

ENROLLED ORDINANCE 169-7

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING ORDINANCE BY AMENDING SECTION 82 REGARDING REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES AND AMENDING SECTIONS 82-22 AND 82-32 AND CREATING SECTION 82-34 TO CREATE A SPECIAL EXCEPTION PROCESS FOR THE EXPANSION OF LEGAL NONCONFORMING BUILDINGS IN OFFSET AREAS (ZT-1776)

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 February 19, 2014, and

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

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Mukwonago Zoning Ordinance, adopted by the Town of Mukwonago on February 27, 2007, hereby amends Section 82 regarding reasonable accommodations for persons with disabilities and amends Sections 82-22 and 82-32 and creates Section 82-34 to create a special exception process for the expansion of legal nonconforming buildings in offset areas, more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference ZT-1776, 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.

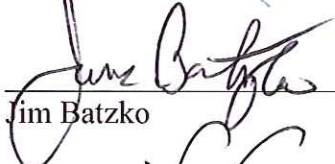
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING ORDINANCE BY  
AMENDING SECTION 82 REGARDING REASONABLE ACCOMMODATIONS  
FOR PERSONS WITH DISABILITIES AND AMENDING SECTIONS 82-22 AND  
82-32 AND CREATING SECTION 82-34 TO CREATE A SPECIAL EXCEPTION  
PROCESS FOR THE EXPANSION OF LEGAL NONCONFORMING  
BUILDINGS IN OFFSET AREAS (ZT-1776)

Presented by:  
Land Use, Parks, and Environment Committee



Walter L. Kolb, Chair



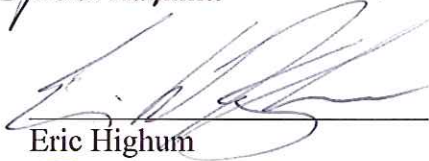
Jim Batzko



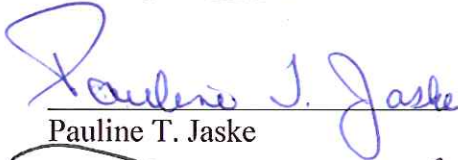
Jennifer A. Grant



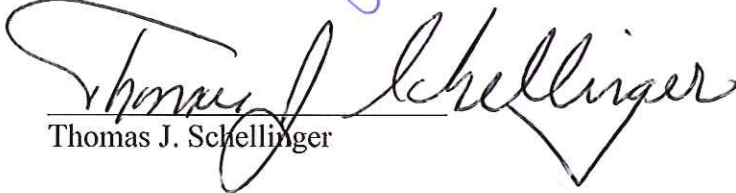
Keith Hammitt



Eric Highum

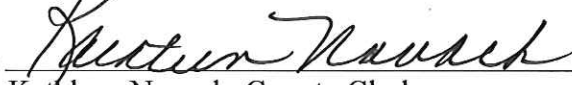


Pauline T. Jaske



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: 5/27/14,   
Kathleen Novack, County Clerk

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

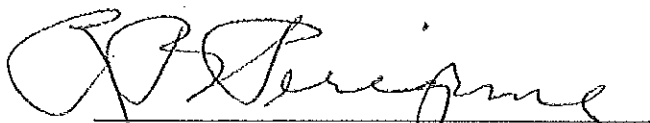
Approved: X  
Vetoed: \_\_\_\_\_  
Date: 6-2-14,   
Daniel P. Vrakas, County Executive

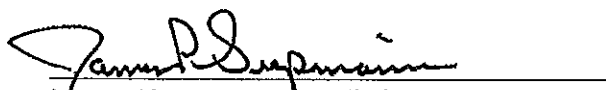
COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Mukwongo Zoning Ordinance hereby recommends approval of ZT-1776 (Text Amendment) in accordance with the attached "Staff Report and Recommendation".


