

Village of Mukwonago
Notice of Meeting and Agenda

PLAN COMMISSION MEETING
Tuesday, August 10, 2021

Time: **6:30 pm**

Place: **Mukwonago Municipal Building, Board Room, 440 River Crest Ct, Mukwonago, WI 53149**

1. Call to Order

2. Roll Call

3. Comments from the Public

Please be advised, per Wisconsin Statute Sec. 19.84(2), information and comment will be received from the public by the Plan Commission. The Public Comment Session is granted to the public at the start of each Plan Commission meeting. The Public Comment Session shall last no longer than fifteen (15) minutes and individual presentations are limited to three (3) minutes per speaker. However, these time limits may be extended at the discretion of the Chief Presiding Officer. The Plan Commission may not respond to or have any discussion on information received during the public comment session unless it is placed upon the Agenda for a subsequent meeting. Public comments should be addressed to the Plan Commission as a body. Presentations shall not deal in personalities personal attacks on members of the Plan Commission, the applicant for any project or Village Employees. Comments shall not be used to engage others in a debate in this forum. All comments, questions and concerns should be presented in a respectful professional manner. Any questions to an individual member of the Plan Commission or Staff will be deemed out of order by the Presiding Officer.

4. Approval of Minutes

4.1 Approval of July 13, 2021 minutes.

[20210713 PlanCommissionMinutesdraft.pdf](#)

5. Public Hearings

All persons interested in making comments about any of the public hearing items will be heard. Formal petitions and written comments regarding any of the public hearing items may be submitted tonight. During the public hearing(s), if you wish to be heard, the Plan Commission asks that you begin by stating your name and address, speak for no more than three minutes and attempt to avoid duplication. Each person speaking at the public hearing must sign the Public Hearing Appearance sign-in sheet before speaking. The sign-in sheet is available on the table located at the back of the room.

5.1 Public Hearing to consider a request for a Tavern and Outdoor Seating with Food and Drink Service, with a permitted or conditional use pursuant to Section 100-351, 100-152(f)(2) and 100-157 of the Village's Zoning Ordinance.

[Public Hearing Notice PC -CU - 326 Atkinson Street.pdf](#)

6. New Business

Discussion and Possible Action on the Following Items

- 6.1 Discussion and possible recommendation to the Village Board **RESOLUTION 2021-61** for Tavern and Outdoor Seating with Food and Drink Service with a permitted or conditional use for Jeffery Royal Jay (Jay's Lanes Inc.), applicant; 326 Atkinson Street, Parcel Number: MUKV 1976-098.

[Staff Report - CU-SPAR - 326 Atkinson Street - MUKV1976098.pdf](#)

[RESOLUTION 2021-61 - CU - 326 Atkinson Street - MUKV1976098.pdf](#)

- 6.2 Discussion and possible recommendation to Village Board **RESOLUTION 2021-62** for Site Plan and Architectural Review for outdoor dining Jeffery Royal Jay (Jay's Lanes, Inc.), applicant; 326 Atkinson St; Parcel MUKV 1976-098.

[RESOLUTION 2021-62 - SPAR - 326 Atkinson Street - MUKV1976098.pdf](#)

- 6.3 Discussion and update regarding draft of Sign Code rewrite.

[Staff Report - Memo PC regarding sign code draft 8-2021.pdf](#)

- 6.4 Discussion and update regarding Article 5 of the Zoning Code rewrite.

[Staff Report - Memo To PC regarding chapter V draft 8-2021.pdf](#)

7. Adjournment

Membership:

Eric Brill, James Decker, Karl Kettner, Mark Penzkover, Tim Rutenbeck, Jason Wamser, Fred Winchowky, and John Fellows (Advisory)

It is possible that a quorum of, members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Please note, upon reasonable notice, efforts will be made to accommodate the needs of individuals with disabilities through appropriate aids and services. For additional information or to request this service, contact the Municipal Clerk's Office, (262) 363-6420.

MINUTES OF THE PLAN COMMISSION MEETING

Tuesday, July 13, 2021

Call to Order

Chairman Winchowky called the meeting to order at 6:30 p.m. located in the Board Room of the Mukwonago Municipal Building, 440 River Crest Ct.

Roll Call

Commissioners present: Fred Winchowky, Chairman
Jim Decker
Jason Wamser
Eric Brill
Tim Rutenbeck
Karl Kettner

Commissioners excused: Mark Penzkover

Also present: John Fellows, Village Planner
Linda Gourdoux, Deputy Clerk/Treasurer

Comments from the Public

Opened at 6:32 pm

Colleen Farmer; 1445 Applewood Ln; Spoke against TID 5

Marilyn McCarthy; S108W27690 Maple Ave; Spoke against TID 5

Kevin McCarthy; 1475 S Rochester St; Spoke against TID 5

Jeff Jay; 326 Atkinson St; Thank the Commission for listening to his outdoor patio plans.

Bob Kohott; 323 Atkinson St; Spoke against outdoor patio at 326 Atkinson St; did not receive copy of mailed notice.

Closed at 6:40 pm

Minutes

Motion made by Decker/Brill to approve the minutes of the June 8, 2021 meeting, carried.

Public Hearings

Public Hearing to consider a request for a Tavern and Outdoor Seating with Food and Drink Service, with a permitted or conditional use pursuant to Section 100-351, 100-152(F)(2) and 100-157 of the Village's Zoning Ordinance.

Opened at 6:41 pm

Tabled until August 10, 2021

Public Hearing to consider the proposed amendment of the boundaries and Project Plan for Tax Incremental District No. 5.

David Boebel; 815 Parkview Ln; Spoke against TID 5

Marilyn McCarthy; S108W27690 Maple Ave; Spoke against TID 5

Colleen Farmer; 1445 Applewood Ln; Spoke against TID 5

Closed 6:59 pm

New Business

Discussion and possible recommendation to the Village Board RESOLUTION 2021-61 and RESOLUTION 2021-62 for Tavern and Outdoor Seating with Food and Drink Service for Jeffery Royal Jay (Jay's Lanes Inc.), applicant; 326 Atkinson Street, Parcel Number: MUKV 1976-098.

Motion made by Wamser/Kettner to table this discussion to August 10, 2021, giving staff time to resend hearing notices to neighbors of 326 Atkinson St within 250 feet, and for the applicant to provide more detailed plans, carried

Discussion and possible recommendation to Village Board RESOLUTION 2021-59 to approve a Site Plan and Architectural Review for a garage addition; American Legion, applicant; 627 E Veterans Way; Parcel MUKV 1964-991-001.

Fellows gave overview of project

Motion by Decker/Kettner to approve RESOLUTION 2021-59 a Resolution to approve Site Plan and Architectural Review for garage addition; American Legion, applicant; 627 E Veterans Way; Parcel MUKV 1964-991-001, carried

Discussion and possible recommendation to Village Board RESOLUTION 2021-58 to approve a 2-Lot Certified Survey Map drafted on 6-11-2021 by Kevin A. Slottke subject to documentation of Town Board approval. Scott and Courtney Babinat, applicant; Parcel MUKT 2005-102-001, MUKT 2005-143-003, and MUKT 2005-143-002.

Fellows gave overview of project

Motion by Decker/Brill to approve RESOLUTION 2021-58 a Resolution to approve a 2-Lot Certified Survey Map drafted on 6-11-2021 by Kevin A. Slottke subject to documentation of Town Board approval. Scott and Courtney Babinat, applicant; Parcel MUKT 2005-102-001, MUKT 2005-143-003, and MUKT 2005-143-002, carried.

Discussion and possible recommendation to the Village Board on ORDINANCE 996 to Amend the District Zoning Map of the Village of Mukwonago on behalf of the Village of Mukwonago, applicant; for property owned by Wendell Shultz and Daniel Schultz Parcel Number: #VM 00018 and #VM 00017A.

Fellows gave overview of project.

Motion by Decker/Brill to approve ORDINANCE 996 to Amend the District Zoning Map of the Village of Mukwonago on behalf of the Village of Mukwonago, applicant; for property owned by Wendell Shultz and Daniel Schultz Parcel Number: #VM 00018 and #VM 00017A, carried

Consideration and possible action on "Resolution Designating Proposed Amended Boundaries and Approving a Project Plan Amendment for Tax Incremental District No. 5, Village of Mukwonago, Wisconsin".

Fellows gave overview of project

Phil Cosson, Ehlers; gave overview of project

Motion by Decker/Brill to approve "Resolution Designating Proposed Amended Boundaries and Approving a Project Plan Amendment for Tax Incremental District No. 5, Village of Mukwonago, Wisconsin", with the following recommendations, carried
Roll Call: "Yes" Commissioner Brill, Decker, Rutenbeck, Winchowky

1. The recommendation was for the July 13, 2021 draft document.

2. Allowing staff and the consultant to review the document and find any typos.
3. Joint Review Board requested that there be a cap on the projects.
4. Joint Review Board requested a dollar cap overall for dollars spent in district.

Discussion and update regarding Articles 1-4 and Article 5 of the draft Zoning and Sign Code rewrite.

Fellows gave overview of project

Tim Schwecke, Civitek Consulting gave overview of project

Discussion and update regarding concepts regarding for the Sign Code rewrite.

Fellows gave overview of project

Tim Schwecke, Civitek Consulting gave overview of project

Adjournment

Meeting adjourned at 9:34 p.m.

Respectfully Submitted,
Linda Gourdoux
Deputy Clerk/Treasurer

**NOTICE OF PUBLIC HEARING BEFORE THE VILLAGE OF MUKWONAGO
PLAN COMMISSION TO CONSIDER A CONDITIONAL USE APPLICATION FOR
A TAVERN AND OUTDOOR SEATING WITH FOOD AND DRINK SERVICE AT
326 ATKINSON STREET, PARCEL MUKV 1976-098.**

Please take notice there will be a public hearing before the Village of Mukwonago Plan Commission in the Board Room of the Village Hall, 440 River Crest Court, Mukwonago, Waukesha and Walworth Counties, on Tuesday, August 10, 2021, commencing at 6:30 P.M. or soon thereafter to consider the following matter:

REGARDING: Consider a request for A Tavern and Outdoor Seating with Food and Drink Service, with a permitted or conditional use as a conditional use pursuant to Section 100-351, 100-152(F)(2) and 100-157 of the Village's Zoning Ordinance

TAX KEY/LOCATION: MUKV1976098; 326 Atkinson Street

APPLICANT: Jay's Lanes Inc.

LEGAL DESCRIPTION: PT LOT 7 BLK 7 ORIGINAL PLAT EX VOL 326/305 ALSO PARCEL 1 CERT SURV 21/345 R282/1158

The meeting/public hearing may be held online via Zoom if so, information will be indicated on the meeting agenda.

The proposal may be viewed at Village Hall, 440 River Crest Court, Mukwonago, WI during business hours. All interested parties will be heard. Written comments will be accepted up to the time of the hearing. For more information, please contact John Fellows, AICP, Village Planner at (262) 363-6420 x. 2111, or at planner@villageofmukwonago.com.

Diana Dykstra, Clerk-Treasurer

To be published: July 27th & August 3rd, 2021.



PLANNING COMMISSION

August 10, 2021 at 6:30pm

Mukwonago, WI

SITE PLAN AND ARCHITECTURAL REVIEW AND CONDITIONAL USE PERMIT

326 Atkinson Street

Parcel Number: MUKV 1976-098

Case Summary

Parcel Data

Proposal:	Patio at front of building for outdoor relaxation and dining.
Applicant:	Jeffery Royal Jay (Jay's Lanes Inc.)
Request:	Site Plan and Architectural Review Conditional Use Permit for outdoor dining
Staff Recommendation:	Approve with Conditions

Parcel Characteristics / Conditions

Acreage:	0.9123
Current Use:	Bowling Alley
Proposed Use:	Bowling Alley with Outdoor Dining Area
Reason for Request:	Site modifications
Land Use Classification:	Low Intensity Commercial / Business
Zoning Classification:	B-2 General Business / Village Center Overlay
Census Tract:	2039.01

Public Notice

A public hearing notice was published two times in the Waukesha Freeman, and letters were mailed to surrounding property owners. Public comment as of this date, staff has not received any comments or other communications regarding this proposal.

Site Plan and Architectural Review Request

Architectural/ Site Review

Site Modifications

The applicant is proposing to add an outdoor patio area to the east of the main entry on Atkinson Street. The patio is planned to be made of concrete. It will be 13 feet in depth and 33 feet in length. Currently this area contains grass and landscaping. The concrete will extend from the face of the building to the public sidewalk.

Utilities	No modifications at this time.
Stormwater Management	No modifications at this time.
Wetlands	None
Signage	No modifications at this time.
Parking	No modifications at this time.
Landscaping	No modifications at this time.
Trash Enclosure	No modifications at this time.
Fencing	No modifications at this time.
Outdoor Lighting	No modifications at this time.
Misc. Performance Standards	None

Staff Review

Engineering	No concerns
Public Works	No concerns
Utilities	No concerns
Police	No concerns
Fire	No concerns
Building Inspection	No concerns
Planning	No concerns

Conditional Use Request

Harmony with Village policies, ordinances, and programs

To Improve the curbside, appear of the business, right not nothing grow there. AN outdoor patio with outdoor seating will look much nicer. Maybe bring more people to the downtown area which is needed. Customer can enjoy the downtown area while sitting outside and relacing with a beverage or a bite to eat.

Specific Location within harmony with Village polices, ordinances and programs

The outdoor seating may bring more people to the downtown area and can enjoy the benefits and used o the establishment. May create more foot traffic, which will benefit all business.

Potential Adverse Impact on surrounding:

No. IT is only going to e a 500 ft square patio right next to the building. A wooded lot is across the street and parking lots on either side. The patio will have a fence around it. As of right now we have people outside there smoking with no complaints. With a patio present, it ill be more comfortable to all smokers and nonsmokers.

Maintaining consistency within the environs of the property:

It will lead to customers Enjoying their time at the business more due to the comfort level. That again hopefully leads to more people present Downton. A goal we all hope to achieve.

Adequate Services

It will be fine. Right next to the building with a fence around it. We will still have the sidewalk out front. So, the patio will be quite a way from the road. They will be confined to the outdoor area seating when present.

Benefits of the use outweigh adverse impacts.

I see no adverse impacts. Like I said, we have had people outside standing and smoking ever since the smoking ban was put in place, whit no complaints we have been in business quite a while with very few complaints I do not see that changing.

Hours of Operation:

Earliest 8:00am to the latest of 12:00am. Normally hours are noon to 11pm

Conditional Use Process / Findings

Review procedures the Plan Commission holds the public hearing and makes a recommendation to the Village Board which makes the final decision.

Following the close of the public hearing, the Plan Commission may recommend (1) approval, (2) approval with conditions, or (3) denial.

If approval is recommended, the Plan Commission can recommend conditions deemed necessary to protect the public health, safety, and welfare. The Plan Commission, in passing on the matter, will need to make the following determinations consistent with Section 100-354 of Mukwonago's zoning regulations:

1. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or welfare of the Village.
2. The uses, values and enjoyment of other property in the surrounding neighborhood that are already permitted shall be, in no foreseeable manner, substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
3. The establishment of the conditional use will not impede the normal and ordinary development and improvement of the surrounding property for uses permitted within the district and/or which are consistent with the standards in the Comprehensive Plan.
4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made to accommodate the use.
5. Adequate measures have been taken or will be taken providing ingress and egress to minimize traffic congestion on public streets so as not to diminish the level of service of any intersection which is impacted by traffic arising from the conditional use.

In addition, the property owner / tenant has shown compliance with the requirements set forth in the Village's zoning regulations for the specified use.

The Village Board will carefully review the recommendation of the Plan Commission and concurs with the Plan Commission's findings set forth above, provided the conditional use is operated pursuant to the conditions of approval set forth in this order.

These findings are incorporated into the draft conditional use order which is attached.

The Plan Commission shall approve a conditional use application if the terms and conditions of the zoning regulations are met. However, in the event the terms and conditions of the ordinance are not consented to and complied with by the applicant, the Commission may deny the application. In addition, the Commission may deny the application or place conditions on it if substantial evidence, as defined in §62.23(7) Wis. Stats. is presented. That evidence must demonstrate the inability of the applicant to comply with or meet the conditions of the zoning regulations or that the conditions to be applied by the Plan Commission are necessary to protect the public health, safety or welfare of the community based upon the presentation of substantial evidence. Potential motion for approval Recommend to the Village Board approval of the project as a conditional use as set forth in the attached conditional use order as drafted, provided the Village Attorney approves the final form of the conditional use order.

Recommendation

Site Plan and Architectural Review

Staff recommends the Planning Commission Approve a resolution for the Site Plan and Architectural Review, as set forth in the attached resolution.

1. Prior to any land disturbing activity, the applicant must submit a complete and final set of plans to the Village planner. All Village department heads must verify in writing whether they have approved the final plans within their purview. Any outstanding matters must be resolved to staff's satisfaction.
2. Prior to any land-disturbing activity, a pre-construction meeting must be held with the applicant's representatives and primary contractors, and Village department heads and representatives.
3. Prior to any land-disturbing activity, the applicant must reimburse the Village for any outstanding charges and establish an escrow account with the Village as may be required.
4. The applicant must obtain all required building permits within nine months of this date, and start construction within six months of the date of building permit issuance and continue in good faith to completion.
5. All work related to this project must comply with all project plans approved by the Village.
6. The developer must comply with all requirements related to impact fees imposed by the Village.
7. The developer shall comply with all parts of the Municipal Code as it relates to this project.
8. If the approved plans need to be revised to address any of the conditions of approval or to conform to Building and Fire Safety Codes, the Zoning Administrator and the Supervisor of Inspections are authorized to approve minor modifications so long as the overall project elements remain unchanged. If they determine that the revision is substantial, the plans must be submitted to the Plan Commission for review and approval.
9. The patio area shall be maintained in a clean state at all times, including cigarette debris, food and trash, etc.
10. Cigarette containers for butts shall be provided to assure a clean patio area.
11. Patio furniture design and style shall be simple in design, durable, and shall be approved by the Community Planner prior to purchase or installation to assure that it complements the vision of the village center area.
12. Patio fencing design and style shall be simple in design, durable, and shall be approved by the Community Planner prior to purchase or installation to assure that it complements the vision of the village center area a black or dark colored fence shall be chosen.
13. If umbrellas are to be used at tables, they shall all be matching with regard to design and style, a variety of colors is acceptable. Advertising on the umbrellas is not permitted.
14. Patio Furniture shall be maintained and when worn out replaced.

15. Patio furniture shall either be used during winter months or if stacked the items shall be stored in an area not visible for the public street.
16. Any future modification to the site such as modification of building, parking, lighting, grading, retaining walls, fences, etc. shall require Site Plan and Architectural Review.

Conditional Use

Staff Recommends the Planning Commission recommend to the Village Board approval of a conditional use permit as set forth in the attached resolution.

To – Grant a Conditional Use permit for an outdoor dining area following on going conditions deemed necessary to protect the health, safety, and welfare

1. **Ongoing conditions of approval.** The following conditions shall constitute an ongoing obligation:

- a. The patio area shall be surrounded by a fence. Such fence design and style shall be approved by the community planner. Any change to the fence shall require reapproval by the community planner.
- b. Outdoor food and drink service shall be contained to the patio area.
- c. Signage shall be applied for and approved by the Village prior to installation.
- d. Outdoor storage shall be located at the side or rear of the building and not within the patio area.
- e. The hours of the patio area shall not occur prior to 8am or later than 12 midnight.

and determining that the conditions are consistent with Section 100-354 of Mukwonago's zoning regulations:

1. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or welfare of the Village.
2. The uses, values and enjoyment of other property in the surrounding neighborhood that are already permitted shall be, in no foreseeable manner, substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
3. The establishment of the conditional use will not impede the normal and ordinary development and improvement of the surrounding property for uses permitted within the district and/or which are consistent with the standards in the Comprehensive Plan.
4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made to accommodate the use.
5. Adequate measures have been taken or will be taken providing ingress and egress to minimize traffic congestion on public streets so as not to diminish the level of service of any intersection which is impacted by traffic arising from the conditional use.

Attachments

1. Maps
2. Plans
3. Resolution for approval of a Conditional Use
4. Resolution for approval of the Site Plan and Architectural Review



Village of Mukwonago GIS
326 Atkinson St - Aerial

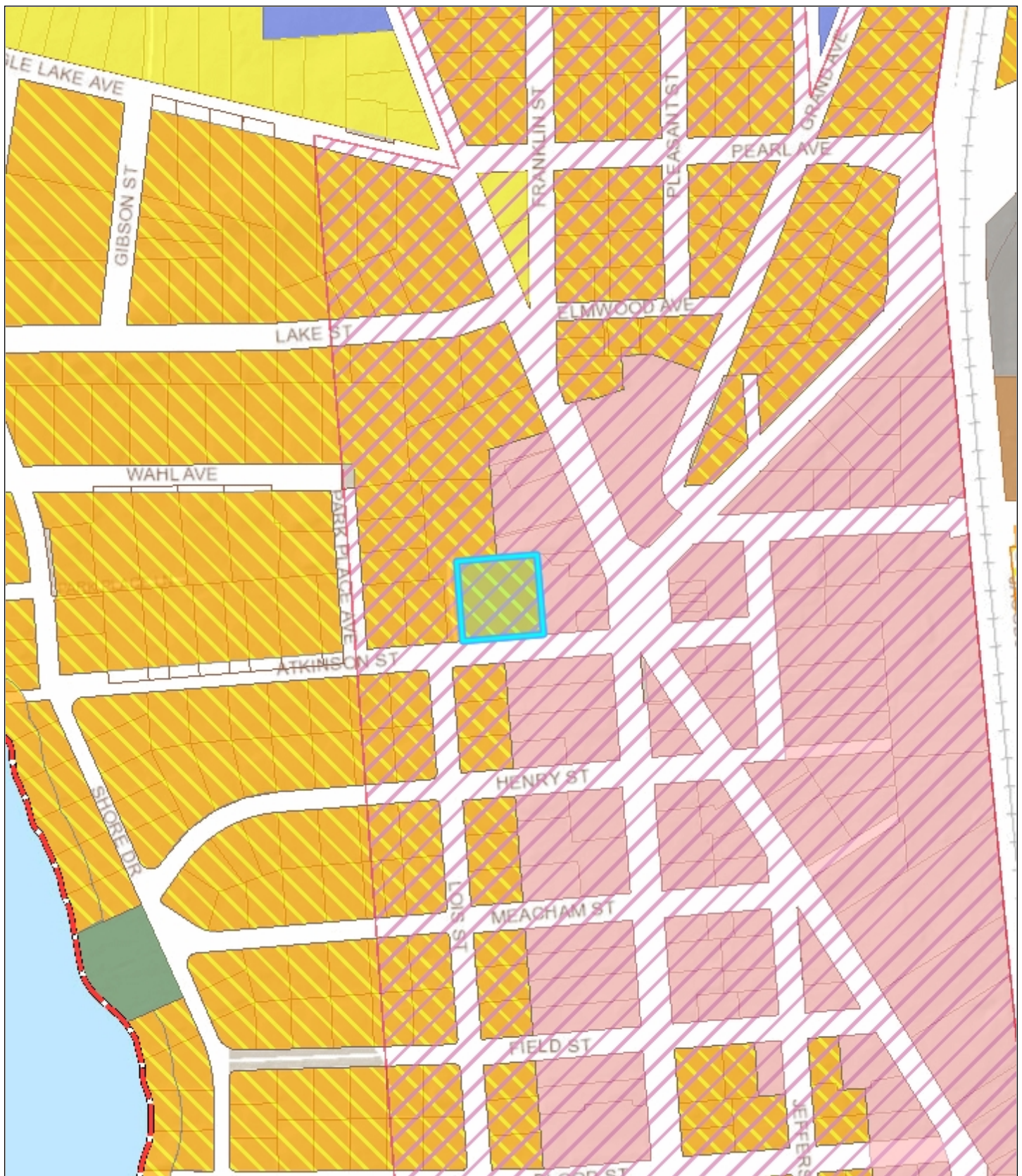
DISCLAIMER: The Village of Mukwonago does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.



