



VILLAGE OF NEW AUBURN  
ZONING ORDINANCE UPDATE  
ADOPTED MARCH 30, 2023



**VILLAGE OF NEW AUBURN  
ORDINANCE NO. 2023-01**

AN ORDINANCE REPEALING CHAPTER 19 FLOODPLAIN ORDINANCE, REPEALING CHAPTER 20 SHORELAND WETLAND ORDINANCE, REPEALING AND RECREATING CHAPTER 22 ZONING ORDINANCE, OF THE MUNICIPAL CODE OF ORDINANCES, AND REPEALING AND RECREATING THE OFFICIAL ZONING MAP, FOR THE VILLAGE OF NEW AUBURN, WISCONSIN

**WHEREAS**, the Village of New Auburn is authorized to prepare and adopt a zoning ordinance, including text and map, under Wis. Stat. § 62.23 and 61.35; and

**WHEREAS**, Chapter 19 serves as the Village's Floodplain Ordinance; and

**WHEREAS**, Chapter 20 serves as the Village's Shoreland-Wetland Ordinance; and

**WHEREAS**, Chapter 22 "Zoning" of the Village of New Auburn Municipal Code currently serves as the Village's general zoning ordinance; and

**WHEREAS**, the Village Plan Commission has recommended bringing the Floodplain and Shoreland-Wetland ordinances into Chapter 22 Zoning, making comprehensive changes to Chapter 22, and undertaking a comprehensive zoning map update; and

**WHEREAS**, the new ordinance repealing Chapter 19 and 20 and repealing and recreating Chapter 22 will serve as the Village's general zoning ordinance, wellhead protection ordinance, floodplain ordinance, shoreland-wetland zoning, and shoreland zoning; and

**WHEREAS**, the Zoning Map will serve as the Village's official zoning map; and

**WHEREAS**, the Village of New Auburn Plan Commission has held a public hearing on this ordinance, in compliance with Wis. Stat. § 62.23, and following such hearing the Board considered public comments and the recommendation of the Village Plan Commission.

**NOW, THEREFORE**, the Village Board of New Auburn, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1:** Chapters 19 & 20 are repealed and Chapter 22 is repealed and recreated to read as attached hereto as Exhibit A.


**SECTION 2:** The Zoning Map of the Village of New Auburn described in Section 22.21(2) of the Municipal Code, is being repealed and recreated to read:

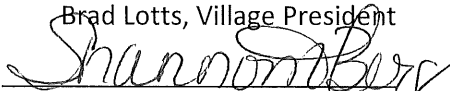
- (1) Zoning Map & Amendments. The boundaries of the aforesaid districts are hereby established as shown on the "Official Zoning Map, Village of New Auburn, Wisconsin", dated December 20, 2022, as amended periodically, which is adopted by reference and made a part hereof. Such map, together with a copy of this Chapter, shall be available for public inspection in the office of the Village Clerk. The map shall be certified by the Village President and attested by the Village Clerk. Any changes in zoning district boundaries shall be recorded on the map. No change shall be effective until so recorded and until a duly certified and attested certificate describing the change is filed with the map. Changes to the zoning map (zoning map amendments) shall further or not contradict the objectives, goals, and policies contained in the Village of New Auburn Comprehensive Plan.
- (2) A copy of the referenced zoning map is attached hereto as Exhibit B.

**SECTION 3: SEVERABILITY.** If any section, clause, provision, or portion of the above-described chapters or map are adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of said chapters or map shall not be affected thereby. If an application of the above described chapters or map to a particular structure, land, or water is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgement shall not be applicable to any other structure, land, or water not specifically included in said judgment. If any requirement or limitation attached to an authorization given under the above described chapters or map is found invalid, it shall be presumed that the authorizations would not have been granted without the requirement or limitation, and therefore, said authorization shall also be invalid. Any other ordinance whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

**SECTION 4: EFFECTIVE DATE.** This ordinance shall take effect upon approval and publication.

Dated this 30th day of March, 2023.

  
\_\_\_\_\_  
Brad Lotts, Village President

  
\_\_\_\_\_  
Shannon Berg, Trustee

  
\_\_\_\_\_  
Allan Anderson, Trustee

\_\_\_\_\_  
Dalton Hinke, Trustee

\_\_\_\_\_  
Gary Pitts, Trustee

ATTEST   
\_\_\_\_\_  
Ardith Story, Clerk-Treasurer

# **EXHIBIT A**

**Adopted March 30, 2023**

**Chapter 22 Zoning Ordinance**

**Village of New Auburn, Wisconsin**



**CHAPTER 22**  
**Village of New Auburn Zoning Code**  
**Adopted March 30, 2023**

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## **ARTICLE 1 IN GENERAL**

### **SEC. 22-1 AUTHORITY.**

This Chapter is adopted under the authority granted by Sections 61.35, 62.23(7) and 87.30 of the Wisconsin Statutes and amendments thereto.

### **SEC. 22-2 TITLE.**

This Ordinance shall be known as, referred to, and cited as the “Village of New Auburn Zoning Ordinance” and is hereinafter referred to as the “Ordinance”.

### **SEC. 22-3 INTENT AND PURPOSES IN VIEW.**

The general purpose of this Chapter is to promote the comfort, health, safety, morals, prosperity, aesthetics, and general welfare of the people of the Village of New Auburn. The Ordinance purposes include:

- (a) To promote the public health, safety, comfort, prosperity, aesthetics, convenience, and general welfare of the citizens of the Village of New Auburn,
- (b) To protect and conserve the natural resources of the Village by the most appropriate use of land,
- (c) To protect and conserve the social character and economic stability, and preserve property values,
- (d) To prevent the overcrowding of land and undue congestion of population,
- (e) To provide adequate light, air, and convenient access to property by regulating the use of land and buildings and the bulk of structures in relationship to surrounding properties,
- (f) To provide adequate and efficient public services such as roads, water and sewer, schools, and police and fire protection,
- (g) To encourage the use of land and buildings which are compatible with nearby existing and planned land uses, and to prohibit and control land uses deemed incompatible with nearby land uses,
- (h) To prevent harm to persons and property by flood, fire, explosion, toxic fumes, or other hazards,
- (i) To protect the traffic-carrying capacity of existing and proposed arterial streets and highways.
- (j) To regulate parking and loading so as to lessen congestion and promote the safety and

efficiency of streets and highways,

- (k) To divide the Village into zones or districts restricting and regulating therein the location, erection, construction, reconstruction, alteration, and use of buildings, structures, and land for residence, business, manufacturing, and other specified uses,
- (l) To stabilize and protect existing and potential property values and encourage the most appropriate use of land throughout the Village,
- (m) To provide for the elimination of nonconforming uses of land, buildings, and structures which are adversely affecting the character and value of desirable development in each district,
- (n) To implement those municipal, county, watershed, and regional comprehensive plans or components of such plans adopted by the Village of New Auburn,
- (o) To provide for the administration and enforcement of this Chapter and to provide penalties for the violation of this Chapter; and
- (p) To implement certain goals and objectives of the Village of New Auburn Comprehensive Plan, which are best addressed through zoning approaches, as enabled by Wisconsin Statutes.

**SEC. 22-4      RELATIONSHIP WITH OTHER LAWS.**

Where the conditions imposed by any part of this ordinance upon the use of land or buildings or upon the bulk of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provisions of this Ordinance or any other laws, ordinances, resolutions, rules or regulations of any kind, the regulations which are more restrictive (or impose higher standards of requirements) shall be enforced.

**SEC. 22-5      SCOPE OF REGULATIONS.**

No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, converted, enlarged, constructed, moved or structurally altered unless in conformity with all the regulations herein specified for the district in which it is located.

**SEC. 22-6      MINIMUM REQUIREMENTS.**

The provisions of this Ordinance shall be held to be the minimum requirements for carrying out the intent and purpose as defined in Section 22-3.

**SEC. 22-7      ABROGATION AND GREATER RESTRICTIONS.**

It is not intended by this Ordinance to repeal, annul, impair, or interfere with any existing easements, covenants, deed restrictions, written agreements, ordinances, rules, regulations, or

permits previously adopted or issued pursuant to law. However, wherever this ordinance imposes greater restrictions, the provisions of this ordinance shall govern.

**SEC. 22-8 SEPARABILITY AND NON-LIABILITY.**

It is hereby declared to be the intention of the Village that the several provisions of this Ordinance are separable, in accordance with the following:

- (a) If any court of competent jurisdiction shall declare any provisions of this Ordinance to be invalid, such ruling shall not affect any other provisions of this Ordinance not specifically included in such ruling.
- (b) If any court of competent jurisdiction shall declare invalid the application of any provision of this Ordinance to a particular property, building or other structure, such ruling shall not affect the application of such provision to any other property, building or structure not specifically included in such ruling.
- (c) The Village does not guarantee, warrant, or represent that only those areas designated as floodlands will be subject to periodic inundation and hereby asserts that there is no liability on the part of the Village Board, its agencies, or employees for any flood damages, sanitation problems, or structural damages that may occur as a result of reliance upon and conformance with this Chapter.

**SEC. 22-9 COMPREHENSIVE PLAN ADOPTED.**

The Village has adopted as though fully set forth in this chapter that certain document entitled “Village of New Auburn 2022-2042 Comprehensive Plan” dated September 8, 2022, and as amended. A copy of the adopted plan is available in the office of the Village Clerk.

**SEC. 22-10 THROUGH 22-14 RESERVED FOR FUTURE USE.**

## **ARTICLE 2**

### **ZONING DISTRICTS AND DISTRICT REGULATIONS**

#### **DIVISION 1 – GENERAL PROVISIONS**

##### **SEC. 22-15 JURISDICTION AND COMPLIANCE.**

- (a) Jurisdiction. The Jurisdiction of this Chapter shall apply to all structures, lands, water, and air within the corporate limits of the Village of New Auburn.
  
- (b) Compliance. Within the Village, the use of any land; the size, shape, and placement of lots; the use, size, height, location, and types of structures thereon; and the provision of open spaces shall be in compliance with the regulations established herein and made applicable to the district or districts in which such land or structure is located.

Where a building permit for a structure has been issued in accordance with law prior to the effective date of this Ordinance, and provided that construction is completed within twelve (12) months of such effective date, such structure may be completed in accordance with the approved plans on the basis in which the building permit has been issued, and further may upon completion be occupied by the use for which originally designated. An extension of up to twelve (12) months may be allowed by the Village Board provided good cause is shown.

- (c) District Regulations to be Complied With. Except as otherwise provided in this Chapter, the use and height of buildings hereafter erected, converted, moved, enlarged, or structurally altered, and the use of any land, shall be in compliance with the regulations established herein for the district in which such building or land is located.
  
- (d) General Interpretation. The following rules of construction apply to this Ordinance: Words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number; the word "shall" is mandatory and not discretionary. The word "person" includes an individual, all partnerships, associations, and bodies political and corporate. The word "lot" includes the word "plot" or "parcel" or "tract". The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged", or "designed to be used or occupied".

##### **SEC. 22-16 GENERAL USE REGULATIONS.**

Only the following uses and their essential services may be allowed in any district:

- (a) Permitted Uses. Permitted uses, being the principal uses, specified in a district.
  
- (b) Accessory Uses. Accessory uses and structures as specific are permitted in any district but not until their principal structure is present or under construction. Any permanent, roofed



structure serving as an accessory use, if attached to the principal building, shall be considered a part of the principal building. If such structure is a building and is not attached to the principal building, it shall conform to the setback and other dimensional requirements of the district within which it is located. Residential accessory uses shall not involve the conduct of any business, trade or industry, with the exception of home occupations as allowed for under Section 22-62.

(c) Conditional Uses.

(1) Conditional uses are considered as special uses requiring, for their authorization, review, public hearing, and approval by the Village Board in accordance with Section 22-130 of this Chapter.

(2) Pre-Existing Conditional Uses. Those existing uses which are classified as “conditional uses” for the district(s) in which they are allocated at the time of adoption of this Code require not action by the Village Board for them to continue as valid conditional uses, and the same shall be deemed to be “regular” conditional uses.

(d) Uses Not Specified in Code:

(1) Any use not specifically listed as a permitted use or a conditional use in the districts established in Section 22-22 shall be considered to be prohibited except as may be otherwise specifically provided hereinafter. In case of question as to the classification of an unlisted use, the question shall be submitted to the Planning Commission for determination in accordance with the following procedure:

- a. Application. Application for determination for classification of an unlisted use shall be made in writing to the Planning Commission and shall include a detailed description of the proposed use and such other information as may be required by the Planning Commission to facilitate the determination. Material Safety Data Sheets will be required for all materials being used, unless specifically exempted by the Planning Commission.
- b. Investigation. The Planning Commission shall make or have made such investigations as it deems necessary in order to compare the nature and characteristics of the proposed use with those of the uses specifically listed in the Ordinance and to determine its classification.
- c. Public Hearing. The Planning Commission shall fix a reasonable time and place for a public hearing following the receipt of an application for the determination of a classification of an unlisted use, publish a Class 1 notice thereof and shall give due notice to the parties in interest and the Building Inspector.
- d. Determination. The determination of the Planning Commission shall be rendered in writing within forty (40) days from the date of the public hearing and shall include findings supporting the conclusion. The Planning Commission shall determine if the classification of the unlisted use is a permitted use, conditional use or prohibited use in one or more of the districts established in Section 22-22.

- (2) Effective Date of Determination. At the time of the determination of the classification of the unlisted use by the Planning Commission, the classification of the unlisted use shall become effective.

**SEC. 22-17 LOT PROVISIONS.**

- (a) Street Frontage. All lots shall abut a public street or approved private road or way which is constructed to applicable standards.
- (b) Principal Structures. All principal structures shall be located on a lot; and only one principal structure shall be located, erected or moved onto a lot in the single-family residential districts.
  - (1) The Planning Commission may permit more than one principal structure per lot in districts where more than one principal structure is needed for the orderly development of the parcel. When additional structures are permitted, the Planning Commission may impose additional yard requirements, landscaping requirements, or parking requirements, or may require a minimum separation distance between principal buildings. Reference, Sec. 17.07, Code of Ordinances for Certified Survey requirements if no subdivision.

**SEC. 22-18 EXISTING SUBSTANDARD LOTS.**

- (a) Substandard lots granted permits under this Section shall be required to meet the setback and other yard requirements of this Ordinance. A permit for the improvement of a lot with lesser dimensions and requisites than those stated below shall be issued only after a variance is granted by the Board of Appeals.
- (b) Legal nonconforming or substandard lots may be utilized as a building site for a permitted use (but not for a conditional use) in the associated zoning district, if all of the following apply:
  - (1) Such lot has never been developed with one or more of its structures placed partly on an adjacent lot or parcel.
  - (2) Such lot is developed to comply with this Chapter and other applicable chapters of the Village of New Auburn Municipal Code.

**SEC. 22-19 YARD REGULATIONS AND EXCEPTIONS.**

- (a) Measurements shall be taken from the nearest point of building to the lot line in question, subject to the following:
  - (1) On lots having double frontage (through lots), the required front yard shall be provided on both street sides.
  - (2) On corner lots, lot having double frontage, the required front yard for that district shall be provided on both street sides. The width of the yard along the side street shall not be less than any required front yard on such street.

- (b) No yard or other open space existing on the effective date of this Ordinance shall be reduced below the minimum required by this Ordinance.
- (c) No yard or other open space allocated to a structure or parcel of land shall be used to satisfy yard, other open spaces or minimum lot area requirements for any other structure or parcel.
- (d) Uncovered stairs, porches, landings, and fire escapes may project into any yard, but not to exceed six (6) feet and not closer than six (6) feet to any lot line.
- (e) Architectural projections, such as chimneys, flues, sills, eaves, and ornaments, may project into any required yard, but such projections shall not exceed three (3) feet.
- (f) Essential Services. Essential service, utilities, electric power and communication transmission lines are exempt from the yard and distance requirements of this Chapter.
- (g) Landscaping. Landscaping and vegetation are exempt from the yard requirements of this Chapter.
- (h) Decks, Porches, and Handicapped Ramps. For purposes of this Chapter, decks and porches shall be considered a part of a building or structure for determining setback compliance. Handicapped ramps shall not be considered a part of a building for determining setback compliance.

**SEC. 22-20 HEIGHT REGULATIONS AND EXCEPTIONS.**

- (a) Architectural projections, such as spires, steeples, belfries, parapet walls, cupolas, domes, flues, and chimneys are exempt from the height limitations of this Ordinance.
- (b) Special structures, such as elevator penthouses, tanks, grain elevators, silos, observation towers, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations, and smokestacks, are exempt from the height limitations of this Ordinance.
- (c) Essential services, utilities, water towers, electric power and communication transmission lines are exempt from the height limitations of this Ordinance.
- (d) Communication structures, such as radio and television transmission and relay towers, aerials, and radio and television receiving and transmitting antennas, are exempt from the height limitations of this Ordinance. This does not include earth station dish antennas.
- (e) Public or semi-public facilities, such as schools, churches, hospitals, monuments, sanatoriums, libraries, and government offices and stations, may be erected to a height

of sixty (60) feet, provided all required yards are increased not less than one (1) foot for each foot the structures exceed the district's maximum height requirement.

- (f) Agricultural Structures. Barns, silos and windmills shall not exceed in height their actual distance from the nearest lot line.

**SEC. 22-21 SANITARY SEWER PROVISION.**

- (a) Purpose. The purpose of this Section of the Ordinance is to maximize public investment in sanitary sewer and sewage treatment infrastructure, and protect surface and ground water, in the interest of public health, safety, and welfare.
  
- (b) Standard. Soils, geologic and hydrogeologic conditions within the Village are not suitable for on-site sewage treatment systems and holding tanks. The Village has made a substantial investment in its sanitary sewer and sewage treatment infrastructure and this system has significant capacity for future growth. Therefore, no new building, structure, activity or use shall be allowed to employ on-site sewage treatment systems and holding tanks within the Village of New Auburn, unless exempted by specific action of the Village Board. If the municipal sewer serves the proposed site or can be constructed to serve the proposed site, an exemption will not be granted or will be granted conditioned upon hook-up to the Village sewer when it is available. Nothing contained herein will bar the use of existing on-site sewage treatment systems provided they are "not failing", (as defined by Section 145.245, Wis. Stats., and regulations adopted thereunder including any revisions of such law), and lawful.

**SEC. 22-22 ZONING DISTRICTS ESTABLISHED.**

For the purpose and administration of this Ordinance, the Village of New Auburn, Wisconsin, is hereby organized into the following zoning districts:

- (a) Residential Districts.
  - (1) R-1 Single Family Residential District
  - (2) R-2 Single- and Two-Family Residential District
  - (3) R-3 Multiple-Family Residential District
  - (4) R-D Rural Development District
  - (5) MHP Mobile Home Park District
  
- (b) Commercial Districts.
  - (1) C-1 Central Business District
  - (2) C-2 General Commercial District
  
- (c) Industrial Districts.
  - (1) I-1 Light Industrial District
  - (2) I-2 Heavy Industrial District
  
- (d) Agricultural Districts.

- (1) Agricultural District
- (2) Intensive Agricultural District

(e) Other Districts.

- (1) PI Public and Institutional District
- (2) W Conservancy District
- (3) PD Planned Development District

(f) Overlay Districts (see Articles 10-13).

- (1) WP Wellhead Protection Overlay District
- (2) Floodplain Overlay District
- (3) Shoreland Overlay District
- (4) Shoreland – Wetland Overlay District

**SEC. 22-23 ZONING DISTRICT BOUNDARIES.**

(a) Zoning Map and Amendments.

- (1) The boundaries of the aforesaid zoning districts are hereby established as shown on the “Village of New Auburn Official Zoning Map”, dated March 30, 2023, as amended periodically, which is adopted by reference and made a part thereof. Such map, together with a copy of this Chapter, shall be available for public inspection in the office of the Village Clerk and shall be certified by the Village President and attested by the Village Clerk. No change shall be effective until so recorded and until a duly certified and attested certificate describing the change is filed with the map. Changes to the zoning map (zoning map amendments) shall further or not contradict, the objectives, goals, and policies contained in the Village of New Auburn Comprehensive Plan.

(b) Boundary Lines

- (1) The district boundaries are either streets or alleys unless otherwise shown, and where the designation on the map indicates that the various districts are approximately bounded by a street or alley line, such street or alley line shall be construed to be the district boundary line.
- (2) Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be lot lines, and where the designations on the map are approximately bounded by lot lines, said lot line shall be construed to be the boundary of the district.
- (3) In unsubdivided property, the district boundary shown on the map shall be determined by use of the scale shown on such map.
- (4) Zoning of Rights of Way. All streets, alleys, public ways, waterways, and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting them. Where the centerline serves as a district boundary, the zoning of the right-of-way shall be deemed to be the same as that of the abutting property up to such centerline, unless otherwise specifically

designated.

- (5) Vacation. Vacation of public streets and alleys pursuant to Section 840.11, Wis. Stats., shall cause the land vacated to be automatically placed in the same district as the abutting sides to which the vacated land reverts.

## **SEC. 22-24 RESERVED FOR FUTURE USE.**

## **DIVISION 2 – RESIDENTIAL DISTRICTS**

### **SEC. 22-25 R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT.**

Primary Purpose and Characteristics. The R-1 Single-Family Residential District is intended to provide a quiet, pleasant, and low-to-moderate density living area protected from excessive traffic and nuisances, such as noise, odors, vibration, and uses which are incompatible with the provisions of this Ordinance for this district. The R-1 Single-Family Residential District shall be municipally sewered, unless specifically exempted by the Village Board because sewer extensions are not available. Nothing contained herein, or any action whereby land is included in the R-1 district, will prevent the Village Board from requiring sewer in the future.

#### (a) Permitted Uses.

- (1) A single-family detached dwelling unit structure
- (2) Public Parks and Playgrounds
- (3) Community living arrangement which has a capacity for eight (8) or fewer persons being served by the program, subject to state licensing requirements, and provided it meets the requirements of Section 60.63, Wis. Stats.
- (4) A licensed family day care, limited to not more than eight (8) children
- (5) Accessory uses, buildings, and structures pursuant to Division 5 of this Article.
- (6) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Article 6

#### (b) Conditional Uses.

- (1) Schools
- (2) Government and community buildings
- (3) Churches and cemeteries
- (4) Non-profit museums, libraries, and community centers
- (5) Nursing homes and hospitals
- (6) Golf courses
- (7) Group day care home licenses for nine (9) or more children, subject to all state licensing requirements
- (8) Community living arrangement which has a capacity for nine (9) or more persons being served by the program, subject to state licensing requirements and provided it meets the requirements of Section 60.63 Wis. Stats.
- (9) Private lodges and clubs

- (10) Public utility infrastructure and offices
- (11) Siting and construction of any new mobile support structure and/or facility or Class 1 collocation of a new mobile service facility on an existing support structure, per Article 6
- (12) Bed and Breakfast Establishment, provided the establishment complies with standards of Chapter DHS 197, Wis. Adm. Code.
- (13) Accessory Dwelling Unit, in accordance with the following standards:
  - a. Not more than one accessory dwelling unit shall be permitted on a lot.
  - b. Accessory dwelling units shall be allowed only on a lot that meets the minimum lot area.
  - c. Accessory dwelling units shall not exceed eight hundred (800) square feet in floor area and shall have a minimum floor area of two hundred fifty (250) square feet.
  - d. The property owner of record must reside in either the primary dwelling unit or the accessory dwelling unit as their permanent legal address. A restrictive agreement shall be recorded to this effect.
  - e. In addition to off-street parking space requirements for the primary dwelling unit, a minimum of one off-street parking space of any efficiency or one-bedroom accessory dwelling unit, or a minimum of two off-street parking spaces for a two or more bedroom accessory dwelling unit, shall be provided.
  - f. The accessory dwelling unit shall not be conveyed or separated in ownership from the primary dwelling unit.
  - g. The accessory dwelling unit shall comply with all pertinent building codes.
  - h. The accessory dwelling unit may be attached to or detached from the single-family residence.
  - i. Attached accessory dwelling units shall comply with the following:
    - 1. The accessory dwelling unit shall be clearly incidental to the principal dwelling unit and the building's exterior shall appear to be single-family.
    - 2. Only one entrance may be located on the façade of the dwelling facing the street, unless the dwelling contained additional entrances before the accessory dwelling unit was created. An exception to this regulation is entrances that do not have access from the ground, such as entrances from balconies or decks.
    - 3. Fire escapes or exterior stairs for access to an upper level accessory dwelling unit shall not be located on the front of the primary dwelling unit.
  - j. Detached accessory dwelling units shall comply with the following:
    - 1. The accessory dwelling unit shall be subject to the requirements of Section 22-55 Accessory Uses, Buildings or Structures.
    - 2. The accessory dwelling unit shall comply with all building code regulations related to dwellings.

(c) Dimensional Requirements.

(1) Lot Size.

- a. Minimum lot area: 8,184 square feet
- b. Minimum lot width: 66 feet

(2) Setbacks and Required Yards for Principal Building

- a. Minimum front yard: 20 feet
  - 1. Exceptions for Existing Alignment. When the average depth of existing front yards of existing buildings located within 120 feet on each side of a lot and within the same block as such lot, and in any district in which a front yard is required under this Chapter, is less than the least front yard prescribed for a building on such lot by other provisions of this chapter, then in such case, the depth of the front yard of any building or structure on such lot shall not be required to exceed the average of the amount of otherwise prescribed least depth and the average depth of said existing front yards; nor shall it be required to exceed the average of said otherwise prescribed least depth and the depth of the front yard of any existing building on a lot immediately adjoining such lot, nor the average depth of front yards of existing buildings on the two lots immediately adjoining if shallower; but shall be at least 10 feet in any case in any residence district.
- b. Minimum side yard: 10 feet
- c. Minimum rear yard: 20 feet

(3) Setbacks and Required Yards for Accessory Building

- a. Side/rear yard: 10 feet, 20 feet for garages facing an alley
- b. For minor structures, the side/rear yard setback is reduced to 3 feet

(4) Building Height

- a. Maximum building height for Principal Building: 30 feet
- b. Maximum building height for Accessory Building: 25 feet

(5) Minimum Principal Building Size

- a. Minimum required flood area of principal building: 800 square feet

**SEC. 22-26 R-2 SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT.**

Primary Purpose and Characteristics. The R-2 Single- and Two-Family Residence District is intended to provide a quiet, pleasant and low to moderate density living area protected from excessive traffic and nuisances, such as noise, odors, vibration, and uses which are incompatible with the provisions of this Ordinance for this district. The R-2 Single- and Two-Family Residence District shall be municipally sewered, unless specifically exempted by the Village Board because sewer extensions are not available. Nothing contained herein, or any action whereby land is included in the R-2 district will prevent the Village Board from requiring sewer in the future.

This district differs from the R-1 District only in its inclusion of Two-Family residences as a



permitted use and recognizes that Two-Family residences are compatible with Single-Family residences in certain areas of the municipality.

(a) Permitted uses.

- (1) All uses permitted under the R-1 District (See Sec. 22.25)
- (2) Two-family attached dwelling unit structure
- (3) Zero-lot line duplex per conditions and standards identified under subsections (d) and (e) of this section.

(b) Conditional Uses.

- (1) Those conditional uses prescribed for the R-1 District (see Sec. 22.25)

(c) Dimensional Requirements.

(1) Parcels having a single-family detached dwelling unit structure:

- a. Minimum lot size: 9,920 square feet
- b. Minimum lot width: 80 feet
- c. Minimum front yard: 20 feet
- d. Minimum side yard: 10 feet
- e. Minimum rear yard: 20 feet

(2) Parcels having a two-family attached dwelling unit structure on one lot:

- a. Minimum lot area: 12,400 square feet
- b. Minimum lot width: 100 feet
- c. Minimum front yard: 20 feet
- d. Minimum side yard: 10 feet
- e. Minimum rear yard: 20 feet

(3) Setbacks and Required Yards for Accessory Building

- a. Side/rear yard: 10 feet, 20 feet for garages facing an alley
- b. For minor structures, the side/rear yard setback is reduced to 3 feet

(4) Building height.

- a. Maximum building height for Principal Building: 30 feet
- b. Maximum building height for Accessory Building: 25 feet

(5) Minimum Principal Building Size

- a. Minimum required floor area: 800 square feet per dwelling unit

(d) Zero-lot line duplexes shall be subject to the following minimum requirements:

- (1) Maximum number of dwelling units per lot: one
- (2) Minimum lot size: 10,000 square feet for duplex (i.e., two dwelling units); 5,000 square feet per single-family dwelling unit
- (3) Minimum lot width: 90 feet (45 feet per lot on which one dwelling unit is located)
- (4) Minimum front yard: 30 feet
- (5) Minimum rear yard: 25 feet

- (6) Minimum side yard: 10 feet to the outside walls of the single-structure, except no setback requirements where the building is connected to the building on the adjoining lot.
  - (7) Minimum building size: 900 square feet per dwelling unit
  - (8) Attached garage: each dwelling unit shall have an attached garage for at least one vehicle.
  - (9) Maximum building height: 35 feet
- (e) Additional Requirements for zero-lot line duplexes.
- (1) A maintenance agreement shall be entered into by the owners of both zero-lot line parcels to ensure equal and reasonable maintenance and repair schedules are conducted for both single-family attached residential units. The maintenance agreement shall require, at a minimum:
    - a. Common siding, roof, and driveway materials
    - b. Maintenance obligations related to these shared items (including the allocation of costs and method for determining if repairs or replacement is needed); and
    - c. A dispute resolution system.
    - d. Prior to the issuance of the building permit for the construction of a zero-lot line duplex, and prior to issuance of a certificate of occupancy or completion if the building permit was issued prior to the effective date of this Ordinance, the Property owner or owners shall cause the fully executed agreement to be recorded in the office of the Register of Deeds for the county in which the property is located, so that the terms and conditions of the agreement will be a covenant running with each of the lots and binding upon all owners of each of the lots on which the zero-lot-line duplex is located. A copy of the recorded agreement, showing the recording information shall be filed with the Village Clerk for the Village's records no later than 10 business days after the issuance of the building permit for the zero-lot line duplex or prior to issuance of a certificate of occupancy.
  - (2) An eight-foot maintenance easement, four-feet on each side of the zero-lot line side property line, to allow for normal maintenance of each single-family attached residential unit shall be recorded with the register of deeds office and a recorded copy provided to the zoning administrator.
  - (3) The dwelling wall abutting the zero-lot line shall be a one-hour fire wall or to the specifications of the State Building Code in effect at the time of commencement of construction of the structure.

**SEC. 22-27 R-3 MULTIPLE-FAMILY RESIDENTIAL DISTRICT.**

Primary Purpose and Characteristics. The R-3 Multiple-Family Residence District is intended to provide a living environment similar in all respects to the R-1 and R-2 Districts, although with a higher population density and greater diversity of housing types. The R-3 Multiple-Family Residence District shall be municipally sewered, unless specifically exempted by the Village Board because sewer extensions are not available. Nothing contained herein, or any action whereby

land is included in the R-3 district, will prevent the Village Board from requiring sewer in the future.

(a) Permitted uses.

- (1) A single-family detached dwelling unit structure
- (2) Two-family attached dwelling unit structure
- (3) Zero-lot line duplex per conditions and standards identified under subsections (d) and (e) of this section.
- (4) Multiple-family dwellings
- (5) Community living arrangement for fifteen (15) persons or less, subject to state licensing requirements, provided it meets the requirements of Section 60.63 Wis. Stats.
- (6) Bed and breakfast establishments subject to the following provisions:
  - a. The bed and breakfast establishment shall be owner-occupied
  - b. The bed and breakfast establishment shall require a permit in accordance with Chapter DHS 197, Wisconsin Administrative Code.
- (7) Public parks and playground
- (8) Accessory uses, buildings and structures pursuant to Division 5 of this Article
- (9) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Article 6

(b) Conditional uses.

- (1) Community living arrangements which has a capacity for sixteen (16) persons or more, subject to state licensing requirements, provided it meets the requirements of Section 60.63 Wis. Stats.
- (2) Schools
- (3) Churches
- (4) Government and community buildings
- (5) Nursing homes
- (6) Hospitals
- (7) Golf courses
- (8) Group day care licenses for nine (9) or more children, subject to all state licensing requirements
- (9) Private lodges and clubs
- (10) Public and private facilities, such as water wells, water and sewage pumping stations, water storage tanks, electrical power substations, telephone exchanges, microwave radio towers, sewage disposal plants, municipal incinerators, power plants, shops, and storage yards.
- (11) Public and private utility infrastructure and offices
- (12) Siting and construction of any new mobile support structure and/or facility of Class 1 collocation of a new mobile service facility on an existing support structure, per Article 6

(c) Dimensional Requirements.

- (1) Minimum lot area
  - a. Single-family and two-family attached dwelling: 12,400 square feet
  - b. Multi-family dwelling: Lots shall have the minimum area of the larger of 17,424 square feet or:
    1. Multi-family dwelling, 1 bedroom: 2,178 square feet per dwelling unit
    2. Multi-family dwelling, 2 bedroom: 2,900 square feet per dwelling unit
    3. Multi-family dwelling, 3 bedroom: 4,000 square feet per dwelling unit
  - c. Minimum lot width: 100 feet
- (2) Setbacks and Required Yards for Principal Building
  - a. Minimum front yard: 25 feet
  - b. Minimum side yard: 10 feet
  - c. Minimum rear yard: 25 feet
- (3) Setbacks and Required Yards for Accessory Building
  - a. Side/rear yard setbacks: 6 feet
- (4) Building height.
  - a. Maximum building height of Principal Building: 30 feet; however, a building may be erected to a height of thirty-five (35) feet if the setback from all required yard lines is increased a distance of one foot for each foot of additional height above thirty (30) feet.
  - b. Maximum building height of Accessory Building: 25 feet
- (5) Minimum Building Size
  - a. Minimum required floor area: 800 square feet for each single-and two-family dwelling units
- (d) Zero-lot line duplexes shall be subject to the following minimum requirements:
  - (1) Maximum number of dwelling units per lot: one
  - (2) Minimum lot size: 10,000 square feet for duplex (i.e., two dwelling units); 5,000 square feet per single-family dwelling unit
  - (3) Minimum lot width: 90 feet (45 feet per lot on which one dwelling unit is located)
  - (4) Minimum front yard: 30 feet
  - (5) Minimum rear yard: 25 feet
  - (6) Minimum side yard: 10 feet to the outside walls of the single-structure, except no setback requirements where the building is connected to the building on the adjoining lot.
  - (7) Minimum building size: 900 square feet per dwelling unit
  - (8) Attached garage: each dwelling unit shall have an attached garage for at least one vehicle.
  - (9) Maximum building height: 35 feet
- (e) Additional Requirements for zero-lot line duplexes.

- (1) A maintenance agreement shall be entered into by the owners of both zero-lot line parcels to ensure equal and reasonable maintenance and repair schedules are conducted for both single-family attached residential units. The maintenance agreement shall require, at a minimum:
  - a. Common siding, roof, and driveway materials,
  - b. Maintenance obligations related to these shared items (including the allocation of costs and method for determining if repairs or replacement is needed); and
  - c. A dispute resolution system.
  - d. Prior to the issuance of the building permit for the construction of a zero-lot line duplex, and prior to issuance of a certificate of occupancy or completion if the building permit was issued prior to the effective date of this Ordinance, the Property owner or owners shall cause the fully executed agreement to be recorded in the office of the Register of Deeds for the county in which the property is located, so that the terms and conditions of the agreement will be a covenant running with each of the lots and binding upon all owners of each of the lots on which the zero-lot-line duplex is located. A copy of the recorded agreement, showing the recording information, shall be filed with the Village Clerk for the Village's records no later than 10 business days after the issuance of the building permit for the zero-lot line duplex or prior to issuance of a certificate of occupancy.
- (2) An eight-foot maintenance easement, four-feet on each side of the zero-lot line side property line, to allow for normal maintenance of each single-family attached residential unit shall be recorded with the register of deeds office and a recorded copy provided to the zoning administrator.
- (3) The dwelling wall abutting the zero-lot line shall be a one-hour fire wall or to the specifications of the State Building Code in effect at the time of commencement of construction of the structure.

**SEC. 22-28 MHP MOBILE HOME PARK DISTRICT.**

Primary Purpose and Characteristics: This district is intended to create, preserve, and enhance areas exclusively designed for mobile home communities. It is also the intent to regulate the placing of mobile homes of all types and varieties in the Village with regards to providing adequate standards to protect the public health, safety, morals, convenience, and general welfare.

- (a) Occupancy. No mobile home as defined in this Ordinance shall be occupied or used for living or sleeping purposes unless it is located in a mobile home park that has been granted an appropriate permit by the Village Board in accordance with the procedures set forth in this Section and Chapter 18. Temporary mobile homes or recreational vehicles used on construction projects or in conjunction with events may be permitted when approved by the Village Board.
- (b) Permitted uses.

- (1) Mobile home used for single-family residential uses.
- (2) One single-family dwelling unit per park for the owner, operator or caretaker thereof.
- (3) Service buildings such as park offices, laundromats, and recreational buildings provided that such uses be subordinate to the residential character of the park and are intended for use only by park residents.
- (4) Accessory structures such as storage sheds, porches, and carports, as approved by the park management. Accessory structures shall meet the minimum setback requirements prescribed for the basic mobile home unit.

(c) Prohibited uses.

- (1) Commercial sales of mobile homes, except that existing mobile homes on the site may be sold by the owner.
- (2) Dependent mobile homes, (those which do not have complete bathroom facilities), and recreational vehicles shall be prohibited from placement or occupancy within mobile home parks.

(d) Minimum Dimensional Standards and Requirements for Mobile Home Parks.

- (1) Park Size. The minimum size of a mobile home park shall be five (5) acres.
- (2) Density. The maximum density for mobile home parks shall be eight (8) mobile home units or lots per gross acres.
- (3) Setbacks. No mobile home shall be located closer than thirty (30) feet from any park property boundary line.
- (4) Drainage and Landscaping. The ground surface in all parts of every mobile home park shall be graded and equipped to drain all surface water in a safe, efficient manner away from the mobile home stand; all mobile home sites shall be sodded or seeded and the park shall be attractively landscaped in accordance with a plan submitted at the time of initial permit application.
- (5) Recreation Areas. Each park shall contain a recreation area. A minimum of one-half acre of area for such use shall be provided for each 100 sites. The minimum area in a park shall be one-half acre.
- (6) Screening. All mobile home parks shall be provided with a screening of trees or shrubs along the property boundary line separating the park and such adjacent properties, except where the adjoining property is also a mobile home park. Within six (6) months after issuance of the appropriate licenses and permits for the occupation of such mobile home park, the following plantings shall be established:

A permanent planting of trees and shrubs so arranged and in sufficient numbers so as to form a solid wall of plant material. Such planting shall be a minimum height of two (2) feet at the original time of planting and shall be grown or maintained at a height of not less than ten (10) feet, except where line of sight vision is necessary for pedestrian or vehicular traffic safety.

(7) Access and Parking Requirements

a. General Requirements.

1. All mobile home stands shall be provided with safe, convenient access

to public streets and roads. Such access shall be provided by private streets located within the park boundaries.

2. Park Entrances. Entrances to parks shall be designed to minimize congestion and hazards and allow free movement of traffic on adjacent streets.
  3. Interior Streets. Paving requirements for interior streets shall adhere to locally applicable codes and shall meet the following width standards:
    - 2-way street with parking on both sides: 32 feet
    - 2-way street with parking on one side: 25 feet
    - 2-way street with parking prohibited: 18 feet
    - 1-way street with parking on one side: 22 feet
    - 1-way street with parking prohibited: 14 feetRight-of-way width shall be at least sixty-six (66) feet, unless the Village Board has specifically approved a lesser width, but shall in no case be less than fifty (50) feet.
- b. Parking Requirements.
    1. A minimum of two (2) improved parking spaces shall be provided for each mobile home, one of which will be on the mobile home site.
    2. An open, well-drained, dust free storage area for the parking of boats, trailers and outside vehicles shall be provided. The minimum size of such area shall be 100 square feet per mobile home site. The storage area shall be fenced to prevent access from outside the park.
  - c. Walkway Requirements.
    1. Pedestrian walkways shall be provided in the area of the service buildings, along major streets, and other location of anticipated heavy foot traffic. Walkways shall be a minimum of three (3) feet wide and be dust-free. In addition, each mobile home stand shall be provided with a walkway from the stand to the street or parking space.
  - d. Water and Sanitary Sewer Requirements.
    1. Mobile home parks and each mobile home therein shall be connected to public water and sanitary sewage facilities.
  - e. Plumbing Requirements.
    1. All plumbing within the park and within the mobile homes therein shall meet all applicable standards for the Wisconsin Administrative Code and any additional requirements of the Village Board.
  - f. Solid Waste Requirements.
    1. All solid waste shall be stored, collected, and disposed in compliance with Chapter DHS 177 of the Wisconsin Administrative Code.

(e) Mobile Home Site Requirements.

- (1) Each site for the placement of mobile homes shall be clearly staked or otherwise delineated and shall meet the following standards.

- (2) Minimum lot size. Individual lots within the mobile home park shall contain an area of not less than 5,000 square feet and shall have a minimum width at the narrowest point, of fifty (50) feet.
- (3) Mobile home stand. A mobile home stand with minimum dimensions of seventeen (17) feet by seventy (70) feet intended for the actual placement of the mobile home shall be provided on each mobile home site. The stand shall be hard surfaced with asphalt, concrete or similar material and provide adequate drainage and support against settling and frost heave. The mobile home stand shall be equipped with tie downs and anchors to secure the mobile home against winds.
- (4) Required separation between mobile homes. Mobile homes shall be separated from each other and from other buildings and structures by at least twenty (20) feet. An accessory structure such as an awning, cabana, storage cabinet, carport, windbreak, or porch attached to the mobile home shall, for purposes of the separation requirements, be considered a part of the mobile home. The basic unit shall not occupy in excess of one-fourth of the area of the lot and the complete unit, including all accessory structures, shall not occupy more than one-half of the area of the lot.
- (5) Setback and buffer strips. Each mobile home shall be located at least five (5) feet from any mobile home lot line. There shall be a minimum setback of the mobile home of twenty (20) feet from the front, or main street side of the lot and of at least ten (10) feet from the rear of the lot. All mobile homes shall be located at least thirty (30) feet from any park property boundary line.