PARK AND PLANNING COMMISSION


April 17, 2014

  
Robert Peregrine, Chairperson

  
James Siepmann, Vice Chairperson

  
Patricia Haukohl

  
Walter Kolb

  
Gary Goodchild

(ABSENT)  
William Mitchell

(ABSENT)  
Fritz Ruf

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

**FILE NO.:** ZT-1776

**DATE:** April 17, 2014

**PETITIONER:** Town of Mukwonago Board  
Town of Mukwonago Hall  
W320 S8315 Beulah Road  
Mukwonago, WI 53149

**NATURE OF REQUEST:**

Amend Section 82 Town of Mukwonago Zoning Ordinance (Town Ordinance 2014-O-12) with regard to reasonable accommodations for persons with disabilities under the Americans with Disabilities Act, the Fair Housing Act and other applicable Federal laws. Amend Section 82-22 and 82-32 and Create Section 82-34 of Chapter 82 (Town Ordinance 2014-O-11) to allow the expansion of legal nonconforming buildings in offset areas in certain situations

**PUBLIC HEARING DATES:**

December 4, 2013 and February 5, 2014.

**PUBLIC REACTION:**

No one from the public spoke to either matter.

**TOWN PLAN COMMISSION:**

On February 5, 2014, the Town of Mukwonago Plan Commission recommended in favor of the proposed amendments.

**TOWN BOARD ACTION:**

On February 19, 2014, the Town of Mukwonago Town Board moved to approve the Zoning Ordinance Amendments as recommended by the Town Plan Commission.

**CONFORMANCE WITH THE COMPREHENSIVE DEVELOPMENT PLAN FOR WAUKESHA COUNTY:**

The County Development Plan recommends that universal design and "visitability" be promoted in housing in order to remove accessibility obstacles for those with disabilities. The proposed ordinance amendment to allow for wheelchair ramp accommodations is a measure that would implement this plan recommendation.

**OTHER CONSIDERATIONS:**

The Town of Mukwonago is proposing amendments to the Town Zoning Code regarding two different topics. The first proposed amendment would allow for wheelchair ramps to be constructed within required setback and offset areas. The proposed language requires that such encroachments upon setbacks or offsets be authorized if the encroaching location is the only reasonable location based upon the configuration of the existing building. In addition, ramps are to encroach no more than is necessary to provide access to the existing building. A "Reasonable Accommodations" section is also being added to the code to site appropriate sections of the Fair Housing Act and the Americans with Disabilities Act. The section states that all requests for reasonable accommodations, other than wheelchair ramps, must be considered through the Town Board of Adjustment

variance process.

The second proposed amendment would create a special exception process whereby the Town Plan Commission could consider authorization of the expansion of legal non-conforming structures into the required side or rear offset areas. The proposed language stipulates that expansions can extend no closer to the lot line than the existing structure. This proposed provision is very similar to the existing language of the County zoning codes, which similarly permit lateral expansions via a special exception process. It should be noted that special exceptions do not require satisfaction of the same hardship test that must be demonstrated for the granting of variances, however, exceptions should not create adverse impacts for adjacent property owners.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that this request be **approved**. The proposed amendments will enable the Town to permit accommodations that do not necessarily conform with conventional zoning standards in the interest of enabling those with disabilities to be able to safely access their homes. The proposed special exception provisions for lateral expansion of homes within offset areas will allow for modest expansions of legal non-conforming structures to occur provided certain criteria are met, which will give the owners of such homes more options to improve their properties.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning and Zoning Manager

Attachment: Town Ordinances 2014-O-11 and 2014-O-12

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ORDINANCE 2014-O-11

AN ORDINANCE TO AMEND SECTION 82-22 AND 82-32 AND CREATE SECTION 82-34  
OF CHAPTER 82 OF THE TOWN OF MUKWONAGO MUNICIPAL CODE

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 Section 82-22 and 82-32 with regard to offset requirements and to create Section 82-34 regarding special exceptions; 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 Plan Commission 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 Town Board held a public hearing on December 4, 2013 pursuant to Section 82-265(d) of the Town of Mukwonago Zoning Code along with the Plan Commission; 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 82-22(b)(1) of Chapter 82 of the Town of Mukwonago municipal code entitled "Zoning," is hereby repealed and recreated as follows:

(b) *Offsets.*

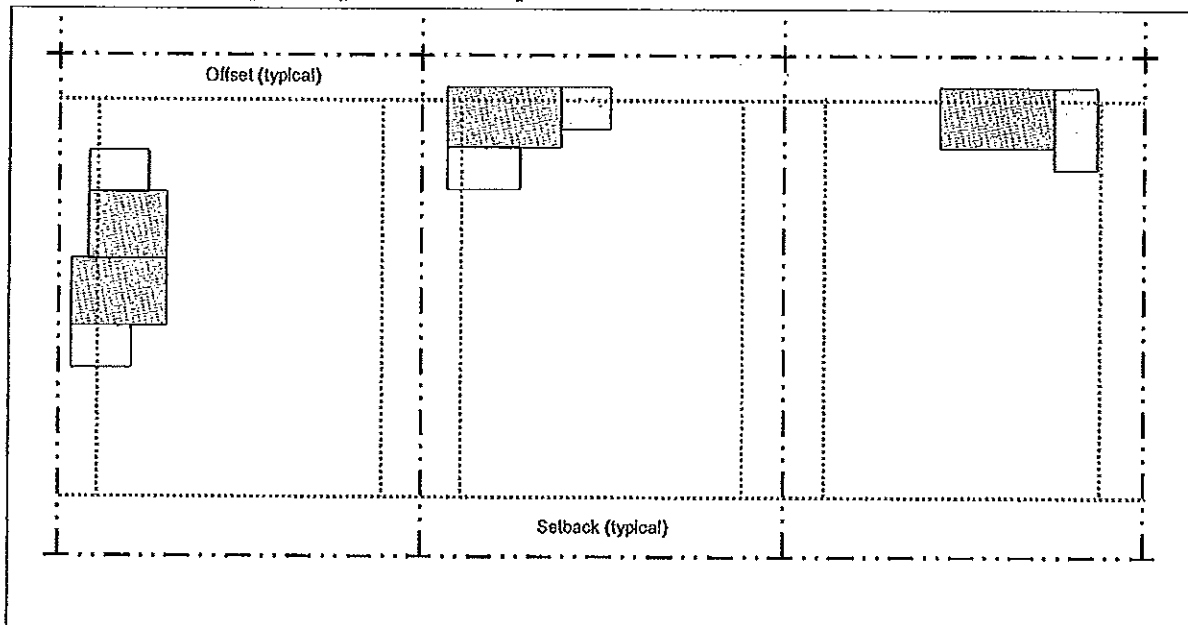
- (1) No principal building or its accessory buildings shall be erected or altered so that any roofed or enclosed portion thereof is closer to any lot line than the offset distance hereinafter specified by the regulations for the district in which such building is located, with the following exceptions:
  - a. On a lake shore lot one boathouse may be permitted not within five feet of the ordinary highwater line.
  - b. In the case of any lot of record which has a minimum average width of less than 120 feet, the side lot offset may be reduced proportionately to the ratio between the actual minimum average width and 120 feet, provided that no offset shall in any case be less than ten feet. Exceptions to these offsets may be permitted for detached accessory buildings on lots of 100 feet in width or less which may be reduced to five feet; provided, that no detached accessory building shall be located closer than ten feet to any structure used for residential purposes. Further reduction in offsets of detached accessory buildings to less than five feet must be approved by the plan commission; but in no case shall the offset be reduced to less than three feet. Attached open decks and patios shall be permitted to within 40 percent of the limits in this subsection.
  - c. The offset may be reduced on lots 1 1/2 acres or less for one detached accessory building, which is less than 200 square feet to a minimum of five feet from the lot line, unless otherwise regulated under any other provisions of this chapter.
  - d. The plan commission may grant a special exception, pursuant to the procedures outlined in section 82-34, authorizing the construction of a building addition within an offset area provided:
    - i. the building to which it is attached is located within an offset area;
    - ii. the existing building was legally established;
    - iii. the use of the building is legal conforming;
    - iv. the addition is in compliance with the height limitations of the zoning district in which it is located, and is not greater in height than the contiguous portion of the existing building;

- v. the addition does not extend closer to the side or rear lot line than the existing building to which it is attached;
- vi. the addition does not extend into an offset area the building does not currently encroach upon;
- vii. the addition is not within an area of a shore setback or a setback from the C-1 zoning district; and
- viii. the addition complies with all other dimensional standards that may apply.

