

ENROLLED ORDINANCE 167-22

AMEND THE TEXT OF THE TOWN OF DELAFIELD ZONING CODE TO REPEAL AND RECREATE SECTIONS 17.04 5.A.5.d, 17.04 5.B.5.d, 17.04 5.H.5.d AND 17.04 5.I.5.d OF THE TOWN OF DELAFIELD ZONING ORDINANCE RELATING TO OPEN SPACE REQUIREMENTS FOR THE R-1, R-1A, A-2 AND A-3 ZONING DISTRICTS (ZT-1738)

WHEREAS after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Delafield Town Board on May 22, 2012, 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 60.61, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Delafield Zoning Code, adopted by the Town of Delafield on July 20, 1998, is hereby amended to repeal and recreate Sections 17.04 5.A.5.d, 17.04 5.B.5.d, 17.04 5.H.5.d and 17.04 5.I.5.d relating to the open space requirements for the R-1, R-1A, A-2 and A-3 zoning districts, 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-1738, 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 Delafield.

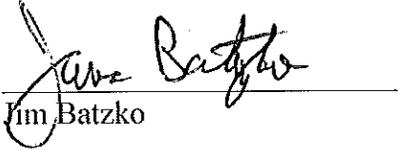
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

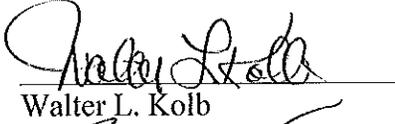
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

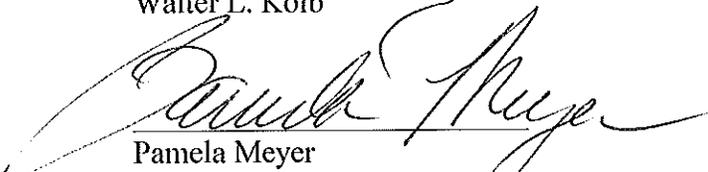
AMEND THE TEXT OF THE TOWN OF DELAFIELD ZONING CODE TO REPEAL AND RECREATE SECTIONS 17.04 5.A.5.d, 17.04 5.B.5.d, 17.04 5.H.5.d AND 17.04 5.I.5.d OF THE TOWN OF DELAFIELD ZONING ORDINANCE RELATING TO OPEN SPACE REQUIREMENTS FOR THE R-1, R-1A, A-2 AND A-3 ZONING DISTRICTS (ZT-1738)

Presented by:  
Land Use, Parks, and Environment Committee

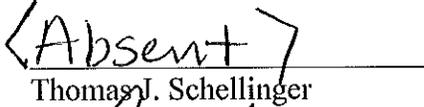
  
James A. Heinrich, Chair

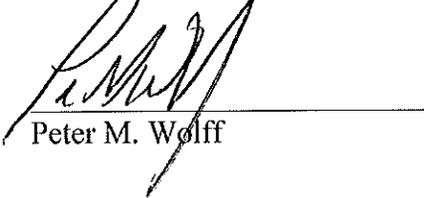
  
Jim Batzko

  
Walter L. Kolb

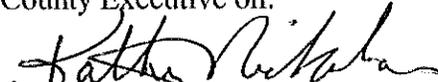
  
Pamela Meyer

  
Fritz Ruf

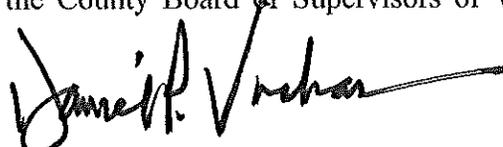
  
Thomas J. Schellinger

  
Peter M. Wolff

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

Date: 7-27-12,   
Kathy Nickolaus, County Clerk

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

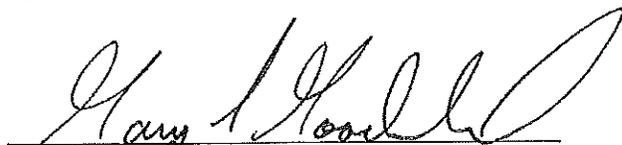
Approved:  \_\_\_\_\_  
Vetoed:  \_\_\_\_\_  
Date: 7-30-12,   
Daniel P. Vrakas, County Executive