(f) Administration.

- (1) Mobile Home Park License. It shall be unlawful for a person to establish or operate a mobile home park upon property owned or controlled by him/her within the Village New Auburn without having first secured the conditional use permit required by Chapter 22 and the mobile home park license required by Chapter 18. The application for a mobile home park license shall accompany the conditional use permit request and shall be accompanied by a fee in the amount of \$25.00. The Village Clerk shall issue the mobile home park license only upon Village Board approval of the conditional use permit. The mobile home park license fee will be returned to the applicant if the conditional use permit is denied.
- (2) Mobile Home Park Application. New mobile home parks as herein defined, shall require a conditional use permit, issued in accordance with the provision of this Section. Applications for a conditional use permit shall contain the following information.:
  - a. Name and address of the applicant. If the owner of the land is other than the application, a duly verified statement by the owner that the applicant is authorized by him/her to construct the proposed park and make the application.
  - b. Location and legal description of the proposed mobile home park.
  - c. Existing easements and covenants affecting the property.



- d. Land characteristics, such as natural drainage, swamp areas and wooded areas.
- e. Development characteristics, such as surrounding streets, existing buildings, available community sewer, water and other utilities.
- f. Complete preliminary engineering plans and specifications of the proposed park showing, but not limited to, the following:
  - 1. The area and dimensions of the tract of land.
  - 2. The number, location and size of all mobile home lots and the location of common and recreational area.
  - 3. The location and width of roadways and walkways.
  - 4. The location of the mobile home stands within the mobile home park, including a detailed sketch of at least one typical mobile home lot and stand therein.
  - 5. Plans and specifications of all utilities, including: sewage collection and disposal, storm water drainage, water distribution and supply, solid waste storage and collection, lighting, electrical, telephone and TV antenna systems.
  - 6. Landscaping plans for the entire park, including a planting plan for the buffer strip.
  - 7. Plans and specifications of all buildings to be located within the park.
  - 8. Written statements describing proposed park operations, management on-site and off-site, and maintenance, including proposed fees/charges, and rules to be established by the operator for conduct of persons within the park.
  - 9. Such other plans and specifications as may reasonably be required by the Planning Commission or Village Board.

(3) Application Review & Approval Process

- a. Plan Commission Review & Recommendation.
  - 1. The Plan Commission shall review the conditional use permit application to determine its conformity with land development trends in the community and recognized principles of design, land use planning and landscape architecture.
  - 2. Within sixty (60) days of receipt of the conditional use permit application, the Plan Commission shall forward the conditional use permit application to the Village Board with the recommendation that it be:
    - i. Approved;
    - ii. Approved with conditions;
    - iii. Approved with modifications;
    - iv. Disapproved.
- b. Determination of Village Board.
  - 1. After receipt of the recommendations of the Plan Commission, the Village Board shall make its determination regarding the conditional use permit.

c. Findings of Fact.

1. Within thirty (30) days after the close of the public hearing in regards to the proposed conditional use permit, the Village Board shall approve, approved with conditions, approve with modifications, or disapprove the conditional use permit.
2. For the Village Board to make an affirmative recommendation, it must find in each of the following instances that:
  - i. The establishment of a proposed mobile home park will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare of the community.
  - ii. The proposed mobile home park will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the neighborhood.
  - iii. The proposed mobile home park will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in this district.
  - iv. Adequate utilities, access roads, drainage and/or other necessary facilities have been, are being, or will be provided.
  - v. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

(g) Manufactured Homes Exempt.

- (1) Purpose of exemption. To allow specific manufactured housing that is compatible and in character with conventional housing within the Village of New Auburn.
- (2) A “manufactured home” as defined in Section 18.02(5) is exempted from the provisions of Section 22-28 if it is:
  - a. Designed to be used as a dwelling, and when placed on site:
    1. Is set upon an enclosed permanent foundation upon land which is owned by the manufactured homeowner, and
    2. is off its wheels, and
    3. is properly connected to utilities, and
    4. is installed in accordance with the manufacturer’s instructions of a plan certified by a registered architect or engineer so as to ensure proper support for the home, and
    5. has no tow bars, wheels or axles attached to it.

**SEC. 22-29 RD RURAL DEVELOPMENT DISTRICT.**

Primary Purpose and Characteristics: The Rural Development District is intended to allow for residential and general agricultural use within the Village.

(a) Permitted Uses.

- (1) Single-family dwelling

- (2) Two-family attached dwelling
- (3) General agricultural crop production
- (4) Forestry
- (5) Accessory uses, buildings, and structures pursuant to Division 5 of this Article, incidental to residential and agricultural uses, however, no more than eight (8) accessory buildings or structures shall be allowed.

(b) Conditional Uses.

- (1) Bed and breakfast establishments subject to the provisions of subsection 22-27(a)(6).
- (2) Public parks and playgrounds
- (3) Sporting and pet animal kennels
- (4) Cattle and hog feed lots; turkey, chicken and other fowl operations; hog barns and hog raising
- (5) Commercial establishments
- (6) Multi-family dwellings
- (7) Any other conditional use as stated in the R-3 District.

(c) Dimensional Requirements

(1) Lot size.

- a. Minimum lot area: 17,424 square feet
- b. Minimum lot width: 100 feet

(2) Setbacks and Required Yards for Principal Building

a. For all single- and two-family dwellings:

1. Minimum front yard: 20 feet

\*Exceptions for Existing Alignment. When the average depth of existing front yards of existing buildings located within 120 feet on each side of a lot and within the same block as such lot, and in any district in which a front yard is required under this Chapter, is less than the least front yard prescribed for a building on such lot by other provisions of this chapter, then in such case, the depth of the front yard of any building or structure on such lot shall not be required to exceed the average of the amount of otherwise prescribed least depth and the average depth of said existing front yards; nor shall it be required to exceed the average of said otherwise prescribed least depth and the depth of the front yard of any existing building on a lot immediately adjoining such lot, nor the average depth of front yards of existing buildings on the two lots immediately adjoining if shallower; but shall be at least 10 feet in any case in any residence district.

2. Minimum side yard: 10 feet

3. Minimum rear yard: 20 feet

b. For all multi-family dwellings:

1. Minimum front yard: 25 feet
2. Minimum side yard: 10 feet
3. Minimum rear yard: 25 feet

(3) Setbacks and Required Yards for Accessory Building

- a. Side/rear yard: 10 feet, 20 feet for garages facing an alley
- b. For minor structures, the side/rear yard setback is reduced to 3 feet

(4) Building Height

- a. Maximum building height of Principal Building: 30 feet
- b. Maximum building height of Accessory Building: 25 feet, except for barns, silos, and other agricultural buildings which are customarily taller in height.

(5) Minimum Building Size

- a. For all single- and two-family dwellings:
  1. Minimum required floor area of principal building: 800 square feet

**SEC. 22-30 THROUGH 22-35 RESERVED FOR FUTURE USE.**

**DIVISION 2 – COMMERCIAL AND INDUSTRIAL DISTRICTS**

**SEC. 22-36 C-1 CENTRAL BUSINESS DISTRICT.**

Primary Purpose and Characteristics: The C-1 Central Business District is intended to provide for orderly and appropriate regulations to ensure compatibility of the diverse uses typical of the "downtown" area without inhibiting the potential for maximum development of commercial, cultural, entertainment, and other community activities which contribute to its role as the "center" of the Village.

(a) Permitted uses.

- (1) Retail sales establishments
- (2) Financial institutions
- (3) Personal and business service establishments
- (4) Commercial and professional offices
- (5) Hotels and motels
- (6) Restaurants, cafes, taverns, and bars
- (7) Theaters and bowling alleys
- (8) Auditoriums and community centers
- (9) Government offices, post offices, and libraries
- (10) Medical and dental clinics
- (11) Clubs and lodges
- (12) Newspaper and magazine publishers
- (13) Daycare centers, provided all state requirements are met
- (14) Churches

- (15) Multi-family dwellings (parking shall be required in accordance with the R3 District)
- (16) Replacement of single- and two-family dwelling which have been damaged by fire, explosion, flood, or other calamity. (Parking shall be required in accordance with the R2 District)
- (17) Residential dwelling units above ground floor
- (18) Attached living quarters which is occupied by the household of the business owner
- (19) Accessory uses, buildings, and structures pursuant to Division 5 of this Article.

(b) Conditional uses.

- (1) Attached living quarters which is occupied by a household other than that of the business owner
- (2) Gas stations
- (3) Automobile and other vehicle sales
- (4) Nursing home
- (5) Warehouses for local wholesale and retail establishments or for personal property
- (6) Public and private facilities such as water wells, water and sewage pumping stations, water storage tanks, electrical power substations, telephone exchanges, sewage disposal plants, municipal incinerators, power plants, shops and storage yards
- (7) Light assembly or light manufacturing, including incubator facilities designed for start-up of businesses, which may be limited in time of the permitted use
- (8) Single-Family Dwelling
- (9) Two-Family Attached Dwelling

(c) Dimensional Requirements.

- (1) Lot size.
  - a. Minimum lot area: 4,000 square feet
  - b. Minimum lot width: 50 feet
- (2) Setbacks and Required Yards for Principal Building
  - a. Minimum front yard: None required
  - b. Minimum side yard: None required, except when adjacent to or abutting a residential district, a side yard setback of ten (10) feet shall be required.
  - c. Minimum rear yard: Six (6) feet, except when adjacent or abutting a residential district, a rear yard setback of twenty-five (25) feet shall be required.
- (3) Building Height
  - a. Maximum building height: 45 feet

**SEC. 22-37 C-2 GENERAL COMMERCIAL DISTRICT.**

Primary Purpose and Characteristics: The C-2 General Commercial District is intended to provide for individual or small groups of retail and customer service establishments. This type of district is generally located away from the traditional central business district and provides

such amenities as increased open space and off-street parking and loading facilities, making such retail centers more compatible with the character of adjacent residential districts or highway access.

(a) Permitted Uses.

- (1) Retail sales establishments
- (2) Financial institutions
- (3) Personal and business service establishments
- (4) Commercial and professional offices
- (5) Automotive sales and equipment service establishments, including gasoline service stations
- (6) Hotels and motels
- (7) Restaurants, cafes, taverns, and bars
- (8) Theaters and bowling alleys
- (9) Auditoriums and community centers
- (10) Government offices, post offices, and libraries
- (11) Clubs and lodges
- (12) Veterinary hospitals and clinics, provided that no service, including the boarding of animals, is offered outside of an enclosed building.
- (13) Medical and dental clinics
- (14) Wholesale establishments
- (15) Daycare centers, provided all state requirements are met
- (16) Nursing homes
- (17) Multi-family dwellings, subject to the requirements of the R3 District
- (18) Mini warehouses. Outdoor storage is limited to boats and recreational vehicles defined in Article 8, Division 1.
- (19) Accessory uses, buildings, and structures pursuant to Division 5 of this Article.

(b) Conditional Uses.

- (1) Hospitals
- (2) Recreational establishments, including drive-in theaters, golf courses, golf or baseball driving ranges, archery fields, miniature golf courses, or similar uses
- (3) Recreational vehicle camps, when such camps provide not less than 1,800 square feet of lot area for each cabin, recreational vehicle, or tent, and when such camp is clearly bounded by a fence or hedge. The requirements of Chapter DHS 178 of the Wisconsin Administrative Code and all other applicable codes shall be minimum standards and may be supplemented by the Planning Commission.
- (4) Sporting and pet animal kennels
- (5) Animal hospitals, including the outside boarding of animals
- (6) Automobile body repair shops
- (7) Transmitting tower, receiving towers, relay, and microwave towers, including broadcast facilities and studios

- (8) Public and private facilities, such as water wells, water and sewage pumping stations, water storage tanks, electrical power substations, telephone exchanges, sewage disposal plants, municipal incinerators, power plants, shops, and storage yards
- (9) Lumber and building supply yards, provided that not more than ten percent (10%) of the lot or tract is used for the open storage of products, materials, or equipment
- (10) Light assembly or light manufacturing, including incubator facilities designed for start-up of business which may be limited in time of the permitted use.
- (11) Single-family dwelling
- (12) Two-family dwelling

(c) Dimensional Requirements.

- (1) Lot size.
  - c. Minimum lot area: 15,000 square feet
  - d. Minimum lot width: 100 feet
- (2) Setbacks and Required Yards for Principal Building
  - a. Minimum front yard: 20 feet
  - b. Minimum side yard: 10 feet
  - c. Minimum rear yard: 20 feet
- (3) Building Height
  - a. Maximum building height: 35 feet\*
    - \* A principal building may be erected to a height of forty-five (45) feet if the setback from all required yard lines is increased a distance of one foot for each foot of additional height above thirty-five feet.

(d) Visual Screening Requirement. When adjoining or abutting a residential district, a visual screening may be required. Such visual screening shall consist of a single row hedge planting or solid wooden fence not less than six (6) feet in height.

**SEC. 22-38 I-1 LIGHT INDUSTRIAL DISTRICT.**

Primary Purpose and Characteristics: The I-1 Light Industrial District is intended to provide for manufacturing, industrial and related uses of a limited nature and size in situations where such uses are not in basic industrial groupings and where the relative proximity to other uses requires more restrictive regulations.

(a) Permitted Uses.

- (1) Manufacturing, assembly, fabrication, and processing plants of a limited scope and not involving operational characteristics which would adversely affect surrounding uses or be basically incompatible with the surrounding environmental character and not more than ten percent (10%) of the lot or tract is used for the open storage of products, materials, or equipment. Such as, but not limited to, the following: bakery goods, candy, cosmetics, pharmaceuticals, toiletries, food products, except fish and meat products, sauerkraut, vinegar, yeast and the rendering of fats and oils and the

ving of peas. Uses allowed include, but are not limited to: articles made from previously prepared materials such as bone, canvas, cellophane, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious or semi-precious metals or stones, shell, textiles, wax, wire, wood, yams, and the like, musical instruments, toys, novelties, rubber or metal stamps and other small molded rubber products, fabrication and repair of electric or neon signs or other commercial advertising structures, light sheet metal products and the like; assembly and manufacture from prefabricated parts of household appliances, electronic products and similar products or the processing or assembling of parts for the production of finished equipment.

- (2) Experimental, testing, and research laboratories, not involving the keeping of animals or use of animal products or any significant degree of danger or undesirable operational characteristics
- (3) Printing and publishing facilities
- (4) Tool making, cabinetry, and repair shops
- (5) General warehousing, where not more than ten percent (10%) of the lot or tract is used for the open storage of products, materials, or equipment
- (6) Lumber and building supply yards, provided that not more than ten percent (10%) of the lot or tract is used for the open storage of products, materials, or equipment
- (7) Automobile body repair shop, not including the storage of junk or wrecked automobiles and parts
- (8) Public utility distribution lines including, but not limited to electric, gas, water, television cable, and telephone distribution lines and other related accessories subject to approval by the Village Public Works Department
- (9) Office, storage, power supply and other uses normally auxiliary to the principal use.
- (10) Residential quarters for the resident operator, guard, or caretaker of the principal use
- (11) Accessory uses, buildings, and structures pursuant to Division 5 of this Article

(b) Conditional uses.

- (1) Kennels and animal hospitals, laboratories using animal products
- (2) Transportation terminals, including trucking
- (3) Commercial service facilities intended primarily as a convenience for the industrial area such as restaurants, motels, gas stations or similar uses
- (4) Office buildings
- (5) Transmission lines, antennas and towers, including, but not limited to, electric, gas, petroleum and telephone transmission lines, antennas and towers, whether installation is above or below ground, and other related accessories, substations, municipal water towers, pump houses, water, and sewage treatment plants.
- (6) Single-Family Dwellings
- (7) Two-Family Attached Dwellings
- (8) Multi-Family Dwellings

(c) Dimensional Requirements.



(1) Lot size.

- a. Minimum lot area: 20,000 square feet
- b. Minimum lot width: 85 feet

(2) Setbacks

- a. Minimum front yard: 25 feet
- b. Minimum side yard: 25 feet
- c. Minimum rear yard: 25 feet\*
  - \* When adjoining or abutting a residence district, will maintain a minimum setback of fifty (50) feet and provide a minimum fifteen (15) foot wide, six (6) foot high planting screen.

(3) Maximum Building Height

- a. Principal building: 50 feet
- b. Accessory building: 35 feet

**SEC. 22-39 I-2 HEAVY INDUSTRIAL DISTRICT.**

Primary Purpose and Characteristics: The I-2 Heavy Industrial District is intended to provide for manufacturing and industrial development of a more general and less restrictive nature than in the I-1 district in those areas where the relationship to surrounding land use would create fewer problems of compatibility and would not necessitate as stringent regulatory controls. Such districts should not normally abut directly upon residence districts.

(a) Permitted Uses.

- a. Manufacturing, assembly, fabrication, and processing plants
- b. Experimental, testing, and research laboratories, not involving the keeping of animals or use of animal products or any significant degree of danger or undesirable operational characteristics
- c. Printing and publishing facilities
- d. Tool making, cabinetry, and repair shops
- e. General warehousing
- f. Transportation terminals, including trucking
- g. Lumber and building supply yards
- h. Automobile body repair shops, not including the storage of junked or wrecked automobiles and parts
- i. Public utility distribution lines including, but not limited to electric, gas, water, television cable, and telephone distribution lines and other related accessories subject to approval by the Village Public Works Department.
- j. Office, storage, power supply, and other uses normally auxiliary to the principal use.
- k. Residential quarters for the resident operator, guard, or caretaker of the principal use.
- l. Accessory uses, buildings, and structures pursuant to Division 5 of this Article.

(b) Conditional Uses.

- (1) Manufacture of cement, lime, gypsum, plaster of paris, acid, explosives, fertilizers, or glue.
- (2) Storage of explosives except as incidental to a permitted use and storage of gasoline or petroleum in excess of 50,000 gallons
- (3) Automobile body repair shops, including the storage of junked or wrecked automobiles and parts
- (4) Animal hospitals, kennels, or laboratories using animal products
- (5) Any similar uses which in the opinion of the Planning Commission would be hazardous, noxious, or offensive to the surrounding area
- (6) Commercial service facilities intended primarily as a convenience for the industrial area such as restaurants, motels, gas stations or similar uses
- (9) Transmission lines, antennas and towers, including, but not limited to, electric, gas, petroleum and telephone transmission lines, antennas and towers, whether installation is above or below ground, and other related accessories, substations, municipal water towers, pump houses, water and sewage treatment plants.

(c) Dimensional Requirements.

(1) Lot size

- a. Minimum lot area: 20,000 square feet
- b. Minimum lot width: 85 feet

(2) Setbacks and Required Yards

- a. Minimum front yard: 25 feet
- b. Minimum side yard: 25 feet
- c. Minimum rear yard: 25 feet\*  
\* When adjoining or abutting a residence district, will maintain a minimum setback of fifty (50) feet and provide a minimum fifteen (15) foot wide, six (6) foot high planting screen.

(3) Maximum Building Height

- a. Principal building: 60 feet
- b. Accessory building: 50 feet

**SEC. 22-40 THROUGH 22-44 RESERVED FOR FUTURE USE.**

## DIVISION 3 – AGRICULTURAL DISTRICTS

### SEC. 22-45 GA GENERAL AGRICULTURAL DISTRICT.

Primary Purpose and Characteristics: The General Agricultural District is intended to allow for agricultural and general farming uses within the Village, including limited livestock operations.

(a) Permitted Uses.

- (1) Single-family dwellings
- (2) Two-family attached dwellings
- (3) Agricultural and general farming activities, including livestock facilities which house fewer than 500 animal units, nurseries, greenhouses, and other similar enterprises or uses, except fur farms and farms operated for the disposal or reduction of garbage, sewage, and rubbish.
- (4) Accessory uses, buildings, and structures pursuant to Division 5 of this Article, incidental to residential and agricultural uses, however, no more than eight (8) accessory buildings or structures shall be allowed.
- (5) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Article 6.

(b) Conditional Uses.

- (1) Bed and breakfast establishments subject to the provisions of subsection 22-27(a)(6).
- (2) Public parks and playgrounds
- (3) Sporting and pet animal kennels
- (4) Cattle and hog feed lots
- (5) Turkey, chicken and other fowl operations (over 100 birds)
- (6) Hog barns and hog raising (over 20 hogs)
- (7) Large dairy operations (over 400 animals)
- (8) Commercial uses permitted in the C-2 General Commercial District
- (9) Light industrial uses permitted in the I-1 Light Industrial District
- (10) Any other conditional uses as stated in in the R-3 District.
- (11) Siting and construction of any new mobile support structure and/or facility or Class 1 collocation of a new mobile service facility on an existing support structure, per Article 6.

(c) Dimensional Requirements.

- (1) Lot Size
  - a. Minimum lot area: 65,340 square feet (1.5 acres)
  - b. Minimum lot width: 100 feet
- (2) Setbacks and Required Yards
  - a. Subsection 22-25(c)(2) shall apply to all single- and two-family dwellings.

- b. Subsection 22-25(c)(3) shall apply to all accessory buildings.
- c. Subsection 22-27(c)(2) shall apply to all multi-family dwellings.
- (3) Building Height
  - a. Maximum building height: 30 feet
- (4) Building Size.
  - a. Any single-family dwelling shall comply with the size requirements of the R-1 District; any two-family dwelling shall comply with the R-2 District, and multi-family dwellings must comply with the R3 District.

**SEC. 22-46 IA INTENSIVE AGRICULTURAL DISTRICT.**

Primary Purpose and Characteristics: The IA District is intended to accommodate all sizes of agricultural operations, whether by right or as a conditional use, as well as ag-related processing uses. Lands within this district do not have access to Village services. The state legislature adopted s. 93.90, Wis. Stats., (Livestock Facility Siting Law) to govern livestock facilities, which is implemented by administrative rule under ch. ATCP 51, Wis. Admin. Code. Terms used in this section that are not defined in Article 8 Division 2 Definitions shall be found using those definitions under s. 93.90 and ch. ATCP 51. The Livestock Facility Siting Law allows local jurisdictions to review livestock facility with five hundred (500) animal units or more as a conditional use.

(a) Permitted Uses.

- (1) Agriculture or general farming activities, including livestock facilities which house fewer than five hundred (500) animal units, nurseries, greenhouses and other similar enterprises or uses, except fur farms and farms operated for the disposal or reduction of garbage, sewage, and rubbish.
- (2) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Article 6.
- (3) Agricultural buildings
- (4) Accessory agricultural buildings

(b) Conditional Uses.

- (1) A new or existing livestock operation, which houses or expands to house five hundred (500) or more animal units. (see Section 22-130(p) for Conditional Use – Specific Livestock Operations) Pursuant to Wis. Admin Code ATCP 51.06(2), approval may not be required for an existing facility unless it expands beyond the previously approved maximum animal units, or expands beyond twenty percent (20%) of the animal units kept before the effective date of the approval requirements.
- (2) Siting and construction of any new mobile support structure and/or facility or Class 1 collection of a new mobile service facility on an existing support structure, per Article 6.

(c) Standards for livestock facility with five hundred (500) animal units or more. A livestock facility with 500 animal units or more shall comply with the following requirements.

(1) General Setbacks

- a. Property lines. Except as provided for waste storage structures, livestock structure must be located a minimum of one hundred (100) feet from the property line if the livestock facility will have fewer than one thousand (1,000) animal units and two hundred (200) feet from the property line if the livestock facility will have one thousand (1,000) or more animal units. The setback requirement does not prevent the use or expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the property line.
- b. Public road right-of-way. Except as provided for waste storage structures, livestock structures must be located a minimum of one hundred (100) feet from the public road right-of-way if the livestock facility will have fewer than one thousand (1,000) animal units, and one hundred fifty (150) feet from a public road right-of way if the livestock facility will have one thousand (1,000) or more animal units. The setback requirement does not prevent the use or expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the public road right-of-way.
- c. Waste Storage Structure. A new waste storage structure may not be located within three hundred fifty (350) feet of a property line, or within three hundred fifty (350) feet from a property boundary. If any portion of an existing structure is closer than three hundred fifty (350) feet from a property boundary line, such structure may be expanded, provided the expansion is not located any closer to the property boundary line than the existing structure. A single new livestock waste storage structure may be constructed closer than three hundred fifty (350) feet if such structure (1) is located on the same tax parcel as a livestock waste storage structure in existence before May 1, 2006, (2) is not larger than the existing structure, (3) is no further than fifty (50) feet from the existing structure, and (4) is no closer to the property boundary line than the existing structure. This setback requirement does not apply to existing waste storage structures, except that an existing structure within thirty (30) feet of a property line or road may not expand toward the property line or road.
- d. All wells located within a livestock facility shall comply with chs. NR 811 and 812, Wis. Admin. Code. New or substantially altered livestock structures shall be separated from existing wells by the distances required in chs. NR 811 and 812, regardless of whether the livestock facility operator owns the land on which the wells are located. A livestock structure in existence on

May 1, 2006 may be altered as long as the alteration does not reduce the distance between the livestock structure and an existing well.

**SEC. 22-47 THROUGH 22-49 RESERVED FOR FUTURE USE.**

**DIVISION 4 – OTHER DISTRICTS**

**SEC. 22-50 PI PUBLIC AND INSTITUTIONAL DISTRICT.**

Primary Purpose and Characteristics: The purpose of this district is to designate areas of public use, such as parks, playgrounds, schools, governmental uses, or other public areas, to delineate institutional uses, such as churches, hospitals and community facilities, and to distinguish areas for public service uses and public and private utilities.

(a) Permitted Uses.

- (1) Municipal uses, village owned and operated
- (2) Public parks and playground
- (3) Public utility and public service uses
- (4) Non-commercial parking
- (5) Schools and associated athletic fields, and related educational or recreational facilities
- (6) Government offices and facilities, and post offices
- (7) Churches and cemeteries
- (8) Public and private facilities, such as water wells, water and sewage pumping stations, sewage disposal plants, water storage tanks, electrical power substations, telephone exchanges, transmitting towers, receiving towers, relay towers, microwave radio towers, municipal incinerators, power plants, municipal shops, and municipal storage yards.
- (9) Public housing
- (10) Non-profit museums, libraries, auditoriums, and community centers
- (11) Nursing homes
- (12) Hospitals

(b) Dimensional Requirements.

- (1) In the Public and Institutional District, the requirements for lot area, lot width, setbacks, and building height shall be consistent with basic planning and zoning principals and designed to encourage and promote improved aesthetic and environmental design. Such requirements as are made part of an approved site plan in accordance with the standards provided herein, shall be construed to be enforced in accordance with this Section.

(c) Procedure.

- (1) The procedure for zoning to a Public and Institutional District shall be the same as required by Section 22-129 of this Ordinance. In addition, thereto, a site plan shall

be required for zoning to a Public and Institutional District, prior to any physical change, as defined in subsection 22-50(c)(1)c, or for any change in use to a property in a Public and Institutional District, and shall be subject to the following additional requirements:

- a. Site Plan. The applicant shall file with the Planning Commission seven (7) copies of a site plan which includes the following information:
  1. Name and address of the applicant. If the owner of the land is other than the applicant, a duly verified statement by the owner that the applicant is authorized by him/her to make the application.
  2. A statement describing the general character of the intended development, physical change or change in use.
  3. An accurate map of the project area to include: its location, relationship to surrounding properties, including the zoning of adjacent properties, existing topography and natural drainage, all building and structure footprints, driveways, sidewalks, parking lots, utilities, and stormwater management structures.
  4. Landscaping plans for the entire site, including provisions for visual screening.
  5. Such other plans and specifications and information as may reasonably be required by the Planning Commission or Village Board.
- b. Visual Screening Requirement. When adjoining or abutting a residential district, a visual screen may be required. Such visual screening shall consist of a single row hedge planting or solid wooden fence not less than six (6) feet in height.
- c. Any Physical Change Defined. In this Section, "any physical change" means any new construction of a building or structure, or modification of any property located within a Public and Institutional District which significantly affects the quality of the physical and human environment in the judgment of the Planning Commission. Projects necessary to maintain or repair buildings and grounds that will not require exterior physical design changes or use changes, or accessory structures with all setbacks at a minimum of twenty-five (25) feet and considered incidental to a principal use on the property, will be permitted without a site plan.
- d. Approval of the Site Plan. Within sixty (60) days after completion of the filing of the site plan, the Planning Commission shall forward to the Village Board a recommendation that such site plan be approved as submitted, approved with modifications, approved with conditions, or disapproved. The approval of the site plan shall establish the basic right of use for the area in conformity with such plan as approved, which shall be established as an integral component of the Public and Institutional District regulations.
- e. Character and Intensity of Land Use. In review of site plans and all other matters concerning the Public and Institutional District, the Planning Commission and Village Board shall consider the uses proposed and their

intensity and arrangement on the site, which shall be of an aesthetic, environmental and operational character which:

1. Will be compatible with the physical nature of the site, with particular concern for the preservation of natural features, tree growth and open space.
  2. Will produce an attractive environment of sustained aesthetic and environmental desirability.
  3. Will not create a traffic or parking demand incompatible with the existing or proposed facilities to serve it.
- f. Village of New Auburn Exempted From Site Plan. The Village of New Auburn in the development, administration and management of its property is exempted only from subsection 22-50(c), Procedure, except that the Village of New Auburn shall follow Section 22-129 of this Ordinance for zoning to a Public and Institutional District, the Village Board shall determine the information, plans and specifications necessary for approvals of Village uses, buildings or facilities within the Public and Institutional District, and the Planning Commission or Village Board may require visual screening for Village properties pursuant to subsection 22-50(c)(1)b, Visual Screening Requirement.

#### **SEC. 22-51 W CONSERVANCY DISTRICT.**

Primary Purpose and Characteristics: The purpose of this district is to discourage development in natural areas with unique features or environmental hazards, provide areas to insure proper water conservation and flood control, and provide areas for outdoor recreation and forestry pursuits.

(a) Permitted Uses.

- (1) Management of recreation, forestry, wildlife and fish

(b) Conditional Uses.

- (1) Parks and bicycle/hiking trails
- (2) Power stations, transmission lines, water pumping and storage facilities
- (3) Golf courses

#### **SEC. 22-52 PD PLANNED DEVELOPMENT DISTRICT**

Primary Purpose and Characteristics: The PD Planned Development District, pursuant to Section 62.23(7)(b), Wis. Stats., provides a regulatory framework to encourage improved environmental design by allowing flexibility in the development of land while ensuring compliance with the basic intent of the zoning ordinance and with the Village comprehensive plan. The Planned Development District (PD) has no set standards and specifications. Developers can propose uses or combination of uses and configurations of intensity and density of development. Standards are negotiated by the developer and the Village; such negotiated standards have the same legal force and effect as do standard zoning requirements.



The objective of the Planned Development District is not simply to allow exceptions to otherwise applicable regulations. It is instead to encourage a higher level of design and amenity than is possible to achieve under other zoning districts. An example application of use of the Planned Development District is for a conservation design subdivision, where due to the topographic and natural features, the standards are relaxed, as negotiated by the Village and the developer.

(a) General requirements:

- (1) Use regulations. The uses allowable in this district are the uses approved as part of the general or detailed plan for particular sites that are placed in the Planned Development District.
- (2) Density and dimensional requirements. This Section sets no prescribed density or dimensional regulations in the Planned Development District.
- (3) Off-street parking and loading. There shall be no prescribed requirements for off-street parking and loading in the Planned Development District. However, in the review and approval of any general or detailed plan in a Planned Development District, due consideration shall be given to the requirements established in Article 3 of this Chapter for uses similar to those proposed in such plan.
- (4) Standards. The following standards shall apply in the review of all general or detailed plans proposed for the Planned Development District:
  - a. The uses proposed in the planned development shall be in general conformance with the Village Comprehensive Plan.
  - b. The planned development shall incorporate environmental design considerations, including the preservation of topography, trees and ground cover, streams and natural bodies of waters, and other significant natural features and control of erosion and runoff in accord with the Village's erosion control standards.
  - c. The planned development shall provide for convenient and harmonious groups of buildings, structures and uses; and buildings shall be spaced and sited to ensure adequate safety, light, ventilation, and privacy.
  - d. In a planned development for residential use, adequate open space and recreational areas shall be provided in appropriate locations, and all public and common open spaces shall be designed and located to provide safe and convenient access to residents.
  - e. The width of street rights-of-way, width of paving, width and location of street or other paving, outdoor lighting, location of sewer and water lines, provision for stormwater drainage or other similar environmental engineering considerations shall be based on a determination of the appropriate standards necessary to implement the specific function in the specific situation; provided, however, that in no case shall standards be less than those necessary to ensure the public safety and welfare as determined by the Village.
  - f. The application for a Planned Development District shall provide evidence

satisfactory to the Village Board of its economic feasibility of available adequate financing and that it would not adversely affect the economic prosperity of the Village or the values of surrounding properties.

- g. The applicant for a Planned Development District shall submit a reasonable schedule for the implementation of the development to the satisfaction of the Village Board, including suitable provisions for assurance that each phase could be brought to completion in a manner that would not result in an adverse effect upon the community as a result of termination at that point.
- (5) Minimum Area. A Planned Development District shall not be less than three (3) acres of contiguous land under the same ownership. This requirement shall not be interpreted to prohibit the post-development sale or all or part of an approved PD subject to the provision of this Section and all applicable statutes and Subdivision regulations.
- (6) Subdivision review. The applicable Subdivision review under the Village's Subdivision Ordinance shall be carried out as an integral part of the review of a Planned Development District. The proposed plan must be submitted in a form that substantially satisfied requirements of the Subdivision regulations for the Preliminary and Final Plat approvals. Subdivision application may be submitted for the whole, a part, or parts of the overall planned development as indicated by phases in the detailed plan for staged development.
- (b) Procedure for establishment of a Planned Development District. The provisions set forth in Article 7 shall apply to the establishment of any Planned Development District, provided the amendatory ordinance shall be considered only in conjunction with a general or detailed plan.
- (c) Pre-application procedures. Applicants are encouraged to seek preapplication, conceptual review of proposed plans by the Plan Commission. The Plan Commission is under no obligation to give a response to such submittals at the same meeting as they are presented. The Plan Commission is entitled to seek outside assistance and sources of critique. No responses by the Plan Commission or by individual Plan Commissioners shall bind the Plan Commission or the Village unless the response is on behalf of the Plan Commission, is in writing, and is expressed as a binding response.
- (d) Approval of general or detailed plan and adoption of zoning ordinance amendment. In the event that the Village Board approves a general (or detailed) plan and adopts a zoning amendment creating a Planned Development District in connection with such general (or detailed) plan, the requirements of the plan shall constitute the zoning regulations of the district and the Zoning District Map shall be amended to show all lands included in such general (or detailed) plan as within the Planned Development District. In the approval of any general (or detailed) plan, the Village Board may stipulate any conditions or restrictions in the establishment, maintenance, or operation of any uses proposed in such plan, and may also require any guarantees, including the filing of a contract together with a surety, satisfactory in form to the Village Attorney

and satisfactory to the Village Engineer, with the Village to ensure that improvements will be installed and completed as proposed in the plan.

- (e) Recording of approved general (or detailed) plans and zoning ordinance amendments. Whenever the Village Board designates land as being within a Planned Development District, the Village Clerk shall record in the Office of the Register of Deeds of the County in which the lands belong, a facsimile copy of the approved general (or detailed) plan, together with a certified copy of the related zoning ordinance amendment and any other action taken thereon by the Village Board. The cost of preparing a facsimile copy of the general (or detailed) plan in recordable form and the recording fee shall be paid by the owners of the lands included in the general (or detailed) plan.
- (f) Changes or modifications to general (or detailed) plans and zoning ordinance amendments. Any approved general (or detailed) plan, together with the related zoning ordinance amendment, may be amended in whole or in part pursuant to the same procedure and subject to the same limitations by which general or detailed plans were approved and the zoning ordinance amended. However, minor modifications may be made to any general (or detailed) plan upon approval of the Village Plan Commission provided that such modifications shall be in general conformity with the approved general or detailed plan and shall not substantially change the concept of such approved plan. All approved minor modifications shall become a part of the approved general or detailed plan and shall be recorded as provided in Subsection (e) of this Section. The Plan Commission shall decide whether a proposed amendment is minor or major, with appeals made to the Village Board.
- (g) Construction of buildings and establishment of uses. No zoning or building permit shall be issued for any lot within the Planned Development District until the detailed plan and the related zoning ordinance amendment have been recorded as required above. Within one year of the date of recording of any detailed plan and the zoning ordinance, construction thereon must begin; and construction must be substantially completed throughout the project within three years of such date of recording, unless extensions are granted by the Village Board. If initial construction has not begun within one year of the date of recording or within the prescribed time period granted as an extension by the Village Board, the approval of the detailed plan and the related zoning ordinance amendment shall become null and void, and the zoning shall revert to the classification that applied prior to the approval of the Planned Development District zoning. No occupancy of dwelling units shall occur until all public works that have been scheduled to be completed before occupancy are completed to the satisfaction of the Village.
- (h) Procedure for establishment of the Planned Development District – General plan for staged development.
  - (1) Submittal of general plan. The general plan shall contain any information and representations deemed necessary by the Plan Commission and shall consist of a statement entitled “Planned Development District – General Plan, Statement of

Owner’s Intent and Description of Development,” which shall include, without limitation, the following:

- a. A legal description describing all of the tract of land included in the proposed development.
  - b. A statement indicating the nature of the applicant’s interest in the land included in the proposed development.
  - c. A statement describing the proposed development, including the character, method, and operation of the development and a development schedule or timetable for construction.
  - d. A statement as to the following data or graphic information referenced to a map or plan of the proposed development:
    1. The location and size of the site including dimensioned exterior boundaries, topography and other salient features, existing buildings and structures, and also adjacent properties and streets, including all public utilities and public easements.
    2. The use and approximate location and bulk of buildings and structures, including number of stories and dimensions of buildings.
    3. The approximate location of vehicular and pedestrian facilities, such as streets, sidewalks, and off-street parking areas, including approximate number of parking spaces.
    4. The approximate location of areas for public or common open spaces and for other public or semi-public uses.
    5. A tabulation of land areas for the different types of uses in relation to the total area.
    6. A tabulation of the gross floor areas of buildings by types of uses.
    7. A tabulation of the number of types of dwelling units, if applicable.
- (2) Review of general plan. The Plan Commission shall review the general plan and determine whether it complies with the standards set forth in Subsection (a)(4) of this Section. Following review of the general plan, the Plan Commission shall forward the petition to the Village Board, together with a recommendation that the general plan be either approved as submitted or approved with modifications or disapproved.
- (3) Approval of general plan.
- a. In the event that the Village Board approves the general plan and adopts the related zoning ordinance amendment, the zoning district maps shall be amended to include all of the lands within the general plan as within the Planned Development District. However, no building construction shall be permitted in any portion of the approved general plan until a detailed plan prepared in accordance with the requirements hereunder has been approved by the Village as provided below.
  - b. In the event the Village Board fails to approve the general plan and ordinance, the Village Board shall communicate its objections back to the Plan Commission for reconsideration and further discussions.

- (i) Procedure for establishment of the Planned Development District – Detailed plan for staged development.
- (1) Submittal of plan. Within one year after the recording of the general plan and the copy of the related zoning ordinance amendment, a detailed plan for at least one stage of the general plan shall be filed with the Village Clerk, unless an extension is granted by the Village Board. The detailed plan shall contain any information and representation deemed necessary by the Plan Commission and shall consist of a statement entitled, “Planned Development District - Detailed Plan, Statement of Owner’s Intent and Description of Development,” which shall include without limitations, the following:
- a. A legal description describing all of the tract of land included in the proposed development, referenced to a locational map indicated the relationship of the tract to the total general plan.
  - b. A statement indicating the nature of the applicant’s interest in the land included in the proposed development.
  - c. A statement describing the proposed development, including the character, method, and operation of the development, and a development schedule or timetable for construction. Where the formation of organizations such as a homeowners’ association is proposed, such a statement shall include any agreements, bylaws or covenants which govern the organizational structure, use, maintenance, and protection of the development and any of its common services, common open spaces, or other common facilities.
  - d. A statement as to the following data or graphic information referenced to a map of the proposed development:
    1. The location and size of the site, including dimensioned exterior boundaries, topography, and other salient features, and existing buildings and structures, and also adjacent properties and streets.
    2. The use and location of all buildings or structures, including the architectural character and design of each building, the number of stories and dimensions of each building, and the dimensioned yards between buildings or structure and lot lines.
    3. The location of vehicular and pedestrian facilities, including dimensioned streets, walkways, access driveways, off-street parking spaces and loading berths, and refuse receptacle areas.
    4. The location and size of areas for public or common open spaces and for other public and semi-public uses.
    5. A grading plan, including any storm sewer system, a landscaping plan, and an erosion control plan.
    6. A sanitary sewer and water distribution system plan.
    7. A tabulation of land areas for the different uses in relation to the total tract area.
    8. A tabulation of the number of buildings and the use and the total gross floor area for each building.
    9. A tabulation indicating the number and types of dwelling units, if any,

in each building.

(2) Review of the detailed plan.

- a. The Plan Commission shall review the detailed plan as a conditional use review and shall determine whether the plan complies with the standards set forth in Subsection (a)(4) of this Section and is in general conformance with the approved general plan. Following Plan Commission approval of a detailed plan, the Village Clerk shall record in the Office of the Register of Deeds of the County in which the lands belong a facsimile copy of the approved detailed plan and a certified copy of the Plan Commission action approving the same. The costs for copies and recordings shall be paid by the owners of the land within the plan areas.
- b. The action of the Plan Commission on the proposed detailed plan shall be appealable to the Village Board. The Village Board shall consult with the Plan Commission before making its appeal decision, but in no case shall a detailed plan be approved that is out of conformity with the corresponding approved general plan.

