a new restaurant or entertainment uses, and the conversion of a residential use to a nonresidential use, when an existing parking facility is not conforming with regards to the minimum required number of parking

spaces, new parking spaces shall only be required for the net increase in building floor area.

- (3) The proposed facility shall provide safe ingress into and egress out of the property. When determined to be necessary and practicable, this shall be achieved through the restriction of turn movements at street access driveways, modification of turning radii at street access driveways, establishment of one-way street access driveways, the narrowing or relocation of existing or proposed street access driveways, or the abandonment of street access driveways.
- (4) The applicant shall attempt to establish vehicular and pedestrian cross access and shared parking facilities with abutting commercial properties. Where such facilities are not practical, the owner or the owner's agent shall provide a letter demonstrating an attempt has been made to establish cross access and shared parking facilities.
- (5) Commercial redevelopment projects may utilize any of the following alternative approaches for the design and layout of parking and loading facilities:
  - (a) Employee parking areas may:
    - (i) Use tandem parking of vehicles; and
    - (ii) Design the parking spaces with a minimum width of 8.5 feet.
  - (b) Up to 25 percent of customer parking areas may contain parking spaces with a minimum width of 8.5 feet. The remaining percentage of parking spaces shall be nine feet in width. Customer parking spaces of less than nine feet in width shall be signed for compact cars.
  - (c) When determined to be safe, parking areas located adjacent to a no through local public street can be designed for vehicles to back out into the street and may be permitted provided that the local street has low levels of existing and projected traffic volume and that no adverse impacts on the adjoining residential neighborhood are created.
- (6) Existing parking areas that use a backing out movement onto a local street shall be presumed safe if there is no history or report of traffic accident accidents associated with the parking area. The backing out parking facility shall be subject to the issuance of a right-of-way use permit. As part of the right-of-way use permit application, the applicant shall submit a legal instrument, acceptable to the Town, which holds the Town harmless from any loss of parking spaces resulting from Town action in the public right-of-way. As a condition for the issuance of the right-of-way permit, the applicant may be required to make necessary improvements within the right-of-way to accommodate a safe and controlled backing out movement.
- (7) Modification from the parking aisle standards contained in this Ordinance may be allowed upon demonstration that safe vehicular circulation and movement can be provided.

- (8) Modification from the standards for parking area landscape islands contained in this Section and parking area medians between tiers of parking contained in this Section may be allowed provided that the required landscaping associated with the islands and medians that is the subject of the modification is located elsewhere on site.
- (9) The elimination or reduction of loading spaces may be allowed provided that the applicant can demonstrate that loading and unloading activities can be conducted safely without a formally designated loading space.
- (10) Flexible enforcement of other off-street parking standards not identified above may be allowed provided that all other applicable safety-related issues have been satisfactorily addressed by the Town Board and the law enforcement agency of the Town.

(B) **Shared On-Site Parking**

- (1) **Non-conforming uses.** In mixed-use development, applicants may propose a reduction in parking requirements based on an analysis of peak demands for non-competing uses. Up to 50 percent of the requirements for the predominant use may be waived by the Town Board if the applicant can demonstrate that the peak demands for two uses do not overlap
- (2) **Competing uses.** In mixed use developments, applicants may propose a reduction in parking requirements where peak demands do overlap. In these cases, the Town may reduce the parking requirements of the predominant use by up to 25 percent.

(C) **Off-Site Parking:** Separate from, or in conjunction with the Shared Parking provisions, an applicant may use off-site parking to satisfy their parking requirements in accordance with the following conditions:

- (1) Off-site parking shall be within five hundred (500) feet of the property for which it is being requested.
- (2) Off-site parking spaces shall be subject to a legally binding agreement that will be presented to the Town Board as a condition of the special permit. Where an agreement shall expire within a specified timeline, the applicant or current property owner shall continue to provide evidence to the Town that the agreement has been extended.
- (3) The Town Board, at its discretion, may allow spaces within a public lot to be used as a supplement to other acceptable parking arrangements. Public parking shall account for no more than 50 percent of the required parking spaces after all other parking reduction strategies have been applied.

(D) **Landscaping and buffering:** Flexibility in the application of landscape buffer standards can facilitate the redevelopment of older commercial property. When standards of this Ordinance are in conflict, the standards contained in this subsection shall prevail. Improvements to landscaping on the site are highly valued as part of the redevelopment plan.

- (1) The applicant shall to the extent practicable, provide the full amount buffer plantings for the applicable buffers required by this Ordinance.

- (2) Reductions not exceeding 50 percent of the required minimum width of a property boundary buffer and street buffer are allowed only when required circulation, parking and stormwater facilities or an existing building is retained and physically constrains the buffer area.
- (3) **Outdoor lighting:** The subject property shall comply with all applicable outdoor lighting standards contained in this Ordinance for lighting added as part of the redevelopment of the site. Existing lighting shall be evaluated for compliance with the illumination levels in this Ordinance. Outdoor light on the site shall be designed with sensitivity to adjacent neighborhoods in order to minimize the visual impacts on abutting residential properties and the public traveling the public right of ways.
- (4) **Open Space:** Aside from required landscape buffers and stormwater improvement facilities, there shall be no minimum open space requirement. This requirement shall supersede the open space requirements of the applicable zoning district.
- (5) **Solid Waste Facilities and Screening of Roof top Equipment:** Where practicable, solid waste storage facilities on the commercial redevelopment site shall be shared by all tenants at a single consolidated location that is conveniently accessible for a solid waste disposal truck and shall be adequately screened in accordance with any recommendations of the Plan Commission.

#### **Section - 276 Building design standards:**

The design standards in this Section shall be applied to development within the Existing Business Redevelopment Overlay District, where applicable. The Planning Commission may waive any of these standards if the applicant can provide compelling evidenced that the waiving of Design Standards shall work to preserve the historic quality of exiting buildings and sites or shall otherwise further the goals of this Ordinance.

##### **(A) Buildings:**

- (1) Where existing buildings of architectural value are to remain in use, the architectural integrity of these existing structures shall not be significantly altered through the use of different signage, building materials or other architectural features.
- (2) All buildings shall have a principal façade and entry (with operable doors) facing a street or open space. Buildings may have more than one principal façade and/or entry;
- (3) Building finish materials shall be appropriate for the architecture of the structure and may include, but not be limited to brick or high quality brick face, wood, stone or high quality stone face. The use of vinyl, unfinished metal or fiberglass as a primary finished surface shall be prohibited.
- (4) Blank walls adjacent to streets, alleys or open spaces shall not be permitted. Where windows are not possible or appropriate to the intended use, vertical articulation in the form of raised or recessed surfaces shall be used to break up blank walls;



- (5) New retail buildings shall have one of the following features along the front surface at intervals sufficient to provide a continuity to pedestrians; awning, marquee, arcade and/or colonnade; and;
- (6) Flat roofs are prohibited on single story buildings and may be allowed on multi story buildings as long as the roof line projects outward from the building surface as a decorative cornice or parapet.

