

ENROLLED ORDINANCE 173-026

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE BY
AMENDING AND REPEALING VARIOUS SECTIONS RELATING
TO CONDITIONAL USE PROVISIONS (RZ8)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Mukwonago Town Board on April 4, 2018; 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 Mukwonago Zoning Code, adopted by the Town of Mukwonago on February 27, 2007, is hereby amended to repeal and amend various sections relating to Conditional Use provisions, 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 RZ8, is hereby approved.

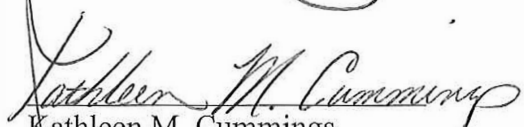
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Mukwonago.

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

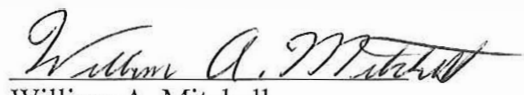
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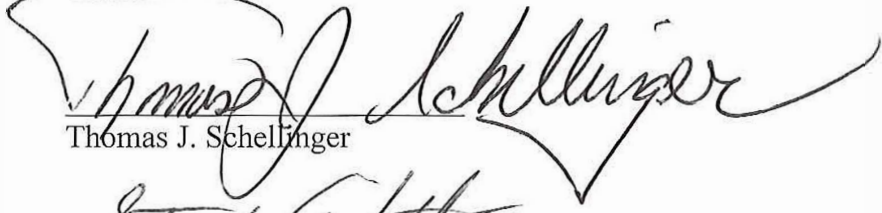
Presented by:
Land Use, Parks, and Environment Committee

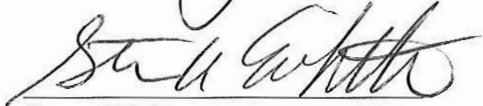

David D. Zimmermann, Chair

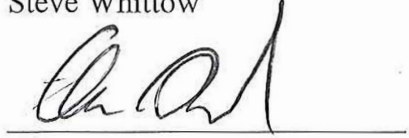

Kathleen M. Cummings

absent
Keith Hammitt

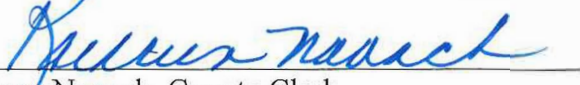

William A. Mitchell


Thomas J. Schellinger


Steve Whittow


Chuck Wood

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

Date: 7/24/18, 
Kathleen Novack, County Clerk

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

Approved: X

Vetoed: _____

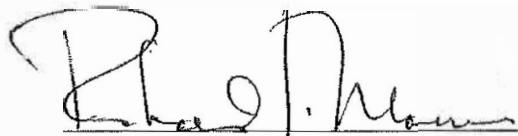
Date: 7/30/18, 
Paul Farrow, County Executive

COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Mukwonago Zoning Code hereby recommends **approval** of **RZ8 (Text Amendment)** in accordance with the attached "Staff Report and Recommendation".

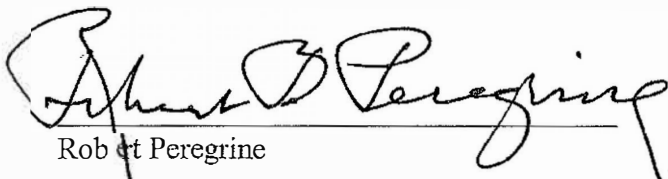
PARK AND PLANNING COMMISSION

June 21, 2018

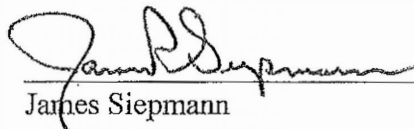


Richard Morris, Chairperson

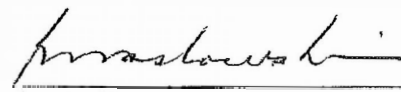
Absent
William Mitchell



Robert Peregrine



James Siepmann



William Maslowski

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

FILE NO: RZ8
TAX KEY NUMBER: N/A
DATE: June 21, 2018
NAME OF PETITIONER: Town Board of Mukwonago
Town of Mukwonago Hall
W320 S8315 Beulah Road
Mukwonago, WI 53149

NATURE OF REQUEST:

Amend and repeal various sections of the Town of Mukwonago Zoning Code relating to conditional use provisions.

