

SECTION 17.05

CONDITIONAL USES

1. APPROVAL REQUIRED.

Certain uses and situations are of such a special nature, or are so dependent upon actual contemporary circumstances as to make impractical the predetermination of permissibility or the detailing in the chapter of the specific standards, regulations or conditions which would permit such use. Therefore, these uses, upon determination in each individual situation, may be permitted as conditional uses in such district, subject to such requirements as are hereinafter specified for each situation.

2. BASIS OF APPROVAL.

The determination of such conditional use by the Town Board shall be based on whether or not the proposed use will violate the spirit or intent of the chapter; be contrary to the public health, safety or general welfare; be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factor; or for any other reason cause an adverse effect on the property values and general desirability of the neighborhood. Except as may be specifically otherwise provided, any such use shall conform to the building location, height, area, yards, parking, loading, traffic and highway access regulations of the district in which it is located and the approving body may require compliance with such other conditions as may be deemed necessary in the specific situation in addition to any which may be herein stated. The location, building plan, site plan, and plan of operation shall be in sufficient detail to enable the Town to make its determination as to the appropriateness of the proposed grant of conditional use. The Town may take into consideration architectural and landscape treatments. Satisfactory provision shall be made for parking and circulation needs, for drainage and sewage disposal, for adequate planting screen where necessary, for operational control devices where necessary to eliminate noise, dust, odor or smoke; and such other factors as would be pertinent to such determination. Variances shall only be granted as provided in section 17.10 of this Chapter.

3. PROCEDURE.

A. Petition.

A request for grant of conditional use status shall be submitted in writing to the Town Clerk who shall promptly refer such petition to the Plan Commission for recommendation.

B. Data Required.

Such petition shall be accompanied by appropriate data and information necessary for proper evaluation of the request including specifically the following:

1. Names, addresses and phone numbers of the applicant, owner of the site, architect, engineer, and contractor.
2. The site legal description, location, zoning district, building and site plans, and plan of operation.
3. An accurate map of the property drawn to a reasonable scale, including indication of general terrain and topographic characteristics, the location of all significant terrain features such as streams, ponds, tree growth, etc., and the location of all existing structures.

4. An accurate and complete written description of the use for which conditional grant is being requested including pertinent statistics and operational characteristics.
5. An accurate and complete description of the current use of existing building and land.
6. Plans and other drawings showing proposed development of the site and buildings including landscape plans, location of parking and service areas, driveways, exterior lighting, type of building material, etc.
7. The names and complete mailing address, including zip code of the owners of all properties within 300 feet of any part of the land included in the proposed use.
8. Any other pertinent information required by the Code Enforcement Officer, Town Engineer, Plan Commission or Town Board as set forth in forms supplied by the Town including percolation test results and well water data.
9. The person applying for a conditional use permit shall certify on the application that the information contained therein is accurate and complete to the best of that person's knowledge.

C. Public Hearing.

Within a reasonable time after an application and all required information has been filed, a public hearing shall be held by the Plan Commission pursuant to this chapter. Within 40 days after the public hearing and all investigation, the Plan Commission shall make a recommendation to the Town Board unless the time is extended by the Petitioner.

D. Fee.

Any petition shall be accompanied by a fee as set from time-to-time by the Town Board to defray the cost of notification and holding of public hearing. Costs incurred by the Town in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner.

4. DETERMINATION.

The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations. Said decision shall be stated in writing and a copy made a permanent part of the Town records. If conditional use status is not granted, the reasons therefor will be included in such record. A grant of conditional use status, subsequent changes or additions thereto and terminations thereof shall be in accordance with the following:

A. Recording.

1. An official record of such conditional grant shall be prepared by the Town Clerk on a form prescribed therefor which shall include the description of the use for which the grant is given and all conditions attached thereto as well as a copy of the resolution of the Town Board approving the grant. A copy of the completed form shall be recorded at the Waukesha County Register of Deeds as a covenant on the title for the premises for which the conditional use was granted.
2. The occupancy permit shall be appropriately noted as to the conditional status granted.
3. Indication shall also be made on the zoning map by appropriate code number or symbol.

B. Changes or Additions.

Subsequent change or addition to the approved plans or use shall first be submitted for approval to the Plan Commission and, if in the opinion of the Plan Commission, such change or addition constitutes a substantial alteration, a public hearing before the Plan Commission shall be required and notice thereof be given pursuant to this Chapter.

C. Conditions.

Conditions such as landscaping, architectural design, type of construction, floodproofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements may be required by the Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Chapter.

D. Termination. (repealed and recreated 2014-01)

Where a conditional use does not continue in conformity with the conditions of the original approval, or where it appears that the information shown on the Petitioner’s application was not accurate or complete, or where a change in the character of the surrounding area or of the use itself causes it to be no longer compatible with surrounding areas or for any cause based upon consideration for the public welfare, the conditional grant may be terminated by action of the Town Board following referral to the Plan Commission for public hearing and recommendation thereon.

5. CONDITIONAL USES PERMITTED.

Subject to the foregoing, in addition to such uses enumerated in the district regulations, the following may be permitted as conditional uses in the districts specified, provided further that a public hearing pursuant to this Chapter shall be held before approval for any such conditional use is granted.

A. Repealed (00-514)

B. Airports, Landing Fields and Takeoff Strips.

Where Permitted. Airports, landing fields and takeoff strips are conditional uses which may be permitted in the following districts:

- A-1 Agricultural District
- A-E Exclusive Agricultural District

C. Animal Hospitals and Kennels. This provision does not apply to hobby kennels as defined by section 17.02. Hobby kennels are separately provided for in this chapter.

1. Where Permitted. (Amd. 00-507a) Subject to the provisions of subsection 2., animal hospitals and kennels, are conditional uses which may be permitted in the following districts:

- | | |
|---------------------------|---------------------------|
| <u>Animal Hospitals</u> | <u>Kennels</u> |
| A-1 Agricultural District | A-1 Agricultural District |

B-2 Shopping Center District
M-1 Industrial District
B-3 Business Park District

A-2 Rural Home District
M-1 Industrial District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to animal hospitals or kennels unless all of the following conditions are met:

- a. Except for animal hospitals, no such use shall be permitted on a lot less than 3 acres in area.
- b. No building other than one used only for residence purposes or as an animal hospital, shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.
- c. The facility is adequately soundproofed.
- d. The facility is maintained in a sanitary condition.

D. Antique Shops, Gift Shops, Arts and Crafts Studios, and Similar Uses.

1. **Where Permitted.** Subject to the provisions of subsection 2., antique shops, gift shops, arts and crafts studios and similar uses are conditional uses which may be permitted in the following districts:

A-1 Agricultural District
A-2 Rural Home District
B-1 Restricted Business District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to an antique shop, gift shop, arts and crafts studio or other similar use unless a finding is made that such use is compatible with surrounding and nearby residential land uses which may be affected by the proposed use.

E. Automobile Service Stations and Convenience Stores.

1. **Where Permitted.** Subject to the provisions of subsection 2., automobile service stations are conditional uses which may be permitted in the following districts:

B-1 Restricted Business District
B-2 Shopping Center District
M-1 Industrial District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to automobile service stations unless all of the following conditions are met:

- a. Gasoline pumps or other accessory equipment are no closer than 15' to the base setback line.

- b. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.

F. Bed and Breakfast Establishments.

1. **Where Permitted.** Subject to the provisions of subsection 2., bed and breakfast establishments are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-2 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-E Exclusive Agricultural District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to bed and breakfast establishments unless all of the following conditions are met:

- a. Transfer of a conditional use permit because of transfer or sale of property is not permissible. Should such property be sold, then the conditional use permit shall become void.
- b. All bed and breakfast establishments shall be subject to and comply with Wisconsin Administrative Code HSS 197 which is hereby incorporated by reference. Any future amendments, revisions or modifications of the current or future codes incorporated herein are intended to be a part of this Code in order to secure uniform statewide regulation of bed and breakfast establishments.
- c. Each bed and breakfast establishment shall be required to keep a register and require all guests to sign such register using their actual names and address before being assigned quarters. The register shall be available for inspection by the Police Department and Code Enforcement Officer for a period of not less than one year.
- d. No guest may be permitted to occupy space in a bed and breakfast establishment for a longer period than fourteen (14) consecutive days.
- e. A minimum of one off-street parking stall shall be provided for every guest bedroom with a minimum of two additional for the owner/proprietor. All parking areas shall meet the size requirements of the Town Code and shall be hard-surfaced and maintained in a reasonably dustless condition. All parking areas abutting residential properties shall be screened from view using a minimum 6' high solid fence or comparable screening. No off-street parking shall be allowed within the front yard setback area and shall be a minimum of 3' from any side yard property line.
- f. One on-premise sign may be permitted not to exceed 6 square feet in area. The sign shall be of solid wood. Each sign must be approved prior to its installation.

