

ENROLLED ORDINANCE 175-65

AMEND THE TEXT OF THE TOWN OF MERTON ZONING CODE BY REPEALING AND RE-CREATING SECTION 17.03 REGARDING DEFINITIONS AND SECTION 17.28 REGARDING LEGAL NON-CONFORMING STRUCTURES AND USES (RZ70)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Town of Merton Board on October 12, 2020; and

WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.62, Wis. Stats.

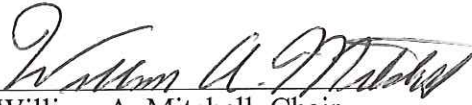
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Merton Zoning Code, adopted by the Town of Merton on October 23, 2007, is hereby amended to recreate Section 17.03 regarding definitions and Section 17.28 regarding legal non-conforming structures and uses, 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 RZ70, 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 Merton.

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

AMEND THE TEXT OF THE TOWN OF MERTON ZONING CODE BY REPEALING AND RE-CREATING SECTION 17.03 REGARDING DEFINITIONS AND SECTION 17.28 REGARDING LEGAL NON-CONFORMING STRUCTURES AND USES (RZ70)

Presented by:
Land Use, Parks, and Environment Committee


William A. Mitchell, Chair



Keith Hammitt


Jacob LaFontain

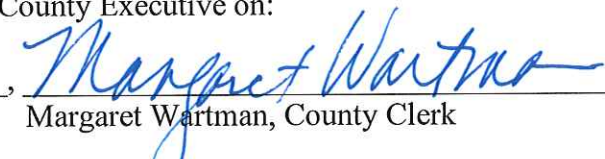

Thomas A. Michalski


Chris Mommaerts


Richard Morris


Thomas J. Schellinger

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

Date: 1/29/2021, 
Margaret Wartman, County Clerk

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

Approved: X

Vetoed: _____

Date: 1/29/2021, 
Paul Farrow, County Executive

COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the text of the Town of Merton Zoning Code hereby recommends **approval** of **RZ70 (Text Amendment/Town Merton Board)** in accordance with the attached “Staff Report and Recommendation”.

PARK AND PLANNING COMMISSION

December 10, 2020

William Mitchell (via Microsoft Teams)

William Mitchell, Chairperson

James Siepmann (via Microsoft Teams)

James Siepmann, Vice Chairperson

Robert Peregrine (via Microsoft Teams)

Robert Peregrine

Richard Morris (via Microsoft Teams)

Richard Morris

Thomas Michalski (via Microsoft Teams)

Thomas Michalski

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

DATE: December 10, 2020

FILE NO.: RZ70

APPLICANT: Town of Merton Board
P.O. Box 128
North Lake, WI 53064

REQUEST:
Repeal and re-create Section 17.03 regarding definitions and Section 17.28 regarding legal non-conforming structures and uses.

PUBLIC HEARING DATE: October 7, 2020

PUBLIC COMMENT: None.

TOWN PLAN COMMISSION ACTION:
On October 7, 2020, the Town of Merton Plan Commission unanimously recommended approval of the request to the Town Board.

TOWN BOARD ACTION:
On October 12, 2020, the Merton Town Board of Supervisors unanimously approved the request.

STAFF ANALYSIS:
The Town of Merton Planner initiated text amendments to modernize the town's definitions utilized for zoning administration. She noted that the terms had not been updated for quite some time and the town felt that there were a variety of new uses and terms that were lacking in the current code. She relied upon the Town of Delafield ordinance and the county zoning ordinances to aid in identifying terms and use types that are not currently described within the town code. The number of defined terms expands significantly. The town planner noted that she included various shoreland and floodland terms because the town's code often refers to the county ordinances with regards to such matters. She noted that the town does envision subsequent additional amendments to provide more context for some of the new definitions and terms.

The other topic that is being dealt with is non-conforming structures and non-conforming uses. Non-conforming structures are structures that contain conforming uses but are sub-standard in other ways such as being located too close to a lot line. The town's existing legal non-conforming structure standards were written well prior to recent changes in state non-conforming law standards being enacted. Accordingly, like many older zoning ordinances, the Merton code contained language that limited the value of improvements to a legal non-conforming structure to 50% of the value of the structure. The recent law changes made such a requirement illegal. Practically, such standards were also very difficult to administer. The amended ordinance removes the 50% standard for non-conforming structures but does retain the standard for legal non-conforming uses, which is in keeping with law. Legal non-conforming uses are uses that pre-date current zoning standards and do not conform to the current use requirements of the ordinance. The idea is that such uses can remain but the structures housing them cannot be totally re-built or vastly improved without the use being brought into conformance, without benefit of a variance.

The town also inserted a reference to the legal conforming statutes and states that all provisions of said laws shall prevail where there is a conflict or ambiguity between local code language and state law. Staff will recommend to the town that they, in the future, consider expanding some of the language related to variance processes for legal non-conformities to make it clear that variance consideration for such structures is held to legal standards that have been set forth in law and further clarified by courts.

STAFF RECOMMENDATION:

Based on the above analysis, the Planning and Zoning Division Staff recommends **approval** of the request. Modernized definitions and updated legal non-conforming provisions will make administration and understanding of the code easier while also bringing the code into conformity with current non-conforming law standards.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning & Zoning Manager

Attachments: Town Ordinance No's. 17.03 and 17.28

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ORDINANCE NO. 17.03

AN ORDINANCE TO REPEAL AND RE-CREATE SECTION 17.03
OF THE GENERAL CODE OF ORDINANCES FOR THE TOWN OF
MERTON RELATING TO DEFINITIONS

The Town Board of Supervisors of the Town of Merton, Waukesha County, Wisconsin, do ordain as follows:

SECTION 1. Section 17.03 of the General Code of Ordinances is hereby repealed and re-created to read as follows:

17.03 DEFINITIONS

(1) **GENERAL INTERPRETATION.** For the purpose of this chapter, and when not inconsistent with the context, words used herein in the present tense include the future, words in the singular number include the plural and in the plural include the singular; the word "person" may be taken for persons, associations, co-partnerships or corporation; the word "structure" includes buildings; the word "occupied" includes designed or intended to be occupied; the word "used" includes designed or intended to be used; the word "shall" is always mandatory and not merely permissive.

(2) **SPECIFIC WORDS AND PHRASES.** For the purpose of this chapter certain terms, words and phrases shall be defined as follows:

Administrative Officer: Any officer such as a Clerk, Building Inspector, Engineer, Attorney or Zoning Administrator, or his agent, who is appointed, elected or is otherwise officially designated by the Town and/or County and does not include any committee, commission or board or its individual members.

Adult Book Store: A commercial establishment that has a significant or substantial portion of its stock in trade, or derives a significant or substantial portion of its revenues from books, magazines and other periodicals, videos, streaming videos, DVDs, tapes, and other similar items, which are distinguished or characterized by their emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas."

Adult Cabaret: A commercial establishment, such as a nightclub, dance hall, bar, restaurant, or similar establishment, that regularly features (1) persons who appear semi-nude; (2) live performances that are characterized by the exposure of specific anatomical areas or by specified sexual activities; or (3) film, motion pictures, video cassettes, streaming videos, DVDs, slides or other photographic reproductions, which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas

Adult Entertainment: Any exhibition of any motion pictures, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated specified sexual activities or specified anatomical areas as defined in this section.

Adult-oriented Establishments: Includes, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion picture establishments or adult cabarets. The term "adult-oriented establishments" further includes any premises to which public patrons or members are invited or admitted and which are physically arranged to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect.