See Figure 82-1 for examples of permissible additions. In making its decision, the plan commission should consider the following factors, in addition to those factors listed in subsection 82-34(d):

- i. The size and location of the existing legal non-conforming structure.
- ii. The size and location of any other structure on the subject property.
- iii. The size and location of the proposed expansion.
- iv. The necessity of constructing the addition within the offset.
- v. The proximity of buildings and other structures on adjoining properties.

Figure 82-1. Examples of permissible expansions within an offset area





SECTION 2. Subsection 82-32(b)(1) of Chapter 82 of the Town of Mukwonago municipal code entitled "Zoning," is hereby repealed and recreated as follows:

- (b) *Regulation.* For the purposes of administration, legal nonconforming structures, uses and lots shall be classified and regulated as follows:
  - (1) *Existing nonconforming structures.* A lawful structure which existed at the time of the adoption or amendment of this chapter may be continued as a legal nonconforming structure, although the structure size or location does not conform to all the requirements of this chapter, however:
    - a. A legal nonconforming structure that does not comply with the offset provisions of this chapter may be expanded pursuant to Section 82-22(b)(1)(d).
    - b. A legal nonconforming structure containing conforming uses may be totally rebuilt if, and only if, such reconstruction is identical in all respects to the size, shape, height, location, footprint, style and use of the original structure.
    - c. A legal nonconforming structure containing conforming uses, subject to approval of the plan commission, may be reduced in size, may have its shape modified, may have its height lowered, and may have its style modified, as long as the proposed structure is identical in all respects to the location, footprint and use of the original structure.
    - d. A legal nonconforming structure containing conforming uses, subject to the grant of a variance from the board of adjustment, may be increased in size, may be increased in shape, may be increased in height, and the location and footprint may be modified.
    - e. Regardless of the foregoing provisions in this subsection, the footprint of a legal nonconforming primary residence with conforming uses, subject to the plan commission approval, may be expanded into areas of the lot where the expansion fully complies with all offset and setback requirements of the district in which it is located, provided that the expansion is otherwise in compliance with all other applicable laws. In passing upon such matter, the plan commission shall consider all the following factors: the size of the lot; the size and location of the existing legal non-conforming structure; the size and location of any other structure on the lot; the size and location of the proposed expansion; the impact, if any, that the expansion may have upon neighboring properties; whether the proposed expansion would violate the intent of this chapter and such other factors as the plan commission finds to be relevant in the interest of the public health, safety, welfare, and be compatible with other properties in the area of the town.

SECTION 3. Section 82-34 of Chapter 82 of the Town of Mukwonago municipal code entitled "Zoning," is hereby created to read as follows:

**Sec. 82-34. Special exception.**

(a) **Generally.** Upon written petition, the plan commission may, on a case-by-case basis, grant a special exception regarding only those requirements of this chapter that specifically and expressly allow for modification by special exception pursuant to this section.

(b) **Initiation.** The owner of the subject property may submit an application for a special exception.

(c) **Application and review procedure.** The general steps outlined below shall be used in the review of a special exception application.