SCALE: 1" = 200'

VILLAGE OF MUKWONAGO
440 River Crest Court
PO Box 206
Mukwonago, WI 53149
262-363-6420

Print Date: 7/20/2021



Village of Mukwonago GIS
326 Atkinson St - Land Use

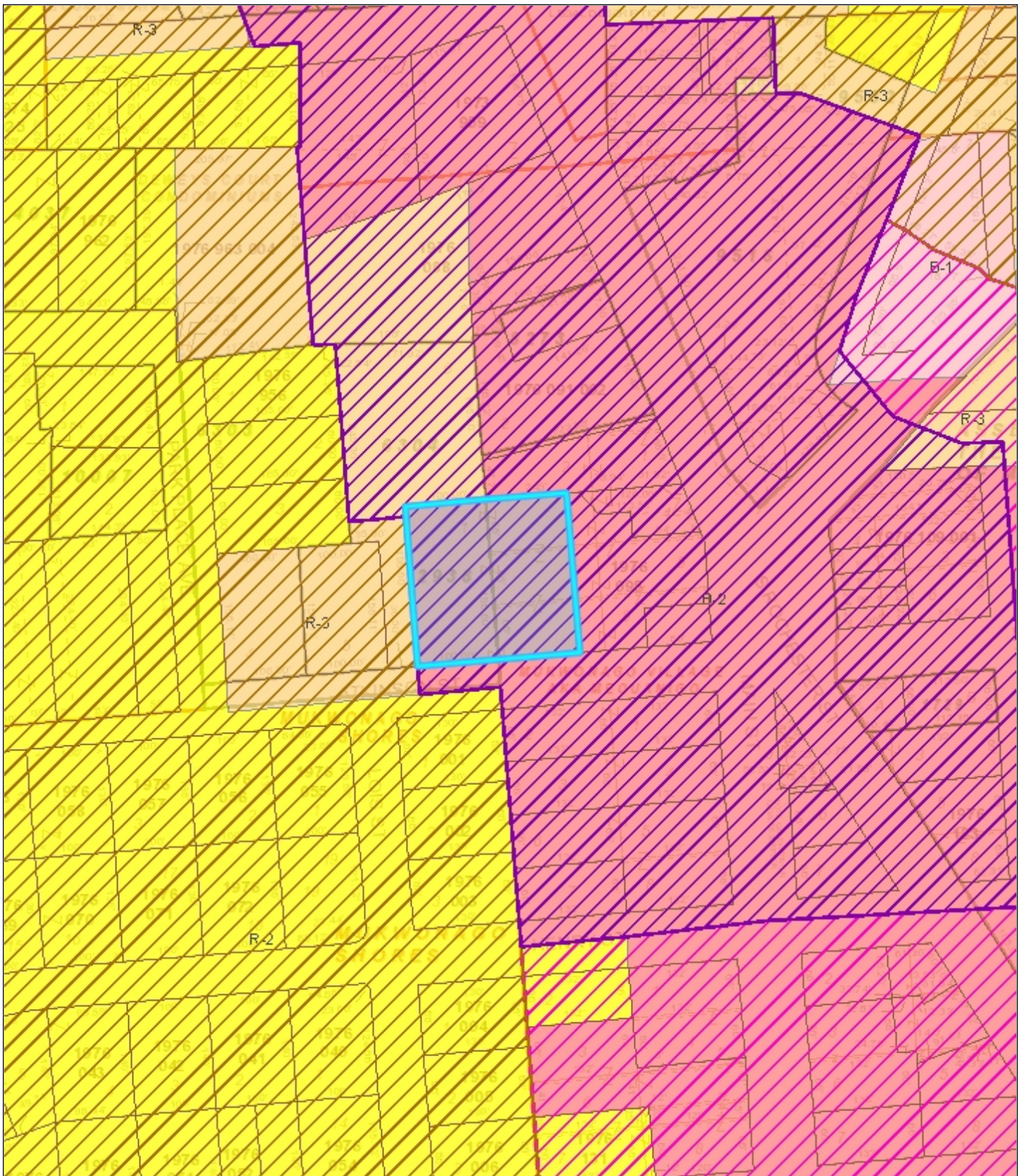
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SCALE: 1" = 333'

VILLAGE OF MUKWONAGO
440 River Crest Court
PO Box 206
Mukwonago, WI 53149
262-363-6420

Print Date: 7/20/2021



Village of Mukwonago GIS
326 Atkinson St - Zoning

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SCALE: 1" = 167'

VILLAGE OF MUKWONAGO
 440 River Crest Court
 PO Box 206
 Mukwonago, WI 53149
 262-363-6420

Print Date: 7/20/2021

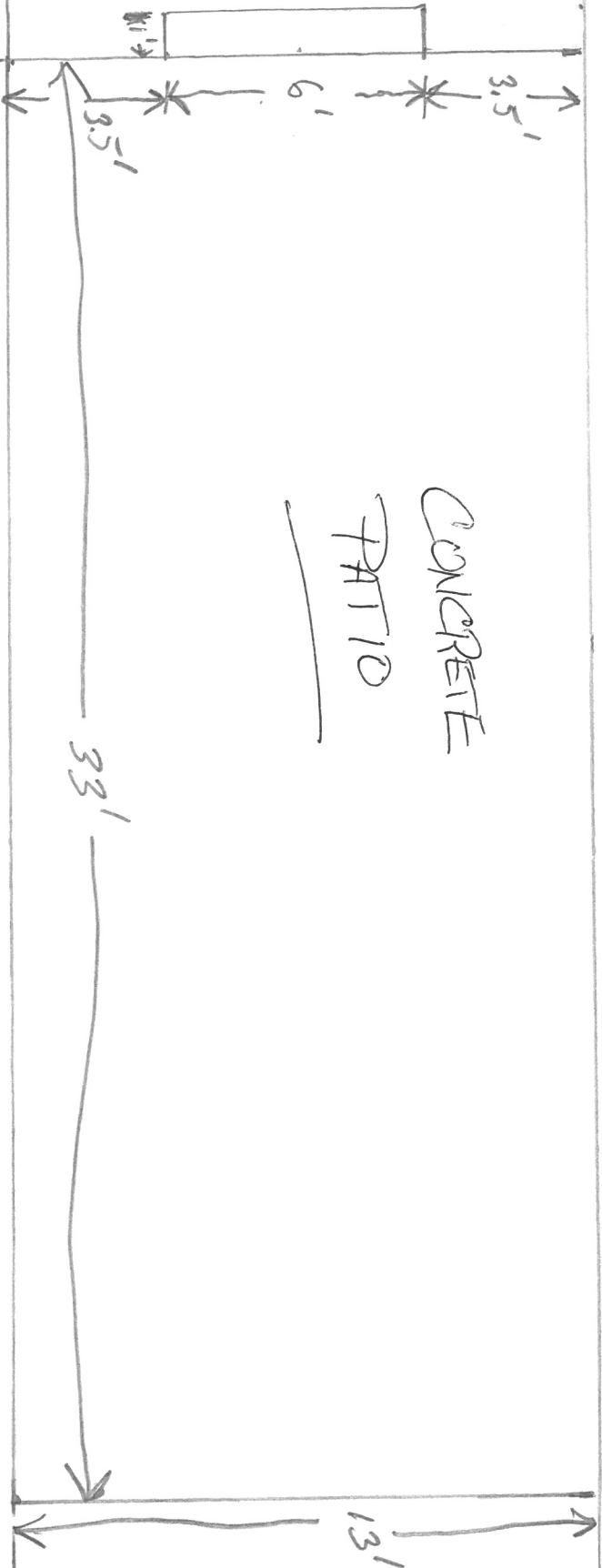
main JAY'S LANE'S OUTDOOR PATIO ADDN 1/4 INCH = 1 FOOT

main
ENTRANCE

EXISTING Building

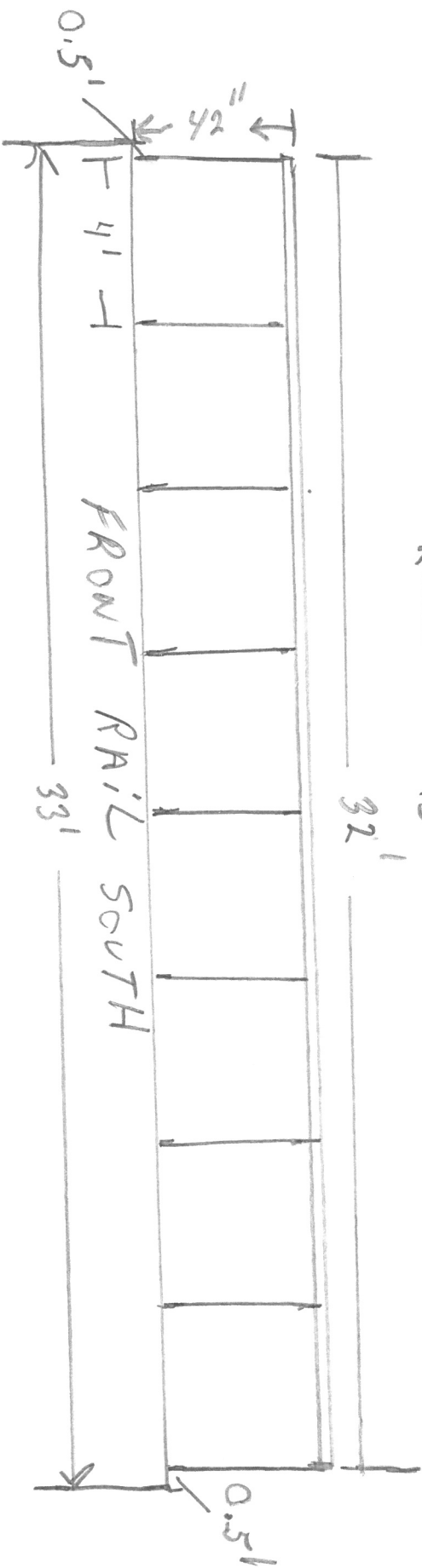
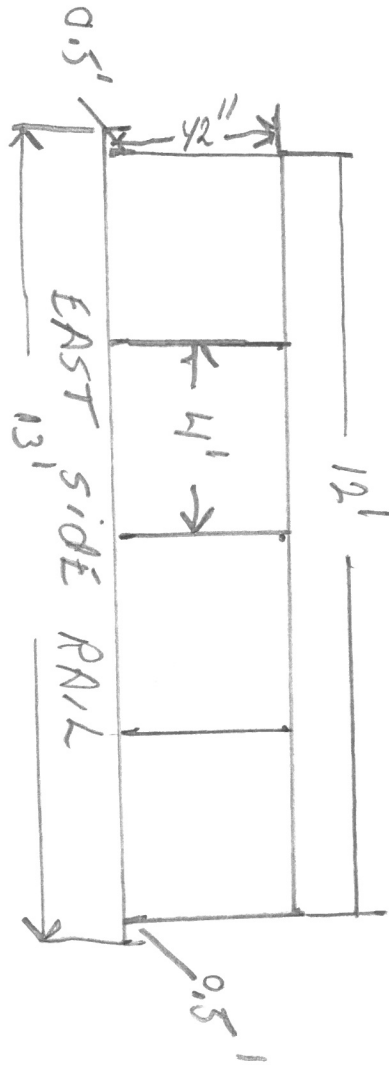
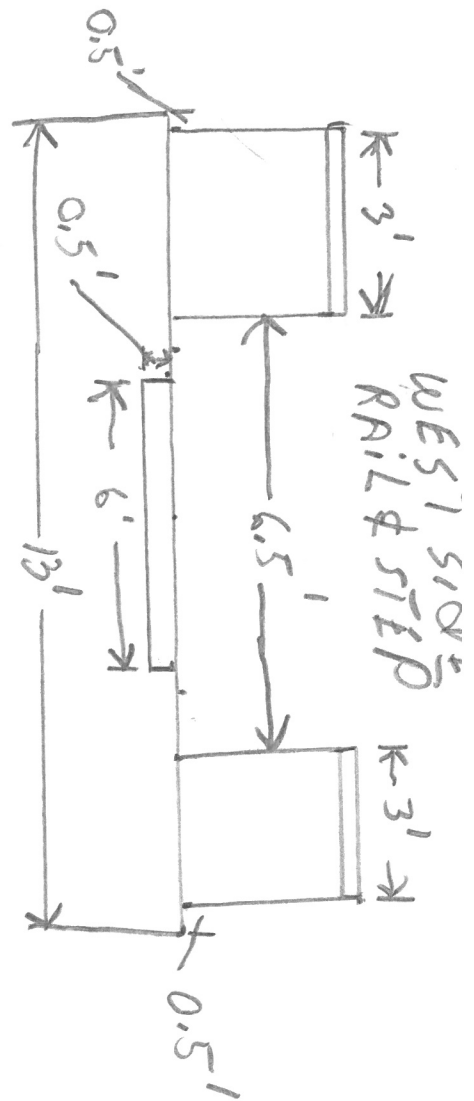
UL

SIDE WALK



Road

1/4 inch = 1 foot



RESOLUTION 2021-61

Village of Mukwonago Order Granting a Conditional Use and Prescribing Conditions for outdoor dining for Jeffery Royal Jay (Jay's Lanes Inc) for 326 Atkinson Street, Mukwonago, WI

WHEREAS, **Jeffery Royal Jay (Jay's Lanes Inc)** (hereinafter "property owner") owns the property identified as 326 Atkinson Street, (hereinafter "subject property") in the Village of Mukwonago, more particularly described as follows:

PT LOT 7 BLK 7 ORIGINAL PLAT EX VOL 326/305 ALSO PARCEL 1 CERT SURV 21/345 R282/1158

WHEREAS, the property owner has, consistent with the Village of Mukwonago's zoning regulations, submitted a conditional use application for an outdoor dining area per Section 100-153 (f) (2), and

WHEREAS, upon receipt of the petition submitted by the property owner and future purchaser, the Village Clerk properly referred such petition to the Plan Commission; and

WHEREAS, allowing for required public notice, the Plan Commission conducted a public hearing on August 10, 2021 to consider the petitioner's request; and

WHEREAS, members of the public in attendance were given ample opportunity to provide comment regarding the petitioner's request; and

WHEREAS, the Plan Commission passed a motion recommending to the Village Board that the conditional use be approved subject to certain conditions; and

WHEREAS, the Plan Commission, in passing on the matter, has made the following determinations consistent with Section 100-354 of Mukwonago's zoning regulations:

1. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or welfare of the Village.
2. The uses, values and enjoyment of other property in the surrounding neighborhood that are already permitted shall be, in no foreseeable manner, substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
3. The establishment of the conditional use will not impede the normal and ordinary development and improvement of the surrounding property for uses permitted within the district and/or which are consistent with the standards in the Comprehensive Plan.
4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made to accommodate the use.
5. Adequate measures have been taken or will be taken providing ingress and egress to minimize traffic congestion on public streets so as not to diminish the level of service of any intersection which is impacted by traffic arising from the conditional use.

In addition, the property owner and future purchaser has shown compliance with the requirements set forth in the Village's zoning regulations for the specified use.

Return to:

Diana Dykstra, Clerk-Treasurer
Village of Mukwonago
440 River Crest Court
Mukwonago, WI 53149

Parcel Number: MUKV 2009-998-004

WHEREAS, the Village Board has carefully reviewed the recommendation of the Plan Commission and concurs with the Plan Commission's findings set forth above, provided the conditional use is operated pursuant to the conditions of approval set forth in this order.

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED AS FOLLOWS:

1. **Authorized uses.** Subject to the terms and conditions of this approval and the sections of the zoning code that apply, the property owner is authorized to add additional landscaping to the site, a retaining wall, and vacuum stalls.
2. **Issuance of permit required.** The zoning administrator is authorized to issue the property owner a conditional use permit when all conditions enumerated in section 3 have been satisfied to his or her satisfaction. Such permit is the last approval before the property owner/tenant can begin to establish the use as authorized herein.
3. **Initial conditions of approval.** The following conditions shall be satisfied prior to the issuance of the conditional use permit:
 - a. The property owner must submit site/architectural plans to the Village for review and obtain approval of the same within 9 months of the date of this decision.
 - b. The property owner must accept the terms and conditions of this conditional use order in its entirety in writing within 6 months of the date of this decision. Prior to such expiration, the property owner may request an extension to this time period and the Village Clerk may approve an extension with good cause.
 - c. This order must be recorded against the subject property in the Waukesha County register of deeds office (only if subsections 3(a) through 3(b) have been satisfied).

In the event the requirements enumerated in subsections 3(a) and 3(b) above are not satisfied, this order shall automatically be null and void without any further action by the Village of Mukwonago on the aforementioned date.

4. **Ongoing conditions of approval.** The following conditions shall constitute an ongoing obligation:
 - a. The patio area shall be surrounded by a fence. Such fence design and style shall be approved by the community planner. Any change to the fence shall require reapproval by the community planner.
 - b. Outdoor food and drink service shall be contained to the patio area.
 - c. Signage shall be applied for and approved by the Village prior to installation.
 - d. Outdoor storage shall be located at the side or rear of the building and not within the patio area.
 - e. The hours of the patio area shall not occur prior to 8am or later than 12 midnight.
5. **Expansion or changes.** The conditional use hereby authorized shall be confined to the subject property without extension or expansion. Any expansion or change in use shall require issuance of a new conditional use approval pursuant to the requirements in effect at the time of application.

6. **Modification of property boundary lines.** The property owner shall not change the size and/or shape of the subject property by any means without the approval of the Village Board. If the Village Board determines that a proposed change is substantial with regard to the overall size of the parcel and/or configuration, such change shall require issuance of a new conditional use approval pursuant to the requirements in effect at the time of application.

7. **Plans and related matters.** Unless otherwise expressly stated herein, plans that are specifically required by this conditional use order may be amended upon the prior approval of the Plan Commission if the Plan Commission finds the amendment to be minor and consistent with the conditional use order and permit. Any change in any plan that the Plan Commission feels, in its sole discretion to be substantial, shall require a new conditional use approval and all procedures in place at the time must be followed.

8. **Inspection.** The property owner shall allow Village of Mukwonago staff, officials, and other authorized agents to inspect the subject property, at any reasonable time and for any proper purpose related to compliance with this conditional use order.

9. **Discontinuance.** Should the conditional use be discontinued in use for 365 consecutive days the use shall be terminated as set forth in the Village of Mukwonago's zoning regulations.

10. **Private rights.** This approval is given under the Village of Mukwonago's zoning regulations and is not to be interpreted to abrogate any private rights other property owners may have pursuant to deed restrictions or restrictive covenants.

11. **Interpretation.** If any aspect of this conditional use order is in conflict with any other aspect of the conditional use order, the more restrictive provisions shall be controlling, as determined by the Plan Commission.

12. **Other permits.** This order shall not be deemed to constitute a building permit, or constitute any other license or permit required by Village ordinance, or other local, state, or federal law.

13. **Severability.** In the event a court of competent jurisdiction determines that a paragraph or phrase of this conditional use order is unlawful, illegal, or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the conditional use order and the remainder shall continue in full force and effect.

14. **Heirs, successors, and assigns.** This conditional use order shall be binding upon the property owner and their heirs, successors, and assigns. Upon a change in ownership, the property owner shall notify the Village Clerk.

15. **Ongoing review.** This conditional use may be reviewed by the Plan Commission with notice to the property owner at any time upon complaint or upon Plan Commission initiative. If it is determined that the authorized use is no longer compatible, or that the provisions of this approval have not been complied with, the Village Board may revoke or amend this order after recommendation by the Plan Commission and holding of a public hearing.

16. **Amendment.** The property owner may propose an amendment to this conditional use order at anytime by submitting a written petition to the Village Clerk, which shall be reviewed pursuant to the requirements in effect at the time of application.

17. **Violation.** Any violation of this order may be treated as a violation of Mukwonago's zoning regulations and each day of each violation of each condition herein shall be treated as a separate violation.

18. **Acceptance.** GRANTEES hereby accept the said Conditional Use Grant and covenant strictly to comply with all the terms and conditions thereof. GRANTEES acknowledge that, in accordance with the provisions of the Zoning Code, failure to comply with any conditions of the Conditional Use Grant is cause for the termination of said Grant by the Village. GRANTEES also acknowledge that approval of the Conditional Use Grant allows the appropriate Village officials to conduct reasonable and routine inspections of the property. This Covenant shall run with the land and shall be binding on the GRANTEES and all persons claiming any estate or interest in the Premises by, through or under the GRANTEES, as long as the said Premises are used as described in the Conditional Use Grant

Approved this 18th day of August, 2021

BY THE VILLAGE BOARD OF THE VILLAGE OF MUKWONAGO

Fred Winchowky, Village President

Attest:

Diana Dykstra, Village Clerk

STATE OF WISCONSIN, WAUKESHA/WALWORTH COUNTY

Personally came before me this ____ day of _____ 2021, the persons described above, Fred Winchowky, Village President, and Diana Dykstra, Village Clerk, to me known to be the persons who executed the foregoing instrument and to me known to be such Village President and Village Clerk of the Village of Mukwonago and acknowledged that they executed the foregoing instrument as such officers of said municipal corporation by its authority and pursuant to the authorization by the Village Board from their meeting on the 18th day of August, 2021.

NOTARY PUBLIC

My Commission Expires:

The remainder of this page left intentionally blank.

Acceptance by Property Owner

I, Jeffery Royal Jay verify that I am an authorized agent for Jay's Lanes Inc accepts the terms stated herein.

Dated this _____ day of _____, 2021

Jeffery Royal Jay, agent

STATE OF WISCONSIN, WAUKESHA/WALWORTH COUNTY

Personally, came before me this _____ day of _____, 2021, the above-named person, Jeffery Royal Jay to me known to be the person who executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC

My Commission Expires:

Drafted by John S. Fellows, AICP, Planner, at the direction of the Mukwonago Village Board.

RESOLUTION 2021- 62

**RESOLUTION APPROVING SITE PLAN AND ARCHITECTURAL REVIEW
FOR JAY'S LANES, APPLICANT
at 326 Atkinson Street
Parcel Number: MUKV 1976-098**

WHEREAS, pursuant to Section and 100-601, and 100-153 of the Zoning Code, an application for a site plan and architectural review has been filed for the approval for an outdoor dining area, which application was filed in the office of the Village Clerk, Village of Mukwonago, Wisconsin, and

WHEREAS, the application has been submitted by the JAY'S LANES

WHEREAS, outdoor dining areas are allowed with a conditional use within the B-2/ Village Center Multi-Purpose Overlay in which the subject property is located, and

WHEREAS, the plan of operation and plans have been reviewed and recommended by the Village Plan Commission.

NOW, THEREFORE, BE IT RESOLVED by the Village Board of the Village of Mukwonago, Wisconsin hereby approves the site plan and architectural review for outdoor dining area at **326 Atkinson Street**, based upon the plan of operation and plans submitted to the Village.

NOW, THEREFORE, BE IT FURTHER RESOLVED this site plan and architectural review approval shall be subject to the following conditions:

1. Prior to any land disturbing activity, the applicant must submit a complete and final set of plans to the Village planner. All Village department heads must verify in writing whether they have approved the final plans within their purview. Any outstanding matters must be resolved to staff's satisfaction.
2. Prior to any land-disturbing activity, a pre-construction meeting must be held with the applicant's representatives and primary contractors, and Village department heads and representatives.
3. Prior to any land-disturbing activity, the applicant must reimburse the Village for any outstanding charges and establish an escrow account with the Village as may be required.
4. The applicant must obtain all required building permits within nine months of this date, and start construction within six months of the date of building permit issuance and continue in good faith to completion.
5. All work related to this project must comply with all project plans approved by the Village.
6. The developer must comply with all requirements related to impact fees imposed by the Village.
7. The developer shall comply with all parts of the Municipal Code as it relates to this project.
8. If the approved plans need to be revised to address any of the conditions of approval or to conform to Building and Fire Safety Codes, the Zoning Administrator and the Supervisor of Inspections are authorized to approve minor modifications so long as the overall project elements remain unchanged. If they determine that the revision is substantial, the plans must be submitted to the Plan Commission for review and approval.

