

ENROLLED ORDINANCE 170-4

AMEND THE TOWN OF OCONOMOWOC DISTRICT ZONING MAP OF THE WAUKESHA COUNTY ZONING CODE FOR THE TOWN OF OCONOMOWOC TO MODIFY CONDITIONS OF ENROLLED ORDINANCE 164-105 FOR CERTAIN LANDS LOCATED IN PART OF THE NW ¼ OF SECTION 35, T8N, R17E, TOWN OF OCONOMOWOC (CZ-1696A)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Oconomowoc Town Board on March 2, 2015, 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 59.69, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Town of Oconomowoc District Zoning Map of the Waukesha County Zoning Code, Waukesha County, Wisconsin, adopted by the Waukesha County Board of Supervisors, on February 26, 1959, is hereby amended to modify conditions of Enrolled Ordinance 164-105 for certain lands located in part of the NW ¼ of Section 35, T8N, R17E, Town of Oconomowoc, and more specifically described in the “Staff Report and Recommendation” and map on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference CZ-1696A, subject to the following conditions:

1. The Zoning Amendment to the B-2 Local Business District shall be limited to a restaurant/tavern use only. No other B-1 or B-2 District uses are allowed unless the zoning is amended, following all proper procedures of the Waukesha County Zoning Code.
2. A Certified Survey Map (CSM) combining both lots into one parcel shall be submitted to the Town of Oconomowoc Plan Commission, Town Board and the Waukesha County Parks and Land Use – Planning and Zoning Division Staff for review and approval. Said CSM shall be submitted for review and approval no later than at the time the Site Plan/Plan of Operation is submitted and shall comply with all of the requirements of the Town of Oconomowoc Land Division Ordinance.
3. A vegetative buffer and manmade fence of five (5) feet in height shall be provided along the eastern most property line to screen the adjacent residential property from the restaurant/tavern use allowed herein. A Landscaping Plan shall be submitted to the Town Planner and the Waukesha County Planning and Zoning Division Staff for review and approval prior to the issuance of any permits, in order to determine the sufficiency of said Landscape Plan to effectively buffer the adjacent property. The vegetative buffer shall contain an initial height of not less than 6 feet and shall contain a mixture of coniferous trees or non-deciduous trees as well as mid-level shrubs and ground cover.
4. A Site Plan and Plan of Operation, including the Landscape and Planting Plan, shall be submitted for the proposed restaurant/tavern prior to the issuance of an Occupancy Permit. The new Site Plan shall not include any parking spaces in the established right of way of either Brown Street (100 ft.) or Lake Drive (80 ft.) and shall also be set back a

minimum of 10 ft. from said right of way. The Landscape Plan shall also provide for landscaping along both roads in order to provide an appropriate screening of the parking spaces.

5. This conditional rezoning shall not take effect unless and until a Site Plan/Plan of Operation Permit is issued consistent with the above conditions for a restaurant/tavern operation. The restaurant/tavern use shall be initiated prior to April 13, 2020. Failure to commence the use within that time period will result in the zoning of the site reverting to the R-2 Residential District upon due process procedures being followed, according to the provisions of the County Zoning Code.

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

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

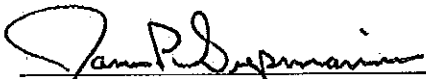
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

COMMISSION ACTION

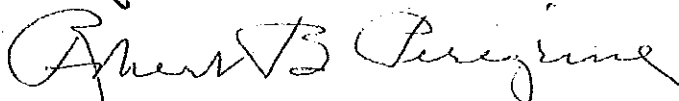
The Waukesha County Park and Planning Commission, after giving consideration to the subject matter of the Ordinance to amend the Waukesha County Zoning Code, hereby recommends approval of (CZ-1696A Mary Kosalos) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