- g. Every bed and breakfast establishment shall be properly addressed with numbers on the front of the structure, a minimum of 5" high and of contrasting color so as to be visible from the street.
- h. The Plan Commission and the Town Board shall consider the potential impact to the surrounding neighborhood and proximity to any existing bed and breakfast establishment when reviewing a request for a bed and breakfast conditional use permit.
- i. An occupancy permit shall be required whenever the property changes ownership and a new conditional use permit is granted to ensure compliance with all state and local regulations and ordinances.
- j. Renting of the bed and breakfast facilities for any special gathering (i.e. wedding receptions, parties, etc.) is prohibited.
- k. The owner of a bed and breakfast shall live on the premises.
- l. The conditional use permit shall be reviewed on an annual basis by the Plan Commission to ensure compliance with all conditional use requirements. Such property may be inspected by the Police Department, Fire Department, Code Enforcement Officer or other authorized personnel of the Town to investigate and determine if any violations exist.
- m. All refuse containers shall be screened from view.

G. Campgrounds.

- 1. **Where Permitted.** Subject to the provisions of subsection 2., campgrounds are conditional uses which may be permitted in the following districts:

A-1 Agricultural District
P-1 Park and Recreation District

- 2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to campgrounds unless the campground maintains a fence or planting screen or combination of the two that is approved by the Town Board upon recommendation of the Plan Commission that screens the campground so far as practical from the normal view of adjacent residential uses.

H. Cemeteries and Mausoleums for the Burial of Human Remains Only.

- Where Permitted.** Cemeteries and mausoleums for the burial of human remains only are conditional uses which may be permitted in the following districts:

All districts, except the A-E Exclusive Agricultural District.

I. Churches, Synagogues and Other Buildings for Religious Assembly.

- 1. **Where Permitted.** Subject to the provisions of subsection 2., churches, synagogues, or other buildings for religious assembly are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-1 A Residential District
R-2 Residential District
R-3 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District
B-1 Restricted Business District
B-2 Shopping Center District
B-3 Business Park District
M-1 Industrial District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to churches, synagogues or other buildings for religious assembly unless all of the following conditions are met:

- a. The use conforms to double the offset requirements of the district in which it is located.
- b. The height limitation of the district in which the use is located may be extended to a maximum of 50' provided the minimum required setback and offsets shall be increased 2' for every additional foot of height in excess of the permitted maximum in that district. The aforesaid height regulation shall not apply to the spire or belfry of a church except where airport safety zone regulations specifically limit the maximum height.
- c. The limitation on minimum open space per lot of the district in which the use is located may be reduced, but at least 50% of each lot shall remain as open space in all cases.

J. Commercial Fish or Bait Ponds or Fish Hatcheries.

1. **Where Permitted.** Subject to the provisions of subsection 2., commercial fish or bait ponds and fish hatcheries are conditional uses which may be permitted in the following districts: All districts.

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to a commercial fish or bait pond or fish hatchery unless all of the following conditions are met:

- a. The lot is at least 5 acres in area.
- b. No building other than one used only for residence purposes shall be closer than 50' to the lot line of an adjoining lot in a district permitting residential use.

K. Commercial Greenhouses.

1. **Where Permitted.** Subject to the provisions of subsection 2., commercial greenhouses are conditional uses which may be permitted in the following districts:

A-1 Agricultural District
A-2 Rural Home District

A-E Exclusive Agricultural District
M-1 Industrial District
B-1 Restricted Business District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to commercial greenhouses unless all of the following conditions are met:

- a. No building other than one used only for residential purposes shall be closer than 150' to the lot line of an adjoining lot in a residential district, in all other cases a minimum offset of 50' shall be maintained.
- b. The lot is at least 1-1/2 acres in area.
- c. Sufficient details shall be submitted in the site plan and plan of operation to determine the adequacy of the storage of any fertilizers or chemicals associated with the greenhouse.

L. Commercial Truck Parking.

1. **Where Permitted.** Subject to the provisions of subsection 2., commercial truck parking is a conditional use which may be permitted in the following districts:

A-1 Agricultural District
B-1 Restricted Business District
B-3 Business Park District
M-1 Industrial District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to commercial truck parking unless all of the following conditions have been met:

- a. The vehicle must be owned or leased by the owner or occupant of the premises.
- b. The premises must front directly upon and have access to an arterial or major collector street as defined in the Waukesha County established street and highway width map.
- c. No more than one (1) such vehicle shall be allowed to be parked or stored on the occupant's property and not more than two (2) additional construction vehicles (backhoes, front end loaders, grading equipment, etc.) shall be allowed. All vehicles shall be fully operative and in active use. Where considered appropriate two (2) trailers may be allowed but in no case may there be more than one (1) semi tractor or "cab" unit.
- d. No such vehicle shall be allowed to be parked or stored closer than fifty (50) feet to any adjacent lot line, and not closer than one hundred (100) feet from the base setback line. In the case of refrigerator trucks, the refrigeration unit may not be operated in the open if said truck is parked closer than 500 feet to the nearest neighboring residential property line.
- e. The conditional use permit shall be reviewed every two (2) years by the Plan Commission in order to determine conformance with the terms of the permit and if it is determined that

the use is no longer compatible with adjacent land uses as they develop in the vicinity, the conditional use permit may be revoked in accordance with the revocation procedures contained in this ordinance.

M. Communication Tower. (repealed 2013-10)

N. Conversion.

1. **Where Permitted.** Subject to the provisions of subsection 2., conversion of the use of barns and farm buildings for the storage of machinery, equipment, vehicles, boats, furniture and similar items are conditional uses which may be permitted in any district.

2. **Conditions Under Which Permitted.**

Conditional use status will not be granted to any conversion of the use of barns or farm buildings for the storage of machinery, equipment, vehicles, boats, furniture and similar items unless all of the following conditions are met:

- a. No such use shall be permitted on lots of 10 acres or less.
- b. Buildings shall consist of the buildings as now exist on the premises. No additional buildings or additions may be made without the express approval of the Town in accordance with the terms of the applicable ordinances. A certified survey map shall be filed detailing the size and offsets of all existing buildings.
- c. Access shall be from a public street.
- d. There shall be no storage outside. Outside storage shall be considered a violation of the terms of any conditional use permit issued under this subsection and grounds for the termination of such permit.
- e. Water supply facilities and septic system, if any, shall be in accordance with the rules of the Waukesha County Division of Health and Department of Industry, Labor and Human Relations.
- f. If there are complaints about unusual noise, inconsistent with the normal operations of the storage buildings, the Plan Commission shall hold a public hearing, upon due notice and shall make reasonable rules and regulations in such regard.
- g. There shall be no commercial signs permitted.
- h. A landscaping plan shall be filed and approved prior to the issuance of an occupancy permit.
- i. The buildings and grounds shall be maintained in a neat, attractive and orderly way.
- j. The property shall comply with all rules and regulations of the Town and the local Fire Department, including submission to routine inspections of the Town and Fire Department.
- k. In determining whether or not the proposed conditional use permit should be issued, a determination of compatibility with adjacent land uses shall be made. If it is determined

that it would, in any way, be incompatible and represents an adverse effect or nuisance to adjacent land uses, the conditional use permit shall not be issued.

O. Drive-in Establishments Serving Food or Beverages to Customers Other Than at a Booth or Table.

1. **Where Permitted.** Subject to the provisions of subsection 2., drive-in establishments serving food or beverages to customers other than at a booth or table may be permitted in the following districts:

B-1 Restricted Business District
B-2 Shopping Center District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to drive-in establishments serving food or beverages to customers other than at a booth or table unless all of the following conditions are met:

No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.

P. Elderly Housing Units.

1. **Where Permitted.** Subject to the provisions of subsection 2., elderly housing units are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-1(A) Residential District
R-2 Residential District
R-3 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to elderly housing units unless all of the following conditions are met:

- a. The minimum lot area shall be 20,000 sq. ft.
- b. The minimum unused lot area per dwelling unit shall be 1500 sq. ft. This shall not include parking spaces or buildings.
- c. Side yard and rear yard setbacks shall be a minimum of 10' on each side and the road setback requirement shall be maintained.
- d. There shall be a minimum living area of 400 sq. ft. for an efficiency apartment, 550 sq. ft. for a one bedroom apartment and 750 sq. ft. for a two bedroom apartment. No dwelling unit shall have more than two bedrooms.

- e. There shall be one covered parking space per dwelling unit.
- f. Multi-story housing for the elderly shall be provided with elevators.
- g. Restrictions shall be placed on the development consistent with State and Federal regulations governing elderly housing.
- h. In the case of phased development of an elderly project as defined, the developer shall present evidence to the Plan Commission that at least 50% of all previous phases are occupied.

Q. Feed Lot Operation.

1. **Where Permitted.** Subject to the provisions of subsection 2., feed lot operations are conditional uses which may be permitted in the following districts:
A-2 Rural Home District
M-1 Industrial District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to a feed lot operation unless all of the following conditions are met:

- a. The site plan submitted must show drainage, structures and the methods to be employed to control, contain or divert runoff of animal wastes.
- b. The operation plan submitted must detail the method of operation and the equipment necessary to accomplish a safe and sanitary operation. The operation plan shall also set forth the number of animals to be contained in the proposed feed lot including the type and weights. The operation plan shall also detail the method of animal collection, storage and disposal to be employed.

3. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to a feed lot operation unless all of the following conditions are met:

- a. The site plan submitted must show drainage, structures and the methods to be employed to control, contain or divert runoff of animal wastes.
- b. The operation plan submitted must detail the method of operation and the equipment necessary to accomplish a safe and sanitary operation. The operation plan shall also set forth the number of animals to be contained in the proposed feed lot including the type and weights. The operation plan shall also detail the method of animal collection, storage and disposal to be employed.
- c. A conservation plan prepared by the Waukesha County Land Conservation Committee shall be submitted for approval.
- d. No feed lot operation shall be permitted on less than 10 acres of tillable land nor closer than 1,000' from any land presently zoned for a residential district.

- e. No accessory residence shall be permitted closer than 100' to the feed lot operation.
- f. No part of the feed lot operation shall be closer than 300' from the center line of any public road nor closer than 200' from the lot lines of the site on which the production unit is situated.
- g. It is important that careful planning and sound management be applied to the operation of manure handling and waste runoff. Farmers are encouraged to seek advice from the Waukesha County Land Conservation Committee. A conservation plan addressing the proposed methods of manure handling and waste runoff control shall be prepared and made a part of the plan of operation for any proposed "Feed Lot Operation."
- h. Animal waste shall not be mechanically spread between December 1st and April 1st unless the manner of application has been reviewed and approved by the Town Board.

R. Fur Farms, Pig Farms, Pea Vineries, Creameries and Condenseries.

1. **Where Permitted.** Subject to the provisions of subsection 2., fur farms, pig farms, pea vineries, creameries and condenseries are conditional uses which may be permitted in the following districts:

A-2 Rural Home District
M-1 Industrial District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to fur farms, pig farms, pea vineries, creameries and condenseries unless all of the following conditions have been met:

- a. The lot must be at least 5 acres in area.
- b. No building other than one used only for residence purposes shall be closer than 200' to the lot line of an adjoining lot in a district permitting residential use.

S. Group Day Care Center.

1. **Where Permitted.** Subject to the provisions of subsection 2., group day care centers are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-1A Residential District
R-2 Residential District
R-3 Residential District
R-L Residential Lake District
B-1 Restricted Business District
B-2 Shopping Center District
B-3 Business Park District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District
M-1 Industrial District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to a group day care center unless in the case of rental properties, the property owner's written permission must be obtained and submitted as part of the conditional use permit application.

T. Hobby Kennels.

1. **Where Permitted.** Subject to the provisions of subsection 2., a hobby kennel, as defined in section 17.02, is a conditional use which may be permitted in the following districts:

R-1 Residential District
R-1A Residential District
R-2 Residential District
R-3 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District
A-E Exclusive Agricultural District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to a hobby kennel unless all of the following conditions are met:

- a. Notice shall be given to landowners within 300' of the subject property and to landowners immediately adjacent and across the street from the proposed use.
- b. Upon recommendation of the Plan Commission, the Town Board may grant the permit and impose such measures or provisions as it considers necessary to provide adequate protection for properties in the neighborhood. The Board may limit the number of dogs or other household pets, fix the location of the kennel and impose such other requirements as it considers necessary for the public welfare. The Town Board may deny the application on its finding that the use would be incompatible or a possible nuisance to the neighborhood or would result in a substantial depreciation in property values in the neighborhood.
- c. The conditional use grant shall be reexamined each year and conditional use status may be denied if the previous year's experience has shown that the hobby kennel has become a nuisance, incompatible or has adversely affected property values in the neighborhood.
- d. The lot must be at least 1 1/2 acres in area.
- e. The kennel must be a minimum of 50' from the closest lot line.
- f. No more than 3 dogs or other household pets shall be permitted on a 1 1/2 acre site plus 2 dogs or other household pets per additional acre up to 10 dogs or other household pets maximum.

- g. Where the number of dogs or other household pets kept does not exceed the number of dogs or other household pets as authorized by section 12.06(7) of this General Code, such use shall be considered accessory to the principal use and shall not require a special permit from the Town Board.

U. In-Law Units

1. **Where Permitted.** Subject to the provisions of subsection 2., in-law units are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-1(A) Residential District
R-2 Residential District
R-3 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District
A-E Exclusive Agricultural District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to in-law units unless all of the following conditions are met:

- a. The Waukesha County Health Department certifies that the septic system will accommodate the proposed use.
- b. The maximum living area in an in-law unit shall not exceed eight hundred (800) square feet for a one (1) bedroom unit and nine hundred (900) square feet for a two (2) bedroom unit.
- c. There shall be an additional parking space for the in-law unit.
- d. The architecture of the residence shall be compatible with the adjacent residential neighborhood and should appear to be a single family residence.
- e. The Plan Commission may recommend and the Town Board require where appropriate that there be an interior door between the living units.
- f. A deed restriction shall be filed in the Waukesha County Register of Deeds' office prior to issuance of the building permit indicating that this living unit is for family members of the principal dwelling unit only.

V. Intermediate Day Care Home.

1. **Where Permitted.** Subject to the provisions of subsection 2., intermediate day care homes are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-1(A) Residential District
R-2 Residential District
R-3 Residential District

R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to an intermediate day care home unless all of the following conditions are met:

- a. The lot is at least 7200 square feet in area.
- b. A minimum of 140 square feet of living space per child is provided.
- c. A minimum of 100 square feet of fully enclosed outside play area shall be provided per child at maximum permitted occupancy.

W. Keeping of Poultry or Livestock.

1. **Where Permitted.** Subject to the provisions of subsection 2., the keeping of poultry or livestock is a conditional use which may be permitted in the following districts:

A-2 Rural Home District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to the keeping of poultry or livestock unless all of the following conditions are met:

- a. The keeping of poultry, fowl and domestic livestock must be on lots of 3 acres or more, provided maximum practical conditions of neatness and sanitation are maintained and that all fowl are kept confined or enclosed.
- b. Not more than one head of livestock or ten fowl shall be kept per acre of land except where such use existed prior to the date of the chapter as principal commercial or agricultural use, such use may be continued subject to the limitations regulating a nonconforming use as regulated by this chapter.
- c. The keeping of hogs, male goats or furbearing animals must be on lots of 20 acres or more.

X. Laboratories for Testing, Experimental or Analytical Purposes.

1. **Where Permitted.** Subject to the provisions of subsection 2., laboratories for testing, experimental or analytical purposes are conditional uses which may be permitted in the following districts:

B-1 Restricted Business District
B-2 Shopping Center District
B-3 Business Park District
A-1 Agricultural District
M-1 Industrial District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to a laboratory for testing, experimental or analytical purposes unless all of the following conditions are met:

- a. No building other than one used only for residential purposes shall be closer than fifty (50) feet to the lot line of an adjoining lot in a district permitting residential use.
- b. Off-street parking shall be provided as required for office building and customer service establishments

Y. Legal Nonconforming Uses.

Where Permitted. Subject to the provisions of Section 7 of this Chapter, a legal nonconforming use may be granted conditional use status in the district in which it is located subject to submitting a petition under this section.

Z. Marina

1. **Where Permitted.** Subject to the provisions of subsection 2., marinas are conditional uses which may be permitted in the following districts:

R-L Residential Lake District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to a marina unless all of the following conditions are met:

- a. Minimum lot area shall be one acre with a minimum frontage of not less than 150', and not less than 85% of the lot area to remain as open space. The minimum open space of 85% may be used for parking of cars, boat and trailers notwithstanding any provisions of this chapter to the contrary.
- b. Maximum pier length shall be 100' from the shoreline, extended into the water in a direction to be determined by the Town Board as compatible with established custom of adjoining piers.
- c. The following standards shall be observed for locating a pier or mooring space with reference to neighboring lot lines extended into the water:
 - (1) A pier which has T's and L's, or slips with mooring spaces extending from the pier or from the T or L extensions of that pier shall be located not closer than 2 times the length of the largest mooring space to the above-referenced lot line extensions.
 - (2) A pier with no T's, L's or slips shall be no closer than 25' from the extended lot line referenced above.
 - (3) No pier erected closer than 50' from these lot line extensions shall be more than 50' in length as measured from the shoreline.

- d. Where a boat launching facility is being provided, no part of that launching ramp will be located closer than 20' from the adjacent lot lines extended into the water.
- e. More than one pier may be installed, but in no case shall the composite length of the piers as measured perpendicular from the shoreline or as close as possible to perpendicular from the shoreline be greater than the lake frontage of the property on which the facility is located unless specifically authorized by the Town Board upon recommendation of the Plan Commission where due to unusual circumstances such as lack of water depth, the above-mentioned length would not provide for safe and adequate access away from the shore or the pier. The aforementioned requirement does not prohibit the installation of boat lifts or mooring spaces along the shoreline or seawall, but in no case shall a space for the life or mooring space be closer than 20' from the adjacent lot line extended into the water.
- f. All installations shall be designed and constructed so normal ingress and egress of boats does not interfere with adjacent riparian owners' use of the water for boating, fishing or swimming, nor with the public's right to navigation.
- g. No water, electric power or sewerage pumpout facilities or services shall be provided to boats. Adequate sanitary facility shall be made available to the users of the facilities and shall be constructed so as to meet public health standards as promulgated by the State and County.
- h. No hull or engine repair services shall be provided other than service to the marina operator's own equipment.
- i. No boats may be occupied overnight.
- j. Off-street parking spaces built to the standards provided in this chapter for customers of the marina shall be provided at the rate of one space per boat available for rent. All other uses of the property shall comply with the parking standards as set forth in this section in addition to the parking standards required for the marina.
- k. In the management and operation of the facility, every attempt possible should be made to alleviate the potential for nuisances and disturbances to surrounding residential neighborhoods. Any complaints by adjacent property owners or any other person affected shall be viewed by the Town Board and a finding made to determine whether or not the potential for such nuisances exist and, if so, provisions made to abate the potential for such nuisances.
- l. All lighting installations on docks or shore shall be designed and shielded to eliminate any hazard to boating or undesirable glare, illumination or nuisance to adjoining property owners.