Village of Mukwonago
Walworth and Waukesha Counties, State of Wisconsin

9. The patio area shall be maintained in a clean state at all times, including cigarette debris, food and trash, etc.
10. Cigarette containers for butts shall be provided to assure a clean patio area.
11. Patio furniture design and style shall be simple in design, durable, and shall be approved by the Community Planner prior to purchase or installation to assure that it complements the vision of the village center area.
12. Patio fencing design and style shall be simple in design, durable, and shall be approved by the Community Planner prior to purchase or installation to assure that it complements the vision of the village center area a black or dark colored fence shall be chosen.
13. If umbrellas are to be used at tables, they shall all be matching with regard to design and style, a variety of colors is acceptable. Advertising on the umbrellas is not permitted.
14. Patio Furniture shall be maintained and when worn out replaced.
15. Patio furniture shall either be used during winter months or if stacked the items shall be stored in an area not visible for the public street.
16. Any future modification to the site such as modification of building, parking, lighting, grading, retaining walls, fences, etc. shall require Site Plan and Architectural Review.

NOW, THEREFORE, BE IT FURTHER RESOLVED the applicant, upon the approval of this site plan and architectural review shall agree to accept the same in writing.

Passed and dated this 18th day of August 2021.

VILLAGE OF MUKWONAGO

By: _____
Fred Winchowky, Village President

Attest: _____
Diana Dykstra, Village Clerk-Treasurer



Village of Mukwonago

440 River Crest Court, Mukwonago, Wisconsin 53149
www.villageofmukwonago.com | (262) 363-6420 | Fax: (262)363-6425

To: Planning Commission

From: John Fellows, Community Planner, Interim Economic Development Director

Date: August 5, 2021

Regarding: Zoning Code and Sign Code – Draft Signage Document 8-2021

Attached you will find a draft of the signage ordinance to date. At the meeting we will provide a summary of the document and have a series of question for you that will provide us direction as we move forward with the drafting of the documents.

Please review the document and bring any questions, comments, or suggestions to the meeting so we can address. At this time the document is a draft and there are still elements and components that have not been drafted, but we both feel it is important to provide drafts of the documents to the commission as we move forward.

CHAPTER 106 – SIGNS

Article 1. General Provisions
Article 2. General Standards and Requirements
Article 3. Specific Standards and Requirements by Sign Type
Article 4. Permissible Signage
Article 5. Administration
Appendix A. Permissible Signage by Location
Appendix B. Definitions

ARTICLE 1 GENERAL PROVISIONS

106.01 Legislative findings

The Village Board makes the following legislative findings relating to signs:

- (1) In addition to signage allowed by this chapter, individuals, groups of people, and businesses have numerous means to communicate different types of speech, including print media, broadcast media, direct mailings to households, and dissemination of information on the Internet.
- (2) Sign regulations in this chapter (i) promote the public welfare, health, and safety of people using the public roads and other public travelways; (ii) advance the aesthetic goals of the Village while allowing creative and effective signage; and (iii) reduce the visual clutter caused by advertising signage which is a significant cause of unsafe traffic and visibility conditions.
- (3) Sign regulations in this chapter are not intended to control the content of a message, except as allowed by law, or to unduly restrict the appearance of a sign.
- (4) The limitations placed on signs by this chapter are deemed to be the minimum necessary to accomplish the purposes of this chapter.

106.02 Purpose

This chapter promotes the public health, safety, and general welfare and is intended to:

- (1) encourage the effective use of signs as a means of communication in the Village;
- (2) maintain and enhance the aesthetic environment and the Village's ability to attract sources of economic development and growth;
- (3) promote the desired community and neighborhood character and aesthetics described in the Village's comprehensive plan;
- (4) protect the safety of the public by requiring proper maintenance of signs and establishing minimum design and construction standards;
- (5) improve pedestrian and traffic safety by reducing distractions and obstructions and discouraging visual competition;
- (6) minimize the possible adverse effect of signs on nearby public and private property;
- (7) enable the fair and consistent enforcement of these restrictions.

106.03 Applicability

All signs located in the Village must comply with this chapter, except for the following which are exempt:

- (1) A traffic control sign and other similar regulatory signage when located on public property along a roadway or other travelway when placed by or authorized by the federal government, the State of Wisconsin, Walworth County, Waukesha County, or the Village.
- (2) A sign inside of a building that does not meet the definition of a window sign.
- (3) A legal notice posted on private property as may be required or authorized by municipal, state, or federal law.
- (4) A scoreboard associated with an outdoor athletic field, which is to be reviewed as part of a site plan review.
- (5) A sports league sponsor sign (banner or rigid) that is temporarily affixed to a fence on an outdoor athletic field, which is subject to other regulations as may be adopted by the Village Board.
- (6) A sign that is not visible from a public right-of-way.
- (7) Murals as set forth in _____. (Let's discuss)

106.04 Internal conflict

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

106.05 General rules of interpretation and definitions

- A. **General rules.** General rules of interpretation are set forth in Chapter 1 of the Municipal Code.
- B. **Words and phrases not defined.** Unless specifically defined in this section, words and phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.
- C. **Words and phrases defined.** For the purpose of this chapter, certain words and phrases are defined in Appendix B and shall have the meaning ascribed to them, except where the context clearly indicates a different meaning.

106.06 Delegation of authority

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

106.07 Website

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

106.08 Use of graphics, illustrations, headings, references, and editorial notes

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

106.09 Reference to state and federal law

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

106.10 Copyright protection

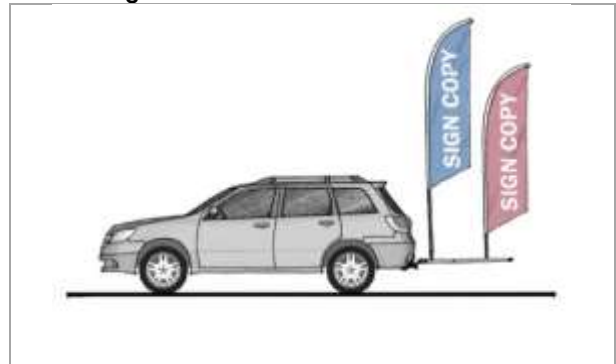
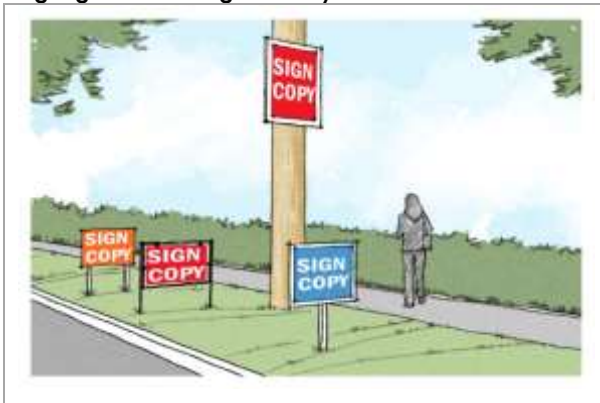
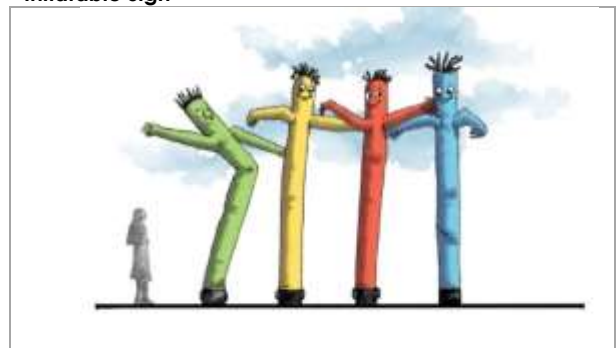
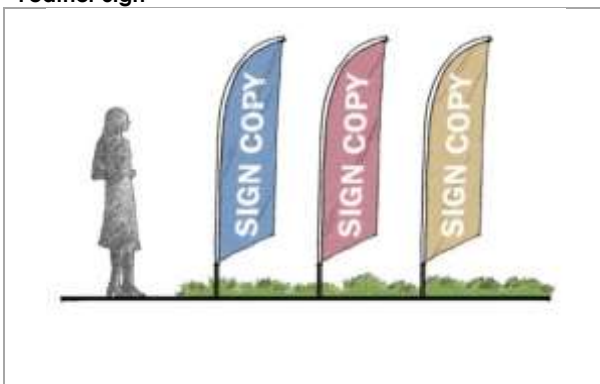
This chapter contains images that are copyright protected and are denoted as such. All such images are used with permission of the copyright holder for the exclusive purposes of this chapter. Any images subject to copyright protection may be reproduced as part of this chapter and are subject to the open records law of Wisconsin, but may not be used in other works without the permission of the copyright holder.

106.11 Severability

If any clause, sentence, paragraph, section, or part of this chapter be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining portions of this chapter, but shall be confined in its operation to such part in which said judgment shall have been rendered.

106.12 to 106.29 Reserved**ARTICLE 2
GENERAL STANDARDS AND REQUIREMENTS****106.30 Prohibited signs**

- A. **Intent.** Some specific signs and classes of signs, provide little value while harming community aesthetics and/or the public welfare.
- B. **Undefined signs.** A sign not specifically allowed in this chapter is prohibited.
- C. **Unauthorized signs on public property.** A sign located on public property, including a public right-of-way, is prohibited unless specifically approved by the jurisdiction having authority over such public property.
- D. **Vehicle signs.** Vehicle signs are prohibited.
- E. **Inflatable signs.** Inflatable signs are prohibited.
- F. **Feather signs.** Feather signs are prohibited.
- G. **Roof signs.** Roof signs are prohibited.
- H. **Projected signs.** Projected signs (e.g., holographic) are prohibited.
- I. **Pylon signs.** Pylon signs are prohibited.
- J. Any sign that does not comply with state law, including § 944.21, Wis. Stats., is prohibited

Sample of Prohibited Signs**Vehicle Sign****Vehicle Sign****Signage in Public Right-of-way****Projected (holographic) Sign****Inflatable Sign****Inflatable Sign****Feather Sign****Roof Sign**

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106.31 Dangerous and unmaintained signs

- A. **Intent.** In order to ensure public welfare and safety, and to promote community aesthetics, dangerous, and unmaintained signs shall be ordered removed from the property upon which they are located.
- B. **Abandoned signs.** All signs or sign messages should be removed for any business within 30 days by the owner or lessee of the premises, when the business it advertises is no longer conducted.
- C. **Dilapidated or deteriorated signs.** The Village Board or zoning administrator may seek the removal of a sign determined to be deteriorated or dilapidated subject to the procedures and requirements set forth in state law, including §§ 66.0413, Wis. Stats.
- D. **Maintenance and repair.** A sign that is allowed under this chapter, including nonconforming signs, must be maintained so that it is (1) safe, (2) clean, (3) in proper working condition, and (4) structurally sound.
- E. A sign must be kept neatly painted, including all metal parts and supports that are not galvanized or of rust-resistant material.
- F. The zoning administrator shall have the authority at any time to inspect and order the painting, repair, alteration, or removal of a sign which constitutes a hazard to the safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, or change in local conditions.

106.32 General standards for all signs

- A. A sign shall not resemble, imitate, or approximate traffic or railroad signs, signals, or devices.
- B. A sign shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or devices.
- C. A sign shall not cause glare, mislead or confuse traffic, or impair driver visibility on public ways, private roadways, or adjoining properties.
- D. A sign shall not be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window, stairway, fire escape, or driveway.
- E. A sign shall not be attached to a standpipe or fire escape.
- F. A sign shall not be attached to a tree or painted on rocks.
- G. Balloons, ribbons, or any other attention-getting devices shall not be attached to a sign, including any supports.
- H. A sign shall not flash, blink, strobe, or be animated, except as specifically allowed in this chapter.
- I. A sign shall not oscillate or rotate, or move in any other manner.
- J. A sign shall not emit any sound, odor, or visible matter (e.g., bubbles, steam).
- K. A sign must comply with any state and local building codes as applicable.
- L. When a sign is authorized to contain electrical power or when a sign is illuminated by one or more external light fixtures, the electric wire providing the electric power to the sign or the light fixture must be placed underground.
- M. A sign shall not be placed on a telecommunication tower, except as required or permitted under the Village's zoning code.
- N. A sign shall comply with state law, including § 944.21, Wis. Stats.

106.33 Electronic message displays

- A. **Findings.** The Village Board makes the following findings regarding electronic message displays (EMDs):
 - (1) Electronic displays are designed to produce sufficient brightness to ensure clear legibility during daylight hours. However, daytime brightness settings are inappropriate for night-time viewing.
 - (2) Electronic displays that are too bright at night can be offensive and reduce the legibility of the display copy.
 - (3) Technology exists to control lighting levels, with scheduled dimming based on sunset-sunrise tables or with photocells.

- (4) Appropriate standards are necessary to ensure electronic displays do not become a nuisance to surrounding property owners or pedestrians or a distraction to passing motorists.

B. **General standards.** An electronic message display when allowed by this chapter must comply with the following minimum standards:

- (1) An electronic message display must be equipped with technology the sign owner can use to program lighting levels to comply with the lighting standards in this section (i.e., automatic dimming).
- (2) Except for time and temperature displays, the message shall remain static at least 60 second before the next message appears.
- (3) No part of the message can flash, fade in or out, or otherwise create the appearance of movement.
- (4) There shall be no transition between messages (i.e., no traveling, scrolling, dissolving, or fading).
- (5) The electronic message display must be turned off by 11:00 pm each day or 30 minutes after the close of the business on the premises whichever is later and shall remain off until 5:00 am or one hour before the business is open, whichever is earlier, the following day.
- (6) An electronic message display may not be located on more than one sign (i.e., one per parcel) if such other sign is otherwise allowed.
- (7) An electronic message display must be placed, designed, and constructed to be an integral part of the sign to which it is attached.
- (8) An electronic message display must be located more than 100 feet from an electronic message display on an adjoining parcel.
- (9) By installing an electronic message display the property owner agrees to cooperate with the zoning administrator in testing the illuminance of the display.
- (10) Lighting levels shall not exceed 0.1 footcandles over ambient lighting conditions at the property boundary line of a residential property or 0.2 footcandles over ambient lighting conditions at the property boundary line of a commercial, industrial, or institutional property.
- (11) Lighting levels shall not exceed 0.3 footcandles over ambient lighting conditions when measured at the specified distance in the table below, based on the size of the display. The publication titled "Night-time Brightness Level Recommendations for On-Premise Electronic Message Centers," as published by the International Sign Association, describes how lighting levels are to be measured. A copy of this publication is available from the building inspector.

Sign Area (square feet)	Measurement Distance (feet)
10	32
15	39
20	45
25	50
30	55
35	59
40	63

Note: The sign areas listed in this table are for illustration only. The Village's sign regulations may not allow the sign areas listed. For signs areas not listed, the measurement distance is calculated with the following formula:

$$\text{Measurement distance} = \sqrt{\text{Area of sign area (in square feet)} \times 100}$$

106.34 Electric signs

A sign contractor or other qualified individual may install electric signs and install ballasts, high-voltage transformers, lighting tubes, and other components, but may not do any work that is otherwise regulated by the National Electrical Code or other Village regulation such as connecting an electric sign to the primary branch circuit.

106.35 to 106.49 Reserved

ARTICLE 3 SPECIFIC STANDARDS AND REQUIREMENTS BY SIGN TYPE

106.50 Awning signs

- A. The awning, whether existing or proposed, must be conforming to all applicable regulations.
- B. The awning, whether existing or proposed, must be made of an opaque material.
- C. The awning must be located above the primary public access or windows that face the parking lot or public street.
- D. An awning sign must complement the scale and proportion of the awning, and compliment the architectural style of the building on which it is to be attached.
- E. When located above a walkway, the bottom edge of the awning must be at least 8 feet above the surface of the walkway.
- F. The sign shall only be placed on the valance (i.e., the vertical flap of the canopy) that is parallel to the face of the building.
- G. If the awning extends over public property (e.g., above a public sidewalk in a street right-of-way), the property owner must obtain a hold harmless agreement, or equivalent written approval, from the entity having jurisdiction over the public property.

106.51 Marquee signs

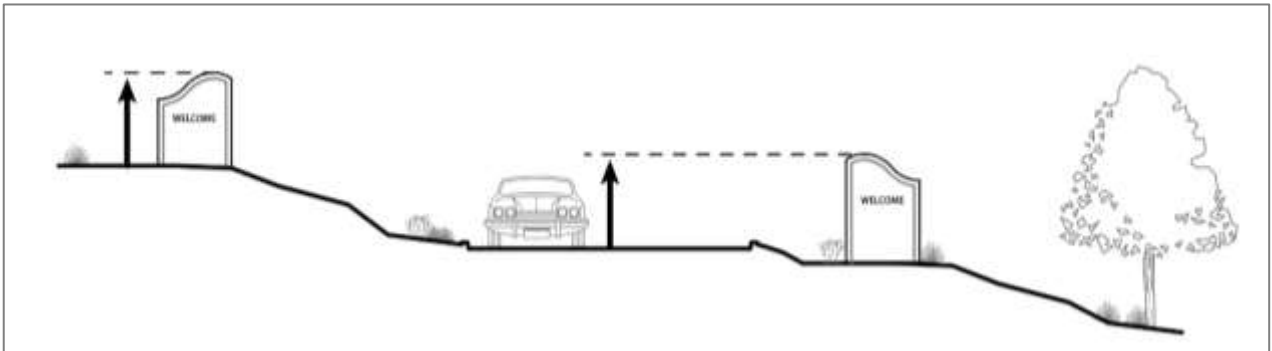
- A. The marquee, whether existing or proposed, must be conforming to all applicable regulations.
- B. The marquee must be located above the primary public access.
- C. A marquee sign must complement the scale and proportion of the marquee, and compliment the architectural style of the building on which it is to be attached.
- D. When located above a walkway, the bottom edge of the marquee must be at least 8 feet above the surface of the walkway beneath the canopy.
- E. The sign shall only be placed on the vertical surface of the marquee.
- F. If the marquee extends over public property (e.g., above a public sidewalk in a street right-of-way), the property owner must obtain a hold harmless agreement, or equivalent written approval, from the entity having jurisdiction over the public property.

- G. The area of a marquee sign without a distinctive border or background is the smallest rectangle encompassing all words, letters, figures, emblems, and other elements of the sign message. The area of a marquee sign with a distinctive border and/or background is the smallest rectangle encompassing the border or background.

106.52 Monument signs

- A. A monument sign must comply with all applicable building regulations, along with any additional construction standards in this chapter.
- B. Lighting for a monument sign must comply with the National Electrical Code (NEC).
- C. Balloons, ribbons, or any other attention-getting devices shall not be attached to a monument sign, including the support structure.
- D. Landscaping must be provided and maintained around the base of the sign for a minimum distance of 5 feet. Such landscaping must consist of small shrubs, perennial/annual plants, ground cover, or a combination thereof so as to not block or interfere with the sign message. Upon petition, and with good cause, the **zoning administrator** may allow an exception to this requirement.
- E. The base of a monument sign must be covered with brick, stone, split-face masonry block, wood, stucco, or other material that complements the exterior building materials on the principal building.
- F. The width of the base of a monument sign must be at least 80 percent of the width of the sign face.
- G. A monument sign must be located at least 5 feet from a public street right-of-way.
- H. A monument sign must be located at least 15 feet from an access drive.
- I. A monument sign must be self-supporting (i.e., no guy wires or the like).
- J. A monument sign must be attached to a permanent foundation set in the ground that complies with the requirements of the International Building Code (IBC) adopted at the time of the permit application.
- K. A monument sign shall not unreasonably obstruct the view of a conforming sign on another property.
- L. Electric service to a monument sign must be concealed (e.g., placed underground).
- M. A monument sign shall not be placed within the vision clearance area except as may be allowed by the Municipal Code.
- N. If internally illuminated, the sign face of a monument sign must be constructed with an opaque surface to allow internal light to project only through the cut-out lettering and/or logos.
- O. The height of monument sign is measured from the surrounding grade to the top of sign. If the monument sign is located within 50 feet of the edge of the street and the surrounding grade is below the grade of the abutting street, then the sign height is measure from the street grade to the top of the sign as indicated below.

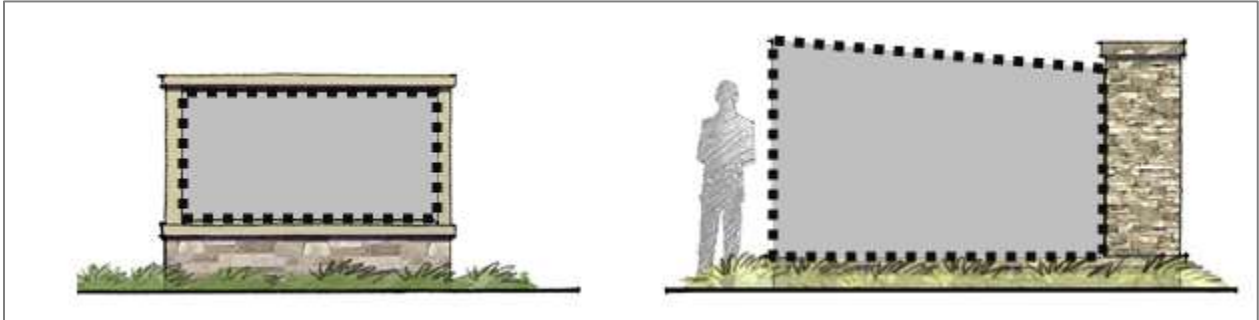
Measuring the height of a monument sign



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- P. The area of a monument sign is the actual area of the sign face. If a monument sign is three-dimensional, the sign area is the area of the object projected on a flat surface. The horizontal base, the vertical pillars, brackets, and other supports are not included in the area calculation.

Measuring the area of a ground sign



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106.53 Projecting signs

- A. A projecting sign must complement the scale, proportion, and architectural style of the building on which it is to be attached.
- B. The bottom of the projecting sign must be at least 8 feet above grade and the top of the sign must not extend higher than the face of the building wall on which it is attached.
- C. If a projecting sign extends over public property (e.g., above a public sidewalk in a street right-of-way), the property owner must obtain a hold harmless agreement, or equivalent written approval, from the entity having jurisdiction over the public property.
- D. The area of a projecting sign is the area of the sign face. If a projecting sign is three-dimensional, the sign area is the largest area of the object projected on a flat surface. Brackets and other supports are not included in the area calculation.
- E. The maximum distance a projecting sign can extend past the face of the building on which it is attached is based on the distance from the grade below the sign to the bottom of the sign as follows:
 - 2.5 feet from building face for a sign 8 to 10 feet above grade
 - 3 feet from building face for a sign 11 to 13 feet above grade
 - 4 feet from building face for sign 14 to 16 feet above grade
 - 5 feet from building face for a sign more than 16 feet above grade

In no event can a projecting sign be closer than 3 feet to the curb line of a street or internal vehicle use area including internal drives and parking areas.

106.54 Sidewalk signs

- A. A sidewalk sign must be freestanding and at sidewalk grade level.
- B. A sidewalk sign shall not have other attention-getting devices, such as balloons and ribbons, attached to them.
- C. A sidewalk sign must be securely weighted or otherwise designed to not shift, move, or topple over in the wind or present a hazard to the public.
- D. A sidewalk sign must be located within 10 feet of the primary access to the business.
- E. A sidewalk sign placed on a public sidewalk (i.e., within the street right-of-way) must be kept inside the business when the business is closed.
- F. A sidewalk sign placed on a public sidewalk (i.e., within the street right-of-way) shall not be located closer than 10 feet to another authorized sidewalk sign.
- G. A sidewalk sign placed on a public sidewalk (i.e., within the street right-of-way) shall not obstruct vehicular/bus stops, benches, fire hydrants, or other features located legally in the right-of-way.