March 19, 2015



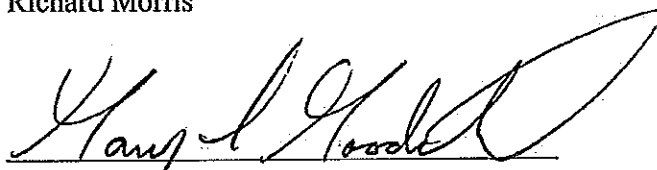
James Siepmann, Chairperson



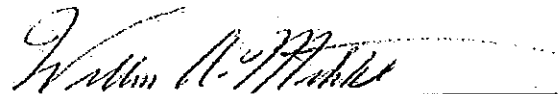
Robert Peregrine

Absent


Richard Morris



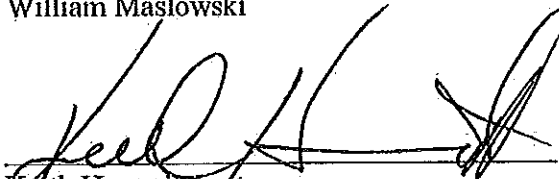
Gary Goodchild



William Mitchell



William Maslowski



Keith Hammitt

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

FILE NO. CZ-1696A

DATE: March 19, 2015

PETITIONER/OWNER: Mary Kosalos
Mary Jane Kosalos Revocable Trust of 2010
N59 W34840 Lake Drive
Oconomowoc, WI 53066

AGENT: Terry Donahue
The Real Estate Duo
N8347 Hustisford Road
Watertown, WI 53094

TAX KEY NO's: OCOT 0570.995 and OCOT 0570.996

LOCATION:

The properties affected by the proposed amendment to the rezone are located in part of the NW ¼ of Section 35, T8N, R17E, Town of Oconomowoc. The two (2) adjacent properties are located at the northeast corner of the intersection of Brown Street (C.T.H. "P") and W. Lake Drive. The address of the property located at the intersection is N53 W35994 W. Lake Drive and it is approximately 26,970 sq. ft. in size. The adjacent property to the east does not have its own address and it is approximately 13,680 sq. ft. in size. The lots are 40,650 sq. ft. in size, total.

PRESENT ZONING:

In 2010, the petitioner was granted a conditional rezone from the R-2 Residential District to the B-2 Local Business District. The Enrolled Ordinance (164-105), including the conditions of rezoning are attached as Exhibit "A". The terms of the rezoning limited the use of the property to restaurant/tavern uses and set a five year deadline for said use to commence.

PRESENT LAND USE:

Currently, the property is not occupied. However, there is a principal structure and two (2) garage-type structures. The principal structure was previously occupied as a restaurant and tavern known as "Ron's Cozy Corner". The Town Planner has indicated that the long standing vacant building is now in poor condition.

PROPOSED ZONING:

Conditional B-2 Local Business District (five year extension requested for deadline to comply with previously imposed rezone conditions).

PROPOSED LAND USE:

Restaurant and tavern uses.

PUBLIC HEARING DATE:

February 16, 2015.

PUBLIC REACTION:

Four citizens of the area expressed their support for the proposed extension to the deadline. The citizens commented that the restaurant use has not been a problem in the past and that keeping the property commercial should be in the best interests of the Town.

In 2010, when the rezone was initially requested, a petition in opposition to the rezoning was signed by 36 people because of inadequate parking, cars being lined along W. Lake Drive creating a hazard to traffic, and because of a littering problem. The adjacent owner to the east of the property spoke against the rezone in 2010 because of traffic and noise. The neighbor also felt that necessary improvements to the property would take up most of the property and offered to purchase a portion of the subject property to provide a larger buffer.

TOWN PLAN COMMISSION AND TOWN BOARD ACTION:

At their meeting of February 16, 2015, the Town of Oconomowoc Plan Commission voted to recommend approval of the request, granting a five year extension to the deadline as stated in Condition No. 5 of the previous Enrolled Ordinance (164-105).

At their meeting of March 2, 2015, the Town Board approved the rezoning (see Exhibit "B").