Adult Theater: An enclosed building such as theater, concert hall, auditorium or other similar commercial establishment that is used for presenting "Adult Entertainment."

Agricultural or Farm Use: The use of the land by tilling the ground, and growing, raising, cultivating, fertilizing, producing, and harvesting field crops; by feeding, watering, grazing, breeding, managing, pasturing, or producing livestock, poultry, fur-bearing animals, or dairy animals; by the sale, barter or trade of products related to livestock, poultry, fur-bearing animals, or dairy animals; by any other horticultural, floricultural, or viticulture use; by animal or poultry husbandry; or by any combination thereof.

Agricultural or Farm Use: Any of the following uses:

(1). Any of the following activities:

- i. Crop or forage production.
- ii. Keeping livestock, horses and poultry.
- iii. Beekeeping.
- iv. Nursery, sod, or Christmas tree production.
- v. Floriculture.
- vi. Aquaculture.
- vii. Fur farming.
- viii. Forest management.

Agricultural sales and service: A place where equipment, products, byproducts, or materials primarily associated with agricultural operations are sold, processed, handled, repaired, or stored. Examples include agricultural implement sales, storage, or repair operations; feed and seed stores; agricultural chemical dealers and/or storage facilities; animal feed storage facilities; food processing facilities; and canning and other packaging facilities

Apartment: A suite of rooms or a room in a multiple dwelling which suite or room is arranged intended or designated to be occupied as a residence of a single family, individual or group of individuals. Such a suite shall also generally define a dwelling unit (DU).

Apartment house: See Dwelling, multiple.

Applicant: The applicant signing any application or petition for any permit, variance, special exception, conditional use, site plan, plan of operation or rezoning under this ordinance shall be the landowner, specifically a person or entity holding fee title to the property, as set forth below:

- (a) In the case of a corporation, an officer or by a member of the corporation who has overall responsibility for the operation of the site for which the permit is sought.
- (b) In the case of a limited liability company, a member or manager.
- (c) In the case of a partnership, a general partner.
- (d) In the case of a sole proprietorship, the proprietor.
- (e) For a unit of government, by an elected official or other duly authorized representative.
- (f) In the case of an individual, by the individual, an attorney, or one allowed to act as power of attorney.

Arcade: Any premises containing three or more amusement devices or games, usually of an electronic nature, for the primary use of entertainment of the public or the patrons of the establishment. Premises for which a license to sell fermented malt beverages and/or intoxicating liquors has been issued may be excluded from this designation.

Army Corps of Engineers (ACOE) Federal agency commonly referred to as ACOE.

Attorney. That officer appointed or otherwise officially designated by the Town Board in such capacity, unless otherwise specifically designated.

Base Flood: A flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a Flood Insurance Study and depicted on a Flood Insurance Rate Map. Base floods are numbered A-Zones on the Flood Insurance Rate Map.

Base Flood Elevation (BFE): The elevation of a Base Flood. Commonly referred to as BFE.

Base Setback Area: That area of the lot between the base setback line and the line at which the structure may be constructed recognizing the required setback distance.

Base Setback Line. The ultimate street line as established by §17.20(1) and from which all required setbacks shall be computed.

Basement: that portion of a building that is partly or completely below the average level of the adjoining ground. If the basement is occupied for living purposes or has six (6) feet of exposure on at least one side, it is defined as a story per this Code.

Bed and Breakfast Facility: An owner-occupied residence often in a building with landmark or historically significant qualities where lodging for paying guests is offered and which offers breakfast to these guests as its only meal.

Beekeeping: The act of cultivation of bees as a commercial venture or hobby for the production of honey.

Boarding House. A house or building where regular meals are generally furnished or served to three or more persons at a stipulated amount for definite periods of one month or less.

Boathouse: A structure located close to the ordinary high water mark and designed and used for the storage of boats normally used in the daily activities of lakefront property and which has a large garage-type door for primary access on the side of the building facing the water. A boathouse may also be used for the storage of accessory marine and other items used by the occupants of the lot. A boathouse shall be placed on a foundation extending below the frost line or concrete slab and contain at least 200 square feet in area. A

boathouse may contain limited plumbing facilities, not including showers and/or baths, for occasional use and convenience of the occupants of the lot; but under no circumstances may the boathouse be used for human habitation, human habitation being defined as utilizing the building for occupancy for overnight living or longer periods of time and including the aggregate of normal living activities such as lounging, cooking, eating, sleeping, etc.

Breezeway: An above-ground, roofed area for passage for the purpose of connecting two structures or buildings, as between a house and a garage, with either open or enclosed sides, with or without a foundation, and which must be designed and constructed in keeping with the existing structures or buildings.

Building: Any structure used, designed or intended for the protection, shelter or enclosure of persons, animals or property.

Building, Accessory: A building or portion of a building subordinate to the principal building and used for a purpose customarily incidental to the permitted use of the principal building. Outbuildings which are not supported by a foundation and which may be placed directly upon the ground or upon a skid and have at least 100 square feet shall be considered as accessory buildings subject to meeting all offsets.

Building Height, Accessory: The vertical distance measured from the lowest exposed point of a structure to the highest point of any roof. The maximum height from the finished grade at the entrance to the peak of the accessory building cannot exceed 18 feet. Maximum height of accessory buildings with flat roofs cannot exceed 15 feet.

Building, Height of: The vertical distance measured from the lowest exposed point of a structure to the highest point of any roof.

Building Inspector: A person who has been designed, or appointed by the Town Board, to fulfill the obligations of construction inspections within the Town of Merton.

Building, Principal: The main building on a lot, intended for primary use as permitted by the regulations of the district in which it is located. Any building intended to be used for human habitation shall constitute a principal building, except a guesthouse as provided in §17.30.

Building Footprint: The surface area of all roofed structures on a lot, except for the area of a roof overhang that measures twenty-four inches (24") or less in depth.

Campground: Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by two (2) or more camping units, or which is advertised or represented as a camping area.

Camping Unit: Any portable device used as a temporary shelter, including but not limited to a tent, camping trailer, mobile home, bus, van, or pick-up truck that is fully licensed, if required, and ready for highway use.

Channel: A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

Conditional Use: A use which may not conform with permitted uses of a category but which may be permitted by the terms of this Ordinance provided that certain conditions specified herein or as may be

determined to be necessary by the county and town are required as part of the permit issued by the Town and or County Zoning Agency, if required, pursuant to this Ordinance.

County Zoning Agency: The committee or commission created or designated by the County Board to act in all matters pertaining to County Planning and Zoning. Also referred to as Zoning Agency.

Clean Fill Disposal Site: A tract of land operated by a public or private agent as a Conditional Use under 17.19 of this Ordinance which involves only materials such as sand, dirt, gravel, concrete or other forms of clean fill material.

Clerk: That person appointed or otherwise officially designated by the Town Board as the Town Clerk.

Code: Means the Town of Merton Zoning Code.

Community Living arrangement: Any one of the following facilities (1)residential care centers for children and youth, as defined in s. 48.02(15d), Wis. Stats., operated by a child welfare agency licensed under s. 48.60, Wis. Stats; (2) group homes for children, as defined in s. 48.02(7), Wis. Stats.; (3) community-based residential facilities, as defined in s. 50.01 (1g), Wis. Stats. The term does not include adult family homes , as defined in s. 50.01, Wis. Stats, day care centers, nursing homes, general hospitals, special hospitals, prisons, or jails.

Composting Facility: A place where vegetation (but not food waste) may be collected and composted. The term includes storage and manipulation of materials prior to, during, and following composting.