(3) Approval of detailed plan. Once the detailed plan is approved, the Zoning District Map shall be amended to include all of the lands within the detailed plan as Planned Development District – detailed plan approved.

- (j) Planned Development District – Single-stage procedure. Upon request by applicant and subject to Village Board concurrence, the general and detailed stages of plan review and approval can be combined. Under this option, the plan is submitted in detailed form and is processed as is a general plan.

**SEC. 22-53 THROUGH 22-54 RESERVED FOR FUTURE USE.**

**DIVISION 5 – ACCESSORY USES, BUILDINGS, AND STRUCTURES**

**SEC. 22-55 ACCESSORY USES, BUILDINGS, AND STRUCTURES.**

- (a) Principal Use to be Present. An accessory use, building, or structure in any zoning district shall not be established prior to the principal use or building being present or under construction.
- (b) Any accessory use, building, or structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided.
  - (1) Any permanent roofed structure serving an accessory use, if attached to the principal building, shall be considered as part of such principal building for all regulatory purposes.
  - (2) Accessory buildings and structures are permitted in the rear yard and side yard; however, when an accessory building or structure is located forward of the rear building line of the principal building, it shall satisfy the same side yard requirements as the principal building.

- (3) Detached accessory buildings and structures shall not occupy more than thirty percent (30%) of the rear yard area in all districts except the commercial, industrial, rural development, and agricultural districts, in which such uses and structures shall not occupy more than fifty percent (50%) of the rear yard area. Private swimming pools shall be exempt from the thirty percent (30%) rear yard occupancy limitation in residential districts. The provisions of this section do not apply to fences.
  - (4) Detached accessory buildings and structures shall not be closer than five (5) feet to the principal structure nor closer than three (3) feet to an alley or platted easement, except that when the accessory building is a garage that has its entrance facing the alley, the rear yard setback shall be twenty (20) feet for the garage.
- (c) Uses in Residential Districts. An accessory use or building in a residential district may be established subject to the following regulations:
- (1) Accessory Building Number Limits. In any residential district, except for the RD district, in addition to the principal building, a detached garage or attached garage and one (1) additional accessory building may be placed on a lot.
  - (2) Accessory building size limits. Garages and other detached accessory buildings shall be less than 25 feet in height.
  - (3) Attached accessory buildings. All accessory buildings which are attached to the principal building shall comply with the yard requirements of the principal building.
  - (4) Accessory uses or buildings in residential districts shall not involve the conduct of any business, trade, or industry except for home occupations as defined herein and shall not be occupied as a dwelling unit.
- (d) Placement and Uses in Commercial and Industrial Districts. An accessory use or structure in a commercial or industrial district may be established subject to the setbacks identified in the respective district.
- (e) Placement and Uses in Agricultural Districts.
- (1) All accessory structures shall comply with the setbacks and required yards of the respective district.
  - (2) Agricultural structures for properties zoned agricultural, such as barns, silos and windmills, shall not exceed in height twice their distance from the nearest lot line.

**SEC. 22-56 LANDSCAPING.**

- (a) Accessory structures and vegetation used for landscaping and decorating may be placed in any required yard area. Permitted structures and vegetation include flagpoles, ornamental light standards, lawn furniture, sundials, birdbaths, trees, shrubs and flowers and gardens.

**SEC. 22-57 TEMPORARY USES.**

- (a) The following temporary uses may be established in any district from which they are not otherwise excluded by the regulations of this chapter, under the following conditions:

- (1) Temporary buildings and the temporary storage of materials and equipment incidental to the construction of buildings on the premises, for a period not to exceed one year from the date of issuance of the building permit or permits for such construction.
- (2) A house trailer or mobile home may be occupied on any premises by the owner or builder, while residential construction is in progress, for a period of not to exceed one year from the date of issuance of the building permit for such residence; provided that no such house trailer or mobile home shall be located closer to the side lot lines of the premises than the width of either side yard as established by the residential construction.

**SEC. 22-58 OUTDOOR LIGHTING.**

- (a) Outdoor lighting installations shall not be permitted closer than three feet to an abutting property line, and where not specifically otherwise regulated, shall not exceed 15 feet in height and shall be adequately shielded or hooded so that no excessive glare or illumination is cast upon the adjoining properties.

**SEC. 22-59 LAWN ACCESSORIES.**

- (a) Walks, drives, paved terraces and purely decorative garden accessories such as pools, fountains, statuary, flagpoles, etc., shall be permitted in setback areas but not closer than three feet to an abutting property line other than a street line.

**SEC. 22-60 RETAINING WALLS.**

- (a) Retaining walls may be permitted anywhere on the lot, provided, however, that no individual wall shall exceed six feet in height, and a terrace of at least three feet in width shall be provided between any series of such walls and provided further that along the street frontage no such wall shall be closer than three feet to the property line.

**SEC. 22-61 OUTSIDE STORAGE OF FIREWOOD.**

- (a) No person shall store firewood in the front yard on residentially zoned property, except that firewood may be temporarily stored in the front yard for a period of 30 days from the date of its delivery.
- (b) Firewood should be neatly stacked and may not be stacked closer than two feet to any lot line and not higher than six feet from grade, except adjacent to a fence where firewood can be stacked against the fence as high as the fence. Fences as used in this section shall not include hedges or other vegetation.
- (c) All brush, debris and refuse from processing of firewood shall be promptly and properly disposed of within 15 days and shall not be allowed to remain on the premises.
- (d) Not more than 20 percent of the side and rear yard may be used for storage of firewood at any one time.



## **SEC. 22-62 HOME OCCUPATIONS.**

- (a) Intent. The Intent of this Section is to provide a means to accommodate a small family business within a residence without the necessity of a rezoning into a Commercial District or obtaining a Conditional Use Permit.
- (b) Accessory use. Home occupations are determined to be an allowed accessory use in all Residential Districts. Permits are not required prior to engaging in such activities, but the following standards apply:
  - (1) The activity must be clearly secondary and incidental to the primary residential use.
  - (2) The activity must not significantly alter the residential character of the dwelling unit, dwelling structure or the parcel.
  - (3) The home occupation shall not occupy more than 25 percent of the floor area of the dwelling.
  - (4) The home occupation shall be conducted only within the enclosed areas of the dwelling unit or attached or detached garage.
  - (5) The activity must not unreasonably interfere with the residential occupancy of other parcels in the neighborhood.
  - (6) The activity must not create environmental, safety or health hazards such as noise, light, odors, vibrations, electrical emissions, or other fire or safety hazards that are noticeably out of character with those produced by normal residential occupancy.
  - (7) The use shall not involve the use of commercial vehicles for more than occasional delivery of materials to or from the premises, and traffic generated by the home occupation may not exceed that which is customary to residential occupancies in the neighborhood.
  - (8) No storage or display of materials, goods, supplies, or equipment related to the operation of the home occupation shall be visible outside any structures located on the premises.
  - (9) Signage for the home occupation is governed by Section 13-1-101.
  - (10) The parcel and structure must contain adequate area to accommodate the home occupation without interfering with residential occupancy of other parcels in the neighborhood.
  - (11) Under no circumstances shall a kennel business or a vehicle repair or body work business qualify as a home occupation.
  - (12) Garage sales as a type of home occupation are allowable in all Residential Districts, provided that not more than four are held on a single premises per year and that each such sale shall not exceed four days in duration.
  - (13) Day care is allowable as a home occupation on a residential premise. Conditional use approval may be required, however, if Section 66.1017, Wis. Stats., or as it may be hereafter amended, applies.

## **SEC. 22-63 OTHER ACCESSORY USES.**

- (a) Window wells.
  - (1) Small window wells no greater than 18 inches from the foundation and no more

- than three feet along the foundation are exempt from these standards.
- (2) A window well may encroach up to a maximum of three feet into the required rear yard and may encroach up to a maximum of two feet into a required side yard.
  - (3) Not more than one window well shall be permitted to encroach into each of the rear or side yard.
- (b) Air conditioning equipment and heat pumps. Height limits for the zoning district apply. Such equipment shall not be located forward the front faces of the principal building and shall be located at least four feet from side and rear property lines. Any object that has potential for safety, or attractive nuisance problems must, at the discretion of the zoning administrator, be security fenced.
- (c) Earth station dish antennas.
- (1) No earth station dish antenna shall be erected, constructed, maintained or operated except in conformance with the following regulations. An earth station dish antenna is permitted as an accessory use/structure. (See Section 62.23(7)(He), Wis Stats., for monetary limit on conditions which may be imposed.)
    - a. Permit. The installation of an earth station dish antenna shall require a building permit. The property owner shall submit, to the Building Inspector, plans which indicate the appearance, proposed location and installation method of the dish. All earth station dish antennas, and the construction and installation thereof, shall conform to applicable Village building code and applicable electrical code regulations and requirements.
  - (2) Ground-Mounted Earth Station Dish Antennas.
    - a. In all residential zoning districts, such earth station dish antennas shall be located only in the rear yard of any lot subject to the provisions contained herein:
      - 1. The dish antenna shall be at least six (6) feet from any side or rear lot line or any alley.
      - 2. The dish antenna shall be at least five (5) feet from the principal building on the lot.
      - 3. The dish antenna shall have a maximum height of fourteen (14) feet above the natural grade.
      - 4. In the event that a usable satellite signal cannot be obtained by locating the antenna in the rear yard of the property, such antenna may be placed in the side yard of the property, provided that it shall be no closer than five (5) feet to the principal structure and six (6) feet to any side yard lot line, nor shall any portion of the dish antenna extend into any front yard area. In the case of a corner lot, the dish antenna is not permitted in the side yard area abutting the street. A building permit shall be issued only upon showing by the applicant that a usable satellite signal is not obtainable from any other permitted locations on the property.

5. Earth station dish antennas shall be located and designed to reduce visual impact from surrounding properties at street level and from public streets through the addition of architectural features and/or landscaping that is compatible with the elements and characteristics of the property.
- b. In any commercial, rural development, agricultural, or industrial zoning district, such earth station dish antennas shall be allowed in any yard area subject to the provisions contained herein:
    1. The dish antenna shall be at least six (6) feet from any rear property line or any alley.
    2. The dish antenna shall be at least six (6) feet from any side yard lot line, except when abutting a residential district, in which case the dish antenna shall be at least ten (10) feet from any side yard lot line and be screened to reduce visual impact from adjacent properties at street level.
    3. In cases where the dish antenna will be located in the front yard area or in the side yard area abutting a street or a corner lot, the dish antenna shall be set back at least fifteen (15) feet from any public right-of-way.
    4. The dish antenna shall have a maximum height of thirty (30) feet above the natural grade.
- (3) Roof-Mounted Earth Station Dish Antennas
- a. In all residential zoning districts, roof-mounted earth station dish antennas shall be permitted subject to the provisions contained herein:
    1. Earth station dish antennas exceeding thirty-six (36) inches in diameter shall not be permitted on the roof.
    2. A roof-mounted dish antenna shall not extend higher than fifteen (15) feet above the highest point of the roof.
  - b. In the commercial, rural development, agricultural and industrial zoning districts, earth station dish antennas shall not extend more than twenty (20) feet above the height limit established for the district in which the structure is located.
- (4) All electric lines, cables, and conduits running to or from any earth station dish antennas shall be underground.
  - (5) All dish antennas must be adequately grounded for protection against a direct strike of lightning.
  - (6) All dish antennas shall meet all manufacturer's specifications and be constructed of non-combustible and corrosive-resistant materials.
  - (7) Not more than one earth dish antenna shall be permitted on a zoning lot in a residential lot.

**SEC. 22-64 THROUGH 22-69 RESERVED FOR FUTURE USE.**

## **ARTICLE 3**

### **PERFORMANCE STANDARDS**

#### **SEC. 22-70 PURPOSE.**

The purpose of this Article is to promote public safety and welfare by establishing standards and minimum requirements for traffic visibility, loading, off-street parking, fencing, screening, and general welfare standards.

#### **SEC. 22-71 TRAFFIC VISIBILITY TRIANGLE.**

- (a) Vision setback lines at the intersection of public streets are hereby established as follows:
  - (1) Across each sector between intersecting streets, a vision setback line shall be established by a straight line connecting two points of the intersecting street right-of-way lines, which points are located twenty (20) feet from the intersection of said right-of-way lines.
  
- (b) In the vision setback area, no structure of any kind shall be permitted which exceeds a height of two (2) feet above the elevation of the center of the intersection, except for necessary highway and traffic signs and public utility lines, nor shall any plant material or natural growth be permitted which obscures safe vision of the approaches to the intersection.
  
- (c) The requirements for vision setback lines shall not apply within the Village's Central Business District.

#### **SEC. 22-72 GENERAL PARKING AND LOADING REQUIREMENTS.**

- (a) Scope of Regulations. The off-street parking and loading provisions of this Ordinance shall apply as follows:
  - (1) For all buildings and structures erected after the effective date of this Ordinance, accessory parking and loading shall be according to the provisions of this Ordinance.
  - (2) Where the intensity of the use of any building, structure or premise shall be increased, additional parking to match the increased intensity of use shall be provided.
  - (3) Wherever an existing building or structure is converted to a new use, parking shall be provided according to the requirements of the new use.
  - (4) Any existing parking and loading serving any type of use may not be reduced below the requirements of this Ordinance.

#### **SEC. 22-73 OFF-STREET PARKING SPACE REQUIREMENTS.**

- (a) General Provisions.
  - (1) Minimum Size Regulations. Each parking space shall not be less than 180 square feet in area, eighteen (18) feet in length and ten (10) feet in width, exclusive of aisles and access drives.

- (2) Access. Each off-street parking space shall open directly upon an aisle or driveway designed to provide safe and efficient means of vehicular access to such parking space. All off-street parking facilities shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movement.
- (3) Computing Requirements. In computing the number of spaces required, the following rules shall govern:
  - a. Floor area shall mean the gross floor area of the specific use. See Article 8 Division 1.
  - b. Provision of parking spaces, shared jointly by several persons in the same block or in the same vicinity is permissible, in which case the number of spaces required shall be the sum total of the individual requirements, provided that where it is found by the Planning Commission, upon application thereto, that the parking demand generated by the different uses included in any joint arrangement to provide parking spaces required herein occurs at distinctly different times, as in the case of a theater generating demand for parking after normal daytime business hours and a store generating demand for parking during such daytime hours, and in similar cases, the Planning Commission may reduce the total number of parking spaces to be jointly provided.
  - c. Where parking spaces are calculated according to the number of employees, the number of employees on the main shift shall be used to compute the number of spaces required.
- (4) Location of Parking Facilities. All parking spaces required herein shall be located on the same lot with the building or use served, except that where the number of spaces are provided collectively or used jointly by two (2) or more buildings or establishments, the required spaces may be located not to exceed 300 feet from any building served.
- (5) Screening. Any off-street parking area, other than that provided for single-family dwelling units, which abuts a single-family residential district, shall provide a planting screen, landscaped fence or wall, at least four (4) feet in height along the side abutting the single-family residential district, unless exempted by the Village Board.
- (6) Lighting. Lights provided in any parking area shall be hooded or beamed so as not to create undesirable glare or illumination on adjacent residential property.
- (7) Yards. Parking may be allowed in the required yards with the exception of the following:
  - a. In any off-street parking area, which abuts a single-family residential district, no vehicles shall be allowed to park closer than ten (10) feet to the abutting lot line between the districts.
  - b. No parking shall be allowed within the first fifteen (15) feet of the required front yard in all residential districts and the conservancy district. No parking shall be allowed within the first ten (10) feet of the required front yard in all commercial and industrial districts.

(8) Surfacing. Any off-street parking area, other than that provided for single- and two-family dwelling units, having a capacity for more than four (4) vehicles shall be hard surfaced, unless exempted by the Village Board.

(b) Parking Spaces Required. In all districts, except the Central Business District, there shall be provided at the time any building or structure is erected or structurally altered, off-street parking spaces in accordance with the following requirements:

Type of Use	Parking Spaces Required
Animal Hospitals	One (1) space per employee plus four (4) additional spaces.
Athletic Fields, Including Softball Fields, Tennis Courts, or Similar Uses	As determined by the Plan Commission to serve the public.
Bowling Alleys	Two (2) spaces per lane plus the requirements for connected commercial uses, such as eating or drinking establishments.
Business, Professional Offices, or Banks	One (1) space per 200 square feet of floor area.
Churches	One (1) space per (5) seats of the main assembly area.
Elementary and Junior High Schools	Two (2) spaces per classroom (if the school includes a public assembly facility, the public assembly facility requirements shall govern, if it is greater).
Funeral Homes or Mortuaries	Twenty (20) per chapel, plus one (1) space per vehicle kept on the premises.
High Schools	One (1) space per five (5) students plus one (1) space per employee (if the school includes a public assembly facility, the public assembly facility requirements shall govern, if it is greater).
Hospitals, Convalescent and Nursing Homes, and Similar Institutions	One (1) space per four (4) beds plus one (1) space per employee on the major shift.
Hotel and Motels	One (1) space per rental unit plus one (1) space per employee on the major shift.
Manufacturing and Processing Plants, Warehouses, Wholesale Establishments, Research Laboratories, and Similar Uses	One (1) space per employee on the major shift, plus one (1) space per business vehicle normally kept on the premises and five (5) additional spaces for the main office.
Medical and Dental Clinics	Five (5) spaces per doctor.

Type of Use	Parking Spaces Required
Multiple-Family Dwellings	Efficiency, one and two bedroom units – 1.5 spaces per dwelling unit.  Three or more bedrooms – two (2) spaces per dwelling unit.
Museums and Libraries	One (1) space for each 200 square feet of floor area.
Child Care Centers	One (1) space for each two (2) staff members, plus one (1) space for each ten (1) children, based on maximum occupancy load.
Parks and Playgrounds	As determined by the Plan Commission to serve the public.
Planned Unit Developments	Provided on the required space for each individual use, with final approval by Village Board.
Private Clubs, Lodge Halls	One (1) space for every 100 square feet of floor area.
Public Assembly Facilities Providing for Seated Audiences	One (1) space per three (3) seats.
Restaurants, Taverns, Nightclubs, etc.	One (1) space per 50 square feet of floor area or one (1) space per six (6) seats, whichever is greater.
Retail and Customer Service Establishments	One (1) space per 200 square feet of floor area.
Single- and Two-Family Dwellings	Two (2) spaces per dwelling unit.

(1) Uses Not Specified. The parking space requirements for uses not consistent with the uses specified in Section 22-73(b) shall be defined by the Planning Commission. Such determination shall be based upon the requirements for the most comparable use specified in Section 22-73(b).

**SEC. 22-74 STORAGE AND PARKING OF RECREATIONAL VEHICLES.**

(a) Permitted parking or storage of recreational vehicles. In all residential districts provided for in this chapter, it is permissible to park or store a recreational vehicle or boat and boat trailer on private property in the following manner:

- (1) No part of the unit may extend over the public sidewalk or public right-of-way.
- (2) Parking is permitted only for storage purposes. Recreational vehicles or boats shall not be:
  - a. Used for dwelling purposes, except for overnight sleeping for a maximum of 14 days in any one calendar year. Cooking is not permitted at any time.
  - b. Permanently connected to sewer lines, water lines or electricity. The

recreational vehicle may be connected to electricity temporarily for charging batteries and other purposes.

- c. Used for storage or goods, materials, or equipment other than those items considered to be part of the unit or essential for its immediate use.
- (3) Notwithstanding the Subsections (1) and (2) of this section, a recreational vehicle or boat may be parked anywhere on the premises during active loading or unloading, and the use of electricity or propane fuel is permitted when necessary to prepare a recreational vehicle for use.
- (4) A recreational vehicle or boat, utility trailer, and motor home may be parked:
  - a. In the front yard on a driveway
  - b. Within a garage
  - c. In the rear yard
  - d. In the side yard no closer than five (5) feet to the side yard lot line
- (5) The recreational vehicle or boat shall be owned by the resident on whose property the unit is parking for storage.
- (6) The recreational vehicle or boat shall have current registration.

#### **SEC. 22-75 STORAGE OF TRUCKS, TRACTORS, AND ROAD MACHINERY**

- (a) Truck parking in residential districts. No motor vehicle over 12,000 gross vehicle weight rated capacity bearing a commercial license, including school buses, and no commercially licensed trailers, including semitrailers, shall be parked or stored in a residential district, except when loading, unloading, or rendering a service.
- (b) Semi tractors and road machinery. No person shall park, keep, or maintain on properties zoned residential the following types of vehicles: tractor-trailers, semi-trailers, dump trucks, and road machinery. Said vehicles may not be kept or parked on said premises whether or not they are in enclosed buildings, except for the purposes of unloading or servicing the premises.

#### **SEC. 22-76 TEMPORARY USE OF STORAGE CONTAINERS.**

- (a) Definitions. As used in this section, the term “container” shall include, but not be limited to, the following items:
  - a. Polystructure/Polyshester. Structures with a frame of steel or other material which is covered by plastic, polyurethane, vinyl, canvas, or other similar flexibility sheeting material.
  - b. Shipping Container. A steel box used for intermodal shipping products and materials between locations. Such containers are designed and constructed to standards established by the International Organization for Standards (ISO) and are typically 10, 20, 30 or 40 feet long.
  - c. Storage Pod. A box container constructed of wood, steel, or other similar materials such as “Portable on Demand Storage” also known as “PODS®.”
- (b) Containers prohibited with exceptions. Except as described herein, the following shall



not be placed for storage or residential use in any zoning district in the Village: shipping containers, semi-trailers, truck bodies, mobile offices, storage pods, polystructures, or other similar conveyances either with or without wheels.

- (c) Permit required. An individual, firm, or corporation must first obtain a zoning permit from the Village before installing, or placing any temporary container for construction, remodeling or moving purposes within the Village. The placement of any temporary container is limited to six (6) months with a permit from the Zoning Administrator. Placement of temporary containers for a time duration greater than six months but no more than twelve (12) months requires approval from the Village Board.
- (d) Container placement. A container may be located in the driveway or yard provided it is placed on a pad consisting of stone, gravel, concrete, asphalt, or a combination of those materials. Temporary containers are not to block any portion of streets or sidewalks. Any lawn that is disturbed by the placement or removal of a temporary container or that has been covered by a stone or gravel pad must be restored to its original or better condition in a timely manner after a temporary container is removed.
- (e) Permanent use exemption for the I-1 and I-2 Industrial Districts. Containers or similar conveyances may be permanently placed outdoors and used for storage in the Industrial Districts in accordance with the following requirements:
  - a. The use of this container, including its contents, shall be accessory to the principal building or use of the premises.
  - b. A container shall not be permitted on vacant lots.
  - c. A container shall be located in the rear yard only and shall be placed on a pad consisting of stone, gravel, concrete, asphalt, or a combination of those materials.
  - d. The container location shall comply with setback requirements as if it were an accessory building. Where a residential use is immediately adjacent to the proposed location of a container, the minimum setback may be increased in combination with required screening or fencing as determined by the Village.
  - e. Additional requirements that may be determined by the Village include painting to match the color of the principal building, fencing, landscaping, lighting, architectural modifications, maintenance standards and site improvements to manage stormwater drainage.
  - f. The removal of a container may be ordered by the Village due to lack of maintenance or if it becomes a public nuisance. The cost for such removal shall be paid by the property owner. If the property owner is negligent in paying for its removal, the Village may charge the removal against the property.

**SEC. 22-77 OFF-STREET LOADING.**

(a) General Provisions.

- (1) Required for Occupancy. Loading and unloading facilities shall be provided prior to occupancy for every commercial or industrial building hereafter erected or altered,

and shall be maintained as long as such building is occupied or unless equivalent facilities are provided in conformance with the regulations of this Ordinance.

- (2) Planning Commission Waiver. The Planning Commission may waive loading requirements dependent upon the character of the proposed use or the impracticality of adding loading docks to existing buildings. The Planning Commission may allow two (2) or more uses to cooperatively provide off-street loading spaces, subject to the assurance of permanent availability.
- (3) Site Plan for Off-Street Loading Required. Detailed drawings of off-street loading facilities shall be submitted for approval by the Planning Commission. The Planning Commission may require structural and landscape features such as bumper guards, curbs, walls, fences, shrubs, ground cover, or hedges to further carry out the screening objectives of this Code.
- (4) Allocation of Use. Space required and allocated for any off-street loading facility shall not, while so allocated, be used to satisfy the space requirements for off-street parking. An off-street loading space shall not be used for repairing or servicing of motor vehicles.
- (5) Location of Facility. All required loading facilities shall be related to the function of the building and use to be served and located so as not to interfere with access and driveways.
- (6) Access Driveways. Each required off-street loading space shall be designed for direct vehicular access by means of a driveway, or driveways, to a public street, provided, however, that loading shall not be from the public right-of-way except in situations of existing commercial facilities in the Central Business District where no other opportunities for loading exist. Generally, where servicing is provided from a public right-of-way, the following principles shall be followed:
  - a. Servicing should be provided from other than the principal entrance of the use or uses.
  - b. Trucks shall be parked for loading or unloading purposes on streets other than the principal street serving the use, on side streets or alleys when available.
- (7) Minimum Size Criteria. A required off-street loading space shall be at least twelve (12) feet wide by at least forty (40) feet in length. The above area shall be exclusive of the maneuvering space, and each loading facility shall have a vertical clearance of at least fourteen (14) feet.

(b) Minimum Space Required. Every building having over 5,000 square feet of gross floor area shall be provided with at least one (1) truck loading space. The following minimum number of spaces shall be required:

Use	Gross Floor Area (sq. ft.)	Loading Space(s)
Retail Establishments	Under 20,000	

	20,000 – 50,000	1
	50,000 – 100,000	2
		3
Printing, Publishing, Warehouses, Storage Establishments	Under 40,000	1
	40,000 – 100,000	2
Servicing, Cleaning, Repairing, Testing, or Manufactured Establishments	Under 40,000	1
	40,000 – 100,000	2
All Uses – One (1) additional loading space for each 100,000 square feet or major fraction thereof of gross floor area so used in excess of 100,000 square feet. When the determination of requirements results in a fractional space, any fraction of one-half or less shall be disregarded. Any fraction of more than one-half shall count as one loading space.		

(1) In the case of any use which is not specifically mentioned in the table above, the provisions for a similar use which is so mentioned shall apply. The Planning Commission shall make all such determinations.

**SEC. 22-78 FENCING.**

- (a) Fences must be kept in good repair. Decorative sides must face outward. Supporting members or braces shall be on the inside and flat faces on the outside. If two faces are used, each face shall be of the same type and finish.
- (b) Residential fencing standards:
  - (1) Perimeter fences are those located within five feet of the lot line. These cannot exceed six feet in height and cannot be forward of the front face of the house, except as provided below.
  - (2) Fences, perimeter or otherwise, in front yard, shall be decorative only; at least 50 percent of their bulk must be air space and they must be not more than four feet in height.
- (c) Temporary Fences. Fences erected for the protection of planting or to warn of a construction hazard, or for similar purposes, shall be clearly visible or marked with colored streamers or other such warning devices at four (4) foot intervals. Such fences shall comply with the setback requirements set forth in this Section. Temporary fences shall not be erected for more than forty-five (45) days.

- (d) Prohibited Fences. With the exception of the Agricultural and Intensive Agricultural District, fences may not have t-posts, chicken wire, woven wire, barbed wire, razor wire, electric wire, hazardous wire edges or similar materials.

**SEC. 22-79 SCREENING.**

- (a) In Commercial and Industrial Districts, mechanical equipment (heating, air conditioners and ventilation) that will be readily visible when viewed from ground level from other properties or from major public ways should be softened by screening or covered in a manner that forms an integral part of the building design. Rooftop equipment may require the use of an extended parapet wall or other integrated roof form.
- (b) In commercial and industrial districts, external garbage or refuse containers shall be screened by walls, fences, berms, or effective landscaping, or combinations thereof.
- (c) Outdoor storage/display areas shall be limited.
  - (1) In Commercial and Industrial Districts, all outdoor storage shall be screened. The screening required shall consist of a fence or wall not less than five (5) feet high. The fence or wall shall be constructed in a manner and of such materials to impair the direct vision of the outdoor storage.
  - (2) The storage of materials, fuel, scrap, inoperative vehicles, and similar objects in places that are readily visible from public rights-of-way or parts of neighboring properties where a significant amount of viewing is expected shall be minimized, and where necessary, shall be effectively screened.
- (d) Planting or other suitable screening including fences or freestanding walls shall be required where deemed necessary for screening or enclosure purposes by the Village Board, upon the recommendation of the Plan Commission, such as, around outdoor storage yards and industrial property lines, salvage yards, refuse disposal sites, quarries and mines, mobile home parks, and trailer camps. Such provisions shall be required to the extent needed to provide for: screening of objectionable views, adequate shade, enclosure of storage materials, public health and safety, and a suitable setting for the particular use.
- (e) Maintenance. All screenings, fences, and walls required by this Chapter shall be maintained so as not to prove an objectionable view by themselves.

**SEC. 22-80 NOISE.**

- (a) No operation or activity shall transmit any noise exceeding 75 dBA from 7:00 a.m. to 10:00 p.m. and 65 dBA from 10:00 p.m. to 7:00 a.m. beyond the property line. The following noises are exempt from the regulations:
  - (1) Noises not directly under the control of the property owner.
  - (2) Noises from temporary construction or maintenance activities during daylight hours.
  - (3) Noises from emergency, safety, or warning devices.

**SEC. 22-81 VIBRATION.**

- (a) No operation or activity shall transmit any physical vibration that is above the vibration perception threshold of an individual at or beyond the property line of the source. Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.
- (b) Vibrations not directly under control of the property user and vibrations from temporary construction or maintenance activities shall be exempt from the above standard.

**SEC. 22-82 EXTERNAL LIGHTING.**

- (a) No operation or activity shall produce any intense glare or lighting with the source directly visible beyond the property boundary.

**SEC. 22-83 ODOR.**

- (a) No operation or activity shall emit any substance or combination of substances in such quantities that create an objectionable odor as defined in Chapter NR 154.18, Wisconsin Administrative Code.

**SEC. 22-84 PARTICULATE AND VISIBLE EMISSIONS.**

- (a) No operation or activity shall emit into the ambient air from any direct or portable source any matter that will affect visibility in the excess of the limitations established in Chapter NR 154.11(6), Wisconsin Administrative Code.

**SEC. 22-85 HAZARDOUS POLLUTANTS.**

- (a) No operation or activity shall emit any hazardous substances in such a quantity, concentration or duration as to be injurious to human health or property, and all emissions of hazardous substances shall not exceed the limitations established in Chapter NR 154.19, Wisconsin Administrative Code.

**SEC. 22-86 ADDITIONAL PERFORMANCE STANDARDS FOR COMMERCIAL AND INDUSTRIAL DISTRICTS.**

- (a) Site Design
  - (1) An overall site amenities theme and materials palette shall be presented and approved by the Village as part of a Site Plan Review process required under Section 22-132.
  - (2) Buildings along with trees and landscaping shall be predominant. Parking lots and free-standing signs shall be secondary features of a site.
  - (3) Loading docks or delivery doors shall be placed to reduce visibility from residential areas or public streets.

- (4) To ensure that building entrances are welcoming and easily identifiable from the street and sidewalks, the principal entry for persons to the building shall be marked by an architectural element such as a building canopy, large entry doors, or landscaping with seating.
- (5) Pedestrian and bicycle connections into and out of the site shall be clearly defined. Pedestrian access to the building shall be visually and functionally clear and shall offer convenient access.
- (6) Provide accessible and high-quality bicycle parking. Bicycle racks shall be placed within 50 feet of the primary entrance of the building they are intended to service.
- (7) Parking lots shall have decorative landscape treatment at the perimeter of the lot and, for larger lots, in island areas within the lot, to provide break-up of the expanse of paving.
- (8) All sites shall be planned and constructed so that surface drainage drains from structures.

(b) Building Architecture, Mass, and Articulation

- (1) An overall architectural theme and building materials palette shall be presented and approved by the Village as part of the site review process.
- (2) Buildings shall include articulation along the facades facing and visible from public rights-of-way; flat blank walls are not allowed.
- (3) Building masses and long, straight fronts and sides (relative to the overall length of the building) that are visually accessible shall be broken up and made more variegated with staggers and offsets, with landscaping or surficial features or with accumulation of mass in the form of small, related units.
- (4) Any side of the building visible from a street or public open space shall be given architectural treatment utilizing windows, awnings, or other architectural details.

(c) Landscaping and Lighting.

- (1) The proposed site shall provide landscaping of sufficient height and density to accomplish positive visual impact and complement the site and building.
- (2) Exterior lighting shall be established, directed, and maintained so as not to be cast directly on public right-of-way or occupied structures or neighboring properties or be lighted in intensity or colors seriously disturbing to neighboring properties.

**SEC. 22-87 ELECTRIC VEHICLE INFRASTRUCTURE.**

- (a) Intent. The intent of this section is to facilitate and encourage the use of electric vehicles and to expedite the establishment of a convenient, cost-effective electric vehicle infrastructure that such use necessitates.
- (b) Definitions. For the purposes of this Section, the following definitions shall apply.
  - (1) Accessible electric vehicle charging station. An electric vehicle charging station where the battery charging station is located within accessible reach of a barrier-free access aisle and electrical vehicle.
  - (2) Battery charging station. An electrical component assembly or cluster of component

- assemblies designed specifically to charge batteries within electric vehicles.
- (3) Battery electric vehicle. Any vehicle that operates exclusively on electrical energy from an off-board source that is stored in the vehicle's batteries, and produces zero tailpipe emissions or pollution when stationary or operating.
  - (4) Charging levels. The standardized indicators of electrical force, or voltage, at which an electric vehicle's battery is recharged. The terms 1, 2, and 3 are the most common charging levels, and including the following specifications:
    - a. Level 1 is considered slow charging. Voltage including the range from 0 through 120.
    - b. Level 2 is considered medium charging. Voltage is greater than 120 and includes 240.
    - c. Level 3 is considered fast or rapid charging. Voltage is greater than 240.
  - (5) Electric vehicle. Any vehicle that is licensed and registered for operation on public and private highways, roads, and streets; either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board via a battery for motive purpose. "Electric vehicle" includes: (1) a battery electric vehicle; and (2) a plug-in hybrid electric vehicle.
  - (6) Electric vehicle charging station. A public or private parking space that is served by battery charging station equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle. An electric vehicle charging station equipped with Level 1 or Level 2 charging equipment is permitted outright as an accessory use to any principal use.
  - (7) Electric vehicle charging station – private restriction use. An electric vehicle charging station that is (1) privately owned and restricted access (e.g., single-family home, executive parking, designated employee parking) or (2) private owned and available to visitors of the use (e.g., shopping center parking).
  - (8) Electric vehicle infrastructure. Conduit/wiring, structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations and rapid charging stations.
  - (9) Electric vehicle parking space. Any marked parking space that identifies the use to be exclusively for the parking of an electric vehicle.
  - (10) Non-electric vehicle. Any motor vehicle that does not meet the definition of electric vehicle.
  - (11) Plug-in hybrid electric vehicle. An electric vehicle that (1) contains an internal combustion engine and also allows power to be delivered to drive wheels by an electric motor; (2) charges its battery primarily by connecting to the grid or other off-board electrical source; (3) may additionally be able to sustain battery charge using an on-board internal-combustion-driven generator; and (4) has the ability to travel powered by electricity.

(c) Permitted Locations.

- (1) Level 1 and Level 2 electric vehicle charging stations are permitted in every zoning district, when accessory to the primary permitted use. Such stations located at

single-family, multi-family, and mobile home park dwellings shall be designated as private restricted use only. Installation shall be subject to a building permit administered by the Building Inspector.

- (2) Level 3 electric vehicle charging stations are permitted in the C2, I1, and I2 districts, when accessory to the primary permitted use. Installation shall be subject to a building permit administered by the Building Inspector.

(d) Readiness Recommendations.

- (1) Residential – In order to proactively plan for and accommodate the anticipated future growth in market demand for electric vehicles, it is strongly encouraged, but not required, that all new residential homes with garages be constructed to provide a 220-240 volt / 40 amp outlet on a dedicated circuit and in close proximity to designated vehicle parking to accommodate the potential future hardwire installation of a Level 2 electric vehicle charging station.
- (2) Commercial & Industrial – In order to proactively plan for and accommodate the anticipated future growth in market demand for electric vehicles, it is strongly encouraged, but not required that all new and expanded commercial and industrial parking areas provide the electrical capacity necessary to accommodate the future hardwire installation of Level 2 electric vehicle charging stations. It is recommended that a typical parking lot have a minimum ratio of 2% of the total parking spaced be prepared by such stations.

(e) General Requirements in Multi-Family Residential, Commercial and Industrial Development.

(1) Parking.

- a. An electrical vehicle charging station space may be included in the calculation for minimum required parking spaces required in accordance with Section 22-73.
- b. Public electric vehicle charging stations are reserved for parking and charging electric vehicles only. Electric vehicles may be parking in any space designed for public parking, subject to the restrictions that would apply to any other vehicle that would park in that space.

(2) Accessible Spaces.

- a. It is strongly encouraged, but not required, that a minimum of one (1) accessible electric vehicle station be provided. Accessible electric vehicle charging stations should be located in close proximity to the building or facility entrance and connected to a barrier-free accessible route of travel.

(3) Lighting.

- a. Site lighting shall be provided where an electric vehicle charging station is installed, unless charging is for daytime purposes only.

(4) Equipment Standards and Protection.

- a. Battery charging station outlets and connected devices shall be no less than 36 inches and no higher than 48 inches from the surface when mounted. Equipment mounted on pedestals, lighting posts, bollards, or other devices



shall be designed and located as to not impede pedestrian travel or create trip hazards on sidewalks.

- b. Adequate battery charging station protection, such as concrete-filled steel bollards, shall be used. Curbing may be used in lieu of bollards, if the battery charging station is setback a minimum of 24 inches from the face of the curb.

(5) Usage Fees.

- a. The property owner is not restricted from collecting a service fee for the use of an electric vehicle charging station made available to visitors of the property.

(6) Signage.

- a. Information shall be posted identifying voltage and amperage levels and any time of use, fees, or safety information related to the electric vehicle charging station.
- b. Each electric vehicle charging station space shall be posted with signage indicating the space is only for electric vehicle charging purposes. For purposes of this subsection, “charging” means that an electric vehicle is parked at an electric vehicle charging station and is connected to the battery charging station equipment. Restrictions shall be included on the signage if removal provisions are to be enforced by the property owner.

(7) Maintenance.

- a. Electric vehicle charging stations shall be maintained in all respects, including the functioning of the equipment. A phone number or other contact information shall be provided on the equipment for reporting when it is not functioning, or other problems are encountered.

**SEC. 22-88 THROUGH 22-89 RESERVED FOR FUTURE USE.**

## **ARTICLE 4**

### **SIGN REGULATIONS**

#### **SEC. 22-90 PURPOSE AND INTENT.**

The purpose of this Article is to create the legal framework to regulate, administer, and enforce sign advertising and display within the Village of New Auburn, to serve the following purposes:

- (a) To protect the health, safety, and general welfare of the Village and its residents and to implement the policies of the Village's Comprehensive Plan.
- (b) To allow adequate opportunity for free speech in the form of messages or images displayed on signs, while balancing that interest against public safety and aesthetic concerns and community character objectives impacted by signs.
- (c) To ensure that the design, location, construction, illumination, installation, repair and maintenance of signs:
  - (1) Does not interfere with traffic safety or otherwise endanger public safety;
  - (2) Enhances and protects the aesthetic value of the Village by reducing visual clutter that is potentially harmful to property values, community character and economic development, and quality of life; and
  - (3) Is consistent with the character of zoning districts in which the signs are located.
- (d) Recognizing the unique impact of off-premise advertising on public safety, visual aesthetics, and quality of life, to restrict new off-premise signs and minimize the impact of existing off-premise signs.
- (e) To prevent the inadvertent favoring of commercial speech over non-commercial speech or favoring of any particular non-commercial speech over any other non-commercial speech based on its content and provide for individual expression.

#### **SEC. 22-91 COMPLIANCE.**

- (a) No sign shall be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without conformance with the provisions of this Article and a sign permit, unless exempted from sign permit requirements under Section 22-93.

#### **SEC. 22-92 NONCOMMERCIAL SIGNS.**

- (a) Any sign authorized by this Article may contain a noncommercial message. Noncommercial signs shall be subject to the same permit requirements, restrictions on size and type, and other specifications set forth in this Article.
- (b) This section does not authorize the substitution of an off-premise commercial message in place of a noncommercial or on-premise commercial message.

#### **SEC. 22-93 EXEMPT SIGNS.**

- (a) The following Signs are exempt from the regulations contained in this Ordinance.
  - (1) A Sign posted by the Village, a County, State, or Federal agency.
  - (2) A Sign integrated into or on an automatic teller machine, coin-operated machine, or vending machine.
  - (3) A Sign carried by a person.

- (4) A Sign located within the interior of any building or structure which is not visible from the public right-of-way. This does not, however, exempt such sign from the structure, electrical or material specifications of this Ordinance.
- (5) Permanent signs located within the interior of any building or structure which are visible from the public right-of-way provided the gross area of the sign does not exceed four (4) square feet.
- (6) Official notices posted by public officers or employers in the performance of their duties.
- (7) Truck, bus, trailer or other vehicles, while operating in the normal course of business, which is not primarily the display of signs.
- (8) Street Addresses and Numbers as required by the US Postal Service.
- (9) Murals and other work of art.
- (10) Holiday lights and decorations containing no commercial messaging.
- (11) Flags of the United State and Wisconsin and other countries or states, up to a maximum of three flags per parcel. If the flag is displayed on a flagpole, the maximum dimension of any flag shall be proportional to the flagpole height of the pole. Flags must flow in accordance with protocol established by U.S. Congress. Any flag not meeting these requirements shall be considered a Sign subject to the requirements of this Article and not allowed as an exemption under this Section.