CONFORMANCE WITH THE COMPREHENSIVE DEVELOPMENT PLAN OF WAUKESHA COUNTY AND THE TOWN OF OCONOMOWOC LAND USE PLAN

The properties are planned in the Commercial and Office Park category on the County Plan. The properties were designated as low density residential on the Town and County Land Use Plans until 2009 when comprehensive amendments were made to both plans. At the time of the 2009 amendments, the Town specifically discussed the subject properties and decided to amend the land use category to commercial so that the property could continue to be used as a restaurant and tavern.

STAFF ANALYSIS:

The properties to be rezoned are located at the northeast corner of Brown Street and W. Lake Drive. There is a golf course located opposite the property on the west side of Brown Street. The lands are bordered by residential properties to the north, east and south. The property is relatively flat, but several feet higher in elevation than Brown Street.

The westerly parcel is approximately 26,970 sq. ft. in size and contains a principal building, formerly used as a restaurant and tavern, and two (2) garage-type buildings. The adjacent property to the east is approximately 13,680 sq. ft. in size and contains no buildings or impervious surfaces. There are several hardwood and coniferous trees that partially screen this vacant parcel from the neighbor to the east.

According to the petitioner, the tavern and restaurant existed for over 70 years. Based upon aerial photos, it appears the building was constructed sometime before 1941. Most of the surrounding residences weren't constructed until the 1960's and 70's. The adjacent residences located directly east of the subject properties were constructed sometime between 1950 and 1963, at least 10 years after the tavern was constructed. In

1960, Waukesha County approved a Conditional Use Permit (CU-20) for the operation of a tavern; including a restaurant, liquor, and beer license.

Restaurant/bar uses continued via a Conditional Use until approximately seven years ago. According to the petitioner, the building has been vacant for approximately seven (7) years. If a conditional use is discontinued for a period of twelve (12) consecutive months, the use is terminated. The petitioner would like to sell the property and market the property for restaurant and tavern uses.

The existing principal structure is located very close to the established road right-of-way of C.T.H. "P" (Brown Street) and W. Lake Drive and is, therefore, a legal non-conforming structure. Therefore, improvements to the structure would be limited to interior remodeling only without benefit of variances. The two (2) garage-type structures may also be non-conforming with the zoning requirements of the Waukesha County Zoning Code. Because there is not a scaled Site Plan of the property, it is difficult to determine if said buildings comply with setbacks, offsets, and area regulations. Parking would also need to be examined carefully as part of any future restaurant site plan review because the existing parking area may be undersized and the paved area extends into the Lake Drive right of way without a clear consolidated driveway. If additional impervious surfaces are added to the site, storm water management may need to be considered.

The easternmost lot is nonconforming to the lot size and width standards of the existing R-2 Residential Zoning District and the proposed B-2 Local Business District. If a Certified Survey Map combines the lots, the newly created lot would conform to both zoning district categories, with a total lot size of 40,650 sq. ft. and an average width of approximately 205 ft.

County Planning and Zoning Division Staff feel that there may be other permitted uses allowed in the B-2 and B-1 Business Districts that could occupy the site with less potential impact to the adjacent residential properties. However, the Town specifically conditioned the rezone approval upon the use being restricted to a restaurant and tavern only. Therefore, if a prospective or future buyer is interested in a use other than a restaurant or tavern, he or she will need to propose and receive an amendment to the conditions of this amendment.

STAFF RECOMMENDATION:

The Planning and Zoning Division Staff recommends approval of the proposed request, subject to the conditions of the rezone approved in 2010, which are restated below, with a modification to the five year deadline to occupy the property for restaurant/tavern uses and other minor edits. The conditions read as follows:

1. The Zoning Amendment to the B-2 Local Business District shall be limited to a restaurant/tavern use only. No other B-1 or B-2 District uses are allowed unless the zoning is amended, following all proper procedures of the Waukesha County Zoning Code.
2. A Certified Survey Map (CSM) combining both lots into one parcel shall be submitted to the Town of Oconomowoc Plan Commission, Town Board and the Waukesha County Parks and Land Use -- Planning and Zoning Division Staff for review and approval. Said CSM shall be submitted for review and approval no later than at the time the Site Plan/Plan of Operation is submitted and shall comply with all of the requirements of the Town of Oconomowoc Land Division Ordinance.