**Section - 277 Application requirements:**

Applicants for an approval within the Existing Business Redevelopment Overlay District shall provide at a minimum the information specified for an Existing Conditions Plan and a Concept Plan below:

**(A) Existing Conditions Plan**

- (1) The name and address of the owner or owners of record, the applicant and the design engineer and/or land surveyor that prepared the plan
- (2) The names, approximate location and widths of adjacent streets.
- (3) The underlying zoning district
- (4) Existing topography at 2 foot contour intervals
- (5) All on site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the existing condition plan.
- (6) If available, the location and results of any soil tests, test pit investigations for soil profiles, percolation rates and determination of seasonal high ground water table or contaminants.
- (7) A description of any Site Assessment activities that have taken place on the contaminated sites and a summary of those findings and activities.

**(B) Concept Plan and Related Information**

- (1) The name, and address of the owner or owners of record, the applicant, and the Design engineer and/or land surveyor that prepared the plan.
- (2) Identification of buildings to be restored rehabilitated or constructed.
- (3) Identification of buildings to be removed.
- (4) Proposed uses including the density or intensity of the proposed use.
- (5) Proposed internal and external traffic and circulation patterns
- (6) Proposed parking needs, including provisions for shared parking between uses, if applicable

- (7) Proposed location and where applicable, sizing of utilities including water supply, sewer, electrical and communications service, stormwater and solid waste containment and disposal
- (8) Proposed landscaping, lighting, and signage features
- (9) A narrative description of items 2 through 8 in Concept Plan
- (10) Architectural elevations for proposed new buildings; and
- (11) Where more than 20,000 square feet of new development or redevelopment is proposed, a traffic study showing the impact of the proposed development on the surrounding area shall be provided. The traffic study shall include existing and expected volumes at build-out, the expected directional distribution of vehicles to and from the site and existing and expected levels of service at all intersections located within 3,000 feet of the site.

#### **Section - 278 Procedure**

- (A) **General.** Whenever an application for an approval is filed with the Plan Commission pursuant to the requirements of this overlay district, the applicant shall also file within ten days of the filing of the completed application, copies of the application, accompanying development plan, and other documentation, to the Waukesha County Environmental Health Division, the Waukesha County Land Resources Division, the Town Building Inspector, the applicable highway department, the police chief or law enforcement agency, the fire chief, and town engineer for their consideration, review and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Plan Commission within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Plan Commission is held prior to the expiration of the thirty-five day period, the Plan Commission may conditionally approve the permit or adjourn the matter to the next Plan Commission meeting. The decision and findings of the Plan Commission shall contain, in writing, an explanation for any departures from the recommendation of any reviewing party.
- (B) **Site Visit:** The Plan Commission and/or Board may conduct a site visit prior to Plan Commission action. At the site visit, the Plan Commission or its agent(s) shall be accompanied by the applicant or its agents.

#### **Section - 279 Decision criteria for the plan commission:**

The Plan Commission and/or board may approve, approve with conditions or deny an application for the concept plan. The criteria for this decision are as follows:

- (A) The degree to which the proposed development furthers from the purposes of this Ordinance as previously listed
- (B) Compliance with the parking requirements listed in this Ordinance

- (C) Compliance with the Design Standards listed in this Ordinance
- (D) The ability of the neighborhood to absorb the level of traffic that will result from the proposed development
- (E) The ability of applicant to provide adequate water and sanitary facilities to the proposal

#### **DIVISION - 24 B-1 RESTRICTED BUSINESS DISTRICT**

##### **Section - 280 Use regulations.**

**(A) Permitted uses:**

- (1) Any use as permitted in the R-3 residential district.
- (2) The following retail or customer service establishments of a restrictive nature provided the location, building and Site Plan and Plan of Operation have been submitted to, and approved by, the Plan Commission as being in keeping with the character of the surrounding residential area.
  - (a) Boarding or lodging houses.
  - (b) Delicatessen.
  - (c) Florist shop.
  - (d) Funeral home.
  - (e) Gift shop.
  - (f) Interior decorator.
  - (g) Professional office or studio.
  - (h) Tea room or restaurant provided no liquor is served.
  - (i) Tourist home.
  - (j) Classes associated with any other permitted use as long as the site plan and plan of operation approved by the plan commission address the hours of operation, number of events and maximum participants, parking, signage and the facility in which said classes are conducted meets all applicable building sanitation, health and fire codes for the type of classes conducted and the number of participants.
  - (k) Any similar use subject to the approval of the Plan Commission
- (3) **Signs**, subject to the following conditions:
  - (a) No sign shall exceed twelve (12) square feet in area.

- (b) No free standing sign shall exceed ten (10) feet in height from the ground, and no sign attached to a building shall project above an eave, cornice, or top parapet line of said building.
- (c) Only one (1) sign shall be permitted for any such permitted use.
- (d) No sign shall include illuminating devices or be constructed of illuminated material, or be specifically illuminated, except by properly shielded cover or back lighting of a non-intermittent type on an opaque background, such source of light not to be more than two (2) feet from the vertical face to be illuminated and in accordance with Section 29 of this Ordinance.

#### **Section - 281 Building location.**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Twenty (20) feet minimum.

#### **Section - 282 Height regulations.**

- (A) **Principal building:** Thirty-five (35) feet maximum.
- (B) **Accessory buildings:** Fifteen (15) feet maximum.

#### **Section - 283 Area regulations.**

- (A) **Floor area:**
  - (1) **Minimum required for residential purposes:**
    - (a) **First floor:** Nine hundred (900) square feet.
    - (b) **Total, one (1) family:** One thousand (1,000) square feet.
  - (2) **Maximum F. A. R. permitted:** Twenty (20) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** Twenty thousand (20,000) square feet.
  - (2) **Minimum average width:** One hundred twenty (120) feet
- (C) **Open space:** Fifteen thousand (15,000) square feet minimum per family.