The Plan Commission, in making its recommendation, and the Town Board in making its determination as to whether this facility shall be granted conditional use status, shall give consideration to lot size, lake frontage, the number and types of boats, intensity of use, compatibility of the operation with adjacent properties, the width, height and type of construction of each pier and the effects of the proposed development on the character of the surrounding residential neighborhood and the rights of the adjoining riparian owners. Further, the facility shall be reviewed to determine whether or not buoys or roped areas may be appropriate in order to maintain minimum distances or designate adjacent swimming areas either owned by the subject property or by adjacent property owners.

- m. No food or beverage shall be served by the operator unless authorized as part of a restaurant or tavern or private club conditional use permit as authorized by other provisions of this chapter. All standards for those restaurants, taverns or private clubs shall be in addition to the standards set forth above.
- n. Fuel docks and the dispensing of motor fuel for marine use will be permitted only with separate authorization by the Planning Commission and the Town Board and after compliance with all applicable State, County and local codes.
- o. The total number of boats which may be launched, stored or moored (either in the water or on dry land) at any marina shall be dependent on the following parking standards in addition to the parking needs required for other uses of the property on which the marina is located:
 - (1) All parking requirements of other permitted uses of the property shall be provided in conformance with this chapter.
 - (2) Two parking spaces (9' x 20' = 180 sq. ft.) shall be provided for each boat moored permanently (permanently being defined as a length of time in excess of 5 days or a total of more than 7 days in any 2 week period).
 - (3) If boat trailers are to be stored on the property for any length of time beyond that needed to launch or "take out" the boat, a minimum parking area as previously set forth for each boat, not exceeding 15' in length (as measured from the bow to the stern of the boat along the centerline) shall be provided. For boats exceeding 15' in length, the trailer parking stall shall be extended 1' each additional 1' of boat length. Under special circumstances, such as unusual trailer-boat combinations, where excess length may occur as a result of unusual trailer tongue lengths or the horizontal storage of the masts of sail boats which would result in length of trailer-boat storage combination exceeding the standards above, the Town Board may establish specific standards as may be appropriate for those unusual combinations.
 - (4) An aisle of at least 35' in width to provide for a minimum turning radius to accommodate proper access for the car-trailer combination shall be provided.
 - (5) Boat and trailer storage shall meet the offset requirements for parking lots. However, where a natural vegetative screen or fence is provided which will adequately screen the parking area from adjacent residential uses, the Town Board has the authority to modify these offset requirements.
 - (6) Runoff from parking areas shall be directed to grass strips or other water quality facilities before being discharged into the lake.

Z-5 Master Sign Program.

1. Where Permitted.

A-1 Agricultural District

A-E Exclusive Agricultural District

A-2 Rural Home District

B-1 Restricted Business District

B-2 Shopping Center District

B-3 Business Park District
M-1 Industrial District
P-1 Park and Recreation District
WF-1 Wetland-Floodplain District

2. Conditions Under Which Permitted.

A Master Sign Program is necessary to establish the uniform theme of size, color and style to signs in multi-tenant operations, office parks, industrial parks, multi-tenant office and retail buildings, and commercial developments that include separate commercial activities. The requirements of Section 17.08 may be modified by the express terms of the Master Sign Program conditional use order.

AA. Mobile Home Parks.

1. **Where Permitted.** Subject to the provisions of subsection 2., mobile home parks are conditional uses which may be permitted in the following districts:

A-1 Agricultural District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to a mobile home park unless all of the following conditions are met:

- a. A public sewage system and a public water supply system are available to service the park (neither a "package" sewage disposal plant nor a "community" well will be accepted as an alternative to the public facilities required).
- b. All permanent structures shall conform to all requirements of the basic district and the principal building shall be considered to be the sanitary facilities building or buildings in the event no permanent residence is established on the lot.
- c. All structures, whether principal, accessory, mobile homes, house trailers or self-propelled dwelling unit vehicles must be located on the lot so as not to encroach on any front, side or rear yard areas as established by the base district setback and offset requirements.
- d. The height of all dwelling units shall not exceed 15'.
- e. The minimum floor area for mobile home units shall be 700 sq. ft.
- f. The minimum lot size for a mobile home park shall be 20 acres in area.
- g. Sublot or "spaces" for mobile home units within the park lot shall not be less than 7,000 sq. ft. in area.
- h. Sublot offsets shall be 10' minimum on each side.
- i. There shall be 5,000 sq. ft. of open space for sublots per dwelling unit.

- j. Provisions must be made for the parking of 2 automobiles on each subplot on paved surfacing.
- k. Any mobile home unit set on a permanent or semipermanent foundation or when wheels have been removed shall have a paved walkway from the access drive to the entrance of the unit.
- l. All drives and motor vehicle parking areas must be paved and provisions made for the proper drainage of surface water.
- m. Before any additions may be made to an original manufactured mobile home unit, the addition plans must be submitted to the Code Enforcement Officer for approval and a building permit must be obtained.
- n. A minimum of 400 sq. ft. of combined general recreational space for each subplot of the mobile home park, in addition to the individual subplot open space, must be provided. For open-space parcels under 15 acres, the combined general recreational space must be a single contiguous area capable of use as playfields for games. On open-space parcels over 15 acres, 2 or more combined general recreational spaces may be provided, each developed for playing field use.
- o. The provisions of section 18.07 of this General Code shall govern the design and construction of all roads and public improvements. Any modification of these standards must be consistent with good engineering practices and be approved in writing by the Town Board;
- p. The provisions of section 18.07 shall govern with respect to dedication of public sites or payment in lieu of dedication; and
- q. Unless the mobile home is supported by a continuous permanent masonry foundation with footings below the frost line, the underside of the mobile home shall be maintained in a sanitary, clean and fire safe condition.

AB. Motels and Hotels.

1. **Where Permitted.** Subject to the provisions of subsection 2., motels and hotels are conditional uses which may be permitted in the following districts:

B-1 Restricted Business District
 B-3 Business Park District
 M-1 Industrial District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to motels or hotels unless all of the following conditions are met:

- a. The lot is at least 3 acres in area.
- b. No building shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.

- c. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.
- d. The facility must be served by public sanitary sewer.

AC. Other Uses. Other uses or situations not specifically described in this section but which, in the judgment of the Plan Commission or Town Board, meet the sense and spirit of conditional use as described in section 17.05 2. are conditional uses which may be permitted in the Town.

AD. Outdoor Theater.

1. **Where Permitted.** Subject to the provisions of subsection 2., outdoor theaters are conditional uses which may be permitted in the following districts:

M-1 Industrial District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to an outdoor theater unless all of the following conditions are met:

- a. No portion of the theater shall be closer than 200' to the base setback line or closer than 200' to the lot line of an adjoining lot in a district permitting residential use.
- b. A planting screen at least 40' in width and at least 6' high shall be provided along any lot line abutting a district permitting residential use.
- c. Additional highway width sufficient to provide for the safe control of traffic at the theater entrance shall be dedicated and the necessary highway improvements constructed to provide for a divided roadway with adequate reservoir area in the center strip to shelter cars entering the theater.
- d. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.
- e. No entrance and exit driveways shall be closer than 200' to the lot line of an adjoining lot in a district permitting residential use.

AE. Private Clubs and Outdoor Recreational Facilities Such as Recreational Camps, Golf Courses, Bathing Beaches and Resorts.

1. **Where Permitted.** Subject to the provisions of subsection 2., private clubs and outdoor recreational facilities such as recreational camps, golf courses, bathing beaches and resorts are conditional uses which may be permitted in the following districts:

All Districts.

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to private clubs or outdoor recreational facilities such as recreational camps, golf courses, bathing beaches and resorts unless all of the following conditions are met:

- a. The lot is at least 3 acres in area, except that this area requirement shall not apply in the following districts:
 - B-1 Restricted Business District
 - B-2 Shopping Center District
 - B-3 Business Park District
 - M-1 Industrial District
- b. No building, other than one used only for residence purposes, shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.
- d. No such permitted use shall include the operation of a commercial facility such as a bar or restaurant except as may be specifically authorized in the grant of permit.
- d. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.

AF. Private Stables.

- 1. **Where Permitted.** Subject to the provisions of subsection 2., private stables are conditional uses which may be permitted in the following districts:

- A-2 Rural Home District
- A-3 Suburban Home District

- 2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to private stables unless all of the following conditions are met:

- a. No buildings other than one used only for residential purposes shall be closer than 100 feet to the lot line of any adjoining lot in a district permitting residential use.
- b. A finding is made that such use is compatible with surrounding and nearby residential land uses which may be affected by the proposed use.
- c. Generally, not more than one horse or other head of livestock should be kept for each full open acre over two acres of open lot area, unless a specific finding is made that the subject parcel can maintain a greater number of livestock based on the proposed building plans, site plans, plan of operation and refuse disposal plan.