3. A vegetative buffer and man made fence of five (5) feet in height shall be provided along the eastern most property line to screen the adjacent residential property from the restaurant/tavern use allowed herein. A Landscaping Plan shall be submitted to the Town Planner and the Waukesha County Planning and Zoning Division Staff for review and approval prior to the issuance of any permits, in order to determine the sufficiency of said Landscape Plan to effectively buffer the adjacent property. The vegetative buffer shall contain an initial height of not less than 6 feet and shall contain a mixture of coniferous trees or non-deciduous trees as well as mid-level shrubs and ground cover.
4. A Site Plan and Plan of Operation, including the Landscape and Planting Plan, shall be submitted for the proposed restaurant/tavern prior to the issuance of an Occupancy Permit. The new Site Plan shall not include any parking spaces in the established right of way of either Brown Street (100 ft.) or Lake Drive (80 ft.) and shall also be set back a minimum of 10 ft. from said right of way. The Landscape Plan shall also provide for landscaping along both roads in order to provide an appropriate screening of the parking spaces.
5. This conditional rezoning shall not take effect unless and until a Site Plan/Plan of Operation Permit is issued consistent with the above conditions for a restaurant/tavern operation. The restaurant/tavern use shall be initiated prior to April 13, 2020. Failure to commence the use within that time period will result in the zoning of the site reverting to the R-2 Residential District upon due process procedures being followed, according to the provisions of the County Zoning Code.

The proposed rezoning, with the conditions recommended above, is in conformance with the Waukesha County and Town of Oconomowoc Land Use Plans. The proposed rezoning allows the petitioner to continue to market the property for restaurant/tavern uses consistent with the historic use of the property. The required Site Plan/Plan of Operation review process will allow the Town and County to address neighborhood concerns. The Planning and Zoning Division Staff feel that there are other low intensity commercial or residential uses that may be more appropriate for the site in light of the residential nature of the neighborhood. However, at this time, the Town wishes to provide for solely a continuation of the historic restaurant/tavern use that dates back many decades. If other compatible uses are contemplated by potential purchasers of the site, it may be appropriate to further consider the specific terms of this conditional rezoning.