PUBLIC HEARING DATE:

April 4, 2018.

PUBLIC REACTION:

A few individuals asked questions or expressed concern about the length of time that it would take the Town to restore conditional use provisions for specific uses. Others made comments or asked questions regarding the minimum acreage for commercial horse boarding operations, provisions for selling produce and commercial vehicle parking.

TOWN PLAN COMMISSION ACTION:

At their meeting of April 4, 2018, the Town of Mukwonago Plan Commission recommended approval of the proposed text amendments to the Town Board.

TOWN BOARD ACTION:

At their meeting of April 4, 2018, the Town of Mukwonago Board unanimously approved the proposed text amendments to Town of Mukwonago Zoning Code.

COMPLIANCE WITH THE COMPREHENSIVE DEVELOPMENT PLAN FOR WAUKESHA COUNTY (WCCDP) AND THE TOWN OF MUKWONAGO COMPREHENSIVE PLAN:

The Town and County plans call for a broad range of uses to be provided for in the community. The Town is taking short-term steps to comply with recently adopted law changes relative to the administration of conditional use provisions and is engaged in a process to bring forward modernized conditional use provisions. Therefore, the proposed amendments do not run counter to plan recommendations provided that the Town brings forward another set of text amendments, as planned, in the relative near future to restore and modernize various use options consistent with new law requirements.

STAFF ANALYSIS:

The Town of Mukwonago has proposed this interim set of text amendments to be responsive to recent changes to State law regarding conditional use administration. The Town has been working to comprehensively update its zoning ordinance over the past couple of years. As the Town neared the end of the code update process, a law change was enacted that impacts the manner in which communities consider and process conditional use requests. Conditional use options are provided for a wide variety of use types. Such uses require special approval upon consideration of specific proposals and particular neighborhood/contemporary circumstances.

The 2017 law changes (see attached Exhibit "A") clarify that conditions imposed by communities in their processing of such applications must be consistent with the purpose of the ordinance and be based upon substantial evidence. Law also states that requirements and conditions must be reasonable, and to the extent practicable, measurable. Accordingly, the Town is proposing to slightly modify the standards for several conditional use types (religious institutions, commercial stables, in-law units) and is proposing to temporarily repeal most of the other 30+ conditional use types so that those provisions can be further assessed and modernized in light of the new law changes.

The Town Planner has advised that a committee that is guiding the preparation of new text provisions is expected to share input with the Town Plan Commission/Board within the next couple of months regarding modified conditional use language. The Town Planner has also advised that individuals wishing to seek approval for the various use types being temporarily repealed from the conditional use section of the code can either seek approval prior to the effective date of this proposed ordinance, wait until the new code provisions are approved or an individual can apply for a text amendment to accommodate a particular use.

STAFF RECOMMENDATION:

The Planning and Zoning Division Staff recommends **approval** of the Town of Mukwonago's request. While individuals seeking approvals for certain use types may face some delay in moving projects forward as the Town takes this interim step, the Town is reacting to a law change that was enacted without a phased implementation schedule, which creates practical difficulties for administering parties. The Town is taking immediate steps to comply with the law. Because the Town is already fully engaged in an effort to bring forward a subsequent set of text amendments, it appears as though the interim period between the two sets of code amendments is likely to be fairly brief.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning and Zoning Manager

Attachments: Town Ordinance No. 2018-O-040
Exhibit "A"

ORDINANCE 2018-O-40

AN ORDINANCE TO AMEND VARIOUS SECTIONS OF THE ZONING REGULATIONS RELATING TO CONDITIONAL USES AND RELATED MATTERS

WHEREAS, the Town Board for the Town of Mukwonago adopted a zoning code for the Town of Mukwonago in 1953 and has amended it from time to time since then; and

WHEREAS, that zoning code is codified as Chapter 82 of the Town of Mukwonago Municipal Code, titled "Zoning;" and

WHEREAS, the Plan Commission for the Town of Mukwonago prepared a recommended ordinance to revise various sections of the zoning code with regard to conditional uses and related matters; and

WHEREAS, the Town Clerk for the Town of Mukwonago has properly referred the matter to the Plan Commission and to the Waukesha County Park and Planning Commission, pursuant to Section 82-265(c) of the Town of Mukwonago Zoning Code; and