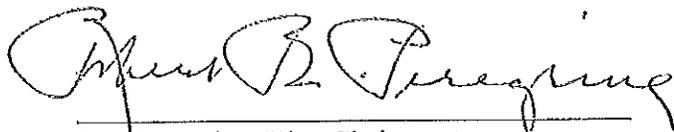
COMMISSION ACTION

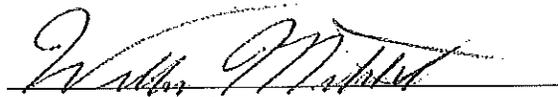
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Delafield Zoning Code hereby recommends approval of (ZT-1738 Town of Delafield Board) in accordance with the attached "Staff Report and Recommendation".

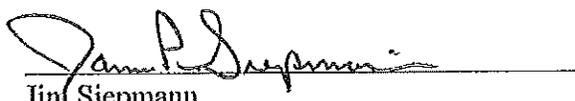
PARK AND PLANNING COMMISSION

June 7, 2012

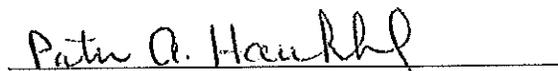
  
\_\_\_\_\_  
Gary Goodchild, Chairperson

  
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Bob Peregrine, Vice Chairperson

  
\_\_\_\_\_  
William Mitchell

  
\_\_\_\_\_  
Jim Siepmann

  
\_\_\_\_\_  
Walter Kolb

  
\_\_\_\_\_  
Pat Haukohl

  
\_\_\_\_\_  
Fritz Ruf

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

**FILE NO.:** ZT-1738

**DATE:** June 7, 2012

**PETITIONER:** Town of Delafield Board  
Town of Delafield Hall  
N14 W30782 Golf Road  
Delafield, WI. 53150

**NATURE OF REQUEST:**

Repeal and recreate Sections 17.04 5.A.5.d, 17.04 5.B.5.d, 17.04 5.H.5.d and 17.04 5.I.5.d of the Town of Delafield Zoning Ordinance, to amend the open space requirements for the R-1, R-1A, A-2 and A-3 zoning districts.

**PUBLIC HEARING DATE:**

May 22, 2012.

**PUBLIC REACTION:**

One resident indicated that over 200 people signed a petition for the changes to allow 15% of lot's area to be buildable with 85% open space, although he indicated that he was in favor of 20% buildable and 80% open space. He felt that a property owner should have the right to build. Another resident felt he has the right to use his property in any way he wishes and that there has to be compelling state interest to restrict someone's rights, which he did not feel that the Town demonstrated. He felt the current ordinance was unreasonable and suggested changing the definition of open space. One resident agreed with the above comments and felt that driveways should not be included. One resident felt that driveways needed to be defined and that consideration should be given for different shaped lots. Another resident suggested that the Town define green space in the code.

**TOWN PLAN COMMISSION:**

At the April 17, 2012, meeting, the Town of Delafield Plan Commission voted to recommend approval to the Town Board to amend the Zoning Code to reduce the open space requirements currently in the code that are in excess of 85% to 85% and that any section of the code that sets an open space percentage of less than 85% remain unchanged. The motion passed with a 5 to 1 vote.

At the May 1, 2012, meeting, the Town of Delafield Plan Commission reconsidered their recommendation to the Town Board and a motion was passed to recommend approval of a draft ordinance to the Town Board with the exception of Sections 3 and 6 relating to modifying the open space requirements in the A-B and P-I districts.

**TOWN BOARD ACTION:**

On May 22, 2012, the Town of Delafield Board approved the proposed amendments to the Zoning Ordinance, as recommended and amended by the Town Plan Commission. The signed Ordinance is attached.