Respectfully submitted,

Amy Barrows

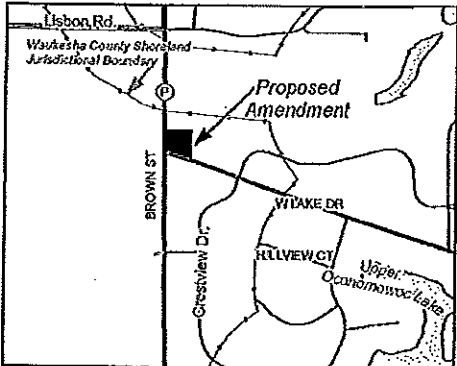
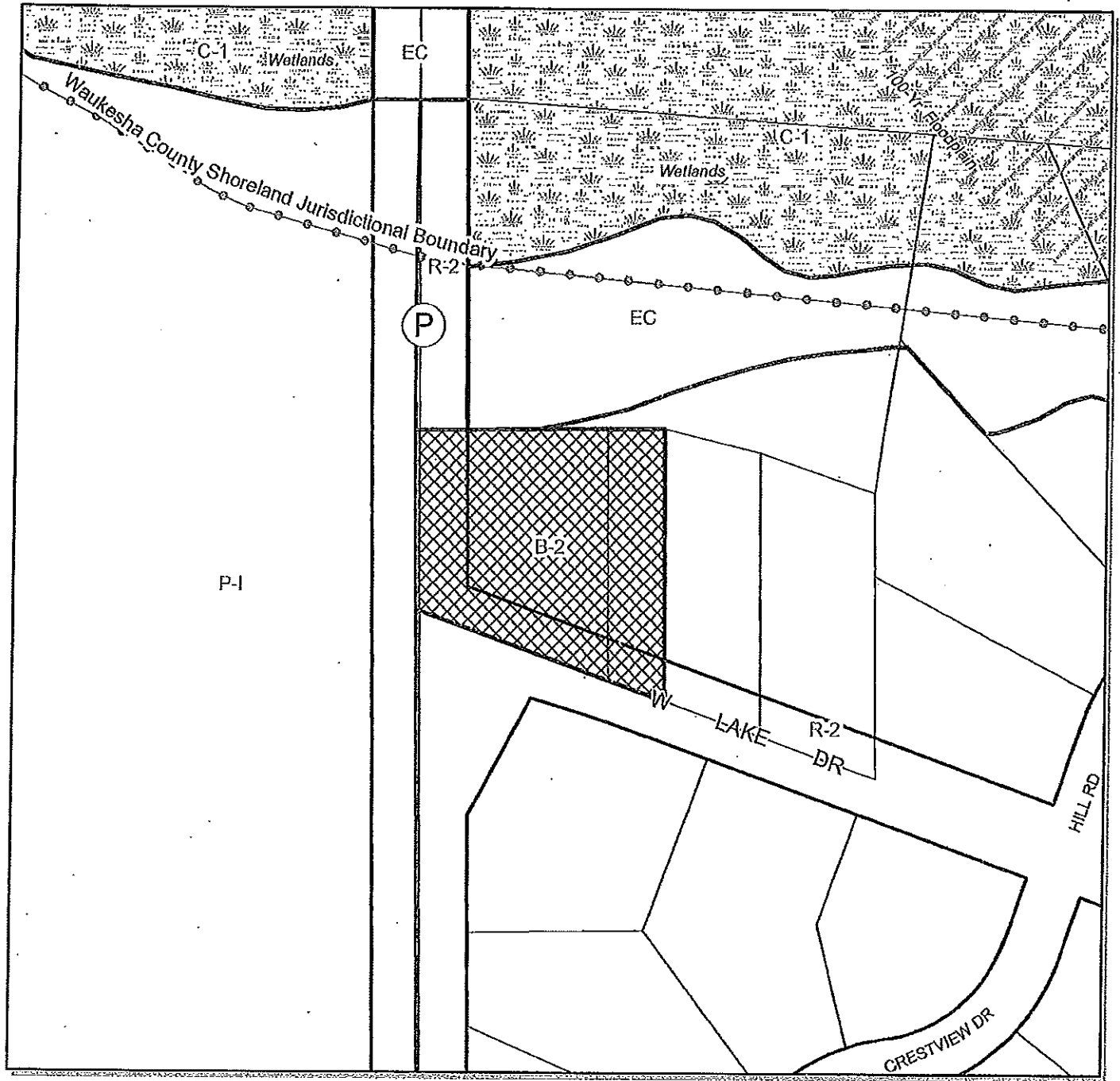
Amy A. Barrows
Senior Land Use Specialist

Attachments: Exhibits "A and B", Map

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ZONING AMENDMENT

PART OF THE NW 1/4 OF SECTION 35
TOWN OF OCONOMOWOC

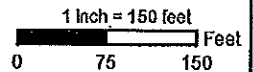


AMEND CONDITIONAL COUNTY ZONING B-2 LOCAL BUSINESS DISTRICT

FILE.....CZ-1698A
 DATE.....3/19/15
 AREA OF CHANGE.....1.37 ACRES
 TAX KEY NUMBERS.....OCOT 0570.995 & .998



Prepared by the Waukesha County Department of Parks and Land Use



ENROLLED ORDINANCE 164-105

AMEND THE TOWN OF OCONOMOWOC DISTRICT ZONING MAP OF THE WAUKESHA COUNTY ZONING CODE FOR THE TOWN OF OCONOMOWOC BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NW ¼ OF SECTION 35, T8N, R19E, TOWN OF OCONOMOWOC, WAUKESHA COUNTY, WISCONSIN, FROM THE R-2 RESIDENTIAL DISTRICT TO THE B-2 LOCAL BUSINESS DISTRICT (CZ-1696)