### **DIVISION - 25 B-2 LOCAL BUSINESS DISTRICT**

#### **Section - 290 Use regulations.**

- (A) **Permitted uses:**

- (1) Any use as permitted in the B-1 restricted business district.
- (2) Any of the following retail or customer service establishments, provided the location, building and Site Plan and Plan of Operation are submitted to and approved by the Plan Commission.
  - (a) Art shop.
  - (b) Appliance store.
  - (c) Bakery (not over ten (10) employees).
  - (d) Barber shop.
  - (e) Beauty shop.
  - (f) Bank or savings and loan office.
  - (g) Clinic.
  - (h) Clothing or dry goods store.
  - (i) Confectionery store.
  - (j) Drug store.
  - (k) Furniture store.
  - (l) Book or stationery store.
  - (m) Fruit and vegetable market.
  - (n) Grocery or other food products store.
  - (o) Hardware store.
  - (p) Ice cream store.
  - (q) Jewelry store.
  - (r) Meat and fish market.
  - (s) Music and radio store.
  - (t) News-stand.
  - (u) Notion or variety shop.
  - (v) Parking lot.

- (w) Pharmacy.
- (x) Radio and television sales and repair shop.
- (y) Personal Storage Facilities
- (z) Photographer.
- (aa) Restaurant.
- (bb) Shoe store.
- (cc) Soda fountain.
- (dd) Tailor or dressmaking shop.
- (ee) Telegraph and telephone office and telephone exchange.
- (ff) Temporary fireworks stands that sell Class "C" fireworks.
- (gg) Utility company office.
- (hh) Any similar use subject to the approval of the Plan Commission.
- (3) Garages for storage of vehicles used in conjunction with the operation of the business.
- (4) Signs, subject to the following conditions:
  - (a) No sign shall exceed forty (40) square feet in area.
  - (b) Illuminated signs shall not exceed twenty (20) square feet.
  - (c) Signs shall be limited to one (1) sign per store side of building.
  - (d) No free standing sign shall exceed twenty (20) feet in height from the ground, and attached signs shall be in accordance with Section 29 of this Ordinance.

#### **Section - 291 Building location.**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:**
  - (1) **Buildings used solely for commercial purposes:** Ten (10) feet minimum.
  - (2) **Buildings used in whole or part for residence purposes:** Twenty (20) feet minimum.

#### **Section - 292 Height regulations.**

- (A) **Principal building:** Thirty-five (35) feet maximum.

- (B) **Accessory buildings:** Fifteen (15) feet maximum.

**Section - 293 Area regulations.**

- (A) **Floor area:**

- (1) **Minimum required for residence purposes:**

- (a) **Buildings used solely for residence purposes:**

(i) **First floor:** Nine hundred (900) square feet.

(ii) **Total:** One (1) family: One thousand (1,000) square feet.

- (b) **Buildings used for both residence and business purposes:** Nine hundred (900) square feet per family.

- (2) **Maximum F. A. R. permitted:** Fifty (50) percent.

- (B) **Lot size:**

- (1) **Minimum area:** Twenty thousand (20,000) square feet.

- (2) **Minimum average width:** One hundred twenty (120) feet.

- (C) **Open space:** Fifteen thousand (15,000) square feet minimum per family.

**DIVISION - 26 B-3 GENERAL BUSINESS DISTRICT**

**Section - 300 Use regulations.**

- (A) **Permitted uses:**

- (1) Any use as permitted in the B-2 local business district, except that residential use shall be permitted only in conjunction with or accessory to an otherwise permitted use.
- (2) The following business and trades of a more general nature, normally serving a larger trade area, providing the location, building and Site Plan and Plan of Operation are submitted to and approved by the Plan Commission.
  - (a) Wholesalers and distributors.
  - (b) Theaters, dance halls, arcades, video game parlors and other amusement places.
  - (c) Used car lots.
  - (d) Dry cleaning and dyeing establishments.

- (e) New and used automobile sales rooms and lots, sale of snowmobiles, personal watercraft, boats and marina equipment along with repair and service shops for such equipment, storage yards and garages for said equipment, vehicles and supplies, but not including the storage and/or sale of junked or wrecked equipment or parts.
  - (f) Printing and publishing houses.
  - (g) Dairies and bottling plants.
  - (h) Laundries.
  - (i) Lockers and cold storage plants.
  - (j) A building, or portion thereof, or a building designed with self-contained units, which is leased by the owner for storage.
  - (k) Any similar use subject to the approval of the Plan Commission.
- (3) Signs, billboards and other similar advertising media as regulated in Section 29 of this Ordinance.

#### **Section - 301 Building location.**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:**
  - (1) **Buildings used solely for commercial purposes:** Ten (10) feet minimum.
  - (2) **Buildings used in whole or part for residence purposes:** Twenty (20) feet minimum.

#### **Section - 302 Height regulations.**

- (A) **Principal building:** Thirty-five (35) feet maximum.
- (B) **Accessory buildings:** Fifteen (15) feet maximum.

#### **Section - 303 Area regulations.**

- (A) **Floor area:**
  - (1) **Minimum required for residence purposes:** Nine hundred (900) square feet per family.
  - (2) **Maximum F. A. R. permitted:** Fifty (50) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** Twenty thousand (20,000) square feet.



- (2) **Minimum average width:** One hundred twenty (120) feet.
- (C) **Open space:** Fifteen thousand (15,000) square feet minimum per family.

## **DIVISION - 27 B-4 COMMUNITY BUSINESS DISTRICT**

### **Section - 400 Statement of intent.**

This district is intended to provide for individual or large groups of retail and customer service retail in a "shopping center setting." The intent is to designate those uses on a predetermined land use plan. This District must be located within one (1) mile of a major highway interchange or at or near the intersection of two (2) major highways. The District is designed for convenience or one-stop shopping and is intended to serve the entire community.

### **Section - 401 Review process.**

The Plan Commission must review and approve building plans and a Site Plan and Plan of Operation for each building proposal or change in use in order to achieve a satisfactory relationship between the permitted use, its operating characteristics, the arterial highway system, and adjacent uses.

### **Section - 402 Permitted principal uses.**

- (A) **Permitted Principal Uses:** The following retail establishments, selling of and storing of only new merchandise.
  - (1) Art, dance, music teaching studios or other similar uses.
  - (2) Architects, engineers or other professional offices.
  - (3) Bakery goods stores.
  - (4) Banks, savings and loan association and other financial institutions.
  - (5) Barber and beauty shops.
  - (6) Candy, confectionery stores.
  - (7) Clothing stores.
  - (8) Delicatessens.
  - (9) Dentist, physician or other similar professional health offices.
  - (10) Drugstores.
  - (11) Dry cleaning pick-up and delivery establishments.