AG. Public and Commercial Refuse Disposal Site.

- 1. **Where Permitted.** Subject to the provisions of subsection 2., public and commercial refuse disposal sites are conditional uses which may be permitted in the following districts:
 - M-1 Industrial District

2. Conditions Under Which Permitted.

Conditional use status shall not be granted to public or commercial refuse disposal sites unless all of the following conditions are met:

- a. The plan of operation submitted must include a description of the types and sources of refuse to be disposed of.
- b. A plan of restoration shall be submitted for approval by the Town Board following recommendation by the Plan Commission.
- c. In reviewing the plans, the Plan Commission and Town Board shall take into consideration the effects on: topography, drainage, water supply, soil conditions, roads and traffic and present and ultimate land development and use, and the production of odors, smoke, rodents or unsightly debris.
- d. No refuse disposal shall take place, nor shall structures pertinent to the disposal of refuse be constructed closer than 200' to the base setback line.
- e. No refuse disposal shall take place closer than: 200' to any property line; 500' to an existing dwelling or to the site of dwelling for which a building permit has been issued prior to the application date for the conditional use permit; 500' to a rural home or residential district at the time of the grant of permit; 500' to a permanent business or industrial structure without written approval of the Waukesha County Health Department.
- f. An approved evergreen planting screen is required.
- g. Only sanitary landfill refuse disposal methods shall be used subject to standards established and enforced by the Waukesha County Health Department and the State Department of Health and Social Services.
- h. Permission to burn refuse before covering must be specifically requested for each instance of burning required.
- i. A responsible person shall be in attendance during the hours of operation, which hours shall be subject to the approval of the Town Board.
- j. No refuse disposal shall take place except during the specified hours of operation and with the attendant present.
- k. Fencing is provided as follows: a nonflammable fence, with a gate which can be locked, must be erected to encompass the entire disposal site to prevent refuse disposal and scavenging during nonoperating hours; additional portable fencing will be provided around those sections of the site then in use so as to restrict the blowing of paper and other refuse.
- l. All existing refuse disposal operations shall be registered with the Town Clerk by the operator within 60 days after the adoption of this chapter, submitting pertinent data relative to present operation, including the boundaries of the actual operation and ownership. Conditional use status shall be granted to such existing operation subject to compliance with a plan of operation satisfactory to the Town Board. A plan of restoration shall be submitted by the operator within one year of the adoption of this

chapter. Such operation and restoration plans shall not impose requirements which are economically unreasonable or unreasonable from an engineering standpoint with respect to conditions resulting from operations prior to enactment of this chapter.

AH. Public and Semipublic Buildings and Uses.

1. **Where Permitted.** Subject to the provisions of subsection 2., public and semipublic buildings and uses are conditional uses which may be permitted in the following districts:

All districts.

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to public or semipublic buildings or uses unless all of the following conditions are met:

- a. Such use shall conform to double the offset requirements of the district in which it is located. A special exception may be granted by the Plan Commission for utility structures, to reduce the setback and offset distance to zero (0) feet, if upon review by the Plan Commission, such structures as proposed will not result in a safety hazard or be detrimental to the property values and aesthetics surrounding the site. (Am. 200203-008).
- b. The height limitation of the district in which the use is located may be extended to a maximum of 50' provided the minimum required setbacks and offsets shall be increased 2' for every additional foot of height in excess of the permitted maximum of that district.

AI. Public Utilities.

1. **Where Permitted.** Subject to the provisions of subsection 2., public utilities are conditional uses which may be permitted in all districts.

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to a public utility unless all of the following conditions are met:

- a. When a public utility proposes a main transmission facility, it shall give notice to the Plan Commission of such intention and of the date of hearing before the Public Service Commission and before beginning construction of a specific route, shall file with the Plan Commission a mapped description of the route of such facility.
- b. The height limitation of the district in which the use is to be located may be extended, provided the minimum required setbacks and offsets shall be increased 1' for every additional foot of height in excess of the permitted maximum of that district and subject to the approval of the Plan Commission or Town Board.
- c. A special exception may be granted by the Plan Commission for installation of a main line transmission facility such that the setback and offset distances are reduced to zero (0) feet, if upon review by the Plan Commission, such facilities as proposed will not

result in a safety hazard or be detrimental to the property values and aesthetics surrounding the site. (Am. 2002-03-008).

- d. A special exception may be granted by the Plan Commission for utility structures associated with the installation of the main line transmission facilities, to reduce the setback and offset distances to zero (0) feet, if upon review by the Plan Commission, such facilities as proposed will not result in a safety hazard or be detrimental to the property values and aesthetics surrounding the site. (Am. 2002-03-008).

AJ. Quarrying.

1. **Where Permitted.** Subject to the provisions of subsection 2., quarrying, as defined in this chapter, is a conditional use which may be permitted in the following districts:

M-1 Industrial District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to a quarrying operation unless all of the following conditions are met:

- a. A quarrying permit for such operation must be obtained from the Town Board. Such permit shall be for an initial period as is deemed appropriate to the specific situation but not to exceed 5 years and may be renewed thereafter for periods not to exceed 3 years provided application therefor shall be made at least 60 days and no more than 120 days before expiration of the original permit. Application after such date shall be treated as an original application.
- b. Application for a quarrying permit shall be made on forms supplied by the Town Clerk.
- c. The application for a quarrying permit shall be accompanied by: a fee as set from time to time by the Town Board to defray the cost of notification and holding of public hearing; a full and adequate description of all phases of the contemplated operation and the specific mention of type of machinery and equipment which will be or might be necessary to carry on the operation; where the operation is to include the washing of sand and gravel, the estimated daily quantity of water required, its source and its disposition shall be made part of the description; a legal description of the proposed site with a map showing its location with indications of existing or proposed private access roads, and of existing or proposed public highways adjacent to the site which will be affected by the operation; a topographic map of the area at a minimum contour interval of 5' extending beyond the site to the nearest public street or highway or to a minimum distance of 300' on all sides; a restoration plan as required by subparagraph d. below; the names and addresses of the owners of all properties within 1/2 mile of the perimeter of the proposed quarrying operation.
- d. In order to insure that the area of quarrying operation shall be restored to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall, prior to the issuance of a permit, submit to the Town Board a plan for such restoration in the form of the following:
 - (1) An agreement with the Town whereby the applicant contracts to restore the premises to a condition and within a time satisfactory to the Town;

- (2) A physical restoration plan showing the proposed contours after restoration, plantings and other special features of restoration and the method by which such restoration is to be accomplished;
 - (3) A certified check or other financial guarantee satisfactory to the Town, in an amount sufficient in the opinion of the Town Board to secure the performance of the restoration agreement;
 - (4) Such agreement and financial guarantee shall be in a form approved by the Town Attorney;
 - (5) In the event of the applicant's failure to fulfill this agreement, such bond, check or other financial guarantee shall be deemed forfeited for the purpose of enabling the Town to perform the restoration;
 - (6) Restoration shall proceed as soon as practicable and at the order and direction of the Town Engineer. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than 2 years;
 - (7) At any stage during the restoration, the plan may be modified by mutual agreement between the Town Board, after referral to the Plan Commission and the owner or operator;
 - (8) Where there is any backfilling, the material used or the method of fill shall not be such as to create a health hazard nor which would be objectionable because of odor, combustibility or unsightliness. In any case, the finished grade of the restored area, except for rock faces, outcroppings, water bodies or areas of proposed building or paving construction shall be of a sufficient depth of earth to support plant growth;
 - (9) Within one year after the cessation of the operation, all temporary structures (excepting fences), equipment, stockpiles, rubble heaps or other debris shall be removed or backfilled into the excavation so as to leave the premises in a neat and orderly condition;
 - (10) In any restoration procedure which takes place in sand or gravel pits or on other sites where the material is of a loose or friable nature, no slope shall be left which is steeper than a ratio of four horizontal to one vertical. In no case shall any slope exceed the normal angle of slippage of the material involved.
- f. The application and all data and information pertaining thereto shall be referred to the Plan Commission for public hearing, report and recommendation back to the Town Board within a reasonable time after the public hearing.
- f. Notices shall be sent through the mail or otherwise placed in the hands of all owners of land in the Town and to the Clerks of adjoining municipalities who have land which lies within 1/4 mile of the perimeter of the proposed quarrying operation. These notices shall be mailed or delivered at least 10 days prior to the date of hearing. Substantial compliance with the notice requirements of this section shall be deemed sufficient.