WHEREAS the subject matter of this Ordinance having been duly referred to and considered by the Waukesha County Park and Planning Commission, after Public Hearing, and the giving of requisite notice of said hearing, and a recommendation for approval thereon reported to the Land Use, Parks and Environment Committee, and the Waukesha County Board of Supervisors, Waukesha County, Wisconsin, as required by Section 59.69 of the Wisconsin State Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that the Town of Oconomowoc District Zoning Map of the Waukesha County Zoning Code, Waukesha County, Wisconsin, adopted by the Waukesha County Board of Supervisors, on February 26, 1959, is hereby amended to conditionally rezone certain lands located in part of the NW ¼ of Section 35, T8N, R19E, Town of Oconomowoc, from the R-2 Residential District to the B-2 Local Business District, and more specifically described in the "Staff Report and Recommendation" and map on file in the office of the Waukesha County Department of Parks and Land Use, and made a part of this Ordinance by reference (CZ-1696), subject to the following conditions:

1. The Zoning Amendment to the B-2 Local Business District shall be limited to a restaurant/tavern use only. No other B-1 or B-2 District uses are allowed unless the zoning is amended, following all proper procedures of the Waukesha County Zoning Code.
2. A Certified Survey Map (CSM) combining both lots into one parcel shall be submitted to the Town of Oconomowoc Plan Commission, Town Board and the Waukesha County Parks and Land Use -- Planning and Zoning Division Staff for review and approval. Said CSM shall be submitted for review and approval no later than at the time the Site Plan/Plan of Operation is submitted and shall comply with all of the requirements of the Town of Oconomowoc Land Division Ordinance.
3. A vegetative buffer and man made fence of five (5) feet in height shall be provided along the eastern most property line to screen the adjacent residential property from the restaurant/tavern use allowed herein. A Landscaping Plan shall be submitted to the Town Planner and the Waukesha County Planning and Zoning Division Staff for review and approval prior to the issuance of any permits, in order to determine the sufficiency of said Landscape Plan to effectively buffer the adjacent property. The vegetative buffer shall contain an initial height of not less than six (6) feet and shall contain a mixture of coniferous trees or non-deciduous trees as well as mid-level shrubs and ground cover.
4. A Site Plan and Plan of Operation including the Landscape and Planting Plan shall be submitted for the proposed restaurant/tavern prior to the issuance of an Occupancy Permit. The new Site Plan shall not include any parking spaces in the established right of

File Number: 164-O-108

way of either Brown Street (100 ft.) or Lake Drive (80 ft.) and shall also be set back a minimum of 10 ft. from said right of way. The Landscape Plan shall also consider the landscaping along both roads in order to provide an appropriate screening of the parking spaces.

5. This conditional rezoning shall not take effect unless and until a Site Plan/Plan of Operation Permit is issued consistent with the above conditions for a restaurant/tavern operation. The restaurant/tavern use shall be initiated within five (5) years from the date of the County Board's approval of this rezoning amendment. Failure to commence the use within that time period will result in the rezoning of the site reverting to the R-2 Residential District upon due process procedures being followed, according to the provisions of the County Zoning Code.

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

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.

EXHIBIT "B"

RESOLUTION NO. 2015-6

WHEREAS, by Enrolled Ordinance No. 164-105, Waukesha County amended the Town of Oconomowoc District Zoning Map of the Waukesha County Zoning Code for the Town of Oconomowoc by conditionally rezoning certain lands located in part of the Northwest One-Quarter of Section 35, Town 8 North, Range 19 East, Town of Oconomowoc, Waukesha County, Wisconsin, from R-2 Residential District to B-2 Local Business District (CZ-1696); and

WHEREAS, paragraph 1 of Enrolled Ordinance No. 164-105 provided that the conditional rezoning amendment to B-2 Local Business District was limited to a restaurant/tavern use only, with no other B-1 or B-2 District uses allowed; and