WHEREAS, the Town Board has conducted the necessary investigation, and scheduled a public hearing for the Plan Commission and the Town Board, pursuant to Section 82-265(c)(2) of the Town of Mukwonago Zoning Code; and

WHEREAS, upon due notice as required by Section 82-267(a), the Plan Commission and Town Board held a joint public hearing on April 4, 2018 pursuant to Section 82-265(d) of the Town of Mukwonago Zoning Code; and

WHEREAS, within a reasonable time after the hearing, the Plan Commission has reported its recommendation to the Town Board; and

WHEREAS, the Town Board for the Town of Mukwonago, after carefully reviewing the recommendation of the Plan Commission for the Town of Mukwonago and having given the matter due consideration having determined that all procedural requirements and notice requirements have been satisfied, and having based its determination on the effect of the adoption of the ordinance on the health, safety and welfare of the community and the preservation and enhancement of property values in the community, and having given due consideration to the municipal problems involved hereby determine that the ordinance amendment will serve the public health, safety and general welfare of the Town of Mukwonago, will enhance property values in the Town and will not be hazardous, harmful, noxious, offensive or a nuisance, and will not unduly limit or restrict the use of property in the Town or for any other reason cause a substantial adverse effect on the property values and general desirability of the Town.

NOW, THEREFORE, the Town Board for the Town of Mukwonago, Waukesha County, does hereby ordain as follows:

Section 1. Subsection 82-20(d) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (d) Reserved

Section 2. Subsection 82-21(d)(2) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (2) *Agricultural businesses including fur farms, pea vineries, creameries, food mills, egg production facilities, commercial greenhouses and condenseries.* Repealed.

Section 3. Subsection 82-21(d)(3) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (3) *Airports, landing field, and take-off strips.* Repealed.

Section 4. Subsection 82-21(d)(4) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (4) *Animal hospitals and commercial kennels.* Repealed.

Section 5. Subsection 82-21(d)(5) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (5) *Antique shops, gift shops, arts and craft studios and similar uses.* Repealed.

Section 6. Subsection 82-21(d)(6) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (6) *Arcades and other amusement places.* Repealed.

Section 7. Subsection 82-21(d)(7) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (7) *Automobile service stations.* Repealed.

Section 8. Subsection 82-21(d)(8) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (8) *Cemeteries and mausoleums for the burial of human remains only.* Repealed.

Section 9. Subsection 82-21(d)(9) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (9) *Churches, synagogues, and other buildings for religious assembly.* In any district except E-C, C-1, and A-E, A-P, A-T or industrial districts, subject to the following requirements:
- a. The location building, site plan and plan of operation shall be submitted to and approved by the plan commission.
 - b. A floor area ratio of no more than 50 percent is allowed.
 - c. Off-street parking be provided for one automobile for each four seats providing the main assembly area of the building.
 - d. Such use shall conform to the setback, height and double the offset requirements of the district in which it is located.
 - e. The height limitation may be extended to a maximum of 50 feet provided the minimum required setback and offset shall be increased two for each additional foot of height in excess of the permitted maximum in the district. The height regulation shall not apply to the spire or belfry of a church except where airport safety zoned regulations specifically limit the maximum height.
 - f. The primary access to a facility with 600 seats or more shall be off of a road classified as a collector or a higher classification as depicted on a highway width map as may be adopted by the Waukesha County Board of Supervisors pursuant to s. 63.1031, Wis. Stats.

Section 10. Subsection 82-21(d)(10) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (10) *Commercial fish, bait, ponds or hatcheries.* Repealed.

Section 11. Subsection 82-21(d)(11) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (11) *Commercial stables.* Such uses are permitted uses by right in the EFO, A-E, A-P, A-T and A-1 districts on parcels 20 acres or greater in size, such uses are not permitted uses and may not be allowed as conditional uses on any size parcel in the C-1, R-1, R-2 and R-3 districts, such uses may be permitted as conditional uses in the EFO, A-E, A-P, A-T, A-1, R-H, S-E, B-1, B-2, B-3, M-1 and M-2 districts subject to the following:
- a. *Minimum lot size.* The minimum lot size for a commercial stable is 20 acres.
 - b. *Number of animals.* Not more than one head of livestock shall be kept for each full open acre over 2 acres of open lot area, unless the plan commission makes a specific finding that the subject parcel can maintain a greater number of livestock

based on the proposed building plan, site plan, plan of operation, and manure management plan.