- g. The Town Board shall, within a reasonable time after receipt of the recommendation, approve or disapprove the application for the proposed quarrying operation and shall be guided by consideration of the public health, safety and welfare and shall give particular consideration to the following factors in making their decision: the effect of the proposed operation on existing roads and traffic movement in terms of adequacy, safety and efficiency; the effect of the proposed operation on drainage and water supply; the possibility of soil erosion as a result of the proposed operation; the degree and effect on dust, noise, smoke and air pollution as a result of the proposed operation; the practical possibility of restoration of the site; the effect of the proposed operation on the natural beauty, character, tax base, land value and land uses in the area; the most suitable land use for the area with particular consideration for future residential value.
- h. Any conditions necessary to the granting of a permit shall be in writing and copies made a part of the permit and a part of the records of the Town.
- i. The procedures set forth above shall also apply to applications for renewal of a permit. Determination in regard to renewal shall be based particularly on an evaluation of the effect of the continuance of the use with relation to changing conditions in the area. Where renewal is not granted, the reasons for refusal shall be presented to the applicant in writing and made a part of the records of the Town.
- j. No part of the quarrying operation shall be permitted closer than 1,000', nor shall any accessory access road, parking area or office building be permitted closer than 500' to the district zoned Rural Home, Suburban Home or Residential at the time of the grant of the permit, except with the written consent of the owners of a Rural Home, Suburban Home or Residentially zoned properties within 1,000' but in no case shall such operation be permitted closer than 200' to a Residential District; no quarrying operation shall be permitted if 30 or more families reside within a band 1/2 mile wide around the perimeter of the proposed operation.
- k. No part of the quarrying operation other than access roads shall be located closer than 200' nor shall any accessory parking area, stock pile or office building be located closer than 100' to the base setback line along any street or highway.
- l. No part of the quarrying operation shall be permitted closer than 200'.
- m. Nor shall any accessory access road, parking area or office building be permitted closer than 50' to any property line except with the written consent of the owner of the adjoining property or except where the line is abutting an existing quarrying operation, but in no case shall such operation be closer than 20' to any property line except by agreement between abutting quarrying operations or be in conflict with the provisions of this chapter relating to preservation of topography.
- n. Fencing or other suitable barrier shall be erected and maintained around the site or around portions of the site where, in the determination of the Town Board, such fencing or barrier is necessary for the protection of the public, and shall be of a type approved by the Town Board.
- o. All machinery and equipment used in the quarrying operation shall be constructed, maintained and operated in such a manner as to minimize dust, smoke, air pollution, noise and vibration.
- p. Access and haulage roads on the site shall be maintained in a dustfree condition by surfacing or treatment as directed by the Town Engineer.

- q. The crushing, washing, refining or other processing other than the initial removal of material, may be permitted as an accessory use only as specifically authorized under the terms of the grant of permit.
- r. In stone quarries the production or manufacturing of veneer stone, sills, lintels, cut flagstone, hearthstones, paving stone and similar architectural or structural stone and the storing or stockpiling of such products on the site shall be considered a permissible part of the operation, provided such production does not require the use of crushing or other heavy machinery except as may be specifically authorized under the terms of the permit.
- s. The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready-mixed concrete and any similar production or manufacturing processes which might be related to the quarrying operation may be permitted as an accessory use only as specifically authorized under the terms of the permit.
- t. The washing of sand and gravel shall be prohibited in any operation where the source of water is of doubtful capacity or where the quantity of water required will, in the opinion of the Town Engineer, seriously affect the supply of water for other uses in the area or where the drainage from such washing would result in silting or pollution of the stream or water course.
- u. The planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the Town Board to screen the operation so far as practical from normal view, to enhance the general appearance from the public right-of-way, and generally to minimize the damaging effect of the operation on the beauty and character of the surrounding country side. Such planting shall be started as soon as practical, but no later than one year after quarrying operations have begun and shall be done according to the decision of the Town Board.
- v. Quarrying operations shall not begin before the hour of 7 a.m. and shall not continue after the hour of 6 p.m. and no operation shall take place on Sundays or legal holidays. During periods of national or unusual emergency, time and hours of operation may be altered at the discretion of the Town Board and through the issuance of a special permit which shall be renewable at 30 day intervals.
- w. When the operation is limited to the removal of topsoil, the Town Board may, consistent with the intent of these regulations, modify any or all of the provisions of this section, provided however, that in no case shall operations be permitted closer than 10' from any property line, or to a depth in excess of 18" or so as to adversely affect the drainage of the area and in such instances the operator shall restore the excavated area with topsoil to a depth of 4" and seed the same with grass.
- x. The provisions of this section shall not apply to an operation which is incident to the legitimate use of the premises, provided, however, where such operation involves the commercial disposal of the material removed, approval of the Town Board shall be required and such operation shall be limited to a maximum period of 6 months.
- y. Application to existing operations:

- (1) Within 60 days after the adoption of this chapter, all existing quarrying operations shall be required to register with the Town Clerk submitting pertinent data relative to the present operation including the boundaries of the actual operation and of the ownership. A quarrying permit shall be granted to such existing operation subject to compliance with the operation requirements herein where they can be reasonably applied under existing circumstances.
- (2) There shall be required within one year after adoption of this chapter, the submission of a plan for restoration of the site of any existing quarrying operation as provided by subparagraph d. above. The plan for restoration in such case shall not, however, impose requirements which are economically unreasonable or unreasonable from an engineering standpoint with respect to conditions resulting from operations prior to enactment of this chapter.
- (3) Within 3 years after the date of this chapter any such existing operation shall be required to make application for a renewal permit the same as for reapplication in the case of a new operation under this chapter.

AK. Quarters for Household or Farm Employees.

1. **Where Permitted.** Subject to the provisions of subsection 2., quarters for household or farm employees are conditional uses which may be permitted in the following district:

A-1 Agricultural District
A-E Exclusive Agricultural District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to quarters for household or farm employees unless all the quarters are occupied only by a full-time employee who works on the premises and members of the employee's immediate family.

AL. Relocation.

1. **Where Permitted.** Subject to the provisions of subsection 2., relocation to a lot of any existing building or structure in any district is a conditional use provided all of the following conditions are met:
2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted for a relocation unless all of the following conditions are met:

- a. A plan is submitted demonstrating the timing of the relocation from its source removal to its arrival on location where it is to be permanently relocated. Said plan shall also include the time within which the relocated building or structure is to be permanently affixed to its new location.
- b. A letter of credit is submitted in an amount deemed sufficient by the Town Board upon recommendation by the Plan Commission to ensure the completion of the relocation and to cover potential damages caused by transporting the building or structure on public roads.

- c. Insurance shall be obtained by the petitioner and proof of insurance shall be submitted, said insurance shall be of a type and in an amount deemed sufficient by the Town Board upon recommendation of the Plan Commission to cover reasonably foreseeable damages that could arise out of the relocation.

AM. Residential Planned Unit Development.

1. **Where Permitted.** Subject to the provisions of subsection 2., residential planned unit developments are conditional uses which may be permitted in the following districts:

R-1 Residential District
R-1(A) Residential District
R-2 Residential District
R-3 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District

2. **Conditions Under Which Permitted.** (amended 05-003)

Conditional use status shall not be granted to a residential planned unit development unless all of the following conditions are met:

- a. No structures or sewage disposal systems shall be allowed in the Wetland-Floodplain District or within 100' of the district.
- b. A minimum of 40% of the total PUD area shall be set aside as permanent common open space. The overall density shall not exceed the maximum density allowed under these regulations.
- c. The unified and planned development of a site, in single or corporate ownership at the time of development, may be permitted in a planned development without the customary division into individual lots and without requiring strict compliance with the specific district regulations, subject to the requirements of this section.
- d. Lot size, offset, setback and open space and floor area requirements may be modified according to the following conditions:
 - (1) All sanitary provisions must conform to the requirements of the State Department of Industry, Labor and Human Relations, the County Health Department, the local sanitary district and the Town;
 - (2) The proposed development must be in conformity with any local comprehensive plan, must not be contrary to the general welfare or economic balance of the community and the benefits and amenities of the resultant development must justify the variation from the normal requirements of the district in which it is located;
 - (3) All other requirements of the Planned Development must be met as set forth in this subparagraph;

- (4) The provisions of sections 18.06 and 18.07 of this General Code shall govern the design and construction of all roads and public improvements. Any modification of these standards must be consistent with good engineering practices and be approved in writing by the Town Board;
- (5) The provisions of section 18.07 shall govern with respect to dedication of public sites or payment in lieu of dedication; and
- (6) Except as specifically provided in subsection (7)(a) (7)(b) or (8)(a), below, the application of these regulations shall be limited to parcels of not less than 20 acres in area.
- (7) In areas designated as "Pewaukee Lake Non-Shoreline Redevelopment Overlay District" the following conditions, in addition to those conditions above that are not in conflict, shall apply:
 - (a) The parcel shall be at least 5 acres in area, and shall be identified in the Land Use Plan as being within the Pewaukee Lake Non-Shoreline Redevelopment Overlay District.
 - (b) The Plan Commission in making its recommendation and the Town Board in making its decision shall take into consideration the following: that although a planned unit development is permitted in this district, it is the intent that such development be designed to preserve to the greatest extent reasonably possible, lake views and vistas, woodlands, steep slopes, and other natural features.
- (8) In an A-1 Agricultural district the following conditions, in addition to those conditions above that are not in conflict, shall apply:
 - (a) The parcel shall be at least 40 acres in area.
 - (b) The Plan Commission in making its recommendation and the Town Board in making its determination shall take into consideration the following: that although a planned unit development is permitted in this district, it is the intent that such development be designed so as to preserve to the greatest extent reasonably possible, farm fields, pastures and open lands suited to general farming in addition to orchards, woods, bodies of water, marshes and other natural features.
 - (c) Open space agreements shall be made with the Town permanently preserving the open lands.
 - (d) The open space shall be owned by the subdivision Homeowner's Association. The open space may be used for agricultural purposes by any entity who will actively engage in farming on the land. Any farmstead remaining on the property shall be designated and constitute one (1) lot of the subdivision.
- e. Table 17-1 shall be utilized to compute the maximum dwelling unit density that may be allowed for the development and shall be referred to as the residential density factor.
TABLE 17-1