Condominium: Ownership, in fee simple, of one or more units in a multiple unit project with the land and all other parts of the project held in limited and/or common ownership or use with owners of the other units. A property subject to a condominium declaration as established under Chapter 703 of the Wisconsin Statutes.

County: The County of Waukesha, Wisconsin.

Crawlspac: An enclosed area below the first usable floor of a Building, generally less than five feet in height, which may be used for access to plumbing, electrical, and other utilities.

Dance Hall: A facility including any room, place or space in which a public dance, public ball with live or amplified music (not including juke box) and live entertainment including shows, disc jockeys, comedy or dramatic arts, is conducted excluding any public or parochial school or church hall when used for public dances sponsored by the school or church authority or of a parent teachers association.

Deck: A structure characterized by a flat, open, horizontal surface or platform suspended above the grade of the land it covers and which may be supported by posts, beams, cantilever and/or by other similar methods.

Development: Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of principal or accessory structures; the construction of additions or alterations to principal or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of structures; land division layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

District: A section of the Town for which the regulations governing the height, area, and the use of the building and premises are the same.

Dryland Access: A vehicular access route which is above the regional flood elevation and which connects land located in the Floodplain to land outside the Floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

Dwelling, Multiple: A building or portion thereof designed for and occupied by more than one family, including duplexes, row houses, condominiums, apartment houses and apartment hotels.

Dwelling, Single-family: A detached or semi-detached building designed for and occupied exclusively by one (1) family.

Dwelling, Two-Family: A detached or semi-detached building designed for and occupied exclusively by two families.

Entrance Gate or Entrance Monument: A structure, usually built with a decorative feature or landscape feature and located at the entrance to a property, such as walls which are often constructed in conjunction with lights, fencing, gates, pillars with lights, property identification signage, or raised planting boxes.

Environmental Corridors: Environmental corridors (Primary, Secondary, and Isolated Natural Resource Areas) are concentrations of key significant natural resource elements including surface water such as lakes, streams, and rivers and their associated undeveloped floodlands and shorelands; woodlands, wetlands, and wildlife habitat; prairie remnants; areas of groundwater discharge and recharge; unfarmed wet, poorly drained and organic soils, rugged terrain and high relief topography; and significant geological formations and physiographic features. In general, Primary Environmental Corridors are concentrations of significant natural resources at least 400 acres in area, at least two miles in length, and at least 200 feet in width. Secondary Environmental Corridors are concentrations of significant natural resources at least 100 acres in area and at least one mile in length (possibly smaller and shorter if considered a primary link). Isolated Natural Resource Areas are concentrations of significant natural resources at least five acres in area and at least 200 feet in width. Generalized environmental corridor boundaries are mapped by the Southeastern Wisconsin Regional Planning Commission, typically at five-year intervals, and precise boundaries are field delineated by or reviewed and approved by the Southeastern Wisconsin Regional Planning Commission Staff. A description of the processes for further defining and delineating Primary and Secondary Environmental Corridors and Isolated Natural Resource Areas is set forth in the Southeastern Wisconsin Regional Planning Commission's Technical Record, Volume/4,#2 and is incorporated herein by reference.

Environmentally Significant Areas. Lands which are zoned C-1 Conservancy District, E-C Environmental Corridor District, or designated as primary environmental corridor, secondary environmental corridor, or isolated natural area on the Waukesha County Development Plan.

Family: The body of persons related by blood, marriage or adoption; or 4 unrelated persons who live together in one dwelling unit as a single housekeeping entity.

Farm, Beef: A tract of land devoted principally to the raising of beef cattle and calves for commercial purposes.

Farm, Fur. A tract of land devoted in whole or part to the raising of fur-bearing animals for commercial purposes.

Farm or Agricultural Operation: One or more parcels of land owned and managed by a single entity and zoned for agricultural or farm use upon which natural fibers, animals, or food for human or animal consumption is produced

Farm, General: A tract of land devoted principally to the raising of crops which may or may not be associated with livestock grazing.

Farm, Pig. A tract of land devoted principally to the raising and feeding of pigs and hogs.

Farm, Poultry and/or Egg Production: A tract of land which may or may not be part of a larger farm operation, devoted principally to the raising of poultry and/or egg production **for commercial purposes.** (§17.19(10.5))

Feed Lot:

(a) A lot or facility used or proposed to be used for the confined feeding and/or holding of animals where the number and kind of animals exceed 25 units per acre. One animal unit is equivalent to 1,000 pounds of live animal weight. The acreage used to compute the density of animal units shall include all fenced pens, yards or similar uncovered structures and all covered enclosures in which animals are enclosed for all of 30 or more continuous days per year on a 24 hours per day basis, and shall not include lands used for the growing crops, vegetative cover or pasture.

(b) The intent of this definition is to clearly distinguish the feed lot type of farming situation which concentrates large numbers of livestock on small acreage from the more general kind of farm operation in which cultivation and livestock grazing or feeding is conducted on a smaller scale. Further, the intent is not to prohibit these kinds of operations but to recognize their potential as a pollution source and to effectively control it.

Federal emergency Management Agency: The Federal agency that administers the National Flood Insurance Program. Commonly referred to as FEMA.

Findings: A written conclusion or determination that is made in connection with reaching a decision.

Fence: See §14.02 of the General Code of Ordinances. Section 14.02 is incorporated herein by reference.

Floodfringe: That portion of the Floodplain, outside of the floodway, which is covered by flood waters during the regional flood and associated with standing water rather than flooding water.

Floodplain: Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes. Also known as floodlands.

Floodplain Certificate of Compliance: A certification that the construction and the use of the land or a structure, the elevation of fill, and the lowest floor of a structure are in compliance with all of the floodplain provisions of the Town and Waukesha County Shoreland Floodland Ordinances.

Floodway: The Channel of a river or stream and those portions of the Floodplain adjoining the Channel required to carry the regional flood discharge.

Floor Area: The sum of the horizontal areas of each floor of an enclosed building as measured to the outside edges of the outside walls. This definition does not include basements, exterior balconies or unenclosed porches.

Floor Area Ratio (FAR): The calculation of the total floor area of buildings allowed on a given lot, expressed as a percentage ratio to the total area of the lot; i.e., an F.A.R. of 100% allows a floor area equal to the total area of the lot, and F.A.R. of 50% allows a floor area of one-half the total area of the lot, etc. A floor area ratio of 50% could be applied to a one-story building occupying 50% of the lot, or a two-story building occupying 25% of the lot.

Freeboard: A factor of safety expressed in terms of a certain amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated, and include, but are not limited to, ice jams, debris accumulation, wave action, obstructed bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to Development and aggregation of the river or stream bed.

Foster and Treatment Home: A place licensed by the state for the care of foster children and which is operated by a corporation, child welfare agency, church, or other such entity.

Frontage: The smallest dimension of a lot abutting a public street measured along the street line.

Funeral Home: A place where the deceased may be prepared for burial or cremation and people may gather for visitation or funeral ceremonies. The indoor display of funeral equipment may also occur. The term includes mortuaries.

Fur-Bearing Animals: Animals which are specifically raised for their pelts including, but not limited to, badger, beaver, bobcat, coyote, fisher, fox, lynx, marten, mink, muskrat, opossum, otter, raccoon, skunk, weasel and wolf. (§17.19(10.5))

Garage, Private: A private garage is one where private vehicles are kept for storage purposes only, and wherein such use is accessory to the principal use of the property on which it is stored.