**BACKGROUND AND SUMMARY OF CHANGES:**

The Town of Delafield is proposing several text amendments to the Town of Delafield Code of Ordinances relative to the open space requirements in the R-1, R-1A, A-2 and A-3 zoning districts. The current Town Code requires that 90% of each lot in the R-1, R-1A and A-3 districts shall remain in open space. The A-2 District requires 92% open space. The proposed Ordinance reduces the required amount of open space in these districts to 85%. It should be noted that the proposed Ordinance also clarifies the language in the A-2 zoning district relative to total space occupied by accessory buildings. The Town Ordinance defines open space as a natural area or manmade landscaped area not occupied by any structures, impervious surfaces, gravel drives or gravel parking areas.

The R-1 zoning district requires a minimum lot size of 1.5 acres. With 15% impervious surface allowed in the R-1 District, a conforming 1.5 acre lot would be allowed 9,800 sq. ft. of impervious surface under the 85% open space requirement. The R-1A zoning district requires a minimum lot size of 1 acre and a one acre lot would be allowed 6,534 sq. ft. in impervious surface. The A-2 zoning district requires a minimum lot size of 3 acres and a 3 area lot would be allowed 19,602 sq. ft. in impervious surface. The A-3 zoning district requires a minimum lot size of 2 acres and a 2 acre lot would be allowed 13,068 sq. ft. in impervious surface.

It is important to note that although the Waukesha County Shoreland and Floodland Protection Ordinance (SFPO) contains open space requirements, it is regulated differently. Under the SFPO, the open space is essentially the area of the lot not occupied by buildings. The R-1 zoning district in the SFPO requires a minimum lot size of 1 acre and 30,000 sq. ft. of open space. The A-2 zoning district in the SFPO requires a minimum lot size of 3 acres and 2 acres (87,120 sq. ft.) of open space is required. The A-3 zoning district in the SFPO requires a minimum lot size of 2 acres and 75,000 sq. ft. of open space. Therefore, although the Town is relaxing their open space requirements, the resultant requirements will still be more restrictive than the current requirements of the SFPO.

It is important to note that there have been recent updates to Chapter NR 115 Wisconsin Administrative Code relative to Wisconsin's Shoreland Protection Program. Waukesha County is required to update the SFPO by 2014 to ensure that the SFPO is at least as restrictive as the updated law. NR 115 defines impervious surface as an area that releases as runoff, all, or a majority of the precipitation that falls on it, including rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious. The law provides that up to 15% impervious surface may be allowed on a given lot. More than 15% but not more than 30% impervious surface may be allowed provided that a mitigation plan is implemented that offsets the impacts of the impervious surface on water quality, near-shore aquatic habitat, updated wildlife habitat and natural scenic beauty with the mitigation measures being proportional to the amount and impacts of the impervious surface permitted.

The proposed revisions to the Town's Code to require 85% open space in the R-1, R-1A, A-2 and A-3 zoning districts as defined in the Town's Code would also be more restrictive than the State minimum shoreland standards in that NR 115 allows for up to 30% impervious surface with mitigation. It should be noted that the Town is not proposing to modify the open space provisions of the R-L (residential lake), R-2 and R-3 zoning districts. The R-2 and R-3 districts currently require 85% open space and the R-L district requires 75% open space. These districts also allow a proportionate reduction in open space for nonconforming lots. Future amendments to the R-L districts may need to be considered to be consistent with NR 115.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that the proposed ordinance to amend the Town of Delafield Zoning Ordinance relative to the open space requirements of the R-1, R-1A, A-2 and A-3 zoning districts be **approved**, as presented. Although the Town is relaxing the open space standards of their Code, the standards will still be more restrictive than the Waukesha County SFPO and the minimum State standards in NR 115. The Town should be commended for its efforts in meeting and exceeding the State impervious surface standards.

It should be noted that research shows that increasing levels of impervious surface contribute negatively to water quality and fish quality and diversity. Although the Town is slightly relaxing their standards, the request is intended to maintain adequate open space while providing more flexibility for land owners.

Respectfully submitted,

*Peggy Tilley*

Peggy Tilley  
Senior Land Use Specialist

Attachment: Town Ordinance 2012-09

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167-0-022

5.