- H. A sidewalk sign placed on a public sidewalk (i.e., within the street right-of-way) must leave a minimum of 5 feet of contiguous clear sidewalk space for pedestrian movement.
- I. A sidewalk sign placed on a public sidewalk (i.e., within the street right-of-way) must be located at least one foot from the face of the street curb but not more than 4 feet, or the sign must be located within 3 feet of the building face.
- J. If the sidewalk sign is placed on a public sidewalk (i.e., within the street right-of-way) the property owner must obtain a hold harmless agreement, or written equivalent approval, from the entity having jurisdiction over the public property.
- K. The area of a sidewalk sign is the actual area of the sign face.

106.55 Suspended signs

- A. The feature to which the suspended sign is attached must be conforming to all applicable regulations.
- B. A suspended sign must be perpendicular to the face of the exterior wall.
- C. The bottom of a suspended sign must be at least 8 feet above the surface of the walkway beneath the sign.
- D. A suspended sign must be located above the primary public entrance.
- E. If a suspended sign extends over public property (e.g., above a public sidewalk in a street right-of-way), and the arcade, awning, or marquee to which it is attached is not subject to a hold harmless agreement, or written equivalent, the property owner must obtain a hold harmless agreement, or written equivalent approval, from the entity having jurisdiction over the public property.
- F. The area of a suspended sign is the actual area of the sign face. If a suspended sign is three-dimensional, the sign area is the area of the object projected on a flat surface. Brackets and other supports are not included in the area calculation.

106.56 Wall signs

- A. A wall sign must comply with all applicable building regulations, along with any additional construction standards in this chapter.
- B. Lighting for a wall sign must comply with the National Electrical Code (NEC).
- C. Balloons, ribbons, or any other attention-getting devices shall not be attached to a wall sign.
- D. A wall sign must complement the scale, proportion, and architectural style of the building on which it is to be attached.
- E. A wall sign must not project from the wall on which it is attached by more than 8 inches.
- F. A wall sign must not extend above the wall face on which the sign is located.
- G. A wall sign shall be placed on an exterior wall that is designed and constructed with sufficient strength to support such signage.
- H. If a wall sign is internally lit (e.g., cabinet sign), the background of the sign face must be opaque to allow the internal light to project only shine through the cut-out lettering and/or logos. Channel letters may be opaque with backlit halo lighting or translucent.

Not Permitted – A sign with translucent background**Nighttime****Daytime****Permitted – A sign with an opaque background****Nighttime**

© Signs Plus

Daytime

© Signs Plus

- I. The area of a wall sign without a distinctive border or background is the smallest rectangle encompassing all words, letters, figures, emblems, and other elements of the sign message. The area of a wall sign with a distinctive border and/or background is the smallest rectangle encompassing the border or background.

Measuring the area of a wall sign

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106.57 Window signs

- A. A window sign shall not be placed on a door window or window so as to constitute a hazard for pedestrian or guest traffic and safety.
- B. A window sign may be painted/adhered on the interior or exterior pane of glass. All other signs must be placed within the building.
- C. The area of a window sign without a distinctive border and/or background is the smallest rectangle encompassing all words, letters, figures, emblems, and other elements of the sign message. The area of a window sign with a distinctive border and/or background is the small rectangle encompassing the border or background.

Measuring the area of a window sign

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106.58 to 160.79 **Reserved**

ARTICLE 4
PERMISSIBLE SIGNAGE

106.80 Sign districts

The following sign districts are established and are depicted on the Village's adopted sign districts map:

- SD-01** North Rochester Street Corridor
- SD-02** South Rochester Street Corridor
- SD-03** Village Center
- SD-04** Neighborhood Commercial
- SD-05** Institutional
- SD-06** General Industrial
- SD-07** Multi-Family Residential
- SD-08** General Residential
- SD-09** Public Park & Open Space
- SD-10**
- SD-11**

106.81 Permissible signage by sign district

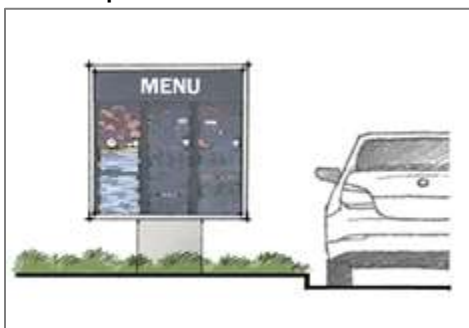
Appendix A specifies what type of signs are allowed in various parts of the Village along with related standards and requirements. Such signage other than supplemental is however only allowed on developed parcels, with the exception of the Public Parks and Open Space district. For purposes of this section, a property that has a

building with an assessed value of \$25,000 or more is prima facie evidence the property is developed. If a property is undeveloped, the only signage that is allowed is supplemental signage as set forth in § 160.

106.82 Permissible signage by use

- A. **Generally.** In addition to the signage that is allowed by sign district (above), additional signage is allowed for those land uses listed in this section. In the event the land use associated with the additional signage as allowed in this section is no longer in operation, such signage must be removed within 30 days following the cessation of the specified use unless otherwise specifically allowed in this chapter.
- B. **Restaurant with drive-through.** A parcel with a restaurant with a drive-through may have two menu boards for each drive-through lane, provided (1) the menu board is placed within 6 feet of the drive-through lane, (2) the total of all menu boards is no more than 32 square feet for each drive-through lane; and (3) orders are taken via the menu board. The menu board may be static or consist of an electronic message display in whole or in part.

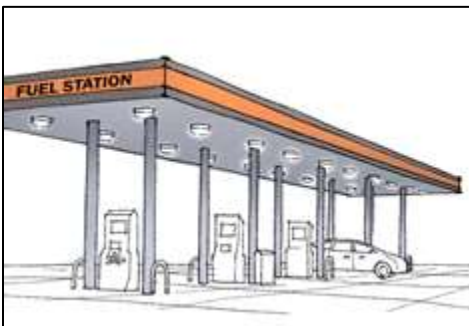
An example of a menu board



© Civic Webware

- C. **Restaurant with drive-in service.** A parcel with a restaurant with drive-in service may have a menu board, provided (1) the menu board is next to the parking space, (2) the menu board is no more than 3 square feet; and (3) orders are taken via the menu board.
- D. **Fuel station.** A parcel with a fuel station as may be allowed by the Village's zoning regulations may have a fuel canopy with signage on the vertical face, provided (1) the sign does not extend above or below the horizontal edge of the canopy face, (2) the sign faces a public road, and (3) the sign copy does not exceed 25 percent of the canopy face.

An example of a fuel canopy



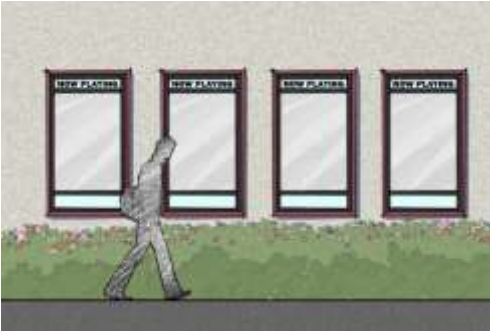
© Civic Webware

- E. **Multi-tenant commercial building with single entrance.** A building with a single entrance serving multiple businesses may place a business directory on the wall, provided (1) the sign area does not exceed 7 square feet, (2) the edge of the sign face is located within 2 feet of the entrance/adjoining windows, and (3) the sign copy is static.

An example of Multi-Tenant Directory

© Civic Webware

- F. **Movie theater.** A movie theater may have additional wall signage on the front face of the building, provided (1) each individual sign does not exceed 6 square feet, (2) the wall signs are grouped together in a single row; (3) lighting is limited to gooseneck fixtures; (4) the sign copy is static, and (5) the number of signs is limited based on the number screens as follows: 1 screen – 2 signs; 2 screens – 3 signs; 3 screens – 5 signs; 4 screens – 7 signs; 5 screens – 9 signs; and 6 screens or more – 11 signs.

An example of movie theater placards

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- G. **Business park identification.** In those instances where a business park is established with 6 or more individual parcels, a monument sign may be placed by the entrance to the business park (1) within the public right-of-way, with the approval of the jurisdiction with control of the right-of-way; (2) in an outlot, provided the outlot is owned by the Village or all of the lot owners within the business park; or (3) within an easement, provided the easement is approved by the Village and all of the property owners in the business park have a real estate interest in the easement. Such monument sign must comply with the following standards:

- (1) **Maximum area:** 32 square feet
- (2) **Maximum height:** 6 feet
- (3) **Illumination:** Internal, gooseneck fixtures, ground-mounted
- (4) **Display type:** Static
- (5) **Permit requirements:** A sign permit is required

- H. **Subdivision identification.** In those instances where a residential subdivision is established with 5 or more individual parcels, not including outlots, a monument sign may be placed by the entrance to the subdivision (1) within the public right-of-way, with the approval of the jurisdiction with control of the right-of-way; (2) in an outlot, provided the outlot is owned by the Village or all of the lot owners within the subdivision, or (3) within an easement, provided the easement is approved by the Village and all of the property owners in the subdivision park have a real estate interest in the easement. Such monument sign must comply with the following standards:

- (1) **Maximum area:** 32 square feet

- (2) **Maximum height:** 6 feet
- (3) **Illumination:** Internal, gooseneck fixtures, ground-mounted
- (4) **Display type:** Static
- (5) **Permit requirements:** A sign permit is required

106.83 Supplemental signage

In addition to the signage allowed in the other sections, an owner is allowed additional signage as specified in Appendix A that can be used for a wall sign (permanent or temporary) and/or a free-standing sign. Such signage may be used for commercial speech and non-commercial speech, including political messages and for indicating the property is for sale, rent, or lease.

106.84 to 106.99 Reserved

ARTICLE 5 ADMINISTRATION

106.100 Permits required

It shall be unlawful for any person to alter, erect, construct, relocate, enlarge, change copy, or structurally modify any sign in the Village, or cause the same to be done without first obtaining a sign permit for each sign as required by this chapter. Permits are not required for cleaning and other normal maintenance or repair of the sign or sign structure or to change the copy for the same business.

106.101 Inspection

The applicant shall, upon completion of the installation, relocation, or alteration of a sign, notify the zoning administrator within 10 days of such date. The zoning administrator may thereafter inspect the sign to ensure it complies with the permit.

106.102 Sign districts map

- A. **Title.** The map that depicts the location of the various sign districts shall be titled "Sign Districts, Village of Mukwonago."
- B. **Official sign districts map.** The Village clerk shall maintain one paper copy of the sign districts map which shall be signed by the mayor and attested by the village clerk. If there is a discrepancy between this sign districts map and other maps as may be made available, the map maintained by the village clerk shall control in all instances.
- C. **Availability.** The sign districts map maintained by the village clerk shall be available for public inspection upon request. The village clerk or zoning administrator may post the map on the Village's website and otherwise make and distribute copies in a manner deemed appropriate.
- D. **Preparation of a new map.** In the event the sign districts map maintained by the village clerk is damaged, lost, or destroyed, and after each amendment, the zoning administrator shall prepare a new sign districts map and submit it to the mayor and village clerk for signature.
- E. **History of amendment.** The sign districts map maintained by the village clerk may include a descriptive history of recent amendments that have been made, indicating the ordinance number and date of action.
- F. **Archive of superseded maps.** The village clerk should maintain a permanent archive of superseded sign districts maps.
- G. **Amendment.** The procedure and requirements to amend the sign districts map are set forth in § 106.109.

106.103 Permit issuance or denial (Decision criteria)

The zoning administrator, or designee, will issue a sign permit when (1) the permit application is properly made, (2) all appropriate fees have been paid, and (3) the proposed sign complies with the applicable provisions of this chapter. If a sign permit is denied, written notice of the denial must be given to the applicant, together with a written statement of the reasons for the denial.

106.104 Sign permit

- A. **Completeness.** Sign applications must contain all pertinent information as required on the form, and any additional information as may be required by the building inspector.
- B. **Review.** Sign permit applications must be filed with the zoning administrator, or designee, who shall review the application for accuracy and completeness. The zoning administrator, or designee, is authorized to issue permits when he or she determines that the proposed signage complies with all applicable provisions set forth in this chapter.
- C. **Approval period.** A sign permit shall become null and void if work authorized under the permit has not been completed within six months of the date of issuance. Prior to such expiration, the property owner may request an extension to this time period and the zoning administrator may approve an extension with good cause.

106.105 Enforcing officer

The zoning administrator shall enforce this chapter and shall perform the following duties:

- (1) Issue permits and conduct inspections of property to determine compliance with the terms of this chapter;
- (2) Establish and enforce necessary or desirable regulations in writing, clarifying or explaining any provision of this chapter;
- (3) Receive and file any application for exceptions or appeals; and
- (4) Maintain permanent and current records of this chapter, including but not limited to the following: all permits, plans, exceptions and appeals.

106.106 Administrative appeal

A person may appeal an administrative decision made by the zoning administrator under this chapter to the Zoning and Building Board of Appeals within 30 days of the date of the decision being appealed.

106.107 Nonconforming signs

- A. **Change of copy.** The copy of a nonconforming sign may be changed.
- B. **Change of sign face.** The face of a nonconforming sign may be changed provided the zoning administrator determines that the other features of the sign are structurally sound and properly maintained.
- C. **Change in location.** A nonconforming sign shall not be relocated.
- D. **Change in area.** The area of a nonconforming sign shall not be enlarged or reconfigured in any manner.
- E. **Change in height.** A nonconforming sign shall not hereafter be placed higher even though the height is otherwise permitted.
- F. **Change in lighting.** A nonconforming sign that is not illuminated may not hereafter be illuminated even though such lighting may be otherwise permitted. A nonconforming sign that is illuminated may not hereafter be illuminated in any other manner even though such lighting may be otherwise permitted, except to bring the existing lighting into compliance (e.g., removal of exposed light bulbs).
- G. **Change to an electronic message display.** A nonconforming sign with a static display shall not be changed, in whole or in part, to an electronic message display even though it may be otherwise permitted.
- H. **Temporary signs.** A nonconforming sign that is temporary in nature must conform with all applicable standards or be removed within 30 calendar days of the date the sign became nonconforming or within a

lesser time period specified by the zoning administrator if he or she determines that the sign poses an unacceptable risk to public health or safety.

- I. **Ongoing maintenance and safety.** A nonconforming sign must comply with all applicable provisions in this chapter related to safety, maintenance, and repair.
- J. **Abandonment.** A nonconforming sign that is abandoned for more than 60 days shall thereafter be made to conform with all applicable standards or be removed.
- K. **Reconstruction following damage.** A nonconforming sign that is damaged by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation on or after March 2, 2006, may be restored to its condition (e.g., size, location, and use) prior to the damage, except the sign may be larger when necessary to comply with state or federal requirements.

106.108 Loss of nonconforming status











A nonconforming sign that is moved to another location or is used or modified in a way that is not specifically allowed in this chapter, is no longer considered to be a nonconforming sign and must therefore conform with all applicable standards in effect on the date of such work or be removed within 45 calendar days of the date the zoning administrator makes such determination in writing, or within a lesser time period specified by the zoning administrator if he or she determines the sign poses an unacceptable risk to public health or safety.

106.109 Amendments

- A. **Generally.** This chapter, including the map depicting the various sign districts, may be amended from time to time.
- B. **Initiation.** Amendments may be initiated by (1) a citizen or property owner of the Village, (2) the Plan Commission, (3) Village Board, or (4) zoning administrator, or designee.
- C. **Plan Commission recommendation.** If the Plan Commission did not initiate the proposed amendment, the Plan Commission must evaluate the proposed amendment and make a recommendation to the Village Board.
- D. **Public hearing.** The Village Board must hold a public hearing preceded by a Class 2 notice as set forth in §§ 985.01(1m) and 985.07, Wis. Stats.
- E. **Decision.** The Village Board may (1) approve the proposed amendment with or without revision, (2) deny the proposed amendment, or (3) refer the proposed amendment to the Plan Commission for further review and consideration.

106.110 Rules for amending the sign districts map

Some of the sign districts are intended to create uniform sign standards along street corridors. Therefore, parcels within the following districts must be contiguous to at least one other parcel in the same district:

SD- 	
SD- 	
SD- 	
SD- 	
SD- 	

106.111 Application forms

The zoning administrator is authorized to prepare application forms and other materials related to this chapter and amend them from time to time.

106.112 Other approvals

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

106.113 Application fees and other charges

- A. **Assessment of fees.** The Village Board may by resolution establish and revise application fees and other charges it deems necessary in the administration of this chapter.
- B. **After the fact fees.** The Village Board may establish an “after-the-fact” fee for any procedure it deems appropriate. Payment of such fees shall not release the applicant from full compliance with this chapter nor from prosecution for a violation of this chapter.
- C. **Timing for payment.** Application fees must be paid before issuance of the permit.
- D. **Refunds.** Application fees are nonrefundable, except when the application and fee were accepted by the Village staff in error.

106.114 Effect of an outstanding violation

If the zoning administrator or the building inspector determine that a parcel is in violation of (1) this chapter, (2) the Village's zoning regulations, or (3) any applicable building code, no permit or approval of any kind shall be granted under this chapter that would benefit such parcel, except to correct the violation or as may be required by state law.

106.115 Effect of an outstanding obligation

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

106.116 Penalties

A person who fails, for whatever reason, to comply with the provisions of this chapter shall, upon conviction thereof, forfeit not less than \$50.00 nor more than \$500.00 and any costs of prosecution for each violation. Each day a violation exists or continues shall constitute a separate offense. If any specific ordinance imposes a greater penalty, then that ordinance shall govern the amount of the penalty.

Appendix A. Permissible Signs by Location

SD-## Name (SAMPLE for Layout Only)

Awning Sign (Section 106.50)

Maximum area: 8 inches in height and 35 percent of the length of the valance

Illumination: none

Display type: Static

Permit requirements: A sign permit issued by the zoning administrator is required

Monument Sign (Section 106.52)

Maximum number: 1 for each street frontage exceeding 100 feet; at the owner's discretion a monument sign or a pylon sign is allowed (i.e., one or the other, but not both)

Maximum area: 50 square feet

Maximum height: 12 feet

Illumination: Internal, gooseneck fixtures, ground-mounted if sign is 8 feet or less in height

Display type: Static; up to 50 percent of sign area can be an electronic message display (EMD) per § 106.33

Permit requirements: A sign permit issued by the zoning administrator is required

Wall Sign (Section 106.57)

Maximum number: 1 for each street frontage (per business)

Maximum area: Total of wall sign and monument sign not to exceed 150 square feet if street frontage is less than 200 feet or 300 square feet if street frontage is 200 feet or more

Sign type: Channel letters, cabinet, flat panel

Illumination: Internal if channel letters or cabinet, gooseneck fixtures if flat panel

Display type: Static

Permit requirements: A sign permit issued by the zoning administrator is required

Supplemental Signage (Section 106.83)

Maximum area: 40 square feet

Permit requirements: A sign permit issued by the zoning administrator is required only if the signage will be permanently installed or if the zoning administrator has not issued a permit for the subject property after [REDACTED], 2021.

Signage Not Permitted

- Marquee Sign
- Projecting Sign
- Sidewalk Sign
- Suspended Sign
- Window Sign

Appendix B

Definitions

Administrative appeal An action taken by an aggrieved party alleging the reviewing authority, acting in an administrative capacity, made an error in making a final decision or failed to act as required.

Awning A sloped, roof-like feature that projects beyond the face of an exterior wall. An awning is typically placed above a door or window to provide protection from the sun and precipitation. An awning can be constructed of various materials, including metal, fabric, or plastic. An awning may be non-retractable or retractable so as to fold up against the building when not in use. (Also see marquee)

Backlight letter A channel letter, with an open or translucent back, that is illuminated. Light is directed against a surface behind the letter, producing a halo effect.

Ballast An electrical device used in fluorescent lights to stabilize the flow of the electrical current.

Building code Those regulations adopted by the Village of Mukwonago or the state of Wisconsin that regulate the construction, repair, alteration, and maintenance of buildings and related structures.

Building face That portion of a building, which is parallel or nearly parallel to an abutting street.

Building inspector The person so designated by the Village of Mukwonago or his/her designee.

Cabinet sign A sign structure comprised of a frame and face or faces. Though a cabinet sign may include electrical components or support structure, the term only refers only to the frame and face.

Channel letter A three-dimensional letter that may include an internal light source.

Copy See sign copy

Dynamic sign display See electronic message display

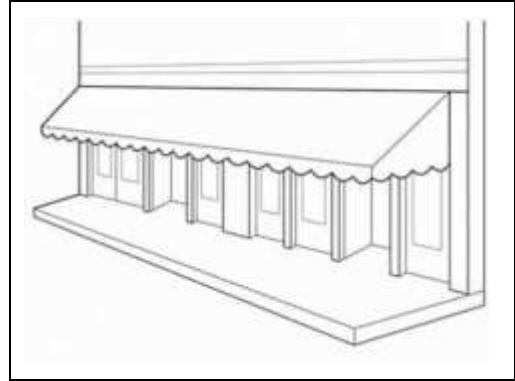
Electronic message center See electronic message display

Electronic message display (EMD) A sign message that can change by electronic means. (In contrast, see static display.)

Electronic reader board See electronic message display

Exterior lighting Lighting that is mounted some distance from the face of the sign. Depending on the location, exterior lighting may be limited to lighting mounted on the ground or from above. (In contrast see and internal lighting)

Awning



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Backlit Letters



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Gooseneck fixture A light fixture characterized by a wall-mounted arm attached to a shade that directs light towards the building face or structure on which it is attached.

Halo lighted letter See backlighting letter

Footcandle A unit of illumination equal to that given by a source of one candela at a distance of one foot. One footcandle is equivalent to one lumen per square foot or 10.764 lux.

Inflatable sign A sign that is inflated with air or gas, and which may be stationary or have moving parts. The term includes “dancing man” inflatables.

Internal lighting Lighting located within the sign element. (In contrast see exterior lighting)

Marquee A flat, roof-like feature that projects beyond the face of an exterior wall. A marquee is typically placed above a door or window to provide protection from the sun and precipitation. (Also see awning)

Monument sign A freestanding sign that is affixed to the ground with a decorative base below the sign face and which may include vertical posts or pillars on one or both of the ends.

Mural A one-of-a-kind original artwork that _____. (Let's discuss).

Menu board A sign that allows a retailer to list products and prices and is associated with a drive-through window.

National Electrical Code (NEC) A code developed by the National Fire Protection Association (NFPA), and which may be adopted by cities and states to regulate electrical wiring and installations.

Nonconforming sign A sign that does not meet current code regulations but was permitted under a previous ordinance or regulation.

Person Any individual, firm, corporation, association, company, partnership, or organization of any kind.

Pole sign See pylon sign

Pylon sign A sign mounted on one or two vertical poles.

Projecting sign A sign, other than a wall sign, that is attached to and projects more than 8 inches from a structure or building face.

Readerboard See electronic message display

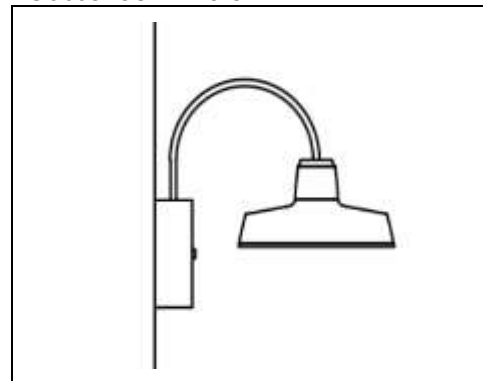
Roof sign A sign erected upon, against, or above a roof.

Sandwich board sign See sidewalk sign

Sidewalk sign A freestanding, internally weighted portable sign frequently but not exclusively having the cross-sectional shape of an A.

Sign Any device, structure, fixture, painting, or visual image using words, graphics, symbols, numbers, or letters designed for the purpose of conveying information or attracting attention.

Gooseneck Fixture



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Marquee



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Sign copy The advertising message, announcement, or decoration on a sign surface, including lettering, logos, graphics, and the like.