- (12) Retail florists.
- (13) Fruit stores.
- (14) General public bookstores.
- (15) Gift stores.
- (16) Grocery stores.
- (17) Hardware stores, paint or decorating stores.
- (18) Hobby shops.
- (19) Meat, fish, or poultry markets.
- (20) Optical stores.
- (21) Packaged beverage stores.
- (22) Photo and film pick-up stores.
- (23) Shoe repair shops.
- (24) Shoe stores.
- (25) Soda and ice cream stores.
- (26) Sporting goods stores.
- (27) Tobacco stores.
- (28) Variety stores.
- (29) Vegetable stores.
- (30) Video stores.
- (31) Department stores.
- (32) Cafes or restaurants.

(B) **Permitted Accessory Uses:**

- (1) Garages for storage of licensed vehicles used in conjunction with the operation of a business.
- (2) Off-street parking and loading areas.

- (3) Classes associated with any other permitted use as long as the site plan and plan of operation approved by the Plan Commission address the hours of operation, number of events and maximum participants, parking, signage and the facility in which said classes are conducted meets all applicable building sanitation, health and fire codes for the type of classes conducted and the number of participants.
- (C) **Off-street Parking and Loading Areas:** Provided detailed site plans, including landscaping and buffering, are submitted to and approved by the Plan Commission. Front, rear and side yard paved setbacks shall not be less than ten (10) feet. Shared drives and shared parking areas may be allowed among adjacent properties where appropriate and practical through the use of cross-easements or other internal linkages between the properties with approval of the Plan Commission and all owners of the properties.
- (D) **Signs:** Allowed by conditional use to evaluate size, orientation and compatibility with the entire site and in conformance with Section 29 of the Ordinance. Landscape and site plans for the signs must be submitted to, reviewed and approved by the Plan Commission.

#### **Section - 403 Permitted conditional uses**

Any use similar in character to the permitted uses listed above conducted as a retail business on the premises, catering to the general public and compatible to the character of adjacent areas. Additionally, only the following uses are permitted conditional uses:

- (A) Fast food establishments.
- (B) Service stations.
- (C) Home improvements stores.
- (D) Communications facilities, including antenna masts and satellite dish antennas located in the rear yard and roof-mounted satellite dish antennas and roof-mounted solar collectors on the roof of the principal structure, provided a registered engineer shall certify that the structure is adequate to support the load. All such facilities shall be screened from view with the facility and screening approved by the Plan Commission and Town Board.
- (E) Entertainment facilities.
- (F) Hospitals and health care facilities.
- (G) All uses operated greater than 16 hours per day.
- (H) Limited outside storage or display.

#### **Section - 404 Prohibited uses.**

- (A) Any new residential dwellings.
- (B) Car, truck and trailer sales lots - new and used.
- (C) Outside bulk sales, bulk storage or bulk display of materials or products.

- (D) Drive-in theaters.

#### **Section - 405 Height regulations.**

- (A) No principal structure shall exceed thirty-five (35) feet in height.
- (B) No accessory structure shall exceed fifteen (15) feet in height.

#### **Section - 406 Lot Area, Frontage, and Yard Regulations.**

(A) **Lot Size - Unsewered:**

- (1) Total site may not be less than ten (10) acres with out lots being created by a PUD.
- (2) When an unsewered lot is created, the Plan Commission may require the principal structure on the lot to be arranged and dimensioned so as to allow further division of the parcel at such time as sewer becomes available.

(B) **Lot Size - Sewered:**

- (1) Free-standing building sites shall have a minimum lot size of 20,000 square feet.

- (c) **Lot Width (out lots):** Free-standing building sites shall have a minimum average width of 120 feet (sewered) and 240 feet (unsewered).

- (D) **Front Yard Setback:** All buildings shall be located not less than fifty (50) feet from any street or highway right-of-way.

- (E) **Side Yard Setback:** Shall have a minimum offset of ten (10) feet; however, the plan commission may require a greater offset to accommodate future expansion of the building or future paved driveway access to the rear of the building.

- (F) **Rear Yard Setback:** Shall have a minimum offset of twenty-five (25) feet.

- (G) **Floor Area:** Initial construction proposed on each lot shall be a minimum of 5,000 square feet.

(H) **Floor Area Ratio:**

- (1) Maximum of thirty percent (30%), unsewered.
- (2) Maximum of fifty percent (50%), sewered.
- (3) Not more than sixty-five percent (65%), unsewered or seventy percent (70%), sewered of any lot shall be covered with buildings, surfaced pavement, parking, loading areas, or other covering materials which are impervious to surface absorption.

#### **DIVISION - 28 BP-MIXED USE BUSINESS PARK DISTRICT.**

#### **Section - 410 Statement of intent.**

- (A) This district is to be used as an implementation tool for the Town's adopted Land Use Plan where it designates specific types of limited office, professional services, retail, business uses, and light industrial uses free of outside storage or display, serving the adjacent industrial and business uses in larger communities. These uses may occur on individual sites or as part of a planned larger development. This District can only be located within one mile of a freeway interchange or at an intersection of two state trunk highways and be used only where specific types of uses are designated on a Town adopted Land Use Plan.
- (B) The Plan Commission shall review and consider for approval a building plan and a Site Plan and Plan of Operation for each building or use proposal to determine if the proposed development complies with the Town Land use Plan. The review shall be required to achieve a satisfactory relationship between the permitted use, it's operating characteristics, the arterial highway system and adjacent uses such as retail, residential, customer service, business park and light industrial.

#### **Section - 411 Permitted principal uses.**

- (A) **Permitted Principal Uses:** The following principal uses are permitted provided the building plan and a Site Plan and Plan of Operation have been submitted to and approved by the Plan Commission. Development prior to sewers being installed in the area is contingent upon the ability of each use to obtain the necessary sanitary septic system approvals from the proper authorities.
  - (1) Community and customer service establishments including eating and drinking establishments, overnight lodging, and indoor commercial recreational facilities such as bowling alleys, physical fitness salons and theaters. Such establishments may not be located adjacent to or opposite a residential district (as designated on the Land Use Plan) and must be within 1,000 feet of a state trunk highway except as identified by Section 412 of this Ordinance.
  - (2) Offices for the professions, business and utilities, studios, health care facilities and clinics (not providing for overnight stay).
  - (3) Automobile Drive-thru facilities such as financial services, fast food establishments, provided the service rendered or product sold is provided to each customer while they remain in or near their cars and provided to one or a few vehicles at a time (as contrasted with an outdoor theater where all cars are serviced at once). Such facilities must be located within 1,000 feet of a state trunk highway.
  - (4) Laboratory, research and servicing operations. Servicing operations shall not be for general retail or public consumption but limited to the servicing of the specific product manufactured or assembled at that site.
  - (5) Trades or light industrial operations of limited intensity, including manufacturing, assembly, fabrication, and processing operations, warehousing (on parcels greater than 3 acres), wholesaling, and distribution operations, except as otherwise prohibited.
- (B) **Permitted Accessory Uses:** The following accessory uses are permitted provided the building or structure plan and a Site Plan and Plan of Operation have been submitted to and approved by the Plan Commission.