A-1	Agricultural Districts	120,000 s.f./dw. unit
A-2	Rural Home District	120,000 s.f./dw. unit
A-3	Suburban Home District	78,000 s.f./dw. unit
C-1	Upland Environmental Corridor Overlay	217,800 s.f./dw. unit
R-1	Residential District	60,000 s.f./dw. unit
R-(A)	Residential District	41,000 s.f./dw. unit
R-2	Residential District	30,000 s.f./dw. unit
R-3	Residential District	20,000 s.f./dw. unit
R-L	Residential Lake District	20,000 s.f./dw. unit

- f. The specific allowable maximum number of dwelling units shall be computed by dividing the total area allowable for density by the appropriate Residential Density Factor; existing public right-of-way or open space easement may not be included in the area for density computation.
- g. Table 17-2 shall be utilized to determine the absolute minimum lot size and open space per family per lot which may be utilized for the platting of lots in the planned unit development:

TABLE 17-2

District		Minimum Lot Size	Minimum Open Space Per Lot
A-1	Agricultural District	36,000 s.f.	80%
A-2	Rural Home District	60,000 s.f.	80%
A-3	Suburban Home District	40,000 s.f.	75%
C-1	Upland Environmental Corridor Overlay	Per Underlying District	Per Underlying District
R-1	Residential District	30,000 s.f.	75%
R-1(A)	Residential District	30,000 s.f.	80%
R-2	Residential District	25,000 s.f.	80%
R-3	Residential District	20,000 s.f.	75%

R-L	Residential Lake District	20,000 s.f.	75%
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TABLE 17-3

h. Table 17-3 shall be utilized to determine the absolute minimum average lot width, setback and offsets which may be utilized for the individual lots.

District		Min. Lot Width	Setback	Offset
A-1	Agricultural District	150'	50'	20'
A-2	Rural Home District	175'	50'	20'
A-3	Suburban Home District	150'	50'	20'
C-1	Upland Environmental Corridor Overlay	Per Underlying District	Per Underlying District	Per Underlying District
R-1	Residential District	130'	50'	20'
R-1(A)	Residential District	130'	50'	20'
R-2	Residential District	120'	50'	20'

R-3	Residential District	120'	50'	20'
R-L	Residential Lake District	100'	50'	20'

Land zoned in an industrial or business district shall not be included in the determination of allowable area for density computation. Up to a maximum of 20% of the area of lands which are zoned Wetland-Floodplain within the project may be used to determine planned development project densities. However, in no case, shall the total area of Wetland-Floodplain zoned lands used in the computation exceed 25% of the net area of the project which is zoned other than Wetland-Floodplain.

- j. Adequate guarantee shall be provided for permanent retention of open area resulting from these regulations, either by private reservation for use of the residents within the development or by public dedication. The parcels created as open space in all zoning districts other than the A-1 District shall be owned in common by the residents of the development or by a home owners association and shall not be further divided nor shall they be used for residential purposes. Buildings or structures for noncommercial, recreational or accessory facilities may be permitted in such open space area subject to specific grant in the conditional use permit. Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for specific approval and inclusion in the terms of the permit. Ownership and tax liability of the open space areas shall be established in a manner acceptable to the Town and shall be made a part of the conditions of approval.
- k. This section shall be construed to permit any type of housing unit within the development boundaries (i.e., multiple family, single family, garden apartments, condominiums, duplexes) subject to specific approval and conditions of this conditional use permit.
- l. Where the use is not proposed to be served by public sanitary sewers, the use of private treatment systems pursuant to COMM 83 Wisconsin Administrative Code shall apply, subject to the following:
 - (1) Private systems serving one dwelling unit shall be privately owned and maintained.
 - (2) Private systems serving more than one dwelling unit shall be the responsibility of an incorporated Owners Association subject to a maintenance and management agreement. Such agreements shall give the Town the right to inspect all facilities and make repairs at the expense of the Owners Association. In the event that the incorporated Owners Association fails to maintain or make repairs to the private system to the satisfaction of the Town, the maintenance and management agreement shall grant the Town the authority to conduct said maintenance or repairs at the expense of the Owners Association. In the event of nonpayment, all costs incurred shall be placed on the tax bills of all Owners Association properties on a prorata basis as a special assessment or special charge.

- m. The total number of dwelling units allowed for the project shall be determined by utilizing the density computation above.
- n. The floor area of attached or detached single family dwellings and duplexes shall not be less than what is required in the underlying zoning district.
- o. The architectural style of the buildings may be subject to approval by the Town Board.
- p. Subject to specific approval by the Town Board, floor area for multiple dwelling units may be modified in accordance with table 17-4.

TABLE 17-4

Efficiency or one bedroom apartment	900 s.f.
Two bedroom unit	1050 s.f.
Three bedroom unit	1250 s.f.

- q. The developer shall enter into an appropriate contract with the Town to guarantee the implementation of the development according to the terms and conditions established as part of the development plan approval.
- r. The Plan Commission in making its recommendation and the Town Board in making its determination as to the approval or denial of the conditional use permit for the planned development shall give consideration to the purposes in this section and be satisfied as to the following:
 - (1) That the proposed development is consistent with the spirit and intent of the chapter, is in conformity with the general character of the Town and would not be contrary to the general welfare and economic prosperity of the Town or of the immediate neighborhood, but rather that the benefits from the anticipated improved design of the resultant development justifies the variation from the normal requirements of this chapter through the application of this planned development section.
 - (2) That the size, quality and architectural design of all buildings in the project will not have an adverse effect upon the general character of the Town and surrounding neighborhood.
 - (3) That the provisions and facilities of the open space areas being provided is of such quality, size and aesthetic value to justify the approval of the project.
 - (4) That the setbacks shall be maintained along any boundary street of the project area as required by the existing underlying basic district.

- (5) That no building shall be permitted closer to a side or rear boundary street of the project area as required by the existing underlying basic district.
 - (6) That there shall be no further division of any lot within the development.
 - (7) That deed restrictions or an appropriate contract with the Town assuring implementation of the development according to the above requirements is filed with the Waukesha County Register of Deeds.
- s. The approval of a petition for conditional use shall be based on and include as conditions thereto the building, site and operational plans for the development as approved, as well as all other commitments offered as required in regard to project value, character or other factors pertinent to an assurance that the proposed development will be carried out basically as presented for the project. After all conditions of a planned unit development project are certified by the Town Board as being completed, development shall be changed to a permitted use in the district in which it is located.
- t. Any subsequent change or addition to an approved plan shall first be submitted for approval to the Plan Commission and, if in the Commission's opinion such change or addition is not substantial, it may recommend approval to the Town Board without public hearing. If the Plan Commission deems that any proposed change is not acceptable, it shall recommend accordingly to the Town Board. Without limitation to the Plan Commission's right to determine any other change substantial, a change in any of the following respects shall be automatically construed as substantial:
- (1) An increase in the number of dwelling units from that shown in the approved comprehensive project plan.
 - (2) A significant change in the size, value or type of structure from that indicated in the approved comprehensive project plan.
 - (3) The addition of any principal uses not included in the approved comprehensive project plan.
 - (4) A change in the basic concept of site development which would significantly alter the relationship of uses or open space to adjoining properties.

AN. Restaurants, Fast Food Restaurants, Supper Clubs, Lake Resorts, Taverns and Similar Uses.

1. **Where Permitted.** Subject to the provisions of subsection 2., restaurants, supper clubs, lake resorts, taverns and similar uses are conditional uses which may be permitted in the following districts:

B-3 Business Park District
R-L Residential Lake District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to restaurants, fast food restaurants, supper clubs, lake resorts, taverns and similar uses unless all of the following conditions are met:

- a. The minimum lot area shall be at least 3 acres in size and at least 200' in minimum average width.
- b. Adequate off-street parking shall be provided within 200' of the building in which such use is occurring, but offset 20' from any lot line or adjacent property zoned Agricultural or Residential. The amount of space shall be in accordance with the parking provisions of this code.
- c. A planting screen or fence of at least 6' in initial height shall be provided and maintained between any abutting Residential District and the proposed conditional use. Additional screening may be required by the Town Board.
- d. The proposed building shall be offset at least 50' from any adjoining residential district and 100' from the high water mark of any lake or navigable body of water.

