

ENROLLED ORDINANCE 165-100

AMEND THE TEXT OF THE TOWN OF WAUKESHA ZONING CODE TO REPEAL SECTION 13-2-10(d)(2) AND CREATE SECTION 13-2-10(e) REGARDING CORNER LOT SETBACK REQUIREMENTS, REPEAL AND RE-CREATE SECTION 13-2-18 REGARDING LEGAL NON-CONFORMING STRUCTURES AND USES AND REPEAL AND RE-CREATE SECTION 13-3-4(d)(3) REGARDING REQUIRED OPEN SPACE IN THE A-1 AGRICULTURAL DISTRICT  
(ZT-1713)

WHEREAS the subject matter of this Ordinance was approved by the Waukesha Town Board on December 9, 2010 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 for approval, 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 State Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Waukesha Zoning Code, adopted by the Town of Waukesha on June 24, 1979, is hereby amended to repeal Section 13-2-10(d)(2) and create Section 13-2-10(e) regarding corner lot setback requirements, repeal and re-create Section 13-2-18 regarding legal non-conforming structures and uses and repeal and re-create Section 13-3-4(d)(3) regarding required open space in the A-1 Agricultural District, 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-1713, 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 this Ordinance shall be in full force and effect upon passage, approval and publication.

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ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

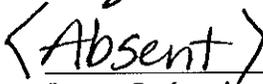
AMEND THE TEXT OF THE TOWN OF WAUKESHA ZONING CODE TO REPEAL SECTION 13-2-10(d)(2) AND CREATE SECTION 13-2-10(e) REGARDING CORNER LOT SETBACK REQUIREMENTS, REPEAL AND RE-CREATE SECTION 13-2-18 REGARDING LEGAL NON-CONFORMING STRUCTURES AND USES AND REPEAL AND RE-CREATE SECTION 13-3-4(d)(3) REGARDING REQUIRED OPEN SPACE IN THE A-1 AGRICULTURAL DISTRICT (ZT-1713)

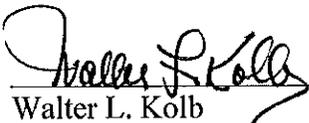
Presented by:  
Land Use, Parks, and Environment Committee

  
\_\_\_\_\_  
Fritz Ruf, Chair

  
\_\_\_\_\_  
Robert Hutton

  
\_\_\_\_\_  
Michael J. Inda

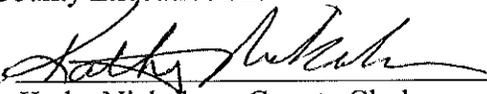
  
\_\_\_\_\_  
James Jeskewitz

  
\_\_\_\_\_  
Walter L. Kolb

  
\_\_\_\_\_  
Ted Rolfs

  
\_\_\_\_\_  
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: March 25, 2011   
\_\_\_\_\_  
Kathy Nickolaus, County Clerk

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

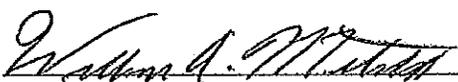
Approved: X  
Vetoed: \_\_\_\_\_  
Date: 3-25-11   
\_\_\_\_\_  
Daniel P. Vrakas, County Executive

COMMISSION ACTION

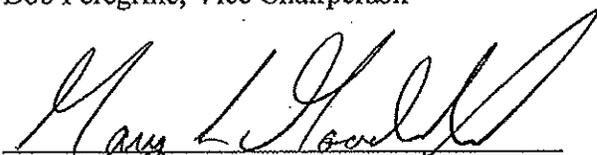
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Waukesha Zoning Code hereby recommends approval of (ZT-1713 Text Amendments for the Town of Waukesha) in accordance with the attached "Staff Report and Recommendation".

