

SECTION 17.06

ACCESSORY USES, ACCESSORY BUILDINGS AND OTHER STRUCTURES

1. ACCESSORY USES RESTRICTED.

In any District, no land, accessory building or accessory structure shall be used and no accessory building or accessory structure shall be erected, converted, relocated, enlarged, structurally altered, occupied or reoccupied except for the uses as stated for that District and in compliance with the regulations established for that District in this chapter. No accessory building or accessory structure shall be erected until the principal building or principal structure has been constructed or is under construction. No occupancy permit for any accessory building or accessory structure shall be issued until the principal building or principal structure is occupied.

2. ACCESSORY USE REQUIREMENTS.

In any District, accessory uses, accessory buildings and accessory structures customarily incident to the permitted uses in that District and located upon the same lot occupied by the principal use, building or structure, shall conform to the established requirements for the District in which it is located.

3. ACCESSORY BUILDINGS OR STRUCTURES. (rep & rec 2002-09-002A)

- A. Any accessory building or accessory structure over 200 square feet in area in any District may be submitted to the Plan Commission if deemed necessary by the Code Enforcement Officer for approval. The accessory building or accessory structure shall be constructed in such a way that its exterior appearance is compatible with the principal building or structure on the lot and on adjacent lots.
- B. **Boathouses.** Boathouses, as defined by this chapter, are permitted in the R-L Residential Lake District, subject to the regulations of this chapter. Boathouses may be permitted in the W-F Wetland Floodplain District abutting an R-L Residential Lake District and any Business Districts abutting the lake as a conditional use.
- C. **Garages.** A private garage at least 480 square feet in area shall be required for each dwelling unit hereafter erected. Such structures shall be either attached or detached and conform to the offset and setback requirements of the District involved. The maximum size of a detached garage shall not exceed the requirement for the District in which it is located. The maximum size of an attached garage shall not exceed 1440 square feet. In the event that the size of an attached garage exceeds 960 square feet, that amount of square footage in excess of 960 square feet shall be deducted from the maximum allowable size for any detached garages or other accessory building in the District in which the building is located and the maximum size for all such accessory buildings built upon the same property shall be reduced by the amount by which the attached garage exceeds 960 square feet. Garages may have no more than four (4) single bay doors or no more than three (3) double bay doors, which shall be of uniform height not to exceed nine feet. The total linear width of all bay doors may not exceed 48 feet. Any application for a permit to construct garage doors of non-uniform height or for a door or doors in excess of nine (9) feet shall be subject to Plan Commission approval.
- D. **Rustic Buildings and Structures.** As defined at §17.02 2. of the Town Zoning Code, rustic buildings or structures may be allowed in any district. Rustic structures shall not be counted in determining whether a proposed use complies with the open space, accessory building or other restrictions of that district. If there is a question as to whether a structure meets the definition of rustic so as to exempt it from District requirements, the Code Enforcement Officer or the Property Owner may request an opinion from the Plan Commission. In those instances, the Plan Commission shall make the final determination as to any such issues.

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1. Rustic structures shall be subject to a maintenance agreement acceptable to the Town Board which shall be recorded with the Waukesha County Register of Deeds. The maintenance agreement shall set forth the minimum standards agreeable to the owner and the Town that will preserve the rustic structure in the form that it is at the time of approval. The owner may, at any time, permanently remove the structure; however, any subsequent building must meet the requirements of the zoning district in which it is located.
2. Any such structure shall be used in conformance with permitted uses of an accessory building and shall not be used for the following:
 - a. any income producing business;
 - b. storage of vehicles that are not personal vehicles of the lot owner or occupant;
 - c. keeping of animals beyond that which is allowed in the underlying zoning district.

The owner shall include the restrictions above in a deed restriction on the property prior to issuance of a building permit or approval by the Plan Commission and/or Town Board.

3. The footprint of any rustic structure shall not occupy more than 25% of the parcel area.
4. Rustic structures may be permitted on lot or outlots, without a principal building, subject to the maintenance and deed restrictions provisions herein.