Sign districts map The map adopted by the Village Board that shows the locations of various districts and other features used in the administration of the sign regulations as more fully set forth in § 106.820 of the municipal code. While there may some similarity to the adopted zoning map, they are unrelated and serve different purposes.

Static display A sign message that does not change by electronic means. The term includes fuel prices on a free-standing sign. (In contrast see electronic message display)

Suspended sign A sign installed below and supported by a canopy or similar feature.

Transformer Electrical equipment that converts incoming voltage and current to a different outgoing voltage and current.

Under-canopy sign See suspended sign

Vehicle sign A sign mounted, painted, or otherwise placed on a trailer, truck, automobile, or other vehicle that is parked within a public right-of-way or on private property so as to be visible from the right-of-way. However, this does not include signs affixed to vehicles and trailers, such as lettering on motor vehicles, where the sign is incidental to the primary use of the vehicle or trailer.

Village Board The Village of Mukwonago Village Board.

Vision clearance (area) Shall have the meaning set forth in § [redacted] of the Municipal Code.

Wall sign A sign that is permanently or temporarily affixed to the face of an exterior wall of a building and does not project more than 8 inches from the face of the wall.

Window sign A sign located inside of a building that is visible from outside the premises and is within 16 inches of an exterior window or door.

Zoning administrator The person so designated by the Village of Mukwonago or his/her designee.

Zoning regulations All of the requirements set forth in Chapter 102 of the Municipal Code.



Village of Mukwonago

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To: Planning Commission

From: John Fellows, Community Planner, Interim Economic Development Director

Date: August 5, 2021

Regarding: Zoning Code and Sign Code – Draft Chapter V Document 8-2021

Attached you will find a draft of chapter V to date. At the meeting we will provide a summary of the document and have a series of question for you that will provide us direction as we move forward with the drafting of the documents.

Please review the document and bring any questions, comments, or suggestions to the meeting so we can address. At this time the document is a draft and there are still elements and components that have not been drafted, but we both feel it is important to provide drafts of the documents to the commission as we move forward.

ARTICLE 5 SPECIFIC PROCEDURAL REQUIREMENTS

Divisions

1. Code amendment
2. Planned development district
3. Designation of historic district
4. Designation of historic structure and site
5. Conditional use
6. Wireless telecommunication facility – New tower and class 1 collocation
7. Wireless telecommunication facility – Class 2 collocation
8. Site plan
9. Architectural review
10. Special exception
11. Registration of a nonconforming use
12. Conversion of a nonconforming use
13. Expansion of a nonconforming building
14. Certificate of appropriateness
15. Zoning permit
16. Floodplain permit
17. Termination of approval
18. Code interpretation
19. Administrative appeal
20. Variance

DIVISION 1 CODE AMENDMENT

102.300 Generally

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

102.301 Initiation

Any of the following may submit an application to amend the text of this chapter or the zoning map:

- (1) a property owner in the area to be affected by the proposed amendment,
- (2) the zoning administrator,
- (3) the Plan Commission,
- (4) the Historic Preservation Commission,
- (5) the Board of Zoning and Building Appeals, and
- (6) the Village Board.

102.302 Review procedure^[1]

The general steps outlined below describe the process for reviewing an application to amend the zoning regulations, including the zoning map.

1. **Submittal of application materials.** The applicant submits a complete application to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Distribution to Department of Natural Resources.** If the proposed amendment would revise floodplain or shoreland-wetland regulations in this chapter, the zoning administrator sends a copy of the application to the regional office of the Wisconsin Department of Natural Resources within 5 work days of receipt.
3. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
5. **Special notice to specified municipalities.** At least 10 calendar days prior to the date of the public hearing, the zoning administrator gives notice of the proposed amendment to the clerk of any municipality whose boundary are within 1,000 feet of any lands included in the proposed amendment.
6. **Special notice to Department of Natural Resources.** If the proposed amendment would revise the floodplain regulations in this chapter, the zoning administrator sends a copy of the public hearing notice to the regional office of the Wisconsin Department of Natural Resources at least 10 calendar days before the date of the public hearing.^[2]
7. **General notice by type of application.** If a proposed amendment would revise the text of this chapter, the zoning administrator provides for (i) a class 2 public notice, (ii) distribution list notice, and (iii) meeting agenda notice consistent with Article 4. If a property owner initiates a proposed amendment that would revise the zoning map, the zoning administrator provides for (i) class 2 public notice, (ii) property owner notice, (iii) distribution list notice, and (iv) meeting agenda notice consistent with Article 4. If the Village initiates a proposed amendment that would revise the zoning map, the zoning administrator provides for (i) class 2 public notice, (ii) distribution list notice, and (iii) meeting agenda notice consistent with Article 4.
8. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Plan Commission, and any other person upon request.
9. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research and to prepare such documents it deems necessary, including a preliminary decision document.
10. **Plan Commission recommendation.** After considering the public comments received at the public hearing and the staff report, if any, the Plan Commission makes a recommendation to the Village Board based on the decision criteria in this division to (i) approve the amendment, (ii) approve the amendment with conditions, or (iii) deny the amendment.
11. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
12. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.

13. **Decision.** The Village Board after considering the Plan Commission's recommendation makes a decision based on the decision criteria in this division to (i) approve the amendment, (ii) approve the amendment with conditions, or (iii) deny the amendment.
14. **Required vote with downzoning.** An amendment must be approved by at least two-thirds of the members-elect if the amendment would decrease the development density of the land to be less dense than was allowed under its previous usage or that would reduce the number of permitted uses of the land to fewer uses than were allowed under its previous usage. If a person requests or agrees to such downzoning, the ordinance may be enacted by a simple majority of the members-elect.^[3]
15. **Required vote with a protest by qualified property owners.** Prior to January 1, 2019, an amendment to the zoning map may not become effective except upon a favorable vote of three-quarters of the Village Board members voting on the proposed change when:
 - (i) those owning 20 percent or more of the land area within the proposed map amendment file a written protest,
 - (ii) those owning 20 percent or more of the land area within 100 feet of the proposed map amendment file a written protest, or
 - (iii) those owning 20 percent or more of the land directly opposite of the proposed map amendment but within 100 feet of the street frontage file a written protest.^[4]
16. **Required vote with protest of airport.** If a proposed amendment would make any change in an airport affected area, as defined under § 62.23(6)(am)1.b., Wis. Stats., and the owner or operator of the airport bordered by the airport affected area files a protest against the proposed amendment, no ordinance which makes such change may be approved except by the affirmative vote of two-thirds of the members of the Village Board present and voting.^[5]
17. **Preparation of decision document.** If the Village Board approves the proposed amendment, the zoning administrator prepares a final ordinance.
18. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
19. **Notification to Department of Natural Resources.** If the proposed amendment is approved and modifies the floodplain regulations in this chapter, the zoning administrator sends a copy of the ordinance to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email within 10 calendar days of the date of decision.
20. **Preparation of new zoning map.** If the proposed amendment is approved and modifies the zoning map, a new zoning map is prepared consistent with Article 6.

Editorial notes:

[1] See § 62.23(7)(d), Wis. Stats.

[2] See § NR 116.20(2)(c) and ch. NR 117, Wis. Admin. Code

[3] See § 66.10015(3), Wis. Stats.

[4] See § 62.23(7)(d)(2m)(a), Wis. Stats.

[5] See § 62.23(7)(d)(2m)(b), Wis. Stats.

102.303 Effective date of adopted ordinance

- A. **Generally.** An adopted ordinance shall take effect as prescribed in state law.
- B. **Exceptions.** An amendment involving floodplain regulations shall not become effective until it is reviewed and approved by the regional office of the Wisconsin Department of Natural Resources. An amendment that modifies official floodplain zoning maps, floodway lines, or water surface profiles shall not become effective until it is reviewed and approved by the Federal Emergency Management Agency.

102.304 Basis of decision

- A. **Text amendment.** If a proposed amendment would revise the text of this chapter, the Plan Commission in making its recommendation and the Village Board in making its decision should consider the following factors:
 - (1) whether the amendment is consistent with the Village's comprehensive plan;

- (2) whether the amendment is consistent with other planning documents adopted by the Village Board;
 - (3) whether this chapter with the amendment is internally consistent;
 - (4) whether the amendment is the least restrictive approach to address issues of public health, safety, and welfare;
 - (5) the extent to which the text amendment will likely create new nonconforming uses and structures;
 - (6) if the proposed amendment relates to floodplain regulations, whether the chapter as amended complies with § 62.23 and 87.30, Wis. Stats., ch. NR 116, Wis. Admin. Code, and other state laws;
 - (7) if the proposed amendment relates to shoreland-wetland regulations, whether the chapter as amended complies with § 62.231, Wis. Stats.; ch. NR 117, Wis. Admin. Code; and other state laws;
 - (8) whether the proposed amendment is needed to comply with a new or revised state or federal law; and
 - (9) any other factor not specifically or generally listed, but deemed appropriate by the Plan Commission or Village Board given the particular circumstances.
- B. **Zoning map amendment.** If a proposed amendment would revise the zoning map, the Plan Commission in making its recommendation and the Village Board in making its decision should consider the following factors:
- (1) whether the amendment is consistent with the Village's comprehensive plan, including future land use maps or similar maps;
 - (2) whether the amendment is consistent with other planning documents adopted by the Village Board;
 - (3) the extent to which the amendment will or will likely increase or decrease the number of nonconforming uses and structures; and
 - (4) any other factor not specifically or generally listed, but deemed appropriate by the Plan Commission or Village Board given the particular circumstances.
- C. **Special review criteria for amendments to the shoreland-wetland overlay district boundary.** To ensure this chapter remains consistent with the shoreland protection objectives of § 144.26, Wis. Stats., the Village Board shall not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:
- (1) storm and flood water storage capacity;
 - (2) maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
 - (3) filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
 - (4) shoreline protection against erosion;
 - (5) fish spawning, breeding, nursery, or feeding grounds;
 - (6) wildlife habitat; or
 - (7) areas of special recreational, scenic, or scientific interest, including scarce wetland types and habitat of endangered species.

102.305 Imposition of conditions

- A. **Generally.** The Plan Commission may recommend and the Village Board may impose one or more conditions of approval as may be necessary to grant approval.
- B. **Mandatory conditions of approval relating to certain existing land uses.** If a proposed amendment would revise the zoning map and is initiated by a property owner and the subject property hosts a land use that at the time of application is not permitted in the proposed zoning district, such use must be

removed as a condition of approval. If the subject property hosts a land use that at the time of application is classified as a conditional use in the proposed zoning district, the property owner must as a condition of approval submit a conditional use application and obtain approval for that land use or, if conditional use approval is not granted, remove such use.

102.306 Staff report content

The staff report should include the following:

- (1) preliminary findings for the decision criteria listed in this division;
- (2) proposed revisions, if appropriate; and
- (3) other information deemed necessary.

102.307 Appeal

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

102.308 through 102.319 Reserved

DIVISION 2 PLANNED DEVELOPMENT DISTRICT

102.320 Generally

A planned development district allows for more flexibility in the development of land while ensuring substantial compliance with the intent of this chapter and the Village's comprehensive plan. As further described in Article 9, the following may be reviewed as a planned development district:

- (1) conventional planned unit development,
- (2) conservation subdivision,
- (3) cottage housing project; and
- (4) adaptive reuse project.

102.321 Development agreement

If a planned development district is established pursuant to this division, the Village and developer may enter into a development agreement that specifies the duties and obligations of both parties with respect to the development project.

102.322 Review procedure

Establishment of a planned development district involves a two-step process. The review of a proposed project begins with a general development plan. If the general development plan is approved (i.e., an ordinance is adopted), a precise implementation plan for all or a part of the project is reviewed. If the precise implementation plan is approved, the project is officially approved. The general steps outlined below describe the process for reviewing an application for a planned development district.

Step One – General Development Plan

1. **Pre-submittal meeting.** The applicant or the applicant's agent meets with the zoning administrator to review (i) applicable regulations and procedures; (ii) applicable sections of the Village's comprehensive plan an applicable neighborhood plans, if any; and (iii) the proposal. Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the Village's zoning requirements.

2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
3. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
5. **General notice.** Consistent with Article 4, the zoning administrator provides for (i) a class 2 public notice, (ii) property owner notice, and (iii) meeting agenda notice.
6. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
7. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission may direct the zoning administrator to conduct additional research related to the proposed district.
8. **Staff follow-up.** After the close of the public hearing, the Plan Commission may direct the zoning administrator, village engineer, and/or the village attorney to prepare a preliminary decision document.
9. **Plan Commission recommendation.** The Plan Commission makes a recommendation to the Village Board based on the decision criteria in this division to (i) approve the general development plan, subject to approval of a precise implementation plan; (ii) approve the general development plan with conditions, subject to approval of a precise implementation plan; or (iii) deny the general development plan.
10. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
11. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
12. **Decision.** The Village Board after considering the Plan Commission's recommendation makes a decision based on the decision criteria in this division to (i) approve the general development plan, subject to approval of a precise implementation plan; (ii) approve the general development plan with conditions, subject to approval of a precise implementation plan; or (iii) deny the general development plan.
13. **Preparation of decision document.** If the general development plan is approved, the zoning administrator prepares a final ordinance.
14. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.

Step Two – Precise implementation plan

1. **Submittal of precise implementation plan.** The applicant submits a precise implementation plan and other required materials to the zoning administrator along with the application fee as may be established by the Village Board. At the discretion of the applicant, such materials may be submitted concurrently with the review of the general development plan.
2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the

applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.

3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
4. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
5. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division that evaluates whether the precise implementation plan is consistent with the approved general development plan and the suitability of the proposed plan given the additional information provided in the plan and supplemental materials. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
6. **Meeting.** Allowing for proper notice, the Plan Commission reviews the precise implementation plan and the staff report, if any.
7. **Determination of consistency.** The Plan Commission determines whether the precise implementation plan is generally consistent with the approved general development plan with respect to density/intensity and permissible land uses. If the Plan Commission determines that the precise implementation plan is not generally consistent, the Plan Commission shall render that decision in writing and take no further action on the precise implementation plan.
8. **Plan Commission recommendation.** If the precise implementation plan is deemed to be consistent with the general development plan, the Plan Commission makes a recommendation to the Village Board based on the decision criteria in this division to (i) approve the precise implementation plan, (ii) approve the precise implementation plan with conditions, or (iii) deny the precise implementation plan.
9. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
10. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
11. **Decision.** The Village Board after considering the Plan Commission's recommendation makes a decision based on the decision criteria in this division to (i) approve the precise implementation plan, (ii) approve the precise implementation plan with conditions, or (iii) deny the precise implementation plan.
12. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a decision document consistent with this division.
13. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.

102.323 Basis of decision

In the review of a general development plan and the precise implementation plan, the Plan Commission in making its recommendation and the Village Board in making its decision should consider the following factors:

- (1) whether development in the proposed project is in keeping with the spirit and intent of this chapter;
- (2) whether development in the proposed project is consistent with the Village's comprehensive plan;
- (3) whether development in the proposed district is consistent with a neighborhood plan or other subarea plan that may have been prepared for land in or near the proposed district;
- (4) the effects of development in the proposed project on traffic safety and efficiency, both within and outside of the district;

- (5) whether the proposed plan for development in the proposed project is properly planned and is properly coordinated with the existing and anticipated land uses on properties in the immediate and surrounding area;
- (6) the extent to which the natural features and open space on the site are preserved;
- (7) whether development in the proposed project complies with provisions of this chapter and other land development regulations of the Village that may apply;
- (8) the effects of development in the proposed project on public services and facilities;
- (9) whether adequate water and sanitary sewer facilities can be provided;
- (10) the proposed means of maintaining any undeveloped areas of the proposed project for the purpose for which it was set aside;
- (11) effects of the proposed use on surrounding properties, including existing and anticipated uses;
- (12) effects of the proposed use on the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district and adjoining districts;
- (13) whether the plan for development is clearly better than what is currently permitted based on the design and development standards of the underlying zoning district;^[1] and
- (14) any other factor that relates to the purposes of this chapter set forth in § 102.05 or as allowed by state law.

Editorial notes:

- [1] For example, a planned development district is better than what is otherwise allowed, when it includes desirable features or amenities that are not otherwise required, such as additional landscaping/buffering, open space, or enhanced design elements.

102.324 Imposition of conditions

- A. **Generally.** The Plan Commission may recommend and the Village Board may impose conditions as may be necessary to grant approval. Such conditions may relate to any of the factors it considered in reaching its decision. In addition, the Plan Commission may recommend and the Village Board may require the provision of off-site exactions that may be necessary to approve the establishment of the planned development district project.
- B. **Effect on contracts with another party.** The Village Board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.^[1]

Editorial notes:

- [1] See § 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

102.325 Staff report content

The staff report should include the following:

- (1) preliminary findings for the decision criteria listed in this division;
- (2) a preliminary list of recommended conditions of approval; and
- (3) other information deemed necessary.

102.326 Effect of approval

The approval of a planned development district runs with the land and is binding on all subsequent property owners.

102.327 Effect of approved planned development district on land division standards

Development in a planned development district is subject to the Village's land division regulations to the extent applicable, except that the Plan Commission or Village Board may waive a development standard in the land division regulations as provided therein.

102.328 Amendment of an approved planned development district

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

102.329 Expiration of an approval

If any portion of a planned development district that can be developed remains substantially undeveloped 3 years after final approval, the Village Board may rescind the approval, in whole or in part, following a public hearing. Upon petition and with cause, the Village Board may grant a one-time extension, not to exceed 4 years. In the event the Village Board rescinds an approval, the Village Board shall at that time reclassify undeveloped lands in the district based on the zoning regulations in effect at that time. Developed portions of the planned development district may either be allowed to retain the planned development district designation or reclassified based on the zoning regulations in effect at that time.

102.330 Appeal

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

102.331 through 102.349 Reserved

DIVISION 3 DESIGNATION OF HISTORIC DISTRICT

102.350 Generally

The Historic Preservation Commission may select geographically defined areas within the Village to be designated as historic districts and shall, with the assistance of the Plan Commission, prepare a historic preservation plan in ordinance form for each area.

102.351 Historic district preservation plans

A. **Criteria.** Guideline criteria to be considered in the development of historic district plans are as follows:

- (1) Regulation of construction, reconstruction, alteration and demolition shall conform to the criteria and standards in § 102-____. **[(305(b)(1), (2) and (3))]**
- (2) All new structures shall be constructed to a height visually compatible with the building and environment with which they are visually related.
- (3) The gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related.
- (4) In the street elevation of a building, the proportion between the width and height in the facade shall be visually compatible with the building and environment with which it is visually related.
- (5) The proportions and relationships between doors and windows in the street facade should be visually compatible with the buildings and environment with which it is visually related.
- (6) The rhythm of solids to voids, created by openings in the facade, should be visually compatible with the buildings and environment with which it is visually related.
- (7) The existing rhythm created by existing building masses and spaces between them should be preserved.
- (8) The materials used in the final facade should be visually compatible with the buildings and environment with which it is visually related.

- (9) The texture inherent in the facade should be visually compatible with the buildings and environment with which it is visually related.
- (10) Colors and patterns used on the facade (especially trim) should be visually compatible with the buildings and environment with which it is visually related.
- (11) The design of the roof should be visually compatible with the buildings and environment with which it is visually related.
- (12) The landscape plan should be sensitive to the individual building, its occupants and their needs. Further, the landscape treatment should be visually compatible with the buildings and environment with which it is visually related.
- (13) The street facade should blend with other buildings via directional expression. When adjacent buildings have a dominant horizontal or vertical expression, this expression should be carried over and reflected.
- (14) Architectural elements should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent characteristics of the area.

In addition to the above, the Historic Preservation Commission may also refer to any guidelines promulgated by the Secretary of the Interior.

- B. **Analysis.** Each historic preservation plan prepared for or by the Historic Preservation Commission must include a cultural and architectural analysis supporting the historic significance of the area, the specific guidelines for development, and a statement of preservation objectives.

102.352 Review procedure

The general steps outlined below describe the process for reviewing an application to create a historic district.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the application to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Historic Preservation Commission consistent with its adopted calendar.
4. **Special notice to owners.** The zoning administrator sends a notice to all property owners within the proposed district.
5. **General notice.** Consistent with Article 4, the zoning administrator provides for (i) a class 1 public notice, (ii) property owner notice, and (iii) meeting agenda notice.
6. **Public hearing.** Allowing for proper notice, the Historic Preservation Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or Historic Preservation Commission may request a continuance. If the public hearing is adjourned, the Historic Preservation Commission may direct the zoning administrator, building inspector, village engineer, and/or village attorney to conduct additional research. In addition, the Historic Preservation Commission may direct the zoning administrator to prepare such documents it deems necessary, including a preliminary decision document.
7. **Staff follow-up.** After the close of the public hearing, the Historic Preservation Commission may direct the zoning administrator to prepare a preliminary decision document.
8. **Historic Preservation Commission recommendation.** After considering all of the information submitted by the applicant, public comments received at the public hearing, the Historic Preservation Commission

makes a recommendation to (i) approve the establishment of the district, (ii) approve the establishment of the district with conditions, or (iii) deny the establishment of the district.

9. **Plan Commission meeting.** If the Historic Preservation Commission recommends approval, the Plan Commission considers the application at a regular or special meeting allowing for proper notice.
10. **Plan Commission recommendation.** After considering the Historic Preservation Commission's recommendation, the Plan Commission makes a recommendation within 30 days of the commission's action to (i) approve the establishment of the district, (ii) approve the establishment of the district with conditions, or (iii) deny the establishment of the district.
11. **Notice.** Notice for the public hearing by the Village Board must be provided as described in steps 4 and 5 above.
12. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
13. **Public hearing.** Allowing for proper notice, the Village Board conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or Historic Preservation Commission may request a continuance. If the public hearing is adjourned, the Village Board may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research. In addition, the Village Board may direct the zoning administrator to prepare such documents it deems necessary, including a preliminary decision document.
14. **Decision.** The Village Board after considering the recommendation of the Historic Preservation Commission and the Plan Commission makes a decision based on the decision criteria in this division to (i) approve the establishment of the district, (ii) approve the establishment of the district with conditions, or (iii) deny the establishment of the district.
15. **Preparation of final decision document.** Based on the action of the Village Board, the zoning administrator prepares a final decision document consistent with this division, subject to the direction given by the Village Board.
16. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to all property owners within the historic district by regular mail and/or email.
17. **Administrative steps.** If the historic district is approved, a new zoning map is prepared consistent with Article 6.

102.353 Basis of decision

The Historic Preservation Commission and Plan Commission in making their recommendation and the Village Board in making its decision must determine whether the proposed district:

- (1) exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, or community;
- (2) is identified with historic personages or with important events in national, state, or local history;
- (3) embodies the distinguishing characteristics of architectural types or specimens inherently valuable for the study of a period or periods, styles, methods, or construction, or of indigenous materials or craftsmanship;
- (4) is representative of the notable works of master builders, designers, or architects who influenced their age; or
- (5) has yielded, or may be likely to yield, information important to history or prehistory.

102.354 Interim control

The building inspector shall not issue a building permit for the alteration, construction, demolition, or removal of a property or structure within a nominated historic district from the date of the meeting of the Historic Preservation Commission at which a nomination form is first presented until the final disposition of the nomination, unless such alteration, removal, or demolition is authorized by resolution of the Village Board as necessary for public health, welfare or safety. In no event shall the delay be for more than 180 days.