WHEREAS, paragraph 5 of Enrolled Ordinance No. 164-105 provided that the restaurant/tavern use shall be initiated within five years from the date of the County Board's approval of the rezoning amendment and that failure to commence the use within that time period would result in the rezoning of the site, reverting to the R-2 Residential District upon due process procedures being followed according to the provisions of the Waukesha County Zoning Code; and

WHEREAS, the Certificate of the Deputy County Clerk certified that Enrolled Ordinance No. 164-105 was adopted by the County Board of Supervisors in a regular session on April 13, 2010; and

WHEREAS, pursuant to paragraph 5, the zoning on the property conditionally rezoned would revert back to R-2 Residential District on April 13, 2015, as the restaurant/tavern use has not yet been initiated on said property; and

WHEREAS, the owner of said property filed an application with the Town of Oconomowoc Plan Commission on January 19, 2015, requesting an extension of the aforementioned five-year limitation, which matter was taken up by the town Plan Commission at its regular meeting on February 16, 2015; and

WHEREAS, the town Plan Commission unanimously recommended that the Town Board request by resolution that Waukesha County amend paragraph 5 to change the five years from the date of the County Board's approval of Enrolled Ordinance No. 164-105 to April 13, 2020.

NOW THEREFORE, BE IT HEREBY RESOLVED that the Town Board of the Town of Oconomowoc accepts the recommendation of the town Plan Commission and requests that the County Board amend Enrolled Ordinance No. 164-105, specifically paragraph 5 thereof, by changing the five years from the date of the County Board's approval (April 13, 2015) for the restaurant/tavern use to be initiated to April 13, 2020.

DATED: 3-10-15

TOWN OF OCONOMOWOC

By: Robert C. Hultquist
Robert C. Hultquist, Chairman

ATTEST:
Lori Opltz
Lori Opltz, Clerk

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-04/28/15

NUMBER-1700003

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

- 2 D. Zimmermann.....AYE
- 4 J. BATZKO.....
- 6 J. WALZ.....AYE
- 8 E. HIGHUM.....AYE
- 10 D. SWAN.....~~AYE~~
- 12 P. WOLFF.....AYE
- 14 C. PETTIS.....AYE
- 16 M. CROWLEY.....AYE
- 18 L. NELSON.....AYE
- 20 T. SCHELLINGER....AYE
- 22 P. JASKE.....AYE
- 24 S. WHITTOW.....AYE

TOTAL AYES-24

TOTAL NAYS-00

CARRIED _____

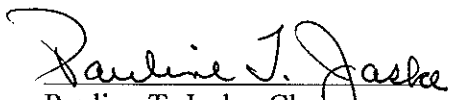
DEFEATED _____

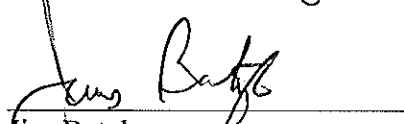
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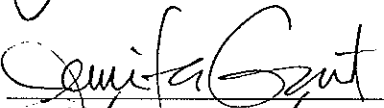
TOTAL VOTES-24

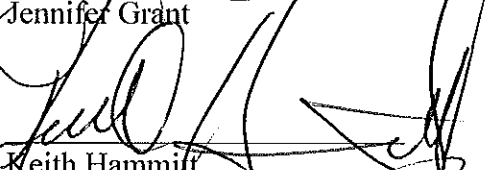
Amend The Town Of Oconomowoc District Zoning Map Of The Waukesha County Zoning Code For The Town Of Oconomowoc To Modify Conditions Of Enrolled Ordinance 164-105 For Certain Lands Located In Part Of The NW ¼ Of Section 35, T8N, R17E, Town Of Oconomowoc, (CZ-1696A))

Presented by:
Land Use, Parks, and Environment Committee


Pauline T. Jaske, Chair


Jim Batzko


Jennifer Grant



Keith Hammitt


Eric Highum


William Mitchell


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: 4/28/2015, 
Kathleen Novack, County Clerk

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

Approved: X

Vetoed: _____

Date: 5-1-15, 
Paul Farrow, County Executive