

Enrolled 158-157
PROPOSED ORDINANCE 158-161

1
2
3 AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING ORDINANCE
4 TO CREATE SECTION 2.02(72)(A) AND SECTION 3.09(1)(J) OF THE TOWN
5 OF MUKWONAGO ZONING ORDINANCE TO DEFINE A SPECIAL EXCEPTION
6 AND TO GRANT SPECIAL EXCEPTIONS FOR STRUCTURES
7 ADJACENT TO LAKE ACCESS DRIVES (ZT-1525)
8
9

10 WHEREAS the subject matter of this Ordinance having been approved by the Mukwonago
11 Town Board on March 10, 2004, after Public Hearing and the giving of requisite notice of said
12 hearing, and duly referred and considered by the Waukesha County Park and Planning
13 Commission and a recommendation thereon reported to the Land Use, Parks and Environment
14 Committee and the Waukesha County Board of Supervisors as required by Section 60.61 of the
15 Wisconsin Statutes.
16

17 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES
18 ORDAIN that the Ordinance amending the text of the Town of Mukwonago Zoning Ordinance,
19 approved by the Mukwonago Town Board on May 9, 1983, to create Section 2.02(72)(a) and
20 Section 3.09(1)(J) of the Town of Mukwonago Zoning Ordinance to define a special exception
21 and to grant special exceptions for structures adjacent to lake access drives, and more
22 specifically described in the "Staff Report and Recommendation" on file in the office of the
23 Waukesha County Department of Parks and Land Use and made a part of this Ordinance by
24 reference (ZT-1525), is hereby approved.
25

26 BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of
27 this Ordinance with the Town of Mukwonago.
28

29 BE IT FURTHER ORDAINED that the Ordinance shall be in full force and effect upon passage,
30 approval and publication.
31

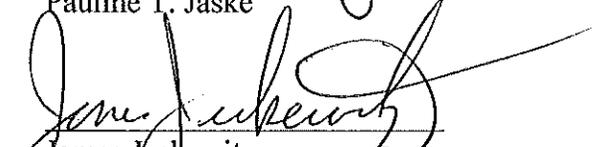
32 BE IT FURTHER ORDAINED that all Ordinances inconsistent with or with contravention of
33 provisions of this Ordinance are hereby repealed.

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING ORDINANCE
TO CREATE SECTION 2.02(72)(A) AND SECTION 3.09(1)(J) OF THE TOWN
OF MUKWONAGO ZONING ORDINANCE TO DEFINE A SPECIAL EXCEPTION
AND TO GRANT SPECIAL EXCEPTIONS FOR STRUCTURES
ADJACENT TO LAKE ACCESS DRIVES (ZT-1525)

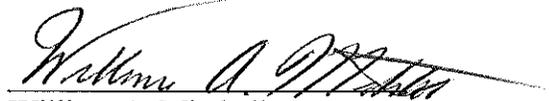
Presented by:
Land Use, Parks, and Environment Committee


Walter L. Kolb, Chair

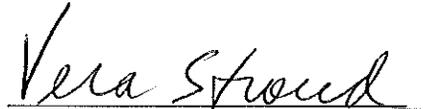

Pauline T. Jaske


James Jeskewitz

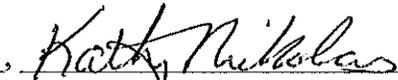

Scott J. Klein


William A. Mitchell

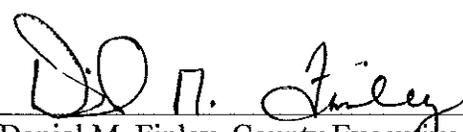

Daniel Pavelko


Vera Stroud

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 4-16-04, 
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved:
Vetoed:
Date: 4-19-04, 
Daniel M. Finley, County Executive

COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Mukwonago Zoning Code hereby recommends **approval** of (ZT-1525 Text Amendment for the Town of Mukwonago) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