4. STRUCTURES OTHER THAN BUILDINGS. (amended 12-001)

- A. **Structures other than Fences and Retaining Walls.** Structures, other than fences and retaining walls, not classified as buildings shall be subject to the setback, offset, height and open space requirements of this chapter, except as may be specifically otherwise provided.
- B. **Fences.** Fences and other architectural screening devices where anchored to supports embedded in the ground shall be considered permanent structures and shall be subject to the following:
 1. No fence or other architectural screening device as described above may be constructed unless a zoning permit is first secured through the building inspection department, except a fence to enclose a farming operation.
 2. Any such structures not in excess of three feet in height may be permitted anywhere on the lot consistent with standards set forth in this chapter, subject to acquiring a zoning permit as specified in 1 above.
 3. Any such structure greater than three feet in height and up to six feet in height may be permitted anywhere behind the nearest portion or projection of the principal structure as measured from the right-of-way, extended to the side lot line, except as regulated below, subject to acquiring a zoning permit as specified in 1 above.
 4. Any such structure greater than three feet in height located between the road right-of-way line and the nearest portion or projection of the principal structure measured from the right-of-way line, extended to the side lot lines may be permitted with the approval of the Plan Commission.
 5. Any such structure located between the Ordinary High Water Mark (OHWM) (as determined by the Wisconsin Department of Natural Resources (WDNR)) of a lake or stream and the nearest portion or projection of the principal structure measured from the OHWM, extended to the side lot lines, shall be no greater than three feet, without Plan Commission approval.

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6. Any such structure greater than six feet in height may be permitted, provided it conforms to the height, offset and setback requirements of the district in which it is located, subject to the approval of the Plan Commission; however, any such structure may be permitted closer to the required offset from the adjoining lot line with the written consent of the adjoining property owners and subject to the approval of the Plan Commission.
 7. Any fence shall be erected so that the finished side faces the abutting property.
- C. **Retaining Walls.** (created 06-007) Retaining walls shall be considered permanent structures and shall be subject to the following, in addition to the requirements of Section 17.03 7. of the Code of Ordinances:
1. Any retaining wall located within five (5) feet of an adjoining property line may be permitted subject to:
 - a. A hearing before the Plan Commission at which the adjoining neighbor has been given notice at least 10 days prior to the meeting of the time and place of the hearing by the applicant. The applicant shall certify in writing to the Town Clerk at least 7 days prior to the meeting that notice has been provided to the adjoining owner.
 - b. Submission of plans showing the location and elevation of the retaining wall, materials, and schedule for building the retaining wall. Submission of a drainage plan may also be required if requested by the Town Engineer.
 - c. Plan Commission approval.
 2. Any retaining wall, 2 feet in height or less, located greater than five feet from the adjoining property line may be permitted without the approval of the Code Enforcement Officer or Plan Commission.
 3. Any retaining wall greater than 2 feet in height and located greater than 5 feet from the adjoining property line may be permitted with the approval of the Code Enforcement Officer. If, in the opinion of the Code Enforcement Officer, the retaining wall may adversely affect drainage, aesthetic values to the surrounding area or safety, the Code Enforcement Officer may require that the applicant gain approval through the Plan Commission.
- D. (Rep. and Rec. 2008-004) **Walks and Driveways Serving a Single Lot.** Walks 3 feet or less in width and driveways shall be permitted in setback and offset areas, but not closer than three feet offset from an adjacent property.
- E. **Signs.** See § 17.08 of this chapter.
- F. **Swimming Pools.** (Am. 2008-004)
1. **Use Permitted.** Swimming pools are permitted in any District provided they comply with the following conditions and requirements:
 - a. **Exclusive Private Use.** The pool is intended and used solely for the enjoyment of the occupants of the principal use of the property on which it is located and their guests.
 - b. **Offset and Setback Requirements.** No pool shall hereafter be erected or structurally altered so that any part thereof is closer to any lot line or base setback line than the offset and setback distances specified for the District in which it is located.