AO. Riding Academies or Commercial Stables. (repealed and recreated 06-003)

- 1. **Where Permitted.** Subject to the provisions of subsection 2., riding academies and commercial stables are conditional uses which may be permitted in the following districts:

- A-1 Agricultural District
- A-2 Rural Home District
- A-3 Suburban Home District
- A-E Exclusive Agricultural District

- 2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to riding academies or commercial stables unless all of the following conditions are met;

- a. The lot is at least 7 ½ acres in area.
- b. Building location:
 - (1) All buildings shall comply with the setback and offset provisions of the underlying zoning district, except as provided below.
 - (2) No new building housing animals shall be closer than 100' to the lot line of an adjoining lot in a district permitting residential use. All other new buildings shall meet the offset and/or setback requirements of the zoning district in which they are located.
 - (3) Existing buildings constituting legal nonconforming structures may remain although their use may be restricted in the grant of permit.
 - (4) No existing building, except one designated as a rustic structure pursuant to Town ordinance, which is located closer than 100' to the lot line of an adjoining lot in a district permitting residential use, may be used to house animals except as may be specifically authorized in the

grant of permit after review by the Plan Commission of the following factors:

- the overall size of the property;
- the nature of the building's use;
- the intensity of the building's use, including the type and number of animals to be housed, and the hours and days of operation,
- the pattern and location of other activity on the property;
- the location and use of buildings on neighboring properties;
- the activities conducted on neighboring properties;
- the consent of neighboring property owners to the intended use; and, - provisions for manure storage and disposal.
- the location of the existing building in relationship with the adjacent property line.

Any such building may be reconstructed or enlarged only as specifically authorized in the grant of permit or an amendment thereto.

- c. No such permitted use shall include the operation of a commercial facility such as a bar or restaurant except as may be specifically authorized in the grant of permit.
- d. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights, are specifically prohibited.

AP. Soil Processing for Resale Either at Wholesale or Retail.

1. **Where Permitted.** Subject to the provisions in subsection 2., soil processing for resale at either wholesale or retail, is a conditional use which may be permitted in the following districts:

A-1 Agricultural District
A-2 Rural Home District
2. **Conditions Under Which Permitted.**
 - a. Minimum lot size shall be 10 acres.

AQ. Solar Energy Systems (created 2014-02)

1. **Where Permitted.** Subject to the provisions of this subsection AQ., solar energy systems as defined in Wisconsin Statutes Section 13.48(2)(h) 1. g. are a conditional use which may be permitted in any district in the Town of Delafield.
2. **Conditions Under Which Permitted.**
 - a. District Regulations. The location, height, area, yard, parking, loading, traffic and highway access and other regulations of the district in which the use is located shall not apply to the solar energy system, unless the Town Board finds that the restriction satisfies one of the following conditions:
 - i. Serves to preserve or protect the public health or safety.
 - ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.
 - iii. It allows for an alternative system of comparable cost and efficiency.

If one or more of the foregoing conditions is found to apply with regard to any such restriction of this Code, then such restriction shall apply to the solar energy system.
 - b. Other Conditions. The Town Plan Commission may recommend, and the Town Board may require compliance with such other conditions as may be deemed necessary in the specific situation, provided that any such restriction imposed must be found to meet one of the following conditions:
 - i. Serves to preserve or protect the public health or safety.
 - ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.
 - iii. It allows for an alternative system of comparable cost and efficiency.

AR. Commercial Planned Unit Development (created 2015-04)

1. **Where Permitted.** Subject to the provisions of subsection 2., commercial planned unit developments are conditional uses which may be permitted in the following districts:

B-2 Shopping Center District
B-3 Business Park District
M-1 Industrial District

2. **Conditions Under Which Permitted.**

Conditional use status shall not be granted to a commercial planned unit development unless all of the following conditions are met:

- a. No structures or sewage disposal systems shall be allowed in the Wetland-Floodplain District or within 75' of the district.

- b. A minimum amount of permanent common open space shall be set aside in each development as shown in Table 17-1.
- c. The unified and planned development of a site, in single or corporate ownership at the time of development, may be permitted in a planned development without the customary division into individual lots and without requiring strict compliance with the specific district regulations, subject to the requirements of this section. In order to accomplish this intended unified planned development, the Town shall consider all structures and uses on the entirety of each Lot that is included, or included in part, within the jurisdiction of the Town of Delafield Zoning ordinance, in the development. By petitioning for a Commercial Planned Unit Development conditional use, the petitioner accepts that the Town will exercise this authority, even on portions of Lots that may be partially outside of the Town of Delafield's zoning jurisdiction.
- d. Approval of a development shall be in accordance with the following conditions:
 - (1) All sanitary provisions must conform to the requirements of the State Department of Commerce, the Waukesha County Health Department, the local sanitary district and the Town;
 - (2) The proposed development must be in conformity with the Town comprehensive plan, must not be contrary to the general welfare or economic balance of the community and the benefits and amenities of the resultant development must justify the variation from the normal requirements of the district in which it is located as determined by the Town Board
 - (3) The provisions of sections 18.06 and 18.07 of this General Code shall govern the design and construction of all roads and public improvements. Any modification of these standards must be consistent with good engineering practices and be approved in writing by the Town Board;
 - (4) The provisions of section 18.07 shall govern with respect to dedication of public sites or payment in lieu of dedication; and
 - (5) The application of these regulations shall be limited to parcels of not less than 10 acres in area.
- e. Table 17-1 shall be utilized to determine the minimum amount of open space per development, minimum permanent common open space, minimum lot size and minimum open space per lot to be utilized for the development of a commercial planned unit development and associated platting of lots in the planned unit development:

TABLE 17-1

District	Title	Minimum Open Space for Development Area	Minimum Permanent Common Open Space	Minimum Individual Lot Size	Minimum Open Space Per Lot
B-2	Shopping Center District	50%	25%	2 acres	25%

B-3	Business Park District	75%	40%	2 acres	25%
M-1	Industrial District	60%	35%	2 acres	25%

- f. Lot width, setback, offsets and height shall follow the regulations found for each zoning district in 17.04.
- g. Adequate guarantee shall be provided for permanent retention of open space resulting from these regulations, either by private reservation for use of the building or property owners within the development or by public dedication. Any lot containing permanent common open space shall be owned in common by the owners of the properties that make up the development or by a business owners association and shall not be further divided nor shall they be used for residential, commercial or development purposes. Buildings or structures for noncommercial, recreational or accessory facilities may be permitted in such open space area subject to specific grant in the conditional use permit. Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for specific approval and inclusion in the terms of the permit. Ownership and tax liability of the open space areas shall be established in a manner acceptable to the Town and shall be made a part of the conditions of approval.
- h. Public sanitary sewer shall be available to service the development. If approved by the Town Board and, if applicable, the Waukesha County Health Department and local sanitary district, a private sewerage disposal system may be accepted as an alternative to the public facility required.
- i. The developer shall submit a development plan and enter into an appropriate contract with the Town to guarantee the implementation of the development according to the terms and conditions established as part of the development plan approval.
- j. The Plan Commission in making its recommendation and the Town Board in making its determination as to the approval or denial of the conditional use permit for the commercial planned unit development shall give consideration to the purposes in this section and be satisfied as to the following:
 - (1) That the proposed development is consistent with the spirit and intent of the chapter, is in conformity with the general character of the Town and would not be contrary to the general welfare and economic prosperity of the Town or of the immediate neighborhood, but rather that the benefits from the anticipated improved design of the resultant development justifies the variation from the normal requirements of this chapter through the application of this planned development section.
 - (2) That the size, quality and architectural design of all buildings in the project will not have an adverse effect upon the general character of the Town and surrounding neighborhood.
 - (3) That the provisions and facilities of the open space areas being provided is of such quality, size and aesthetic value to justify the approval of the project.

- (4) That the setbacks shall be maintained along any boundary street of the project area as required by the existing underlying basic district.
 - (5) That no building shall be permitted closer to a side or rear boundary street of the project area as required by the existing underlying basic district.
 - (6) That there shall be no further division of any lot within the development without consideration and approval of a new conditional use permit.
 - (7) That deed restrictions or an appropriate contract with the Town assuring implementation of the development according to the above requirements is filed with the Waukesha County Register of Deeds.
- k. The approval of a petition for conditional use shall be based on and include as conditions thereto the building, site and operational plans for the development as approved, as well as all other commitments offered as required in regard to project value, character or other factors pertinent to an assurance that the proposed development will be carried out as presented for the project. After all conditions of a planned unit development project are certified by the Town Board as being completed, the uses established pursuant to the approved development plan and conditional use order shall be deemed to be permitted uses in the district in which it is located; however, the conditional use order shall remain in effect for purposes of ongoing compliance with the development plan.
- l. Any subsequent change or addition to an approved development plan shall first be submitted for approval to the Plan Commission and, if in the Commission's opinion such change or addition is not substantial, it may recommend approval to the Town Board without public hearing. If the Plan Commission deems that any proposed change is not acceptable, it shall recommend accordingly to the Town Board. Without limitation to the Plan Commission's right to determine any other change substantial, a change in any of the following respects shall be automatically construed as substantial:
- (1) An increase in the number of buildings from that shown in the approved comprehensive project plan.
 - (2) A significant change in the size, value or type of structure from that indicated in the approved comprehensive project plan.
 - (3) The addition of any principal uses not included in the approved comprehensive project plan.
 - (4) A change in the basic concept of site development which would significantly alter the relationship of uses or open space to adjoining properties.
 - (5) Change of ownership.