Garage, Public or Commercial: Any building or premises, other than a private or storage garage, where motor-driven vehicles are equipped, repaired, serviced, hired, sold or stored for monetary gain as a business.

Garage, Storage: Any building or premises used for the storage only of motor-driven vehicles, pursuant to previous arrangements and not to transients, and where no equipment, parts, fuel, grease or oil is sold and vehicles are not equipped, serviced, repaired, hired or sold for monetary gain as a business.

Grade, Established: The elevation of the finished street at the centerline or curb as fixed by the engineer or by such authority as shall be designated by law to determine such an elevation.

Grading, Minor: including filling and land altering activities: Those land altering activities or projects that do not exceed land disturbance greater than three thousand (3,000) square feet in area and/or fifteen (15) cubic yards in aggregate.

Greenhouse and or hoop house: An enclosed building or structure constructed mainly of glass, glasslike or translucent material, cloth or lath, and a support frame and which is devoted to the protection or cultivation of flowers, vegetables, or other tender plants.

Green Space: A natural or man-made land area not occupied by any structure or impervious surface.

Group Daycare Center: A place licensed as a day care by the state where care is provided for 9 or more children. This use may include outdoor play areas, playhouses, and related recreational equipment, such as swings, slides, basketball hoops and jungle gyms.

Guesthouse: A structure used only for the occasional occupancy of guests of the owners, and shall not be used, leased or rented for human occupancy.

Highway: A right-of-way designated on the Waukesha County Established Streets and Highway Width Map or any other comprehensive system for the principal purpose of providing vehicular thoroughfare and not necessarily affording direct access to abutting property.

Home Occupation: Any occupation for monetary gain or financial support conducted entirely within the principal residence. (§17.44(7))

Horticulture: The culture of growing and cultivating fruits, flowers and related plant material.

Hotel: A building in which lodging, with or without meals, is offered for compensation and which may have more than five sleeping rooms for this purpose. See MOTEL.

Housekeeping Entity: A housing or lodging unit where all of the amenities of bathing and sanitary facilities, eating, cooking, living, sleeping and storage are provided the person or body of persons occupying and living together as a single entity within the unit. A single-family residence or a dwelling unit in a multiple-family structure is deemed to be a single housekeeping entity.

Human Habitation: The use of a building or structure for overnight living or longer periods of time and including the aggregate of normal occupancy activities such as lounging, cooking, eating, sleeping, bathing, sanitation, etc.

Impervious Surface: An area that releases as runoff all or a majority of the precipitation that falls on it. Impervious Surface includes, but is not limited to, rooftops, sidewalks, driveways, parking lots, Decks, patios, sport courts, swimming pools, retaining walls and hot tubs.

Infiltration(or infiltrate): The entry of precipitation or runoff into or through the soil.

Infiltration Swales: A shallow grassed or vegetated channel designated to capture, detain and treat stormwater and convey larger flows. It takes surface flows from adjacent paved surfaces and allows it to infiltrate through a soil bed into underlying soils.

Inhabit: Means to be present in or occupy any building or structure which is designed or intended to be occupied, used, for human habitation.

In-Law Unit: A room or suite of rooms used or occupied as a separate housekeeping entity and located in a single-family dwelling occupied by persons related by blood or marriage to the family or persons occupying the single-family dwelling.

Junk: Garbage, waste, refuse, trash, any motor vehicle upon which no current license plate is displayed, any inoperable or abandoned motor vehicle, any used tire or used motor vehicle part, and any scrap material

such as metal, lumber, furniture, paper, cans or bottles. Any trailer which is required to be licensed by the State of Wisconsin but which is unlicensed, or any trailer which is abandoned or inoperable is considered junk under this ordinance.

Kennel, Commercial: An establishment, structure or premises where dogs or other household pets are raised, sold, bred, or boarded for any length of time for commercial purposes or exceeds five (5) dogs. This definition includes businesses termed “doggy day care” and dog rescue operations or any similar operations. The raising and selling of three (3) or more litters of animals ~~dogs from any number of adult dogs~~ per year shall constitute a commercial kennel. The training or grooming of dogs without other related kennel activities, as listed above, is not considered a commercial kennel, but those activities are considered commercial type uses which are otherwise regulated in this Ordinance.

Kennel, Hobby: A non-commercial establishment, structure, premises or pursuit accessory to the principal use of the property where three or more household pets ~~dogs~~ of 6 or more months of age are kept for such private purposes as pets, field trials, shows or hobby. The occasional raising of not more than two litters of dogs per year on a premise and the sale or disposal of said dogs within six months of their birth shall also be considered a hobby kennel. More than five (5) dogs on a single property shall constitute a Commercial Kennel.

Land-Altering Activity: Any man-made change of the land surface, including removal of vegetative cover which changes the land surface, cutting of trees which changes the land surface, excavating, soil removal, filling, grading, dredging and channel improvements in excess of those limits set forth in §17.14(5) and §17.141, but not including agricultural land uses such as planting, growing, cultivating and harvesting of crops, growing and tending of gardens and harvesting of trees and tree nurseries. (§17.14(5); §17.141)

Livestock: Animals which are typically kept for breeding, production of agricultural products, sale or pleasure, including, but not limited to cattle, bovine, emus, llamas, alpaca, pigs, swine, hogs, sows, horses and other equine animals, sheep, goats, farm raised deer, camelids, ratites, farm-raised fish, farm-raised game birds and bison.

Living Area: The occupies or usable floor area in a building designed and built with necessary ceiling, flooring and electrical, heating and plumbing facilities to accommodate human habitation.

Lodging House: A building where lodging only is provided for compensation and having not more than five sleeping rooms for this purpose.

Lot: A parcel of contiguous land with described boundaries and abutting or having access via an approved easement to a public street or other approved way, and exclusive of any land lying in public rights-of-way, mill tax roads, public streams or other public water body. Where such streams or public rights-of-way divide a single described parcel into two or more parts, such severed portions shall be considered separate individual lots if such separate parcels individually meet the use regulations, building location and area regulations of the zoning district in which they are located. Where such separate parcels do not meet those requirements and have been described as a single parcel of record, together such severed portions shall be considered to be a single lot for regulatory purposes under the provision of this ordinance, and such severed areas shall constitute a single lot for computation of area regulations and other locational provisions of this ordinance and shall not be sold separately.

Lot Area: The area of a lot as defined herein bounded by lot lines exclusive of land provided for public rights-of-way, mill tax roads, public streams and lands below the ordinary highwater mark of navigable waters.

Lot Depth: The mean horizontal distance measured between the street line and the opposing rear line(s) of the lot.

Lot, Legal Nonconforming: A legally recognized lot which existed at the time of passage of this chapter, but which does not conform to the district regulations in the district in which it is located.

Lot Lines: The lines bounding a lot as defined herein.

Lot Line, Side: A lot line extending from a street line towards the interior of the lot and separating adjoining lots.

Lot Width, Minimum Average: The mean horizontal distance measured between side lot lines, perpendicular to the lot depth and at a point in relation to the depth where the product of the two would produce the minimum required lot area. A lot shall be at least as wide as the specified minimum average width for a distance of at least one-half the depth of the lot which is necessary to create the minimum required area. On corner lots the lot shall be at least as wide as specified minimum average width for one-half of the depth in both directions perpendicular to the road frontage.

Lot of Record: A platted lot or lot described in a certified survey map which has been approved by the Town and has been recorded in the office of the Waukesha County Register of Deeds, or a metes and bounds description of a lot which has been recorded in the office of the Waukesha County Register of Deeds prior to the adoption of the original Town of Merton zoning ordinance (February 26, 1959). (§17.20)

Lowest Floor or Level: The lowest floor or level of the enclosed area in a building, including a basement.