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- c. **Enclosing the Pool.** Every swimming pool, whether heretofore or hereafter erected, shall be completely enclosed before filling the same, by a secure fence or wall not less than four feet above ground elevation. Such fence or wall shall be provided with a self-closing and self-latching gate or door with the latch located at the top of the gate or door or made inaccessible to small children in any other manner approved by the Code Enforcement Officer. An unobstructed areaway of not less than four feet shall be provided between the pool and such fence. No such fence or wall shall be required in the case of aboveground pools whose walls are perpendicular to the ground and are not less than four feet high, provided that the ladder or steps leading up to the pool is hinged at the top thereof and capable of being raised out of the reach of small children.
 - d. **Electricity to Pool.** All electrical connections to any swimming pool shall be properly grounded so that no electrical current can be discharged into any part of such pool or surrounding fences. No electrical wires or other electrical conductor shall be strung over any swimming pool.
- 2. **Permit Required.** No swimming pool will be constructed unless a building permit is first secured pursuant to this chapter.
 - 3. (Amd. 2008-004). The provisions of 17.06 4. F. 1.a. through c. shall apply to hot tubs, except that a fence is not required if there is a latched cover on the hot tub.
- G. **Fuel Tanks.** All accessory structures involving the utilization or storage of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and comply with all the requirements of the Fire Department, the State (DILHR) Flammable Liquids Code and/or Code Enforcement Officer.
- H. **Special Use Structures.** Special use structures, as herein defined, are permitted in any District other than WF-1, when used solely by the occupants of the principal use of the property and subject to the following:
- 1. **Permit Required.** A separate special use permit from the Town Board shall be required for each system. The permit shall be applicable solely to the systems, structures, use and property described in the permit.
 - 2. **Basis of Approval.** The Town Board shall base its determination on general consideration as to the effect of such grant on the property values and general desirability of the neighborhood in which such use would be located. These considerations shall include the effect on the established character and quality of the area, its physical attractiveness, the demand for related services, the possible hazardous, harmful, noxious, offensive or nuisance effect as a result of noise, glare, dust, smoke or odor and such other factors as would be appropriate to carrying out the intent of this chapter.
 - 3. **Types of Special Uses.** (repealed 2014-02)
 - a. ~~**Solar Energy Conversion System.** Such as "active" or "passive" solar collection and heating systems.~~
 - b. **Wind Energy Conversion Systems.** Such as "windmills" or other devices used to produce power.

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- c. **Communication Systems.** Such as private cable television devices (disks, dishes), etc. not preempted by Federal law.
4. **Fees.** Before receiving approval for a Special Use Structure, a fee shall be paid as designated from time-to-time by resolution of the Town Board.
5. **Permit Procedure.**
 - a. The Town Board is designated as the agency which may approve special use permits and the Code Enforcement Officer is the official to receive, process and, following approval by the Town Board, issue special use permits.
 - b. The permit application shall be made to the Code Enforcement Officer on forms provided by the Town and include the name and address of the applicant, a site plan a plan of operation, describing proposed improvements to the site and any additional information deemed necessary by the Code Enforcement Officer for proper review of the application.
 - c. The Code Enforcement Officer shall review the application and, if the application is complete and contains all required information, shall refer it to the Town Board. The Town Board may refer the matter to the Plan Commission for its recommendation.
 - d. Upon receipt of any requested recommendation from the Plan Commission, and following public hearing per this chapter, when deemed necessary by the Town Board and following necessary study and investigation, the Town Board shall, as soon as practical, render its decision in writing. Such decision shall include an accurate description of the special use permitted, of the property on which permitted and any and all conditions made applicable thereto or, if disapproved, shall indicate the reasons for disapproval. The Board may impose any conditions or exceptions necessary to minimize any burden on any person affected by the granting of the special use permit.
 - e. When a special use does not continue in conformity with the conditions of the original approval, or where a change in the character of the surrounding area or of the use itself cause it to be no longer compatible with surrounding areas, or for similar cause based upon consideration for the public welfare, the special use permit may be terminated by action of the Town Board following a public hearing per this chapter.
6. **Standard Requirements.**
 - a. Except as may be specifically otherwise provided, any such special use shall conform to the structure location, height, structure size and open space regulations of the District in which it is located.
 - b. Building, site and operation plans for the proposed use shall be submitted for approval of the Town Board. Such plans shall be in sufficient detail to enable the Town Board to evaluate the suitability of architectural and landscape treatment; the proper location of the structure on the lot; the satisfactory provision for drainage and sewage disposal, for adequate planting screen where necessary and for operations control devices where necessary to eliminate noise, glare, dust, odor, smoke or other objectionable operating conditions; and the general compatibility of the proposed use within the area in which it is located.