- c. *Buildings.* Nonresidential buildings and other structures related to a commercial stable, such as barns, stables, riding arenas, and sheds, are allowed subject to compliance with all other requirements of this chapter.
- d. *Location of buildings.* A building that houses livestock shall be located at least 100 feet from any lot line of any adjoining lot in a district permitting a residential use.
- e. *Manure management plan.* The property owner shall submit a manure management plan to the plan commission for review and obtain approval of the same.
- f. *Special events.* Special events related to a commercial stable, such as horse shows, exhibitions, and contests, may be permitted with plan commission approval.

Section 12. Subsection 82-21(d)(12) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (12) *Commercial truck parking.* Repealed.

Section 13. Subsection 82-21(d)(13) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (13) *Conservation design developments.* Repealed.

Section 14. Subsection 82-21(d)(14) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (14) *Conversions.* Repealed.

Section 15. Subsection 82-21(d)(15) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (15) *Drive-in establishments serving food or beverages to customers other than at a booth or table.* Repealed.

Section 16. Subsection 82-21(d)(16) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (16) *Feed lot operation, including livestock and poultry of all types.* Repealed.

Section 17. Subsection 82-21(d)(17) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (17) *In-law units.* In the A-P, R-H, E-C, A-1, S-E, R-1, R-2, R-3, B-1, B-2, B-3, subject to the restrictions as set forth in section 82-200, M-1, subject to the restrictions as set forth in section 82-230, M-2, subject to the restrictions as set forth in division 18, and all planned unit developments, subject to the following:
- a. *Compliance with sanitation requirements.* Prior to the establishment of an in-law dwelling unit, the Waukesha County Health Environmental Resource Department shall certify that the existing on-site sewage disposal system can accommodate the proposed use in accordance with county sanitation requirements.
 - b. *Compliance with building codes.* Prior to establishment of an in-law dwelling unit, the town building inspector shall certify that the single-family dwelling meets all applicable building codes.
 - c. *Limitation on floor area and bedrooms.* The maximum living area in an in-law unit shall not exceed 800 square feet for a one-bedroom unit and 900 square feet for a two-bedroom unit.
 - d. *Exterior appearance.* The architecture of the residence shall be compatible with the adjacent residential neighborhood and appear to be a single-family residence.
 - e. *Exterior doors.* An in-law dwelling unit shall not have a primary exterior door. A patio-type door is allowed as a secondary exterior door if it opens onto a deck or patio and does not face the front of the lot.
 - f. *Interior door between units.* The plan commission may determine that it is appropriate to have an interior door between the living units.
 - g. *Deed restriction.* Prior to the establishment of an in-law dwelling unit, the property owner shall file a deed restriction in the Waukesha County register of deeds office, acceptable to the town planner, that includes a statement that the living unit is for family members of the principal dwelling unit only and the approval of an in-law dwelling unit is not transferable to another property owner without formal approval of the plan commission, and other provisions deemed appropriate by the reviewing authority.
 - h. *Required actions following termination of use.* At such time as the in-law dwelling unit is no longer occupied by a person that is related by blood or marriage to the family occupying the primary portion of the single-family dwelling, the property owner shall remove the stove and/or oven in the in-law dwelling unit or in the other dwelling unit and the interior door separating the two units, if allowed, shall be removed.

Section 18. Subsection 82-21(d)(18) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(18) *Laboratories for testing, experimental or analytical purposes.* Repealed.

Section 19. Subsection 82-21(d)(19) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(19) *Legal nonconforming uses.* Repealed.

Section 20. Subsection 82-21(d)(20) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(20) *Marinas and boat deliveries.* Repealed.

Section 21. Subsection 82-21(d)(21) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(21) *Mobile home parks and trailer camps.* Repealed.

Section 22. Subsection 82-21(d)(22) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(22) *Motels.* Repealed.

Section 23. Subsection 82-21(d)(23) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(23) *Multifamily units and condominiums.* Repealed.

Section 24. Subsection 82-21(d)(24) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(24) *Outdoor theaters.* Repealed.

Section 25. Subsection 82-21(d)(25) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(25) *Planned unit development.* Repealed.