March 18, 2004

Absent

Betty Willert, Chairperson


Vy Janusonis


Mareth Kipp

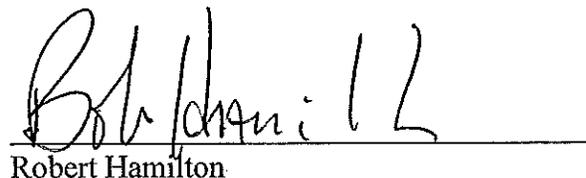
Absent

Ellen Gennrich


Walter Kolb


Joseph LaPorte


Walter Baade


Robert Hamilton

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE
STAFF REPORT AND RECOMMENDATION
TEXT AMENDMENT

FILE NO.: ZT-1525

DATE: March 18, 2004

PETITIONER: Mukwonago Town Board
Mukwonago Town Hall
W320 S8315 Beulah Road
Mukwonago, WI 53149

NATURE OF REQUEST:

Text Amendments to create Section 2.02(72)(a) and Section 3.09(1)(J) of the Town of Mukwonago Zoning Ordinance to define a *special exception* and to allow the Town Plan Commission to grant special exceptions for structures adjacent to lake access drives.

PUBLIC HEARING DATE:

March 3, 2004.

PUBLIC REACTION:

None.

TOWN PLAN COMMISSION:

The Town of Mukwonago Plan Commission, at their meeting of March 3, 2004, voted to approve the Text Amendments in accordance with Exhibit "A".

TOWN BOARD ACTION:

The Town of Mukwonago Board at their meeting of March 10, 2004, voted to approve the request in accordance with Exhibit "A".

OTHER CONSIDERATIONS:

The Town of Mukwonago Zoning Ordinance currently requires that all structures be located beyond the (50) fifty-foot road setback requirement from public accesses to lakes. These (60) sixty-foot access drives are required every half-mile on public bodies of water in accordance with Section 236 of the Wisconsin State Statutes and become local community public right-of-ways. Current case law requires in the granting of a Variance, that the applicant must show that he has no reasonable use of the property without the Variance being granted. Many communities are looking at the granting of a special exception in order to alleviate some of these issues and avoid the hardship findings as required of a Variance. Because of the current case law standard, the Town of Mukwonago has created a definition for a special exception in Section 2.02(72)(a), which allows the Town Plan Commission to grant a special exception, which will allow the property owner to deviate from otherwise applicable provisions as long as they comply with certain prescribed requirements of the Ordinance as outlined. Section 3.09(1)(J) has been created which outlines the procedure and process an applicant must go through in order to submit a special exception, requires that the Town Building Inspector and Town Planner make sure it meets all other applicable codes, file a report to the Plan Commission and sets certain requirements and conditions for the granting of a special exceptions such as:

1. The proposed structure cannot be less than 5 (five) feet from a dedicated but unimproved right-of-way.
2. Construction must be in compliance with other State and applicable codes.
3. It must be compatible with the surrounding neighborhood.
4. Requires a Deed Restriction be filed for non-conforming structures and stating any conditions of approval for the special exception.

STAFF RECOMMENDATION:

It is the opinion of the Planning and Zoning Division Staff this request be approved. We feel this is an appropriate amendment and alleviates a technical problem with public accesses where there is no intent that the right-of-way will be expanded as a road and will allow many legal non-conforming lots reasonable additions or accessory structures on their lots where it does not impact adjacent residential properties and where no impact on public roads will result.

Respectfully submitted,

Kathy Moore | Kab

Kathy Moore
Senior Planner

KM:es

Attachments: Exhibit "A"

158-0-158

4a.

EXHIBIT "A"

STATE OF WISCONSIN

TOWN OF MUKWONAGO

WAUKESHA COUNTY

ORDINANCE NO. 2004-4

AN ORDINANCE TO CREATE SECTION 2.02(72)(a) AND SECTION 3.09(1)(J) OF THE ZONING ORDINANCE FOR THE TOWN OF MUKWONAGO

WHEREAS, the Town Planner for the Town of Mukwonago has proposed that the Zoning Code for the Town of Mukwonago be amended to allow special exceptions to be granted from the setback requirements as they apply to dedicated but unimproved roads which access a body of water; and

WHEREAS, the Plan Commission for the Town of Mukwonago has reviewed the Town Planner's recommendations and has found it to be a legitimate concern; and

WHEREAS, the Town Board for the Town of Mukwonago has also reviewed the Town Planner's recommendations and agrees that it is a legitimate concern; and

WHEREAS, pursuant to Section 22.01 of the Zoning Code for the Town of Mukwonago, the Town Board for the Town of Mukwonago has initiated the zoning amendment procedure by directing the Town Clerk to transmit this issue to the Plan Commission for the Town of Mukwonago for necessary investigation, public hearing and report; and