- (1) **Submittal of application materials.** The applicant shall submit a completed application and other required materials to the town planner along with the applicable fee(s) as may be established by the town board by separate resolution.
- (2) **Staff review.** Within 30 days of submittal, the town planner shall make a determination of whether the application is complete and notify the applicant of any deficiencies. If the application is incomplete, the applicant has 3 months to resubmit the application or forfeit the application fee. The town planner shall take no further steps to process the application until the deficiencies are remedied. The incomplete application shall be retained as a public record. Once the town planner finds that the application is complete, the town planner shall place the matter upon an upcoming plan commission meeting agenda for public hearing as soon as practicable, allowing for proper notice.
- (3) **Notice.** At least 10 days before the date of the plan commission meeting, the town planner shall send a written notice by certified mail to all property owners with land abutting the subject property. The failure of such notice to reach a property owner provided such failure is not intentional, shall not invalidate any decision made by the plan commission.
- (4) **Staff report preparation and distribution.** The town planner shall prepare a written staff report and provide a copy of it to each member of the plan commission and the applicant prior to the meeting at which the matter will be considered. The town planner shall also provide a copy to interested people upon request.
- (5) **Public hearing.** Allowing for proper notice, the plan commission shall conduct a public hearing at a regular or special meeting to consider the application.
- (6) **Decision.** The plan commission shall make a decision based on the decision criteria in this section to (1) approve the special exception, (2) approve the special exception with conditions, or (3) deny the special exception. The plan commission may render its

decision at the same meeting the matter was initially considered or at a subsequent meeting.

- (7) **Preparation of decision notice.** The plan commission shall prepare notice of its decision, or may direct town staff to do so consistent with its deliberations and decision.
- (8) **Applicant notification.** Within a reasonable time following the plan commission's decision, the town planner shall mail the decision notice to the applicant by regular mail.
- (9) **Acceptance by property owner if approval includes conditions.** If the application is approved with conditions, the property owner shall sign the decision notice to acknowledge the terms of the approval and return the same to the town planner within 3 months of the decision. If the signed decision notice is not returned to the town planner within the previously specified time period the decision shall become null and void without any further action by the town.
- (10) **Public record copy.** A duplicate copy of the decision notice shall be retained as a public record.
- (11) **Recorded copy.** The original decision notice shall be recorded against the property in the office of the Waukesha County Register of Deeds.

(d) **Basis of decision.** The plan commission in making its decision shall consider the following factors in making their decision:

- (1) the size of the property in comparison to other properties in the area;
- (2) the extent to which the issuance of the special exception would be in keeping with the overall intent of this chapter;
- (3) whether there are any unique circumstances and the nature of those circumstances that warrant the issuance of the special exception;
- (4) the nature and extent of anticipated impacts to the natural environment that could potentially occur if the special exception permit was granted;
- (5) the nature and extent of anticipated positive and negative effects on properties in the area;
- (6) actions the applicant will undertake to mitigate the negative effects, if any, of the proposed special exception;
- (7) the totality of all other waivers, variances, and special exceptions that may be needed to accommodate the petitioner's project;

- (8) any factor specifically listed under a section of this chapter authorizing the issuance of a special exception; and
- (9) any other factor that relates to the purposes of this chapter as set forth in Section 82-2 or as allowed by state law.

(e) **Imposition of conditions.** In approving a special exception, the plan commission may impose one or more conditions deemed necessary to further the intent and purposes of this chapter.

(f) **Limitations on issuing a special exception.** A special exception shall only be approved in those instances where issuance is specifically and expressly authorized in this chapter, by reference to this section.

(g) **Content of decision notice.** If the application for a special exception is approved, the decision notice shall include the following:

- (1) a statement that the application is approved,
- (2) a description of the special exception,
- (3) the plan commission's findings for the decision criteria listed in this section,
- (4) conditions of approval, if any,
- (5) if one or more conditions of approval are imposed, a statement indicating that the property owner must sign the decision notice and return it to the town planner to acknowledge acceptance of the same,
- (6) the effect of the approval, expiration of approval, and appeal provisions in subsection (h), (i), and (j),
- (7) other information the plan commission or town planner deems appropriate,
- (8) the signature of the town plan commission chair, or the town staff person directed by the plan commission to prepare the notice, and
- (9) the date of the decision.

