

ENROLLED ORDINANCE 161-69

AMEND THE TEXT OF THE TOWN OF WAUKESHA ZONING CODE REGARDING REDEFINING THE MINIMUM AND AVERAGE LOT WIDTH, MEASUREMENT OF LOT WIDTH, RECLASSIFICATION AND REGULATION OF NON-CONFORMING STRUCTURES, CONDITIONAL USE STATUS FOR NON-CONFORMING USES, MODIFYING THE BOARD OF APPEALS MEMBERSHIP FROM 3 TO 5 MEMBERS AND PROVISIONS FOR THE APPOINTMENT OF AN ALTERNATE MEMBER, REQUIREMENTS FOR MAJORITY VOTES ON BOARD ACTIONS AND A CHANGE TO THE CONSERVANCY DISTRICT TO REQUIRE WETLANDS TO BE FIELD STAKED AND PLACED ON MAPS (ZT-1636)

WHEREAS the subject matter of this Ordinance having been approved by the Waukesha Town Board on October 12, 2006, after Public Hearing and the giving of requisite notice of said hearing, and duly referred to and considered by the Waukesha County Park and Planning Commission and a recommendation thereon reported to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors as required by Section 60.61 of the Wisconsin Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that the Ordinance amending the text of the Town of Waukesha Zoning Code, adopted on June 24, 1979, and approved by the Waukesha Town Board on October 12, 2006, to amend the text of the Town of Waukesha Zoning Code regarding redefining the minimum and average lot width, measurement of lot width, reclassification and regulation of non-conforming structures, Conditional Use status for non-conforming uses, modifying the Board of Appeals membership from 3 to 5 members and provisions for the appointment of an alternate member, requirements for majority votes on board actions and a change to the conservancy district to require wetlands to be field staked and placed on maps, and more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference (ZT-1636) is hereby approved.

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

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

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FURTHER ORDAINED that all Ordinances inconsistent with or with contravention of provisions of this Ordinance are hereby repealed.

AMEND THE TEXT OF THE TOWN OF WAUKESHA ZONING CODE REGARDING REDEFINING THE MINIMUM AND AVERAGE LOT WIDTH, MEASUREMENT OF LOT WIDTH, RECLASSIFICATION AND REGULATION OF NON-CONFORMING STRUCTURES, CONDITIONAL USE STATUS FOR NON-CONFORMING USES, MODIFYING THE BOARD OF APPEALS MEMBERSHIP FROM 3 TO 5 MEMBERS AND PROVISIONS FOR THE APPOINTMENT OF AN ALTERNATE MEMBER, REQUIREMENTS FOR MAJORITY VOTES ON BOARD ACTIONS AND A CHANGE TO THE CONSERVANCY DISTRICT TO REQUIRE WETLANDS TO BE FIELD STAKED AND PLACED ON MAPS (ZT-1636)

Presented by:  
Land Use, Parks, and Environment Committee

  
William A. Mitchell, Chair

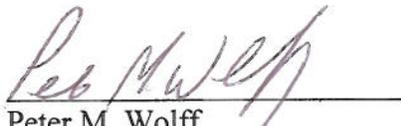
  
Keith Hammitt

  
Keith Harenda

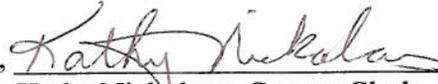
Absent  
Pauline T. Jaske

  
Walter L. Kolb

  
Vera Stroud

  
Peter M. Wolff

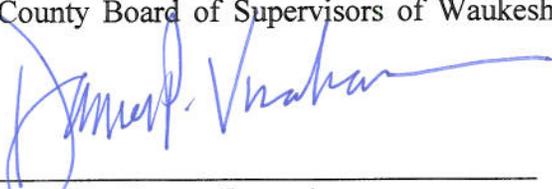
The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 1/26/07,   
Kathy Nickolaus, County Clerk

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

Approved: X

Vetoed: \_\_\_\_\_

Date: 1-26-07,   
Daniel P. Vrakas, County Executive

AN ORDINANCE REPEALING AND RECREATING SECTIONS 13-1-4(b)(46),  
13-2-12(b)(3), 13-2-18(b), 13-2-18(c), 13-2-21(a), 13-2-21(d)(5), 13-3-2(b)(2), 13-2-18(b)  
and 13-2-18(c), AND REPEALING SECTION 13-2-15(M).

OF THE TOWN CODE OF THE TOWN OF WAUKESHA,  
WAUKESHA COUNTY, WISCONSIN

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THE TOWN BOARD OF THE TOWN OF WAUKESHA, WAUKESHA COUNTY,  
WISCONSIN, DOES ORDAIN AS FOLLOWS:

SECTION 1: Section 13-1-4(b)(46), Section 13-2-12(b)(3), Section 13-2-18(b),  
13-2-18(c), Section 13-2-21(a), Section 13-2-21(d)(5), Section 13-3-2(b)(2) of the Town Code of  
the Town of Waukesha is hereby repealed and recreated to read as follows:

Section 13-1-4(b)

- (46) **Lot Width, minimum average:** The mean horizontal distance measured between side lot lines perpendicular to the mean lot depth at the building setback line. The lot width at the base setback line shall be no less than 30 ft. along a straight road section or 45 ft on a cul-de-sac turn-around.