WHEREAS, upon referral of the matter by the Town Clerk, the Plan Commission for the Town of Mukwonago scheduled a public hearing for the Town Board of the Town of Mukwonago and the Plan Commission for the Town of Mukwonago as soon as practicable; and

WHEREAS, upon publication of the required notice of public hearing and the mailing of said notice for public hearing to all parties in interest, as required by Section 23.02 of the Zoning Code for the Town of Mukwonago, the Plan Commission for the Town of Mukwonago and the Town Board for the Town of Mukwonago held the public hearing on March 3, 2004, at approximately 6:30 p.m., as required by Section 22.02 of the Zoning Code for the Town of Mukwonago; and

WHEREAS, the Plan Commission for the Town of Mukwonago has recommended to the Town Board for the Town of Mukwonago that said zoning amendment be granted; and

WHEREAS, the Town Board for the Town of Mukwonago after carefully reviewing the recommendation of the Plan Commission for the Town of Mukwonago, and having given the matter due consideration and having based its determination on the effect of approving the petition on the health, general welfare, safety and economic prosperity of the Town of Mukwonago, and upon giving due consideration to the municipal problems involved, hereby determines that the zoning amendment will not violate the spirit or intent of the zoning code for the Town of Mukwonago, will not be contrary to the public health, safety or general welfare of the Town of Mukwonago and will not be hazardous, harmful, noxious, offensive, or a nuisance by reason of noise, dust, smoke, odor, or other similar factors, and will not for any other reason cause potential adverse effect on the property values and general desirability of the Town.

NOW, THEREFORE, the Town Board of the Town of Mukwonago, Waukesha County, Wisconsin, DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Section 2 of the Town of Mukwonago Zoning Code entitled "Definitions", Subsection 2.02 entitled "Specific Words and Phrases", Subsection 2.02(72)(a) entitled "Special Exceptions" is hereby created as follows:

Special Exception: A specific approval that may be granted by the Town of Mukwonago Plan Commission as specifically set forth in this Ordinance, to allow a property owner to deviate from otherwise applicable provisions of this Ordinance, in compliance with such procedures, restrictions and conditions as may apply to the special exception as described in this Ordinance.

SECTION 2: Section 3 of the Town of Mukwonago Zoning Code entitled "General Provisions", Subsection 3.09 entitled "Building Location", Subsection 1 entitled "Setbacks", Subsection (J) is hereby created as follows:

- (J) In the case of a lot abutting a dedicated but unimproved right-of-way that terminates at a public water body, the Town Plan Commission may grant a special exception as to the setback from such dedicated but unimproved right-of-way, subject to the following procedures, requirements and conditions:
1. Procedure. A property owner may apply for a special exception and the special exception may be considered as follows:

- a. The property owner shall submit a petition to the Town Clerk. The petition shall include building and site plans, which include elevations along with such additional information as may be required by the Building Inspector and the Plan Commission. The building and site plan shall depict the proposed construction and the location of the proposed construction on the lot, including its location in relationship to existing structures on the lot and on adjacent lots within 100 feet. If the petition is for an addition to an existing structure, the application shall include recent photographs of all structures on the parcel. The petition shall be accompanied by payment of such application fees as may be established from time to time by the Town Board by separate resolution and shall be submitted to the Town Clerk no later than 3 weeks prior to the Town Plan Commission meeting at which they are to be scheduled.
- b. Upon receipt of the complete application, required plans and application fees, the Town Clerk shall provide a copy of the petition and plans to the Town Building Inspector and Town Planner and shall place the matter on an upcoming Town Plan Commission agenda for consideration.
- c. Prior to the Town Plan Commission meeting when the matter will be heard, the Town Planner shall review the request and discuss the matter with the Town Building Inspector, view the proposed location, and shall submit a written recommendation to the Town Plan Commission. Along with the recommendation, the Town Planner shall advise the Town Plan Commission as to whether the proposed construction would be in full compliance with all applicable federal, State of Wisconsin, Waukesha County, and Town of Mukwonago codes, statutes, rules, regulations and ordinances if the special exception were granted.
- d. The Town Plan Commission shall consider the matter at the scheduled Plan Commission meeting. The Petitioner shall be given an opportunity to be heard regarding the matter at that meeting.