- (1) Garages attached to the principal structure for storage of vehicles used in conjunction with operation of the business.
- (2) Off-street parking and loading areas, provided detailed site plans, including landscaping and buffering, are submitted to and approved by the plan commission. Front, rear and side yard paved setbacks shall be not less than ten (10) feet. Shared drives and shared parking areas among adjacent properties where appropriate and practical are desirable through the use of cross-easements or other internal linkages between properties.
- (3) Communications facilities, including antenna masts and satellite dish antennas located in the rear yard and roof-mounted solar collectors on the roof of the principal structure, provided a registered engineer shall certify that the structure is adequate to support the load. All such facilities shall be screened from view with the facility and screening approved by the plan commission. Screening shall be required for any satellite dish exceeding 24 inches in size and where more than one exists per property.
- (4) Bus or taxi shelters or waiting areas.
- (5) Classes associated with any other permitted use as long as the site plan and plan of operation approved by the Plan Commission address the hours of operation, number of events and maximum participants, parking, signage and the facility in which said classes are conducted meets all applicable building sanitation, health and fire codes for the type of classes conducted and the number of participants

#### **Section - 412 Permitted conditional uses.**

Only the following conditional uses may be permitted provided the building plan and a Site Plan and Plan of Operation have been submitted to and approved by the Plan Commission and Town Board:

- (A) Child care facilities not accessory to a principal office use.
- (B) Cooling towers, silos or other similar uses accessory to the permitted principal uses.
- (C) Automobile service and fuel stations.
- (D) Restaurants to be located within 1,000 feet of any residential area designated on the Land Use Plan.
- (E) Fuel or vehicle repair stations serving trucks other than company motor vehicles. Such facilities shall not be located within 1,000 feet of a residential area designated on the Land Use Plan unless having direct access to a state trunk highway.
- (F) Any outdoor recreation involving night operation with limitations on hours of operation.
- (G) Retail stores and shops located beyond 1,000 feet of a state trunk highway.
- (H) Retail uses operated more than 16 hours per day.
- (I) Health care facilities providing for overnight stays.

- (J) Commercial vehicle terminals with roadway access to a state trunk highway.

**Section - 413 Prohibited uses.**

- (A) **Offensive Uses.** No uses shall be permitted or maintained which, when conducted under adequate conditions and safeguards in compliance with the provisions of this Section and any additional conditions or requirements prescribed by the Plan Commission, are or may become hazardous, noxious or offensive due to emission or odor, dust, smoke, cinders, gas, fumes noise, vibrations, beat frequency, refuse matter, water-carried waste or fugitive lighting.
- (B) **Specific Prohibited Uses.** The following uses are specifically prohibited:
- (1) Truck or trailer sales.
  - (2) New and used car lots.
  - (3) Car wash facilities.
  - (4) Bulk sales, storage or display of lumber.
  - (5) Outdoor displays or storage of materials.
  - (6) Drive-in theaters.
  - (7) Mobile home sales, service or campgrounds.
  - (8) Recreational vehicle, all terrain vehicle or outdoor recreational vehicle sales and service.
  - (9) Junkyards or wrecking yards.
  - (10) Refining of petroleum or its products.
  - (11) Petroleum storage yards, not including petroleum storage accessory to a permitted conditional use.
  - (12) Animal reduction facilities.
  - (13) Forges.
  - (14) Foundries.
  - (15) Garbage or medical incinerators.
  - (16) Rubbish storage or transfer station.
  - (17) Slaughterhouses.
  - (18) Stockyards.
  - (19) Tanneries.

- (20) Bulk storage of salt, fertilizer, or similar materials; explosives, gasoline or other petroleum products in excess of 50,000 gallons, and grease.
  - (21) Storage of radioactive materials.
  - (22) Manufacturing or processing of ammonia, asbestos, asphalt, cement, chlorine, coal tar, creosote, explosives, fertilizer, glue, gypsum, insecticides, poison, pulp, proxylon, radium and radioactive materials.
  - (23) Outside product or equipment testing.
  - (24) Mini-warehouses or multi-tenant storage.
- (C) **Dwellings:** No new dwellings or residences of any kind.

#### **Section - 414 Height regulations.**

- (A) No principal structure shall exceed thirty-five (35) feet in height.
- (B) No accessory structure shall exceed fifteen (15) feet in height.

#### **Section - 415 Lot Area, Frontage, and Yard Regulations.**

- (A) **Lot Size - Unsewered:**
  - (1) Building site shall have a minimum lot size of 40,000 square feet.
  - (2) When an unsewered lot is created, the Plan Commission may require the principal structure on the lot to be arranged and dimensioned so as to allow further division of the parcel at such time as sewer becomes available.
- (B) **Lot Size - Sewered:** Building sites shall have a minimum lot size of 20,000 square feet.
- (C) **Lot Width:** Building sites shall have a minimum average width of 120 feet (sewered) and 240 feet (unsewered).
- (D) **Front Yard Setback:** All buildings shall be located not less than fifty (50) feet from any street or highway right-of-way. Signs not less than twenty (20) feet from any street or highway right-of-way.
- (E) **Side Yard Setback:** Shall have a minimum offset of ten (10) feet; however, the Plan Commission may require a greater offset to accommodate future expansion of the building or future paved driveway access to the rear of the building.
- (F) **Rear yard Setback:** Shall have a minimum offset of twenty-five (25) feet.
- (G) **Floor Area:** Initial construction proposed on each lot shall be a minimum of 5,000 square feet.
- (H) **Floor Area Ratio:** Maximum of thirty percent (30%). In addition, no more than sixty-five percent (65%) of any lot shall be covered with buildings, surface pavement, parking, loading areas, or



other covering materials which are impervious to surface absorption prior to the installation of sanitary sewers. Upon installation of sanitary sewers, the total impervious coverage shall not exceed 75% and the floor area ratio shall not exceed 50%.