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7. **Special Requirements.** In addition to the general standard requirements as stated in this section such special uses shall be subject to more specific standards and requirements pertinent to the particular use, which standards and requirements may be set out in a supplementary guide for special use regulations adopted by the Town Board and modified from time to time in order that they reflect the best and most contemporary of regulatory practices.
8. **Modification of Regulations.** Requirements applicable to uses by the regulations of this chapter may be modified or waived by the Town Board in their application to special use if in the Town Board's opinion they are not appropriate or necessary to the proper regulations of the special use and where such modification or waiver would not in the Board's opinion result in adverse affect upon the surrounding properties.

I. **Television Satellite Dish Antennas Regulations.**

1. No television satellite dish antenna unless exempted from local permitting processes by Federal Law shall be installed or erected in the Town without a permit from the Code Enforcement Officer. Applications for a permit shall be on forms provided by the Code Enforcement Officer and shall be accompanied by two copies of a survey and details of the antenna to be installed.
2. All applications for roof dish antennas and other antennae not conforming to Section 3 below shall be referred to the Plan Commission. The Plan Commission shall determine if the proposed antenna conforms with the intent of this subsection, is aesthetically harmonious with the building on which it is to be located and would not adversely affect the appearance of or property values in the neighborhood.
3. Ground dish antennas may be approved by the Code Enforcement Officer on the following conditions:
 - a. Shall be mesh. No solid dishes shall be allowed.
 - b. Shall not be in the setback area.
 - c. Offset shall be equal to or greater than the offset of the particular District.
 - d. Maximum diameter, 10 feet.
 - e. Maximum total height, 12 feet.
 - f. Shall be adequately screened, as determined by the Code Enforcement Officer.
 - g. Color shall harmonize with screening and surroundings.
 - h. Only one dish per lot shall be allowed.
4. Letters of approval or disapproval from neighboring property owners shall be considered by the Code Enforcement Officer or Plan Commission in making their determinations hereunder.

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5. KEEPING OF CHICKENS. (created 2012-02)

Certain zoning districts describe within their use regulations that the keeping of chickens is allowed subject to the requirements of this section. In all such cases, the use is subject to all of the following requirements:

- A. No more than 8 chickens shall be allowed per lot.
- B. Roosters shall be prohibited.
- C. Owners shall acquire and maintain in effect an annual license from the Town of Delafield in accordance with Chapter 12 of the Town Code of Ordinances. The license shall apply to the individual applicant, to authorize keeping of chickens on the parcel that is subject to the application, and shall not be transferable to new persons or entities, or to new properties. The license shall apply to all chickens on the parcel, not to particular chickens which may change over the term of the license.
- D. Chickens shall be kept in a chicken coop and/or chicken run as defined in this code. Slaughtering may take place in an enclosed area on the property. No more than one chicken coop and run shall be allowed on any one property. The chicken coop shall be equal to or less than 50 square feet and shall not be included in the open space calculations, composite area of all accessory buildings or be included in the number of accessory buildings requirement of the district in which they are located.
- E. All chicken coops must meet double the required setback and offset provisions for structures in the district in which they are located; or if said doubled setbacks and offsets cannot be met due to lot dimensions, must be located the maximum distance as far off the property lines as is feasible. Chicken runs shall meet the required setback and offset provisions of the district in which it is located.
- F. No commercial activities shall be permitted by the homeowner, such as sale of eggs at a roadside stand, sale of live or dressed chickens, sale of live chicks, feathers, etc.
- G. Owners shall exercise proper care and control of the chickens to prevent them from becoming a public nuisance.
- H. Chicken coops and chicken runs shall be removed no later than 12 months after the keeping of chickens is no longer a use on the property.

6. WIRELESS TELECOMMUNICATIONS MOBILE SERVICE FACILITIES. (created 2013-10)

- A. **Purpose.** This section is intended to regulate mobile service facilities to the full extent allowed by Wisconsin Statutes Section 66.0404 and other applicable laws. Nothing herein is intended to regulate or to authorize the regulation of mobile service facilities in a manner that is preempted or prohibited by Wisconsin Statutes Section 66.0404 or other applicable laws.
- B. **Definitions.** All terms used herein shall have the meaning described in Wisconsin Statutes Section 66.0404(1).