Maintenance: The act or process of restoring to original soundness, including redecorating, refinishing (such as painting, decorating, or paneling), non-structural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or equipment.

Mobile Home: A structure or vehicle which is used, titled and registered as living quarters and contains sleeping accommodations, a flush toilet, a tub or shower bath, kitchen facilities, and plumbing and electrical connections for attachment to outside systems; and is designed for transportation after fabrication on streets or highways on wheels and arrives at the site where it is to be occupied complete and ready for occupancy except for minor and incidental unpacking and assembly operations, locations on jacks or other temporary or permanent foundations, connections to utilities and the like. A mobile home is not considered a recreational vehicle as defined herein.

Mobile Home Park: Any plot of ground upon which two or more mobile home units occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodation, §66.0435, Wis. Stats. For the purpose of this chapter a mobile home park cannot be considered a Residential Planned Unit Development.

Modular Home: A principal structure which is partially preassembled at a manufacturing plant and placed together or erected on a lot or parcel as a dwelling unit or units (also called "prefabricated" or "precut" homes or "double-wide" units) meeting the requirements of all applicable state and local building codes.

Motel, (also Hotel): A building or series of buildings, with or without the availability of meals being served in a restaurant associated with the facility, in which short-term lodging (not a housekeeping entity) and normally not exceeding two weeks in duration, is offered for the traveling public for compensation and which

may have more than 5 individual sleeping rooms, or grouping of rooms (or a suite) or units and toilet and bathing facilities for the purpose of overnight sleeping and which is distinguished from a hotel primarily by reason of providing direct independent access to each room and adjoining parking for each room or unit. Such facilities shall provide longer term housing (normally more than two weeks) to a person or groups of persons as a residence as such uses are considered apartments with each unit serving as a single housekeeping entity.

Motel: A building or series of buildings in which lodging is offered only for compensation, has more than five sleeping rooms or units, and is distinguished from a hotel primarily by reason of providing direct, independent access and adjoining parking for each rental unit.

Motor Vehicle: Motor vehicle means any automobile, truck, trailer, tractor, bus, vehicle or other conveyance that is self-propelled by an internal combustion engine or motor, and for the purposes of this zoning ordinance shall include, but not be limited to, boats, recreational vehicles, all-terrain vehicles, motorized farm equipment and mobile machinery, motorcycles and snowmobiles.

Navigable Waters. Those intermittent and perennial rivers, streams, ponds, lakes and flowages shown on the U.S.G.S. Topographic Quadrangle 7.5 Minutes Series Maps of Waukesha County (and as periodically updated) and those stream reaches shown on the large scale topographic mapping control survey project for Waukesha County conducted under §87.31, Wis. Stats. Any water is considered navigable in fact if it meets the tests outlined in state laws. Determinations of navigability are ultimately field determinations, and map delineations are merely the best representation of navigable conditions at any particular time. (§17.20(1)(h))

Nonconforming Structure, Legal: A building, structure, or portion thereof, lawfully existing at the time of passage of this Ordinance, but which does not conform in one or more respects to the regulations of this Ordinance.

Nonconforming Use, Legal: The use of a building or land lawfully carried on-at the time of the passage of this Ordinance or amendments thereto, but which does not conform to the use regulations established by this Ordinance.

Nursery: Any parcel of land used to cultivate, grow, raise, and harvest trees, bushes, shrubs, vines, ornamental plants, flowers, and other plants in the outdoors or in greenhouses and for sale to retail or wholesale outlets or garden centers.

Nursery, Retail: The sale of trees, bushes, shrubs, vines, ornamental plants, flowers, and other plants on the premises where they are grown, or the place of business where the nursery stock is received after being transported from an off-site location.

Nursery, Wholesale: The cultivation of trees, bushes, shrubs, vines, ornamental plants, flowers, and other plants on a property and where the nursery stock is transported to market and is not sold on site.

Nursing Home: A place where 5 or more persons who are not related to the operator or administrator reside, receive care or treatment and, because of their mental or physical condition, require 24-hour nursing services, including limited nursing care, intermediate level nursing care, and skilled nursing services. The term does not include (1) a convent or facility owned or operated exclusively by and for members of a religious order that provides reception and care or treatment of an individual; (2) a hospice as defined in state law; or (3) a residential care complex.

Occupy: Means to commence use of any building or structure which is designed or intended to be occupied, used or inhabited.

Offset: The horizontal distance measured from the side or rear lot line, not along a street to any roofed or enclosed portion of a building, and not including a roof overhang as defined herein of 24 inches or less.

Offsite Parking Lot: A place where motor vehicles associated with an offsite use may be parked for a short duration. It may be available to the public or reserved to accommodate parking for a specific purpose or event.

Open Space: Land area used for recreation, agriculture, resource protection, amenities for recreational purposes or buffers. (§17.22(3))

Open Space, Common: Lands which are open space and owned in common by individuals within a development or land trusts or other private conservation organizations, if access is available to the public, and as may be agreed to in the approval of the development by the Town Plan Commission or Town Board. (§17.59(3)(c))

Open Space, Public: Lands which are open space dedicated and owned by a public entity, such as a town, city, village, county or other public entity and used for a public purpose.

Ordinary Highwater Mark: The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high water mark is, resource may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high water mark. (§17.20(1)(h))

Outdoor/Indoor Recreational Facilities: Land and structures, along with accessory equipment, designed and utilized for leisure time activities of a predominantly "outdoor or indoor" nature and having a more specific purpose such as tennis courts, swimming pools, basketball or racquetball courts, ice arenas, etc., other than passive park-like open areas, and further classified:

- (1) **Public:** Facilities owned and operated by a governmental agency for a limited or general public use.
- (2) **Private Commercial:** Facilities owned and operated by an individual, group, or corporation for profit as a business whether or not open to general public use.
- (3) **Private Noncommercial Group:** Facilities owned and operated by a group for the exclusive use of the members of such group and their guests and not for profit as a business.

Outhouse: A facility designed to accommodate the elimination of human waste directly into a hole or earthen pit without running water. Same as privy.

Outdoor Shooting Range: An outdoor area where patrons shoot guns, such as pistols, rifles, and shotguns, and bow and arrows for target practice. The term includes archery ranges, trap and skeet clubs, target ranges and the like.

Overhang: That portion of a room over a structure and designated as an integral part of the structure, which extends from the outer wall of the structure to the eave. Rain gutters are not included or considered part of the overhang.

Patio: A structure characterized by a flat, open, horizontal surface or platform and usually constructed of materials including, but not limited to, concrete, brick, flagstone, crushed stone, compacted stone, gravel, wood, or other natural or man-made materials. A patio is located on the surface of the ground or at the average grade of the ground surface. This definition includes sport courts such as tennis courts, basketball courts, and similar structures that are not associated with normal driveway construction.

Permitted Use: A use that is allowed without a conditional use permit, special exception, or other special zoning permission but that may require a zoning permit or other approval as specified in this Ordinance.

Person: Means an individual, association, partnership, limited liability company, or corporations.

Pervious Area: An area that releases as runoff a small portion of the precipitation that falls on it. Lawns, garden, parks, forests and similar vegetated areas are examples of surfaces that typically are pervious.

Personal Storage Facility: A place, building or portion thereof, or a group of buildings where storage units are offered to the general public for rent, lease, sale, or other arrangement for the storage of personal property and the units are not for commercial storage purposes.