#### **Section - 416 Signs.**

- (A) Landscape and Site Plans for signs must be submitted to, reviewed and approved by the Plan Commission.
- (B) **Sign regulations:**
  - (1) **Wall sign:** Placed on or against the exterior wall of the building or one projecting sign attached to the building front may be permitted and shall be subject to the following:
    - (a) Single-use structure signs shall not exceed .5 square feet for each one (1) foot width of the building.
    - (b) Multi-use structure signs shall not exceed .25 square feet for each one (1) foot in width per front foot per individual use.
  - (2) **Free standing signs:** One free standing sign may be permitted per property and may be in conjunction with a wall sign and may not exceed 30 square feet in area on each sign face. Free standing signs may not be closer than 150 feet from another free standing sign.
  - (3) **Free standing signs:** One free standing sign may be permitted per property and may be in conjunction with a wall sign and may not exceed 30 square feet in area on each sign face. Free standing signs may not be closer than 150 feet from another free standing sign.
  - (4) Signs used for identification of individual tenants in multi-tenant buildings must be uniform with regard to panel design, letter style and color. Said sign may contain painted metal surfaces with or without illumination or individual letters routed out of metal, plastic or wood surfaces.
  - (5) Signs may be non-illuminated or internally illuminated.
  - (6) The materials of the sign shall be compatible to the adjacent building materials.

#### **DIVISION - 29 Q-1 QUARRYING DISTRICT.**

#### **Section - 420 Use regulations.**

- (A) **Permitted uses:**
  - (1) Any use as permitted in the A-1 agricultural district.
- (B) **Conditional Uses:**
  - (1) Quarrying, although permitted by right, shall be authorized as a conditional use under the provisions of this Ordinance. The issuance of a conditional use permit to authorize

the quarrying of the site shall be conditional upon compliance with the standards and regulations as set forth in this Ordinance.

- (2) The following operations shall be authorized as a conditional use under the provisions of this Ordinance but only where accessory to an approved quarrying operation, and subject to the regulations of conditional use provisions of this Ordinance.
  - (a) The manufacture of concrete building blocks or other similar blocks.
  - (b) Production of ready-mixed concrete.

#### **Section - 421 Building location.**

**(A) Setback:**

- (1) **Quarrying operations:** As required by Section 21 (B) (38).
- (2) **Other permitted uses:** Fifty (50) feet minimum.

**(B) Offset:**

- (1) **Quarrying operations:** As required by Section 21 (B) (38).
- (2) **Other permitted uses:** Twenty (20) feet minimum.

#### **Section - 422 Height regulations.**

**(A) Principal building:** Thirty-five (35) feet maximum.

**(B) Accessory buildings:**

- (1) **Quarrying operations:** Sixty (60) feet maximum.
- (2) **Other permitted uses:** Fifteen (15) feet maximum.

#### **Section - 423 Area regulations.**

**(A) Floor area:**

- (1) **Minimum required for residence purposes:**
  - (a) **First floor:** Nine hundred (900) square feet.
  - (b) **Total, one (1) family:** One thousand (1,000) square feet.
- (2) **Maximum F. A. R. permitted:** Ten (10) percent.

**(B) Lot size:**

- (1) **Minimum area:** Three (3) acres.

- (2) **Minimum average width:** Two hundred (200) feet.
- (C) **Open space:** Two-acre minimum per family.

### **DIVISION - 30 M-1 LIMITED INDUSTRIAL DISTRICT**

#### **Section - 430 Use regulations.**

(A) **Permitted uses:**

- (1) Any use as permitted in a B-3 general business, except that residential use shall be permitted only in conjunction with or accessory to an otherwise permitted use.
- (2) Trades or industries of a restrictive character which are not detrimental to the district or to the adjoining residential areas by reason of appearance, noise, dust, smoke or odor, provided the location, building plan and a Site Plan and Plan of Operation have been submitted to and approved by the Plan Commission, but not including any use enumerated under Section 440 (A)(3) or any of the following:
  - (a) Salvage yards, as regulated by Section 21(B)(43).
  - (b) Drop forges, foundries, refineries, tanneries or any similar use, the normal operation of which causes objectionable noise, odor, dust or smoke.

#### **Section - 431 Building location.**

- (A) **Setback:** Fifty (50) feet minimum.
- (B) **Offset:** Ten (10) feet minimum. (Exception: where a lot abuts on a district boundary line of a more restrictive district permitting residence use, the following restrictions shall apply :
  - (1) Buildings or uses permitted in the more restrictive district shall comply with the offset requirements of the more restrictive district.
  - (2) Buildings or uses not permitted in the more restrictive district shall provide a fifty (50) feet minimum offset and shall be screened from the more restrictive district by a planting screen at least six (6) feet high and fifteen (15) feet in width.

#### **Section - 432 Height regulations.**

- (A) **Principal building:** Sixty (60) feet maximum.
- (B) **Accessory buildings:** Sixty (60) feet maximum.

#### **Section - 433 Area regulations.**

(A) **Floor area:**

- (1) **Minimum required for residence purposes:** Nine hundred (900) square feet per family.

(2) **Maximum F. A. R. permitted:** Seventy (70) percent.

(B) **Lot size:**

(1) **Minimum area:** One (1) acre.

(2) **Minimum average width:** One hundred fifty (150) feet.

(C) **Open space:** No requirement.

## **DIVISION - 31 M-2 GENERAL INDUSTRIAL DISTRICT**

### **Section - 440 Use regulations.**

(A) **Permitted uses:**

(1) Any use as permitted in the M-1 limited industrial district.

(2) Quarrying, subject to the regulations of Section 21(B) (38).

(3) Any other commercial or industrial use not otherwise prohibited by law, provided their location, building plan and a Site Plan and Plan of Operation have been Submitted to and approved by the Plan Commission, except the following:

(a) Cement, lime, gypsum, or plaster of paris manufacture.

(b) Acid manufacture.

(c) Manufacture of explosives, but not including the making of small arms ammunition.

(d) Storage of explosives, except as incidental to a permitted use.

(e) Fertilizer manufacture.

(f) Offal or dead animal reduction.

(g) Glue manufacture, fat rendering or distillation of bones.

(h) Stockyards or commercial slaughter of animals.

### **Section - 441 Building location.**

(A) **Setback:** Fifty (50) feet minimum except that where the opposite frontage is in a residential or agricultural district, a one hundred (100) foot minimum setback shall be required.