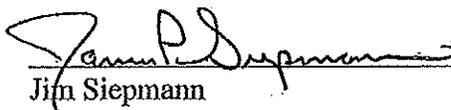
PARK AND PLANNING COMMISSION

February 17, 2011

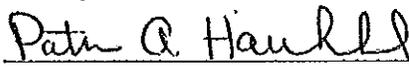
  
William Mitchell, Chairperson

  
Bob Peregrine, Vice Chairperson

  
Gary Goodchild

  
Jim Siepmann

  
Walter Kolb

  
Pat Haukohl

  
Fritz Ruf

165-0-103

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

**FILE NO:** ZT-1713

**TAX KEY NUMBER:** N/A

**DATE:** February 17, 2011

**NAME OF PETITIONER:** Town Board of Waukesha  
Town of Waukesha Town Hall  
W250 S3567 Center Rd.  
Waukesha, WI 53189

**NATURE OF REQUEST:**

Several amendments to the Town of Waukesha Zoning Code are proposed. Specifically, the request is to consider repeal of Section 13-2-10(d)(2) and create Section 13-2-10(e) pertaining to corner lot setback requirements, repeal and re-create Section 13-2-18 pertaining to legal non-conforming structures and uses and repeal and re-create Section 13-3-4(d)(3) regarding required open space in the A-1 Agricultural District.

**PUBLIC HEARING DATE:**

December 9, 2010.

**PUBLIC REACTION:**

There were no comments from the public.

**TOWN PLAN COMMISSION ACTION:**

On December 9, 2010, the Town of Waukesha Plan Commission voted to recommend approval of the proposed amendments to the Town Zoning Code to the Town of Waukesha Board.

**TOWN BOARD ACTION:**

On December 9, 2010, the Town of Waukesha Board adopted an ordinance to amend the Town of Waukesha Zoning Code in accordance with the recommendation of the Town Plan Commission.

**BACKGROUND AND SUMMARY OF CHANGES:**

The Town of Waukesha is proposing changes to a number of sections of the Town of Waukesha Zoning Code pertaining to corner yard setbacks, legal non-conforming structures and uses and open space provisions within the A-1 Agricultural District. The proposed amendment relative to corner lots would allow for accessory buildings and structures on corner lots to be located in accordance with the offset requirements for the district relative to the secondary abutting street (See Exhibit "A"). The current code provisions require accessory buildings to be no closer to the road than the principal structure, and principal structures must meet the required road setback from both the primary and secondary street. In most of the Town's zoning districts, this change would result in a minimum accessory structure setback decrease from 50' to 20' along the secondary street. The primary street is determined by the driveway location or address assigned to the property. The County zoning codes require that all structures meet

165-0-103

the required setback from both the primary and secondary street, although Staff has considered the merits of a change similar to the Town's proposal during review of variance requests on related matters.

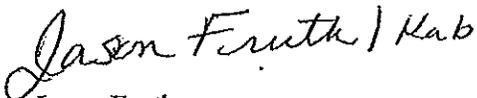
The proposed changes relative to open space requirements pertain to the A-1 Agricultural District only (See Exhibit "B"). The proposed amendment would eliminate the open space requirements for A-1 parcels, with the exception of Planned Unit Developments (PUDs). The town code currently calls for a minimum of 18 acres of open space for parcels within the A-1 District. Because some existing parcels are less than the district minimum area requirement of 20 acres, this seems to be a very logical change.

Finally, the section of the town code relative to non-conforming structures and uses is proposed to be amended to limit the total repairs over the life of the structure to 50% of the assessed value of a building, except for structures damaged by natural disasters or vandalism (See Exhibit "C"). A similar provision had existed in the town code until the non-conformity section was amended in 2007. In accordance with state law, the amendments note that restoration of non-conforming structures is permissible where damage occurred after March 2, 2006 and was caused by certain natural disasters such as floods, mold or infestation. The proposed amendments also allow for the termination of legal non-conforming conditional use status by the Town Board upon just cause.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that the proposed ordinances to amend the Town of Waukesha Zoning Code relative to corner yard setbacks, legal non-conforming structures and uses and open space provisions within the A-1 Agricultural District be approved as presented. Staff feels that the code changes relative to corner yard setbacks are reasonable and give property owners who own such property more flexibility for locating accessory structures while still ensuring that such structures are not too close to the corner so as to obstruct vision or create a negative visual impact. The changes to the A-1 District open space provisions eliminates the need for existing substandard lots of record in this district to obtain fairly needless variances. Finally, the changes regarding legal non-conforming structures and uses allows for reconstruction of structures damaged by natural causes or vandalism in accordance with Chapter 59.69 of the State Statutes and gives the Town the ability to terminate conditional use status for such structures given just cause. Staff feels that these changes are appropriate and similar provisions exist in the county zoning codes.