Plan Commission: The Town Plan Commission established under village powers pursuant to §62.23, Wis. Stats., the Town Park Commission established pursuant to §60.181, Wis. Stats., or any other agency created by the Town Board and authorized by statute to plan land use.

Planned Unit Development (PUD): A development strategy, process or procedure whereby a relatively large parcel of land is developed for a specific use in such a way as to provide specific benefits to the community as well as the developer and future citizens who will reside within the development, and when the normal application of standards and requirements are waived or made more flexible, and which shall contain substantial amounts of common open space for aesthetic, natural preservation or recreational purposes.

Planned Unit Development Mixed: A Planned Unit Development which is a mixture of retail, service uses, industrial or residential uses. Buildings associated with open space and recreations uses, either public or private, shall be considered part of the open space use.

Planting Screen: An area landscaped with natural growing plant material which effectively screens from vision the objects it is intended to hide from view.

Pool, Swimming: Means a structure above or below ground level, or combination thereof, designed to hold water more than 30 inches deep at its deepest point, to be used for recreation or relaxation purposes.

Porch/Stoop: A functional element of the ingress/egress of a principal structure allowing for easy and convenient passage between the exterior and interior of said structure. For the purposes of regulation in this ordinance, a stoop is considered to be 20 square feet or less whereas a porch exceeds 20 square feet in area.

Poultry: Domesticated birds kept for eggs, meat or as pets.

Private Club or Lodge: Building or grounds used for regular or periodic meetings or gatherings of a group of persons organized for a nonprofit purpose but not groups organized to render a service customarily carried on as a business.

Professional Office: Office of a doctor, practitioner, dentist, minister, architect, landscape architect, professional engineer, lawyer, author, musician or other similar recognized professional person.

Public and Semi-public Building: Public and semi-public buildings and uses in the sense of this chapter are structures principally of an institutional nature and serving a public need such as hospitals, rest homes, private academic and nursery schools, libraries, museums, public and private utilities and other public services, but not including the operation of a public bar, restaurant or recreational facility as a commercial enterprise.

Pyramiding: The act of obtaining or providing access to public bodies of water across private lots or lands in a manner that increases the number of families that have access to that water to a degree greater than what would occur with individual riparian owners having individual lots fronting on the water. The effect of pyramiding is to funnel backlot Development from offshore lots or residences via a narrow parcel of land to provide access to the water. Publicly owned access points shall not fall within this definition.

Quarrying: The removal of rock, slate, gravel, sand, topsoil or other natural material from the quarrying site by excavating, stripping, leveling or any other such process, **including the mining of non-metallic minerals for commercial purposes and personal gain.**

Rain Garden: A manmade depression in the ground that is vegetated and used as a landscape tool to improve water quality. The rain garden forms a bio retention area by collecting water runoff and storing it temporarily, permitting it to be filtered and slowly absorbed by the soil.

Recycling Center: A place where recoverable materials, which have been previously removed from the waste stream, may be stored prior to shipment to others who use those materials to manufacture new products. Typical recoverable materials include glass, paper, metal, wood, rubber, asphalt/concrete, and plastic.

Recreational Vehicle: Motorized vehicles that include a cabin for living accommodations and are commonly used for recreational travel and touring. Vehicles included in this category come in several forms: travel trailers, tent trailers and camping trailers, all of which must be towed by another vehicle; and truck campers, motor homes and camper vehicles, all of which have a motor within the body of the vehicle and are self-propelled.

Refuse Disposal Site: A tract of land operated by a public or private agent, subject to restrictions of use and under supervision, and where more than one family may take all types of refuse, including organic and inorganic wastes (but excluding human excreta, sewage and/or other liquid wastes) hard or clean fill operations involving materials such as foundry sand, dirt, gravel, concrete or other forms of clean fill material, for compacting and burial by sanitary land fill methods. **Hard or clean fill operations involving materials such as sand, dirt, gravel, concrete or other forms of clean fill material shall not constitute refuse disposal sites for the purposes of this Ordinance.**

Regional Flood: A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the Flood Insurance Rate Map, the regional flood elevation is equivalent to the Base Flood Evaluation. A regional flood may also be determined by other studies approved by the WDNR.

Regional Flood Elevation: The elevation of the regional flood. Commonly referred to as RFE.

Remodeling: Any structural alterations(s), additions(s), modifications(s), or latera enlargement(s) of any existing structure(s), principal or accessory. The term "remodeling" shall also refer to the conversion of living spaces of other floor areas into space for living purposes; such as converting a part of the living into a bedroom or bathroom regardless of whether such changes(s) require structural alterations to the basic structures. Ordinary maintenance repairs, including painting, decorating, paneling, replacement of doors, shingles, siding, windows, and other nonstructural components shall not be considered remodeling.

Restaurant: Any building, room or place wherein meals are prepared, served or sold to transients or the general public, and all places used in connection therewith. Meals shall not include soft drinks, ice cream, milk, milk drinks, ices and confections. The serving in taverns of free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter shall not constitute such taverns to be restaurants. The term restaurant does not apply to churches, religious, fraternal, youth or patriotic organizations which occasionally serve or sell meals to transients or the general public, nor shall it include any private individual selling foods from a movable or temporary stand at public farm sales.

Retaining Wall: A structure more than 24 inches in height, as measured from finished grade, or a combination or series of multiple structures more than 24 inches in height from finished grade, constructed of man-made or natural materials for the main purpose of retaining land or stone and resisting the lateral pressure of the land or stone. For the purposes of this Ordinance, outcroppings are also considered retaining walls if they meet the retaining wall definition, unless they are naturally occurring in the landscape.

Retirement Home: A place where individuals, generally of retirement age or older, may occupy independent dwelling units. The units may be rented or owned as in a condominium. This use may include limited on-site commercial and medical facilities for the exclusive use of residents.

Right of Way: A strip of land dedicated or acquired for public or private use.

Road. A public or private right-of way usually affording primary access to abutting property.

Roadside Stand. A farm building used or intended to be used solely by the owner or the tenant of the farm on which such building is located for the sale of the products raised on the farm.

Salvage yard: A place where salvage materials, such as scrap metal, rubber tires, junk vehicles, and used timber and lumber, or similar materials, that may be bought, sold, exchanged, stored, baled, packed, disassembled, or handled. (Note: In contrast see recycling center).

Sand or Gravel Pits: See QUARRYING.

Screening: A feature such as a wall, fence, hedge, berm, or similar feature used to shield or obscure elements of a development from adjacent sites.

Seasonal Product Sales: An outdoor area where merchandise typically associated with a seasonal holiday or festival is displayed and offered for sale at retail immediately before the event. Examples of such merchandise include Christmas trees and wreaths for Christmas and pumpkins for Halloween. The term does not include fireworks sales for the Fourth of July.

Selective vegetative cutting or removal: The process of selectively cutting or removing vegetation which would include a determination by a forester or naturalist of which plants, including woody vegetation and

trees, middle layer species and ground layer vegetation is to be removed or cut based upon the species type, quality, indigenous character (alien, invasive or native) or otherwise of poor quality (dead, diseased, dying).

Self-service storage facility and mini warehouses: A building or portion thereof, or a group of buildings, divided into separate, self-contained, self-service storage units that are rented or leased by the owner and used to meet the storage needs of a household or for the storage of personal property of the general public. The units are not for commercial storage purposes.

Setback: The horizontal distance between the base setback line and the nearest roofed or enclosed portion of a building excluding the 24-inch roof overhang defined herein.