Section 26. Subsection 82-21(d)(26) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(26) *Private clubs and outdoor recreational facilities, such as gun clubs, recreational camps, golf courses, bathing beaches, riding academies, resorts.* Repealed.

Section 27. Subsection 82-21(d)(27) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(27) *Private stables.* Repealed.

Section 28. Subsection 82-21(d)(28) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(28) *Public and commercial refuse disposal sites.* Repealed.

Section 29. Subsection 82-21(d)(29) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(29) *Public and semi-public structures and uses.* Repealed.

Section 30. Subsection 82-21(d)(30) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(30) *Quarrying.* Repealed.

Section 31. Subsection 82-21(d)(31) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(31) *Restaurants, supper clubs, lake resorts, taverns and similar uses.* Repealed.

Section 32. Subsection 82-21(d)(33) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(33) *Wrecking and salvage yards.* Repealed.

Section 33. Subsection 82-21(d)(34) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

(34) *Other uses.* Repealed.

Section 34. Subsection 82-25(b)(1) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (1) No more than (2) accessory buildings per parcel are permitted in any district except as follows:
 - a. On parcels of 15-acres or more, in area used solely for agricultural purposes, more than two accessory buildings may be permitted by the plan commission subject to compliance with the floor area ratio requirements of the Zoning Ordinance.
 - b. In the B-3 and all Industrial Districts, the plan commission may approve more than two accessory buildings as part of a site plan and plan of operation when such

accessory buildings are accessory to the principal use and constructed and used in accordance with the approved site plan and plan of operation.

Section 35. Subsection 82-27(c)(3) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (3) Reserved

Section 36. Subsection 82-29(a) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (a) Use restricted: Signs are prohibited in all zoning districts in the town except: (1) One or more sign may be specifically authorized as part of a conditional use allowed under s. 82-21; (2) One or more sign is permitted to the extent specifically authorized by the applicable zoning district regulations.

Section 37. Subsection 82-32(c) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (c) Reserved

Section 38. Subsection 82-81(8) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (8) Private stables and commercial stables subject to the following:
 - a. Private stables on parcels of less than 20 acres subject to a written refuse disposal plan being submitted to and approved by the plan commission if requested by the town, provided that not more than one horse or other head of livestock are kept for each full open acre over two acres of lot area and provided that the keeping of hogs, pigs of any type (except potbellied pigs as defined in this chapter for which a hobby kennel use permit has been issued), male goats or fur-bearing animals shall not be permitted on less than 20 acres.
 - b. Private stables on parcels 20 acres or greater in size subject to a written refuse disposal plan being submitted to and approved by the plan commission if requested by the town.
 - c. Commercial stables on parcels 20 acres or greater in size subject to a written refuse disposal plan being submitted to and approved by the plan commission if requested by the town.

Section 39. Subsection 82-82 of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

Reserved

Section 40. Subsection 82-92(5) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (5) Private stables as follows:
- a. Private stables on parcels of less than 20 acres subject to a written refuse disposal plan being submitted to and approved by the plan commission if requested by the town, provided that not more than one horse or other head of livestock are kept for each full open acre over two acres of lot area and provided that the keeping of hogs, pigs of any type (except potbellied pigs as defined in this chapter for which a hobby kennel use permit has been issued), male goats or fur-bearing animals shall not be permitted on less than 20 acres.
 - b. Private stables on parcels 20 acres or greater in size subject to a written refuse disposal plan being submitted to and approved by the plan commission if requested by the town.
 - c. Commercial stables on parcels 20 acres or greater in size subject to a written refuse disposal plan being submitted to and approved by the plan commission if requested by the town.

Section 41. Subsection 82-93 of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

Reserved

Section 42. Subsection 82-111 of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

Reserved

Section 43. Subsection 82-130(b) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (b) The primary purpose of the A-1 agricultural district is to preserve in agriculture use those lands generally suited for such use and which may have the ultimate potential for residential use but at this time are deemed beyond the current land needs for residential use. It is intended that residential development be limited to parcels being created by certified survey map per the town land division and development control ordinance.

