

SECTION 17.10

ADMINISTRATION AND ENFORCEMENT

1. PLAN COMMISSION.

In addition to the responsibility and authority granted the Plan Commission pursuant to Wisconsin State Statutes, the Plan Commission shall be responsible for the functions identified in this chapter.

2. STAFF.

- A. *Unless otherwise specified, the Building Inspector shall be designated as the Code Enforcement Officer, and shall generally be responsible for administering this chapter. The Code Enforcement Officer or authorized appointee is hereby designated as the primary enforcement agency for the provisions of this chapter. The duty of the Code Enforcement Officer, among other things, shall be:*

To interpret and administer this chapter;

To authorize issuance of all permits required by this ordinance;

To keep an accurate record of all building and occupancy permits issued; and

To keep accurate records and maps of the Zoning Code and any amendments or changes thereto.

- B. *In the enforcement of this chapter, the Code Enforcement Officer under the direction of the Town Board shall have the power and authority for the following:*

1. *At any reasonable time and for any proper purpose, to enter upon any public or private premises and make inspection thereof.*
2. *Upon reasonable cause or question as to proper compliance, to revoke any building or occupancy permit and issue cease and desist or stop work orders requiring the cessation of any building, moving, alteration or use which is in violation of the provisions of this chapter. Such revocation shall be in effect until reinstated by the Code Enforcement Officer or the Board of Appeals.*
3. *Enforce the provisions of this chapter and the Building Code.*

3. VIOLATIONS.

A. Penalties.

Any person, firm, company or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this chapter, will be subject to a monetary forfeiture as provided in § 25.04 of this General Code. Each day that a violation exists shall constitute a separate violation and be punishable as such.

B. Injunction.

Compliance with the provisions of this chapter may also be enforced by an injunction order at the suit of the Town or one or more owners of real estate situated within an area affected by the regulations of this chapter.

C. Declared Nuisances.

Any building erected, converted, relocated, enlarged, occupied, reoccupied, structurally altered, moved or placed on a lot or any use carried on in violation of the provisions of this chapter is hereby declared to be a nuisance per se and the Town may apply to any court of competent jurisdiction to restrain or abate such nuisance.

4. BOARD OF APPEALS.

A. General Administration.

Board of Appeals administration and authority shall be as follows:

1. Establishment.

a. Authority. (repealed and recreated 2013-02)

- (1) *There is hereby created a Board of Appeals, pursuant to § 62.23(7)(e), Wis. Stats., to consist of 5 members to be appointed by the Chair of the Town, subject to confirmation by the Town Board for terms of three years, except those first appointed, one shall serve for one year, two for two years and two for three years, respectively; and, thereafter, on January 1 of each year, the new appointments shall be for three year terms. The Town Chair shall also appoint, for staggered terms of three years, two alternate members, to serve as required and established pursuant to § 62.23(7)(e)(2), Wis. Stats. The Board of Appeals is encouraged to establish a procedure which allows all members and alternates to serve on an alternating, random or periodic basis, so that all members and alternates share equivalent work loads and gain equivalent experience.*
- (2) *Members and alternates of the Board of Appeals shall be removable by the Town Chair, for cause, upon written charges and after public hearing.*
- (3) *The Town Chair may appoint for a term of three years two alternate members of such Board, in addition to the five members above provided for, who shall act, with full power, only when a member of the Board refuses to vote because of interest or when a member is absent.*
- (4) *The provisions, with regard to removal and the filling of vacancies, shall also apply to such alternate.*

b. General.

- (1) *All members of the Board shall reside within the Town.*
- (2) *The Town Chair shall designate one of the members Chair.*
- (3) *A vacancy shall be filled for the unexpired term of any member whose term becomes vacant, by appointment by the Chair of the Town Board.*

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- (4) *The members of the Board shall serve at such compensation to be fixed by ordinance, in addition to the actual and necessary expenses incurred by the Board in the performance of its duties.*

2. **Rules.**

a. **General.**

- (1) *The Chair, or in his or her absence, the acting Chair, may administer oaths and compel the attendance of witnesses.*
- (2) *The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examination and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.*

b. **Meetings.**

Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine and shall be subject to the open meetings law.

c. **Procedural.**

The Board shall adopt such other rules governing its procedures as are necessary, consistent with this chapter.

d. **Cooperation With Plan Commission.**

The Board shall keep the Plan Commission informed as to any matters brought before it and shall request of the Plan Commission such information as is pertinent to the matter under consideration.