Section 13-2-12(b)

- (3) The mean horizontal distance measured between side lot lines perpendicular to the mean lot depth at the building setback line. In no event shall the lot width at the base setback line be less than 30 ft. along a straight road section or 45 ft on a cul-de-sac turn-around, unless a relief for cause is approved by the Plan Commission and Town Board

Section 13-2-18

- (b) **Classification and Regulation.** For the purposes of administration, legal non-conformity shall be classified and regulated as follows:
- (1) Nonconforming structures.
    - a. No structure shall be expanded or enlarged except in conformity with the applicable district regulations. A non-conforming structure which is damaged or destroyed may be restored, repaired, or reconstructed to the size and location that existed or larger to meet the current regulations of this code.
    - b. All nonconforming structures lying within floodplains shall be floodproofed.
  - (2) Nonconforming use of structures and land.

- a. The nonconforming use may not be expanded or enlarged. The structure which houses the nonconforming use may be restored, repaired or reconstructed.
  - b. If the nonconforming use is discontinued for a period of 12 months, any future use of the land, building, premise, structure, or fixture shall conform to the requirements of the Zoning Code.
- (3) Nonconforming lots. The size and shape of such lots shall not be altered in any way which would increase the degree of such nonconformity to the applicable district regulations.

Section 13-2-18

- (c) **Conditional Use Status.** Subject to the provisions of Section 13-2-9(i)(14) conditional use status may be granted to existing legal nonconforming uses by the Town Plan Commission and Town Board upon petition of the owner where such use is determined to be not adverse to the public health, safety, or welfare, would not conflict with the spirit or intent of this ordinance, or would not be otherwise detrimental to the community and particularly the surrounding neighborhood. Such conditional use status shall be granted only with the review of the Town Plan Commission and approval by the Town Board following a public hearing.

Section 13-2-21(a)

- (a) **Establishment.** There shall be a Board of Appeals consisting of 5 members appointed by the Town Chairman, subject to confirmation by the Town Board, for terms of 3 years, except that of those first appointed, one shall serve for 1 year, two for 2 years, and two for 3 years. The members of the Board shall be removable by the Town Chairman for cause upon written charges and after public hearing. The Town Chairman shall designate one of the members as chairman. The Town Board may employ a secretary and other employees for the Board of Appeals. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The Town Chairman may appoint, for a term of 3 years, an alternate member of such Board, in addition to the 5 members above provided for, who shall act, with full power, when a member of the Board refuses to vote because of a conflict of interest or is absent. The above provisions with regard to removal and the filling of vacancies shall apply to such alternate.

Section 13-2-21(d)

- (5) **Required Vote.** The concurring vote of a majority of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation therefrom. The grounds of every such determination shall be stated.

Section 13-3-2(b)

- (2) The boundaries of conservancy districts as drawn are intended to represent the edge of swamp, marsh, and flood land or the high water line along a stream or water course and shall be finally determined by the Town Plan Commission and Town Board by the actual field conditions in each specific situation. Within the C-1 Conservancy District, the shaded area represents the approximate edge of the Floodland-Shoreland District under the jurisdiction of Waukesha County. Boundaries of conservancy districts that include wetlands shall be field staked by the

Southeastern Wisconsin Regional Planning Commission or Town approved botanist and placed on a map by a registered land surveyor. The Town Board shall review and approve the wetland delineations.

SECTION 2: Section 13-2-15(m) of the Town Code of the Town of Waukesha is hereby repealed.

SECTION 3: All ordinances or parts of ordinances conflicting with or contravening the provisions of this ordinance are hereby repealed.

SECTION 4: All ordinances shall take effect upon passage and posting as provided by law.

PASSED AND ADOPTED by the Town Board of the Town of Waukesha,  
Waukesha County, Wisconsin this 12<sup>th</sup> day of October, 2006.

