

Enrolled 157-134
~~PROPOSED ORDINANCE 157-136~~

1
2
3 AMEND THE TEXT OF THE TOWN OF BROOKFIELD ZONING CODE RELATING TO
4 NON-CONFORMING USES, STRUCTURE AND LOTS, AND ALLOWING
5 CERTAIN LOTS WITH LESS THAN REQUIRED OFFSETS AND
6 SETBACKS TO BE CONSIDERED CONFORMING (ZT-1475)
7
8

9 WHEREAS the subject matter of this Ordinance having been approved by the Brookfield Town
10 Board on October 15, 2002, after Public Hearing and the giving of requisite notice of said
11 hearing, and duly referred and considered by the Waukesha County Park and Planning
12 Commission and a recommendation thereon reported to the Land Use, Parks and Environment
13 Committee and the Waukesha County Board of Supervisors as required by Section 60.61 of the
14 Wisconsin Statutes.
15

16 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES
17 ORDAIN that the Ordinance amending the text of the Town of Brookfield Zoning Ordinance,
18 adopted on December 27, 1988, and approved by the Brookfield Town Board on October 15,
19 2002, relating to nonconforming uses, structure and lots, and allowing certain lots with less than
20 required offsets and setbacks to be considered conforming, and more specifically described in the
21 "Staff Report and Recommendation" on file in the office of the Waukesha County Department of
22 Parks and Land Use and made a part of this Ordinance by reference (ZT-1475) is hereby
23 approved.
24

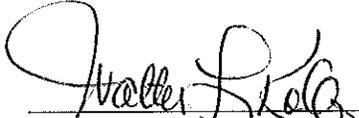
25 BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of
26 this Ordinance with the Town Clerk of Brookfield.
27

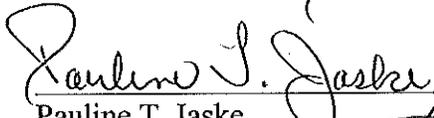
28 BE IT FURTHER ORDAINED that the Ordinance shall be in full force and effect upon passage,
29 approval and publication.
30

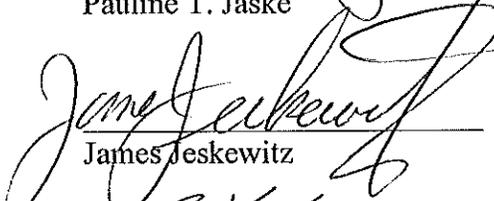
31 BE IT FURTHER ORDAINED that all Ordinances inconsistent with or with contravention of
32 provisions of this Ordinance are hereby repealed.

AMEND THE TEXT OF THE TOWN OF BROOKFIELD ZONING CODE RELATING TO
NON-CONFORMING USES, STRUCTURE AND LOTS, AND ALLOWING
CERTAIN LOTS WITH LESS THAN REQUIRED OFFSETS AND
SETBACKS TO BE CONSIDERED CONFORMING (ZT-1475)

Presented by:
Land Use, Parks, and Environment Committee

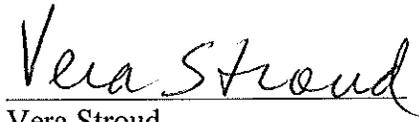

Walter L. Kolb, Chair

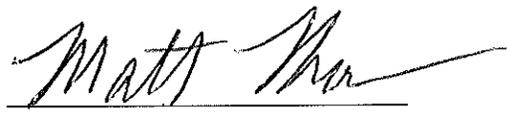

Pauline T. Jaske


James Jeskewitz


Scott J. Klein


Daniel Pavelko


Vera Stroud


Matt Thomas

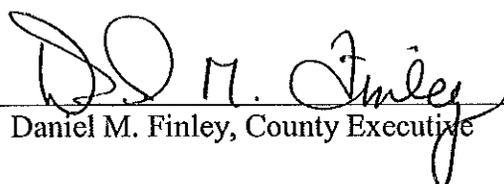
The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: April 11, 2003, 
Kathy Nickolaus, County Clerk

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

Approved:

Vetoed:

Date: 4-11-03, 
Daniel M. Finley, County Executive

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

FILE NO: ZT-1475

TAX KEY NUMBER: N/A

DATE: March 6, 2003

NAME OF PETITIONER: Brookfield Town Board
Town of Brookfield Town Hall
645 North Janacek Road
Brookfield, WI 53045-6052

NATURE OF REQUEST:

Amendment to create Section 17.09(5) of the Town of Brookfield Zoning Code relating to non-conforming uses, structure and lots, and allowing certain lots with less than required offsets and setbacks to be considered conforming.

PUBLIC HEARING DATE:

September 24, 2002.

PUBLIC REACTION:

One person was present who indicated support while another person was questioning how this would impact her property.

TOWN PLAN COMMISSION ACTION:

The Town of Brookfield Plan Commission, at their meeting of September 24, 2002, recommended in favor of the proposed changes to the Zoning Code.

TOWN BOARD ACTION:

The Town of Brookfield Board, at their meeting on October 15, 2002, voted unanimously in favor of the proposed amendments.