Section 44. Subsection 82-131(1) of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

- (1) Any use as permitted in the A-E exclusive agricultural conservancy district subject to the following:
 - a. Private stables on parcels of less than 20 acres subject to a written refuse disposal plan being submitted to and approved by the plan commission if requested by the town, provided that not more than one horse or other head of livestock are kept for each full open acre over two acres of lot area and provided that the keeping of hogs, pigs of any type (except potbellied pigs as defined in this chapter for which a hobby kennel use permit has been issued), male goats or fur-bearing animals shall not be permitted on less than 20 acres.
 - b. Private stables on parcels 20 acres or greater in size subject to a written refuse disposal plan being submitted to and approved by the plan commission if requested by the town.
 - c. Commercial stables on parcels 20 acres or greater in size subject to a written refuse disposal plan being submitted to and approved by the plan commission if requested by the town.
 - d. Reserved.
 - e. Poultry raising is permitted but not more than 20 fowl may be kept for each full open acre over two acres of lot area.

Section 45. Subsection 82-132 of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

Reserved

Section 46. Subsection 82-141 of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

Reserved

Section 47. Subsection 82-252 of the Town of Mukwonago municipal code is repealed and recreated to read as follows:

Reserved

Section 48. Banquet facilities, allowed as an unspecified use determination by Town action on May 4, 2016, are no longer considered a conditional use in any of the zoning districts.

Section 49. Dormitories and staff housing, allowed as an unspecified use determination by Town action on March 19, 2014, are no longer considered a conditional use in any of the zoning districts.

Section 50. A race event (with no more than 2,000 runners over two consecutive days, not including setup and teardown, occurring on contiguous parcels with a minimum of 200 acres), allowed as an unspecified use determination by Town action on April 17, 2013, is no longer considered a conditional use in any of the zoning districts.

Section 51. Family wineries, allowed as an unspecified use determination by Town action on July 21, 2010, are no longer considered a conditional use in any of the zoning districts.

Section 52. The sale of mulch, Christmas trees, pumpkins, other holiday items, and related activities, allowed as an unspecified use determination by Town action, is no longer considered a conditional use in any of the zoning districts.

Section 53. Retail selling of trees, allowed as an unspecified use determination by Town action, is no longer considered a conditional use in any of the zoning districts.

Section 54. Retail/wholesale greenhouse and nursery operations, allowed as an unspecified use determination by Town action, are no longer considered a conditional use in any of the zoning districts.

Section 55. 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 56. The Town of Mukwonago Town Clerk is directed to send three signed copies of this ordinance to the Waukesha County Clerk for approval of the Waukesha County Board of Supervisors.

Section 57. This ordinance shall take effect immediately upon passage and posting or publication as provided by law following approval by the Waukesha County Board of Supervisors.

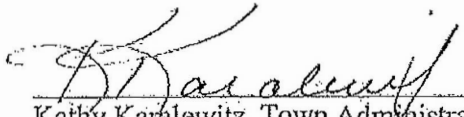
Adopted this 4th day of April 2018

TOWN OF MUKWONAGO



Peter Topczewski, Town Chair

ATTEST:


Kathy Karalewitz, Town Administrator

Published and/or posted this 16 day of May, 2018

State of Wisconsin



EXHIBIT "A"

2017 Assembly Bill 479

Date of enactment: November 27, 2017

Date of publication*: November 28, 2017

2017 WISCONSIN ACT 67

AN ACT to renumber and amend 59.694 (7) (c) and 62.23 (7) (e) 7.; to amend 59.69 (10e) (title), 59.69 (10e) (a) 1., 59.69 (10e) (b), 60.61 (5e) (title), 60.61 (5e) (a) 1., 60.61 (5e) (b), 62.23 (7) (hb) (title), 62.23 (7) (hb) 1. a. and 62.23 (7) (hb) 2.; and to create 59.69 (5e), 59.694 (7) (c) 1., 59.694 (7) (c) 3., 60.61 (4e), 60.62 (4e), 62.23 (7) (de), 62.23 (7) (e) 7. a., 62.23 (7) (e) 7. d., 66.10015 (1) (e), 66.10015 (2) (e), 66.10015 (4), 227.10 (2p) and 710.17 of the statutes; relating to: limiting the authority of local governments to regulate development on substandard lots and require the merging of lots; requiring a political subdivision to issue a conditional use permit under certain circumstances; standards for granting certain zoning variances; local ordinances related to repair, rebuilding, and maintenance of certain nonconforming structures; and the right to display the flag of the United States.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 2. 59.69 (5e) of the statutes is created to read:

59.69 (5e) CONDITIONAL USE PERMITS. (a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a county, but does not include a variance.