B. **Powers.**

The Board of Appeals shall have the following powers as defined by statute:

1. *Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of § 62.23, Wis. Stats., or of this chapter and such additional other powers as provided by the State statutes.*
2. *To authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.*
3. *Establishment or expansion of a use otherwise prohibited by Chapter 17 shall not be allowed by variance.*

4. *The Zoning Board of Appeals shall have no authority to grant a variance to the minimum lot size or lot area requirements of this zoning code. (adopted 7/27/04 – Ord. 2004-003)*

C. Additional Variance Requirements. (repealed and recreated 2013-02)

In making its determination the Board shall consider whether the proposed variance would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects; and may impose such requirements and conditions with respect to locations, construction, maintenance and operation, in addition to any which may be stipulated in this chapter, as the Board may deem necessary for the protection of adjacent properties and the public interest and welfare. Any action authorized by a variance granted by the Board shall be completed no later than two years of the date such variance is granted, except as follows. The Board may specify in the variance a specific date by which the action authorized by the variance must be completed, which shall control, provided that such date is less than 2 years from the date the variance is granted.

D. Required Vote. (repealed and recreated 2013-02)

If a quorum is present, the Board may take action under this Section by a majority vote of the members present, including such alternate members as may form part of the quorum. The grounds of every such determination shall be stated.

E. Further Appeal.

Any person or persons aggrieved by a decision of the Board of Appeals, or any taxpayer, or any officer, department, board or bureau of the Town may appeal a decision of the Board of Appeals in the manner provided in § 62.23(7)(e), Wis. Stats., within 30 days after the filing of the decision in the office of the Board of Appeals.

F. Appeals. (repealed and recreated 2013-02)

1. How Filed.

- a. *Appeals to the Board of Appeals may be taken by any person aggrieved or by any taxpayer or any officer, department, board or bureau of the Town affected by any decision of the administrative officer. Such appeal shall be taken within 20 days from the date of the decision appealed from by filing with the administrative officer from whom the appeal is taken and with the Board of Appeals, a notice of appeal specifying the grounds thereof. The administrative officer from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.*
- b. *The Town Board may, by ordinance or resolution, establish reasonable filing fees for the filing of an appeal to the Board of Appeals. Such filing fees shall be paid at the time of filing of the appeal.*

2. Stay.

An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the administrative officer from whose decision the appeal is taken certifies to the Board of Appeals after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the

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Board of Appeals or by a court of record on application, on notice to the administrative officers from whom the appeal is taken and on due cause shown.

3. **Hearing.**

Each appeal shall be held within a reasonable time from the time the appeal was filed with the Zoning Board of Appeal. Notice of hearing shall be given by publication thereof in a newspaper of general circulation in the Town as a Class 2 notice, under Ch. 985, Wis. Stats., the last insertion to be at least one week prior to the date set for the hearing. If the Town has an official newspaper, the notice shall be published therein. In addition, written notice shall be given to the Plan Commission, any administrative officer whose decision is appealed from, the petitioner, the Town Clerk, the owners of each parcel of land adjoining the land in question and any other specifically interested parties. At the hearing, any person may appear in person, by agent, or by attorney.

4. **Decision.**

The decision on any appeal shall be in writing and shall be made within a reasonable time after completion of the hearing thereon.

5. AMENDMENTS TO ZONING REGULATIONS OR MAP.

A. ***Town Board Action.***

Pursuant to the provisions of § 62.23(7) of the Wisconsin Statutes, the Town Board may, after first submitting the proposal to the Plan Commission for report and recommendation and after notice and public hearing as hereinafter provided, amend the regulations of this chapter or change the District boundaries.

B. ***Initiation.***

A proposal to amend the text or change the District mapping of this chapter may be initiated by motion of the Town Board or by motion of the Plan Commission. A petition to change the District mapping of this chapter may be initiated by one or more property owners in the area to be affected by the amendment.

C. ***Filing of Petition.***

A petition to change the District mapping of this chapter submitted by a private property owner shall be prepared on printed forms provided for that purpose and filed with the Clerk and shall be accompanied by the appropriately established current fee to defray the cost of giving notice, investigation and other administrative processing.

D. ***Data Required.***

In addition to all information required on the petition form, the petitioner shall supply 3 copies of the following:

1. *A legal description of the land in question.*
2. *A plot map drawn to a scale of not less than 100 feet to the inch showing the land in question, its location, the length and direction of each boundary thereof, the location and existing use of all buildings on such land and the principal use of all properties within 600 feet of such land.*

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3. *The names and addresses of owners of all properties within 300 feet of any part of the land included in the proposed change.*
4. *Any further information which may be required by the Code Enforcement Officer or the Plan Commission to facilitate the making of a comprehensive report to the Town Board.*

E. Referral.

1. *The Clerk shall transmit without delay one copy of such petition or motion of the Plan Commission or Town Board to the Town Board at its next meeting for formal referral to the Plan Commission, to be placed on the agenda of the next meeting of the Plan Commission.*
2. *The Plan Commission shall conduct the necessary investigation, hold an informal hearing where deemed desirable and report its recommendation to the Town Board within a reasonable time of the receipt of such petition.*

F. Hearing.

Upon receipt of the Plan Commission report or at least 60 days after submitting the petition or motion to the Plan Commission, the Town Board shall hold a public hearing thereon in the manner provided in § 6 of this section.