102.355 Appeal

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

102.356 through 102.369 Reserved

DIVISION 4 DESIGNATION OF HISTORIC STRUCTURE AND SITE

102.370 Review procedure

The general steps outlined below describe the process for reviewing an application to designate a historic structure or site and rescind such designation.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the application to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Historic Preservation Commission consistent with its adopted calendar.
4. **Special notice.** The Historic Preservation Commission must notify the following of the pending application: department of public works, parks division, fire and police departments, health department, building inspector, and Plan Commission. Each such department may respond to the commission with its comments on the proposed designation or rescission.
5. **General notice.** Consistent with Article 4, the zoning administrator provides for (i) a class 1 public notice, (ii) property owner notice, and (iii) meeting agenda notice.
6. **Public hearing.** Allowing for proper notice, the Historic Preservation Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or commission may request a continuance. If the public hearing is adjourned, the Historic Preservation Commission may direct the zoning administrator, building inspector, village engineer, and/or village attorney to conduct additional research. In addition, the Historic Preservation Commission may direct the zoning administrator to prepare such documents it deems necessary, including a preliminary decision document. The Historic Preservation Commission may hear expert witnesses and shall have the power to subpoena such witnesses and records as it deems necessary.
7. **Independent investigation.** The Historic Preservation Commission may conduct an independent investigation into the proposed designation or rescission.
8. **Staff follow-up.** After the close of the public hearing, the Historic Preservation Commission may direct the zoning administrator to prepare a preliminary decision document.
9. **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, the Historic Preservation Commission makes a decision to (i) approve the designation/recession of the historic structure or site, (ii) approve the designation/recission of the historic structure or site with conditions, or (iii) deny the designation/recission of the historic structure or site.

10. **Preparation of final decision document.** Based on the action of the Historic Preservation Commission, the zoning administrator prepares a final decision document consistent with this division, subject to the direction given by the commission.
11. **Applicant notification.** Within a reasonable time following the Historic Preservation Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
12. **Administrative actions.** If the application for a designation or recession is approved, the zoning administrator sends the decision document to the village clerk, building inspector, Plan Commission, assessor for the Village, and others as appropriate.
13. **Recording of decision document.** If the application for a designation or recession is approved, the decision document is recorded, at the Village's expense, in the register of deeds office for Walworth County or Waukesha County, as appropriate.

102.371 Basis of decision

The Historic Preservation Commission in making its decision must determine whether the historic site or structure:

- (1) exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, or community;
- (2) is identified with historic personages or with important events in national, state, or local history;
- (3) embodies the distinguishing characteristics of architectural types or specimens inherently valuable for the study of a period or periods, styles, methods, or construction, or of indigenous materials or craftsmanship;
- (4) is representative of the notable works of master builders, designers, or architects who influenced their age; or
- (5) has yielded, or may be likely to yield, information important to history or prehistory.

102.372 Interim control

The building inspector shall not issue a building permit for the alteration, construction, demolition, or removal of a property or structure from the date of the meeting of the Historic Preservation Commission at which a nomination form is first presented until the final disposition of the nomination, unless such alteration, removal, or demolition is authorized by resolution of the Village Board as necessary for public health, welfare or safety. In no event shall the delay be for more than 180 days.

102.373 Appeal

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

102.374 through 102.389 Reserved

DIVISION 5 CONDITIONAL USE

102.390 Generally

Although each zoning district is primarily intended for a predominant type of land use, there are a number of uses that may be appropriate under certain conditions. These are referred to as conditional uses. This division describes the requirements and procedures for reviewing a conditional use, including an amendment of an approved conditional use.

102.391 Applicability and restrictions

- A. **General applicability.** Those land uses designated as a conditional use in the land use matrix (Appendix A) must comply with the requirements in this division.
- B. **Limitation due to nonconforming lot.** In the event a lot is classified as a nonconforming lot (e.g., lot area, lot width), all conditional uses are prohibited, unless the Plan Commission determines, on a case-by-case basis, that the nature of the nonconformity does not affect the appropriateness of the lot for the conditional use. Any such determination in the affirmative shall have no bearing on the Plan Commission's recommendation and/or Village Board's decision under this division.
- C. **Limitation due to a nonconforming use on the lot.** In the event a lot has a nonconforming use, all conditional uses are prohibited, unless the Plan Commission determines, on a case-by-case basis, the non-conforming use and the proposed conditional use are compatible. Any such determination in the affirmative shall have no bearing on the Plan Commission's recommendation and/or Village Board's decision under this division.
- D. **Limitation due to existing conditional use on the lot.** In the event a lot has an approved conditional use, all other conditional uses are prohibited, unless the Plan Commission determines, on a case-by-case basis, that the existing and proposed conditional uses are compatible. Any such determination in the affirmative shall have no bearing on the Plan Commission's recommendation and/or Village Board's decision under this division.

102.392 Review procedure

The general steps outlined below describe the process for reviewing an application for a conditional use.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent must meet with the zoning administrator to review applicable regulations and procedures and the proposal. Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the Village's zoning requirements.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
3. **Determination of completeness.** The zoning administrator reviews the application to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
5. **Special notice to Department of Natural Resources.** If the application relates to the floodplain regulations in this chapter, the zoning administrator shall send a copy of the application and public hearing notice to the regional office of the Wisconsin Department of Natural Resources at least 10 calendar days before the date of the public hearing.
6. **General notice.** Consistent with Article 4, the zoning administrator provides for (i) a class 2 public notice, (ii) property owner notice, and (iii) meeting agenda notice.
7. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
8. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional

research. In addition, the Plan Commission may direct the zoning administrator to prepare such documents it deems necessary, including a preliminary decision document.

9. **Staff follow-up.** After the close of the public hearing, the Plan Commission may direct the zoning administrator to prepare a preliminary decision document.
10. **Plan Commission recommendation.** After the public hearing has been closed, the Plan Commission makes a recommendation to the Village Board for approval or denial. The recommendation shall state the terms of the approval or reasons for denial as set forth in a draft conditional use order. The burden of proof is on the applicant to prove they have met the standards of the chapter and those set forth by the Plan Commission/Village Board during the process.
11. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
12. **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, the staff report, if any, and the Plan Commission's recommendation, the Village Board makes a decision to (i) approve the conditional use, (ii) approve the conditional use with conditions, or (iii) deny the conditional use.
13. **Preparation of final decision document.** Based on the action of the Village Board, the zoning administrator prepares a final decision document consistent with this division, subject to the direction given by the Village Board.
14. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
15. **Notification to Department of Natural Resources.** If the application relates to the floodplain regulations in this chapter, the zoning administrator sends a copy of the decision document to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email within 10 calendar days of the date of decision.
16. **Acceptance by property owner.** If the application is approved, the property owner must sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the Village at the expiration of such time limit. The decision document shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
17. **Recording of decision document.** If the property owner returns the decision document within the required time period with the required signatures, the decision document is recorded against the subject property in the register of deeds office for Walworth County or Waukesha County, as appropriate.

102.393 Basis of decision

The Plan Commission in making its recommendation and the Village Board in making its final decision should consider whether the proposal complies with:

- (1) the standard conditions of approval set forth in § 102.356,
- (2) each of the special conditions of approval set forth in § 102.355,
- (3) each of the performance standards set forth in Article 8,
- (4) each of the development standards prescribed for the requested conditional use,
- (5) all other applicable sections of the zoning code, and
- (6) all other applicable sections of the Municipal Code.

In addition, the Plan Commission in making its recommendation and the Village Board in making its decision must ensure compliance with the following standards:

- (1) The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or welfare of the Village.
- (2) The uses, values, and enjoyment of other property in the surrounding area that are already permitted shall be, in no foreseeable manner, substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
- (3) The establishment, maintenance, or operation of the conditional use is compatible with surrounding properties, whether in the same or different zoning districts. In making this determination, the Plan Commission and Village Board must determine whether the petitioner has demonstrated there are no adverse effects on surrounding properties or that potentially adverse effects have been eliminated or reduced to an acceptable level. Approaches that could be employed to mitigate potentially adverse effects will depend on the particular circumstances but may include (i) adjusting the location of the use, or parts thereof, on the subject property; (ii) limiting hours of operation; (iii) limiting the size or scope of the use, or parts thereof; (iv) controlling how the use is managed on an on-going basis; (v) providing additional landscaping; (vi) providing additional screening; and (vii) limiting operations conducted out-of-doors, if otherwise allowed.
- (4) The establishment, maintenance, or operation of the conditional use will not impede the normal and ordinary development and improvement of the surrounding property for uses permitted within the district and/or which are consistent with the standards in the Comprehensive Plan.
- (5) Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made to accommodate the use.
- (6) Adequate measures have been taken or will be taken providing ingress and egress to minimize traffic congestion on public streets so as not to diminish the level of service of any intersection which is impacted by traffic arising from the conditional use.

In making such determination, the personal experience of surrounding property owners may be considered substantial evidence to the extent deemed appropriate.

102.394 Effect of comprehensive plan

While § 66.1001(2m)(b), Wis. Stats does not require a conditional use be consistent with the Village's adopted comprehensive plan, the Village encourages consistency.

102.395 Special conditions of approval

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

Issue	Potential Condition
1. Hours of operation	Limit hours of operation to hours to be more compatible with surrounding uses.
2. Buffering	Require more of a buffer than what is otherwise required by this chapter. Buffering may include landscaping, walls or fences, berms, and other features to physically separate adjoining uses.
3. Maximum floor area	Establish a maximum floor area that may be less than what is otherwise allowed.
4. Maximum number of patrons	Limit the size of the use by establishing maximum patron loads, often by seats and/or tables.
5. Uses within buildings	Limit commercial uses to the first floor of a multistory building.
6. Number and/or location of entrances	Design the site and building so that entrances are located in areas away from adjoining properties.

7. Outdoor activity	Restrict locations and/or times of outdoor activity.
8. Outdoor storage	Establish a maximum area for outdoor storage that may be less than what is otherwise allowed.
9. Take-out food service	Prohibit drive-up service windows and/or walk-up service windows in certain areas of the property (e.g., near a residential use). If these are allowed, limitations could be set.
10. Delivery services	Prohibit delivery services that entail frequent trips or establish upper limits on the activity.
11. Signage	Prohibit signage in areas of the property that may cause an impact on surrounding areas.

- B. **Limitation on imposing conditions.** A condition of approval shall not lessen a development standard or other requirement in this chapter.
- C. **Effect on contracts with another party.** The review authority shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.^[1]

Editorial notes:

[1] See § 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

102.396 Standard terms for an approved conditional use

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

- (1) Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be submitted to the Plan Commission for determination.
- (2) No use is hereby authorized unless the use is conducted in a lawful, orderly, and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption, or exception to any law, ordinance, order or rule of either the municipal governing body, Walworth County, Waukesha County, the State of Wisconsin, the United States of America or other duly constituted authority, except only to the extent that it authorizes the use of the subject property above described in any specific respects described herein.
- (3) This conditional use order does not constitute a building permit or any license or other permit required by Village ordinance or other law.
- (4) The approved conditional use shall be confined to the subject property described, without extension or expansion other than as noted herein, and shall not vary from the purposes herein mentioned unless expressly authorized in writing by the Plan Commission as being in compliance with all pertinent ordinances.
- (5) The property shall comply with all rules and regulations of the Village and the local fire department, including submission to routine inspections by the village staff and fire department staff.
- (6) Prior to the execution of the conditional use permit, the applicant must obtain any and all approvals that must be obtained before the use may be established or the commencement of any land-disturbing activity related to the approved conditional use.
- (7) Should the permitted conditional use be abandoned in any manner, or discontinued in use for 12 months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to the Village, or should a change in the character of the surrounding area or the use itself cause it to be no longer compatible with the surrounding area or for similar cause based upon consideration of public health, safety or welfare, the conditional use may be terminated by action of the Village Board, pursuant to the enforcement provisions of this conditional use order, and all applicable ordinances.

- (8) Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use, including but not limited to an addition, modification, alteration, and/or amendment to the use, premises, structures, lands or owners, other than as specifically authorized herein, shall require a new permit and all procedures in place at the time must be followed.
- (9) Unless this conditional use order expressly states otherwise, plans that are specifically required by this conditional use order may be amended upon the prior approval of the Plan Commission if the Plan Commission finds the plan amendment to be minor and consistent with the conditional use permit. Any change in any plan that the Plan Commission feels, in its sole discretion, to be substantial shall require a new permit, and all procedures in place at the time must be followed.
- (10) As a condition precedent to the issuance of the conditional use permit, the owner of the subject property must approve the issuance of this conditional use order upon the terms and conditions described herein in writing, and the petitioner is required to accept the terms and conditions of the same in its entirety in writing.
- (11) The petitioner must, on demand, reimburse the Village for all costs and expenses of any type that the Village incurs in connection with this application, including the cost of professional services incurred by the Village (including engineering, legal, planning and other consulting fees) for the review and preparation of the necessary documents or attendance at meetings or other related professional services for this application, as well as for any actions the Village is required to take to enforce the conditions in this conditional approval due to a violation of these conditions.
- (12) Any unpaid bills owed to the Village by the subject property owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Village; shall be placed upon the tax roll for the subject property if not paid within 30 days of billing by the Village, pursuant to § 66.0627, Wis. Stats. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Village, including possible cause for termination of this approval.
- (13) The petitioner must file with the village clerk a current mailing address and current phone number at which the petitioner can be reached, which must be continually updated by the petitioner if such contact information should change, for the duration of the conditional use. If the petitioner fails to maintain such current contact information, the petitioner thereby automatically waives notice of any proceedings that may be commenced under this conditional approval, including proceedings to terminate this conditional use.
- (14) All conditions of approval imposed by duly adopted motion of the Village Board in its consideration of the petitioner's application, as noted in the minutes of the Village Board meeting at which approval was granted, are specifically incorporated herein by reference.
- (15) Should any paragraph or phrase of this conditional use order be determined by a court of competent jurisdiction to be unlawful, illegal, or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the conditional use order and the remainder shall continue in full force and effect.
- (16) If any aspect of this conditional use order or any aspect of any plan contemplated and approved under this conditional use is in conflict with any other aspect of the conditional use or any aspect of any plan of the conditional use, the more restrictive provision shall be controlling as determined by the Plan Commission.
- (17) If the property owner/operator is a business entity, such as a limited liability company or a corporation, such entity shall for the life of the conditional use continuously maintain a registered office in the state of Wisconsin as evidenced by registration with the Wisconsin Department of Financial Institutions.
- (18) The property owner shall not change the size and/or shape of the subject property by any means without the approval of the Village Board. If the Village Board determines that a proposed change is substantial with regard to the overall size of the parcel and/or configuration, such change shall require issuance of a new conditional use approval pursuant to the requirements in effect at the time of application.
- (19) This approval is given under the Village's zoning code and is not to be, in any way, interpreted to abrogate any private rights other property owners may have pursuant to an easement or a deed restriction.

- (20) If this conditional use terminates for any reason, the property owner must remove equipment, buildings, structures, or any improvements specifically related to the conditional use and which cannot be utilized for an approved use (i.e., a use permitted by right or a different conditional use as approved).
- (21) In the event the subject property is found to be in violation and then brought into compliance, the Village Board reserves the right to impose periodic reviews to ensure continued compliance.
- (22) Following approval, the petitioner must meet with the Plan Commission every **2 years** for the purpose of verifying compliance with the conditional use approval.

102.397 Financial guarantee

- A. **Generally.** The Plan Commission may recommend and the Village Board may require, in its reasonable discretion, a financial guarantee as set forth in Article **3** to remove an equipment, building, structure, or other improvement that may pose a hazard or nuisance after a conditional use has been terminated or abandoned, unless otherwise required by an applicable State Law or Administrative Code provision. Any such financial guarantee must expressly state that it will remain in full force and effect for a period of at least 6 months after the Village receives a written notice of an expiration or termination of the financial guarantee. The applicant must remove any equipment or structure placed or erected pursuant to a conditional use order that may pose a hazard or nuisance after the use has abandoned or revoked not less than 30 days prior to termination or expiration of the financial guarantee.
- B. **Amount.** Unless specifically stated in the zoning code, the amount of the financial guarantee is based upon the estimated cost of the removal of the equipment, building or structure, or any other improvement plus 20 percent.

Temporary note: This section derived from s. 100-354(j). The village attorney to review in particular

102.398 Staff report content

The staff report should include preliminary findings for the decision criteria listed in this division and other information deemed appropriate.

102.399 Content of decision document

- A. **Approval.** If the application for a conditional use is approved, the decision document should include the following:
 - (1) a statement that the conditional use is approved;
 - (2) a description of the conditional use;
 - (3) a description of where the conditional use will occur on the property;
 - (4) reasons for the decision based on the criteria listed in this division;
 - (5) conditions of approval that must be satisfied prior to the establishment of the conditional use, if any;
 - (6) conditions of approval that must be complied with during the life of the conditional use, if any;
 - (7) a statement indicating that the property owner must sign the decision document and return it to the zoning administrator to acknowledge acceptance of the same;
 - (8) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
 - (9) a statement that an aggrieved person, other than the applicant, may appeal the decision to a court of competent jurisdiction and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
 - (10) a statement indicating the nature of the approval (i.e., personal to the property owner or runs with the land);
 - (11) other information the Village Board or zoning administrator deems appropriate;
 - (12) the signature of the village president; and

(13) the date of the decision.

- B. **Denial.** If the application for a conditional use is denied, the decision document should include the following:

- (1) a statement that the conditional use is denied,
- (2) a description of the project, including acreage and proposed use characteristics,
- (3) reasons for the decision based on the criteria listed in this division,
- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) other information the Village Board or zoning administrator deems appropriate,
- (7) the signature of the village president, and
- (8) the date of the decision.

102.400 Term for an approval

- A. **Generally.** A conditional use order authorizing a conditional use shall have a 5-year term unless otherwise specified in the conditional use order.
- B. **Change in term as part of renewal.** If a term is specified in a conditional use order (i.e., the approval is not permanent), the Plan Commission during the renewal process may revise the term to be a longer period (e.g., change renewal from 5 years to 10 years) or make the approval permanent (e.g., remove the renewal requirement from the order).
- C. **Administrative renewal.** The order may describe an administrative renewal process to allow for streamlined renewal of the conditional use order with a provision that allows the Plan Commission and/or the Village Board to remove the conditional use order from administrative renewal if there are concerns with compliance with the conditional use order or concerns raised by the public about the applicant's operations. If the Plan Commission or the Village Board pulls the conditional use order from administrative renewal, the conditional use order shall remain in effect while the Plan Commission provides due process to the applicant in reviewing the conditional use order and its potential renewal.

102.401 Effect of approval

- A. **Generally.** Unless otherwise specified in the conditional use order, approvals run with the land.
- B. **Temporary uses.** If a use is listed as a temporary use in the land use matrix (Appendix A) and is approved by the Village Board as a conditional use, the use may be re-established with the written approval of the zoning administrator if he or she determines that the use to be re-established is substantially the same as what was originally approved and that the approved use did not create any potentially adverse impacts on the public health, safety, or welfare.

102.402 Expiration of an approval

- A. **Non-establishment.** If the zoning administrator determines that substantial work as authorized by a conditional use approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to Division 13 of this article. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 6 months, provided (1) the permit holder requests the extension prior to the expiration of the approval, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.
- B. **Cessation.** If the zoning administrator determines that a conditional use has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, he or she shall initiate the process to terminate the approval pursuant to Division 13 of this article.

102.403 Amendment of an approved conditional use

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

102.404 Appeal

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

102.405 through 102.419 Reserved**DIVISION 6****WIRELESS TELECOMMUNICATION FACILITY – NEW TOWER AND CLASS 1 COLLOCATION****102.420 Review procedure**

The general steps outlined below describe the process for reviewing an application for a new telecommunication tower and a Class 1 collocation as designated in the land use matrix (Appendix A).

1. **Submittal of application materials.** The applicant submits a completed application to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the application and determines whether the application is complete. If the application includes all of the required information, the application shall be found to be complete. The zoning administrator notifies the applicant in writing within 10 days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their application as often as necessary until it is complete. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
4. **General notice.** Consistent with Article 4, the zoning administrator provides for (i) a class 2 public notice, (ii) property owner notice, and (iii) meeting agenda notice.
5. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
6. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance consistent with Article 4.
7. **Staff follow-up.** If the Plan Commission does not render a decision immediately following the public hearing, the Plan Commission may direct the zoning administrator to prepare a preliminary decision document.
8. **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, and the staff report, if any, the Plan Commission makes a decision to (i) approve the application, (ii) approve the application with conditions, or (iii) deny the application.
9. **Preparation of final decision document.** Based on the action of the Plan Commission, the zoning administrator prepares a final decision document, subject to the direction given by the Plan Commission.

10. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
11. **Recording of decision document.** If the property owner returns the decision document within the required time period with the required signatures, the decision document is recorded against the subject property in the register of deeds office for Walworth County or Waukesha County, as appropriate.

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

102.421 Application form

An application form for a new telecommunication tower or a Class 1 collocation must include all of the following information as appropriate:

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

102.422 Imposition of conditions

- A. **Generally.** The reviewing authority may impose one or more conditions of approval as may be necessary to grant approval. Such conditions may relate to any aspect of the use that impacts the public health, safety, or general welfare, subject to subsection (B) below.
- B. **Limitations.** The reviewing authority may not impose any of the following as a condition of approval:
 - (1) A requirement relating to environmental testing, sampling, or monitoring.
 - (2) A requirement relating to radio frequency emissions.
 - (3) A requirement to pay a reoccurring fee.
 - (4) A requirement that the structure or mobile service facility owner must provide space on or near the structure for the use of or by the Village at less than the market rate, or to provide the Village other services via the structure or facilities at less than the market rate.
 - (5) Limit the duration of the approval.
 - (6) A requirement that the applicant must indemnify or insure the Village in connection with the political subdivision's exercise of its authority to approve the application.
 - (7) A requirement that the applicant must give the Village the right to place at or collocate with the applicant's support structure any mobile service facilities provided or operated by, whether in whole or in part, the Village or an entity in which the Village has a governance, competitive, economic, financial, or other interest.

102.423 Expiration of an approval

- A. **Non-establishment.** If the zoning administrator determines that substantial work as authorized by the approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to Division 17 of this article. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 6 months, provided (1) the permit holder requests the extension prior to the expiration of the approval, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.
- B. **Cessation.** If the zoning administrator determines that a wireless telecommunication facility has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, he or she shall initiate the process to terminate the approval pursuant to Division 17 of this article.

102.424 Amendment of an approval

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

102.425 Fees

- A. **Professional service reimbursement.** Costs incurred by the Village in obtaining legal, planning, engineering, and other technical and professional advice in connection with an application shall be charged to the applicant as set forth in § 102.209.
- B. **Limitation on fees.** The total of all fees, excluding professional service reimbursement, associated with the review of an application shall not exceed the limits established by § 66.0404(4)(d), Wis. Stats.

102.426 through 102.439 Reserved**DIVISION 7****WIRELESS TELECOMMUNICATION FACILITY – CLASS 2 COLLOCATION****102.440 Review procedure**

The general steps outlined below describe the process for reviewing an application for a Class 2 collocation as designated in the land use matrix (Appendix A).

1. **Submittal of application materials.** The applicant submits a completed application to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the application and determines whether the application is complete. If the application includes all of the required information, the application shall be found to be complete. The zoning administrator must notify the applicant in writing within 5 days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their application as often as necessary until it is complete. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.

3. **Decision.** The zoning administrator makes a decision on the application within 45 days of the date the application is deemed complete, unless the time is extended by the applicant. The decision shall be stated in writing. If approval is not granted, the reasons therefor must be stated.

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

102.441 Expiration of an approval

- A. **Non-establishment.** If the zoning administrator determines that substantial work as authorized by the approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to Division 17 of this article. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 6 months, provided (1) the permit holder requests the extension prior to the expiration of the approval, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.
- B. **Cessation.** If the zoning administrator determines that a wireless telecommunication facility has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, he or she shall initiate the process to terminate the approval pursuant to Division 17 of this article.

102.442 Amendment of an approval

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

102.443 Fees

- A. **Professional service reimbursement.** Costs incurred by the Village in obtaining legal, planning, engineering, and other technical and professional advice in connection with an application shall be charged to the applicant as set forth in § 102.209.
- B. **Limitation on fees.** The total of all fees, excluding professional service reimbursement, associated with the review of an application shall not exceed the limits established by § 66.0404(4)(d), Wis. Stats.

102.444 through 102.459 Reserved

DIVISION 8 SITE PLAN

102.460 Generally

The operational characteristics of a land use and the way in which a land use occupies a lot has a direct effect on the overall functionality of the site, the extent to which the land use can be expanded on the site in the future, effects of the land use on nearby properties, and impacts on existing and anticipated public and private infrastructure. This division describes the requirements and procedures for reviewing a site plan.