2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board, the county shall grant the conditional use permit. Any condition imposed must be

related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The county's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the county of a class 2 notice under ch. 985, the county shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the county may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the county zoning board.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(e) If a county denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694 (10).

SECTION 3. 59.69 (10e) (title) of the statutes is amended to read:

59.69 (10e) (title) REPAIR ~~REBUILDING~~ AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.

SECTION 4. 59.69 (10e) (a) 1. of the statutes is amended to read:

59.69 (10e) (a) 1. "Development regulations" means the part of a zoning ordinance ~~enacted under this section~~ that applies to elements including setback, height, lot coverage, and side yard.

SECTION 5. 59.69 (10e) (b) of the statutes is amended to read:

59.69 (10e) (b) An ordinance ~~enacted under this section~~ may not prohibit, or limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

SECTION 8. 59.694 (7) (c) of the statutes is renumbered 59.694 (7) (c) 2. and amended to read:

59.694 (7) (c) 2. To authorize upon appeal in specific cases variances from the terms of the ordinance that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

4. A county board may enact an ordinance specifying an expiration date for a variance granted under this paragraph if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of adjustment does not specify an expiration date for the variance, a variance granted under this paragraph does not expire unless, at the time it is granted, the board of adjustment specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.

5. A variance granted under this paragraph runs with the land.

SECTION 9. 59.694 (7) (c) 1. of the statutes is created to read:

59.694 (7) (c) 1. In this paragraph:

a. "Area variance" means a modification to a dimensional, physical, or locational requirement such as the setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of adjustment under this subsection.

b. "Use variance" means an authorization by the board of adjustment under this subsection for the use of

land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

SECTION 10. 59.694 (7) (c) 3. of the statutes is created to read:

59.694 (7) (c) 3. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this paragraph, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with the zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

SECTION 11. 60.61 (4e) of the statutes is created to read:

60.61 (4e) CONDITIONAL USE PERMITS. (a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town, but does not include a variance.

2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The town's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the town may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the town zoning board.

(e) If a town denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures described in s. 59.694 (10).

SECTION 12. 60.61 (5e) (title) of the statutes is amended to read:

60.61 (5e) (title) REPAIR, REBUILDING AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.

SECTION 13. 60.61 (5e) (a) 1. of the statutes is amended to read:

60.61 (5e) (a) 1. "Development regulations" means the part of a zoning ordinance ~~enacted under this section~~ that applies to elements including setback, height, lot coverage, and side yard.

SECTION 14. 60.61 (5e) (b) of the statutes is amended to read:

60.61 (5e) (b) An ordinance ~~enacted under this section~~ may not prohibit, or limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

SECTION 15. 60.62 (4e) of the statutes is created to read:

60.62 (4e) (a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town, but does not include a variance.

2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The town's decision

to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the town may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the town zoning board.

(e) If a town denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures described in s. 61.35.

SECTION 16. 62.23 (7) (de) of the statutes is created to read:

62.23 (7) (de) *Conditional use permits.* 1. In this paragraph:

a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.

b. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

2. a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.

3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.

4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or

renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.

5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

SECTION 17. 62.23 (7) (e) 7. of the statutes is renumbered 62.23 (7) (e) 7. b. and amended to read:

62.23 (7) (e) 7. b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.

f. A variance granted under this subdivision runs with the land.

g. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

SECTION 18. 62.23 (7) (e) 7. a. of the statutes is created to read:

62.23 (7) (e) 7. a. In this subdivision, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

SECTION 19. 62.23 (7) (c) 7. d. of the statutes is created to read:

62.23 (7) (e) 7. d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

SECTION 20. 62.23 (7) (hb) (title) of the statutes is amended to read:

62.23 (7) (hb) (title) *Repair, rebuilding, and maintenance of certain nonconforming structures.*

SECTION 21. 62.23 (7) (hb) 1. a. of the statutes is amended to read:

62.23 (7) (hb) 1. a. "Development regulations" means the part of a zoning ordinance enacted under this subsection that applies to elements including setback, height, lot coverage, and side yard.