**SEC. 22-94 PROHIBITED SIGNS.**

- (a) The following Signs shall be prohibited within the Village of New Auburn:
  - (1) Abandoned signs.
  - (2) Off-Premise Signs, except as expressly allowed under this chapter.
  - (3) Flashing or Moving Signs: Flashing signs are prohibited. Changeable message signs and movie theater marquees are not subject to this restriction. Signs with physically moving components visible from the public right-of-way are not permitted except for those which revolve around a vertical axis at speeds less than seven (7) revolutions per minute.
  - (4) Swinging signs.
  - (5) Floodlighted and Illuminated Signs: Signs may be floodlighted or illuminated, subject to the following restrictions:
    - a. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of a public-right-of-way and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
    - b. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any residential property and which are of such intensity or brilliance as to cause a public nuisance are prohibited.
    - c. No sign shall be so floodlighted or illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.
  - (6) Signs which are an imitation of, or resemble in shape, size, copy or color an official traffic sign or signal.

- (7) Signs attached to any public utility pole or structure, street tree, fence, fire hydrant, bridge, curb, sidewalk, park bench, or other location on public property except as otherwise expressly permitted under this Ordinance.

**SEC. 22-95 SIGN PERMIT APPLICATION, DETERMINATION, INDEMINIFICATION, AND INSURANCE.**

- (a) Permit Required. It shall be unlawful for any person to erect, construct, enlarge, or structurally modify a sign or cause the same to be done in the Village of New Auburn without first obtaining a sign permit for each such sign from the Zoning Administrator as required by this Section. Permits shall not be required for a change of copy of any sign, nor for the repainting, cleaning, and other normal maintenance and repair of the sign and sign structure.
  - (1) For purposes of a permit, a double-faced sign shall be equivalent to one (1) sign.
  - (2) A sign permit issued for the erection, construction, enlargement, modification or moving of a sign shall be subject to the following time limitations: Work permitted by the permit issued shall commence within sixty (60) days of the date of issue or the permit shall be null and void. Each sign or work on a sign subject to a permit shall be completed within six (6) months after the date of the permit or the owner shall be required to apply for and receive another permit before continuing to work on the sign.
  
- (b) Application for Permit. Application for a permit shall be filed with the Zoning Administrator or Village Clerk upon forms provided by the Village Clerk and shall contain the following information:
  - (1) The name, address, and telephone number of the sign owner, the property owner where the sign is or will be located, and the sign contractor of the proposed sign.
  - (2) Clear and legible drawings with description and nominal dimensions of the proposed sign, the construction, size, dimensions, and kind of materials to be used in such structure.
  - (3) A site plan showing the buildings on the premises upon which the structure is to be erected and maintained together with location, setbacks, size, and types of existing signs on the premises where the proposed sign is to be located. All dimensions shall be indicated for the sign and the site plan elements.
  - (4) If located on land not owned by the owner of the sign subject to the application, the written consent or approval or a lease or other form of contract executed by the owner of the land on which the sign is to be placed, indicating that permission has been granted for placement of the sign at the location in question.
  - (5) Electrical permit applied for or obtained for the sign, if applicable.
  - (6) Calculations demonstrating that the sign, as it is designed, meets the construction requirements of this Article for dead load and wind pressure.
  - (7) A description of any existing signs that will remain on the site.
  - (8) Evidence of liability, insurance policy or bond as required by Subsection 22-95(e).
  - (9) Such other information as the Zoning Administrator may require to show full compliance with this and all other applicable laws of the Village of New Auburn.

- (10) Signature of the applicant.
  - (11) Fee. At the time an application is submitted for a sign permit under this Article, the applicant shall pay the applicable fee in full with the fee to be determined in accord with the administrative fee schedule adopted annually by the Village Board and maintained on file with the Village.
- (c) Determination. The Zoning Administrator shall issue a permit for the erection, structural alteration, enlargement, or relocation of a sign within the Village of New Auburn when the permit application is properly made and the sign complies with the appropriate laws and regulations of the Village of New Auburn. If the sign permit is denied by the Zoning Administrator, he/she shall give written notice of the denial to the applicant, together with a brief statement of the reasons for the denial.
- (d) Indemnification for Sign Installation and Maintenance. All persons engaged in the business of installing or maintaining signs which involved in whole or in part, the erection, alteration, relocation, maintenance of a sign or other sign work, in, over, or immediately adjacent to a public right-of-way or public property used or encroached upon by the sign contractor, shall agree to hold harmless and indemnify the Village of New Auburn, its officers, agents, employees, from any and all claims of negligence resulting from the erection, alteration, relocation, maintenance of this sign or any other sign work insofar as this Ordinance has not specifically directed the placement of this sign.
- (e) Insurance. Every sign contractor shall file with the Zoning Administrator a Certificate of Insurance indicating the application holds a public liability and property damage policy specifically to include the hold harmless clause with bodily injury limits of at least \$300,000 per occurrence, and \$300,000 aggregate, and property damage insurance of at least \$100,000 per occurrence, and \$100,000 aggregate. Such insurance shall not be canceled or reduced without the insured first giving thirty (30) days notice in writing to the Village of New Auburn of such cancellation or reduction. This requirement may be waived by the Village Board.

**SEC. 22-96    LEGAL NONCONFORMING SIGNS.**

- (a) Notification of Nonconformance. Upon determination that a sign is nonconforming, the Zoning Administrator shall use reasonable efforts to so notify, either personally or in writing, the user or owner of the property on which the sign is located of the sign's nonconformity and whether the sign is eligible for characterization as a legal nonconforming sign or is unlawful.
- (b) Signs Eligible for Characterization as Legal Nonconforming. Signs lawfully existing at the time of the adoption of this ordinance may be continued although the size or location does not conform with the provisions of this Ordinance. Such signs shall be deemed nonconforming and the nonconforming use and structure provisions under Article 6 of this Ordinance shall apply.

- (c) No nonconforming sign shall be enlarged, physically altered or replaced by another sign, relocated, whether on or off of the premises on which it was situated at the time that it became nonconforming without causing it to become a conforming sign under this Article. All nonconforming signs shall be removed at the time of a change in business on the premises upon which the sign is located.
- (d) Nonconforming signs may be routinely maintained, but no repairs shall be made to them for the purposes of prolonging its anticipated life beyond what is reasonably anticipated as of the time such repairs are proposed to be made.
- (e) Without the express, written consent of the Village, no new signs, including, but not limited to, those capable of being permitted under this Article, may be erected on any premises upon which a nonconforming sign is located unless the nonconforming sign is brought into full compliance with this Article or is removed.
- (f) Nonconforming signs which have been abandoned in accord with Subsection 22-97(b) lose their nonconforming status and shall be removed from the premises upon which they are located. Thereafter, no sign may be erected on the same premises that is not in full compliance with the provisions of this Article.
- (g) A change in business or other use that necessitates a new sign message or sign structure shall require the sign be brought into conformance with the provisions of this Article, including an application for a sign permit.

#### **SEC. 22-97 REMOVAL AND DISPOSITION OF SIGNS.**

##### **(a) Maintenance and Repair.**

- (1) Every sign, including, but not limited to, those signs for which permits are required, shall be maintained in a safe, presentable, and good structural condition at all times, including replacement of defective parts, painting (except when a weathered or natural surface is intended), repairing, cleaning and other acts required for the maintenance of said sign.
- (2) The Zoning Administrator shall require compliance with all standards of this Ordinance. If the sign is not modified to comply with safety standards outlined in this Ordinance, the Zoning Administrator shall require its removal in accordance with this Section.

##### **(b) Abandoned Signs.**

- (1) All signs or sign messages shall be removed by the owner or lessee of the premises upon which an on-premise sign is located when the business it advertises is no longer conducted or, for an off-premise sign, when lease payment and rental income are no longer provided. If the owner or lessee fails to remove the sign, the Zoning Administrator shall give the owner sixty (60) days written notice to remove said sign. Upon failure to comply with this notice, the Village of New Auburn may cause

removal to be executed, the expenses of which will be assessed to the tax roll of the property on which the abandoned sign is located.

(c) Deteriorated or Dilapidated Signs.

- (1) The Zoning Administrator shall cause to be removed any deteriorated or dilapidated signs under the provision of Wisconsin Statutes 66.05.

**SEC. 22-98 CONSTRUCTION SPECIFICATIONS.**

- (a) Every sign or advertising structure hereafter erected shall have marked in a conspicuous place thereon the date of erection, the manufacturer's name, the permit number and the voltage of any electrical apparatus used in connection therewith.
- (b) All signs shall comply with the provisions of the Village of New Auburn Zoning Ordinance, the current National Electrical Code, and the additional construction standards herein set forth.
- (c) All ground sign structures shall be self-supporting structures and permanently attached to sufficient foundations.
- (d) Electrical service to ground signs shall be concealed wherever possible.
- (e) No sign shall be suspended by chains or other devices that allow the sign to swing due to wind action. Signs shall be anchored to prevent any lateral movement that could cause wear on supporting members or connections.
- (f) Supports and braces shall be an integral part of the sign design. Angle irons, chains, or wires used for supports or braces shall be hidden from the public view to the extent technically feasible.
- (g) All signs shall be constructed to withstand wind pressure of not less than thirty (30) pounds per square foot and shall be constructed so as to support dead loads in accordance with the building code.

**SEC. 22-99 MEASUREMENT STANDARDS.**

- (a) Signable Area. The signable area of a building is designated as the area of the façade of the building up to the roof line which is free of windows and doors or major architectural detail on which signs may be displayed. In computing signage area, any façade which faces or abuts a public right-of-way may be utilized. Calculations may include parapet walls but shall exclude door and window openings.
- (b) Measuring Sign Face. In calculating the area of a sign to determine whether it meets the requirements of this Article, the Zoning Administrator shall include the sign copy and any border or frame surrounding that copy. Supporting posts of foundations shall be

excluded from the area calculation. The area of irregularly shaped signs or signs containing two or more detached elements, shall be determined by the area of the smallest regular polygon that will encompass all elements of the sign.

- (c) Measuring Sign Height. The sign height shall be the vertical distance measured from the grade at the base of the sign structure to the highest point of such sign or sign structure. In the case where a sign is to be located in a raised planting bed or berm, the grade shall be determined by the average of the grades measured at the grade of the planting bed or the toes of the slope at the front and back of the bed or berm.

#### **SEC. 22-100 LOCATION STANDARDS.**

- (a) No signs are permitted in the Traffic Visibility Triangle as described under Section 22-71.
- (b) No sign shall be placed within a public right-of-way nor so close to a pedestrian way as to hinder or endanger safe passage.
- (c) Signs shall not be placed on utility poles, light poles, trees, utility pedestals or boxes, or any similar structure.
- (d) Signs shall not be attached or affixed to or adhered to or drawn upon any public street or sidewalks.

#### **SEC. 22-101 GENERAL DESIGN REQUIREMENTS.**

- (a) A ground sign, any part of which is closer than fifteen (15) feet to the right-of-way shall have a minimum vertical distance of ten (10) feet between the bottom of the sign and the grade at the right-of-way line or shall not be more than four (4) feet in height.
- (b) Any overhead sign location that is accessible to vehicles shall have a minimum vertical clearance of sixteen (16) feet.
- (c) No sign facing a residential district shall be closer than twenty-five (25) feet to that district line.
- (d) Wall signs placed against the exterior walls of buildings shall not extend more than sixteen (16) inches outside of a building's wall surface.
- (e) The gross area of permanent window signs shall not exceed fifty percent (50%) of the gross window area.

#### **SEC. 22-102 SIGNS PERMITTED IN ALL DISTRICTS WITHOUT A PERMIT.**

The following signs are permitted in all zoning districts without a permit, subject to the specified conditions.

- (a) Construction Signs. Two (2) construction signs per construction site, not exceeding 160



square feet in area each, shall be confined to the site of construction and shall be removed thirty (30) days after completion of construction or prior to occupancy, whichever is sooner.

- (b) Temporary Ground or Wall Signs on properties or buildings for sale, lease, or rent not exceeding eight (8) square feet in area on one side or sixteen (16) square feet in area on all sides. If not attached to a wall, such signs shall be setback at least ten (10) feet from a side or rear lot line, shall not be located in a public right-of-way, and shall be removed within ten (10) days after the property or building is sold, leased, or rented.
- (c) Temporary Freestanding, Ground, or Wall Signs on properties of buildings with an open house, grand opening, anniversary or special sale, not exceeding sixteen (16) square feet on one side, or thirty-two (32) square feet in area on all sides. Sign may be placed on the premises not earlier than seven (7) days prior to the event in question and shall be removed no later than at the end of the last day of the event.
- (d) Election Campaign Signs. As provided in Section 12.04, Wis. Stats., election campaign signs are permitted in residential zoning districts subject to the following requirements:
  - (12) Shall not be located in the public right-of-way or on public property, unless specifically exempted under section 22-93; and
  - (13) Shall not exceed eleven (11) square feet in area unless the sign is affixed to a permanent structure, does not extend beyond the perimeter of the structure, and does not obstruct a window, door, fire escape, ventilation shaft, or other area which is required by the Village building code to remain unobstructed.
- (e) A temporary sign not to exceed eleven (11) square feet in area and shall not be displayed for more than thirty (30) days in any given 12-month period of time on any given parcel.

**SEC. 22-103 SIGNS PERMITTED IN SPECIFIED ZONING DISTRICT WITH A PERMIT.**

- (a) The following signs are permitted in all Residential Zoning Districts, with a permit, subject to the following regulations:
  - (1) Permanent Ground Sign placed at the entrance to a subdivision or development, which shall be setback at least ten (10) feet from a street right-of-way or side or rear lot line. The sign shall not exceed twenty (20) square feet in size and six (6) feet in height.
    - a. The Subdivider, condominium association, or homeowner’s association shall be responsible for paying all costs for maintenance of the sign and associated landscaping. Written agreements shall be on file between the Village and the Subdivider, condominium association, and/or homeowners association as to the maintenance and care of the sign and landscaping.
  - (2) Signs associated with a permitted, accessory, or conditionally allowed non-residential use. Signage shall consist of no more than one (1) ground sign not to

exceed twenty (20) square feet in size and six (6) feet in height, together with one (1) wall sign not larger than fifteen (15) square feet in size.

- (3) Home Occupation Signs. Signs associated with a home occupation as defined in the Zoning Ordinance provided such signs are non-illuminated signs that do not exceed two (2) square feet in area. One (1) sign per home occupation is allowed.
  
- (b) The following signs are permitted in the C-1 Central Business District, with a permit:
  - (1) Permitted Sign Types: Wall, window, ground, and directional
  - (2) Area: The gross area in square feet of all signs shall not exceed four (4) times the lineal front footage of the zoning lot, however, the gross surface area of all illuminated signs shall not exceed two (2) times the lineal front footage of the zoning lot.
  - (3) Ground Signs: The area of the ground sign shall not exceed seventy-five (75) square feet. One (1) on-premise ground sign shall be permitted for each street frontage of the zoning lot. No ground sign shall project higher than twenty-five (25) feet above grade.
  
- (c) The following signs are permitted in the C-2 General Commercial District, with a permit:
  - (1) Permitted Sign Types: Wall, window, ground, and directional
  - (2) Area: The gross area in square feet of all signs shall not exceed four (4) times the lineal front footage of the zoning lot, however, the gross surface area of all illuminated signs shall not exceed two (2) times the lineal front footage of the zoning lot.
  - (3) Ground Signs: The area of a ground sign shall not exceed one hundred (100) square feet in gross area. One (1) on-premise ground sign shall be permitted for each street frontage of the zoning lot. The sign shall not be higher than twenty-five (25) feet above grade.
  
- (d) The following signs are permitted in the I-1 Light Industrial and I-2 Heavy Industrial Districts, with a permit:
  - (1) Permitted Sign Types: Wall, window, ground, and directional
  - (2) Area: The gross area in square feet of all signs shall not exceed four (4) times the lineal front footage of the zoning lot; however, the gross surface area of all illuminated signs shall not exceed two (2) times the lineal front footage of the zoning lot.
  - (3) Ground Signs: The area of a ground sign shall not exceed two hundred (200) square feet in gross area. One (1) on-premise ground sign shall be permitted for each street frontage on the zoning lot. No ground sign shall project higher than twenty-five (25) feet above grade.
  
- (e) The following signs are permitted in the GA General Agriculture, IA Intensive Agriculture, and Rural Development District.
  - (1) Permitted Sign Types: Wall, window, ground, and directional

- (2) Area: The gross area in square feet of all signs shall not exceed two hundred (200) square feet, however, the gross surface area of all illuminated signs shall not exceed one hundred (100) square feet
- (3) Ground Signs: The area of a ground sign shall not exceed one hundred (100) square feet in gross area. One (1) on-premise ground sign shall be permitted for each street frontage of the zoning lot. The sign shall not be higher than ten (10) feet above grade.

**SEC. 22-104 ILLUMINATION RESTRICTIONS – ALL ZONING DISTRICTS.**

- (a) The following restrictions on illumination of signs shall apply in all zoning districts.
  - (1) No illuminated sign shall cause any reflection or glare upon any public street, highway, or sidewalk, nor create glare on adjoining private properties.
  - (2) Exposed lighting media such as light bulbs and tubes are prohibited. All external sources of illumination must be hidden from view by the planting of vegetation, such as shrubbery, or by being camouflaged by non-vegetative means, subject to approval of the Village.
- (b) No sign which is allowed to be erected or constructed without a permit shall be illuminated without the express written permission of the Village.

**SEC. 22-105 TEMPORARY AND PORTABLE SIGNS.**

- (a) In addition to the temporary signs allowed under Section 22-93 Exempt Signs and Section 22-102, the following temporary and portable signage may be allowed subject to review and approval of a sign permit:
  - (1) Moveable Flag Signs or banners may be approved on a temporary basis in any district by the Plan Commission following a review and recommendation by the Zoning Administrator. Temporary sign permits shall not be granted for a period of more than three (3) weeks, and each business or organization shall be limited to two temporary sign permits for a flag sign or banner in any 12-month period. Banners displayed above a street shall not exceed one hundred-twenty (120) square feet in area on each side. Banners attached to a building or other structure shall not exceed thirty two (32) square feet in area.
  - (2) Temporary Signs. A temporary sign other than a flag or banner may be allowed in any district for up to thirty (30) days in any given calendar year provided the sign is not permanently mounted or affixed to the ground. The sign area shall not exceed thirty-two (32) square feet on one side or sixty-four (64) square feet on all sides, and shall be at least ten (10) feet from a property line (except for the C-1 Central Business District). Only one (1) temporary sign may be located on a lot. Each business or organization shall be limited to two (2) temporary sign permits in any 12-month period.
  - (3) Portable Sign Regulations. Any person wishing to place a portable sign on his/her premises or the premises of another shall first obtain a permit from the Plan Commission. Permits shall be issued for a period not to exceed sixty (60) days in any

calendar year. Any sign remaining on the premises for more than sixty (60) days in any calendar year shall be deemed to be a permanent sign and shall meet all requirements for a permanent sign.

- a. No portable sign shall exceed thirty-two (32) square feet and no portable sign shall be over seven (7) feet in height from grade level.
- b. All portable signs shall have a minimum setback from the front property line of ten (10) feet or an additional setback as deemed necessary by the Plan Commission for the safe flow of vehicle or pedestrian traffic.

#### **SEC. 22-106 ADMINISTRATION AND ENFORCEMENT.**

(a) Zoning Administrator.

(1) The Zoning Administrator is hereby designated as the Administrative and Enforcement Officer for the provisions of this Section. The Village Clerk can act as the Zoning Administrator's representative in the administration and enforcement of this Article. The Zoning Administrator can seek counsel with the Planning Commission regarding the administration and enforcement of this Article. The Zoning Administrator shall examine all applications for permits for the erection of signs, issue permits and denials, authorize the continued use of signs which conform with the requirements of this code, record and file all applications for permits with any accompanying plans and documents, make inspections of signs in the Village of New Auburn, and make such reports as the Village may require.

(b) Should any sign be erected or constructed that fails to meet all requirements of this Article or any applicable building or electrical code, notwithstanding the fact that the owner thereof was granted a permit with which to construct it or, in other cases, that no permit was required under this Article, the Zoning Administrator may provide notice to the owner of the premises upon which it is located that the sign be rebuilt to standards and that the owner or his or her agent shall have thirty (30) to ninety (90) days in which to do so. The failure to do so shall result in the loss of the sign permit in cases where a sign permit is required. Signs that are subject to this paragraph shall, if not rebuilt or reconstructed by the owner, be treated by the Village as abandoned or dilapidated signs, subject to removal by the Village in accordance with this Article.

(c) Violations of this Article, if uncorrected in accord with the requirements of the notice provided by the Village, shall be subject to imposition of a forfeiture in the amount of not less than \$100 for each day such a violation continues, with each day constituting a separate violation.

(d) Each violation of the requirements of this Article pertaining to permanent signs is deemed by the Village to create a public nuisance which endangers the health, safety, and general welfare of the citizens of the Village. Correspondingly, in addition to or as a complete alternative to pursuing the imposition of a forfeiture for violations of this Article, the Village may seek injunctive relief against the continued maintenance of such signs, requesting of the court that it order removal or authorize the Village to do so at

the expense of the owner of the premises on which the offending sign is located.

## **SEC. 22-107 SPECIAL EXCEPTIONS AND SIGN VARIANCE / APPEALS.**

### **(a) Special Exceptions.**

(1) **Applicability and Procedure.** Following submittal of a complete special exception application, the Plan Commission may grant a special exception to one or more requirements in this Article. The application requirements and procedure for, and other requirements associated with, a special exception shall be the same as those for a conditional use permit under Section 22-130, except as follows:

- a. The application for special exception shall also include materials required to obtain a sign permit under Section 22-95(b).
- b. The criteria for consideration of a special exception shall be those in subsection (2) below.

(2) **Criteria.** No special exception shall be granted unless the Plan Commission finds that the sign(s) authorized thereby, as limited by an enforceable condition, will meet all of the following criteria:

- a. Is consistent with the purpose and intent of this Chapter and this Section.
- b. Will not negatively affect the reasonable use and development of nearby properties of the community.
- c. Is compatible with existing signage on and visible from the subject site and not significantly exceeding the height, area, or quantity of such existing signage.
- d. Is proportional with the scale of the subject site and the building(s) and use(s) on the subject site to which the sign relates or advertises.
- e. Is not hazardous, harmful, or otherwise adverse to the natural environment and aesthetic value of the site, nearby properties, and the community.
- f. Will not negatively affect the safe and efficient installation, use, and maintenance of public facilities serving the area, including but not limited to roadways, sidewalk and paths, and utilities.
- g. Is supported by evidence that normally applicable requirements do not provide for sufficient visibility for the proposed signage or use(s) it advertises, such as a highway visibility study for freestanding signage that exceeds normally applicable height or area requirements.

### **(b) Sign Permit Variance and Appeal.**

(1) In the event that any of the requirements herein contained cause undue or unnecessary hardship on any person, firm or corporation, a variance from such requirements may be applied for to the Board of Appeals. An application for variance must be made within ten (10) days after receipt of notice that the sign involved does not conform to the Ordinance and not less than forty-five (45) calendar days before a scheduled Board of Appeals meeting. In the event that the appeal is not made in writing to the Board within such ten (10) day period, a variance may not be granted. The Board of Appeals is to take action on any variance request within sixty (60) days of receipt of the variance application. The Zoning

- Administrator shall comply with and enforce the Zoning Board of Appeals decision.
- (2) The Zoning Administrator's failure to either formally grant or deny a sign permit within thirty (30) days of the date an application meeting the requirements of this Ordinance is filed shall be cause for appeal to the Zoning Board of Appeals.

**SEC. 22-108 THROUGH 22-109**

**RESERVED FOR FUTURE USE.**

## **ARTICLE 5**

### **TELECOMMUNICATIONS**

#### **SEC. 22-110 PURPOSE.**

The purpose of this Article is to establish regulations for signal received antennas and wireless telecommunication facilities.

#### **SEC. 22-111 SIGNAL RECEIVING ANTENNAS.**

- (a) Purpose. This Section regulating the placement of signal receiving antennas is adopted to:
- (1) Provide uniform regulation of all signal receiving antenna devices.
  - (2) Secure placement of such antennas in an aesthetically sensitive manner while allowing users reasonable reception of signals.
  - (3) Protect the public from injury from antennas that are inadequately mounted, unduly susceptible to wind pressure, improperly installed and wired, or are placed on structures insufficiently designed or constructed to safely support the antenna; and
  - (4) Provide for placement of such antennas in locations that preserve access to rear property areas by firefighting apparatus and emergency personnel.
- (b) Permit Required. No owner shall, within the Village of New Auburn, build, construct, use or place any type of signal receiving antenna until a permit shall have first been obtained from the Zoning Administrator.
- (c) Definitions.
- (1) For purposes of this Section, a "signal receiving antenna" is defined as any apparatus capable of receiving communications from a transmitter or a transmitter relay located in a planetary orbit. This definition includes all types of signal receiving antennas, including, without limitation, parabolic antennas, home earth stations, satellite television disks, UHF and VHF television antennas, and AM, FM, ham and short-wave radio antennas, regardless of the method of mounting.
  - (2) "Owner" means the holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant shall be considered such owner to the extent of his/her interest. The personal representative of at least one (1) owner shall be considered an owner.
- (d) Application. Application for a signal receiving antenna permit shall be made in writing to the Zoning Administrator. With such application, there shall be submitted a fee as set forth in the Village's annual fee schedule and a sufficient set of mounting plans and specifications, including a general plot plan showing the location of the proposed signal receiving antenna with respect to streets, lot lines and buildings. If such application meets all requirements of this Section, the application shall be approved.

- (e) Installation Standards. Signal receiving antennas installed in any zoning district within the Village shall comply with the following provisions:
- (1) Setbacks.
    - a. Any signal receiving antenna and its mounting post shall be located a minimum of ten (10) feet from any property line.
    - b. Subject to the provisions herein, signal receiving antennas shall only be located in the rear yard of any lot. If reasonable reception of signals is not possible with a rear yard placement due to the physical characteristics of the lot and area, the signal receiving antenna shall be placed in the side yard of the lot. In the event that reasonable reception of signals is not possible by locating the signal receiving antenna on the rear or side yard of the property, such antenna may be placed in the front yard or on the roof of structures on the property. For corner lots, a side yard is only a yard that does not face a street.
    - c. If side yard, front yard, or roof mounting is requested, the Zoning Administrator shall determine where reasonable reception is possible, based on evidence provided by the person seeking to erect or construct the antenna.
  - (2) Mounting. Signal receiving antennas attached to the wall or roof of any principal or accessory structure shall be permitted only if the structure is properly constructed to carry all imposed loading and complies with applicable state and local building code requirements. The Zoning Administrator may require engineering calculations.
  - (3) Diameter. The diameter of the signal receiving antenna shall not exceed fifteen (15) feet in diameter, except for systems used to provide community antenna television services.
  - (4) Height.
    - a. A ground-mounted signal receiving antenna, including any platform or structure upon which said antenna is mounted or affixed, may not exceed eighteen (18) feet in height, as measured from the ground to the highest point of the dish.
    - b. A roof-mounted antenna may not exceed fifteen (15) feet in height above the surrounding roof line as measured from the lowest point of the existing roof line.
  - (5) Wind Pressure. All signal receiving antennas shall be permanently mounted in accordance with the manufacturer's specifications for installation. All such installations shall meet a minimum wind load design velocity of eighty (80) mph.
  - (6) Electrical Installations. Electrical installations in connection with signal receiving antennas, including grounding of the system, shall be in accordance with the National Electrical Safety Code, Wisconsin State Electrical Code and the instructions of the manufacturer. In cases of conflict, the stricter requirements shall govern. All cable used to conduct current or signals from the signal receiving antenna to the receivers shall be installed underground unless installation site conditions preclude underground. If a signal receiving antenna is to be used by two (2) or more



residential property owners, all interconnecting electrical connections, cables and conduits must also be buried. The location of all such underground lines, cables and conduits shall be shown on the application for a permit. All signal receiving antennas shall be grounded against direct lightning strikes.

- (7) Temporary Placement. No portable or trailer-mounted signal receiving antenna shall be allowed, except for temporary installation for on-site testing and demonstration purposes for periods not exceeding five (5) days. However, such trial placement shall be in accordance with all provisions of this Section. Failure to comply shall result in a citation being issued for violation of this Section. Any person making such temporary placement shall first give written notice to the Zoning Administrator of the date when such placement shall begin and end.
  - (8) Advertising. No form of advertising or identification, sign or mural is allowed on the signal receiving antenna other than the customary manufacturer's identification plates.
  - (9) Interference with Broadcasting. Signal receiving antennas shall be filtered and/or shielded so as to prevent the emission or reflection of an electromagnetic radiation that would cause any harmful interference with the radio and/or television broadcasting or reception on adjacent properties. In the event that harmful interference is caused subsequent to its installation, the owner of the signal receiving antenna shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.
  - (10) Compliance with Federal Regulations. The installation and use of every signal receiving antenna shall be in conformity with the Federal Cable Communications Policy Act of 1984 and regulations adopted thereunder.
  - (11) Aesthetic Considerations. Signal receiving antennas shall be located and designed to reasonably reduce visual impact from surrounding properties at street level.
- (f) Enforcement.
- (1) It shall be unlawful to construct, use, build, or locate any signal receiving antenna in violation of any provisions of this Section. In the event of any violation, the Village Board or any property owner who would be specifically damaged by such violation may institute appropriate action or proceedings to enjoin a violation of this Section.
  - (2) Any person, firm, or corporation who fails to comply with the provisions of this Section shall, upon conviction, be subject to the general penalty under the Village's forfeiture schedule.
- (g) Variance Criteria.
- (1) When considering a variance from the provisions of Section 22-111, the Zoning Board of Appeals shall consider the minimum effective height necessary to engage in amateur radio activities as determined by the Federal Communications Commission.

## **SEC. 22-112 WIRELESS TELECOMMUNICATION FACILITIES.**

### **(a) Purpose and Intent.**

- (1) The purpose and intent of this section is to strike a balance between the state and federal interest concerning the construction, modification, and siting of mobile service facilities and mobile service support structures for use in providing personal

wireless services, and the Village's interest in:

- a. Protecting residential areas and land uses from the potential adverse impacts of towers and antennas.
- b. Minimizing the total number of towers throughout the community.
- c. Encouraging the joint use of new and existing tower sites as a primary siting option rather than construction of additional single-use towers.
- d. Avoiding potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

(2) This Section establishes regulations for:

- a. The siting and construction of any new mobile service support structure and facilities.
- b. With regard to a Class I collocation, the substantial modification of an existing support structure and mobile service facilities; and
- c. With regard to a Class II collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

(3) The regulations contained in this section shall be interpreted to comply with Section 66.0404, Wis. Stats., and any amendments thereto. Any provisions within the Code that conflicts with the Village's authority under Section 66.0404, Wis. Stats., shall not be applied to new mobile service support structure and facilities, class 1 collocation, or class 2 collocation.

(b) Authority. The Village of New Auburn has the specific authority under Sections 61.35, 62.23 and 66.0404, Wis. Stats., to adopt and enforce this Section.

(c) Definitions. Unless expressly indicated, all terms in this Section shall have the meanings established in Section 66.0404(1), Wis. Stats.

(d) Siting and Construction of Any New Mobile Service Support Structure and Facilities

(1) A Village zoning permit is required for the siting and construction of any new mobile service structure and facilities. The siting and construction of any new mobile service support structure and facilities is a conditional use in the Village obtainable with this permit through the conditional use permit process.

(2) An application for a permit to engage in the siting or construction of a new mobile service support structure and facilities shall be submitted in writing to the Zoning Administrator. The Zoning Administrator shall submit a copy of the application to the Building Inspectors for review and recommendation on all structural requirements. The application shall contain the following information:

- a. The name and business address of, and the contact individuals for, the applicant.
- b. The location of the proposed or affected support structure.
- c. The location of the proposed mobile service facility.
- d. If the request is to substantially modify an existing support structure, a construction plan must be included which describes the proposed

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

- e. If the application is to construct a new mobile service support structure, a construction plan must be included which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
  - f. If the application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
  - g. If the application is to construct a new mobile service support structure, the application shall demonstrate that the structure will be located a distance from any residential dwelling structure that is equal to the height of the mobile service support structure plus ten (10) feet measured from the base of the support structure to the nearest portion of the residential dwelling structure (including roof overhangs, porches and patios). Alternatively, the applicant may demonstrate through submittal of an engineering certification showing that the mobile service support structure is designed to collapse within a smaller distance than the height of the structure.
  - h. The fee for the permit shall be as established in the Village fee schedule [but may not exceed three thousand dollars (\$3,000) per Sec. 66.0404(4)(d), Wis. Stats.].
- (3) The Zoning Administrator shall inform the applicant within ten (10) days of receipt of the application if the application is not complete. Notification shall be in writing and shall specify in detail the information that was incomplete.
- (4) Within ninety (90) days of receipt of a completed application, the Zoning Administrator shall issue a written decision to approve or deny the application. If the application is denied, the written decision shall set forth the reasons for denial based upon substantial evidence. The Zoning Administrator and the applicant may agree in writing to an extension of the ninety-(90) day period.
- (5) Pursuant to Section 66.0404 (2)(f), Wis. Stats., the decision of the Zoning Administrator, or of the Village Board under subsection (c)(4), is a final decision appealable to circuit court.

(e) Class 1 Collocation.

- (1) A Village Zoning Permit is required for a Class 1 collocation. A Class 1 collocation is a

conditional use in the Village obtainable through the conditional use permit process of this Chapter.

- (2) An application for a permit to engage in a Class 1 collocation shall be completed by the applicant and submitted in writing to the Zoning Administrator. The application must contain, at a minimum, the following information:
  - a. The name and business address of, and the contact individuals for, the applicant.
  - b. The location of the proposed or affected support structure.
  - c. The location of the proposed mobile service facility.
  - d. If the application is to substantially modify an existing support structure, a construction plan must be included which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
  - e. The fee for the permit shall be as established in the Village fee schedule [but may not exceed three thousand dollars (\$3,000) per Sec. 66.0404(4)(d), Wis. Stats.].
- (3) The Zoning Administrator shall inform the applicant within ten (10) days of receipt of the application if the application is not complete. Notification shall be in writing and shall specify in detail the information that was incomplete.
- (4) Within ninety (90) days of receipt of a completed application, the Zoning Administrator shall issue a written decision to approve or deny the application. If the application is denied, the written decision shall set forth the reasons for denial based upon substantial evidence. The Zoning Administrator and the applicant may agree in writing to an extension of the ninety-(90) day period.
- (5) Pursuant to Section 66.0404 (2)(f), Wis. Stats., the decision of the Zoning Administrator, or of the Village Board under subsection (c)(4), is a final decision appealable to circuit court.

(f) Class 2 Collocation.

- (1) A Village Zoning Permit is required for a Class 2 Collocation. A Class 2 Collocation is a permitted use in the Village but still requires the issues of a Village building and zoning permit.
- (2) An application for a permit to engage in Class 2 Collocation shall be completed by the applicant and submitted in writing to the Zoning Administrator. The application must contain, at a minimum, the following information:
  - a. The name and business address of, and the contact individuals for, the applicant.
  - b. The location of the proposed or affected support structure.
  - c. The location of the proposed mobile service facility.
- (3) The Zoning Administrator shall inform the applicant within five (5) days of receiving the application if the applicant is not complete. Notification shall be in writing and shall specify in detail the information that was incomplete.

- (4) Within forty-five (45) days of receipt of a completed application, the Building Inspector shall issue a written decision to approve or deny the application, except that the Zoning Administrator and the applicant may agree in writing to an extension.
- (5) Decisions to deny an application shall be supported by substantial evidence. Such evidence shall be included in the written decision.
- (6) Pursuant to Section 66.0404 (2)(f), Wis. Stats., the decision of the Zoning Administrator, or of the Village Board under subsection (c)(4), is a final decision appealable to circuit court.

(g) Abandonment.

- (1) If a mobile service support structure shall cease to be used for a period exceeding one year and a day, it shall be considered abandoned. The owner or operator of said structure shall remove the structure and related improvements upon at no cost to the Village within ninety (90) days thereafter and return the site to an erosion and dust free condition. Prior to the issuance of any building or zoning permits to construct the support structure, a performance bond shall be provided to guarantee that a support structure that has ceased being used for mobile service facilities purposes is removed. The bond amount shall be the lesser of twenty thousand dollars (\$20,000) or an amount based on a written estimate of a person qualified to remove such structures. Responsibility to remove abandoned structures may be assigned to the owner of property upon which the structure is located or any other mobile service provider with facilities on the structure upon notice to the Zoning Administrator that such assignment has been made and accepted and filing of a new bond for the new responsible party. Notwithstanding the forgoing, the owner of property upon which the structure sits may be held jointly and severally liability by the Village for the obligation and cost of removal of any abandoned structure and in the event the structure is not removed in accordance with this Section, upon sixty (60) days' notice, the Village may cause the structure to be removed and assess the cost thereof to the property under Section 66.0627, Wis. Stats.

(h) Structural Requirements.

- (1) Every mobile service support structure and mobile service facility shall be designed and constructed so as to comply with the requirements of Chapter 16 of the Village of New Auburn Code of Ordinances, and International Building Code (IBC) 3108, as amended from time to time. If, upon inspection, the Building Inspector concludes that a structure or facility fails to comply with such codes in effect at the time of construction, and constitutes a danger to persons or property, then upon notice being provided to the owner of the structure or facility, the owner shall have thirty (30) days or such time as determined by the Building Inspector to bring such tower into compliance with said codes. Failure to bring such structure or facility into compliance within said thirty (30) days or such time as determined by the Building Inspector shall constitute grounds for the removal of the structure or facility at owner's expense.

- (i) Tower and Building Design. All new mobile service support structures and facilities shall be designed as follows:
  - (1) Mobile service facilities and mobile service support structures shall be constructed out of metal or other nonflammable material.
  - (2) Mobile service facilities and mobile service support structures shall ensure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
  - (3) Emergency back-up generators shall be completely enclosed on all sides. Other efforts to mitigate noise from such generators may be required.
  - (4) All new mobile service support structures shall be structurally and electrically designed to accommodate at least three (3) separate antenna arrays, unless credible evidence is presented that said construction is economically and technologically unfeasible. Multiple-user mobile service support structures shall be designed to allow for future rearrangement of antennas and to accept antennas mounted at varying heights. Parking areas, access roads, and utility easements shall be shared by site users.
  - (5) Mobile service support structures are not subject to the height restrictions established for any district in which they are located.
  
- (j) Location. A good faith effort in achieving collocation shall be required of the applicant and host entity, subject to existing collocation contracts, and all of the following measures shall be implemented for new mobile service support structures and Class 1 collocations:
  - (1) No mobile service support structure shall be installed closer than one-quarter (1/4) mile from another mobile service support structure, measured from the base of the existing structure to the base of the proposed structure, unless the applicant provides a sworn statement from an individual who has responsibility over the placement of the mobile service structure attesting that collocation within the applicant's search ring:
    - a. Would not result in the same mobile service functionality, coverage, and capacity;
    - b. is technically infeasible; or
    - c. is economically burdensome to the mobile service provider.
  - (2) Mobile service support structure(s) may be located on a lot in a residential district, only if said lot is greater than two (2) acres in area and the principal use is other than residential.
  - (3) Mobile service support structures towers, guy wires, appurtenant equipment, and buildings shall comply with the yard and setback requirements of the zoning district in which they are located.
  - (4) Mobile service support structures shall be located no closer to any residential dwelling structure than a distance that is equal to the height of the mobile service support structure and attached facilities (including possible future collected facilities) plus ten (10) feet measured from the base of the support structure to the

nearest portion of the residential dwelling structure (including roof overhangs, porches and patios) unless the applicant demonstrates through submittal of an engineering certification showing that the mobile service support structure is designed to collapse within a smaller distance than the height of the structure and attached facilities (including possible future collected facilities). Unless the Building Inspector can demonstrate by substantial evidence that the engineering certification is flawed, the mobile service support structure shall be located no closer to any residential dwelling structure than zone of collapse established by the engineering certification plus ten (10) feet.

**SEC. 22-113 THROUGH SEC. 22-114 RESERVED FOR FUTURE USE.**

## **ARTICLE 6**

### **NONCONFORMING USES, STRUCTURES AND LOTS**

#### **SEC. 22-115 PURPOSE.**

The purpose of this Article is to establish regulations for the following nonconforming situations created legally prior to the effective date of this Chapter: nonconforming uses, nonconforming and substandard lots, nonconforming structures, and other nonconforming sites.

#### **SEC. 22-116 EXISTING NONCONFORMING USES.**

- (a) The lawful and established nonconforming use of a structure or land, including but not limited to fences, parking and buildings, existing at the time of the adoption or amendment of this Chapter may be continued although the use does not conform with the provisions of this Chapter. However, only that portion of the land in actual use may be so continued and the structure may not be extended, enlarged, reconstructed, substituted, moved or structurally altered except when required to do so by law or order or so as to comply with the provisions of this Chapter.
- (b) Substitution of new equipment may be permitted by the Board of Zoning Appeals if such equipment will reduce the incompatibility of the nonconforming use with the neighboring uses.
- (c) If a nonconforming use or the use (conforming or nonconforming) of a structure that is nonconforming (as it relates to zoning setbacks, heights, etc.) is discontinued for a period of twelve (12) months, any future use of the building, premises, structure, or fixture shall conform to this Chapter.
- (d) Notwithstanding subsections (a) – (c) of this section, a manufactured home community licensed under Section 101.935, Wis. Stats., that is a legal nonconforming use continues to be a legal nonconforming use notwithstanding the occurrence of any of the following activities within the community:
  - (1) Repair or replacement of homes.
  - (2) Repair or replacement of infrastructure.