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- C. **New Towers and Facilities.** The siting and construction of a new mobile service support structure and facilities shall be subject to the following requirements:
1. **Application Process.** The applicant shall submit a written application which shall include all of the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed tower.
 - c. The location of the mobile service facility.
 - d. A construction plan which describes the tower, equipment, network components, antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new tower.
 - e. An explanation as to why the applicant chose the proposed location, and why the applicant did not choose collocation, including a sworn statement from the responsible party attesting that collocation within the applicant's service area would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome.
 2. **Determination of Completeness within 10 Days of Submittal.** The Town Zoning Administrator shall review the application and determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Town Zoning Administrator shall notify the applicant in writing within ten days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their applications as often as necessary until it is complete.
 3. **Conditional Use Review Procedure.** The wireless telecommunications mobile service facility shall be a conditional use, however it is not subject to Section 17.05 of this code, and instead shall be reviewed pursuant to the following procedures:
 - a. **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.
 - b. **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. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).

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c. Requirements.

- i. Conditional use status shall not be granted to communication towers unless the tower is located so that there is sufficient radius of clear land around the tower so that its collapse shall be completely contained on the property, subject to the following. If an applicant provides the Town with engineering certification showing that the tower is designed to collapse within a smaller area than the radius equal to the height of the tower, the smaller area shall be used unless the Town has and provides to the applicant substantial evidence that the engineering certification is flawed.
- ii. Offsets and setback distances shall be increased according to Section 17.036.D. "Increase Permitted" of this Code.
- iii. All facilities shall meet all State and federal codes.

d. Determination. The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations, provided further that final action shall be taken within 90 days of receipt of a complete application unless the time extended by the Petitioner. 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 recorded as follows:

- i. 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.
- ii. The occupancy permit shall be appropriately noted as to the conditional status granted.
- iii. Indication shall also be made on the zoning map by appropriate code number or symbol.

e. 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.

f. 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, among other issues as deemed appropriate may be required by the Plan Commission upon its finding that these are necessary to fulfill the

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purpose and intent of this Chapter; subject to the limitations of Section 17.06(6)C.4., below.

4. Limitations upon Authority. The Town review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Section 66.0404(4). In the event the applicant believes the Town has exceeded its authority in this regard, the applicant shall notify the Town Board in writing and the Town Board reserves the right to reconsider the matter, to ensure that applicable laws are followed.
 - D. **Modifications.** The construction of modifications to an existing mobile service support structure or mobile service facility shall be subject to the following requirements:
 1. Substantial Modification.
 - a. Application and Review Process. The application and review process for a substantial modification is identical to the application and review process for a new tower, as described in Section 17.066.C. above, except that the required plans should describe the proposed modifications, rather than describe the new structure.
 2. Not Substantial Modifications.
 - a. **Application Information.** The applicant shall submit a written application that describes the applicant's basis for concluding that the modification is not substantial, and all of the following information:
 - i. The name and business address of, and the contact individual for, the applicant.
 - ii. The location of the affected support structure.
 - iii. The location of the proposed facility.
 - b. **Completeness Determination within Five Days.** The Town Zoning Administrator will determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Town Zoning Administrator must notify the applicant in writing within five (5) days of receiving the application if it is found not to be complete, specifying in detail the required information that was incomplete. The applicant may resubmit as often as necessary until it is complete.
 - c. **Fee.** Any petition shall be accompanied by a fee as set from time-to-time by the Town Board to defray the cost of review. 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. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).

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- d. **Determination.** The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations, provided further that final action shall be taken within 45 days of receipt of a complete application unless the time extended by the Petitioner. Said decision shall be stated in writing and a copy made a permanent part of the Town records. If approval is not granted, the reasons therefor will be included in such record.

- e. **Limitations Upon Authority.** The Town review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Section 66.0404(4), and such other laws as may apply which may include 47 USCA §1455. In the event the applicant believes the Town has exceeded its authority in this regard, the applicant shall notify the Town Board in writing and the Town Board reserves the right to reconsider the matter, to ensure that applicable laws are followed.