If the application for a special exception is denied, the decision notice shall include the following:

- (1) a statement that the application is denied,
- (2) a description of the special exception,
- (3) the plan commission's findings for the decision criteria listed in this section,
- (4) the appeal provisions in subsection (j),

- (5) other information the plan commission or town planner deems appropriate,
- (6) the signature of the town plan commission chair, or the town staff person directed by the plan commission to prepare the notice, and
- (7) the date of the decision.

(h) **Effect of approval.** If a special exception is approved, such approval shall run with the land and is binding on all subsequent property owners, subject to the following. A special exception shall expire if work is not timely commenced, as described in subsection (i), below. The plan commission may limit the duration of a special exception on a case-by-case basis, if it finds that the justification for the special exception will diminish or expire over time, or for other reasonable cause, and any such limitation shall be stated in the decision notice. A special exception that allows a structure, or use of a structure, that is not otherwise compliant with this chapter automatically expires and is null and void if such structure is razed or removed from the property, regardless of cause. A structure constructed or allowed to remain or be used pursuant to a special exception is not thereby considered to be legal non-conforming, and legal non-conforming rights of this chapter do not apply. The grant of a special exception applies only to the specific structure described at the public hearing, without expansion or modification.

(i) **Expiration of an approval.** An approval for a special exception shall automatically expire 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the town planner may grant a one-time extension not to exceed 12 months provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

(j) **Appeal.** An aggrieved person may appeal a final decision made pursuant to this section by filing an appeal with a court of competent jurisdiction within 30 days of the final decision. The grant or denial of a special exception cannot be appealed to the zoning board of adjustment.

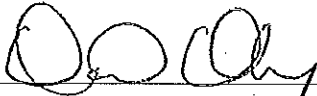
**SECTION 4. SUBMITTAL TO WAUKESHA COUNTY.** The Town of Mukwonago Town Clerk is directed to send three signed copies of this ordinance to the Waukesha County Clerk for approval of the Waukesha County Board of Supervisors.

**SECTION 5. SEVERABILITY.** Several sections this ordinance are declared to be severable and if any section or portion thereof shall be declared by a decision of the 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 which shall remain. The remainder of the ordinance shall remain in full force and effect and any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 6. EFFECTIVE DATE. This ordinance shall take effect immediately upon passage and posting or publication as provided by law following approval by the Waukesha County Board of Supervisors.

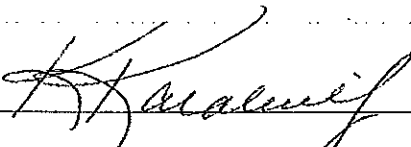
Adopted this 19th day of February 2014

TOWN OF MUKWONAGO



David Dubey, Town Chairman

ATTEST:



Kathy Karalewitz, Town Administrator/Clerk

Published and posted this 6 day of March 2014

ORDINANCE 2014-O-12

AN ORDINANCE TO AMEND CHAPTER 82 OF THE TOWN OF  
MUKWONAGO MUNICIPAL CODE WITH REGARD TO REASONABLE  
ACCOMODATIONS UNDER APPLICABLE FEDERAL LAWS

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 intended to address Federal requirements for reasonable accommodations in local zoning ordinances; 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 Plan Commission 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 Town Board held a public hearing on February 5, 2014 pursuant to Section 82-265(d) of the Town of Mukwonago Zoning Code along with the Plan Commission; 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. Chapter 82 of the Town of Mukwonago Municipal Code entitled "Zoning," Section 82-22 entitled "Building Location," subsection (a) entitled "Setbacks," subsection (3) is hereby repealed and recreated as follows:

- (3) No principal building or its accessory buildings shall be erected, altered, or placed so that any roofed or enclosed portion is closer to the base setback line than the setback distance hereinafter specified by the regulations for the district in which such building is located with the following exceptions:
  - a. Setback averaging as follows where the setback requirements of the properties involved are identical:
    - (i) Where the nearest existing building on one side of such building is within 500 feet and has less than the required setback, the average between such existing setback and the required setback shall apply.
    - (ii) Where the nearest buildings on both sides of such building are within 500 feet of such buildings but not closer than 300 feet to each other and have less than the required setback, the average of such existing setbacks and the required setback shall apply.
    - (iii) Where the nearest buildings on both sides of such building are within 300 feet of each other and have less than the required setback, the average between such existing setbacks shall apply.
    - (iv) In the case of a proposed addition to an existing building which has less than the required setback, such existing building may be considered the "nearest existing building" in order to apply the aforesaid exceptions in determining required setback for the proposed addition.
  - b. The building inspector may, pursuant to section 82-17 of this chapter, allow the construction of an unenclosed wheelchair access ramp in a setback area for an existing building, provided:
    - (i) the proposed location for the ramp is the only reasonable location based on the configuration of the existing building; and
    - (ii) the ramp encroaches into the setback area no more than is necessary to provide access to the existing building.



SECTION 2. Chapter 82 of the Town of Mukwonago Municipal Code entitled "Zoning," Section 82-22 entitled "Building Location," subsection 82-22(a) entitled "Setbacks," subsection (9) is hereby repealed and recreated as follows:

- (9) Shore setback lines shall be a minimum of 75 feet from the established floodplain line, conservancy line, or the average annual highwater mark when such established lines are not available. Attached open decks shall maintain a minimum shore setback distance of 80 percent of the distance to the existing principal building or 60 feet, whichever is the shorter distance. A boathouse may be exempt from these provisions per subsection (b)(1)a of this section. The building inspector may, pursuant to section 82-17 of this chapter, allow the construction of an unenclosed wheelchair access ramp in a shore setback area for an existing building, provided:
  - (i) the proposed location for the ramp is the only reasonable location based on the configuration of the existing building; and
  - (ii) the ramp encroaches into the shore setback area no more than is necessary to provide access to the existing building.

SECTION 3. Chapter 82 of the Town of Mukwonago Municipal Code entitled "Zoning," Section 82-22 entitled "Building Location," subsection (b) entitled "Offsets," subsection (1) is hereby repealed and recreated as follows:

(b) *Offsets.*

- (1) No principal building or its accessory buildings shall be erected or altered so that any roofed or enclosed portion thereof is closer to any lot line than the offset distance hereinafter specified by the regulations for the district in which such building is located, with the following exceptions:
  - a. On a lake shore lot one boathouse may be permitted not within five feet of the ordinary highwater line.
  - b. In the case of any lot of record which has a minimum average width of less than 120 feet, the side lot offset may be reduced proportionately to the ratio between the actual minimum average width and 120 feet, provided that no offset shall in any case be less than ten feet. Exceptions to these offsets may be permitted for detached accessory buildings on lots of 100 feet in width or less which may be reduced to five feet; provided, that no detached accessory building shall be located closer than ten feet to any structure used for residential purposes. Further reduction in offsets of detached accessory buildings to less than five feet must be approved by the plan commission; but in no case shall the offset be reduced to less than three feet. Attached open decks and patios shall be permitted to within 40 percent of the limits in this subsection.

- c. The offset may be reduced on lots 1 1/2 acres or less for one detached accessory building, which is less than 200 square feet to a minimum of five feet from the lot line, unless otherwise regulated under any other provisions of this chapter.
  
- d. **NOTE: This subsection is subject to change based on the adoption of Ordinance 2014-O-11, which is currently under review.**  
In the case of an extension or addition of a structure into the minimum offset distance, and where such extension would not extend closer to the lot line than the existing structure to which it is attached, the plan commission may approve a special exception to allow such an extension or addition provided (1) the use of the structure is legal conforming, (2) the extension or addition does not encroach closer to the side lot line or the rear lot line than the existing structure to which it is attached, and (3) the extension or addition is not greater in height than the contiguous portion of the existing structure. In making its decision, the plan commission should consider the following factors:
  - (i) The overall size of the subject property.
  - (ii) The size and location of the existing legal non-conforming structure.
  - (iii) The size and location of any other structure on the subject property.
  - (iv) The size and location of the proposed expansion.
  - (v) The impact, if any, that the expansion may have upon neighboring properties.
  - (vi) Whether the proposed expansion would violate the intent of this chapter.
  - (vii) Whether the requested special exception, if granted, would benefit the petitioner's project in a way that is not inconsistent with the Town of Mukwonago's interests.
  - (viii) The totality of all other waivers, variances, and special exceptions that may be needed to accommodate the petitioner's project.
  - (ix) Whether, instead of granting the special exception the chapter itself should be changed to accommodate the kind of situation presented by the petitioner.
  - (x) Any other factor relating to the public health, safety, or welfare.