102.461 Applicability

Those land uses designated as requiring site plan review (SP) in the land use matrix (Appendix A) must comply with the requirements in this division.

102.462 Review procedure

The general steps outlined below describe the process for reviewing an application for a site plan.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
4. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
5. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
6. **Plan Commission meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
7. **Recommendation.** The Plan Commission makes a recommendation to the Village Board to (i) approve the site plan, (ii) approve the site plan with conditions, or (iii) deny the site plan.
8. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
9. **Decision.** After considering all of the information submitted by the applicant, the staff report, if any, and the Plan Commission's recommendation, the Village Board makes a decision to (i) approve the site plan, (ii) approve the site plan with conditions, or (iii) deny the site plan.
10. **Preparation of decision document.** Based on the action of the Plan Commission, the zoning administrator prepares a decision document consistent with this division.
11. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.

102.463 Basis of decision

The Plan Commission in making its recommendation and the Village Board in making its final decision should consider the following factors:

- (1) effects of the project on traffic safety and efficiency and pedestrian circulation, both on-site and off-site;
- (2) effects of the project on the natural environment;
- (3) effects of the project on surrounding properties;
- (4) actions the applicant will undertake to mitigate the negative effects, if any, of the proposed land use;
- (5) compliance with the general site design principles and requirements in Article 6;
- (6) compliance with the landscaping requirements in Article 17;
- (7) compliance with the parking requirements in Article 18;
- (8) compliance with the outdoor lighting requirements in Article 19;

- (9) compliance with other applicable requirements in this chapter; and
- (10) any other factor that relates to the purposes of this chapter set forth in § 102.05 or as allowed by state law.

102.464 Imposition of conditions

- A. **Generally.** In approving a site plan, the Plan Commission may recommend and the Village Board may impose one or more conditions deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping and screening, and revisions to the site design.
- B. **Effect on contracts with another party.** The Plan Commission shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.^[1]

Editorial notes:

- [1] See § 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

102.465 Staff report content

The staff report should include the following:

- (1) a description of the proposed project;
- (2) preliminary findings for the decision criteria listed in this division;
- (3) a preliminary recommendation to approve the application, approve the application with conditions, or deny the application;
- (4) a preliminary list of conditions whether the preliminary staff recommendation is for approval or denial; and
- (5) other information deemed necessary.

102.466 Content of decision document

- A. **Approval.** If the application for a site plan is approved, the decision document should include the following:
 - (1) a statement that the site plan/plan of operation is approved;
 - (2) a description of the land use along with operational characteristics;
 - (3) reasons for the decision based on the criteria listed in this division;
 - (4) conditions of approval, if any;
 - (5) a statement indicating that the property owner and operator, if different, must sign the decision document and return it to the zoning administrator to acknowledge acceptance of the same; (verify if needed)
 - (6) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
 - (7) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
 - (8) other information the reviewing authority or zoning administrator deems appropriate;
 - (9) the signature of the village president; and
 - (10) the date of the decision.
- B. **Denial.** If the application for a site plan is denied, the decision document should include the following:
 - (1) a statement that the site plan/plan of operation is denied,
 - (2) a description of the land use,
 - (3) reasons for the decision based on the criteria listed in this division,

- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) other information the reviewing authority or zoning administrator deems appropriate,
- (7) the signature of the village president, and
- (8) the date of the decision.

102.467 Effect of approval

The approval of a site plan runs with the land and is binding on all subsequent property owners.

102.468 Expiration of an approval

An approval of a site plan automatically expires 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

102.469 Amendment of an approved site plan

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

102.470 Appeal

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

102.471 through 102.489 Reserved

DIVISION 9 ARCHITECTURAL REVIEW

102.490 Generally

Architectural review is intended to ensure that buildings fit in to the context in which they occur.

102.491 Applicability

Those land uses designated as requiring architectural review in the land use matrix (Appendix A) must comply with the requirements in this division. The exterior of an existing building designated as requiring architectural review may be resided or re-roofed with the same or similar type of materials.

102.492 Review procedure

The general steps outlined below describe the process for reviewing an application for an architectural plan.

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

2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
4. **Plan Commission meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
5. **Recommendation.** The Plan Commission makes a recommendation to the Village Board to (i) approve the architectural plan, (ii) approve the architectural plan with conditions, or (iii) deny the architectural plan.
6. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
7. **Decision.** After considering all of the information submitted by the applicant, the staff report, if any, and the Plan Commission's recommendation, the Village Board makes a decision to (i) approve the architectural plan, (ii) approve the architectural plan with conditions, or (iii) deny the architectural plan.
8. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a decision document consistent with this division.
9. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.

102.493 Basis of decision

The Plan Commission in making its recommendation and the Village Board in making its final decision should determine whether the building complies with all applicable provisions of this chapter.

102.494 Imposition of conditions

- A. **Generally.** In approving an architectural plan, the Plan Commission may recommend and the Village Board may impose one or more conditions deemed necessary to further the intent and purposes of this chapter.
- B. **Effect on contracts with another party.** The review authority shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.^[1]

Editorial notes:

[1] See § 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

102.495 Content of decision document

- A. **Approval.** If the architectural plan is approved, the decision document should include the following:
 - (1) a statement that the architectural plan is approved;
 - (2) a description of the project;
 - (3) reasons for the decision based on the criteria listed in this division;
 - (4) conditions of approval, if any;

- (5) if one or more conditions of approval are imposed, a statement indicating that the property owner must sign the decision document and return it to the zoning administrator to acknowledge acceptance of the same;
 - (6) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
 - (7) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
 - (8) other information the Village Board or administrator deems appropriate; and
 - (9) the date of the decision.
- B. **Denial.** If the architectural plan is denied, the decision document should include the following:
- (1) a statement that the architectural plan is denied,
 - (2) a description of the project,
 - (3) reasons for the decision based on the criteria listed in this division,
 - (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
 - (5) a statement that the decision may be appealed as provided for in this division,
 - (6) other information the Village Board or zoning administrator deems appropriate, and
 - (7) the date of the decision.

102.496 Effect of approval

An approval of an architectural plan runs with the land and is binding on all subsequent property owners.

102.497 Expiration of an approval

An approval of an architectural plan automatically expires 12 months after the date of issuance unless substantial work has commenced and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

102.498 Amendment of an approved architectural plan

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

102.499 Appeal

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

102.500 through 102.519 Reserved

DIVISION 10 SPECIAL EXCEPTION

102.520 Generally

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

102.521 Review procedure

The general steps outlined below describe the process for reviewing an application for a special exception.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
4. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
5. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
6. **Plan Commission meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
7. **Recommendation.** After considering all of the information submitted by the applicant and the staff report, if any, the Plan Commission makes a recommendation to the Village Board based on the decision criteria in this division to (i) approve the special exception, (ii) approve the special exception with conditions, or (iii) deny the special exception.
8. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
9. **Decision.** After considering all of the information submitted by the applicant, the staff report, if any, and the Plan Commission's recommendation, the Village Board makes a decision to (i) approve the special exception, (ii) approve the special exception with conditions, or (iii) deny the special exception.
10. **Preparation of final decision document.** Based on the action of the Village Board, the zoning administrator prepares a final decision document consistent with this division subject to the direction given by the Village Board.
11. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
12. **Acceptance by property owner.** If the application is approved, the property owner must sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the Village at the expiration of such time limit. The decision document shall only become effective when all

required signatures have been obtained and the original signature copy is returned to the zoning administrator. (verify if needed)

102.522 Basis of decision

The Plan Commission in making its recommendation and the Village Board in making its final decision should consider the following factors:

- (1) the size of the property in comparison to other properties in the area;
- (2) the extent to which the issuance of the special exception would be in keeping with the overall intent of this chapter;
- (3) whether there are any unique circumstances and the nature of those circumstances that warrant the issuance of the special exception;
- (4) the nature and extent of anticipated impacts to the natural environment that could potentially occur if the special exception was granted;
- (5) the nature and extent of anticipated positive and negative effects on properties in the area;
- (6) actions the applicant will undertake to mitigate the negative effects, if any, of the proposed special exception;
- (7) a factor specifically listed under a section of this chapter authorizing the issuance of a special exception; and
- (8) any other factor that relates to the purposes of this chapter set forth in § 102.05 or as allowed by state law.

102.523 Imposition of conditions

- A. **Generally.** In approving a special exception, the review authority may impose one or more conditions deemed necessary to further the intent and purposes of this chapter.
- B. **Effect on contracts with another party.** The review authority shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.^[1]

Editorial notes:

- [1] See § 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

102.524 Limitations on issuing a special exception

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

102.525 Staff report content

The staff report should include the following:

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

102.526 Content of decision document

- A. **Approval.** If the application for a special exception is approved, the decision document should include the following:
- (1) a statement that the special exception is approved;
 - (2) a description of the special exception;
 - (3) reasons for the decision based on the criteria listed in this division;
 - (4) conditions of approval, if any;
 - (5) a statement indicating that the property owner must sign the decision document and return it to the zoning administrator to acknowledge acceptance of the same; (verify)
 - (6) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
 - (7) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
 - (8) other information the review authority or zoning administrator deems appropriate;
 - (9) the signature of the village president; and
 - (10) the date of the decision.
- B. **Denial.** If the application for a special exception is denied, the decision document should include the following:
- (1) a statement that the special exception is denied,
 - (2) a description of the special exception,
 - (3) reasons for the decision based on the criteria listed in this division,
 - (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
 - (5) a statement that the decision may be appealed as provided for in this division,
 - (6) other information the review authority or zoning administrator deems appropriate,
 - (7) the signature of the village president, and
 - (8) the date of the decision.

102.527 Effect of approval

An approval of a special exception runs with the land and is binding on all subsequent property owners.

102.528 Expiration of an approval

An approval for a special exception automatically expires 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

102.529 Appeal

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

102.530 through 102.549 Reserved

DIVISION 11 REGISTRATION OF A NONCONFORMING USE

102.550 Generally

There may be now or in the future certain uses of land that are not in compliance with this chapter, but which were legally established. These uses are referred to as "nonconforming uses," and consistent with the provisions of Article 20 are allowed to continue to operate within certain parameters. For this reason, it is necessary to document those uses that are considered nonconforming. Registration of a use as a nonconforming use provides documentary evidence establishing (1) when the use was first established; (2) that the use was established consistent with the rules and regulations in effect at the time, if any; (3) that the use has operated continuously, without cessation of more than 12 continuous months; and (4) the nature of the use. Failure to register a nonconforming use does not result in prohibition of the use, but in any future situation where the owner asserts the use is a nonconforming use, the property owner shall have the burden of so proving.

102.551 Initiation

Any of the following may submit an application to determine whether a use should be registered as a nonconforming use:

- (1) a person having a financial interest in the property or in the use occurring on the property;
- (2) the zoning administrator;
- (3) the Plan Commission, or any member thereof; and
- (4) the Village Board, or any member thereof.

102.552 Review procedure

The general steps outlined below describe the process for reviewing an application to register a nonconforming use.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
3. **Special notice to property owner.** If the application process is not initiated by the property owner, the zoning administrator sends a written notice to the property owner by regular and certified mail at least 60 calendar days prior to the date of the Plan Commission meeting. Such notice shall invite the property owner to submit evidence relating to the pending determination. In addition, the notice should state (i) the reasons why the application has been submitted; (ii) the date and time of the meeting; (iii) contact information for the zoning administrator; and (iv) other information deemed appropriate by the zoning administrator.
4. **Meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
5. **Plan Commission recommendation.** The Plan Commission determines whether it has sufficient evidence to make a recommendation, and if so whether the use should or should not be classified as a nonconforming use.
6. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
7. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
8. **Decision.** After considering the Plan Commission's recommendation, the Village Board determines whether it has sufficient evidence to make a final decision, and if so whether the use should or should not be classified as a nonconforming use.

9. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a decision document consistent with this division, subject to the direction provided by the Village Board.
10. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the property owner by regular mail and/or email.
11. **Inclusion in registry.** If the use is determined to be a nonconforming use, the zoning administrator shall include the nonconforming use in the registry authorized in Article 6.

102.553 Basis of decision

In making its decision, the review authority shall determine whether there is sufficient evidence to show that (1) the use in question was legally established; (2) such use does not now comply with one or more of the requirements of this chapter; and (3) such use has continued from the date, or approximate date, of establishment to the current date without an interruption of more than 12 continuous months.

102.554 Content of decision document

- A. **Approval.** If the application for registering a nonconforming use is approved, the decision document should include the following:
 - (1) a statement that the application is approved,
 - (2) a description of the use,
 - (3) reasons for the decision based on the criteria listed in this division,
 - (4) a statement that the applicant may appeal the decision as provided for in this division,
 - (5) other information the Plan Commission or the zoning administrator deems appropriate,
 - (6) the signature of the village president, and
 - (7) the date of the decision.
- B. **Denial.** If the application for registering a nonconforming use is denied, the decision document should include the following:
 - (1) a statement that the application is denied,
 - (2) a description of the use,
 - (3) reasons for the decision based on the criteria listed in this division,
 - (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
 - (5) a statement that the applicant may appeal the decision as provided for in this division,
 - (6) other information the Plan Commission or the zoning administrator deems appropriate,
 - (7) the signature of the village president, and
 - (8) the date of the decision.

102.555 Effect of decision

If the Village Board determines that a land use meets the criteria for a nonconforming use, such decision constitutes documentary evidence establishing the legitimacy and nature of the use as a nonconforming use.

102.556 Appeal

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

102.557 through 102.569 Reserved**DIVISION 12
CONVERSION OF A NONCONFORMING USE****102.570 Generally**

An existing nonconforming use (e.g., a tavern in a residential district) which has been registered as a nonconforming use, pursuant to Division 11 of this article, may be converted to another nonconforming use provided the new use is less nonconforming (e.g., from a tavern to a restaurant).

102.571 Review procedure

The general steps outlined below describe the process for reviewing an application for the conversion of a nonconforming use.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent shall meet with the zoning administrator to review (i) applicable regulations and procedures, (ii) applicable sections of the Village's comprehensive plan, and (iii) the proposal. Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the Village's zoning requirements.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
3. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
5. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
6. **General notice.** Consistent with Article 4, the zoning administrator provides for (i) a class 2 public notice, (ii) property owner notice, and (iii) meeting agenda notice.
7. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing consistent with Article 4. Prior to the close of the public hearing, the applicant or Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research and to prepare such documents it deems necessary, including a preliminary decision document.
8. **Plan Commission recommendation.** After considering all of the information submitted by the applicant, public comments received at the public hearing, the Plan Commission makes a recommendation to the Village Board based on the decision criteria in this division to (i) approve the conversion, (ii) approve the conversion with conditions, or (iii) deny the conversion.
9. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.

10. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
11. **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, and the Plan Commission's recommendation, the Village Board makes a decision based on the decision criteria in this division to (i) approve the conversion, (ii) approve the conversion with conditions, or (iii) deny the conversion.
12. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a final decision document consistent with this division, subject to the direction given by the Village Board. If approved, the zoning administrator shall also prepare a conversion order.
13. **Applicant notification.** If the application is denied, the zoning administrator, within a reasonable time following the Village Board's decision, sends the decision document to the applicant by regular mail and/or email.
14. **Acceptance by property owner.** If the application is approved, the property owner must sign the conversion order to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the Village at the expiration of such time limit. The conversion order shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
15. **Recording of decision document.** If the property owner signs the approved conversion order, the conversion order is recorded, at the applicant's expense, in the register of deeds office for Walworth County or Waukesha County, as appropriate.

102.572 Basis of decision

The Plan Commission in making its recommendation and the Village Board in making its final decision should compare the known and anticipated impacts of the existing nonconforming use on properties in the area and those of the proposed nonconforming use. The Plan Commission shall not recommend and the Village Board shall not approve a conversion when the proposed nonconforming use would be more of a nonconformity than the existing nonconforming use.

102.573 Imposition of conditions

- A. **Generally.** In approving a conversion, the Village Board may impose one or more conditions deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping and screening, outdoor lighting, and hours of operation.
- B. **Effect on contracts with another party.** The Village Board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.^[1]

Editorial notes:

[1] See § 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

102.574 Staff report content

The staff report should include the following:

- (1) a description of the requested conversion;
- (2) preliminary findings for the decision criteria listed in this division;
- (3) a preliminary recommendation to approve the application, approve the application with conditions, or deny the application;
- (4) a preliminary list of conditions whether the preliminary staff recommendation is for approval or denial; and

- (5) other information deemed necessary.

102.575 Content of decision document

- A. **Approval.** If the application for a conversion is approved, the decision document should include the following:
- (1) a statement that the conversion is approved;
 - (2) a description of the new nonconforming use;
 - (3) a statement indicating that the property owner must sign the conversion order and return it to the zoning administrator;
 - (4) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
 - (5) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
 - (6) other information the review authority or zoning administrator deems appropriate;
 - (7) the signature of the village president;
 - (8) the date of the decision; and
 - (9) the copy of the conversion order described in § 102.576.
- B. **Denial.** If the application for a conversion is denied, the decision document should include the following:
- (1) a statement that the application is denied,
 - (2) a description of the proposed conversion,
 - (3) reasons for the decision based on the criteria listed in this division,
 - (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
 - (5) a statement that the decision may be appealed as provided for in this division,
 - (6) other information the Village Board or zoning administrator deems appropriate,
 - (7) the signature of the village president, and
 - (8) the date of the decision.

102.576 Content of conversion order

If the conversion is approved, a conversion order shall be prepared and adopted that includes (1) a description of the subject property's location (e.g., address, parcel number, reference to a parcel in a certified survey map or subdivision plat); (2) a description of the existing and of the new nonconforming use; (3) conditions of approval, if any; and (4) other provisions deemed necessary given the nature of the approval.

102.577 Effect of approval

An approval of a conversion runs with the land and is binding on all subsequent property owners.

102.578 Expiration of an approval

If the zoning administrator determines that substantial work as authorized by a conversion approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to Division 13 of this article. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 6 months.

102.579 Amendment of an approved conversion

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

102.580 Appeal

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

102.581 through 102.589 Reserved

DIVISION 13 EXPANSION OF A NONCONFORMING BUILDING

102.590 Generally

A nonconforming building (e.g., a building built too close to a lot line) with a conforming use may be expanded in compliance with all requirements of the zoning code and with the procedures and requirements of this division.

102.591 Review procedure

The general steps outlined below describe the process for reviewing an application to expand a nonconforming building.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the zoning administrator to review applicable regulations and procedures and the proposal.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
3. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
5. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
6. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
7. **Meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
8. **Plan Commission recommendation.** The Plan Commission makes a recommendation to (i) approve the expansion, (ii) approve the expansion with conditions, or (iii) deny the expansion.

9. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
10. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
11. **Decision.** The Village Board makes a decision to (i) approve the expansion, (ii) approve the expansion with conditions, or (iii) deny the expansion.
12. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a decision document consistent with this division.
13. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
14. **Acceptance by property owner.** If the application is approved, the property owner must sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the Village at the expiration of such time limit. The decision document shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator. (Should this be included or not?)
15. **Recording of decision document.** When approval is granted, the decision document is recorded in the register of deeds office for Walworth County or Waukesha County, as appropriate. (Should this be included or not?)

102.592 Basis of decision

The Plan Commission in making its recommendation and the Village Board in making its final decision should consider the following factors:

- (1) the degree of the existing nonconformity (i.e., 1 foot into the setback or 1 foot from the property boundary line),
- (2) the size and configuration of the lot,
- (3) whether the lot conforms to the dimensional standards of the zoning district in which it is located,
- (4) the size and location of the existing nonconforming building,
- (5) the size and location of other existing structures and those structures reasonably anticipated on the lot,
- (6) the impact, if any, that the expansion may have on adjoining properties,
- (7) whether the proposed expansion would violate the intent of this chapter, and
- (8) any other factor that relates to the purposes of this chapter set forth in § 102.05 or as allowed by state law.

102.593 Imposition of conditions

- A. **Generally.** In approving an expansion of a nonconforming building, the Village Board may impose one or more conditions of approval deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping, screening, and the maximum size of the building(s), or impose limitations on additional buildings otherwise allowed on the subject property under the applicable zoning district regulations.
- B. **Effect on contracts with another party.** The Village Board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.^[1]

Editorial notes:

[1] See § 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

102.594 Content of decision document

- A. **Approval.** If the application for an expansion of a nonconforming building is approved, the decision document should include the following:
- (1) a statement that the building expansion is approved;
 - (2) a description of the building project;
 - (3) reasons for the decision based on the criteria listed in this division;
 - (4) conditions of approval, if any;
 - (5) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
 - (6) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
 - (7) other information the Village Board or zoning administrator deems appropriate;
 - (8) the signature of the village president; and
 - (9) the date of the decision.
- B. **Denial.** If the application for expansion of a nonconforming building is denied, the decision document should include the following:
- (1) a statement that the building expansion is denied,
 - (2) reasons for the decision based on the criteria listed in this division,
 - (3) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
 - (4) a statement that the applicant may appeal the decision to a court of competent jurisdiction,
 - (5) other information the Village Board or zoning administrator deems appropriate,
 - (6) the signature of the village president, and
 - (7) the date of the decision.

102.595 Effect of decision

An approval of an expansion of a nonconforming building runs with the land and is binding on all subsequent property owners.

102.596 Expiration of an approval

An approval to expand a nonconforming building automatically expires 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

102.597 Appeal

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

102.598 through 102.619 Reserved

DIVISION 14 CERTIFICATE OF **HISTORIC** APPROPRIATENESS

102.620 Generally

A certificate of appropriateness is required for the following:

- (1) Reconstruction or alteration of a historic structure or site. A certificate of appropriateness is not needed for ordinary maintenance and repairs, provided that the work involves repairs to existing features of a historic structure or site or the replacement of elements of a structure with pieces identical in appearance and provided that the work does not change the exterior appearance of the structure or site and does not require the issuance of a building permit.
- (2) Construction of a new improvement on a property with a historic structure or site.
- (3) Demolition in whole or in part of any historic structure or site.
- (4) Any project undertaken by a Village department, or by a public utility and transportation company that affects historic structures, historic sites or historic districts including street paving, sidewalks, utility installations, lighting, walls, fences, structures and buildings on property, easements, or streets owned or franchised by the Village.

The building inspector shall not issue a permit for any such work, if otherwise required, without a certificate of appropriateness.

102.621 Review procedure

- A. **Commission review.** The general steps outlined below describe the process for reviewing an application for a certificate of appropriateness.
 1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
 2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
 3. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Historic Preservation Commission.
 4. **Meeting.** Allowing for proper notice, the Historic Preservation Commission considers the application at a regular or special meeting.
 5. **Decision.** After considering all of the information submitted by the applicant, the staff report, if any, the Historic Preservation Commission makes a decision within 45 day of the filing of the application to (i) approve the proposed work, (ii) approve the proposed work with conditions, or (iii) deny the proposed work.
 6. **Preparation of decision document.** Based on the action of the Historic Preservation Commission, the zoning administrator prepares a decision document consistent with this division.
 7. **Applicant notification.** Within a reasonable time following the Historic Preservation Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
- B. **Village Board review on appeal.** If a final decision of the Historic Preservation Commission is appealed as provided for in this division, the general steps outlined below apply.

1. **Submittal of application materials.** The zoning administrator forwards the application and other materials the applicant submitted to the Historic Preservation Commission along with the commission's decision.
2. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
3. **Meeting.** Allowing for proper notice, the Village Board considers the appeal at a regular or special meeting.
4. **Decision.** In consultation with the village attorney, the Village Board makes a written decision within 60 calendar days of when the Historic Preservation Commission's decision was appealed.
5. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a decision document consistent with this division.
6. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.