TOWN BOARD, TOWN OF WAUKESHA,  
WAUKESHA COUNTY, WISCONSIN

BY:   
RODNEY T. STILWELL, Chairman

BY:   
STEPHEN SMART, Supervisor

BY:   
ROBERT J. TALDINGER, Supervisor

ATTEST:   
MICHAELENE R. KNOEBEL, Clerk

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-01/23/07

(ORD) NUMBER-1610077

1	K. HERRO.....	AYE	2	R. THELEN.....	AYE
3	T. ROLFS.....	AYE	4	R. HUTTON.....	
5	J. MARCHESE.....	AYE	6	D. BROESCH.....	AYE
7	J. JESKEWITZ.....	AYE	8	J. DWYER.....	AYE
9	P. HAUKOHL.....	AYE	10	S. WOLFF.....	AYE
11	K. HARENDA.....	AYE	12	T. SCHELLINGER....	AYE
13	J. MORRIS.....	AYE	14	S. WIMMER.....	AYE
15	D. SWAN.....	AYE	16	R. STEVENS.....	AYE
17	J. BEHREND.....	AYE	18	B. MORRIS.....	
19	W. MITCHELL.....	AYE	20	P. WOLFF.....	AYE
21	W. KOLB.....	AYE	22	G. BRUCE.....	AYE
23	J. TORTOMASI.....	AYE	24	B. KRAMER.....	
25	K. CUMMINGS.....	AYE	26	F. RUF.....	AYE
27	D. PAULSON.....	AYE	28	P. JASKE.....	AYE
29	T. BULLERMANN....	AYE	30	K. NILSON.....	AYE
31	V. STROUD.....	AYE	32	P. GUNDRUM.....	AYE
33	K. HAMMITT.....	AYE	34	R. SINGERT.....	AYE
35	P. MEYER.....	AYE			

TOTAL AYES-32

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS   X  

TOTAL VOTES-32

COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Waukesha Zoning Code hereby recommends approval of (ZT-1636 Text Amendment) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

November 16, 2006

Pat A. Haukohl  
Pat Haukohl, Chairperson

Gary L. Goodchild  
Gary Goodchild, Vice Chairperson

Absent  
Betty Willert

Bonnie Morris  
Bonnie Morris

Walter Kolb  
Walter Kolb

Walter Baade  
Walter Baade

Absent  
Ellen Gennrich

Bob Hamilton  
Bob Hamilton

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

**DATE:** November 16, 2006

**FILE NO.:** ZT-1636

**PETITIONER/OWNER:** Waukesha Town Board of Supervisors  
Waukesha Town Hall  
W250 S3567 Center Road  
Waukesha, Wisconsin 53189

**NATURE OF REQUEST:**

Various amendments to sections of the text of the Town of Waukesha Zoning Code to redefine minimum and average lot width, how to measure lot width along with a reclassification and regulation of non-conforming structures and the ability to apply for Conditional Use status for non-conforming uses in the Town of Waukesha, along with the change to the Board of Appeals membership to be changed from three (3) to five (5) members with the ability for an alternate member to be provided along with requirements for majority votes on the Boards actions. There is also reference to a change to the Conservancy District to require wetlands to be field staked and placed on maps.

**PUBLIC HEARING DATE:**

August 10, 2006.

**PUBLIC REACTION:**

None.

**TOWN PLAN COMMISSION ACTION:**

The Town of Waukesha Plan Commission, at their meeting of October 12, 2006, recommended approval of the amendments to the text.

**TOWN BOARD ACTION:**

The Town Board of Waukesha, at their meeting of October 12, 2006, approved the proposed amendments to the text.

**OTHER CONSIDERATIONS:**

The subject of these amendments is to modify and clarify the meaning of minimum average lot width and how to calculate it. Specifically, they have identified a specific location for a structure from the base setback line, which are a minimum of 30 ft. along a straight road section or 45 ft. on a cul-de-sac turn around. The existing Ordinance does not have a specific lot dimension called for at the base setback line. Regarding the non-conformity provisions, the Town is responding to a recent amendment to the Statute that talks about the ability of non-conforming structures damaged or destroyed by certain natural causes to be relocated or rebuilt without expansion or enlargement and that any such non-conforming structures in floodplains shall be flood proofed. The amendment also provides for the Town to grant Conditional Use status to non-conforming uses in a manner similar to what the County Zoning Code does. The next

amendment deals with the number of members on a Board of Appeals, to be appointed for staggered one, two or three year terms and to have a minimum of five members appointed. Previously, many communities around the State had three members on a Board of Appeals. The Statute was recently amended to require five members and to provide for the opportunity to appoint alternate members, which the amendment provides for. In the event regular members are unable to attend, an alternate can sit in at the meetings and have the same full power as a regular member of the Board to vote on issues. Also, the required vote for Board of Appeals/Adjustment decisions has been revised to require a majority of the Board voting and present. The last amendment is that the Conservancy District boundaries, as shown on the zoning map where they include wetlands, need to be marked by either the Southeastern Wisconsin Regional Planning Commission or a Town approved botanist and then measured and field staked and placed on a survey, with the Town Board approving the delineations. Finally the Ordinance proposes to remove the provision requiring non-conforming signs to be removed after a seven-year period of time. That was a provision the Town of Waukesha has in their existing Ordinance, but was recently specifically prohibited by a statutory change.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that this request be **approved**. We feel the proposed amendments are appropriate and are consistent with existing recent changes to the Statutes regarding some of these matters and that some of the provisions relative to definitions and the requirement to field stake wetland determinations is a good requirement and will help to better inform the Town as well as all parties-in-interest to exactly where and how the lots are to be measured and where wetlands are located.

Respectfully submitted,

*Richard J. Mace | KMB*

Richard L. Mace  
Planning and Zoning Manager

Attachment: Town Ordinance

RLM:es

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161-0-077

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