#### **SEC. 22-117 EXISTING NONCONFORMING STRUCTURES.**

- (a) The lawful nonconforming structure existing at the time of the adoption or amendment of this Chapter may be continued although its size or location does not conform with the lot width, lot area, yard, height, parking and loading, and access provisions of this Chapter. However, it shall not be extended, enlarged, reconstructed, moved, or structurally altered except when required to do so by law or order or so as to comply with the provisions of this Chapter.
- (b) Total lifetime structural repairs or alterations of a lawfully established nonconforming building shall not exceed fifty percent (50%) of the Village's assessed value of the



building, premises, structure, or fixture at the time of it becoming a nonconforming use unless it is permanently changed to conform to the use provisions of this Chapter.

(c) Repair and maintenance of certain nonconforming structures

(1) Definitions. The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

- a. Development regulations means the parts of this chapter that apply to elements including setback, height, lot coverage, and side yard.
- b. Nonconforming structure means a dwelling or other building that existed lawfully before this chapter was enacted or amended, but that does not conform to one or more of the development regulations in this chapter.

(2) Nothing in this chapter prohibits, or limits based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

(d) Restoration of certain nonconforming structures.

(1) Restrictions in this chapter that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this subsection do not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

- a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
- b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

(2) The structure may be larger than the size it was immediately before the damage or destruction if necessary, for the structure to comply with applicable state or federal requirements.

(e) Building Destroyed by Fire. Where a building located in a district restricted against its use has been destroyed by fire or other calamity to the extent of not more than fifty percent (50%) of its value assessed by the Village, the same may be rebuilt; but where such a building is destroyed to the extent of more than fifty percent (50%) of its assessed value, a permit may be granted for its reconstruction within twelve (12) months from the date of such fire or other calamity, except any public utility located in a restricted district shall be permitted to rebuild, alter or enlarge in any business or industrial district as the interest of the public demands.

**SEC. 22-118 CHANGES AND SUBSTITUTIONS.**

Once a nonconforming use or structure has been changed to conform, it shall not revert back to a nonconforming use or structure. Once the Board of Zoning Appeals has permitted the substitution of a more restrictive nonconforming use for an existing nonconforming use, the previous use shall lose its status as a legal nonconforming use and become subject to all the

conditions required by the Board of Zoning Appeals.

**SEC. 22-119 NONCONFORMING AND SUBSTANDARD LOTS.**

- (a) No lot shall be created which does not meet the lot dimensional requirements of the associated zoning district.
  
- (b) Legal nonconforming or substandard lots, as detailed in Article 2, may be utilized as a building site for a permitted use (but not for a conditional use) in the associated zoning district, if all of the following apply:
  - (1) Such lot has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
  - (2) Such lot is developed to comply with this Chapter and other applicable chapters of the New Auburn Municipal Code.
  
- (c) Conforming structures existing at the time of the adoption or amendment of this Chapter may be continued, although the lot does not conform to the newly adopted or amended requirements of this Chapter, as long as all uses on the lands containing the structure are legal conforming uses.
  
- (d) Each aforementioned structure may be extended, enlarged, substituted, moved, remodeled, modified, added to, or rebuilt as long as any such change conforms to the established building setback lines along streets and the other lot and building requirements of this Chapter.

**SEC. 22-120 THROUGH SEC. 22-124 RESERVED FOR FUTURE USE.**

## **ARTICLE 7**

### **ADMINISTRATION & PROCEDURES**

#### **SEC. 22-125 PURPOSE.**

The purpose of this Article is to establish responsibilities for the administration of this Chapter, and the enforcement procedures and penalties for non-compliance with the provisions of this Zoning Ordinance. The purpose of this Article is to establish procedural requirements for zoning text amendments, zoning map amendments, and various development approvals under this Chapter, including but not limited to conditional use permits, variances, and site plan review and approval.

#### **SEC. 22-126 ZONING ADMINISTRATOR.**

The Building Inspector is hereby designated as the enforcement officer (Zoning Administrator) for the provisions of this Ordinance. The Village Clerk can act as the Zoning Administrator's representative. The duty of the Zoning Administrator shall be to interpret and administer this ordinance and, after on-site inspection, advise the Village Board on the issuance of all permits required by this Ordinance. The Zoning Administrator shall further:

- (a) Maintain records of all permits issued, inspections made, work approved, and other official actions.
- (b) Initiate, direct and review, from time to time, a study of the provisions of this Ordinance, and make reports of the recommendations to the Planning Commission for investigation and appropriate action.
- (c) Upon reasonable cause or question as to proper compliance, to revoke any building or occupancy permit and issue cease and desist orders requiring the cessation of any building, moving, alteration, or use which is in violation of the provisions of this Ordinance, such revocation to be in effect until reinstated by the Zoning Administrator or the Board of Appeals, or take any other action as directed by the Village Board to ensure compliance with or to prevent violation of provisions of this Ordinance.
- (d) Inspect all structures, lands and waters as often as necessary to assure compliance with this Ordinance.
- (e) Investigate all complaints made relating to the location of structures and the use of structures, lands and waters, give notice of all violations of this Chapter to the owner, resident, agent, or occupant of the premises and report uncorrected violations to the Village Attorney in a manner specified.
- (f) Assist the Village Attorney in the prosecution of Ordinance violations.
- (g) Be permitted access to premises and structures during reasonable hours to make those inspections as deemed necessary by him/her to ensure compliance with this Ordinance. If, however, he/she is refused entry after presentation of his/her identification, he/she may procure a special inspection warrant in accordance with Section 66.122 of the Wisconsin Statutes.
- (h) Prohibit the use or erection of any structure, land or water until he has inspected and approved such use or erection.
- (i) Request assistance and cooperation from the Police Department, Village Clerk-

Treasurer, and Village Attorney as deemed necessary.

**SEC. 22-127 ROLE OF SPECIFIC VILLAGE OFFICIALS IN ZONING ADMINISTRATION.**

- (a) Plan Commission. The Plan Commission, together with its other statutory duties, shall make reports and recommendations relating to the plan and development of the Village to the Village Board, other public officials and other interested organizations and citizens. In general, the Plan Commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning. Under this Chapter, its functions are primarily recommendatory to the Village Board pursuant to guidelines set forth in this Chapter as to various matters and, always, being mindful of the intent and purposes of this Chapter. Recommendations shall be in writing. A recording thereof in the Commission's minutes shall constitute the required written recommendation. The Commission may, in arriving at its recommendation, on occasion of its own volition, conduct its own public hearing.
  
- (b) Village Board. The Village Board, the governing body of the Village, subject to recommendations by the Plan Commission and the holding of public hearings by said Board, has ultimate authority to grant permitted conditional uses, make changes and amendments in zoning districts, the zoning map and supplementary floodplain and wetland maps and to amend the text of this Chapter. The Village Board may delegate to the Plan Commission the responsibility to hold some or all public hearings as required under this chapter.
  
- (c) Zoning Board of Appeals. A Zoning Board of Appeals is established to provide an appeal procedure for persons who deem themselves aggrieved by decisions of administrative officers in enforcement of this Chapter. The Board of Appeals shall have the following powers:
  - (1) Errors. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator.
  - (2) Variances. To hear and grant appeals for variances as will not be contrary to the public interest where, owing to practical difficulty or unnecessary hardship, so that the spirit and purposes of this Chapter shall be observed and the public safety, welfare and justice secured. Use variances shall not be granted.
  - (3) Interpretations. To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation.
  - (4) Permits. The Board may reverse, affirm wholly or partly, modify the order, requirement, decision, or determination being appealed, and may issue or direct the issuance of a permit.

**SEC. 22-128 REVIEW AND APPROVAL REQUIRED.**

- (a) Review procedures vary depending on the type of request; however, procedures within this Article generally adhere to three common elements:

- (1) Submittal of a complete application, including fee payment and appropriate supplemental information.
  - (2) Review by appropriate Village staff and/or officials.
  - (3) Action by appropriate Village official(s) or staff to approve, conditionally approve, or deny the request.
- (b) The table below summarizes the procedures, agencies, and personnel involved in various procedures authorized by this Chapter. The table is provided as a convenience for the Village and general public. Where there are conflicts between the text of this Chapter and the table below, the text shall prevail.

**Review and Approval Activities and Bodies**

Application Process	Staff	Plan Commission	Village Board	Zoning Board of Appeals
Zoning Ordinance Amendment	RR	RR	PH, RE, A	
Zoning Map Amendment	PM*, RR	RR	RR, RE, A	
Conditional Use Permit	RR	PH, RR	RE, A	
Zoning Permit	RE, IP			
Site Plan	RR	RE, A		
Planned Development District	PM*, RR	PH, RR	RE, A	
Interpretation	RE, A			Appeal Only
Variance	RR			PH, RE, A
Appeal	RR			PH, RE, A
Violations and Penalties	RE, A			
Floodplain Map Amendment	Refer to Wisconsin DNR/FEMA			
Sign Permit	RE, IP			
RE = Review and Evaluate    IP = Issues Permit    RR = Review and Recommend PH = Public Hearing    PM = Public Meeting    A = Final Action *If determined to be necessary by the Zoning Administrator or designee.				

Note: This table is not exhaustive. Some procedures may not be covered within this table including Land Division approvals required under Chapter 17, Land Subdivision Regulations.

**SEC. 22-129 ZONING ORDINANCE (TEXT OR MAP) AMENDMENT.**

- (a) Authority. Pursuant to the provisions of 62.23(7), Wisconsin Stats, whenever the public necessity, convenience, general welfare, or good zoning practice requires, the Village Board may, by ordinance, change the district boundaries established by this Chapter and the Zoning Map incorporated herein or amend, change, or supplement the text of the regulations established by this Chapter or amendments thereto. Such change or amendment shall be subject to the review and recommendation of the Plan Commission with final action by the Village Board.

(b) Initiation of Changes or Amendments. The Village Board, the Plan Commission, the Zoning Board of Appeals and other government bodies and any private petitioners may apply for an amendment to the text of this Chapter or to the zoning district boundaries hereby established or by amendments hereto in the accompanying zoning map made a part of this Chapter.

(c) Procedures for Changes or Amendments.

(1) Application. Petitions for any change to the district boundaries and map(s) or amendments to the text regulations shall be addressed to the Village Board and shall be filed with the Village Clerk, describe the premises to be rezoned or the portions of text of regulations to be amended, list the reasons justifying the petition, specify the proposed use, if applicable, and have attached the following, if petition be for change of district boundaries:

- a. Name and street address of petitioner
- b. The lot number of any real estate owned by the petitioner adjacent to the area proposed to be changed.
- c. Legal description of the property to be altered.
- d. The existing user of all buildings on such land.
- e. The principal use of all properties within 300 feet of such land.
- f. Purpose for which such property is to be used.
- g. Reciting of facts indicating that the proposed change will not be detrimental to the general public interest and the purposes of this Ordinance.
- h. Plot plan, drawn to a scale of one (1) inch equals one hundred (100) feet showing the area proposed to be rezoned, its location, its dimensions, the location and classification of adjacent zoning districts and the location and existing use of all properties within three hundred (300) feet of the area proposed to be rezoned.
- i. Owners' names and addresses of all surrounding property owners within one hundred seventy-five (175) feet of the property to be rezoned.
- j. Fee. The fee for a rezoning amendment shall be as set forth in the Village's annual fee schedule.
- k. Any further information requested on the petition or which may be required by the Planning Commission to facilitate the making of a comprehensive report to the Village Board.

(2) Review Standards. The Zoning Administrator, or designee, and other Village Departments shall review the complete application and evaluate whether the proposed amendment:

- a. Advances the purposes of this Chapter as outlined in Section 22-3.
- b. Advances the purposes of the general Article in which the amendment is proposed to be located.
- c. Advances the purposes of the specific Section in which the amendment is proposed to be located.
- d. Is in harmony with the Village of New Auburn Comprehensive Plan.

- e. Maintains the desired overall consistency of land uses, land use intensities, and land use impacts within the pertinent zoning districts.
  - f. Addresses any of the following factors that may not be addressed in the current zoning text:
    - 1. A change in the land market, or other factors which require a new form of development, a new type of land use, or a new procedure to meet said change(s).
    - 2. New methods of development or types of infrastructure.
    - 3. Changing governmental finances to meet the needs of the government in terms of providing and affording public services.
    - 4. Any other factor deemed appropriate by the Village.
- (3) Public Hearing Required.
- a. Within ninety (90) days of filing of a complete application, the Village Board shall hold a public hearing to consider the proposed zoning change or amendment, giving notice of the time, place, and the change or amendment proposed by publication of a Class 2 notice, under Chapter 985 of the Wisconsin Statutes. At least ten (10) days prior, written notice shall also be given to the clerk of any municipality within one thousand (1,000) feet of any land to be affected by the proposed change or amendment.
  - b. A public hearing may be held more than ninety (90) days from filing of the complete application when requested by the applicant in writing.
  - c. The Village Board may delegate to the Plan Commission the responsibility to hold public hearings as required under this Section.
- (4) Plan Commission Review and Recommendation.
- a. The Village Board or the Village Zoning Administrator shall cause the petition to be forwarded to the Plan Commission for its consideration and recommendation.
  - b. Within sixty (60) days of the public hearing, the Plan Commission shall make its recommendations regarding the application. Said recommendation may include a formal finding of facts developed and approved by the Plan Commission and whether the public benefits outweigh any and all potential adverse impacts of the proposed amendment.
  - c. The Village Clerk shall provide due notice of the Plan Commission meeting to the applicant and owners of record of properties which are located within one hundred seventy-five (175) feet of the parcel involved in the application.
  - d. The Plan Commission shall review all proposed amendments to the text and zoning map(s) within the corporate limits and shall recommend in writing that the petition be granted as requested, modified, or denied. A recording of the recommendation in the Plan Commission's official minutes shall constitute the required written recommendation. In arriving at its recommendation, the Commission may on occasion, of its own volition, conduct its own public hearing on proposed amendment(s).
  - e. If the Plan Commission fails to make a recommendation within sixty (60) days of the public hearing, the Village Board may hold a public hearing within

thirty (30) days after the expiration of said sixty (60)-day period. Failure to receive said recommendation from the Plan Commission shall not invalidate the proceedings or actions of the Village Board. If a public hearing is necessary, the Village Board shall provide notice per the requirements of under (c)(3) above.

(5) Village Board Review and Action.

- a. Following the required public hearing and after consideration of the Plan Commission's recommendation, the Village Board shall review the proposed amendment. The Village Board may request further information and/or additional reports from the Plan Commission, Zoning Administrator (or designee), the applicant, and/or any other entity as it sees fit.
- b. The Village Board may refer the matter back to the Plan Commission. In such cases, the Village Board shall specify the issue(s) to be addressed in further detail.
- c. The Village Board may take final action (by ordinance) on the application at the time of its initial meeting or may continue the proceedings by its own decision or the applicant's request. The Village Board may approve the amendment as originally proposed, may approved the proposed amendment with modifications, or may deny approval of the proposed amendment.

(d) Effect of Denial. No application which has been denied (either wholly or in part) shall be resubmitted for a period of three hundred sixty five (365) days from the date of said order of denial, except on grounds of new evidence or material changes of circumstances.

(e) Protest.

- (1) In the event of a protest against amendment to the zoning map, duly signed and acknowledged by the owners of twenty percent (20%) or more, either of the areas of the land included in such proposed change, or by the owners of twenty percent (20%) or more of the land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of twenty percent (20%) or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such changes or amendments shall not become effective except by the favorable vote of three-fourths (3/4) of the full Village Board membership.
- (2) In the event of protest against amendment to the text of the regulations of this Chapter, duly signed and acknowledged by twenty percent (20%) of the number of persons casting ballots in the last general election, it shall cause a three-fourths (3/4) favorable vote of the full Village Board membership to adopt such amendment.

**SEC. 22-130 CONDITIONAL USE PERMIT PROCEDURES & STANDARDS.**

(a) Purpose. The purpose of this Section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, or proposed conditional uses.

(b) Applicability. There are certain uses, which because of their unique characteristics, may have a high potential to create undesirable impacts on nearby properties, public



facilities, or the community as a whole. In these cases, specific standards, regulations, or conditions may be established.

- (c) **Initiation of Request for Conditional Use.** Any person, firm, corporation or organization having a freehold interest or a possessory interest entitled to exclusive possession, or a contractual interest which may become a freehold interest, or an exclusive possessory interest, and which is specifically enforceable in the land for which a conditional use is sought may file an application to use such land for one (1) or more of the conditional uses provided for in this Chapter in the zoning district in which such land is located.
  
- (d) **Application for Conditional Use.**
  - (1) An application for a conditional use shall be filed on a form prescribed by the Village. A non-refundable application fee, as set forth in the annual Village fee schedule, shall be paid at the time of application. The application shall be accompanied by a plan showing the location, size and shape of the lot(s) involved and of any proposed structures, the existing and proposed use of each structure and lot, and shall include a statement in writing by the applicant and adequate evidence showing that the proposed conditional use shall conform to the standards set forth in Section 22-130(f).
  - (2) The Plan Commission or Village Board may require such other information as may be necessary to determine and provide for an enforcement of this Chapter, including a plan showing contours and soil types; highwater mark and groundwater conditions, bedrock, vegetative cover, specifications for areas of proposed filling, grading, and lagooning, location of buildings, parking areas, traffic access, driveways, walkways, open spaces and landscaping, plans of buildings, sewage disposal facilities, water supply systems, and arrangements of operations. When considering a development proposal or land use change, the Village may require additional studies, benefits-costs analysis, or other information, at its discretion and potentially at the developer's expense. Such studies or information may be needed to analyze factors such as: land use compatibility, potential impacts (e.g., transportation, fiscal, environment, public health, property values), engineering studies or place, and whether other standards are sufficiently met.
  
- (e) **Public Hearing Required.**
  - (1) All requests for conditional uses shall be referred to the Plan Commission or the Plan Commission can, on its own motion, apply conditional uses when applications for rezoning come before it. Nothing in this Chapter shall prohibit the Village Board, on its own motion, from referring the request for conditional use to the Plan Commission. Upon receipt of the application and statement referred to in Subsection 22-130(d), the Plan Commission shall hold a public hearing on each application for a conditional use at such time and place as shall be established by such Commission. The hearing shall be conducted, and a record of the proceedings shall be preserved in such a manner and according to such procedures as the Plan Commission shall, by rule, prescribe from time to time.

- (2) Notice of Public Hearing. Notice of the time, place and purpose of such hearing shall be given by publication of a Class 2 Notice under the Wisconsin Statutes in the official Village newspaper. Notice of the time, place and purpose of such public hearing shall also be sent to the applicant, the Zoning Administrator, members of the Village Board and Plan Commission, and the owners of record as listed in the office of the Village Assessor who are owners of property in whole or in part situated within one hundred (100) feet of the boundaries of the properties affected. Said notice to be sent at least ten (10) days prior to the date of such public hearing.
- (f) Conditional Use Permit Review Standards. In determining whether to approve, approve with conditions, or deny a request for issuance of a conditional use permit, the Plan Commission and the Village Board shall consider all relevant factors specific in other sections of this Ordinance, including standards for specific requirements for certain land uses and activities. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specific in this Chapter or imposed by the Village, the Village shall grant the conditional use permit. The applicant must demonstrate by substantial evidence that the applicant and all requirements and conditions established by the Village are or shall be satisfied. No application for a conditional use shall be recommended for approval by the Plan Commission or granted by the Village Board unless such Commission and Board shall find all of the following conditions are present:
- (1) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
  - (2) That the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use and the proposed use is compatible with the use of adjacent land.
  - (3) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
  - (4) That adequate utilities, access roads, drainage, and other necessary site improvements have been or are being provided. The Village will consider the availability and potential impacts to public services, especially sanitary sewer, water lines, storm sewers, fire protection, parks, transportation networks, and schools, and ensure that any needed services be available or that such services could be made available safely and efficiently.
  - (5) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
  - (6) That the conditional use shall conform to all applicable regulations of the district in which it is located.
  - (7) That the proposed use does not violate flood plain regulations governing the site.
  - (8) That, when applying the above standards to any new construction of a building or an addition to an existing building, the Plan Commission and Board shall bear in mind the statement of purpose for the zoning district such that the proposed building or

addition at its location does not defeat the purposes and objective of the zoning district.

- (9) That, in addition to passing upon a Conditional Use Permit, the Plan Commission and Board shall also evaluate the effect of the proposed use upon:
- a. The maintenance of safe and healthful conditions.
  - b. The prevention and control of water pollution including sedimentation.
  - c. Existing topographic and drainage features and vegetative cover on the site.
  - d. The location of the site with respect to floodplains and floodways of rivers and streams.
  - e. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
  - f. The location of the site with respect to existing or future access roads.
  - g. The need of the proposed use for a shoreland location.
  - h. Its compatibility with uses on adjacent land.
  - i. The amount of liquid wastes to be generated and the adequacy of the proposed disposal systems.
  - j. Potential negative impacts on environmentally sensitive areas or other critical community services (e.g., schools, nursing care, governmental) are prevented or mitigated. New development, reconstruction, and infrastructure projects should consider and apply resource conservation techniques and best practices that reduce energy demand and promote air and water quality improvements.

(10) The use is in harmony with the Village of New Auburn Comprehensive Plan.

(11) The conditional use is located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by public or private agencies serving the subject property.

(g) Plan Commission Review and Recommendation.

- (1) Following public hearing, the Plan Commission shall review the proposed Conditional Use Permit request with the review standards in Subsection 22-130(f).
- (2) The Plan Commission shall report its advisory recommendations to the Village Board within thirty (30) days after a matter has been referred to. If such action has not been reported by the Plan Commission within thirty (30) days, the Village Board can act without such recommendation.

(h) Village Board Review and Action.

- (1) Within sixty (60) days after the filing of a Conditional Use Permit application, the Village Board shall make its findings and take final action on the application.
- (2) The Village Board may, by resolution, authorize the Zoning Administrator to issue a conditional use permit after review, public hearing and advisory recommendation from the Plan Commission, provided that such conditional use and involved structure(s) are found to be in accordance with the purpose and intent of this Zoning Code and evaluation of the standards for conditional uses as outlined in Subsection

22-130(f). Prior to the granting of a conditional use, the Commission shall make findings based upon the evidence presented that the standards herein prescribed are being complied with.

- (3) Any development within five hundred (500) feet of the existing or proposed rights-of-way of freeways, expressways and within one-half (½) mile of their existing or proposed interchange or turning lane rights-of-way shall be specifically reviewed by the highway agency that has jurisdiction over the traffic way. The Plan Commission shall request such review and await the highway agency's recommendation for a period not to exceed twenty (20) days before taking final action.
  - (4) Conditions, as further described in Subsection 22-130(j) of this Article may be required by the Village Board upon its finding that these are necessary to fulfill the purpose and intent of this Chapter.
  - (5) Compliance with all other provisions of this Chapter, such as lot width and area, yards, height, parking, loading, traffic, highway access and performance standards shall be required of all conditional uses.
- (i) Action on a Conditional Use Permit
- (1) The Village Board may take the final action on the application at the time of the public hearing or may continue the proceedings at its discretion or at the applicant's request. The Board may approve the conditional use as originally proposed, may approve the proposed conditional use with modifications, or may deny approval of the proposed conditional use. The requirements and conditions described must be reasonable, and to the extent practicable, measurable and may include conditions such as the permit's duration or renewal. The applicant and all requirements and conditions established by the Village relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.
  - (2) The Village's approval of the proposed conditional use shall be considered the approval of a unique request and shall not be construed as precedent for any other proposed conditional use.
  - (3) When an advisory recommendation or determination of denial of a conditional use application is made, the Plan Commission/Village Board shall furnish the applicant, in writing when so requested, those standards that are not met and enumerate reasons the Commission/Board has used in determining that each standard was not met. Per Section 62.23(7)(de), Wis. Stats., if the Village denies a conditional use permit application, the applicant may appeal the decision to the circuit court under the procedures contained in Statute.
  - (4) Effect of Denial: No application which has been denied (either wholly or in part) shall be resubmitted for a period of six (6) months from the date of denial, except on grounds of new evidence or proof of change of factors.
- (j) Conditions and Guarantees
- (1) Conditions. Prior to the granting of any conditional use, the Village Board may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the conditional use as deemed

necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified in Subsection 22-130(f) above. In all cases in which conditional uses are granted, the Board shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. Any condition imposed must be related to the purpose of this Chapter and be based on substantial evidence. The requirements and conditions must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the Village related to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. Such conditions may include specifications for, without limitation because of specific enumeration:

- a. Landscaping.
  - b. Type of construction.
  - c. Construction commencement and completion dates.
  - d. Sureties.
  - e. Lighting.
  - f. Fencing.
  - g. Operational control.
  - h. Hours of operation.
  - i. Traffic circulation.
  - j. Deed restrictions.
  - k. Access restrictions.
  - l. Setbacks and yards.
  - m. Type of shore cover.
  - n. Specified sewage disposal and water supply systems.
  - o. Planting screens.
  - p. Piers and docks.
  - q. Increased parking.
  - r. Duration of conditional use; or
  - s. Any other requirements necessary to fulfill the purpose and intent of this Chapter.
- (2) Site Review. In making its recommendation, the Plan Commission shall evaluate each application and may request assistance from any source which can provide technical assistance. The Commission or Board may review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems, and the proposed operation/use.
- (3) Alteration of Conditional Use. No alteration of a conditional use shall be permitted unless approved by the Village Board after recommendation from the Plan Commission.
- (4) Architectural Treatment. Proposed architectural treatment will be in general harmony with surrounding uses and the landscape. To this end, the Village Board

may require the use of certain general types of exterior construction materials and/or architectural treatment.

- (5) Sloped Sites; Unsuitable Soils. Where slopes exceed six percent (6%) and/or where a use is proposed to be located on areas indicated as having soils which are unsuitable or marginal for development, on-site soil tests and/or construction plans shall be provided which clearly indicate that the soil conditions are adequate to accommodate the development contemplated and/or that any inherent soil condition or slope problems will be overcome by special construction techniques. Such special construction might include, among other techniques, terracing, retaining walls, oversized foundations and footings, drain tile, etc.
- (6) Conditional Uses to Comply with Other Requirements. Conditional uses shall comply with all other provisions of this Chapter such as lot width and area, yards, height, parking and loading.

(k) Validity of Conditional Use Permit.

- (1) Conditional uses authorized by Village Board resolution shall be established for a period of time to a time certain or until a future happening or event at which the same shall terminate.
- (2) Where the Village Board has approved or conditionally approved an application for a conditional use, such approval shall become null and void within twelve (12) months of the date of the Board's action unless the use is commenced, construction is underway, or the current owner possesses a valid building permit under which construction is commenced within six (6) months of the date of issuance and which shall not be renewed unless construction has commenced and is being diligently prosecuted. Approximately forty-five (45) days prior to the automatic revocation of such permit, the Zoning Administrator shall notify the holder by certified mail of such revocation. The Board may extend such permit for a period of ninety (90) days for justifiable cause, if application is made to the Village Board at least thirty (30) days before the expiration of said permit.
- (3) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the Village may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the Village Plan Commission or Village Board.
- (4) Discontinuing an Approved Conditional Use. Any and all conditional uses which have been discontinued for a period exceeding three hundred sixty-five (365) days shall have their conditional use invalidated automatically. The burden of proof shall be on the property owner to conclusively demonstrate that the subject conditional use was operational during this period.

- (l) Termination. Conditional use(s), when replaced by permitted use(s), shall terminate. In such case(s), the reestablishment of any previous conditional use(s), or establishment of a new conditional use(s) shall require review, public hearing, and approval by the Village Board.

- (m) Substitution. Conditional uses authorized by the Village Board shall not be subject to substitution with other conditional uses, whether similar type or not, without Village Board approval and the procedures required under this Chapter.
- (n) Complaints Regarding Conditional Uses. The Village Board shall retain continuing jurisdiction over all conditional uses for the purpose of resolving complaints against all previously approved conditional uses. Such authority shall be in addition to the enforcement authority of the Zoning Administrator to order the removal or discontinuance of any unauthorized alterations of an approved conditional use, and the elimination, removal or discontinuance of any violation of a condition imposed prior to or after approval or violation of any other provision of this Code. Upon written complaint by any citizen or official and after seeking an advisory recommendation from the Plan Commission, the Village Board shall initially determine whether said complaint indicates a reasonable probability that the subject conditional use is in violation of either one (1) or more of the standards set forth in Subsection 22-130(f) above, a condition of approval or other requirement imposed hereunder. Upon reaching a positive initial determination, a hearing shall be held upon notice as provided in Subsection 22-130(e). Any person may appear at such hearing and testify in person or be represented by an agent or attorney. The Village Board may, in order to bring the subject conditional use into compliance with the standards set forth in Subsection 22-130(f) or conditions previously imposed by the Village Board, modify existing conditions upon such use and impose additional reasonable conditions upon the subject conditional use. In the event that no reasonable modification of such conditional use can be made in order to assure that Standards in Subsection 22-130(f) will be met, the Village Board may revoke the subject conditional approval and direct the Zoning Administrator and the Village Attorney to seek elimination of the subject use. Following any such hearing, the decision of the Village Board shall be furnished to the current owner of the conditional use in writing stating the reasons therefor. The basis for permit termination or revocation must be supported by substantial evidence.
- (o) Conditional Use - Sexually Oriented Businesses
- (1) Findings and Purpose. The Village Board finds that due to their nature, the existence of sexually oriented businesses in the Village have serious objectionable operational characteristics, such as an effect upon property values, local commerce and crime. Due to the deleterious combined effect on adjacent areas when such uses are concentrated, or when located in close proximity to premises which serve alcoholic beverages, fermented malt beverages, or wine for consumption on site, such uses should not be permitted to be located in close proximity to each other or to premises serving such beverages. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. Such regulations are contained in these standards. These standards are designed to protect the Village's retail trade, maintain property values, prevent crime, control the spread of disease, and, in general protect and preserve the quality of the Village's neighborhoods, commercial

districts and the quality of Village life.

- (2) Standards. A sexually oriented business is permitted only as a conditional use and only in the C-2 district, provided that:
  - a. Such use shall not be located within one thousand (1,000) feet of any residence or single/multi-family residential district designated within this Chapter.
  - b. Such use shall not be located within one thousand (1,000) feet of any public or private school, day care premises, nursery, church, park, or any building used even upon occasion as such.
  - c. Such use shall not be located within one thousand (1,000) feet of another adult bookstore, adult entertainment establishment, or adult motion picture theater.
  - d. Such use shall not be located within one thousand (1,000) feet of any premises which is licensed by the Village of New Auburn or any other governmental body to sell, serve, or dispense alcoholic beverages, fermented malt beverages or wine for consumption on site.
  - e. Such use shall not be located on or in premises which are licensed by the Village of New Auburn to sell, serve, or dispense alcoholic beverages, fermented malt beverages or wine for consumption on site.
- (3) Exemptions. The provisions of this Section do not apply to the following establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music, and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not of the type or nature offered by a sexually oriented business such as an Adult Book Store, Adult Entertainment Establishment, or Adult Motion Picture Theater.
- (4) Miscellaneous.
  - a. The distances provided in this Section shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the lot upon which the proposed use is to be located, to the nearest point of the zoning district boundary line or the lot from which the proposed use is to be separated.
  - b. Violation of these provisions is declared to be a public nuisance per se.
  - c. Nothing in this Section is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any Village ordinance, county ordinance, or statute of the State of Wisconsin regarding public nuisances, sexual conduct, lewdness or obscene or harmful matter or the exhibition or public display thereof.

(p) Conditional Use – Specific Livestock Operations

- (1) Generally. This section describes the procedural requirements relating to the conditional use permit review of a new or expanded livestock operations that will have five hundred (500) or more animal units, as required under Subsection 22-46(b)(1).
- (2) Initiation. The owner of the subject property may submit an application for the



establishment of a livestock operation.

- (3) Application and Review Procedure. The general steps outlined below shall be used in the review of an application for a Conditional use permit for a new or expanded livestock operation.
- a. Pre-submittal meeting. Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator to review applicable regulations and procedures and the proposed livestock operation.
  - b. Submittal of application materials. The applicant shall submit four (4) copies of the completed application form and worksheets prescribed by s. ATCP 51.30, Wis. Admin Code, to the Zoning Administrator along with the application fee as may be established by the Village Board in the Village's annual fee schedule. Submission of documentation relied upon for the nutrient management checklist may be required if necessary to substantiate the nutrient management checklist.
  - c. Determination of completeness. Within forty-five (45) days of submittal, the Zoning Administrator shall determine whether the application is complete or incomplete. If the Zoning Administrator determines that the application is incomplete, he or she shall send the applicant a written notice that describes the reason or reasons why the application is incomplete. If the Zoning Administrator determines that the application is complete, he or she shall send a written notice to the applicant within fourteen (14) days of such determination.
  - d. Notice to adjacent property owners. Within fourteen (14) days of a determination of completeness, the Zoning Administrator shall mail a completed notice as in Appendix C of ch. ATCP 51, Wis. Admin. Code to the recorded owner of each parcel of land that is adjacent to the proposed livestock facility. Such notices shall be mailed by first class mail. Failure to comply with the notice requirement under this subsection does not invalidate the approval of a proposed livestock facility, or create a cause of action by a property owner against the Village of New Auburn or any Village committee, Village Board, or employee.
  - e. Public Hearing. The Zoning Administrator may schedule a public hearing on the application within ninety (90) days after issuing notice of a complete application.
  - f. Standards. The standards for issuing a permit are as follows:
    1. The state livestock facility siting standards adopted under ATCP 51, Wis. Adm. Code. These standards are incorporated by reference, without reproducing them in full.
    2. Setbacks authorized by this Ordinance.
  - g. Criteria for Issuance of a Permit
    1. A permit shall be issued if the application for the proposed livestock facility contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets the standards specific in this

- ordinance.
2. A permit may be denied if any of the following apply:
    - i. The application, on its face, fails to meet the standards for approval.
    - ii. The Village finds, based on other clear and convincing information in the record, that the proposed livestock facility does not comply with applicable standards in this ordinance.
  3. No conditions may be imposed on a permit other than the standards provided in the Ordinance.
- h. Record of Decision.
1. The Village Board shall issue its decision in writing. Its decision shall be based on written findings of fact supported by evidence in the record.
  2. In the event that a permit is approved, the applicant shall receive a duplicate copy of the approved application, marked “approved.” The duplicate copy must include worksheets, maps, and other documents (other than engineering specifications) included in the application.
- i. Notice to the Department. The Village Clerk as required by ATCP 51.36 within thirty (30) days of the Village decision on the application shall do all of the following:
1. Give the Department of Agriculture, Trade and Consumer Protection written notice of the town/county decision.
  2. File with the Department a copy of the final application granted or denied, if the Village has granted or denied an application under this ordinance. (The copy shall include all of the worksheets, maps, and other attachments included in the application, except that it is not required to include the engineering design specifications.)
  3. If the Village has withdrawn a local approval under this ordinance, file with the department a copy of the Village final notice or order withdrawing the local approval.
- j. Expiration of Permit. A permit remains in effect regardless of the amount of time that elapses before the livestock operator exercises the full authority granted under the permit, and regardless of whether the livestock operator exercises the full authority granted by the approval. However, the Village may treat a permit as lapsed and withdraw the permit if the permit holder fails to do all of the following within two (2) years after issuance of the permit: (1) Begin populating the new or expanded livestock facility, or (2) Begin constructing all of the new or expanded livestock housing or waste storage structures proposed in the permit application.
- k. Permit Modifications. The operator may make reasonable changes that maintain compliance with the standards in this ordinance, and the Village shall not withhold authorization for those changes.
- l. Compliance Monitoring. The Village shall monitor compliance with the ordinance as follows:

1. Upon notice to the livestock facility owner the Village may request the right of the Zoning Administrator to personally view the permitted facility at a reasonable time and date to insure that all commitments of the application as approved are being complied with.
  2. If the livestock facility owner refuses the Zoning Administrator the right to view the permitted facility, the Zoning Administrator may request the assistance of the Sheriff or a deputy Sheriff to obtain an inspection warrant from the circuit court to inspect the permitted facility for the purpose of protection of the public health and safety under Sec. 66.0119 of Wis. Statutes.
  3. If a permitted facility is found not to be in compliance with the commitments made in the approved application, the Zoning Administrator shall issue a written notice to the livestock facility owner stating the conditions of non-compliance and directing that compliance of the commitments of the approved application and be complied with in a reasonable amount of time stated in this written notice.
  4. If non-compliance of the permit conditions as described in the written notice given by the Zoning Administrator continue past the stated reasonable time to comply, the Zoning Administrator may take further action as provided in this ordinance, including but not limited to issuance of a citation or seeking of injunctive relief.
  5. If the livestock facility owner disputes that the conditions of the permit have not been complied with, the livestock facility owner may request a hearing in writing within five (5) days of receipt of the notice of non-compliance. The Village Board shall schedule a hearing within five (5) days to determine if the conditions of the permit have been complied with or whether non-compliance of the commitments of the approved application and local approval exists.
- m. Terms of the Permit. A permit and the privileges granted by a permit issued under this ordinance is conditioned on the livestock operator's compliance with the standards in this ordinance, and with commitments made in the application for a permit. The Village is authorized to suspend a permit or seek other redress provided in this ordinance for non-compliance.
1. Pursuant to ATCP 51.34(4)(b) the Village may withdraw an approval if any of the following apply:
    - i. The operator materially misrepresented relevant information in the application for local approval.
    - ii. The operator, without authorization from the Village, fails to honor relevant commitments made in the application for approval.
    - iii. The livestock facility fails to comply with applicable standards.
- n. Transferability. A permit and the privileges granted by the permit run with

the land, and remain in effect, despite a change in ownership of the livestock facility, as long as the new operator does not violate the terms of the local approval. An applicant may record with the register of deeds, at the applicant's expense, the duplicate copy of the approved application.

Upon change of ownership of the livestock facility, the new owner of the facility shall file information with the Village Clerk providing pertinent information, including but not limited to such information as the name and address of the new owner and date of transfer of ownership.

- o. Appeal of Decision on Livestock Facilities Conditional Use Permit
  1. In addition to other appeal rights provided by law, Sec. 93.90(5), Wis. Stats., provides that any "aggrieved person" may request review by the Livestock Facility Siting Review Board and any decision by the Village Board in connection with a permit application. An "aggrieved person" may challenge the decision on the grounds that the Village Board incorrectly applied the standards under this Article or violated Sec. 93.30, Wis. Stats.
  2. An "aggrieved person" under this section as defined in Sec. 93.90(5) of Wis. Stats. means a person who applied to the Village for approval of a livestock siting or expansion, a person who lives within two (2) miles of the livestock facility that is proposed to be sites or expanded, or a person who owns land within two (2) miles of a livestock facility that is proposed to be sited or expanded.
  3. Any appeal to the State Livestock Facility Siting Review Board shall comply with Sec. 93.90 of Wis. Statutes and administrative rules of said board.

#### **SEC. 22-131 ZONING PERMIT.**

- (a) Where required under this Ordinance, applications for a zoning permit shall be made to the Zoning Administrator and shall include the following where pertinent and necessary for proper review:
  - (1) Names and addresses of the applicant, owner of the site, architect, professional engineer, and contractor.
  - (2) Description of the subject site by lot, block and recorded subdivision or by metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.
  - (3) Plat of survey prepared by a land surveyor registered in the State of Wisconsin or other map drawn to scale and showing such of the following as may be required by the Zoning Administrator: the location, boundaries, dimensions, uses, and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets and other public ways; public utilities; off-street parking, loading areas and driveways; existing highway access restrictions; high water; channel,

floodway and floodplain boundaries; and existing and proposed street, side and rear yards.

- (4) Additional information as may be required by the Zoning Administrator or the Plan Commission and Village Board (if involved).

(b) Action.

- (1) A zoning permit shall be granted or denied in writing by the Zoning Administrator within thirty (30) days of application and the applicant shall post such permit in a conspicuous place at the site.
- (2) The permit shall expire within six (6) months unless substantial work has commenced or within eighteen (18) months after the issuance of the permit if the structure for which a permit is issued is not substantially completed, in which case of expiration, the applicant shall reapply for a zoning permit before commencing work on the structure.
- (3) Any permit issued in conflict with the provisions of this Chapter shall be null and void.

**SEC. 22-132 SITE PLAN REVIEW AND APPROVAL PROCEDURES.**

Purpose: The purpose of the site plan review process is to promote compatible development, maintain stability of property values, ensure the attractiveness and functional utility of the community as a place to live and work, preserve the character and quality of the building environment by retaining the integrity of those areas which have a discernible character, protect certain public investments in the area, and raise the level of community expectations for the quality of its environment.