(B) **Offset:** Ten (10) feet minimum, except that where a lot abuts on a district boundary line of a more restrictive district permitting residence use, the following regulations shall apply:

- (1) Buildings or uses permitted in the more restrictive district shall comply with the offset requirements of the more restrictive district.
- (2) Buildings or uses not permitted in the more restrictive district shall provide a one hundred (100) foot minimum offset from a restricted or local business district and a two hundred (200) foot minimum offset from a residential or agricultural district and shall be screened from the more restrictive district by a planting screen at least six (6) feet high and fifteen (15) feet in width.

#### **Section - 442 Height regulations.**

- (A) **Principal building:** Sixty (60) feet maximum.
- (B) **Accessory buildings:** Sixty (60) feet maximum.

#### **Section - 443 Area regulations.**

- (A) **Floor area:**
  - (1) **Minimum required for residence purposes:** Nine hundred (900) square feet per family.
  - (2) **Maximum F.A.R. permitted:** Seventy (70) percent.
- (B) **Lot size:**
  - (1) **Minimum area:** One (1) acre.
  - (2) **Minimum average width:** One hundred fifty (150) feet.
- (C) **Open space:** No requirement.

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## ARTICLE V. ADMINISTRATION AND ENFORCEMENT\*

### Section-480. Board of Adjustment--Establishment.

There shall be a board of adjustment consisting of five (5) members and two (2) alternates who shall be appointed by the Town Board, but not more than one supervisor shall be a member of the board of adjustment. Board of adjustment members shall be appointed for terms of one, two, and three years respectively, dating from the first day of the month next following the appointment. Successors shall be appointed or elected in like manner at the expiration of each term, and their terms of office shall be three years in all cases and until their successors are appointed or elected. The members of the board of adjustment shall all reside within the town. The board of adjustment shall choose its own chair. The Town Board may compensate the members of the board of adjustment. Vacancies shall be filled for the unexpired term of any board member or alternate whose term becomes vacant.

### Section-481. Meetings.

The Town Board shall adopt rules for the conduct of the business of the board of adjustment, in accordance with the provisions of this Ordinance. The board of adjustment may adopt further rules as necessary to carry into effect the regulations of the Town Board. Meetings of the board of adjustment shall be held at the call of the chair and at such other times as the board of adjustment may determine. Such chair, or in his absence the acting chair, may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment shall be open to the public. The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of adjustment and shall be a public record.

### Section-482. Appeals.

- (A) **How filed.** Appeals to the board of adjustment may be taken by any person aggrieved or by any officers, department, board or bureau of the town affected by any decision of the administrative officer. Such appeal shall be taken within 65 days as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof, together with the proper fee as established under by the Town Board. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all papers constituting the record upon which the action appealed from was taken.
- (B) **Stay.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (C) **Hearing.** Each appeal shall be heard within a reasonable time and not to exceed 65 days from the time the appeal was filed with the board of adjustment. Notice of hearing shall be given by publishing in a paper of general circulation in the vicinity of the appeal, at least once each week for two consecutive weeks and not less than seven days from the date of the hearing. In addition, written notice shall be given to the administrative officer appealed from, and by

certified mail to the petitioner, the owners of each parcel of land within 300 feet of the land in question, and any other specifically interested parties. At the hearing, any party may appear in person or by agent or by attorney.

- (D) **Decisions.** Decision on any appeals shall be made within 35 days after completion of the hearing thereon.

#### **Section-483. Powers.**

- (A) **Defined.** The board of adjustment shall have the following powers as defined by statute: To hear and decide appeals where it is alleged there is error in any order, requirements, decision, or determination made by an administrative official in the enforcement of this Ordinance.
- (B) **Additional requirements.** In making its determination, the board of adjustment shall consider whether the proposed exception, variance or use allowed by law would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects; and may impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to any which may be stipulated in this Ordinance, as the board of adjustment may deem necessary for the protection of adjacent properties and the public interest and welfare.
- (C) **Performance standards.** In order to reach a fair and objective decision, the board of adjustment may utilize and give recognition to appropriate performance standards which are available in model codes or ordinances, or which have been developed by planning, manufacturing, health, architectural and engineering research organizations.
- (D) **Enforcement of decision.** In exercising the powers set out in the Ordinance, the board of adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, decisions or determination appealed from, and may make such order, requirements, 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; and may issue or direct the issuance of a permit provided that no such action shall have the effect of permitting in any district a use prohibited in that district; or rezoning; or of permitting, without the approval of the Town Board, any building within the base setback area as established by Section 22(A) or of granting exceptions to the Wis. Administrative Code chapters NR 115 or 116, the county sanitary ordinance and any other state, federal or local requirements.
- (E) **Required vote.** The concurring vote of two members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation there from. The grounds of every such determination shall be stated.
- (F) **Further appeal.** Any person or persons aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the municipality, may appeal from a decision of the board of adjustment within 30 days after the filing of the decision in the office of the board of adjustment in the manner provided in Wis. Stats. § 59.694.

#### **Section-484. Changes and Amendments--Authority.**



Subject to the provisions of Wis. Stats. § 60.61(4)(c)(1), the Town Board may from time to time after first submitting the proposal to the Plan Commission for report, and after notice and public hearing as provided in this Ordinance, amend, supplement or change the boundaries of districts or the regulations as established in this Ordinance or which may be subsequently established. Such proposal may be initiated by the board of adjustment on its own motion, by recommendation of the Plan Commission or by petition of one or more property owners.

#### **Section-485. Procedure.**

- (A) **Filing of petition.** All petitions for any change in the text or map submitted by any person or agency other than the Town Board or the Plan Commission shall be prepared in triplicate on printed forms provided for that purpose by the town clerk. Such petition shall be filed with the clerk and shall be accompanied by a fee as regulated in Section 487(D) and payable to the town to defray the costs of advertising, investigation, and possible changes in the text or map of this Ordinance.
- (B) **Data required.** In addition to all of the information required on the petition form, the petitioner shall supply the following:
- (1) A plot map in triplicate drawn to a scale of not less than 100 feet to the inch showing the land in question, its location, the length and direction of each boundary thereof, the location and existing use of all buildings on such land and the principal use of all properties within 300 feet of such land.
  - (2) The names and addresses of the owners of all properties within 300 feet of any part of the land included in the proposed change.
  - (3) In the case of a request for a map amendment, the applicant shall submit documentation or a letter of compliance from the Town Planner and the Waukesha County Department of Parks and Land Use that the proposed request complies with the Town of Oconomowoc Land Use Plan and the Waukesha County Development Plan.
  - (4) Any further information which may be required by the Plan Commission to facilitate the making of a comprehensive report to the Town Board, including a detailed description of the intended new use.
- (C) **Referral.**
- (1) The clerk shall transmit without delay one copy of such petition to the Plan Commission and one copy to the county park and planning commission.
  - (2) The Plan Commission shall conduct the necessary investigation, schedule a public hearing, and report its recommendation to the Town Board within a reasonable time after the hearing.
- (D) **Hearing.** Upon the recommendation of the Plan Commission and proper notice per Section 487(A), the Town Board shall hold a public hearing thereon.
- (E) **Decision.** The Town Board shall make a decision within a reasonable time after receipt of the Plan Commission recommendation.