RECEIVED

MAY 23 2012

State of Wisconsin

Town of Delafield

Waukesha County  
DEPT OF PARKS & LAND USE

Ordinance No. 2012-09

An Ordinance to repeal and recreate certain portions of Section 17.04 5. A., 17.04 5. B., 17.04 5. H., and 17.04 5. I. of the Town of Delafield Code of Ordinances regarding the required percentage of open space on a property.

WHEREAS, from time to time, the Town Plan Commission reviews the Zoning Code (Chapter 17) of the Town of Delafield Municipal Code, and

WHEREAS, this amendment to the zoning regulations of the Town of Delafield was initiated by the Plan Commission pursuant to Section 17.10 (5)(B) of the Town of Delafield Zoning Code, and

WHEREAS, the Plan Commission, on March 6, 2012, received a petition signed by 180 residents of the Town requesting that the open space in the A-2 zoning district be reduced from 92% to 80% and that the inclusion of driveways in the open space calculation should be eliminated, and

WHEREAS, the Plan Commission has conducted the necessary investigation, held informal hearings and has reported its recommendation to the Town Board pursuant to 17.10 (5)(B)(2) of the Town of Delafield Zoning Code as noted in the minutes of the May 1, 2012 Plan Commission meeting, and

WHEREAS, the Town of Delafield Plan Commission has recommended that certain sections of the zoning code be modified to better meet the purpose of the Zoning Code, and

WHEREAS, upon due notice as required by Section 17.10(5)(F) and Section 17.10 (6) of the Town of Delafield Zoning code, the Town Board conducted a public hearing regarding the proposed amendments on May 22, 2012, and

WHEREAS, the Town Board of the Town of Delafield, having carefully reviewed the recommendation of the Plan Commission, having determined that all procedural requirements and notice requirements have been satisfied, and having given the matter due consideration, and having based its determination on the effect of the zoning amendment on the health, safety and welfare of the community, and having given due consideration to the municipal problems involved as well as the impact on surrounding properties as to noise, dust, smoke and odor, hereby determines that the zoning amendment will not violate the spirit or intent of the Zoning Code for the Town of Delafield, will not be contrary to the public health, safety or general welfare of the Town of Delafield, will not be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a substantial adverse effect on the property values and general desirability of properties affected by these zoning amendments, and further finds that these amendments will be consistent with the Town of Delafield Comprehensive Plan,

NOW, THEREFORE, the Town of Delafield Board of Supervisors DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning Ordinance," Section 17.04 entitled "Zoning Districts", subsection 5. entitled "Specific District," subsection A. entitled "R-1

167-0-022

6.

Residential District", subsection 5. Entitled "Area Regulations", subsection d. entitled Open Space is hereby repealed and recreated as follows:

d. Open Space

With the exception of rustic structures, which shall be permitted, 85% of each lot shall remain as open space.

**Section 2:** Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning Ordinance," Section 17.04 entitled "Zoning Districts", subsection 5. entitled "Specific District," subsection B. entitled "R-1A Residential District", subsection 5. Entitled "Area Regulations", subsection d. entitled Open Space is hereby repealed and recreated as follows:

d. Open Space

With the exception of rustic structures, which shall be permitted, 85% of each lot shall remain as open space.

**Section 3:** Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning Ordinance," Section 17.04 entitled "Zoning Districts", subsection 5. entitled "Specific District," subsection H. entitled "A-2 Rural Home District", subsection 5. Entitled "Area Regulations", subsection d. entitled Open Space is hereby repealed and recreated as follows:

d. Open Space

With the exception of rustic structures, which shall be permitted, 85% of each lot shall remain as open space.

With the exception of rustic structures, the total space occupied by all accessory buildings shall not exceed 1% of the total lot space unless the land is greater than 10 acres in which case the accessory buildings can be 2%.