- (a) Site Plan Review and Approval. All applications for Building Permits for any construction, reconstruction, expansion, or conversion, except for one (1) and two (2) family residences in Residential Districts, shall require site plan approval by the Plan Commission in accordance with the requirements of this Section. This review will include: existing and proposed structures, neighboring uses, utilization of landscaping and open space, parking areas, driveway locations, loading and unloading, highway access, traffic generation and circulation, drainage, sewerage and water systems, and the proposed operation of the use.
- (b) Application. The applicant shall also submit a site plan and sufficient plans and specifications of proposed buildings, machinery, and operations to enable the Plan Commission or its expert consultants to determine whether the proposed application meets all the requirements applicable thereto in this Chapter. This includes the following materials:
  - (1) Written Use Description: Description of the intended use described in reasonable detail, which may include the following: zoning, land use plan designation, current land uses, proposed land uses, projected use, proposed development, operations, operations considerations, building materials, other information.
  - (2) Location Map: A map of the subject property showing all lands for which the use is

- proposed, and all other lands within two hundred (200) feet of the boundaries of the subject property.
- (3) Scale Site Plan: A site plan of the subject property as proposed for development drawn to scale.
  - (4) Detailed Landscape Plan: At the same scale as the site plan, showing the location of all required setbacks and landscaping areas, proposed landscaping and any proposed screening.
  - (5) Grading Plan: At the same scale as the site plan showing existing and proposed grades, including retaining walls and related devices, and erosion control measures.
  - (6) Elevation Drawings: Side views of proposed buildings, structures, or proposed remodeling of existing buildings showing finished exterior treatment shall also be submitted, with adequate labels provided to clearly depict exterior materials, texture, color, and overall appearance.
  - (7) Stormwater Management Plans: At the same scale as the site plan, prepare stormwater runoff and erosion control plans consistent with Village Ordinances.
- (c) Administration. The Zoning Administrator shall make a preliminary review of the application and plans and refer them, along with a report of his findings, to the Plan Commission within ten (10) days. The Plan Commission shall review the application and may refer the application and plans to any expert consultants selected by the Village Board to advise whether the application and plans meet all the requirements applicable thereto in this Chapter. Within thirty (30) days of its receipt of the application, the Commission shall notify the Zoning Administrator of its decision to approve or deny the site plan.
- (d) Requirements. In acting on any site plan, the Plan Commission shall consider the following:
- (1) The appropriateness of the site plan and buildings in relation to the physical character of the site and the usage of adjoining land areas.
  - (2) The layout of the site with regard to entrances and exits to public streets; the arrangement and improvement of interior roadways; the location, adequacy and improvement of areas for parking and for loading and unloading and shall ensure that the traffic pattern generated by the proposed construction or use shall be developed in a manner consistent with the safety of residents and the community, and the applicant shall so design the construction or use as to minimize any traffic hazard created thereby.
  - (3) The adequacy of the proposed water supply, drainage facilities, and sanitary and waste disposal.
  - (4) The landscaping and appearance of the completed site. The Plan Commission may require that those portions of all front, rear and side yards not used for off-street parking shall be attractively planted with trees, shrubs, plants, or grass lawns and that the site be effectively screened so as not to impair the value of adjacent properties nor impair the intent or purposes of this Section.
  - (5) The architectural design, landscaping, control or lighting, and general site

development within the proposed use will result in an attractive and harmonious area compatible with and not adversely affecting the aesthetics, enjoyment, or property values of the surrounding neighborhood.

(6) Potential negative impacts on environmentally sensitive areas and other critical community services (e.g., schools, nursing care, governmental) are prevented or mitigated. New development, reconstruction, and infrastructure projects should consider and apply resource conservation techniques and best practices that reduce energy demand and promote air and water quality improvements.

(e) Effect on Municipal Services. Before granting any site approval, the Plan Commission may, besides obtaining advice from consultants, secure such advice as may be deemed necessary from the Village Engineer or other municipal officials, with special attention to the effect of such approval upon existing municipal services and utilities. Should additional facilities be needed, the Plan Commission shall forward its recommendations to the Village Board and shall not issue final approval until the Village Board has entered into an agreement with the applicant regarding the development of such facilities.

#### **SEC. 22-133 VARIANCES.**

(a) Purpose. The purpose of this Section is to provide regulations which enable the Village to hear and decide requests for permitted variation from the terms of this Chapter as will not be contrary to the public interest where owing to special factors, a literal enforcement of the provisions of this Chapter would result in practical difficulty or unnecessary hardship, so that the spirit of this Chapter shall be observed, public safety and welfare secured, and substantial justice done; as provided for by Section 62.23(7)(e)(7), Wis. Stats.

(1) For the purposes of this Section, "unnecessary hardship" shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district which is caused by facts, such as rough terrain or good soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same zoning district

(b) Initiation of Request. A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause him or her undue hardship or create conditions causing greater harmful effects than the initial condition. A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.

(c) Application for Variance. The application for a variance shall be filed with the Zoning Administrator, with a fee as established in the Village's annual fee schedule plus publication and report costs. Applications may be made by the owner or lessee of the structure, land or water to be affected. The application shall contain the following information:

(1) Name and address of applicant and all abutting and opposite property owners of

- record.
- (2) Statement that the applicant is the owner or the authorized agent of the owner of the property.
  - (3) Address and description of the property.
  - (4) A site plan showing an accurate depiction of the property.
  - (5) Additional information required by the Plan Commission, Village Engineer, Board of Zoning Appeals, or Zoning Administrator.
  - (6) Application fee as set forth in the Village's annual fee schedule.
- (d) Public Hearing of Variance application. Within sixty (60) days of filing of a complete application, The Board of Appeals shall conduct at least one (1) public hearing on the proposed variance. Notice of such hearing shall be given not more than thirty (30) days and not less than ten (10) days before the hearing in one (1) or more of the newspapers in general circulation in the Village, and shall give due notice to the parties in interest, the Zoning Administrator, and the Plan Commission. At the hearing the appellant or applicant may appear in person, by agent, or by attorney. The Board shall thereafter reach its decision within thirty (30) days after the final hearing and shall transmit a written copy of its decision to the appellant or applicant, Zoning Administrator, Plan Commission, and Village Board.
- (e) Action of the Board of Appeals. For the Board to grant a variance, it must find that:
- (1) Denial of variation may result in hardship to the property owner due to geographical consideration. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.
  - (2) The conditions upon which a petition for a variance is based are unique to the property for which variance is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
  - (3) The purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the property.
  - (4) The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.
  - (5) The proposed variance will not undermine the spirit and general and specific purposes of the Zoning Code.
- (f) Conditions. The Board of Appeals may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to comply with the standards established in this Section.
- (g) Effect of Denial. No application for a variance which has been denied (either wholly or



in part) shall be resubmitted for a period of three hundred sixty-five (365) days from the date of said order of denial, except on grounds of new evidence or material change of circumstances found valid by the Zoning Administrator, or designee.

- (h) Review by Court of Record. Any person or persons aggrieved by any decision of the Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the offices of the Board of Appeals.

**SEC. 22-134 APPEALS TO THE ZONING BOARD OF APPEALS.**

- (a) Scope of Appeals. Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the Village affected by any decision of the administrative officer. Such appeal shall be taken within thirty (30) days of the alleged grievance or judgment in question by filing with the officer(s) from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof, together with payment of a filing fee as may be established by the Village Board. The officer(s) from whom the appeal is taken shall forthwith transmit to the Board of Appeals all papers constituting the record of appeals upon which the action appeals from was taken.
- (b) Stay of Proceedings. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certified to the Board of Appeals that, by reason of facts stated in the certificate, a stay would, in his opinion, cause immediate peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (c) Hearing on Appeals. Within sixty (60) days after the filing of a complete application the Board of Appeals shall fix a reasonable time for a public hearing, cause notice thereof to be published in the official newspaper not less than seven (7) days prior thereto, cause notice to be given to the appellant or applicant and the administrative officer(s) appealed from by regular mail or by personal service not less than five (5) days prior to the date of hearing. In every case involving a variance, notice shall also be mailed not less than five (5) days prior to the hearing of the fee owners of records of all land within one hundred (100) feet of any part of the subject building or premises involved in the appeal.
- (d) Decision of the Board of Appeals.
  - (1) Timeframe. The Board of Appeals shall decide all appeals and applications within thirty (30) days after the public hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant and the Zoning Administrator.
  - (2) Conditions. Conditions may be placed upon any approval or authorization made by

this Board.

(3) Validity. Variances, substitutions or use permits granted by the Board shall expire within six (6) months unless substantial work has commenced pursuant to such grant.

(e) Effect of Denial. No application for an appeal which has been denied (either wholly or in part) shall be resubmitted for a period of three hundred sixty-five (365) days from the date of said order of denial, except on grounds of new evidence or material change of circumstances found valid by the Zoning Administrator, or designee.

#### **SEC. 22-135 FEES FOR PERMITS, VARIANCES, APPEALS, REZONINGS, CONDITIONAL USES, AND SIGNS.**

(a) All persons, firms, or corporations performing work which by this Ordinance requires an action of the Zoning Administrator, Plan Commission, or Village Board, shall pay such fee for consideration to the Village Clerk to help defray the cost of administration, investigation, advertising, and processing of such actions as may be set in accordance with the fee schedule established by the Village Board and presented as a separate attachment in support of these regulations.

#### **SEC. 22-136 PUBLIC HEARINGS.**

(a) In order that the owners of property involved and other legitimately interested parties may have fair opportunity to be heard, adequate notice shall be given of any public hearing required by the provisions of this Ordinance in the manner hereinafter defined or as may be otherwise specifically designated elsewhere in this Ordinance.

(b) The notice to be given concerning any appeals, variances, or conditional use permits shall be given by publishing a Class 1 notice under Chapter 985 of the Wisconsin Statutes, and for changes and amendments of this Ordinance by a Class 2 notice under Chapter 985 of the Wisconsin Statutes, and by giving due notice of the hearing to all parties in interest.

(c) Due notice to parties in interest shall mean that the Village Clerk will mail, by ordinary postage, reasonable advance notice of all hearings and meetings on any pending matter to the applicant and to owners of record of properties which are located within one hundred seventy-five (175) feet of the parcel involved in the application (one thousand (1,000) feet in the case of changes and amendments to zoning districts and regulations). In addition, at least ten (10) days prior to written notice of any such hearings shall be given to the Clerk of any municipality whose boundaries are within one thousand (1,000) feet of any lands included in the application. Failure of the office to accomplish such provision of notice shall be invalidate or prejudice the proceedings, provided that reasonable efforts were made to so notify the parties in interest.

**SEC. 22-137 ANNEXATIONS.**

- (a) Any area annexed to the Village of New Auburn after the effective date of this Ordinance shall automatically be placed in the R-1, Single-Family Residential District, and shall remain in such district until the appropriate zoning district(s), zoning district boundaries, and regulations are studied and recommended by the Planning Commission and adopted by the Village Board in accordance with the requirements of Section 22-129 of this Ordinance; except that such adopted be completed within ninety (90) days of the annexation.

**SEC. 22-138 MUNICIPALITIES AND STATE AGENCIES REGULATED.**

- (a) Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all required permits. State agencies are required to comply if Section 13.48(13) of the Wisconsin Statute applies. The construction, reconstruction, maintenance, and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt from compliance when Section 30.12(4)(a) of the Wisconsin Statute applies.

**SEC. 22-139 VIOLATIONS AND PENALTIES.**

- (a) Violations. It shall be unlawful to use or improve any structure or land, or to use water or air in violation of any of the provisions of this Chapter. In case of any violation, the Village Board, the Zoning Administrator, the Plan Commission, or any property owner who would be specifically damaged by such violation may cause appropriate action or proceeding to be instituted to enjoin a violation of this Chapter or cause a structure to be vacated or removed.
- (b) Remedial Action. Whenever an order of the Zoning Administrator has not been complied with within thirty (30) days after written notice has been mailed to the owner, resident agent, or occupant of the premises, the Village Board, the Zoning Administrator, or the Village Attorney may institute appropriate legal action or proceedings.
- (c) Penalties. Any person, firm, or corporation who fails to comply with the provisions of this Chapter or any order of the Zoning Administrator issued in accordance with this Chapter or resists enforcement shall, upon conviction thereof, be subject to a forfeiture and such additional penalties as provided for in this Code of Ordinances.

**SEC. 22-140 THROUGH SEC. 22-144 RESERVED FOR FUTURE USE.**

## ARTICLE 8 DEFINITIONS

### SEC. 22-145 DEFINITIONS.

The following terms, for purposes of this Ordinance, shall have the meaning stated below:

#### **DIVISION 1 – GENERAL.**

**Abutting.** Have a common property line or district line.

**Acre, Net.** The actual land devoted to the land use, excluding public streets, public lands or unusable lands, and school sites contained within 43,560 square feet.

**Alley.** A public way which affords only a secondary means of access to abutting property.

**Accessory Apartment.** A separate complete housekeeping unit that is substantially contained within the structure of a single-family dwelling, but can be isolated from it.

**Apartment.** A suite of rooms or a room in a multiple dwelling which suite or room is arranged, intended, or designed to be occupied as a residence of a single family, individual, or group of individuals, with separate facilities and utilities which are used or intended to be used for living, sleeping, cooking, and eating.

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

**Adult Book Store.** An established having as a predominant portion of its stock in trade, books, magazines, and other periodicals, or video cassettes, which are distinguished or characterized by their emphasis on matter depicting, describing or related to "Specified Sexual Activities" (as defined herein) or "Specified Anatomical Areas" (as defined herein).

**Adult Entertainment Establishment.** An establishment having as a predominant portion of its business live acts, demonstrations, dances, or exhibitions which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "Specified Sexual Activities" (as defined herein) or "Specific Anatomical Areas" (as defined herein).

**Adult Motion Picture Theater.** An enclosed building which is significantly or substantially used for presenting motion picture films, video cassettes, cable television, or any other such

visual media, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to “Specific Sexual Activities” (as defined herein) of “Specified Anatomical Areas” (as defined herein).

**Antenna.** A device used to receive or send broadcasts either as over the air signals from transmitters, including fixed television or radio signals, or microwave signals from earth orbiting communication satellites.

**Automobile Wrecking Yard.** Any premises on which two (2) or more self-propelled vehicles not in running order or operating condition are stored in the open.

**Basement.** A portion of a building with the floor located below the mean grade level. For the purpose of this Ordinance, any such basement with more than four (4) feet above grade level shall be counted as a story. No dwelling unit shall be situated in a basement having less than four (4) feet above grade level.

**Bed and Breakfast Establishment.** An owner-occupied, single-family dwelling unit at which overnight sleeping accommodations are offered to travelers by the owner.

**Block.** A tract of land bounded by streets or by a combination of streets and public parks or other recognized lines of demarcation.

**Board.** The Board of Appeals, as provided in Section 22-127(c) of this Ordinance.

**Buffer Zone.** A designated neutral area designed to separate conflicting land uses. A natural vegetative screening of trees, shrubs, or other plantings is usually employed in such a designated area.

**Buildable Lot Area.** The portion of a lot remaining after required yards have been provided.

**Building.** Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals, equipment, machinery, or materials. When a building is divided into separate parts by unpierced walls extending from the ground up, each part shall be deemed a separate building.

**Building, Detached or Accessory.** A building surrounded by open space on the same lot such as an accessory garage or storage shed.

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

**Building, Principal.** A building in which the principal use of the lot on which it is located is conducted.

**Business.** An occupation, employment, or enterprise which occupies time, labor, and materials, or wherein merchandise is exhibited or sold, or where services are offered.

**Carport.** An automobile shelter having one or more sides open.

**Certified Survey Map (CSM).** A Certified Survey Map is map of a land split prepared in accordance with Chapter 236, Wisconsin Statutes and Section 17.07 of the Village's Subdivision Ordinance.

**Channel.** Those woodlands normally occupied by a stream of water under average annual highwater flow conditions while confined within generally well established banks.

**Clinic.** An establishment for medical examination and treatment of patients, but without provisions for keeping such patients overnight on the premises (except for veterinary clinics). For purposes of this Ordinance, a doctor's or dentist's office, in a residence, when it complies with the requirements of this Ordinance relating to such office, shall not be considered a clinic, but any doctor's or dentist's office which is not part of his home, or the office of two or more doctors or dentists, whether in a residence or not, shall be considered a clinic.

**Club or Lodge.** A building or portion thereof or premises owned by a corporation, association, person or persons for a social, educational, or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as a business.

**Community Living Arrangement.** The following facilities licensed or operated or permitted under the authority of the Wisconsin State Statutes: Child welfare agencies under Section 48.60, group foster homes for children under Section 48.02(7m) and community-based residential facilities under Section 50.01, but does not include day care centers, nursing homes, general hospitals, special hospitals, prisons and jails. The establishment of a community living arrangement shall be in conformance with applicable Sections of the Wisconsin State Statutes, including Sections 46.03(22), 59.97(15), 62.23(7)(i) and 62.23(7)(a), and amendments thereto, and also the Wisconsin Administrative Code.

**Conditional Use.** A use, either public or private, which because of its unique characteristics, cannot be properly classified as a permitted use in a particular district or districts, and therefore, may be permitted in such district or districts only by Conditional Use Permit.

**Conservation Standards.** Guidelines and specifications for soil and water conservation practices and management enumerated in the Technical Guide, prepared by the USDA Soil Conservation Service for Chippewa County and Barron County respectively, adopted by the County Soil and Water Conservation District Supervisors, and containing

suitable alternatives for the use and treatment to land based upon its capabilities from which the landowner selects that alternative which best meets his/her needs in developing his/her soil and water conservation.

**Controlled Access Arterial Street.** The condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with an arterial street is fully or partially controlled by public authority.

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

**District, Basic.** A part or parts of the Village for which the regulations of this Ordinance governing the use and location of land and building are uniform.

**District, Overlay.** Overlay districts, also referred to herein as regulatory areas, provide for the possibility of superimposing certain additional requirements upon a basic zoning district without disturbing the requirements of the basic district. In the instance of conflicting requirements, the more strict of the conflicting requirements shall apply.

**Dwelling.** A building designed or used exclusively as a residence or sleeping place, but does not include boarding or lodging houses, motels, hotels, tents, cabins, or mobile homes.

**Dwelling Unit.** Any room or group of rooms located within a dwelling and forming a single habitable unit, with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

**Dwelling, Efficiency.** A dwelling unit consisting of one (1) principal room with no separate sleeping rooms.

**Dwelling, Single-Family.** A detached building designed for or occupied by one (1) family.

**Dwelling, Two-Family (referred to as duplex, twinhome or two-flat).** A detached building containing two (2) separate dwelling (or living) units, designed for occupancy by not more than two (2) families. Often called a duplex.

**Dwelling, Multiple-Family.** A building or portion thereof used or designated as a residence for three (3) or more families as separate housekeeping units, including apartments, apartment hotels, and town houses.

**Earth Station Dish Antenna.** An earth station dish antenna shall mean a combination of: (a) a dish antenna whose purpose is to receive communication or other signals from orbiting satellites; (b) a low-noise amplifier (LNA) which is situated at the

focal point of the receiving component and whose purpose is to magnify and transfer signals; and (c) a coaxial cable whose purpose is to carry the signals into the interior of the building. This definition shall not include satellite antennas with a diameter of 36" or less."

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

**Family.** The body of persons related by blood, marriage, or adoption, or not more than four (4) unrelated persons who live together in one (1) dwelling unit as a single housekeeping entity.

**Floor Area (Business and Manufacturing Buildings).** For the purpose of determining off-street parking and off-street loading requirements, the sum of the gross horizontal areas of the floors of the building, or portion thereof, devoted to a use requiring off-street parking or loading. This area shall include elevators and stairways, accessory storage areas located within selling or working space occupied by counters, racks or closets and any basement floor area devoted to retailing activities, to the production or processing of goods, or to business or professional offices. However, floor area, for the purposes of determining off-street parking spaces, shall not include floor area devoted primarily to storage purposes except as otherwise noted herein.

**Foster Family Home.** The primary domicile of a foster parent AND four (4) or fewer foster children and which is licensed under Section 48.62 of the Wisconsin Statutes and amendments thereto.

**Frontage.** All the property abutting on one (1) side of a street between two (2) intersecting streets or all of the property abutting on one (1) side of a street between an intersecting street and the dead end of a street.

**Garage, Private.** A detached accessory building or portion of the principal building, designed, arranged, used, or intended to be used for storage of automobiles of the occupant of the premises. Carports are considered garages.

**Garage, Public.** Any building or portion thereof, not accessory to a residential building or structure, used for equipping, servicing, repairing, leasing, or public parking of motor vehicles.

**Gasoline Station.** Any area of land, including structures thereon, that is used for the sale of gasoline or other motor vehicle fuel, and oil or other lubrication substances; sale of motor



vehicle accessories; and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning or otherwise cleaning such vehicles.

**Grade.** When used as a reference point in measuring height of building, the "grade" shall be the average elevation of the finished ground at the exterior walls of the main building.

**Gross Floor Area (Residential).** The square footage of each story of a dwelling. The basement area of a dwelling can be considered in the floor area calculation if the basement floor has an at-grade access.

**Group Foster Home.** Any facility operated by a person required to be licensed by the State of Wisconsin under State Statute Section 48.62 for the care and maintenance of five (5) to eight (8) foster children.

**Home Occupation.** Any occupation for gain or support conducted entirely within a building by resident occupants and no more than one non-resident person, which is incidental to the principal use of the premises; does not exceed fifty percent (50%) of the area of any above ground living area; has no article offered for sale except such as is produced by such home occupation; and meets all of the conditions of Section 22-63 of this Ordinance. Examples of home occupations are: child care, millinery, canning, dressmaking, dentists, architects, landscape architects, registered land surveyors, lawyers, and teachers.

**Hospital.** An institution intended primarily for the medical diagnosis, treatment, and care of patients being given medical treatment. A hospital shall be distinguished from a clinic by virtue of providing for 24-hour patient care.

**Hotel.** A building in which lodging, with or without meals, is offered to transient guests for compensation and in which there are more than five (5) sleeping rooms with no cooking facilities in any individual room or apartment.

**Housing for the Elderly.** A dwelling unit or units designed and constructed to be occupied by elderly persons. An elderly person is a person who is 62 years of age or older on the date such person intends to occupy the premises, or a family, the head of which, or his/her spouse, is an elderly person as defined herein.

**Institution.** A building occupied by a non-profit corporation or a non-profit establishment for public use.

**Interchange.** A grade-separated intersection with one (1) or more direct connections for vehicular travel between the intersecting streets or highways.

**Junk.** Any scrap, waste, reclaimable material, or debris, whether or not stored or used in

conjunction with dismantling, processing, salvage, storage, baling, disposal or other use or disposition. Junk includes, but is not limited to: vehicles, tires, vehicle parts, equipment, paper, rags, metal, glass, building materials, household appliances, brush, wood, and lumber.

**Junkyard.** Any area, lot, land, parcel, building, or structure or part thereof used for the storage, collecting, processing, purchase, sale, or abandonment of wastewater, rags, scrap metal or other scrap or discarded goods, materials, machinery, or two (2) or more unregistered, inoperable motor vehicles or other type of junk.

**Land Development Activity.** The construction of buildings, roads, parking lots, paved storage areas, and similar facilities.

**Land Disturbing Activity.** Any man-made change of the land surface including removing vegetation cover, excavating, filling, and grading, but not including agricultural activities such as planting, growing, cultivating, and harvesting of crops; growing and tending of gardens; harvesting of trees; and landscape modifications.

**Landowner.** Any person holding title to or having an interest in land.

**Land User.** Any person operating, leasing, renting, or having made other arrangements with the landowner by which the landowner authorizes use of his or her land.

**Loading Area.** A completely off-street space or berth on the same lot for the loading or unloading of freight carriers, having adequate ingress and egress to a public street or alley.

**Lodging House.** A building where lodging only is provided for compensation for not more than three (3) persons not members of the family.

**Lot.** A division of land occupied or designed to be occupied by one building and its accessory buildings or uses, including open spaces required by this Ordinance. A lot may be a parcel of land designated in a plat laid out prior to the effective date of this amendment, whether or not such division abuts a public street or other officially approved place recorded in the Office of the Register of Deeds, or any part of a larger division when such parts comply with the requirements of this Ordinance as to width and area for the district in which it is located. No land included in any street, highway or railroad right-of-way, dedicated to the public or reserved for roadway purposes, shall be included in the computation of lot size.

A lot for purposes of this ordinance, may differ from a "lot" as shown on a plat.

Example: Platted lots may be subdivided or combined by Certified Survey Map pursuant to Section 17.07 of the Village's Subdivision Ordinance. Thereafter, the lot created by such lot divisions, shall be considered a lot for purposes of this ordinance.

**Lot, Corner.** A lot abutting two (2) or more streets at their intersection provided that the corner of such intersection shall have an angle of one hundred thirty-five degrees (135°) or less, measured on the lot side. (See illustration #4)

**Lot, Interior.** A lot situated on a single street which is bounded by adjacent lots along each of its other lines and is not a corner lot.

**Lot, Through.** A lot which has a pair of opposite lot lines along two (2) substantially parallel streets and which is not a corner lot. On a through lot, both street lines shall be deemed front lot lines.

**Lot, Substandard.** A parcel of land held in separate ownership having frontage on a public street, or other approved means of access, occupied or intended to be occupied by a principal building or structure, together with accessory buildings and uses, having insufficient size to meet the lot width, lot area, yard, off-street parking areas or other open space provisions of this code as pertaining to the district wherein located.

**Lot Coverage, Residential.** The area of a lot occupied by the principal building or buildings and accessory building.

**Lot Coverage (except Residential).** The area of a lot occupied by the principal building or buildings and accessory buildings, including any driveways, parking areas, loading areas, storage areas, and walkways.

**Lot Line.** A property boundary line of any lot held in single or separate ownership, except that where any portion of the lot extends into the abutting street or alley, the lot line shall be deemed to be the abutting street or alley right-of-way line.

**Lot Lines and Area.** The peripheral boundaries of a parcel of land and the total area lying within such boundaries.

**Lot of Record.** A platted lot of a recorded subdivision, certified survey map, or parcel of land for which the deed, prior to the adoption of this Ordinance, is on record with the Chippewa County Register of Deeds and which exists as described therein.

**Lot Width.** The horizontal distance between the side lot lines measured at the building setback line.

**Minor Structures.** Any small movable accessory erection or construction such as birdhouses, tool houses, pet houses, play equipment, yardbarns, arbors, and walls containing not more than 100 square feet in floor space areas. Such erection or construction shall be deemed structures, even if not permanently affixed to the ground.

**Mobile Home.** A manufactured home that is HUD certified and labeled under the National

Manufactured Home Construction and Safety Standards Act of 1974 (U.S.C. Title 42, Chapter 70). A mobile home is a structure, which is, or was as originally constructed, designed to be transportable in one or more sections, which in traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein and any additions, attachments, annexes, foundations, and appurtenances.

**Mobile Home Lot.** A parcel of land for the placement of a single mobile home and the exclusive use of its occupants.

**Mobile Home Park.** A parcel of land which has been developed for the placement of mobile homes and is owned by an individual, a firm, trust, partnership, public or private association, or corporation, and where individual lots are rented to individual mobile home users. A mobile home park is also any lot on which two (2) or more mobile homes are parked for the purpose of permanent habitation, regardless of whether or not a charge is made for such accommodation, and including any associated service, storage, recreation, and other community service facilities designed for the exclusive use of park occupants.

**Mobile Home Subdivision.** A land subdivision, as defined by Chapter 236 of the Wisconsin Statutes and any Section of these Ordinances, with lots intended for the placement of individual mobile home units. Individual homesites are in separate ownership as opposed to the rental arrangements in mobile home parks.

**Modular Unit.** A modular unit is a factory fabricated transportable building unit designed to be used by itself or to be incorporated with similar units at a building site into a modular structure to be used for residential, commercial, educational, or industrial purposes.

**Motel.** A building or group of buildings containing rooms which are offered for compensation for the temporary accommodation of travelers or tourists.

**Nonconforming Uses.** Any structure, use of land, use of land and structure in combination or characteristics of use (such as yard requirement or lot size) which was existing at the time of the effective date of this code or amendments thereto and which is not in conformance with this code. Any such structure conforming in respect to use but in respect to frontage, width, height, area, yard, parking loading, or distance requirements shall not be considered a nonconforming use, but shall be considered nonconforming with respect to those characteristics.

**Nursing Home.** An establishment used as a dwelling place by the aged, infirm, chronically ill, or incurably afflicted, in which not less than three (3) persons live or are kept or

provided for on the premises for compensation, excluding clinics and hospitals and similar institutions devoted to the diagnosis, treatment, or the care of the sick or injured. A nursing home is subject to State-level licensing and operational limitations as set forth in Chapter 50 of the Wisconsin Statutes.

**Open Sales Area.** Any open land or area used or occupied for the purpose of displaying for sale new or secondhand merchandise, including, but not limited to, passenger cars or trucks, farm machinery, construction machinery, motor scooters or motorcycles, boats, trailers, aircraft, and monuments. No repair work is done in such area except for incidental repair of items to be displayed and sold on the premises.

**Outdoor Storage Areas.** Any open land or area used for the purpose of storage of any product or part of a product either before, during, or after manufacture, servicing, or repair, and not displayed for retail sale. This does not include open sales areas.

**Parking Lot.** A structure or premises containing five (5) or more parking spaces open to the public.

**Parking Space.** An off-street space available for the parking of a motor vehicle and which is held to be an area the dimensions of which are ten (10) feet by eighteen (18) feet or which covers one hundred eighty (180) square feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto.

**Parties in Interest.** Includes all abutting property owners, all property owners within one hundred (100) feet, and all property owners with opposite frontages.

**Places of Assembly.** Places where people gather or congregate for amusement, worship, learning, etc. This includes schools, churches, theaters, playgrounds, etc.

**Planning Commission.** Where the phrase "Planning Commission" appears, this refers to the Planning Commission of the Village of New Auburn. The Planning Commission is appointed by the Village President and confirmed by the Village Board pursuant to Section 62.23, Wisconsin Statutes.

**Planned Unit Development.** A "planned unit development" is a tract of land which contains or will contain two (2) or more principal buildings, developed under single ownership or control; the development of which is unique and of a substantially different character than that of surrounding areas. A planned unit development allows for flexibility not available under normal zoning district requirements.

**Premise.** The area of land surrounding a structure and forming one enclosure with it.

**Professional Home Offices.** Residences of doctors of medicine, practitioners, dentists, clergymen, architects, landscape architects, professional engineers, registered land surveyors, lawyers, artists, teachers, authors, musicians, or other recognized professionals,

used to conduct their professions where the office does not exceed one-half (1/2) the area of only one (1) floor of the residence and only one (1) nonresident person is employed.

**Public Airport.** Any airport which complies with the definition contained in Section 114.002(18m), Wisconsin Statutes, or any airport which serves or offers to serve common carriers engaged in air transport.

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

**Recreational Vehicle.** Any vehicle or structure designed and used for temporary, seasonal human living quarters which meets all of the following qualifications: (a) is not used as the permanent residence of the owner or occupant; (b) is used for temporary living quarters by the owner or occupant while engaged in recreation or vacation activities; (c) is towed or self-propelled on public streets or highways incidental to such recreation or vacation activities; (d) examples of such vehicles include van campers, tent camping trailers, self-contained travel trailers, pick-up campers, camping buses, and self-contained, self-propelled truck chassis mounted vehicles providing living accommodations.

**Recreational Vehicle Camp.** A park, court, campsite, lot, parcel, or tract of land designed, maintained or intended for the purpose of supplying the location or accommodations for any recreational vehicles as defined herein, and upon which said recreational vehicles are parked.

**Restaurant.** A business establishment consisting of a kitchen and dining room, whose primary purpose is to prepare and serve food to be eaten by customers seated in the dining room.

**Restaurant, Drive-in.** A business establishment consisting of a kitchen, with or without a dining room, where food is prepared and packaged to be eaten either off the premises or within automobiles parked on the premises.

**Retail.** The sale of goods or merchandise in small quantities to the consumer.

**Roadside Stand.** A structure having a ground area of not more than three hundred (300) square feet, not permanently fixed to the ground, readily removable in its entirety, not fully enclosed and to be used solely for the sale of farm products produced on the premises.

**Rooming Unit.** Any room or group of rooms forming a single habitable unit used or intended to be

used for living and sleeping , but not for cooking or eating purposes.

**School.** A building or group of buildings maintained by the public or by a private organization for the purpose of education and which is accredited by the State of Wisconsin. Schools include pre-school and grades kindergarten through twelve (12), but not trade schools that do not teach the state required courses for high school graduation in addition to the vocational instruction.

**School, Commercial.** A school limited to special instructions such as business, art, music, trades, handicraft, dancing, or riding.

**Setback.** A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots and double frontage lots have two (2) such yards. Uncovered steps shall not be included in measuring the setback.

**Sheltered Care Facility.** A private home which provides separate sleeping accommodations and kitchen facilities for its occupants, but also maintains some means of contact with a central control office or building. This facility may include joint recreational and eating facilities.

**Shopping Center.** A concentration of retail stores and service establishments in a suburban area with generous parking space and planned to serve the community or a neighborhood.

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

**Specified Anatomical Areas.** Less than completely and opaquely covered human genitals, pubic region, buttock, perineum, anal region or female breast at or below the areola or human male genitals in a discernable turgid state even if completely and opaquely covered.

**Specified Sexual Activities.**

- a. Human genitals in a state of sexual stimulation or arousal; or
- b. Acts of human masturbation, sexual intercourse or sodomy; or
- c. Fondling or other erotic touching of human genitals, pubic region, buttock, perineum, anal region, or the female breast.

**Story.** That portion of a building included between the surface of any floor and the surface of the

next floor above it, or if there is no floor above it, then the space between the floor and the ceiling next above it. Any portion of a story exceeding fourteen (14) feet in height shall be considered as an additional story for each fourteen (14) feet or fraction thereof. A basement having one-half (1/2) or more of its height above grade shall be deemed a story for purposes of height regulation.

**Story, Half.** That portion of a building under a gable, hip or mansard roof, the wall plates of which, on at least two (2) opposite exterior walls, are not more than four and one-half (4 1/2) feet above the finished floor of such story. In the case of one (1) family dwellings, two (2) family dwellings and multi-family dwellings less than three (3) stories in height, a half (1/2) story in a sloping roof shall not be counted as a story for the purposes of this code.

**Street.** Property other than an alley or private thoroughfare or travelway which is subject to public easement or right-of-way for use as a thoroughfare and which is twenty-one (21) feet or more in width.

**Street, Arterial.** A public street or highway intended to be used primarily for fast or heavy through traffic. Arterial streets and highways shall include freeways and expressways, as well as major thoroughfares, highways, and parkways.

**Structure.** Anything constructed or erected, the use of which requires a permanent location on the ground or attached to something having a permanent location on the ground.

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

**Temporary Structure.** A movable structure not designed for human occupancy nor for the protection of goods or chattels and not forming an enclosure, such as billboards.

**Unnecessary Hardship.** The circumstances where special conditions, which were not self-created, affect a particular property and make strict conformity with the restrictions governing dimensional standards (such as lot area, lot width, setbacks, yard requirements, or building height) unnecessarily burdensome or unreasonable in light of the purpose of this Ordinance. Unnecessary hardship is present only where, in the absence of a variance, no feasible use can be made of the property.

**Use.** The purpose or activity for which the land or building thereof is designed, arranged, or intended, or for which it is occupied or maintained.

**Use, Accessory.** A subordinate building or use which is located on the same lot on which the principal building or use is situated, and which is reasonably necessary and incidental to the conduct of the primary use of such building or main use, when permitted by district regulations. See also "accessory use or structure".



**Use, Permitted.** A "permitted use" is a use which may be lawfully established in a particular district or districts, provided it conforms with all requirements, regulations, and standards of such district.

**Use, Principal.** The main use of land or building as distinguished from subordinate or accessory use.

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

**Variance.** A departure from the terms of this Ordinance as applied to a specific building, structure or parcel of land, which the Board of Appeals may permit, contrary to the regulations of this Ordinance for the district in which such buildings, structure, or parcel of land is located, when the Board of Appeals finds that a literal application of such regulation will affect a limitation on the use of the property which does not generally apply to other properties in the same district, and for which there is no compensation or gain to the property and does not endanger the public health, safety, or welfare.

**Village Board.** The Village of New Auburn Board of Trustees.

**Vision Setback Area.** An unoccupied triangular space at the intersection of highways or streets with other highways or streets or at the intersection of highways or streets with railroads. Such vision clearance triangle shall be bounded by the intersecting highway, street or railroad right-of-way lines and a setback line connecting points located on such right-of-way lines by measurement from the intersection as specified in this Ordinance.

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

**Yard, Front.** A yard extending the full width of the lot between the front or street lot line and the nearest part of the principal building, including eaves, but excluding uncovered steps. Corner lots shall have two (2) front yards.

**Yard, Rear.** A yard extending the full width of the lot between the rear lot line to the nearest part of the principal building, including eaves. On corner lots there shall be no rear yard.

**Yard, Side.** A yard on each side of the principal building extending from the nearest part of the

principal building, including eaves to the lot line and from the front yard line to the rear yard line.

**Zero Lot Line.** The concept whereby two (2) respective dwelling units within a building shall be on separate and abutting lots and shall meet on the common property line between them, thereby having zero space between said units.

**Zoning Permit.** A permit issued by the Building Inspector to certify that the use of lands, structure, air and waters subject to this Ordinance are or shall be used in accordance with the provisions of said Ordinance.

## **DIVISION 2 – LARGE LIVESTOCK DEFINITIONS.**

For the purposes of this Chapter, the following definitions shall be used specific to Section 22-46 and 22-130(p), related to Large Livestock Facilities. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and not permissive.

**Adjacent.** located on land parcels that touch each other, or on land parcels that are separated only by a river, stream, or transportation or utility right-of-way.

**Animal Unit.** Has the meaning that was given in s. NR 243.03(5).

**Expanded Livestock Facility.** The entire livestock facility that is created by the expansion, after May 1, 2006. "Expanded livestock facility" includes all livestock structures in the expanded facility, regardless of whether those structures are new, existing or altered.

**Expansion.** An increase in the largest number of animal units kept at a livestock facility on at least ninety (90) days in any twelve (12)-month period. The acquisition of an existing livestock facility, by the operator of an adjacent livestock facility, does not constitute an "expansion" unless that operator increases the largest number of animal units kept at the combined livestock facilities on at least ninety (90) days in any twelve (12)-month period.

**Livestock.** Domestic animals traditionally used in this state in the production of food, fiber, or other animal products. "Livestock" includes cattle, swine, poultry, sheep, and goats. "Livestock" does not include equine animals, farm-raised deer, fish, captive game birds, ratites, camelids, or mink.

**Livestock facility.** A feedlot, dairy farm, or other operation where livestock will be fed, confined, maintained, or stabled for a total of forty-five (45) days or more in any twelve (12)-month period. A "livestock facility" includes all of the tax parcels of land on which the facility is located but does not include a pasture or winter grazing area. Related livestock facilities are collectively treated as a single "livestock facility" for purposes of this chapter, except that an operator may elect to treat a separate species facility as a separate "livestock facility."

**Livestock structure.** A building or other structure used to house or feed livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to store livestock feed, or to collect or store waste generated at a livestock facility. “Livestock structure” includes a barn, milking parlor, feed storage facility, feeding facility, animal lot, or waste storage facility. “Livestock structure” does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing are, a livestock watering or feeding facility in a pasture or winter grazing area, or a machine shed or like facility that is not used for livestock.

**New livestock facility.** A livestock facility that will be used as a livestock facility for the first time, or for the first time in at least five (5) years. “New livestock facility” does not include an expanded livestock facility if any portion of that facility has been used as a livestock facility in the preceding five (5) years.

**Operator.** A person who applied for or holds a local approval for a livestock facility.

**Property line.** A line that separates parcels of land owned by different persons.

**Roadside Stand.** A building or part of a building no more than five hundred (500) square feet used for the retail sale of agricultural and related incidental products, excluding livestock, produced on the farm where the stand is located.

**Waste.** Manure, milking center waste and other organic waste generated by a livestock facility.

**Waste storage structure.** A waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. “Waste storage structure” does not include equipment used to apply waste to land. For purposes of ss. ATCP 51.12(2) and 51.14, “waste storage structure” does not include any of the following:

- a. A structure used to collect and store waste under a livestock housing facility.
- b. A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.

### **DIVISION 3 – SIGN DEFINITIONS.**

**Abandoned Sign.** A sign which no longer correctly advertises a bonafide business, lessee, owner, product or activity conducted, or product available on the premises where the sign is displayed or elsewhere.

**Area of Copy.** The entire area within a single, continuous perimeter composed of squares or rectangles which encloses the extreme limits of advertising message, announcement, or decoration of a wall sign.

**Area of Sign.** The area of the largest single face of the sign within a perimeter which forms the outside shape, but excluding the necessary supports or uprights on which the signs

may be placed. If the sign consists of more than one section or module, all areas will be totaled. Any irregularly shaped sign area shall be computed using the actual sign-face surface. In the case of wall signs, the area of copy will be used.

**Billboard.** See "Off-Premise Signs".

**Changeable Message Sign.** A sign such as an electric controlled time and temperature sign, message center or reader board where copy changes.

**Directional Sign.** Any sign which serves to designate the location or direction of any place or area. This includes, but is not limited to, such signs as those identifying restrooms, telephone, parking areas, entrances and exits.

**Electric Sign.** Any sign containing internal electrical wiring which is attached or intended to be attached to an electrical energy source.

**Flag Sign.** A sign made of fabric or vinyl and is attached to a pole which is affixed to the ground or attached to a building.

**Flashing Sign.** Any sign which contains an intermittent or flashing light source, or which includes the illusion of intermittent or flashing light by means of animation, or an externally-mounted intermittent light source, not including changeable message signs.

**Frontage.** The length of the property line of any one premise parallel to and along each public right-of-way it borders.

**Grade.** The elevation or level of the street closest to the sign to which reference is made, measured at the street's centerline.

**Ground Sign.** A sign erected on one or more free-standing supports or uprights and not attached to any building.

**Gross Area.** The area of a sign is determined by using the outside perimeter dimensions of the sign. If the sign consists of more than one module or section, their areas will be totaled. If the modules are formed in the shape of letters or symbols, the rules for "Area of Copy" apply.

**Height of Sign.** The vertical distance measured from the grade at the street right-of-way line where the sign is located to the highest point of such sign.

**Illuminated Sign.** A sign which is lighted by an artificial light source either directed upon it or illuminated from an interior source.