- (F) **Three-fourths vote in case of protest.** In case of protest against such change duly signed and acknowledged by the owners of 20 percent or more either of the areas of land included in such proposed amendments, supplement or change, or by the owners of 20 percent or more of the area of the land immediately adjacent and extending 300 feet there from, or by the owners of 20 percent or more of the land directly opposite thereto extending 300 feet from the street frontage of such opposite land or in the event that such change is contrary to the recommendation of the plan commission such amendment, supplement or change shall require a three-fourths vote of the members of the Town Board.
- (G) **Effective upon county approval.**
- (1) Three signed copies of any change or amendment adopted by the Town Board shall be sent to the county clerk and Waukesha County department of Parks and Land Use for approval of the county board.
  - (2) Any such change or amendment shall become effective in the town upon the approval of the county board.

#### **Section-486. Public Hearing--Purpose.**

In order that the owners of property involved and other legitimately interested parties may have fair opportunity to be heard, adequate notice shall be given of any public hearing required by this Ordinance.

#### **Section-487. Procedure.**

- (A) **Posting and publishing.**
- (1) Except as may be otherwise specifically provided in this Ordinance, notice of public hearing shall be given by publication for two consecutive weeks in the official newspaper of the town or in the newspaper of general circulation in the area of the proposed change, conditional use, variance or sewer reduction at least seven days before such public hearing. The failure of such notice to reach any property owner, provided such failure is not intentional, shall not invalidate any amending ordinance, variance or granting of conditional use.
  - (2) When the hearing involves a proposed change in the zoning district classification of any property, the granting of a conditional use, or are appealed to the board of adjustment, the notices shall be posted in the vicinity of such proposed change, conditional use or variance where practical and the clerk shall mail certified letters of the public hearing to the owners of all lands within 300 feet of any part of the land included in such proposed change, conditional use or variance at least ten days before such public hearing. The failure of such notice to reach a property owner provided such failure is not intentional shall not invalidate any amending ordinance, variance or grant of conditional use.
  - (3) Notice of public hearing shall be sent to the county board supervisor representing the subject area, the State Department of Natural Resources, and Federal Insurance Administrator (FEMA) if lying within the jurisdiction of the Waukesha County Shoreland and Floodland Protection Ordinance.

- (B) **Information.** Such notices shall state the time and place of such public hearing and the purpose for which the hearing is held.
- (C) **Filing.** Where such hearing is required by the provisions of this Ordinance as a result of the request for other than a zoning change, such requests shall be presented to the clerk in writing and shall be accompanied by a map or description clearly identifying the property, along with a fee as set forth in Section 487(D) payable to the town to defray the cost of notification and holding of the public hearing.
- (D) **Fee schedule.** The fees referred to in other Sections of this Ordinance shall be established by the Town Board in a fee schedule and may, from time to time, be modified by resolution. Processing fees are related to costs involved in handling conditional use petitions, appeals to the board of adjustment, zoning amendments and changes, special exceptions and sewer reductions.
- (E) **Special meeting.** If a petitioner requests a special meeting (other than a regular Plan Commission or Town Board meeting) all costs incurred will be the responsibility of the petitioner.

#### **Section-488. Enforcement Officer.**

- (A) **Building inspector designated.** The building inspector is designated as the enforcement officer for the provisions of this Ordinance under the direction of the Town Board.
- (B) **Duties.** In the enforcement of this Ordinance, the building inspector shall perform the following duties:
  - (1) Issue the necessary "building and zoning," and "use" permits, provided the provisions of this Ordinance and the town building code, relative to buildings and building regulations, have been complied with.
  - (2) Keep an accurate record of all permits, numbered in the order of issuance, in a record book provided by the town for this purpose.
  - (3) Maintain accurate records and maps pertinent hereto and any amendments or changes thereto.
- (C) **Authority.** In the enforcement of this Ordinance the building inspector shall have the power and authority for the following:
  - (1) At any reasonable time and for any proper purpose, to enter upon any public or private premises to make inspections thereof.
  - (2) Upon reasonable cause or question as to proper compliance, to revoke any building, zoning or occupancy permit and issue cease and desist orders requiring the cessation of any building, moving, alteration or use which is in violation of the provisions of this Ordinance, such revocation to be in effect until reinstated by the building inspector or the board of adjustment.
  - (3) In the name of the town and with the authorization of the Town Board, to commence any legal proceedings necessary to enforce the provisions of this Ordinance or the

building code, including the collection of forfeitures provided for in this Ordinance.

#### **Section-489. Violations.**

- (A) **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 Ordinance, 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. Each day that a violation is permitted to exist shall constitute a separate violation and be punishable as such.
- (B) **Enforcement by injunction.** Compliance with the provisions of this Ordinance may also be enforced by injunctive order at the suit of the town or one or more owners of real estate situated within the area affected by the regulations of this Ordinance. It shall not be necessary to prosecute for fine or imprisonment before resorting to injunctive procedures.
- (C) **Declared nuisances.** Any building erected, structurally altered, or placed on a lot, or any use carried on in violation of the provisions of this Ordinance, is declared to be a nuisance per se, and the town may apply to any court of competent jurisdiction to restrain or abate such nuisance.

#### **Section-490 Validity**

- (A) **Repeal of conflicting ordinances.** All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.
- (B) **Declaration of severability.** The several Sections, subsection, and paragraphs of this Ordinance are hereby declared to be severable. If any Section, subsection, paragraph, or subparagraph of this chapter shall be declared by a decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this Ordinance, or of the Section of which the invalid portion or paragraph may be a part.
- (C) **Effective date.** This Ordinance shall be in full force and effect upon passage and publication by the Town Board and upon approval of the county board of supervisors, said publication to consist of posting of three copies thereof in three public places in said town.
- (D) **Adoption.** The Ordinance was adopted by the Town Board the \_\_\_th day of \_\_\_\_, 2011.