OTHER CONSIDERATIONS:

This amendment would provide for establishing legal conforming status to certain residential structures and parcels which might otherwise be nonconforming because they were constructed within or closer to the side yard or street setback line than is permitted. The new provisions require an As-built Survey to be submitted showing the actual offset and/or setback measurements to the Building Inspector who then may determine the existing structure fails to meet offset and/or setback requirements, but the existing encroachment is less than 10 percent of the minimum required for that zoning district. The Building Inspector then certifies, after a provision for notice to persons within 300 ft. of the subject property that the structure is considered being legal conforming if the encroachment is less than 10 percent. In a case where the encroachment might be 10 and 20 percent of the requirement, the Planning Commission, after providing notices as set forth, may certify the structure as a legal conforming structure. These modifications or certifications of conformity can only apply to structures constructed or erected prior to January 1, 1980, and are properties which are residentially zoned. The notice procedure, as mentioned above, informs those within 300 ft. of the subject structure a reasonable opportunity to object to this certification and provides that if the Building Inspector does receive an objection to the proposed

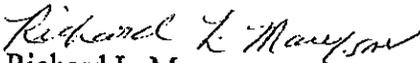
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certification, he then refers those matters to the Plan Commission for review and recommendation to the Town Board for final approval. If the certification is finally granted, the offset and/or setback requirements, which apply, to those structures will be those that are depicted on the As-built Survey in the direction that the encroachment occurs. Where additions are proposed to said structures in any other direction than the encroachment, the existing applicable zoning district requirements apply. The Town also discovered that some new homes built prior to 1980, were apparently setback less than the required minimum 50 ft. confirmed by new surveys showing the structure to be slightly less than 50 ft., which renders them nonconforming unless this provision were to apply. The Town was unaware of exactly how many properties would be affected as a result of being built slightly closer to lot lines or the road setback line than as presently required, but felt that it may not be a significant number; therefore, the impact of this provision would be fairly insignificant, in fact, the 10 percent standard would result in 45 setbacks, i.e., rather than 50 ft. setbacks as normally required.

STAFF RECOMMENDATION:

It is the opinion of the Planning and Zoning Division Staff that this request be **approved**. This amendment provides for an administrative remedy to a problem of inadequate surveys and house stakeouts for construction, which was carelessly provided over past years and without sufficient field inspections to certify those exact locations at the time of construction. In some cases, the houses were 1 ft. closer than required at the time of their construction, and without this remedy would render those houses nonconforming. We feel this is a fairly insignificant change to the Zoning Ordinance and allows for an administrative procedure to be provided along with due process to affected property owners within 300 ft. of the property and is an appropriate amendment to be made to the Town of Brookfield Zoning Code.

Respectfully submitted,


Richard L. Mace
Planning and Zoning Manager

RLM:smv

157-0-139

**ORDINANCE CREATING SECTION 17.09(5)
OF THE TOWN ZONING CODE OF THE
TOWN OF BROOKFIELD, WAUKESHA COUNTY, WISCONSIN**

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

SECTION 1: Section 17.09(5) of the Town Zoning Code of the Town of Brookfield is hereby created to read as follows:

17.09 NONCONFORMING USES, STRUCTURES AND LOTS.

- (5) **PURPOSE:** The purpose of this ordinance is to establish legal, conforming status to certain residential structures which would otherwise be nonconforming structures because those structures were constructed within the offset or setback areas of a residential lot.

The owner of any property on which a structure, which would otherwise be deemed a nonconforming structure because of its failure to meet the offset and/or setback requirement, may submit a survey establishing the actual offset and/or setback measurements to the building inspector.

In the event the building inspector determines that the existing structure fails to meet the offset and/or setback requirements, but that the encroachment into the offset and/or setback areas is less than ten percent of the minimum offset or setback required for that zoning classification, the building inspector may, after providing notice as set forth in subparagraph (c), certify the structure as a legal, conforming structure. In the event the building inspector determines that the encroachment into the offset and/or setback area is more than 10%, but less than 20%, the Plan Commission, after providing notice as set forth in subparagraph (c), may certify the structure as a legal, conforming structure.

MODIFICATION OF OFFSET AND SETBACK REQUIREMENTS.

Notwithstanding anything contained herein to the contrary, the status of any structure within any portion of a lot designated as the offset or setback area of the lot, may be deemed a conforming structure provided the construction or erection of the structure meets the following conditions:

- (a) The structure was constructed or erected prior to January 1, 1980; and
- (b) The property on which the structure is located is zoned for residential uses; and

- (c) Prior to certifying any nonconforming structure as a legal, conforming structure under the provisions of this section, notice of the proposed certification shall be provided to all property owners whose properties are located within 300 feet of the property on which the structure is located, and those property owners shall be afforded a reasonable opportunity to object to the certification. In the event the building inspector receives any objection to the proposed certification, the building inspector shall then refer the request for certification to the Plan Commission for its review and a recommendation to the Town Board for approval. Upon certification, the offset and/or setback requirements, which apply to such structures, shall be those offsets depicted on the survey in the direction of encroachment into the established minimums, and in all other directions, to the offset and/or setback requirements which would otherwise be applicable to the zoning classification.

SECTION 2: All ordinances or parts of this ordinance conflicting 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.

Dated this 15th day of October, 2002.

TOWN BOARD, TOWN OF BROOKFIELD,
WAUKESHA COUNTY, WISCONSIN

BY: [Signature]
KEITH HENDERSON, Chairman

BY: [Signature]
JEFFREY TIMM, Supervisor

BY: [Signature]
CHERYL MANTZ, Supervisor

BY: _____
LEO TALSKEY, Supervisor

BY: [Signature]
KEITH HARENDA, Supervisor

ATTEST:

BY: [Signature]
JANE F. CARLSON, Clerk

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157-0-139

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WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-04/08/03

(RES) NUMBER-1570139

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

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

TOTAL AYES-30

TOTAL NAYS-00

CARRIED X

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-30