SECTION 22. 62.23 (7) (hb) 2. of the statutes is amended to read:

62.23 (7) (hb) 2. An ordinance enacted under this subsection may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

SECTION 23. 66.10015 (1) (e) of the statutes is created to read:

66.10015 (1) (e) "Substandard lot" means a legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.

SECTION 24. 66.10015 (2) (e) of the statutes is created to read:

66.10015 (2) (e) Notwithstanding any other law or rule, or any action or proceeding under the common law, no political subdivision may enact or enforce an ordinance or take any other action that prohibits a property owner from doing any of the following:

1. Conveying an ownership interest in a substandard lot.
2. Using a substandard lot as a building site if all of the following apply:
 - a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
 - b. The substandard lot or parcel is developed to comply with all other ordinances of the political subdivision.

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SECTION 25. 66.10015 (4) of the statutes is created to read:

66.10015 (4) Notwithstanding the authority granted under ss. 59.69, 60.61, 60.62, 61.35, and 62.23, no political subdivision may enact or enforce an ordinance or take any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

SECTION 26. 227.10 (2p) of the statutes is created to read:

227.10 (2p) No agency may promulgate a rule or take any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

SECTION 27. 710.17 of the statutes is created to read:

710.17 Right to display the flag of the United States. (1) **DEFINITIONS.** In this section:

(a) "Housing cooperative" means a cooperative incorporated under ch. 185 or organized under ch. 193 that owns residential property that is used or intended to be used, in whole or in part, by the members of the housing cooperative as their homes or residences.

(b) "Member of a homeowners' association" means a person that owns residential property within a subdivision, development, or other similar area that is subject to any policy or restriction adopted by a homeowners' association.

(c) "Member of a housing cooperative" means a member, as defined in s. 185.01 (5) or 193.005 (15), of a housing cooperative if the member uses or intends to use part of the property of the housing cooperative as the member's home or residence.

(2) **RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES.** (a) Except as provided in sub. (3), a homeowners' association may not adopt or enforce a covenant, condition, or restriction, or enter into an agreement, that

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restricts or prevents a member of the homeowners' association from displaying the flag of the United States on property in which the member has an ownership interest and that is subject to any policy or restriction adopted by the homeowners' association.

(b) Except as provided in sub. (3), a housing cooperative may not adopt or enforce a covenant, condition, or restriction, or enter into an agreement, that restricts or prevents a member of the housing cooperative from displaying the flag of the United States on property of the housing cooperative to which the member has a right to exclusive possession or use.

(3) **EXCEPTIONS.** A homeowners' association or housing cooperative may adopt and enforce a covenant, condition, or restriction, or enter into an agreement, that does any of the following:

(a) Requires that any display of the flag of the United States must conform with a rule or custom for proper display and use of the flag set forth in 4 USC 5 to 10.

(b) Provides a reasonable restriction on the time, place, or manner of displaying the flag of the United States that is necessary to protect a substantial interest of the homeowners' association or housing cooperative.

SECTION 28. Initial applicability.

(1) **RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES.** The treatment of section 710.17 of the statutes first applies to a covenant, condition, or restriction that is adopted, renewed, or modified, or to an agreement that is entered into, renewed, or modified, on the effective date of this subsection.

(2) **CONDITIONAL USE PERMITS.** The treatment of sections 59.69 (5e), 60.61 (4e), 60.62 (4e), and 62.23 (7) (de) of the statutes first applies to an application for a conditional use permit that is filed on the effective date of this subsection.

D1 - Foti	AYE	D14 - Wood	AYE
D2 - Zimmermann	(M) AYE	D15 - Mitchell	AYE
D3 - Morris	AYE	D16 - Crowley	AYE
D4 - Batzko	AYE	D17 - Paulson	AYE
D5 - Dondlinger	AYE	D18 - Nelson	AYE
D6 - Walz	AYE	D19 - Cummings	AYE
D7 - Grant	AYE	D20 - Schellinger	AYE
D8 - Michalski	AYE	D21 - Gaughan	AYE
D9 - Heinrich	AYE	D22 - Wysocki	AYE
D10 - Swan	AYE	D23 - Hammitt	Notified
D11 - Howard	AYE	D24 - Whittow	AYE
D12 - Wolff	AYE	D25 - Johnson	(2) AYE
D13 - Decker	AYE		

172-0-26

Passed (24 Y - 0 N - 1 Absent)

Majority Vote >