G. Action.

1. *As soon as reasonable after such public hearing the Town Board shall act to approve, approve with conditions, modify and approve, modify and approve with conditions, or disapprove the proposed change or amendment.*
2. *Approval shall be by appropriate ordinance and necessary changes in the official zoning map or texts shall be made promptly by the Code Enforcement Officer.*

H. Protest.

In case of protest against a change or amendment duly signed and acknowledged by the owners of 20 percent or more either of the areas of land included in such proposed change, or by the owners of 20 percent or more of the area of the land immediately adjacent and extended 100 feet therefrom, or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such change shall require a 3/4 vote of the members of the Town Board for passage.

I. Effective Upon County Approval.

1. *Any such amendatory ordinance when so adopted shall, within 7 days thereafter, be submitted by the Town Clerk to the County Clerk for approval by the County Board.*
2. *Any such amendatory ordinance shall become effective in the Town upon the approval of the County Board.*

5.5 SPECIAL EXCEPTION DUE TO ERRONEOUSLY PERMITTED WORK (created 2013-04)

The Town Board is authorized to grant a special exception to waive or modify any requirements of

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this Ordinance if, in the judgment of the Town Board, it would be inappropriate to apply literally the provisions of this Ordinance due to erroneously permitted work, to the extent deemed just and proper on a case-by-case basis after receiving and considering a recommendation from the Town of Delafield Plan Commission. The procedures and standards to be applied are as follows.

A. Procedures.

1. Petition.

A party seeking a special exception shall file a petition with the Town Clerk. The petition shall include all of the following:

- a. *Plat of Survey.* *A plat of survey, drawn to a reasonable scale and properly dimensioned, shall be prepared and certified by a surveyor registered by the State. Such survey shall bear the date of the survey, which shall be within one year of the application for the special exception. The survey shall also show the following:*
 - (1) *The boundaries of the property involved.*
 - (2) *The location of the centerline of any abutting streets.*
 - (3) *The ordinary high water line of any stream or lake on which the property abuts.*
 - (4) *The location on the property of any existing buildings, structures, hard surfaces, including the measured distances between such buildings and structures and the lot lines, and a chart indicating the area, measured in square feet, of each structure or hard surface.*
 - (5) *The location and grade of the existing driveways and parking areas.*
 - (6) *The nearest portion of such buildings and structures and the centerline of any abutting street.*
 - (7) *The nearest portion of such buildings and structures and the ordinary high water line of any abutting stream or lake.*
 - (8) *The proposed floor elevation of all existing buildings and structures in relation to the existing and/or established grade of any abutting streets and the ordinary high water line of any abutting stream or lake.*
 - (9) *The elevation and setback of any existing buildings or structures on adjacent parcels within 200 feet of any existing buildings, structures or additions.*
- b. *The names and addresses of the owners of all properties within 300 feet of the property involved.*
- c. *A detailed written description of the existing development or use, and conditions for which the special exception is sought.*

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- d. Any further information as required by the Town Staff, Town Plan Commission, or Town Board to facilitate the making of an evaluation of such request, such as, parking, traffic impact, landscaping treatment, drainage, sanitary sewer, erosion control and other factors as would be pertinent including the impact on public facilities.

2. **Fee.**

The petition shall be accompanied by a fee payment as set from time to time by the Town of Delafield Town Board to defray the cost of publication, notification, and holding a public hearing, administrative expenses and expenses of Board members. The Petitioner shall also pay reimbursement to the Town of Delafield for all costs incurred for legal, planning, engineering, and administrative work necessary to administer the application and oversee all procedures and activities related to the application.

3. **Plan Commission Evidentiary Hearing.**

The Town Plan Commission shall hold an evidentiary hearing upon receipt of such petition. All interested persons may be heard, in sworn oral testimony. Notice of such hearing shall be provided as described in 17.10(6) of this Ordinance, to the same extent as though this were consideration of a conditional use.

4. **Plan Commission Findings and Recommendation.**

As soon as practicable following the evidentiary hearing, the Town Plan Commission shall make written findings and a recommendation to the Town Board, regarding whether the petitioner has proved an adequate basis for granting a special exception, and if so, regarding any conditions that the Plan Commission recommends be included in any such grant of a special exception.