**Section 4:** Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning Ordinance," Section 17.04 entitled "Zoning Districts", subsection 5. entitled "Specific District," subsection I. entitled "A-3 Suburban Home District", subsection 5. Entitled "Area Regulations", subsection d. entitled Open Space is hereby repealed and recreated as follows:

d. Open Space

With the exception of rustic structures, which shall be permitted, 85% of each lot shall remain as open space.

**Section 5: Severability**

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not

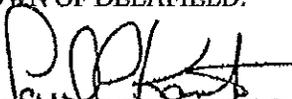
affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

**Section 6: Effective Date**

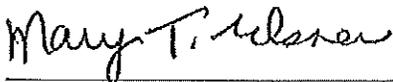
This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

This ordinance passed this 22<sup>nd</sup> day of May, 2012.

BY THE TOWN BOARD OF THE  
TOWN OF DELAFIELD:

  
\_\_\_\_\_  
Paul L. Kanter, Town Chairman

ATTEST:

  
\_\_\_\_\_  
Mary T. Elsner, CMC, WCMC  
Town Clerk

kat: HA1121600\Doc\O 120418 Zoning Code Changes Open Space rev05-02-12.docx

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-07/24/12

(ORD) NUMBER-1670022

- 1 C. SLATTERY.....AYE
- 3 R. MORRIS.....AYE
- 5 J. BRANDTJEN.....AYE
- 7 J. GRANT.....AYE
- 9 J. HEINRICH.....AYE
- 11 F. RUF.....AYE
- 13 P. DECKER.....AYE
- 15 W. KOLB.....AYE
- 17 D. PAULSON.....AYE
- 19 C. CUMMINGS.....AYE
- 21 W. ZABOROWSKI.....AYE
- 23 K. HAMMITT.....AYE
- 25 G. YERKE.....AYE

- 2 D. FALSTAD.....AYE
- 4 J. BATZKO.....AYE
- 6 J. JESKEWITZ.....
- 8 P. HAUKOHL.....AYE
- 10 D. SWAN.....AYE
- 12 P. WOLFF.....AYE
- 14 P. MEYER.....AYE
- 16 M. CROWLEY.....AYE
- 18 L. NELSON.....AYE
- 20 T. SCHELLINGER....AYE
- 22 P. JASKE.....AYE
- 24 D. DRAEGER.....AYE

TOTAL AYES-24

TOTAL NAYS-00

CARRIED X

DEFEATED \_\_\_\_\_

UNANIMOUS Y

TOTAL VOTES-24

1 AMEND THE TEXT OF THE TOWN OF DELAFIELD ZONING CODE TO REPEAL AND  
2 RECREATE SECTIONS 17.04 5.A.5.d, 17.04 5.B.5.d, 17.04 5.H.5.d AND 17.04 5.I.5.d OF  
3 THE TOWN OF DELAFIELD ZONING ORDINANCE RELATING TO OPEN SPACE  
4 REQUIREMENTS FOR THE R-1, R-1A, A-2 AND A-3 ZONING DISTRICTS (ZT-1738)  
5  
6

7 WHEREAS after proper notice was given, a public hearing was held and the subject matter of  
8 this Ordinance was approved by the Delafield Town Board on May 22, 2012, and  
9

10 WHEREAS the matter was referred to and considered by the Waukesha County Park and  
11 Planning Commission which recommended approval and reported that recommendation to the  
12 Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors,  
13 as required by Section 60.61, Wis. Stats.  
14

15 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS  
16 that the text of the Town of Delafield Zoning Code, adopted by the Town of Delafield on July  
17 20, 1998, is hereby amended to repeal and recreate Sections 17.04 5.A.5.d, 17.04 5.B.5.d, 17.04  
18 5.H.5.d and 17.04 5.I.5.d relating to the open space requirements for the R-1, R-1A, A-2 and A-3  
19 zoning districts, more specifically described in the "Staff Report and Recommendation" on file  
20 in the office of the Waukesha County Department of Parks and Land Use, and made a part of this  
21 Ordinance by reference ZT-1738, is hereby approved.  
22

23 BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of  
24 this Ordinance with the Town Clerk of Delafield.  
25

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27 approval and publication.  
28

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