102.622 Basis of decision

The Historic Preservation Commission must approve the application unless:

- (1) In the case of a designated historic structure or historic site, the proposed work would detrimentally change, destroy or adversely affect any exterior architectural feature of the improvement or site upon which such work is to be done;
- (2) In the case of the construction of a new improvement upon a historic site, or within a historic district, the exterior of such improvement would adversely affect or not harmonize with the external appearance of the other neighboring improvements on such site or within the district;
- (3) In the case of any property located in a historic district, the proposed construction, reconstruction, exterior alteration or demolition does not conform to the purpose and intent of this chapter and to the objectives and design criteria of the historic preservation plan for such district;
- (4) The building or structure is of such architectural or historical significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the Village and state;
- (5) The building or structure is of such old and unusual or uncommon design, texture, and/or material that it could not be reproduced without great difficulty and/or expense;
- (6) In the case of a request for a demolition permit, the denial of the permit would result in the loss of all reasonable and beneficial use of or return from the property;
- (7) In the case of a request for the demolition of a deteriorated building or structure, any hardship or difficulty claimed by the owner is self-created or is the result of any failure to maintain the property in good repair;
- (8) The owner of the historic property submits information that the denial of the certificate of appropriateness will deprive the owner of all reasonable use of, or economic return on, the property.

In addition, in determining whether to issue a certificate of appropriateness, the commission must consider and may give decisive weight to any or all of the following standards:

- (1) A property must be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2) The historic character of a property must be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- (3) Each property must be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- (4) Most properties change over time; those changes that have acquired historic significance in their own right must be retained and preserved.

- (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property must be preserved.
- (6) Deteriorated historic features must be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and other visual qualities and, where possible, materials. Replacement of missing features must be substantiated by documentary, physical, or pictorial evidence.
- (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- (8) Significant archeological resources affected by a project must be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- (9) New additions and adjacent or related new construction must be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

102.623 Imposition of conditions

- A. **Generally.** In approving a certificate of appropriateness, the Historic Preservation Commission may impose one or more conditions deemed necessary to further the intent and purposes of this chapter.
- B. **Effect on contracts with another party.** The review authority shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.^[1]

Editorial notes:

- [1] See § 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

102.624 Consultation

If the Historic Preservation Commission does not approve a petitioner's application, the commission should work with the applicant in an attempt to obtain a certificate of appropriateness within the established guidelines.

102.625 Content of decision document

- A. **Approval.** If the proposed work is approved, the decision document should include the following:
 - (1) a statement that the proposed work is approved;
 - (2) a description of the project;
 - (3) reasons for the decision based on the criteria listed in this division;
 - (4) conditions of approval, if any;
 - (5) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
 - (6) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
 - (7) other information the Historic Preservation Commission or zoning administrator deems appropriate; and
 - (8) the date of the decision.
- B. **Denial.** If the proposed work is denied, the decision document should include the following:
 - (1) a statement that the proposed work is denied,
 - (2) a description of the proposed work,
 - (3) reasons for the decision based on the criteria listed in this division,

- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) other information the Historic Preservation Commission or zoning administrator deems appropriate, and
- (7) the date of the decision.

102.626 Effect of approval

An approval of a certificate of appropriateness runs with the land and is binding on all subsequent property owners.

102.627 Expiration of an approval

An approval granted under this division automatically expires 12 months after the date of issuance unless substantial work has commenced and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

102.628 Amendment of an approval

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

102.629 Appeal

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

102.630 through 102.659 Reserved

DIVISION 15 ZONING PERMIT

102.660 Generally

A zoning permit is administrative in nature and is intended to ensure that certain types of land uses are in compliance with this chapter and any precedent approvals (e.g., conditional use approval).

102.661 Applicability

Those land uses designated as requiring a zoning permit in the land use matrix (Appendix A) must comply with the requirements in this division when a new use is being established and when there is a change in occupancy of an existing non-residential building.

102.662 Review procedure

The general steps outlined below describe the process for reviewing an application for a zoning permit.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Decision.** When the zoning administrator determines the application is complete, he or she makes a decision to (i) approve the zoning permit, (ii) approve the zoning permit with conditions, or (iii) deny the zoning permit
4. **Applicant notification.** Within a reasonable time following his or her decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.

102.663 Basis of decision

In determining whether to issue a zoning permit or deny the permit, the zoning administrator shall determine whether the proposed use is consistent with (1) any prior approvals, such as a conditional use approval, (2) this chapter, and (3) other provisions of the municipal code.

102.664 Expiration of an approval

- A. **Project involving construction.** For a project involving any construction, a zoning permit automatically expires 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3i) the project complies with this chapter in effect at the time the extension is granted.
- B. **Change in use.** For a change in use, the zoning permit automatically expires 6 months after the date of issuance if the applicant does not move into the vacant space.

102.665 Appeal

An aggrieved person may appeal a final decision made pursuant to this division by filing an administrative appeal with the Board of Zoning and Building Appeals within 30 calendar days of the date of the final decision.

102.666 through 102.679 Reserved

DIVISION 16 FLOODPLAIN PERMIT

102.680 Generally

A floodplain permit is administrative in nature and is intended to ensure that land uses located in the floodplain overlay district comply with the requirements in Article 12.

102.681 Applicability

A floodplain permit must be obtained before any of the following is initiated in the floodplain overlay district:

- (1) new development, broadly construed;
- (2) repair, modification, or addition to an existing structure; or
- (3) change in the use of a building or structure.

102.682 Review procedure

The general steps outlined below describe the process for reviewing an application for a floodplain permit.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. If the application is deemed incomplete or if additional information is requested, the zoning administrator will take no further steps to process the application until the deficiencies are remedied or the information is provided. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Decision.** When the zoning administrator determines the application is complete, he or she makes a decision based on the decision criteria in this division to (i) approve the floodplain permit, (ii) approve the floodplain permit with conditions, or (iii) deny the floodplain permit.
4. **Applicant notification.** Within a reasonable time following his or her decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.

102.683 Basis of decision

In determining whether to issue a floodplain permit or deny the permit, the zoning administrator shall determine whether the proposed use is consistent with the standards in Article 12.

102.684 Expiration of an approval

- A. **Project involving construction.** For a project involving any construction, a floodplain permit automatically expires 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.
- B. **Change in use.** For a change in use, the floodplain permit automatically expires 6 months after the date of issuance if the applicant does not move into the vacant space.

102.685 Appeal

An aggrieved person may appeal a final decision made pursuant to this division by filing an administrative appeal with the Board of Zoning and Building Appeals within 30 calendar days of the date of the final decision.

102.686 through 102.699 Reserved

DIVISION 17 TERMINATION OF APPROVAL

102.700 Generally

There are certain situations when the approval for a land use may be terminated. This division describes the procedures for terminating an approved use.

102.701 Initiation

- A. **Voluntary termination of a conditional use.** The property owner is authorized to submit an application to terminate a conditional use approval for his or her property.
- B. **Involuntary termination of conditional use approval due to cessation.** The zoning administrator is authorized to submit an application to terminate a conditional use approval when he or she determines the land use authorized by such approval has ceased to operate for more than 12 months.
- C. **Involuntary termination of a conditional use approval due to violation.** The zoning administrator is authorized to submit an application to terminate a conditional use approval when he or she determines that the property owner has violated one or more conditions of approval and satisfactory action has not been taken to correct the violation.
- D. **Involuntary termination of a specified land use due to cessation.** The zoning administrator is authorized to submit an application to terminate an approved land use when he or she determines that such use is no longer in use for the time period specified for such use.
- E. **Involuntary termination of a nonconforming use.** The zoning administrator is authorized to submit an application to terminate a nonconforming use when he or she determines that such use is having a significant harmful effect on the public health, safety, and welfare or the nonconforming use has ceased to operate for the period of time required by this chapter to retain designation as a nonconforming use.

102.702 Review procedure for voluntary termination

The general steps outlined below describe the process for reviewing an application to voluntarily terminate an approval of a land use authorized under this chapter.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
4. **Meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
5. **Decision.** The Village Board makes a decision to (i) approve the termination, (ii) approve the termination with conditions, or (iii) deny the termination.
6. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a decision document consistent with this division, subject to the direction provided by the Village Board.

7. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
8. **Administrative steps.** If the application is approved, the zoning administrator updates any village records to indicate that the use as specified in the application has been terminated.

102.703 Review procedure for involuntary termination

The general steps outlined below describe the process for reviewing an application to involuntarily terminate an approval of a land use authorized under this chapter.

1. **Submittal of application materials.** The zoning administrator shall complete an application and other required materials.
2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
4. **Special notice to property owner.** The zoning administrator sends a written notice to the property owner by regular and certified mail at least 30 calendar days prior to the date of the public hearing. Such notice should state (i) the reasons why the zoning administrator has submitted an application to terminate the specified use; (ii) the date and time of the public hearing; (iii) contact information for the zoning administrator, including telephone number; and (iv) other information deemed appropriate by the zoning administrator. If the action is intended to terminate a conditional use for a violation, the notice shall state the alleged violation along with supporting evidence. If the action is intended to terminate an inactive land use, the notice shall state the time period when the land use was not in use along with any supporting evidence.
5. **General public notice.** Consistent with Article 4, the zoning administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
6. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research. In addition, the Plan Commission may direct the zoning administrator to prepare such documents it deems necessary, including a preliminary decision document.
7. **Plan Commission recommendation.** After considering all of the information submitted by the applicant, public comments received at the public hearing, the Plan Commission makes a recommendation to the Village Board based on the decision criteria in this division to (i) approve the termination, (ii) approve the termination with conditions, or (iii) deny the termination.
8. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
9. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
10. **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, and the Plan Commission's recommendation, the Village Board makes a decision based on the decision criteria in this division to (i) approve the termination, (ii) approve the termination with conditions, or (iii) deny the termination.
11. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a final decision document consistent with this division, subject to the direction given by the Village Board.

12. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the property owner by regular mail and/or email.
13. **Administrative steps.** If the application is approved, the zoning administrator updates any village records to indicate that the use as specified in the application has been terminated.

102.704 Basis of decision

The Plan Commission in making its recommendation and the Village Board in making its decision should consider the following factors:

- (1) the nature of those buildings or other structures, if any, on the subject property that relate to the use and the extent to which they are or are not otherwise permitted in the district in which the subject property is located;
- (2) effects of the existing use on surrounding properties, including detriment to the full and complete use of such properties and potential for concerns related to possible nuisances;
- (3) effects of the existing use on the normal and orderly development and improvement of the surrounding property for those uses permitted in the zoning district in which they are located; and
- (4) any other factor that relates to the purposes of this chapter as set forth in § 102.05 or as allowed by state law.

102.705 Content of decision document

- A. **Approval.** If the application to terminate an approval is approved, the decision document should include the following:
 - (1) a statement that the specified use is terminated;
 - (2) a description of the land use being terminated;
 - (3) reasons for the decision based on the criteria listed in this division;
 - (4) requirements for the removal of any building or other structure, if any, on the subject property that are related to the terminated use and that are not otherwise permitted in the zoning district in which the subject property is located;
 - (5) a statement that the decision may be appealed as provided for in this division;
 - (6) other information the Village Board or zoning administrator deems appropriate;
 - (7) the signature of the village president; and
 - (8) the date of the decision.
- B. **Denial.** If the application to terminate an approval is denied, the decision document should include the following:
 - (1) a statement that the specified use continues to be an approved use,
 - (2) a description of the land use,
 - (3) reasons for the decision based on the criteria listed in this division,
 - (4) a statement that the decision may be appealed as provided for in this division,
 - (5) other information the Village Board or zoning administrator deems appropriate,
 - (6) the signature of the village president;, and
 - (7) the date of the decision.

102.706 Compliance with requirements of zoning district

If the Village Board terminates an approval under this division, the property owner shall bring the subject property into conformity with the permitted use regulations of the zoning district in which the property is located. The Village Board shall establish a timeframe it determines appropriate to bring the property into

compliance. In making such determination, the Village Board should consider the type of actions the property owner will need to take to bring the property into compliance and weather conditions. In no event, shall the compliance period be less than 30 calendar days or more than 9 months.

102.707 Appeal

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

102.708 through 102.729 Reserved

DIVISION 18 CODE INTERPRETATION

102.730 Generally

When there is uncertainty or disagreement as to the intent or meaning of a provision in this chapter, a person can ask for a code interpretation. For example, the question may relate to (1) the zoning map, (2) a specific provision in the code, (3) how a specific provision in the code is applied in a specific instance, or (4) terms and conditions of an approval. This division describes the procedures and requirements to issue such interpretations.

102.731 Initiation

Any person, including the zoning administrator, may submit a question for interpretation.

102.732 Limitations on interpretations

The responsibility for issuing an interpretation shall not be construed as overriding the responsibilities specifically given to any commission, board, or official named in any other part of this chapter.

102.733 Review procedure

- A. **Zoning administrator review.** The general steps outlined below describe the process for reviewing an application for a code interpretation.
 1. **Submittal of question.** The individual requesting the interpretation submits the question in writing to the zoning administrator and the application fee as may be established by the Village Board.
 2. **Decision.** In consultation with the village attorney, if deemed necessary, the zoning administrator makes a written decision within 60 calendar days of when the petition was submitted.
 3. **Notification of decision.** Within a reasonable time following completion of the interpretation, the zoning administrator sends a copy of the interpretation by regular mail and/or email to the individual requesting the interpretation and provides a copy of the same to the Plan Commission, the village attorney, and those village employees and agents involved in the administration of this chapter, as appropriate.
- B. **Plan Commission review on appeal.** If a final decision of the zoning administrator is appealed as provided for in this division, the general steps outlined below apply.
 1. **Submittal of application materials.** The zoning administrator forwards the application and other materials the applicant submitted to the Plan Commission along with the administrator's interpretation.
 2. **General notice.** Consistent with Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.

3. **Meeting.** Allowing for proper notice, the Plan Commission considers the appeal at a regular or special meeting.
4. **Decision.** In consultation with the village attorney, the Plan Commission makes a written decision within 60 calendar days of when the zoning administrator's decision was appealed.
5. **Preparation of decision document.** Based on the action of the Plan Commission, the zoning administrator prepares a decision document consistent with this division.
6. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.

102.734 Basis of decision

- A. **General.** In consultation with the village attorney and others as appropriate, the review authority shall (1) evaluate the section of this chapter in question and those that are related, (2) consider the purposes of this chapter set forth in § 102.05 and other parts of the chapter along with applicable legislative findings in this chapter, and (3) consider other applicable interpretations that have previously been made and make a decision consistent with this division giving this chapter its most reasonable application. If the review authority cannot make a reasonable interpretation, a determination shall not be issued.
- B. **Floodplain zoning.** If an unclear provision relates to the floodplain regulations and is required by ch. NR 116, Wis. Admin. Code, the provision shall be interpreted in light of the standards in ch. NR 116 in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.
- C. **Shoreland-wetland zoning.** If an unclear provision relates to the shoreland-wetland regulations and is required by ch. NR 117, Wis. Admin. Code, the provision shall be interpreted in light of the standards in ch. NR 117 in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.
- D. **Similarity of land uses.** In making a determination as allowed under § 102.841 with respect to similarity of land uses, the zoning administrator should consider (1) the nature of the requested use; (2) whether the requested use is consistent with the Village's comprehensive plan; and (3) whether the requested use is consistent with the purposes of each of the zoning districts where the similar use is allowed either by right or as a conditional use.

102.735 Repeal or revision of an interpretation

The review authority may rescind or modify an interpretation the review authority issued if such interpretation is deemed to be incorrect in whole or in part.

102.736 Interpretation content

An interpretation must be in writing and include the following:

- (1) the name of the person posing the question,
- (2) the section number of this chapter in question,
- (3) the question or alleged ambiguity,
- (4) the factors that were considered in making the interpretation,
- (5) the interpretation,
- (6) other information the review authority deems appropriate,
- (7) the signature of the zoning administrator, and
- (8) the date of decision.

102.737 Effect of interpretation

An interpretation once rendered shall have full effect as if set forth in this chapter. Where appropriate, interpretations should be addressed through the amendment process. If the review authority determines that it

is not possible to make a reasonable interpretation, such decision shall not affect the validity of any section of this chapter.

102.738 Compilation of interpretations

The zoning administrator must keep a written record of all interpretations in effect and make them available for public inspection during normal office hours.

102.739 Appeal

An aggrieved person may, without time constraint, appeal an interpretation made pursuant to this division by filing an appeal with the Plan Commission. Following the final decision of the Plan Commission, an aggrieved person may appeal such decision to a court of competent jurisdiction without time constraint.

102.740 through 102.759 Reserved

DIVISION 19 ADMINISTRATIVE APPEAL

102.760 Generally

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

102.761 Initiation

Any person aggrieved by a final decision of the zoning administrator may file an appeal with the Board of Zoning and Building Appeals consistent with this division.

102.762 Review procedure

The general steps outlined below describe the process for reviewing an application for an administrative appeal.

1. **Submittal of appeal.** The applicant submits a written appeal to the village clerk within 30 calendar days of the date of the administrative decision being appealed, unless a different timeframe is established.
2. **Notification of appeal.** The village clerk provides a copy of the appeal to the Board of Zoning and Building Appeals and the zoning administrator.
3. **Compilation and submittal of record.** The zoning administrator compiles a complete and accurate record relating to the action being appealed and transmits it to the Board of Zoning and Building Appeals in a timely manner.
4. **Special notice to Department of Natural Resources.** If the administrative appeal relates to a decision relating to the floodplain regulations or shoreland-wetland regulations in this chapter, the zoning administrator sends a copy of the application and public hearing notice to the regional office of the Wisconsin Department of Natural Resources by regular mail and/or email at least 10 calendar days before the date of the public hearing.
5. **Special notice to parties in interest.** The chairperson of the Board of Zoning and Building Appeals gives notice for the public hearing to the parties in interest, including the applicant and the zoning administrator.
6. **General notice.** The chairperson of the Board of Zoning and Building Appeals provides for (i) a class 2 public notice and (ii) meeting agenda notice consistent with Article 4.

7. **Public hearing.** Allowing for proper notice, the Board of Zoning and Building Appeals conducts a public hearing consistent with Article 4. Prior to the close of the public hearing, the applicant or the Board of Zoning and Building Appeals may request a continuance consistent with Article 4.
8. **Decision.** After the public hearing has been closed, the Board of Zoning and Building Appeals makes a decision to affirm the zoning administrator's decision, set aside the decision, or modify the decision.
9. **Notification of decision.** Within a reasonable time following the Zoning Board of Appeals' decision, the village clerk sends the decision document to the applicant by regular mail and/or email and provides a copy of the same to the zoning administrator and the Plan Commission.
10. **Notification to Department of Natural Resources.** If the administrative appeal relates to a decision relating to the floodplain regulations or shoreland-wetland regulations in this chapter, the village clerk sends a copy of the decision document to the regional office of the Wisconsin Department of Natural Resources by regular mail and/or email.

102.763 Basis of decision

- A. **Generally.** The Board of Zoning and Building Appeals must determine whether the zoning administrator made an error in judgment as applied to the instance being appealed.
- B. **Historic property.** In an action involves a historic property, as defined in § 44.31(3), Wis. Stats., the Board of Zoning and Building Appeals shall consider any suggested alternatives or recommendations submitted by the landmarks commission, if one has been established, or the Plan Commission.

102.764 Effect of appeal

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

102.765 Appeal

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

102.764 through 102.779 Reserved

DIVISION 20 VARIANCE

102.780 Generally

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

102.781 Review procedure

The general steps outlined below describe the process for reviewing an application for a variance.

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

2. **Determination of completeness.** The zoning administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Board of Zoning and Building Appeals consistent with its adopted calendar.
4. **Special notice to Department of Natural Resources.** If the application relates to the floodplain regulations or shoreland-wetland regulations in this chapter, the zoning administrator sends a copy of the application and public hearing notice to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email at least 10 calendar days before the date of the public hearing.
5. **General notice.** Consistent with Article 4, the zoning administrator provides for (i) a class 2 public notice, (ii) property owner notification, and (iii) meeting agenda notice.
6. **Staff report preparation and distribution.** The zoning administrator may prepare a staff report as set forth in this division. If one is prepared, the zoning administrator provides a copy to the applicant, each member of the Board of Zoning and Building Appeals, and any person upon request.
7. **Public hearing.** Allowing for proper notice, the Board of Zoning and Building Appeals holds a public hearing consistent with Article 4. Prior to the close of the public hearing, the applicant or the board may request a continuance. If the public hearing is adjourned, the Board of Zoning and Building Appeals may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research and to prepare such documents it deems necessary, including a preliminary decision document.
8. **Decision.** After the public hearing has been closed, the Board of Zoning and Building Appeals after considering the comments and the staff report, if any, makes a decision based on the decision criteria in this division to (i) approve the variance, (ii) approve the variance with conditions, or (iii) deny the variance. The Board of Zoning and Building Appeals may render its decision at the same meeting the public hearing is conducted or at a subsequent meeting.
9. **Preparation of decision document.** Based on the action of the Board of Zoning and Building Appeals, the zoning administrator prepares a decision document consistent with this division.
10. **Applicant notification.** Within a reasonable time following the Board of Zoning and Appeals' decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
11. **Notification to Department of Natural Resources.** If the application relates to the floodplain regulations or shoreland-wetland regulations in this chapter, the zoning administrator sends a copy of the decision document to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email.
12. **Additional procedural steps.** If the Board of Zoning and Building Appeals grants the variance, the applicant shall then follow other review procedures as may be required.

102.782 Basis of decision

The Board of Zoning and Building Appeals shall base its decision upon the standard for a variance described in § 62.23(7)(e)(7), Wis. Stats., and applicable judicial interpretations of such statute.

102.783 Limitations on issuing a variance

The following actions shall not be allowed by an area variance, and shall be deemed to be a use variance subject to the use variance standard in § 62.23(7)(e)(7)(d), Wis. Stats.:

- (1) expansion of a nonconforming use (e.g., expansion of area, increase in operational characteristics, etc.), or

- (2) modification to lot size requirements so as to increase the permitted density or intensity of use.

102.784 Imposition of conditions

In approving a variance, the Board of Zoning and Building Appeals may impose such conditions and restrictions as may be necessary to grant approval.

102.785 Staff report content

The staff report should include the following:

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

102.786 Content of decision document

- A. **Approval.** If an application for a variance is approved, the decision document should include the following:

- (1) a statement that the variance is approved;
- (2) a description of the variance;
- (3) reasons for the decision based on the criteria listed in this division;
- (4) conditions of approval, if any;
- (5) a statement that the approval will automatically expire 12 months after the date of approval unless substantial work as authorized by the approval has commenced and continues in good faith to completion and that the Board of Zoning and Building Appeals may, with cause, grant a one-time extension, not to exceed 6 months;
- (6) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (7) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (8) other information the Board of Zoning and Building Appeals or zoning administrator deems appropriate;
- (9) the signature of the chairperson of the Zoning Board of Appeals; and
- (10) the date of the decision.

- B. **Denial.** If the application for a variance is denied, the decision should include the following:

- (1) a statement that the variance request is denied,
- (2) a description of the proposed variance,
- (3) reasons for the decision based on the criteria listed in this division,
- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration provided there is a substantial change in the circumstances relating to the application,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) other information the Board of Zoning and Building Appeals or zoning administrator deems appropriate,
- (7) the signature of the chairperson of the Board of Zoning and Building Appeals, and

(8) the date of the decision.

102.787 Effect of approval

- A. **Generally.** An approved variance merely sets aside the rule or regulation from which relief is sought. All other rules and regulations not part of the variance decision must be followed. An approval of a variance runs with the land and is binding on all subsequent property owners.
- B. **Creation of nonconformity.** If a variance is granted and creates a nonconforming situation, the premises is subject to all applicable provisions relating to nonconformities set forth in Article 20.

102.788 Effect of denial

If the Board of Zoning and Building Appeals denies a variance application, the board may not rehear the same, or essentially the same, application unless there has been substantial change in the circumstances relating to the application.

Editorial notes:

[1] See *Tateoka v City of Waukesha Bd. of Zoning Appeals*, 220 Wis.2d 656, 583 N.W. 2d 871 (Ct. App. 1998).

102.789 Expiration of an approval

A variance approval automatically expires 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

102.790 Appeal

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

102.791 through 102.899 Reserved