Setback, Wetland: The horizontal distance between the closed point of a structure or Building and the wetland boundary, excluding a roof Overhang measuring twenty-four inches (24") or less.

Shorelands: Those lands within the following area: One thousand (1,000) feet from the Ordinary High Water Mark of the navigable lakes, ponds or flowages; three hundred (300) feet of the Ordinary High Water Mark of navigable rivers or streams, or to the landward side of the Floodplain (as defined herein), whichever distance is greater.

Shoreland/Wetlands: Those wetland areas that lie within the shoreland and floodland jurisdiction of this ordinance and that have been designated as such on the Final Wisconsin Wetland Inventory Maps for Waukesha County prepared by the WDNR as depicted on the WDNR Surface Water Data Viewer.

Sign: Any structure or device displaying advertising in lettering, pictures, symbols or other media.

Site Plan and/or Plat of Survey: A map of the property (in standard engineering or mapping scale which provides a clear representation of the property to a scale not to exceed two hundred (200) feet to one (1) inch), showing the location and dimensions of all existing and proposed buildings and structures and other attributes on the site, the location, number and arrangement of parking spaces or loading areas, lighting fixtures, easements, dumpsters, signs, landscaping and screening, and any other factors affecting the development of the site. The site plan shall also indicate all areas which are to be used as special event parking on the parcel.

Solid Waste Transfer Station: A place where solid waste may be temporary stored prior to transport to a processing plant or to final disposal.

Special Event Parking: A place where parking for motor vehicles is allowed when specifically related to a special event of regional significance as designated by the Town Plan Commission or Town Board.

Special Exception: A request for a minor adjustment to the requirements of the zoning ordinance only where specifically authorized by this ordinance owing to special conditions of the property. The special exception must be necessary and desirable and must not adversely affect adjacent property owners. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship or practical difficulty. In the granting of a special exception, the approving body must still consider whether the proposed special exception 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 restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest or welfare.

Special Use Systems: Accessory structure which may be mounted on the ground surface, upon another structure or as a mobile unit for the purpose of receiving satellite communication transmissions or retransmissions; for the purpose of solar collection for heating, including those systems defined by §13.48(2)(h)1.g., and §66.0403(1)(m), Wis. Stats.; for the purpose of generating electrical power by use of windmills. Solar energy conversion systems shall mean only “active” solar collection systems not constructed as an integral part of a building.

Specified Anatomical Areas means:

- (1) Less than completely and opaquely covered human genitals, public region, buttocks, and female breasts below the point immediately above the top of the areola;
- (2) Human male genitals in a discernible turgid state, even if opaquely covered.

Specified Sexual Activities: Simulate or actual:

- (1) Showing of human genitals in a state of sexual stimulation or arousal;
- (2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus;
- (3) Fondling or erotic touching of human genitals, public region, buttocks or females breasts.

Stable, Commercial or Boarding: A tract of land or structure where horses or other livestock are kept for hire, boarding, sale or used for commercial recreation purposes. (§17.43; §17.44(6))

Stable, Private: A tract of land or structure where horses or other livestock are kept for personal use by the property owner or occupant of the principal residential structure on the property. (§17.44(6))

Stormwater BMP: A structural best management practice that is designed to collect or manage the quantity or quality of stormwater for an indefinite time period, following adopted County or State technical standards. Some examples include, but are not limited to : pervious pavement, rain garden, infiltration trench or basin, green roof, bioswale, filter strip, constructed wetland, bio-retention basin, wet detention basin, or any combination of these or other permanent stormwater management practices approved by the Town and/or County.

Story: That portion of a building included between the surface of the floor next above it or the space between the floor and the ceiling next above it. A basement or cellar having one-half or more of its height above grade shall be deemed a story for purposes of height regulation and floor area computation.

Street. See Road:

- (1) **Street, Arterial:** A road providing for efficient, safe and direct connection to or separation of developed areas for circulation to destinations outside the developed area and deemed as such on the Established Street and Highway Width Map for Waukesha County or other official map adopted by the municipality.
- (2) **Street, Collector:** A road providing for circulation to serve local traffic moving between minor streets and arterial streets as designed on the Established Street and Highway Width Map for Waukesha County or other official map adopted by the municipality.
- (3) **Street, Minor:** Any other road not deemed as a collector or arterial street on the Established Street and Highway Width Map for Waukesha County or other official map adopted by the municipality

Street Frontage: A street contiguous and parallel to a traffic artery and affording direct vehicular access to abutting property.

Street Line: A dividing line between a lot, tract or parcel of land and a contiguous street.

Structural Alterations: Any change in the supporting members of a building or any substantial change in the roof structure or exterior walls.

Structure: Any man-made object with form, shape and utility that is constructed or otherwise erected on the ground or attached to something on the ground, or permanently or temporarily placed, either upon the ground or upon another structure. For the purposes of this Ordinance, the term “structure” includes, but is not limited to, Principal and Accessory Buildings (including garages, sheds, Boathouses, porches and gazebos), signs, swimming pools, hot tubs, patios, Decks, sidewalks, walkways, fire pits, retaining walls, monuments, Entrance Gates, radio towers and television towers, but does not include landscaping, earthwork, or Land Altering Activities including graded areas, filled areas, ditches, berms, or earthen terraces. The term “structure” does not include flag poles, mailboxes, fences, basketball hoops, satellite dishes eighteen (18) inches or less in diameter, or small objects that are easily moved by hand, such as lawn chairs, portable grills, portable picnic tables, fences, dohousers, bird feeders, birdhouses, and birdbaths.

Structure, Legal Nonconforming: A building, structure or portion thereof lawfully existing at the time of the passage of this ordinance, but which does not conform in one or more respects to the regulations of this ordinance.

Sustained Yield Forestry: The management of forested lands to provide annual or periodic crops of forest products.

Swimming Pool: A structure designed to hold water more than 30 inches deep for the purposes of swimming. See pool, swimming.

Temporary Structure: A movable structure not designed for human habitation or occupancy but for the temporary protection (not to exceed one year) of goods or chattels during a period of construction, for the enclosure or screening of goods or property or for the display of signs and advertising.

Tourist Homes: A building in which lodging with or without meals is offered to transient guests for compensation, and having no more than 5 sleeping rooms for this purpose with no cooking facilities in any such individual room or apartment.

Town Board: The Town Board of Supervisors of the Town of Merton.

Town Zoning Agency: The Town Plan Commission designated by the Town Board as its agency in regard to zoning.

Traffic Artery: See Highway.

Trailer Parks: See Mobile Home Parks.

Use, Accessory: A use subordinate to and customarily incident to the permitted principal use of the property or buildings and located upon the same lot as the principal use.

Use, Legal Nonconforming: The use of a building or land lawfully carried on at the time of the passage of this chapter or amendments thereto but which does not conform to the use regulations of this chapter.

Use, Principal: The main or primary use of property or buildings as specified and permitted by the regulations of the district in which it is located.

Variance: An authorization granted by the Board of Adjustment to construct or alter a building, land use or structure in a manner that deviates from this ordinance.

Vision Setback: An unoccupied triangular space at the street corner of a corner lot as established by this code. §17.20(1)(b).

Wetlands: Those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

Youth Facility: Any facility where minors gather for education or recreational activities including, but not limited to, playgrounds, swimming pools, libraries, licensed child care facilities or youth clubs. (§17.19(17))

Zoning Administrator: The person designated by the Town Board.

Zoning District, Overlay: A type of zoning district that is superimposed over one or base zoning districts, or portions thereof and thereby imposes additional requirements, modifies existing requirements of the underlying base zoning district, or both.