5. **Town Board Action.**

The Town Board shall review the recommendation of the Town Plan Commission, and make a decision in writing, of whether to grant, conditionally grant, or deny the requested special exception.

B. **Basis of Approval.**

An application for a special exception may be approved, denied, or approved with conditions. The Town Board shall consider the recommendation of the Town Plan Commission, but is not bound to follow the Town Plan Commission's recommendation. The Town Board may rely upon the sworn testimony received by the Town Plan Commission, or in its discretion the Town Board may take additional testimony from any witness(es) of their choosing. In order to approve or conditionally approve the special exception, the Town of Delafield Town Board must find that the applicant has demonstrated all of the following:

1. *Permit Error. That the Petition seeks approval of a structure that was constructed pursuant to a building permit or zoning permit issued by the Town of Delafield Building Inspector or Zoning Administrator, in accordance with the plans filed with the permit application and all conditions of the permit approval, and only after completing construction was the structure found to be in violation of the yard,*

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building height, area, setback, offset, or open space requirements of this Ordinance.

2. *Preservation of Property Rights. That the special exception is necessary for the preservation and enjoyment of substantial property rights possessed by the applicant.*
3. *No Substantial Detriment. That the special exception will not create substantial detriment to adjacent property or the general desirability of the Town of Delafield and its environs, and will not materially impair or be contrary to the purpose and spirit of this Ordinance, or the adopted Town of Delafield Comprehensive Plan, or the public interest.*

C. Determination.

The action of the Town of Delafield Board shall be stated in writing, and shall include findings of facts setting forth the basis for the decision. If a special exception is granted, or is conditionally granted, it shall be subject to the written approval of the applicant, and upon such approval it shall be recorded at the office of the Waukesha County Register of Deeds. Such recorded document shall be in a form approved by the Town Attorney and shall include all of the following: (a) A description of the particular non-compliant conditions on the property that are allowed to remain; (b) all conditions imposed by the Town Board upon the grant of the special exception; (c) a statement that in the event a non-compliant structure or use is destroyed or otherwise removed from the property, either wholly or in part, for any reason, such non-compliant structure or portion thereof shall not be replaced; (d) a statement that the grant of a special exception under this Section 17.10(5.5) does not render the structure or use legal non-conforming, and no legal non-conforming rights shall apply. The decision of the Town of Delafield Town Board shall be final, and shall not be subject to appeal to the Zoning Board of Appeals.

6. **PUBLIC HEARINGS.**

A. **Notice.**

In order that the owners of property involved and other legitimately interested parties may have fair opportunity to be heard, adequate notice shall be given of any public hearing required by the provision of this chapter stating the time and place of such hearing and the purpose for which the hearing is being held.

B. **Procedure.**

1. Posting and Publishing.

- a. *Except as may be otherwise herein specifically provided, notice of hearing shall be given not less than 10 days prior to the date of such hearing by posting such notice in at least 3 public places in the Town, and publishing the notice as a Class 2 notice, under Ch. 985, Wis. Stats., in a newspaper likely to give notice to the area affected. If the Town has an official newspaper the notice shall be published in the official newspaper.*
- b. *When the hearing involves a proposed change in the zoning district classification of any property, or the granting of a conditional use, one of the notices shall be posted in the vicinity of such proposed change of*

conditional use where practical, and notice of the public hearing shall be mailed to the owners of all lands in the Town which lie within 300' of any part of the land included in such proposed change or conditional use at least 10 days before such public hearing. The failure of such notice to reach any property owners provided such failure is not intentional, shall not invalidate any amending ordinance, grant of conditional use or decision. Such mailed notice shall not be required where the Town Board determines that the Zoning District changes are of such a nature that such notice would involve excessive administrative effort and expense and is not necessary for reasonable notification of affected property owners.

2. **Fee.**

Where a hearing is required by the provision of this chapter, such petition shall be presented in writing to the Town Clerk and shall be accompanied, in addition to the data required, by a fee as set from time-to-time by the Town Board to defray the cost of notification and holding of a public hearing.

7. **ADMINISTRATIVE AND ON-SITE DEVELOPMENT FEES.**

A. ***Administration.***

All persons, firms or corporations whose application, petition and/or plans require appearance at a public meeting, staff review of plans, staff inspection of site improvements and/or issuance of a permit shall pay a fee to the Town to help defray the cost of administration, investigation, advertising, inspection and processing. All fees shall be established by separate resolution of the Town Board and amended from time-to-time as deemed appropriate.

B. ***Consultant Fees.***

Costs incurred by the Town for retaining outside consultants to assist in review and analysis of any application shall be paid by the applicant.