- e. The Town Plan Commission shall approve, deny, or conditionally approve the special exception petition, in accordance with the requirements and conditions of this Section 3.09(1)(J). The Town Plan Commission shall issues its decision in writing.
2. Requirements and Conditions. In order to approve or conditionally approve a special exception petition, the Town Plan Commission must find all of the following to be true regarding the proposed construction:
- a. The proposed construction must be at least five (5) feet from the dedicated but unimproved right-of-way setback line.
 - b. The proposed construction must be in compliance with all applicable federal, State of Wisconsin, Waukesha County, Town of Mukwonago codes, statutes, rules, regulations and ordinances, if the special exception is granted.
 - c. The proposed construction must be compatible with the surrounding neighborhood.
 - d. If the property for which the special exception is requested contains legal non-conforming structures, legal non-conforming use of structures or lands, or is a legal non-conforming lot, the Plan Commission shall require the petitioner to file a deed restriction, as follows. The deed restriction shall state that if the structure that is the subject of the special exception petition is damaged or repaired beyond 50% of the full equalized assessed value at the date of completion of the construction, the structure can only be repaired or rebuilt in full compliance with all then-current requirements of the Town of Mukwonago Zoning Code. Such deed restriction shall be recorded with the Waukesha County Register of Deeds in a form that is subject to the approval of the Town of Mukwonago Town Attorney.
 - e. The Plan Commission must find that the special exception will not be adverse to the public health, safety or general welfare, and will not be in conflict with the spirit and intent of the Town of Mukwonago Zoning Code, and will

not otherwise be detrimental to the Town of Mukwonago or the immediate neighborhood where the constructions would be located.

- f. The Plan Commission may require additional conditions and restrictions, including but not limited to conditions related to screening and landscaping.
- g. If approved, a deed restriction in a form approved by the Town Attorney shall be filed in the Waukesha County Register of Deeds office prior to the issuance of any building permit, indicating the special exception has been granted and recording any conditions of approval, including a statement that the structure may only be used for personal use and cannot be used for any type of commercial purposes unless otherwise permitted by the Town of Mukwonago Zoning Code.

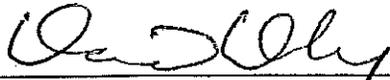
Section 3. SEVERABILITY. The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 4: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

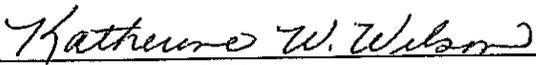
Dated this 11th day of March, 2004.

TOWN OF MUKWONAGO



Dave Dubey, Town Chairperson

ATTEST:



Katherine W. Wilson

Published and/or posted this 16th day of March, 2004.

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WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-04/13/04

(ORD) NUMBER-1580158

- 1 K. HERRO.....AYE
- 3 D. STAMSTA.....AYE
- 5 J. MARCHESE.....AYE
- 7 J. JESKEWITZ.....AYE
- 9 P. HAUKOHL.....AYE
- 11 K. HARENDA.....AYE
- 13 J. MORRIS.....AYE
- 15 D. SWAN.....AYE
- 17 J. BEHREND.....
- 19 W. MITCHELL.....AYE
- 21 W. KOLB.....AYE
- 23 P. FRONOLD.....AYE
- 25 K. CUMMINGS.....AYE
- 27 D. PAULSON.....AYE
- 29 M. THOMAS.....AYE
- 31 V. STROUD.....AYE
- 33 D. PAVELKO.....AYE
- 35 C. SEITZ.....AYE

- 2 R. THELEN.....AYE
- 4 H. CARLSON.....AYE
- 6 D. BROESCH.....AYE
- 8 J. DWYER.....AYE
- 10 S. WOLFF.....AYE
- 12 J. GRIFFIN.....AYE
- 14 J. LA PORTE.....AYE
- 16 R. MANKE.....AYE
- 18 B. MORRIS.....AYE
- 20 M. KIPP.....AYE
- 22 G. BRUCE.....AYE
- 24 A. SILVA.....AYE
- 26 S. KLEIN.....AYE
- 28 P. JASKE.....AYE
- 30 K. NILSON.....AYE
- 32 P. GUNDRUM.....AYE
- 34 R. SINGERT.....AYE

TOTAL AYES-34

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS X

TOTAL VOTES-34