**Integrated Shopping Center.** A shopping center in single ownership or under unified control, and

containing three (3) or more separate businesses.

**Legal Nonconforming Sign.** A nonconforming sign that did meet regulations when it was originally installed.

**Nonconforming Sign.** A sign that does not meet code regulations.

**Off-Premise Sign.** A sign which advertises goods, products, facilities, services, or a message for something not necessarily on the premises where the sign is located, or directs persons to a different location from where the sign is located.

**On-Premise Sign.** Any sign identifying or advertising a business, person, activity, goods, products, or services located on a premise where the sign is installed and maintained.

**Portable Sign.** Any sign not permanently attached to the ground or a building.

**Sign.** Any emblem, painting, banner, pennant, placard, design, identification, description, illustration, or device, illuminated or nonilluminated, to advertise, identify, convey information, or direct attention to a product, service, place, activity, person, institution, business, or solicitation, including any permanently installed, or situated merchandise. For the purpose of removal, signs shall also include all sign structures.

**Sign Contractor.** Any person, partnership, or corporation engaged in whole or in part in the erection or maintenance of signs, excluding the business which the sign advertises.

**Sign Structure.** Any device or material which supports, has supported, or is capable of supporting a sign in a stationary position, including decorative covers.

**Swinging Sign.** A sign installed on an arm or mast or spar that is not, in addition, permanently fastened to an adjacent wall or upright pole.

**Wall Sign.** A sign attached to the wall of a building with the face in a parallel plane to the plane of the building wall. This includes signs painted directly on a wall.

**Window Sign.** A sign affixed to, in contact with, painted upon, or placed within a window, for the purpose of viewing from outside the premises; such sign must be placed only on the interior of any window unless painted directly upon it. This does not include merchandise located in a window.

**Zoning Lot.** A parcel of land considered or treated as a single unit. A zoning lot may or may not correspond with a lot of record.

## **ARTICLE 9**

### **WP WELLHEAD PROTECTION OVERLAY DISTRICT**

#### **SEC. 22-146 PRIMARY PURPOSE AND CHARACTERISTICS.**

- (a) The users of the public water supply system located in the Village of New Auburn depend exclusively on ground water for safe drinking water. Certain land use practices and activities can seriously threaten or degrade ground water quality. The purpose of the Wellhead Protection Overlay District is to institute land use regulations and restrictions to protect the Village of New Auburn municipal water supply and wells, and to promote the public health, safety and general welfare of the residents of the Village of New Auburn.

#### **SEC. 22-147 AUTHORITY.**

- (a) These regulations were established pursuant to the authority granted by the Wisconsin Legislature in 1983, Wisconsin Act 410 (effective May 11, 1984), which specifically added ground water protection to the statutory authorization for municipal planning and zoning in order to protect the public health, safety and welfare.

#### **SEC. 22-148 APPLICABILITY.**

- (a) The regulations specified in the Wellhead Protection Overlay District shall apply within the Village of New Auburn limits.
- (b) The regulations of this overlay district will apply in addition to all other regulations which occupy the same geographic area. The provisions of any zoning districts that underlay this overlay district will apply except when provisions of the Wellhead Protection Overlay District are more stringent.
- (c) No new use or change in use of any structure, land or water shall be located, extended, converted or structurally altered, and no development shall commence without full compliance with the terms of this Section and other applicable regulations.

#### **SEC. 22-149 PERMITTED USES.**

- (a) Permitted uses within the Wellhead Protection Overlay District area subject to the separation distance requirements set forth in section 22-150, Separation Distance Requirements, the prohibition of uses, activities or structures designated in section 22-151, Prohibited Uses and include:
- (1) Public and private parks and beaches, provided there are no on-site wastewater disposal systems or holding tanks
  - (2) Playgrounds
  - (3) Wildlife areas and Natural areas
  - (4) Trails such as biking, hiking, skiing, nature, equestrian and fitness trails
  - (5) Residential which is municipally sewered
  - (6) Agricultural activities which are conducted in accordance with USDA-SCS Wisconsin Field Office Technical Guide Specification 590 nutrient management standards
  - (7) Commercial establishments which are municipally sewered

#### **SEC. 22-150 SEPARATION DISTANCE REQUIREMENTS.**

- (a) The following separation distances as specified in NR 811.16, Wisconsin Administrative Code shall be maintained:
- (1) Fifty (50) feet between a public water supply well and a stormwater sewer main or any sanitary sewer main constructed of water main materials and joints which is pressure tested in place to meet current AWWA C600 specifications.
  - (2) Two hundred (200) feet between a public water supply well and any sanitary sewer main not meeting the above specifications, any sanitary sewer lift station or single-family residential fuel oil tank.
  - (3) Four hundred (400) feet between a public water supply well and a stormwater detention, retention, infiltration or drainage basin.
  - (4) The provisions of NR 811.16(4)(d)4, 5, and 6, Wisconsin Administrative Code are not listed here as uses, activities or structure contained therein are prohibited in the District.

#### **SEC. 22-151 PROHIBITED USES.**

- (a) The method of regulation by prohibition of certain uses is employed to provide the greatest assurance that inadvertent discharge of pollutants into the groundwater supply will not occur, since such an event would result in almost certain contamination of the public water supply, and costly mitigation or remediation for which liability is difficult or impossible to establish. The prohibited uses, activities or structures for the Wellhead Protection Overlay District include:
- (1) Above and Below Ground Hydrocarbon or Petroleum Storage Tanks
  - (2) Cemeteries
  - (3) Chemical Manufacturers (Standard Industrial Classification Major Group 28)
  - (4) Coal Storage
  - (5) Dry Cleaners
  - (6) Hazardous, Toxic or Radioactive Materials Transfer and Storage under Title III or SARA planning
  - (7) Industrial Lagoons and Pits
  - (8) Jewelry Plating and Metal Plating
  - (9) Landfills and Any Other Solid Waste Facility, except post-consumer recycling
  - (10) Machine or Metal Working Shops
  - (11) Manure Storage
  - (12) Non-metallic earthen materials extraction or sand and gravel pits
  - (13) Pesticide and Fertilizer Dealer, Transfer or Storage
  - (14) Research Labs, Universities and Hospitals
  - (15) Railroad Yards and Maintenance Stations
  - (16) Rendering Plants and Slaughterhouses
  - (17) Salt or Deicing Material Storage
  - (18) Salvage or Junk Yards
  - (19) Septage or Sludge Spreading, Storage or Treatment

- (20) Septage, Wastewater, or Sewage Lagoons
- (21) Septic tanks, holding tanks or other on-site sewage treatment systems
- (22) Stockyard and Feedlots
- (23) Stormwater infiltration basins without pre-treatment
- (24) Vehicular Service, including filling and service stations, repair, renovation and body working
- (25) Wood Preserving

**SEC. 22-152 REQUIREMENTS FOR EXISTING FACILITIES WHICH MAY CAUSE OR THREATEN TO CAUSE ENVIRONMENTAL POLLUTION.**

- (a) Existing facilities within the Wellhead Protection Overlay District at the time of enactment of such district which may cause or threaten to cause environmental pollution include, but are not limited to, the Wisconsin Department of Natural Resources' draft or current list of Inventory of Sites or Facilities Which May Cause or Threaten to Cause Environmental Pollution, Wisconsin Department of Industry, Labor and Human Relations' list of Underground Storage Tanks, lists of facilities with hazardous, solid waste permits, and all other facilities which are considered a prohibited use in section 22-151, Prohibited Uses, all of which are incorporated herein as if fully set forth.
  - (1) Such facilities as above which exist within the district at the time of enactment of a district shall provide copies of all federal, state and local facility operation approval or certificates and on-going environmental monitoring results to the Village.
  - (2) Such facilities as above which exist within the district at the time of enactment of a district shall provide environmental or safety structures/monitoring to include an operational safety plan, hazardous material containment, best management practices, stormwater runoff management and groundwater monitoring.
  - (3) Such facilities as above which exist within the district at the time of enactment of a district shall replace equipment, or expand on the site or property of record associated with the facility at the time of enactment of a district, in a manner that improves the environmental and safety technologies already being utilized.
  - (4) Such facilities as above which exist within the district at the time of enactment of a district shall have the responsibility of devising, filing and maintaining with the Village, a current contingency plan which details how they intend to respond to any emergency which occurs at their facility, including notifying municipal, county and state officials.
  - (5) Such facilities as above cannot engage in or employ a use, activity, or structure listed in section 22-151, Prohibited Uses, which they did not engage in or employ at the time of enactment of a district, and can only expand those present uses, activities, or structures on the site or property of record associated with the facility at the time of enactment of a district, and in a manner that improves the environmental and safety technologies already being utilized.

**SEC. 22-153 CONDITIONAL USES.**

- (a) Any individual person, partnership, corporation, or other legal entity and/or facility may



request that the Village of New Auburn Board of Trustees grant a Conditional Use Permit for certain uses, activities and structures within the Wellhead Protection Overlay District.

(1) All requests shall be made in writing to the Village of New Auburn Planning Commission and shall include:

- a. A site plan map with all building and structure footprints, driveways, sidewalks, parking lots, stormwater management structures, groundwater monitoring wells, and 2-foot ground elevation contours.
- b. A business plan and/or other documentation which describes in detail the use, activities and structures proposed.
- c. An environmental assessment report prepared by a licensed environmental engineer which details the risk to, and potential impact of, the proposed use, activities, and structures on groundwater quality.
- d. An operational safety plan, which details the operational procedures for material processes and containment, best management practices, stormwater runoff management, and groundwater monitoring.
- e. A contingency plan which addresses in detail the actions that will be taken should a contamination event caused by the proposed use, activities, or structures occur.

(2) All Conditional Use Permits granted under this section shall be subject to conditions that will include environmental and safety monitoring determined necessary to afford adequate protection of the public water supply, and/or bonds and/or sureties satisfactory to the Village. These conditions shall include, but not be limited to:

- a. Provide current copies of all federal, state and local facility operation approval or certificates and ongoing environmental monitoring results to County Emergency Government and the Village of New Auburn.
- b. Establish environmental or safety structures/monitoring to include an operational safety plan, material processes and containment, operations monitoring, best management practices, stormwater runoff management, and groundwater monitoring.
- c. Replace equipment or expand in a manner that improves the environmental and safety technologies being utilized.
- d. Devise, file and maintain a current contingency plan which details the response to any emergency which occurs at the facility, including notifying municipal, county and state officials. Provide a current copy to County Emergency Government and the Village of New Auburn.

(3) The individual, person, partnership, corporation, or other legal entity and/or facility making the request shall reimburse the Village for consultant fees and Planning Commission expenses associated with this review at the invoiced amount, plus administrative costs.

(4) The Village Board shall decide upon a request for a Conditional Use Permit only after full consideration of the recommendations made by the Village Planning Commission.

Any conditions above and beyond those specified in section 22-153, Conditional Uses that are recommended by the Planning Commission or established by the Village Board may be applied to the granting of the Conditional Use Permit.

**SEC. 22-154 VIOLATIONS, ENFORCEMENT AND PENALTIES.**

- (a) It shall be unlawful to construct or use any structure, land or water in violation of any of the provisions of this Section. In case of any violation, the Village Board shall institute appropriate action or proceeding to enjoin a violation of this Section.
  
- (b) Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of this Section shall, upon conviction thereof, forfeit to the Village of New Auburn, a penalty of not less than \$50 together with the taxable cost in such action and not more than \$500, and in default of payment thereof shall be imprisoned for a term of not more than 30 days or until such penalty and costs are paid. Each and every day of violation shall constitute a separate offense in addition to any penalties. Compliance with this Section is mandatory, and no building, structure or use shall be allowed without full compliance.
  
- (c) In the event any individual, person, partnership, corporation, or other legal entity (hereinafter "individual") that owns an Existing Facility Which May Cause or Threaten to Cause Environmental Pollution, or any individual and/or facility possessing a Conditional Use Permit under the provisions of section 22-153, Conditional Uses, and that individual/facility causes, or is the site of, the release of any contaminants which endanger the municipal water supply associated with a Wellhead Protection Overlay District, the activity causing said release shall immediately cease and a cleanup satisfactory to the Village shall occur.
  - a. The individual/facility shall be responsible for all costs of cleanup, Village consultant or outside contractor fees, fees at the invoice amount plus administrative costs for oversight, review and documentation, plus the following:
    - 1. The cost of Village employee's time associated in any way with the cleanup based on the hourly rate paid to the employee multiplied by a factor determined by the Village representing the Village's cost for expenses, benefits, insurance, sick leave, holidays, workman's compensation, holidays, overtime, vacation, and similar benefits.
    - 2. The cost of Village equipment employed in the cleanup.
    - 3. The cost of mileage incurred on Village vehicles used in any activity related to the cleanup, or of mileage fees reimbursed to Village employees attributed to the cleanup.

**SEC. 22-155 DEFINITIONS.**

**Aquifer.** A saturated, permeable, geologic formation that contains and will yield significant

quantities of water.

**Existing Facilities Which May Cause or Threaten to Cause Environmental Pollution.** Existing facilities which may cause or threaten to cause environmental pollution within the Village of New Auburn include, but are not limited to, the Department of Natural Resources' draft or current list of Inventory of Sites or Facilities Which May Cause or Threaten to Cause Environmental Pollution, the Department of Workforce Development (DWD) list of Underground Storage Tanks (USTs), lists of facilities with hazardous, solid waste permits, and any facility which is considered a prohibited use under this Section, all of which are incorporated herein as if fully set forth.

**Cone of Depression.** The area around a well, in which the water level has been lowered at least one-tenth of a foot by pumping of the well.

**Five Year Time of Travel.** The 5-year time of travel is the recharge area upgradient of the cone of depression, the outer boundary of which it is determined or estimated that groundwater will take five years to reach a pumping well.

**Recharge Area.** The area which encompasses all areas or features that, by surface infiltration of water that reaches the zone of saturation of an aquifer, supplies groundwater to a well.

**Well Field.** A piece of land use primarily for the purpose of locating wells to supply a municipal water system.

**Wellhead Protection Overlay District.** The area of land which contributes water to the well starting at the well and continuing out to a line delineating the 5-year time of travel to the well. Time of travel delineations must be based on accepted hydrogeological research as outlined in the State Wellhead Protection Program Plan for Public Water Utilities, Appendix 2 with Zone boundaries normalized (if practical) to road centerlines, railways, surface water features, the public land survey section lines, 1/2, 1/4, 1/8, or 1/16 section lines and property lines.

**Zone of Saturation.** The saturated zone is the area of unconsolidated, fractured or porous material that is saturated with water and constitutes groundwater.

**SEC. 22-156 THROUGH SEC. 22-159 RESERVED FOR FUTURE USE.**

## **ARTICLE 10**

### **FLOODPLAIN OVERLAY DISTRICT**

#### **SEC. 22-160 STATUTORY AUTHORIZATION.**

- (a) Statutory Authorization. This article is adopted pursuant to authorization in s. 61.35 and 62.23, and the requirements in s. 87.30, Stats.

#### **SEC. 22-161 FINDING OF FACT.**

- (a) Finding of Fact. Uncontrolled development and use of the floodplains and rivers of the Village of New Auburn would impair the public health, safety, convenience, general welfare and tax base.

#### **SEC. 22-162 STATEMENT OF PURPOSE.**

- (a) This article is intended to regulate floodplain development to:
- (2) Protect life, health and property;
  - (3) Minimum expenditures of public funds for flood control projects;
  - (4) Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
  - (5) Minimize business interruptions and other economic disruptions;
  - (6) Minimize damage to public facilities in the floodplain;
  - (7) Minimize the occurrence of future flood blight areas in the floodplain;
  - (8) Discourage the victimization of unwary land and homebuyers;
  - (9) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
  - (10) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

#### **SEC. 22-163 TITLE.**

- (a) This article shall be known as the Floodplain Zoning Ordinance for the Village of New Auburn, Wisconsin.

#### **SEC. 22-164 GENERAL PROVISIONS.**

- (a) Areas to be Regulated.
- (1) This article regulates all areas of special flood hazard identified as zones A, AO, AH, A1-30, AE, on the Flood Insurance Rate Map.
  - (2) Additional areas identified on maps approved by the Department of Natural Resources (DNR) and local community may also be regulated under the provisions of this article, where applicable.
- (b) Official Maps & Revisions.
- (1) Special Flood Hazard Areas (SFHA) are designated as zones A, A1-30, AE, AH, AO, on the Flood Insurance Rate Maps (FIRMs) based on flood hazard analyses summarized in the Flood Insurance Study (FIS) listed in Section 22-164(b)(2)a-d. These maps and revisions are on file in the office of the Village of New Auburn Village Clerk.

(2) Official Maps: Based on the Flood Insurance Study (FIS):

- a. Flood Insurance Rate Map (FIRM), panel numbers 55005C0750D (Not Printed) effective 12/03/2009 and 55017C0180E (Not Printed) and 55017C0185E Chippewa County, dated 03/02/2010;
- b. Flood Insurance Rate Map (FIRM), panel number 55017C0185E Barron County, dated 03/02/2010;
- c. Flood Insurance Study (FIS) volume 55005CV000A for Barron County dated 12/03/2009;
- d. Flood Insurance Study (FIS) volume 55017CV000C for Chippewa County dated 10/19/2023.

(c) Establishment of Floodplain Zoning Districts.

(1) The flood hazard areas regulated by this article are divided into districts as follows:

- a. The Floodway District (FW), is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters, within AE Zones as shown on the FIRM, or within A Zones shown on the FIRM when determined according to section 22-172(e).
- b. The Floodfringe District (FF) is that portion of a riverine special flood hazard area outside the floodway within AE Zones on the FIRM, or, when floodway limits have been determined according to section 22-172(e), within A Zones shown on the FIRM.
- c. The General Floodplain District (GFP) is those riverine areas that may be covered by floodwater during the regional flood in which a floodway boundary has not been delineated on the FIRM and also includes shallow flooding areas identified as AH and AO zones on the FIRM.

(d) Locating Floodplain Boundaries.

(1) Discrepancies between the exterior boundaries of zones A1-30, AE, AH, or A on the official floodplain zoning map and actual field conditions may be resolved using the criteria in subd (i) or (ii) below. If a significant difference exists, the map shall be amended according to section 22-175 *Amendments*. The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre- development field conditions and the basis upon which the district boundary was determined. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to section 22-174(c)(3) and the criteria in a. and b. below. Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must approve any map amendment or revision pursuant to section 22-175 *Amendments*.

- a. If the flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
- b. Where flood profiles do not exist for projects, including any boundary of zone

A, AO, the location of the boundary shall be determined by the map scale.

(e) Removal of Lands from Floodplain.

- (1) Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to section 22-175 *Amendments*.
- (2) The delineation of any of the Floodplain Districts may be revised by the community where natural or man-made changes have occurred and/or where more detailed studies have been conducted. However, prior to any such change, approval must be obtained from the Wisconsin Department of Natural Resources and Federal Emergency Management Agency. A completed Letter of Map Revision is a record of this approval. The floodplain administrator shall not sign a community acknowledgement form unless all criteria set forth in the following paragraphs are met:
  - a. The land and/or land around the structure must be filled at least two feet above the regional or base flood elevation;
  - b. The fill must be contiguous to land outside the floodplain; Applicant shall obtain floodplain development permit before applying for a LOMR or LOMR-F;
- (3) Removal of lands from the floodplain may also occur by operation of §87.30(1)(e), Wis. Stat. if a property owner has obtained a letter of map amendment from the federal emergency management agency under 44 C.F.R. 70.

(f) Compliance.

- (1) No structure or use within areas regulated by this ordinance shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged, or altered without full compliance with the terms of these regulations and all other applicable regulations that apply to uses within the jurisdiction of these regulations.
- (2) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with section 22-176.
- (3) Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications, or amendments thereto if approved by the Floodplain Administrator. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with section 22-176.

(g) Municipalities and State Agencies Regulated.

- (1) Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this article and obtain all necessary permits. State agencies are required to comply if s. 13.48(13), Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the

Wisconsin Department of Transportation is exempt when s. 30.2022, Stats., applies. Although exempt from a local zoning permit and permit fees, DOT must provide sufficient project documentation and analysis to ensure that the community is in compliance with Federal, State, and local floodplain standards. If a local transportation project is located within a Zone A floodplain and is not a WisDOT project under s. 30.2022, then the road project design documents (including appropriate detailed plans and profiles) may be sufficient to meet the requirements for issuance of a local floodplain permit if the following apply: The applicant provides documentation to the Floodplain Administrator that the proposed project is a culvert replacement or bridge replacement under 20' span at the same location, the project is exempt from a DNR permit under s.30.123(6)(d), the capacity is not decreased, the top road grade is not raised, and no floodway data is available from a federal, state, or other source. If floodway data is available in the impacted area from a federal, state, or other source that existing data must be utilized by the applicant in the analysis of the project site.

(h) Abrogation and Greater Restrictions.

- (1) This article supersedes all the provisions of any municipal zoning ordinance enacted under s. 61.35 for villages; or s. 87.30, Stats. which relate to floodplains. A more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (2) This article is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this article shall prevail.

(i) Interpretation.

- (1) In their interpretation and application, the provisions of this article are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this article, required by ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this article or in effect on the date of the most recent text amendment to this article.

(j) Warning and Disclaimer of Liability.

- (1) The flood protection standards in this article are based on engineering experience and research. Larger floods may occur, or the flood height may be increased by man-made or natural causes. This article does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. This article does not create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this article.

(k) Severability

(1) Should any portion of this article be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

(l) Annexed Areas for Cities and Villages

(1) The respective Barron County or Chippewa County zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code and 44 CFR 59-72, *National Flood Insurance Program (NFIP)*. These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the floodway location.

**SEC. 22-165 GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS.**

The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding and assure that all necessary permits have been received from those governmental agencies whose approval is required by federal or state law.

(a) If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall:

- (1) be designed and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) be constructed with flood-resistant materials;
- (3) be constructed by methods and practices that minimize flood damages; and
- (4) Mechanical and utility equipment must be elevated to or above the flood protection elevation.

(b) If a subdivision or other proposed new development is in a flood-prone area, the community shall assure that:

- (1) such proposed subdivision or other proposed new development is consistent with the need to minimize flood damage within the flood-prone area;
- (2) public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) adequate drainage is provided to reduce exposure to flood hazards.

All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this article and all other requirements in section 22-174(b).

**SEC. 22-166 HYDRAULIC AND HYDROLOGIC ANALYSES.**

(a) No floodplain development shall:



- (1) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, causing any increase in the regional flood height; or
  - (2) Cause any increase in the regional flood height due to floodplain storage area lost.
- (b) The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of section 22-175 *Amendments* are met.

**SEC. 22-167 WATERCOURSE ALTERATIONS.**

- (a) No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices, and required the applicant to secure all necessary state and federal permits. The standards of section 22-166 must be met and the flood carrying capacity of any altered or relocated watercourse shall be maintained.
- (b) As soon as practicable, but not later than six months after the date of the watercourse alteration or relocation and pursuant to section 22-175 *Amendments*, the community shall apply for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.

**SEC. 22-168 CHAPTER 30, 31, WIS. STATS., DEVELOPMENT.**

- (a) Development which requires a permit from the Department, under chs. 30 and 31, Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodplain zoning ordinance are made according to section 22-175 *Amendments*.

**SEC. 22-169 PUBLIC OR PRIVATE CAMPGROUNDS.**

- (a) Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:
- (1) The campground is approved by the Department of Agriculture, Trade and Consumer Protection;
  - (2) A land use permit for the campground is issued by the zoning administrator;
  - (3) The character of the river system and the campground elevation are such that a 72-hour warning of an impending flood can be given to all campground occupants;
  - (4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the floodplain zoning agency or zoning administrator, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the

procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation;

- (5) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. (4) - to remain in compliance with all applicable regulations, including those of the state Department of Agriculture, Trade and Consumer Protection and all other applicable regulations;
- (6) All mobile recreational vehicles placed on site must meet one of the following:
  - a. Be fully licensed, if required, and ready for highway use; or
  - b. No occupy any site in the campground for more than 180 consecutive days, at which time the recreational vehicle must be removed from the floodplain for a minimum of 24 hours; or
  - c. Meet the requirements in either sections 22-170, 22-171, or 22-172 for the floodplain district in which the structure is located;

A mobile recreational vehicle is ready for highway use if it is on wheels or jacking system, if attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

- (7) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit consistent with section 22-169(6) and shall ensure compliance with all the provisions of this section;
- (8) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section;
- (9) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued; and
- (10) All service facilities, including but not limited to refuse collection, electrical service, gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation; and
- (11) Standards for structures in a campground:
  - a. All structures must comply with section 2.4 or meet the applicable requirements in sections 22-170, 22-171, or 22-172 for the floodplain district in which the structure is located;
  - b. Deck / landing-a portable landing may be allowed for a camping unit for each entry provided that the landing is not permanently attached to the ground or camping unit, is no more than 200 square feet in size, shall be portable, contain no walls or roof, and can be removed from the campground by a truck and/or trailer. Sections of such portable landings may be placed together to form a single deck not greater than 200 square feet at one entry point. Provisions for the removal of these temporary landings during flood events must be addressed within the written agreement with the municipality compliant with section 22-169(4). Any such deck/landing structure may be constructed at elevations lower than the flood protection

elevation but must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.

- c. Decks/patios that are constructed completely at grade may be allowed, but must also comply with applicable shoreland zoning standards.
  - d. Camping equipment and appurtenant equipment in the campground may be allowed provided that the equipment is not permanently attached to the ground or camping unit, is not used as a habitable structure, and must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood. Provisions for the removal of this equipment during flooding events shall be addressed within the written agreement with the municipality compliant with section 22-169(4).
  - e. Once a flood warning in the written agreement has been issued for the campground, the campground owner or the designated operator shall ensure that all persons, camping units, decks, camping equipment and appurtenant equipment in the campground shall be evacuated within the timelines specified within the written agreement with the municipality compliant with section 22-169(4).
- (12) A land use permit shall be obtained as provided under section 22-174(a)(2) before any development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated.

#### **SEC. 22-170 FLOODWAY DISTRICT (FW).**

(a) Applicability.

This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to section 22-172(e).

(b) Permitted Uses.

The following open space uses are allowed in the Floodway District and the floodway areas of the General Floodplain District, if:

- they are not prohibited by any other ordinance;
  - they meet the standards in sections 22-170(c) and (d); and
  - all permits or certificates have been issued according to section 22-174(a).
- (1) Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.
  - (2) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
  - (3) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of section

22-170(c)(4).

- (4) Uses or structures accessory to open space uses or classified as historic structures that comply with section 22-170(c) and section 22-170(d).
- (5) Extraction of sand, gravel or other materials that comply with section 22-170(c)(4).
- (6) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with chs. 30 and 31, Stats.
  
- (7) Public utilities, streets and bridges that comply with section 22-170(c).
- (8) Portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch. SPS 383, Wis. Adm. Code.
- (9) Public or private wells used to obtain potable water for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code.
- (10) Wastewater treatment ponds or facilities permitted under s. NR 110.15(3)(b), Wis. Adm. Code.
- (11) Sanitary sewer or water supply lines to service existing or proposed development located outside the floodway that complies with the regulations for the floodplain area occupied.

(c) Standards for Developments in the Floodway.

(1) General

- a. Any development in the floodway shall comply with section 22-165 and have a low flood damage potential.
- b. Applicants shall provide an analysis calculating the effects of this proposal on the regional flood height to determine the effects of the proposal according to sections 22-166 and 22-174(a)(2)c. The analysis must be completed by a registered professional engineer in the state of Wisconsin.
- c. Any encroachment in the regulatory floodway is prohibited unless the data submitted for subd. 22-170(c)(1)b above demonstrates that the encroachment will cause no increase in flood elevations in flood events up to the base flood at any location or removes the encroached area from the regulatory floodway as provided in section 22-164(e).

(2) Structures

Structures accessory to permanent open space uses, including utility and sanitary facilities or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

- a. Not designed for human habitation, does not have a high flood damage potential and is constructed to minimize flood damage;
- b. Shall either have the lowest floor elevated to or above the flood protection elevation or shall meet all the following standards:
  1. Have the lowest floor elevated to or above the regional flood elevation and be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and completely dry to

- the flood protection elevation without human intervention during flooding;
- 2. Have structural components capable of meeting all provisions of Section 22-170(c)(2)g and;
- 3. Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with Section 22-170(c)(2)g.
- c. Must be anchored to resist flotation, collapse, and lateral movement;
- d. Mechanical and utility equipment must be elevated to or above the flood protection elevation; and
- e. Must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.
- f. For a structure designed to allow the automatic entry of floodwaters below the Regional Flood Elevation, the applicant shall submit a plan that meets sections 22-170(c)(2)a through 22-170(c)(2)e and meets or exceeds the following standards:
  1. The lowest floor must be elevated to or above the regional flood elevation;
  2. a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  3. the bottom of all openings shall be no higher than one foot above the lowest adjacent grade; openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters, otherwise must remain open.
  4. The use must be limited to parking, building access or limited storage.
- g. Certification. Whenever floodproofing measures are required, a registered professional engineer or architect shall certify that the following floodproofing measures will be utilized, where appropriate, and are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood:
  1. Reinforcement of floors and walls to resist rupture, collapse, or lateral movement caused by water pressures or debris buildup;
  2. Construction of wells, water supply systems and waste treatment systems so as to prevent the entrance of flood waters in such systems and must be in accordance with provisions in Sections 22-170(d)(4) and (5);
  3. Subsurface drainage systems to relieve external pressures on foundation walls and basement floors;
  4. Cutoff valves on sewer lines or the elimination of gravity flow basement drains; and
  5. Placement of utilities to or above the flood protection elevation.

(3) Public Utilities, Streets and Bridges – Public utilities, streets and bridges may be allowed by permit, if:

- a. Adequate floodproofing measures are provided to the flood protection

- elevation; and
- b. Construction meets the development standards of section 22-166.

(4) Fills of Deposition of Materials

- a. Fills or deposition of materials may be allowed by permit, if:
  - 1. The requirements of section 22-166 are met;
  - 2. No material is deposited in navigable waters unless a permit is issued by the Department pursuant to ch. 30, Stats., and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and all other requirements have been met;
  - 3. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and
  - 4. The fill is not classified as a solid or hazardous material.

(d) Prohibited Uses.

- (1) All uses not listed as permitted uses in section 22-170(b) are prohibited, including the following uses:

- a. Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;
- b. Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- c. Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- d. Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department- approved campgrounds that meet the applicable provisions of local ordinances and ch. SPS 383, Wis. Adm. Code;
- e. Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code;
- f. Any solid or hazardous waste disposal sites;
- g. Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code; and
- h. Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

**SEC. 22-171 FLOODFRINGE DISTRICT (FF).**

(a) Applicability.

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to section 5.1(5).

(b) Permitted Uses.

Any structure, land use, or development is allowed in the Floodfringe District if the standards in section 22-171(c) are met, the use is not prohibited by this, or any other ordinance or regulation, and all permits or certificates specified in section 22-174(a) have been issued.

(c) Standards for Development in the Floodfringe

Section 22-165 shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of section 22-173 *Nonconforming Uses*;

(1) Residential Uses

- a. Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe, shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of section 22-173 *Nonconforming Uses*;
- b. All new construction, including placement of manufactured homes, and substantial improvement of residential structures, shall have the lowest floor elevated to or above the flood protection elevation on fill. The fill around the structure shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. No area may be removed from the floodfringe district unless it can be shown to meet section 22-164(e).
- c. Notwithstanding section 22-171(c)(1)a, a basement or crawlspace floor may be placed at the regional flood elevation if the basement or crawlspace is designed to make all portions of the structure below the flood protection elevation watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. No floor of any kind is allowed below the regional flood elevation;
- d. Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in subd. e.
- e. In developments where existing street or sewer line elevations make compliance with subd. d impractical, the municipality may permit new development and substantial improvements where roads are below the regional flood elevation, if:
  1. The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
  2. The municipality has a DNR-approved emergency evacuation plan that follows acceptable hazard mitigation planning guidelines.

(2) Accessory Structures or Uses

In addition to section 22-165, new construction and substantial improvements of Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

(3) Commercial Uses

In addition to section 22-165, any commercial structure which is erected, altered or moved into the floodfringe shall meet the requirements of section 22-171(c)(1). Subject to the requirements of section 22-171(c)(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(4) Manufacturing and Industrial Uses

In addition to section 22-165, any manufacturing or industrial structure which is erected, altered or moved into the floodfringe shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in section 22-174(e). Subject to the requirements of section 22-171(c)(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(5) Storage of Materials

Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with section 22-174(e). Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

(6) Public Utilities, Streets and Bridges

All utilities, streets, and bridges shall be designed to be compatible with comprehensive floodplain development plans; and

- a. When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction or repair of such facilities shall only be permitted if they are designed to comply with section 22-174(e).
- b. Minor roads or non-essential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

(7) Sewage Systems

All sewage disposal systems shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to section 22-174(e)(3), to the flood protection elevation and meet the provisions of all local ordinances and ch. SPS 383, Wis. Adm. Code.



(8) Wells

All wells shall be designed to minimize or eliminate infiltration of flood waters into the system, pursuant to section 22-174(e)(3), to the flood protection elevation and shall meet the provisions of chs. NR 811 and NR 812, Wis. Adm. Code.

(9) Solid Waste Disposal Sites

Disposal of solid or hazardous waste is prohibited in floodfringe areas.

(10) Deposition of Materials

Any deposited material must meet all the provisions of this article.

(11) Manufactured Homes

- a. Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.
- b. In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
  1. have the lowest floor elevated to the flood protection elevation; and
  2. be anchored so they do not float, collapse or move laterally during a flood.
- c. Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in section 22-171(c)(1).

(12) Mobile Recreational Vehicles

All mobile recreational vehicles must be on site for less than 180 consecutive days and be either:

- a. fully licensed and ready for highway use; or
- b. shall meet the elevation and anchoring requirements in section 22-171(c)(11)b and c.

A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions

**SEC. 22-172 GENERAL FLOODPLAIN DISTRICT (GFP).**

(a) Applicability.

The provisions for the General Floodplain District shall apply to development in all floodplains mapped as A, AO, AH, and in AE zones within which a floodway is not delineated on the Flood Insurance Rate Maps identified in section 22-

164(b)(2).

(b) Floodway Boundaries

For proposed development in zone A, or in zone AE within which a floodway is not delineated on the Flood Insurance Rate Map identified in section 22-164(b)(2), the boundaries of the regulatory floodway shall be determined pursuant to section 22-172(e). If the development is proposed to encroach upon the regulatory floodway, the development is subject to the standards of section 22-170. If the development is located entirely within the floodfringe, the development is subject to the standards of section 22-171.

(c) Permitted Uses

Pursuant to section 22-172(e) it shall be determined whether the proposed use is located within the floodway or floodfringe. Those uses permitted in the Floodway (section 22-170(b)) and Floodfringe (section 22-171(b)) Districts are allowed within the General Floodplain District, according to the standards of section 22-172(d) provided that all permits or certificates required under section 22-174(a) have been issued.

(d) Standards for Development in the General Floodplain District

Section 22-170 applies to floodway areas, determined pursuant to section 22-172(e); Section 22-171 applies to floodfringe areas, determined pursuant to section 22-172(e).

- (1) New construction and substantial improvement of structures in zone AO shall have the lowest floor, including basement, elevated:
  - a. To or above the depth, in feet, as shown on the FIRM Above the highest adjacent natural grade; or
  - b. If the depth is not specified on the FIRM, to or above two (2) feet above the highest adjacent natural grade.
- (2) New Construction and substantial improvement of structures in zone AH shall have the lowest floor, including basement, elevated to or above the flood protection elevation.
- (3) In AO/AH zones, provide adequate drainage paths to guide floodwaters around structures.
- (4) All development in zones AO and zone AH shall meet the requirements of section 22-171 applicable to flood fringe areas.

(e) Determining Floodway and Floodfringe Limits

Upon receiving an application for development within zone A, or within zone AE where a floodway has not been delineated on the Flood Insurance Rate Maps, the zoning administrator shall:

- (1) Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits,

stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures; and the flood zone as shown on the FIRM.

- (2) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries.
  - a. A Hydrologic and Hydraulic Study as specified in section 22-174(a)(2)c.
  - b. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
  - c. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

## **SEC. 22-173 NONCONFORMING USES.**

### (a) General

#### (1) Applicability

- a. The standards in this section shall apply to all uses and buildings that do not conform to the provisions contained within a floodplain zoning ordinance or with s. 87.30, Stats. and §§ NR 116.12-14, Wis. Adm. Code and 44 CFR 59-72., these standards shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this article or any amendment thereto. A party asserting existence of a lawfully established nonconforming use or structure has the burden of proving that the use or structure was compliant with the floodplain zoning ordinance in effect at the time the use or structure was created.
  - b. As permit applications are received for additions, modifications, or substantial improvements to nonconforming buildings in the floodplain, municipalities shall develop a list of those nonconforming buildings, their present equalized assessed value and a list of the costs of those activities associated with changes to those buildings.
- (2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this article may continue subject to the following conditions:
    - a. No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.

- b. The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.
- c. If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;
- d. The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
- e. No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with section 22-171(c)(1). The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;
- f. No maintenance on a per event basis to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with section 22-171(c)(1). Maintenance to any nonconforming structure, which does not exceed 50% of its present equalized assessed value on a per event basis, does not count against the cumulative calculations over the life of the structure for substantial improvement calculations.
- g. If on a per event basis the total value of the work being done under e and f equals or exceeds 50% of the present equalized assessed value the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this article. Contiguous dry land access must be provided for residential and commercial uses in compliance with section 22-171(c)(1).
- h. Except as provided in subd. g, if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged,

it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.

- i. For nonconforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the following minimum requirements are met and all required permits have been granted prior to the start of construction:

1. Residential Structures

- a. Shall have the lowest floor, including basement, elevated to or above the Base Flood elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of section 22-174(e)(2).
- b. Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with methods and materials resistant to flood damage.
- c. Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
- d. In A Zones, obtain, review and utilize any flood data available from a federal, state or other source.
- e. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in s. 5.1(4).
- f. in AO Zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.

2. Nonresidential Structures

- a. Shall meet the requirements of section 22-173(a)(2) i 1 a-f.
- b. Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in section 22-174(e) (1) or (2).
- c. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in section 22-172(d).

(3) A nonconforming historic structure may be altered if the alteration will not preclude

the structure's continued designation as a historic structure, the alteration will comply with section 22-170(c)(1), flood resistant materials are used, and construction practices and floodproofing methods that comply with section 22-174(e) are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of section 22-173(a)(2) i 1 if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.

(b) Floodway District

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the Floodway District, unless such modification or addition:
  - a. Has been granted a permit or variance which meets all ordinance requirements;
  - b. Meets the requirements of section 22-173(a);
  - c. Shall not increase the obstruction to flood flows or regional flood height;
  - d. Any addition to the existing structure shall be floodproofed, pursuant to section 22-174(e), by means other than the use of fill, to the flood protection elevation; and
  - e. If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
    1. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
    2. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
    3. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
    4. The use must be limited to parking, building access or limited storage.
- (2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances, section 22-174(e)(3) and ch. SPS 383, Wis. Adm. Code.
- (3) No new well or modification to an existing well used to obtain potable water shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing well in the Floodway District shall meet the applicable requirements of all municipal ordinances, section 22-174(e)(3) and chs. NR 811 and NR 812, Wis. Adm. Code.

(c) Floodfringe District

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality and meets the requirements of section 22-171(c) except where section 22-173(c)(2) is applicable.
- (2) Where compliance with the provisions of subd. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Adjustment/Appeals, using the procedures established in section 22-174(c), may grant a variance from those provisions of subd. (1) for modifications or additions using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
  - a. No floor is allowed below the regional flood elevation for residential or commercial structures;
  - b. Human lives are not endangered;
  - c. Public facilities, such as water or sewer, shall not be installed;
  - d. Flood depths shall not exceed two feet;
  - e. Flood velocities shall not exceed two feet per second; and
  - f. The structure shall not be used for storage of materials as described in section 22-171(c)(5).
- (3) All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances, section 22-174(e)(3) and ch. SPS 383, Wis. Adm. Code.
- (4) All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this article, section 22-174(e)(3) and ch. NR 811 and NR 812, Wis. Adm. Code.

**SEC. 22-174 ADMINISTRATION.**

Where a zoning administrator, planning agency or a board of appeals has already been appointed to administer a zoning ordinance adopted under ss. 59.69, 59.692 or 62.23(7), Stats., these officials shall also administer this article.

(a) Zoning Administrator

- (1) Duties and Powers – The zoning administrator is authorized to administer this chapter and shall have the following duties and powers:
  - a. Advise applicants of the article provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
  - b. Issue permits and inspect properties for compliance with provisions of this ordinance and issue certificates of compliance where appropriate.
  - c. Inspect and assess all damaged floodplain structures to determine if substantial damage to the structures has occurred.

- d. Keep records of all official actions such as:
  - 1. All permits issued, inspections made, and work approved;
  - 2. Documentation of certified lowest floor and regional flood elevations;
  - 3. Floodproofing certificates.
  - 4. Water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances, and amendments.
  - 5. All substantial damage assessment reports for floodplain structure.
  - 6. List of nonconforming structures and uses.
- e. Submit copies of the following items to the Department Regional office:
  - 1. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
  - 2. Copies of case-by-case analyses and other required information.
  - 3. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.
- f. Investigate, prepare reports, and report violations of this ordinance to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.
- g. Submit copies of amendments to the FEMA Regional office.

(2) Land Use Permit – A land use permit shall be obtained before any development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated.