Respectfully submitted,



Jason Fruth  
Planning and Zoning Manager

Attachments: Town Ordinances (Exhibits "A", "B" and "C")

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165-0-103

**EXHIBIT "A"**

RECEIVED

JAN 25 2011

DEPT OF PARKS & LAND USE  
WAUKESHA COUNTY

STATE OF WISCONSIN: TOWN OF WAUKESHA:

**AN ORDINANCE REPEALING SECTION 13-2-10(d)(2) AND  
CREATING SECTION 13-2-10(e) OF THE TOWN CODE OF THE TOWN OF  
WAUKESHA, WAUKESHA COUNTY, WISCONSIN**

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

SECTION 1: Section 13-2-10(d)(2) of the Town Code of the Town of Waukesha  
is hereby repealed.

SECTION 2: Section 13-2-10(e) of the Town Code of the Town of Waukesha is  
hereby created to read as follows:

(e) **Corner Lots.**

As used herein the term "corner lot" shall refer to any lot of record which  
abuts two or more public rights of way. Except as otherwise provided in  
this code, all buildings or structures on corner lots must meet the setback  
requirement as measured from the primary street, and the offset  
requirement as to any secondary street or other public right of way  
abutting the corner lot. The primary street shall be determined by  
driveway location or address assigned to the property

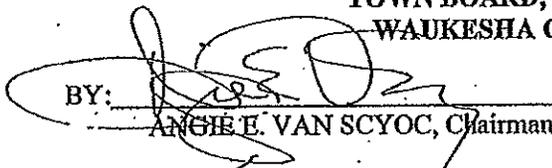
SECTION 3: All ordinances or parts of ordinances conflicting with or  
contravening the provisions of this ordinance are hereby repealed.

SECTION 4: This ordinance shall take effect upon passage and posting as  
provided by law.

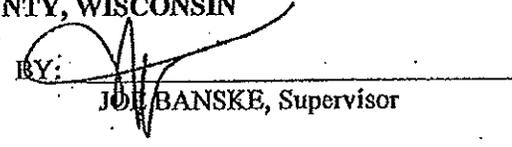
PASSED AND ADOPTED by the Town Board of the Town of Waukesha,  
Waukesha County, Wisconsin this 9 day of December, 2010.

TOWN BOARD, TOWN OF WAUKESHA,  
WAUKESHA COUNTY, WISCONSIN

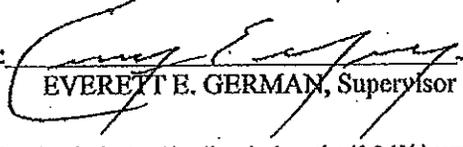
BY:

  
ANGIE E. VAN SCYOC, Chairman

BY:

  
JOE BANSKE, Supervisor

BY:

  
EVERETT E. GERMAN, Supervisor

ATTEST:

  
JAMIE SALENTINE, Clerk

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RECEIVED

JAN 25 2011

STATE OF WISCONSIN:

TOWN OF WAUKESHA:

DEPT OF PARKS & LAND USE  
WAUKESHA COUNTY

**AN ORDINANCE REPEALING AND RECREATING SECTION 13-3-4(d)(3)  
OF THE TOWN CODE OF THE TOWN OF WAUKESHA,  
WAUKESHA COUNTY, WISCONSIN**

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

SECTION 1: Section 13-3-4(d)(3) of the Town Code of the Town of Waukesha  
is hereby repealed and recreated to read as follows:

**(3) Open Space.**

- a. There shall be no minimum open area requirements with respect to properties zoned for uses permitted in the A-1 Agricultural Districts, except where a residential planned unit development is utilized. Where a PUD is utilized the minimum open space requirement shall be determined in accordance with the provisions of 13-2-9(i)(22).

SECTION 2: All ordinances or parts of ordinances conflicting with or contravening the provisions of this ordinance are hereby repealed.

SECTION 3: This ordinance 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 9 day of December, 2010.