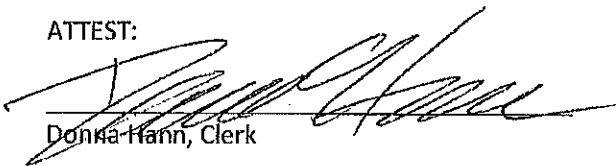
SECTION 2. EFFECTIVE DATE. This ordinance shall become effective upon passage, posting or publication as required by law.

DATED: 10-12-2020

TOWN OF MERTON

By: 
Tim Klink, Chairman

ATTEST:


Donna Hann, Clerk

Date Adopted: 10-13-2020
Date Published: 10-16-2020
Effective Date: 10-16-2020

ORDINANCE NO. 17.28

 COPY

AN ORDINANCE TO REPEAL AND RE-CREATE SECTION 17.28 OF THE GENERAL CODE OF THE TOWN OF MERTON RELATING TO NON-CONFORMING USES, STRUCTURES AND LOTS

The Town Board of the Town of Merton, Waukesha County, Wisconsin, do ordain as follows:

SECTION 1. Section 17.28 of the General Code of Ordinances is hereby repealed and re-created to read as follows:

17.28 - LEGAL NON-CONFORMING USES, STRUCTURES AND LOTS.

(A) **Continuance of Use, Generally,**

- (1) Any lawfully established construction of a building or structure at the time of the enactment of this Code or any amendment applicable thereto that does not conform to the dimensional regulations for the District in which it is located shall be deemed a legal nonconforming structure and may be continued, except as otherwise provided herein.
- (2) Any lawfully established use of a building, structure or land at the time of the enactment of this Code or any amendment applicable thereto that does not conform to the use regulations for the District in which it is located shall be deemed to be a legal nonconforming use and may be continued, except as otherwise provided herein.
- (3) Any lawfully established lot or parcel of land at the time of enactment of this Code or any amendment thereto which does not meet the requirements for the District in which it is located shall be deemed to be a legal nonconforming lot and may be used in accordance with this Code and as provided herein.

(B) **Regulation.** For the purposes of administration, legal nonconforming structures, uses and lots shall be classified and regulated as follows:

- (1) **Existing Non-conforming Structures.** A lawful structure which existed at the time of the adoption or amendment of this Code may be continued as a legal non-conforming structure, although the structure size or location does not conform to all the requirements of this Code, however:

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- (a) A legal non-conforming structure containing conforming uses may be totally rebuilt if, and only if, such reconstruction is identical in respect to the size, height, location, footprint, use of the original structure. If said structure is located within the Shoreland Regulations of Waukesha County, then all requirements of NR 115.05 (1) (g) 6.
 - (b) A legal non-conforming structure containing conforming uses, subject to approval of a special exception by the Board of Adjustment, may be reduced in size, may have its shape modified, may have its height lowered, and may have its style modified, as long as the proposed structure is identical in all respects to the location, footprint and use of the original structure.
 - (c) A legal non-conforming structure containing conforming uses, subject to the grant of a variance per Section 17.62 from the Board of Adjustment, may be increased in size, may be increased in shape, may be increased in height, and the location and footprint may be modified, provided setbacks and offsets are complied with.
 - (d) Regardless of the foregoing provisions in this subsection, the footprint of a legal non-conforming primary residence with conforming uses, subject to the grant of a variance per Section 17.62 from the Board of Adjustment, may be expanded into areas of the lot where the expansion fully complies with all offset and setback requirements of the district in which it is located, provided that the expansion is otherwise in compliance with all other applicable laws. In passing upon such matter, the Board of Adjustment shall consider all the following factors: the size of the lot; the size and location of the existing legal non-conforming structure; the size and location of any other structure on the lot; the size and location of the proposed expansion; the impact, if any, that the expansion may have upon neighboring properties; whether the proposed expansion would violate the intent of this Code and such other matters as the Board of Appeals finds to be relevant in the interest of the public health, safety, welfare, and be compatible with other properties in the area of the Town.
- (2) **Nonconforming Use of Structures and Lands.** A lawful use which existed at the time of the adoption or amendment of this Code may be continued as a legal non-conforming use, although the use of the structure and land does not conform with the provisions of this Code, however:

- (a) No such use shall be expanded or enlarged.
 - (b) Upon petition to and approval of the Town Plan Commission, such use may be changed to another use provided the Town Plan Commission determines that the new use would not result in a greater degree of non-conformity than the current use.
 - (c) When any such use is discontinued for a period of twelve (12) consecutive months or eighteen (18) cumulative months during a three-year period, any future use of the land or structure shall conform to the use regulations of the applicable district. Seasonable uses shall be excluded from this provision.
 - (d) When a structure which houses such non-conforming use is damaged beyond 50 percent of its present equalized assessed value, it may be restored for any use in conformity with the applicable district regulations.
 - (e) Total structural repairs or alterations to a structure housing a non-conforming use shall not exceed, on an accumulative percentage basis, 50 percent of the present equalized assessed value of the structure.
- (3) **Nonconforming lots.** The size and shape of such lots shall not be altered in any way which would increase the degree of such non-conformity to the applicable district regulations.
- (C) **Conditional use status.** Subject to the provisions of Sections 17.18 and 17.19, Conditional Use Status may be granted to existing legal non-conforming uses, structures or lots upon petition of the owner and where such use, structure or lot is determined by the Town Plan Commission to be: not adverse to the public health, safety, or welfare; not in conflict with the spirit or intent of the Code; and not otherwise detrimental to the community and particularly the surrounding neighborhood. Such conditional use status shall be granted only with the approval of the Town Plan Commission following a public hearing in the manner provided in Section 17.18
- (D) **State Law:** Any applicable restriction in this Code which prohibits restoration of a damaged or destroyed non-conforming structure shall not apply to the extent that Sec. 62.23(7)(h)(c), Wis. Stats. applies to such restoration, including such amendments and renumbering of the applicable statutes referred to therein as may be made from time to time.

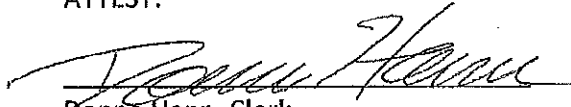
SECTION 2. EFFECTIVE DATE. This ordinance shall become effective upon passage, posting or publication as required by law.

DATED: 10-12-2020

TOWN OF MERTON

By: 
Tim Klink, Chairman

ATTEST:


Donna Hann, Clerk

Date Adopted: 10-12-2020
Date Published: 10-16-2020
Effective Date: 10-16-2020



VOTE RESULTS: Passed By Majority Vote

AYE: 21

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ABSENT: 4

D1 - Foti	AYE
D2 - Zimmermann	AYE
D3 - Morris	Second
D4 - Batzko	AYE
D5 - Dondlinger	AYE
D6 - Walz	AYE
D7 - LaFontain	AYE
D8 - Michalski	AYE
D9 - Heinrich	AYE
D10 - Swan	AYE
D11 - Howard	AYE
D12 - Wolff	ABSENT
D13 - Decker	AYE

D14 - Mommaerts	ABSENT
D15 - Mitchell	Motion
D16 - Crowley	AYE
D17 - Paulson	AYE
D18 - Nelson	AYE
D19 - Cummings	AYE
D20 - Schellinger	AYE
D21 - Gaughan	AYE
D22 - Wysocki	AYE
D23 - Hammitt	ABSENT
D24 - Whittow	ABSENT
D25 - Johnson	AYE