Application to the zoning administrator shall include:

- a. General Information
  - 1. Name and address of the applicant, property owner and contractor;
  - 2. Legal description, proposed use, and whether it is new construction of a modification;
- b. Site Development Plan – A site plan to scale shall be submitted with the permit application form and shall contain:
  - 1. Location, dimensions, area and elevation of the lot;
  - 2. Location of the ordinary highwater mark of any abutting navigable waterways;
  - 3. Location of any structures with distances measured from the lot lines and street center lines;
  - 4. Location of any existing or proposed on-site sewage systems or private water supply systems;
  - 5. Location and elevation of existing or future access roads;
  - 6. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
  - 7. The elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study – either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum



- (NAVD);
8. Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of sections 22-170 or 22-171 are met; and
  9. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to section 22-166. This may include any of the information noted in section 22-170(c)(1).
- c. Hydraulic and Hydrologic Studies to Analyze Development - All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the State. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the Department.
1. Zone A floodplains and in AE zones within which a floodway is not delineated:
    - a. Hydrology – The appropriate method shall be based on the standards in ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.
    - b. Hydraulic modeling - The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:
      1. Determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.
      2. channel sections must be surveyed.
      3. minimum four-foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping
      4. a maximum distance of 500 feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.
      5. the most current version of HEC-RAS shall be used.
      6. a survey of bridge and culvert openings and the top of road is required at each structure.
      7. additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.
      8. standard accepted engineering practices shall be used when assigning parameters for the base model such as flow,

Manning's N values, expansion and contraction coefficients or effective flow limits. The base model shall be calibrated to past flooding data such as high water marks to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.

9. The model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.
- c. Mapping – A work map of the reach studied shall be provided, showing all cross-section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development and whether the proposed development is located in the floodway.
  1. If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.
  2. If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.
2. Zone AE Floodplains
  - a. Hydrology – If the proposed hydrology will change the existing study, the appropriate method to be used shall be based on ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.
  - b. Hydraulic model – The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:
    1. Duplicate Effective Model - The effective model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the effective model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.
    2. Corrected Effective Model - The Corrected Effective Model

shall not include any man-made physical changes since the effective model date but shall import the model into the most current version of HEC-RAS for Department review.

3. Existing (Pre-Project Conditions) Model - The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.
  4. Revised (Post-Project Conditions) Model - The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.
  5. All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.
  6. Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the effective model and result in water surface elevations and topwidths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.
- c. Mapping – Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:
1. Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.
  2. Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised
  3. Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.
  4. If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plane Coordinate System in accordance with FEMA

mapping specifications.

5. The revised floodplain boundaries shall tie into the effective floodplain boundaries.
6. All cross sections from the effective model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.
7. Both the current and proposed floodways shall be shown on the map.
8. The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.

- d. Expiration – All permits issued under the authority of this ordinance shall expire no more than 180 days after issuance. The permit may be extended for a maximum of 180 days for good and sufficient cause. If the permitted work has not started within 180 days of the permit date, the development must comply with any regulation, including any revision to the FIRM or FIS, that took effect after the permit date.

(3) Certificate of Compliance – No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:

- a. The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this article;
- b. Application for such certificate shall be concurrent with the application for a permit;
- c. If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- d. The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that the requirements of section 22-174(e) are met.
- e. Where applicable pursuant to section 22-172(d), the applicant must submit a certification by a registered professional engineer or surveyor of the elevation of the bottom of the lowest horizontal structural member supporting the lowest floor (excluding pilings or columns), and an indication of whether the structure contains a basement.

- f. Where applicable pursuant to section 22-172(d), the applicant must submit certifications by a registered professional engineer or architect that the structural design and methods of construction meet accepted standards of practice as required by section 22-172(d).

(4) Other Permits – Prior to obtaining a floodplain development permit the applicant must secure all necessary permits from federal, state, and local agencies, including but not limited to those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

(b) Zoning Agency

(1) The Village of New Auburn Plan Commission shall:

- a. Oversee the functions of the office of the zoning administrator; and
- b. review and advise the governing body on all proposed amendments to this ordinance, maps and text.
- c. publish adequate notice pursuant to Ch. 985, Stats., specifying the date, time, place and subject of the public hearing.

(2) The Village Plan Commission shall not:

- a. grant variances to the terms of the ordinance in place of action by the Board of Appeals; or
- b. amend the text or zoning maps in place of official action by the governing body.

(c) Board of Appeals - The Board of Appeals, created under s. 62.23(7)(e), Stats., is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The zoning administrator shall not be the secretary of the Board.

(1) Powers and Duties – The Board of Appeals shall:

- a. Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance;
- b. Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map; and
- c. Variances - Hear and decide, upon appeal, variances from the ordinance standards.

(2) Appeals to the Board.

- a. Appeals to the board may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the

board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all records regarding the matter appealed.

- b. Notice and Hearing for Appeals Including Variances
  1. Notice – The board shall:
    - a. Fix a reasonable time for the hearing;
    - b. Public adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing; and
    - c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.
  2. Hearing – Any party may appear in person or by agent. The board shall:
    - a. Resolve boundary disputes according to section 22-174(c)(3);
    - b. Decide variance applications according to section 22-174(c)(4); and
    - c. Decide appeals of permit denials according to section 22-174(d).
  - c. Decision: The final decision regarding the appeal or variance application shall:
    1. Be made within a reasonable time;
    2. Be sent to the Department Regional office within 10 days of the decision;
    3. Be a written determination signed by the chairman or secretary of the Board;
    4. State the specific facts which are the basis for the Board’s decision;
    5. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application; and
    6. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(3) Boundary Disputes – The following procedures shall be used by the Board in hearing disputes concerning floodplain dispute boundaries:

- a. If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary.
- b. The person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board; and
- c. If the boundary is incorrectly mapped, the Board should inform the zoning committee or the person contesting the boundary location to petition the governing body for a map amendment according to section 22-175 *Amendments*.

(4) Variance

- a. The Board may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:
  1. Literal enforcement of the ordinance will cause unnecessary hardship;
  2. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
  3. The variance is not contrary to the public interest; and
  4. The variance is consistent with the purpose of this ordinance in section 22-162.
- b. In addition to the criteria in subd. a, to qualify for a variance under FEMA regulations, the Board must find that the following criteria have been met:
  1. The variance shall not cause any increase in the regional flood elevation;
  2. The applicant has shown good and sufficient cause for issuance of the variance;
  3. Failure to grant the variance would result in exceptional hardship;
  4. Granting the variance will not result in additional threats to public safety, extraordinary expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
  5. The variance granted is the minimum necessary, considering the flood hazard, to afford relief.
- c. A variance shall not:
  1. Grant, extend or increase any use prohibited in the zoning district;
  2. Be granted for a hardship based solely on an economic gain or loss;
  3. Be granted for a hardship which is self-created.
  4. Damage the rights or property values of other persons in the area;
  5. Allow actions without the amendments to this ordinance or map(s) required in section 22-175 Amendments; and
  6. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.
- d. When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to \$25.00 per \$100.00 of coverage. A copy shall be maintained with the variance record.

(d) To Review Appeals of Permit Denials

- (1) The Zoning Agency (section 22-174(b)) or Board shall review all data related to the appeal. This may include:
  - a. Permit application data listed in section 22-174(a)(2);
  - b. Floodway/floodfringe determination data in section 22-172(e);
  - c. Data listed in section 22-170(c)(1)b where the applicant has not submitted this information to the zoning administrator; and
  - d. Other data submitted with the application or submitted to the Board with the appeal.

- (2) For appeals of all denied permits the Board shall:

- a. Follow the procedures of section 22-174(c);
  - b. Consider zoning agency recommendations; and
  - c. Either uphold the denial or grant the appeal.
- (3) For appeals concerning increases in regional flood elevation the Board shall:
- a. Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per the requirements of section 22-175 *Amendments*; and
  - b. Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase provided no other reasons for denial exist.

(e) Floodproofing Standards

- (1) No permit or variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to or above the flood protection elevation and submits a FEMA Floodproofing Certificate. Floodproofing is not an alternative to the development standards in ss. 22-165, 22-170, 22-171, or 22-172.
- (2) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:
- a. certified by a registered professional engineer or architect; or
  - b. meeting or exceeding the following standards:
    - 1. a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - 2. the bottom of all openings shall be no higher than one-foot above grade; and
    - 3. openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (3) Floodproofing measures shall be designed, as appropriate, to:
- a. Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
  - b. Protect structures to the flood protection elevation;
  - c. Anchor structures to foundations to resist flotation and lateral movement;
  - d. Minimize or eliminate infiltration of flood waters;
  - e. Minimize or eliminate discharges into flood waters;
  - f. Placement of essential utilities to or above the flood protection elevation; and
  - g. If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
    - 1. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human



intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;

2. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
3. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
4. The use must be limited to parking, building access or limited storage.

(f) Public Information

- (1) Place marks on structures to show the depth of inundation during the regional flood.
- (2) All maps, engineering data and regulations shall be available and widely distributed.
- (3) Real estate transfers should show what floodplain district any real property is in.

**SEC. 22-175 AMENDMENTS.**

(a) Obstructions or increases may only be permitted if amendments are made to this article, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with section 22-175(b).

- (1) In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this article, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with section 22-175(b). Any such alterations must be reviewed and approved by FEMA and the DNR.
- (2) In A Zones increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this article, the official floodplain maps, floodway lines, and water surface profiles, in accordance with section 22-175(b).

(b) General

- (1) The governing body shall change or supplement the floodplain zoning district boundaries and this article in the manner outlined in section 22-175(c) below. Actions which require an amendment to the article and/ or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:
  - a. Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height;
  - b. Any change to the floodplain boundaries and/or watercourse alterations on the FIRM;
  - c. Any floodplain fill which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
  - d. Correction of discrepancies between the water surface profiles and floodplain maps;

- e. Any upgrade to a floodplain zoning ordinance text required by s. NR 116.05, Wis.
- f. Adm. Code, or otherwise required by law, or for changes by the municipality; and
- g. All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

(c) Procedures

- (1) Article amendments may be made upon petition of any party according to the provisions of s. 62.23, Stats. The petitions shall include all data required by section 22-172(e) and 22-174(a)(2). The Land Use Permit shall not be issued until a Letter of Map Revision is issued by FEMA for the proposed changes.
- a. The proposed amendment shall be referred to the zoning agency for a public hearing and recommendation to the governing body. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of s. 62.23, Stats.
  - b. No amendments shall become effective until reviewed and approved by the Department.
  - c. All persons petitioning for a map amendment that obstructs flow causing any increase in the regional flood height, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.

**SEC. 22-176 ENFORCEMENT AND PENALTIES.**

- (a) Any violation of the provisions of this article by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not more than \$50.00 (fifty dollars), together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this article is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30, Stats.

**SEC. 22-177 DEFINITIONS.**

Unless specifically defined, words and phrases in this article shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.

**A ZONES.** Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

**AH ZONE.** See “AREA OF SHALLOW FLOODING”.

**AO ZONE.** See “AREA OF SHALLOW FLOODING”.

**ACCESSORY STRUCTURE OR USE.** A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building. An accessory structure shall not be used for human habitation.

**ALTERATION.** An enhancement, upgrade or substantial change or modification other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.

**AREA OF SHALLOW FLOODING.** A designated AO, AH, AR/AO, AR/AH, or VO zone on a community’s Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

**BASE FLOOD.** Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.

**BASEMENT.** Any enclosed area of a building having its floor sub-grade on all sides.

**BREAKAWAY WALL.** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**BUILDING.** See STRUCTURE.

**BULKHEAD LINE.** A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.

**CAMPGROUND.** Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping

units, or which is advertised or represented as a camping area.

**CAMPING UNIT.** Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, or tent that is fully licensed, if required, and ready for highway use.

**CERTIFICATE OF COMPLIANCE.** A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.

**CHANNEL** – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

**CRAWLWAYS or CRAWL SPACE** – An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.

**DECK** – An unenclosed exterior structure that has no roof or sides and has a permeable floor which allows the infiltration of precipitation.

**DEPARTMENT** – The Wisconsin Department of Natural Resources.

**DEVELOPMENT** – Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

**DRYLAND ACCESS** – A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

**ENCROACHMENT** – Any fill, structure, equipment, use or development in the floodway.

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)** – The federal agency that administers the National Flood Insurance Program.

**FLOOD INSURANCE RATE MAP (FIRM)** – A map of a community on which the Federal

Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

**FLOOD or FLOODING** – A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:

- The overflow or rise of inland waters;
- The rapid accumulation or runoff of surface waters from any source;
- The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
- The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

**FLOOD FREQUENCY** – The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent (%) chance of occurring in any given year.

**FLOODFRINGE** – That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.

**FLOOD HAZARD BOUNDARY MAP** – A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.

**FLOOD INSURANCE STUDY** – A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

**FLOODPLAIN** – Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.

**FLOODPLAIN ISLAND** – A natural geologic land formation within the floodplain that

is surrounded, but not covered, by floodwater during the regional flood.

**FLOODPLAIN MANAGEMENT** – Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

**FLOOD PROFILE** – A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

**FLOODPROOFING** – Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

**FLOOD PROTECTION ELEVATION** – An elevation of two feet of freeboard above the Regional Flood Elevation. (Also see: FREEBOARD.)

**FLOOD STORAGE** – Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

**FLOODWAY** – The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

**FREEBOARD** – A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.

**HABITABLE STRUCTURE** – Any structure or portion thereof used or designed for human habitation.

**HEARING NOTICE** – Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.

**HIGH FLOOD DAMAGE POTENTIAL** – Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

**HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE** – Any structure that is either:

Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.

**INCREASE IN REGIONAL FLOOD HEIGHT** – A calculated upward rise in the regional flood elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

**LAND USE** – Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)

**LOWEST ADJACENT GRADE** – Elevation of the lowest ground surface that touches any of the exterior walls of a building.

**LOWEST FLOOR** – The lowest floor of the lowest enclosed area (including basement).

**MAINTENANCE** – The act or process of ordinary upkeep and repairs, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.

**MANUFACTURED HOME** – A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."

**MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION** – A parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.

**MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING** – A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction

of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

**MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING** – The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.

**MOBILE RECREATIONAL VEHICLE** – A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."

**MODEL, CORRECTED EFFECTIVE** – A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.

**MODEL, DUPLICATE EFFECTIVE** – A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.

**MODEL, EFFECTIVE** – The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.

**MODEL, EXISTING (PRE-PROJECT)** – A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.

**MODEL, REVISED (POST-PROJECT)** – A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.

**MUNICIPALITY or MUNICIPAL** – The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.



**NAVD or NORTH AMERICAN VERTICAL DATUM** – Elevations referenced to mean sea level datum, 1988 adjustment.

**NGVD or NATIONAL GEODETIC VERTICAL DATUM** – Elevations referenced to mean sea level datum, 1929 adjustment.

**NEW CONSTRUCTION** – Structures for which the start of construction commenced on or after the effective date of a floodplain zoning regulation adopted by this community and includes any subsequent improvements to such structures.

**NON-FLOOD DISASTER** – A fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.

**NONCONFORMING STRUCTURE** – An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)

**NONCONFORMING USE** – An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)

**OBSTRUCTION TO FLOW** – Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.

**OFFICIAL FLOODPLAIN ZONING MAP** – That map, adopted and made part of this ordinance, as described in section 22-164(b), which has been approved by the Department and FEMA.

**OPEN SPACE USE** – Those uses having a relatively low flood damage potential and not involving structures.

**ORDINARY HIGHWATER MARK** – The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

**PERSON** – An individual, or group of individuals, corporation, partnership, association, municipality or state agency.

**PRIVATE SEWAGE SYSTEM** – A sewage treatment and disposal system serving one

structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.

**PUBLIC UTILITIES** – Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

**REASONABLY SAFE FROM FLOODING** – Means base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

**REGIONAL FLOOD** – A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.

**START OF CONSTRUCTION** – The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** – Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

**SUBDIVISION** – Has the meaning given in s. 236.02(12), Wis. Stats.

**SUBSTANTIAL DAMAGE** – Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50

percent of the equalized assessed value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** – Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure’s continued designation as a historic structure.

**UNNECESSARY HARDSHIP** – Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.

**VARIANCE** – An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.

**VIOLATION** – The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

**WATERSHED** – The entire region contributing runoff or surface water to a watercourse or body of water.

**WATER SURFACE PROFILE** – A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

**WELL** – means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

**SEC. 22-178 THROUGH SEC. 22-179 RESERVED FOR FUTURE USE.**

## **ARTICLE 11**

### **SHORELAND OVERLAY DISTRICT**

#### **SEC. 22-180 STATUTORY AUTHORIZATION.**

- (a) This article is adopted pursuant to the authorization in Wis. Stat. sec. 61.35 and 61.353.

#### **SEC. 22-181 FINDINGS OF FACT AND PURPOSE.**

- (a) Uncontrolled use of shorelands and pollution of the navigable waters of the municipality would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities to:
- (1) Promote the public health, safety, convenience and general welfare;
  - (2) Limit certain land use activities detrimental to shorelands; and
  - (3) Preserve shore cover and natural beauty by controlling the location of structures in shoreland areas.

#### **SEC. 22-182 GENERAL PROVISIONS.**

- (a) Compliance - The use of shorelands within the shoreland area of the municipality shall be in full compliance with the terms of this article and other applicable local, state or federal regulations. All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this article.
- (b) Municipalities and State Agencies Regulated - Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this article and obtain all necessary permits. State agencies are required to comply if Wis. Stat. sec. 13.48(13) applies.
- (c) Abrogation and Greater Restrictions
- (1) This article supersedes all the provisions of any other applicable municipal ordinance except that where another municipal ordinance is more restrictive than this article, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
  - (2) This article is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this article imposes greater restrictions, the provisions of this article shall prevail.
- (d) Interpretation – In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes or Wisconsin Constitution.
- (e) Severability – Should any portion of this article be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be

affected.

(f) Applicability of Shoreland Regulations

(1) The Shoreland Zoning regulations apply only to the following shorelands:

- a. A shoreland that was annexed by the Village of New Auburn after May 7, 1982, and that prior to annexation was subject to a county shoreland zoning ordinance under Wis. Stat. sec. 59.692; and
- b. A shoreland that before incorporation by the Village of New Auburn was part of a town that was subject to a county shoreland zoning ordinance under Wis. Stat. sec. 59.692 if the date of incorporation was after April 30, 1994.

(2) Determinations of the ordinary highwater mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate office of the Wisconsin Department of Natural Resources for a final determination of ordinary highwater mark.

(3) Effect on Existing Land Division, Sanitary, Zoning and Other Regulations - The lands regulated by this article are subject to all applicable provisions of the Village of New Auburn Municipal Code. Where the provisions of this article are more restrictive than other regulations in the Municipal Code, the provisions of this article shall apply.

**SEC. 22-183 SETBACKS FROM THE WATER.**

(a) Building and Structure Setbacks.

(1) All buildings and structures shall be setback at least 50 feet from the ordinary high-water mark.

(2) Reduced Principal building setback: A setback less than the 50' setback required from the ordinary high water mark shall be permitted for a proposed principal structure and shall be determined as follows:

- a. Where there are existing principal buildings on each adjacent lot, the setback shall equal the average of the distances the two existing principal buildings are setback from the ordinary high water mark or 35' from the ordinary high water mark, whichever distance is greater.

**SEC. 22-184 MAINTENANCE, REPAIR, REPLACEMENT, OR VERTICAL EXPANSION OF NONCONFORMING STRUCTURES.**

(a) An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the nonconforming structure. Further, an existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. The expansion of a structure beyond the existing footprint may be allowed if the expansion is necessary to comply with applicable state or federal requirements.

**SEC. 22-185 MAINTENANCE, REPAIR, REPLACEMENT, OR VERTICAL EXPANSION OF STRUCTURES THAT WERE AUTHORIZED BY VARIANCE.**

- (a) A structure of which any part has been authorized to be located within the shoreland setback area by a variance granted before July 13, 2015 may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the authorized structure. Additionally, the structure may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. The expansion of a structure beyond the existing footprint may be allowed if the expansion is necessary to comply with applicable state or federal requirements.

**SEC. 22-186 DEFINITIONS.**

In this Article, the following definitions apply.

**Principal building.** The main building or structure on a single lot or parcel of land and includes any attached garage or attached porch.

**Shorelands.** Lands within the following distances from the ordinary highwater mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

**Shoreland setback area.** An area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of structures has been limited or prohibited.

**SEC. 22-187 THROUGH SEC. 22-189 RESERVED FOR FUTURE USE.**

## **ARTICLE 12**

### **SHORELAND-WETLAND OVERLAY DISTRICT**

#### **SEC. 22-190 STATUTORY AUTHORIZATION.**

(b) This article is adopted pursuant to the authorization in section 61.351, Wis. Stats.

#### **SEC. 22-191 FINDING OF FACT AND PURPOSE.**

(a) Uncontrolled use of the shoreland-wetlands and pollution of the navigable waters of the municipality would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities to:

- (1) Promote the public health, safety, convenience and general welfare;
- (2) Maintain the storm and flood water storage capacity of wetlands;
- (3) Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- (4) Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat;
- (5) Prohibit certain uses detrimental to the shoreland wetland area; and
- (6) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland wetland excavation, filling and other earth moving activities.

#### **SEC. 22-192 GENERAL PROVISIONS.**

(a) Compliance – The use of wetlands and the alteration of wetlands within the shoreland area of the municipality shall be in full compliance with the terms of this article and other applicable local, state or federal regulations. (However, see section 22-196 of this article, for the standards applicable to nonconforming uses located within a shoreland-wetlands district.) All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this article.

(b) Municipalities and State Agencies Regulated – Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this article and obtain all necessary permits. State agencies are required to comply if section 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when section 30.2022(1m), Wis. Stats., applies.

(c) Abrogation and Greater Restrictions

- (1) This article supersedes all the provisions of any municipal zoning ordinance enacted under sections 61.35, 62.23 or 87.30, Wis. Stats., which relate to floodplains and shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than this article, that ordinance shall continue in full force and effect to

the extent of the greater restrictions, but not otherwise.

(2) This article is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this article shall prevail.

(d) Interpretation – In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this article is required by a standard in chapter NR 117, Wis. Adm. Code, and where the article provision is unclear, the provision shall be interpreted in light of the chapter NR 117 standards in effect on the date of the adoption of this article or in effect on the date of the most recent text amendment to this article.

(e) Severability – Should any portion of this article be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this article shall not be affected.

## **SEC. 22-193 SHORELAND-WETLAND ZONING DISTRICT.**

(a) Shoreland-Wetland Zoning Maps

(1) The following maps are hereby adopted and made part of this article and are on file in the office of the municipal Clerk:

- a. The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer is made part of this article. The maps can be viewed at <http://dnrmaps.wi.gov/SL/Viewer.html?Viewer=SWDV&runWorkflow=Wetland>.
- b. Floodplain maps titled “National Flood Insurance Program (NFIP) Flood Insurance Rate Maps (FIRM)”, with various effective dates as approved by FEMA.
- c. United State Geological Survey maps titled and dated.
- d. Zoning map for the Village of New Auburn, dated December 20, 2022, and as updated.

(b) District Boundaries

(1) The shoreland wetland zoning district includes all wetlands in the municipality which are five acres or more and are shown on the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer and made a part of this article and which are:

- a. Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the municipality shall be presumed to be navigable if they are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this article.
- b. Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain,



whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this article. Floodplain zoning maps adopted in section 22-193(a)(1)b. shall be used to determine the extent of floodplain areas.

- (2) Determinations of navigability and ordinary high-water mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator shall contact the appropriate office of the Department for a final determination of navigability or ordinary high-water mark.
- (3) When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official zoning maps and actual field conditions at the time the maps were adopted, the zoning administrator shall contact the appropriate office of the Department to determine if the shoreland-wetland district boundary as mapped, is in error. If Department staff concur with the zoning administrator that a particular area was incorrectly mapped as a wetland, the zoning administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors or acknowledge exempted wetlands designated in section 22-193(b)(4) and (5), the zoning administrator shall be responsible for initiating a map amendment within a reasonable period.
- (4) Filled Wetlands - Wetlands which are filled prior to the effective date of the municipality's original implementation of shoreland-wetland zoning, in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland, are not subject to this article.
- (5) Wetlands Landward of a Bulkhead Line - Wetlands located between the original ordinary high water mark and a bulkhead line established prior to May 7, 1982 under s. 30.11, Stats. are not subject to this article.

#### **SEC. 22-194 PERMITTED USES.**

- (a) The following uses are permitted subject to the provisions of chapter 30 and 31, Wis. Stats., and the provisions of other local, state and federal laws, if applicable:
  - (1) Activities and uses which do not require the issues of a zoning permit, provided that no wetland alteration occurs:
    - a. Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;
    - b. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
    - c. The practice of silviculture, including the planting, thinning and harvesting of timber;

- d. The pasturing of livestock;
- e. The cultivation of agricultural crops; and
- f. The construction and maintenance of duck blinds.

(2) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:

- a. The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected;
- b. The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries;
- c. The maintenance and repair of existing drainage systems to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is otherwise permissible and that dredged spoil is placed on existing spoil banks where possible;
- d. The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
- e. The construction and maintenance of piers, docks, walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance;
- f. The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland listed in section 22-198(a)(3) of this article; and
- g. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

(3) Uses which are allowed upon the issuance of a permit and which may include wetland alterations only to the extent specifically provided below:

- a. The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted under section 22-194, of this article, provided that:
  - 1. The road cannot, as a practical matter, be located outside the wetland;
  - 2. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in section 22-198(a)(3) of this article;
  - 3. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;

4. Road construction activities are carried out in the immediate area of the roadbed only; and
  5. Any wetland alteration must be necessary for the construction or maintenance of the road.
- b. The construction and maintenance of nonresidential buildings provided that:
1. The building is used solely in conjunction with a use permitted in the shoreland-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;
  2. The building cannot, as a practical matter, be located outside the wetland;
  3. The building does not exceed 500 square feet in floor area; and
  4. Only limited filling and excavating necessary to provide structural support for the building is allowed.
- c. The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:
1. Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;
  2. Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed;
  3. The construction and maintenance of roads necessary for the uses permitted under this paragraph are allowed only where such construction and maintenance meets the criteria in section 22-194(a)(3)a. of this article; and
  4. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
- d. The construction and maintenance of electric and telephone transmission lines, water and gas distribution lines and sewage collection lines and related facilities and the construction and maintenance of railroad lines provided that:
1. The utility transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
  2. Only limited filling or excavating necessary for such construction or maintenance is allowed; and
  3. Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in section 22-198(a)(3) of this ordinance.

**SEC. 22-195 PROHIBITED USES.**

- (a) Any use note listed in section 22-194 of this article is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this article in accordance with section 22-198 of this article.
- (b) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.

**SEC. 22-196 NONCONFORMING STRUCTURES AND USES WITHIN THE SHORELAND-WETLAND DISTRICT.**

- (a) The lawful use of a building, structure or property which existed at the time this article, or an applicable amendment to this article, took effect and which is not in conformity with the provisions of the article, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:
  - (1) The shoreland- wetland provisions of this article authorized by s. 61.351, Wis. Stats., shall not limit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure or of any environmental control facility related to such a structure in existence on the effective date of the shoreland-wetland provisions. All other modifications to nonconforming structures are subject to s. 62.23(7)(hb), Wis. Stats.
  - (2) If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this article.
  - (3) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this article adopted under sections 61.351 or 62.231, Wis. Stats., may be continued although such use does not conform with the provisions of the article. However, such nonconforming use may not be extended.
  - (4) The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of section 30.121, Wis. Stats.
  - (5) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

**SEC. 22-197 ADMINISTRATIVE PROVISIONS.**

- (a) Zoning Administrator – the zoning administrator shall have the following duties and powers:
  - (1) Advise applicants as to the provisions of this article and assist them in preparing permit applications and appeal forms.
  - (2) Issue permits and certificates of compliance and inspect properties for compliance with this article.
  - (3) Keep records of all permits issued, inspections made, work approved and other official actions.

- (4) Have access to any structure or premises between the hours of 8 a.m. and 6 p.m. for the purpose of performing these duties.
- (5) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within 10 days after they are granted or denied, to the appropriate office of the Department.
- (6) Investigate and report violations of this article to the appropriate municipal planning agency and the district attorney, corporation counsel or municipal attorney.

(b) Zoning Permits

- (1) When Required - Unless another section of this article specifically exempts certain types of development from this requirement, a zoning permit shall be obtained from the zoning administrator before any new development, as defined in section 22-200, of this article, or any change in the use of an existing building or structure is initiated.
- (2) Application - An application for a zoning permit shall be made to the zoning administrator upon forms furnished by the municipality and shall include, for the purpose of proper enforcement of these regulations, the following information:
  - a. General Information
    1. Name, address, and telephone number of applicant, property owner and contractor, where applicable.
    2. Legal description of the property and a general description of the proposed use or development.
    3. Whether or not a private water supply or sewage system is to be installed.
  - b. Site Development Plan – The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:
    1. Dimensions and area of the lot;
    2. Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;
    3. Description of any existing or proposed on-site sewage systems or private water supply systems;
    4. Location of the ordinary high-water mark of any abutting navigable waterways;
    5. Boundaries of all wetlands;
    6. Existing and proposed topographic and drainage features and vegetative cover;
    7. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps;
    8. Location of existing or future access roads; and
    9. Specifications and dimensions for areas of proposed wetland alteration.
  - c. Expiration – All permits issued under the authority of this article shall expire 12 months from the date of issuance.

(c) Certificates of Compliance

- (1) Except where no zoning permit or conditional use permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the zoning administrator subject to the following provisions:
  - a. The certificate of compliance shall show that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this article.
  - b. Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
  - c. The certificate of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises and proposed use thereof conform with all the provisions of this article.
- (2) The zoning administrator may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established by the municipal governing body.
- (3) Upon written request from the owner, the zoning administrator shall issue a certificate of compliance for any building or premises existing at the time of ordinance adoption, certifying after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this article.

(d) Conditional Use Permits

- (1) Application – Any use listed as a conditional use in this article shall be permitted only after an application has been submitted to the zoning administrator and a conditional use permit has been granted by the Board of Appeals following the procedures in sections 22-197(h)(2), (3) and (4) of this article.
- (2) Conditions - Upon consideration of the permit application and the standards applicable to the conditional uses designated in section 22-194(a)(3) of this article, the Board of Appeals shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this article, as are necessary to further the purposes of this article as listed in section 22-191. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion controls; increased setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Board of Appeals may require the applicant to furnish, in addition to the information required for a zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this article.

(e) Fees – The municipal governing body may, by resolution, adopt fees for the following:

- (1) Zoning permits.
  - (2) Certificates of compliance.
  - (3) Public hearings.
  - (4) Legal notice publications.
  - (5) Conditional use permits.
  - (6) Rezoning petitions.
- (f) Recording – Where a zoning permit or conditional use permit is approved, an appropriate record shall be made by the zoning administrator of the land use and structures permitted.
- (g) Revocation – Where the conditions of a zoning permit or conditional use permit are violated, the permit shall be revoked by the Board of Appeals.
- (h) Board of Appeals - The village president shall appoint a Board of Appeals under section 62.23(7)(e), Wis. Stats., consisting of five members subject to confirmation by the municipal governing body. The Board of Appeals shall adopt rules for the conduct of its business as required by section 62.23(7)(e)3., Wis. Stats.
- (1) Powers and Duties – The Board of Appeals:
    - a. Shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this article.
    - b. Shall hear and decide applications for conditional use permits.
    - c. May authorize upon appeal a variance from the dimensional standards of this article where an applicant convincingly demonstrates:
      - 1. That literal enforcement of the terms of the ordinance will result in unnecessary hardship for the applicant.
      - 2. That the hardship is due to special conditions unique to the property; and is not self-created or based solely on economic gain or loss;
      - 3. That such variance is not contrary to the public interest as expressed by the purpose of this article and;
      - 4. That such variance will not grant or increase any use of property which is prohibited in the zoning district.
  - (2) Appeals to the Board
    - a. Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any order, requirement, decision, or determination of the zoning administrator or other administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board by filing with the official whose decision is in question, and with the Board of Appeals, a notice of appeal specifying the reasons for the appeal. The zoning administrator or other official whose decision is in question shall transmit to the Board all the papers constituting the record on the matter appealed.
  - (3) Public Hearings

- a. Before making a decision on an appeal or application, the Board of Appeals shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a class 2 notice under ch. 985, Stats., specifying the date, time and place of the hearing and the matters to come before the Board. At the public hearing, any party may present testimony in person, by agent or by attorney.
- b. A copy of such notice shall be mailed to the parties in interest and the appropriate office of the Department at least 10 days prior to all public hearings on issues involving shoreland-wetland zoning.

(4) Decisions

- a. The final disposition of an appeal or application for a conditional use permit before the Board of Appeals shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the Board chairperson. Such decision shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse, or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution, or grant the application for a conditional use.
- b. A copy of such decision shall be mailed to the parties in interest and the appropriate office of the Department within 10 days after the decision is issued.

**SEC. 22-198 AMENDING SHORELAND-WETLAND ZONING REGULATIONS.**

- (a) The municipal governing body may alter, supplement or change the district boundaries and the regulations contained in this article in accordance with the requirements of section 62.23(7)(d)2., Wis. Stats., NR 117, Wis. Adm. Code, and the following:
  - (1) A copy of each proposed text or map amendment shall be submitted to the appropriate office of the Department within 5 days of the submission of the proposed amendment to the municipal planning agency;
  - (2) All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the municipal planning agency, and a public hearing shall be held after class II notice as required by section 62.23(7)(d)2., Wis. Stats. The appropriate office of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.
  - (3) In order to ensure that this article will remain consistent with the shoreland protection objectives of section 281.31, Wis. Stats., the municipal governing body may 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:
    - a. Storm and flood water storage capacity;
    - b. 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;



- c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
  - d. Shoreline protection against erosion;
  - e. Fish spawning, breeding, nursery or feeding grounds;
  - f. Wildlife habitat; or
  - g. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.
- (4) Where the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in section 22-198(a)(3), of this article, the Department shall so notify the municipality of its determination either prior to or during the public hearing held on the proposed amendment.
- (5) The appropriate office of the Department shall be provided with:
- a. A copy of the recommendation and report, if any, of the municipal planning agency on a proposed text or map amendment, within 10 days after the submission of those recommendations to the municipal governing body.
  - b. Written notice of the action on the proposed text or map amendment within 10 days after the action is taken.
- (6) If the Department notifies the municipal planning agency in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in section 22-198(a)(3), of this article, that proposed amendment, if approved by the municipal governing body, shall not become effective until more than 30 days have elapsed since written notice of the municipal approval was mailed to the Department, as required by section 22-198(a)(5)b of this article. If within the 30-day period, the Department notifies the municipality that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the municipality as provided by sections 62.231(6) and 61.351(6), Wis. Stats., the proposed amendment shall not become effective until the ordinance adoption procedure under section 62.231(6) or 61.351(6), Wis. Stats., is completed or otherwise terminated.

**SEC. 22-199 ENFORCEMENT AND PENALTIES.**

- (a) Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this ordinance in violation of the provisions of this article, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The zoning administrator shall refer violations to the municipal planning agency and the district attorney, corporation counsel or municipal attorney who shall prosecute such violations. Any person, firm, association, or corporation who violates or refuses to comply with any of the provisions of this ordinance shall be subject to a forfeiture as provided for in Chapter 1 of Village Ordinances. Each day of continued violation shall constitute a separate offense. Every violation of this article is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to section 87.30(2), Wis. Stats

## **SEC. 22-200 DEFINITIONS.**

For the purpose of administering and enforcing this article, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified, shall be measured horizontally.

The following terms used in this article mean:

**Accessory structure or use.** A detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principle structure or use to which it is related and which is located on the same lot as that of the principle structure or use.

**Boathouse.** As defined in section 30.121(1), Wis. Stats., means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of structural parts.

**Class 2 public notice.** Publication of a public hearing notice under chapter 985, Wis. Stats., in a newspaper of circulation in the affected area. Publication is required on two consecutive weeks, the last at least seven days prior to the hearing.

**Conditional use.** A use which is permitted by this article provided that certain conditions specified in the article are met and that a permit is granted by the Board of Appeals or, where appropriate, the planning agency designated by the municipal governing body.

**Department.** Means the Wisconsin Department of Natural Resources.

**Development.** Any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.

**Drainage system.** One or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

**Environmental control facility.** Any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

**Fixed houseboat.** As defined in section 30.121(1), Wis. Stats., means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

**Navigable waters.** Means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under section 281.31(2m), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under sections 61.351 or 62.231, Wis. Stats., and chapter NR 117, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if:

- (a) Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before ditching; and
- (b) Artificially constructed drainage ditches, ponds, or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

"Wisconsin's Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGaynor and Co., Inc., v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]. For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons."

**Ordinary high-water mark.** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

**Planning agency.** The municipal plan commission created under section 62.23(1), Wis. Stats., a board of public land commissioners or a committee of the municipality's governing body which acts on matters pertaining to planning and zoning.

**Shorelands.** Lands within the following distances from the ordinary high-water mark of navigable waters; 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

**Shoreland-wetland district.** The zoning district, created in this shoreland-wetland zoning article, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this ordinance.

**Unnecessary hardship.** That circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing

area, setbacks, frontage height or density unnecessarily burdensome or unreasonable in light of the purposes of this article.

**Variance.** An authorization granted by the Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this article.

**Wetlands.** Those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

**Wetland alteration.** Any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

# **EXHIBIT B**

**Adopted March 30, 2023**














**Official Zoning Map**

**Village of New Auburn, Wisconsin**

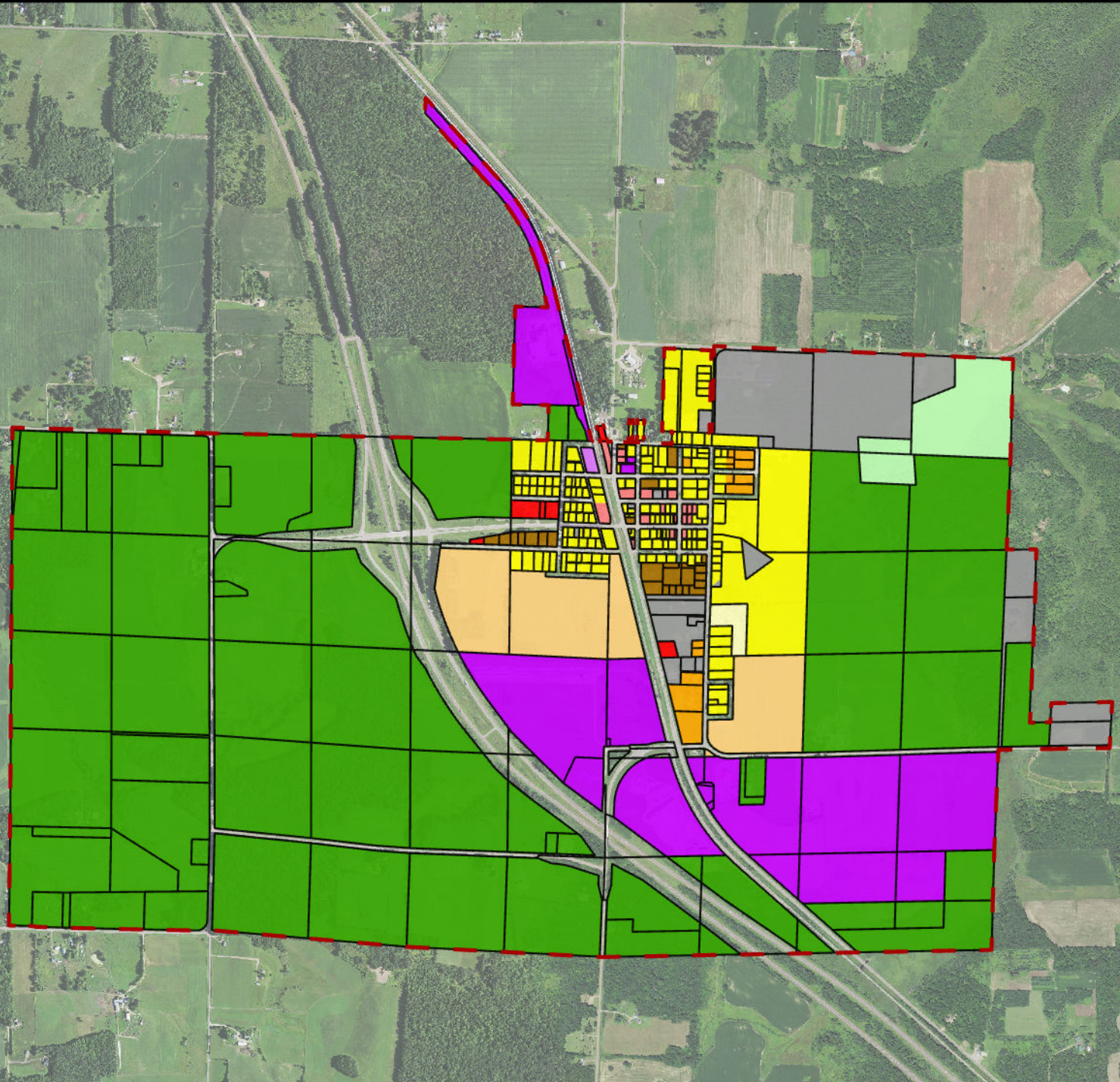




**Legend**

-  R1 - Single Family Residential
-  R2 - Single/Two Family Residential
-  R3 - Multiple Family Residential
-  MHP - Mobile Home Park
-  RD - Rural Development
-  C1 - Central Business
-  C2 - General Commercial
-  I1 - Light Industrial
-  I2 - Heavy Industrial
-  PI - Public & Institutional
-  GA - General Agricultural
-  W - Conservancy
-  Village Boundary

*Note: Railroad, street, highway, and telecommunication right-of-way has no color assigned on the map.*



**OFFICIAL ZONING MAP**  
VILLAGE OF NEW AUBURN, WI

Data Sources:  
WCWRPC, 2020 Aerial,  
2021 Statewide Parcels.

**Adopted March 30, 2023**