**TOWN BOARD, TOWN OF WAUKESHA,  
WAUKESHA COUNTY, WISCONSIN**

BY:   
ANGIE E. VAN SCYOC, Chairman

BY:   
JOE BANSKE, Supervisor

BY:   
EVERETT E. GERMAN, Supervisor

ATTEST:   
JAMIE SALENTINE, Clerk

jwh\clients\waukesha, town\1-ordinanc\ord-repealing and recreating 13-3-4 open space 11-2-10 rev.doc

**EXHIBIT "C"**

RECEIVED

FEB 11 2011

STATE OF WISCONSIN:

TOWN OF WAUKESHA:

DEPT. OF PARKS & LAND USE  
WAUKESHA COUNTY

**AN ORDINANCE REPEALING AND RECREATING SECTION 13-2-18  
OF THE TOWN CODE OF THE TOWN OF WAUKESHA,  
WAUKESHA COUNTY, WISCONSIN**

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

SECTION 1: Section 13-2-18 of the Town Code of the Town of Waukesha is  
hereby repealed and recreated to read as follows:

**SEC. 13-2-18 LEGAL NONCONFORMITY.**

- (a) **Existing Use Permitted.** The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the zoning code. The nonconforming use may not be extended.
- (b) **Nonconforming Structures.** The total structural repairs or alterations of a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If any nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the zoning code.
- (c) **Restoration of Certain Nonconforming Structures.** Notwithstanding anything contained herein to the contrary, a nonconforming building or structure may be restored to the size, location and use that it had immediately before the damage or destruction occurred, if, prior to the event which requires repair, reconstruction or improvement, all of the following applied.
  - a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

165-0-103

- b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

The Town Board may allow for the size of a structure or building to be larger than the size it was immediately before the damage or destruction referenced in this section, if necessary for the structure to comply with applicable town, state or federal requirements.

- c. All nonconforming structures lying within floodplains shall be floodproofed.
- (d) **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.
- (e) **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.
- (f) **Termination.** Where a permitted conditional use does not continue in conformity with the conditions of the original approval, or where a change in the character of the surrounding area or of the use itself causes it to be no longer compatible with surrounding areas, or for similar cause based upon consideration for the public welfare, the conditional use grant may be terminated by action of the Town Board following referral to the Plan Commission for recommendation, and public hearing thereon. Such use shall thereafter be classified as a legal nonconforming use, except that where the action is due to failure to comply with the conditions of the conditional grant, the Town Board shall enforce complete termination of such use.

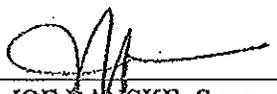
SECTION 2: All ordinances or parts of ordinances conflicting with or contravening the provisions of this ordinance are hereby repealed.

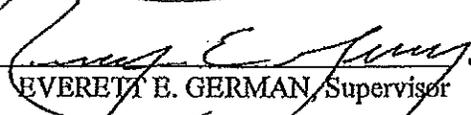
SECTION 3: This ordinance shall take effect upon passage and posting as provided by law.

PASSED AND ADOPTED by the Town Board of the Town of Waukesha,  
Waukesha County, Wisconsin this 9 day of December, 2010.

**TOWN BOARD, TOWN OF WAUKESHA,  
WAUKESHA COUNTY, WISCONSIN**

BY:   
ANGIE E. VAN SCYOC, Chairman

BY:   
JOE BANSKE, Supervisor

BY:   
EVERETT E. GERMAN, Supervisor

ATTEST:   
JAMIE SALENTINE, Clerk

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WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-03/23/11

(ORD) NUMBER-1650103

- 1 D. FALSTAD.....AYE
- 3 R. HUTTON.....AYE
- 5 J. JESKEWITZ.....AYE
- 7 P. HAUKOHL.....AYE
- 9 J. HEINRICH.....AYE
- 11 F. RUF.....AYE
- 13 P. DECKER.....AYE
- 15 P. MEYERS.....AYE
- 17 J. TORTOMASI.....AYE
- 19 S. WIMMER.....AYE
- 21 W. ZABOROWSKI.....AYE
- 23 K. CHIAVEROTTI.....AYE
- 25 G. YERKE.....AYE

- 2 T. ROLFS.....
- 4 J. DWYER.....AYE
- 6 J. BRANDTJEN.....
- 8 T. SCHELLINGER.....AYE
- 10 D. SWAN.....AYE
- 12 P. WOLFF.....AYE
- 14 M. INDA.....AYE
- 16 D. PAULSON.....AYE
- 18 K. CUMMINGS.....
- 20 P. JASKE.....AYE
- 22 P. GUNDRUM.....AYE
- 24 W. KOLB.....AYE

TOTAL AYES-22

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS   X  

TOTAL VOTES-22