- e. The building inspector may, pursuant to section 82-17 of this chapter, allow the construction of an unenclosed wheelchair access ramp in an offset area for an existing building, provided:
  - (i) the proposed location for the ramp is the only reasonable location based on the configuration of the existing building; and
  - (ii) the ramp encroaches into the offset area no more than is necessary to provide access to the existing building.

SECTION 4. Chapter 82 of the Town of Mukwonago Municipal Code entitled "Zoning," Section 82-17 entitled "Reasonable Accommodations," is hereby created as follows:

Sec. 82-17. Reasonable accommodations

(a) *Legislative findings.* The Town Board makes the following legislative findings relating to reasonable accommodations for persons with disabilities:

- (1) The federal government has adopted various laws with respect to various rights afforded persons with disabilities.
- (2) Some of these laws, most notably the Fair Housing Act and the Americans with Disabilities Act, affect how local zoning rules and regulations are administered by municipalities.
- (3) Under the Fair Housing Act, reasonable accommodations must be made in some circumstances so that a person with a disability has an equal opportunity to use and enjoy a dwelling unit.
- (4) Under Title II of the Americans with Disabilities Act, reasonable accommodations must be made in some circumstances to avoid discrimination as provided in the act.
- (5) If a local municipality can demonstrate that a requested modification would fundamentally alter the nature of its service, program, or activity (such as zoning requirements) it is not required to grant the modification.

(b) *Reviewing Authority.* The reviewing authority for requests for reasonable accommodations shall be as follows:

- (1) *Wheelchair ramps in setback and offset areas.* The building inspector is authorized to approve the construction of wheelchair access ramps in setback and offset areas pursuant to Section 82-22(a)(3) and 82-22(b)(1), respectively. In consideration of the matter, the building inspector shall be the reviewing authority, and shall have the powers to apply the general requirements of this section. In consideration of any such request, the building inspector must determine whether granting the requested accommodation would fundamentally alter the nature of this zoning code and its

requirements, and if the building inspector finds that it would not, then the accommodation must be granted subject to all terms and conditions of this section.

- (2) *Other reasonable accommodations.* All requests for reasonable accommodations, other than for wheelchair ramps, under the above-mentioned federal laws shall be accomplished through the variance process described in Article V of this chapter. The Zoning Board of Adjustment shall be the reviewing authority concerning such requests, and shall have the power to apply the general requirements of this section. In consideration of any such special exception request, the Zoning Board of Adjustment must determine whether granting the requested accommodation would fundamentally alter the nature of this chapter and its requirements, and if the Zoning Board of Adjustment finds that it would not, then the accommodation must be granted subject to all terms and conditions of this section.

(c) *General requirements.* The following general requirements apply with regard to all applications for a reasonable accommodation, regardless of the reviewing authority specified in this chapter.

- (1) *Identification of disability.* If a person's disability is not obvious or otherwise known, the reviewing authority may request information that (i) is necessary to verify that the person meets the federal government's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activity), (ii) describes the needed accommodation, and (iii) shows the relationship between the person's disability and the need for the requested accommodation.
- (2) *Confidentiality of applicant information.* In reviewing petitions for reasonable accommodations, the reviewing authority will attempt to balance the privacy rights and reasonable request of an applicant for confidentiality, with normal procedural requirements relating to public notice, public hearings, written decision documents that may include findings of fact and conclusions of law, and maintaining adequate records. Any document identifying the disability or medical condition of any specific person shall be treated as confidential and shall not be subject to disclosure by the Town for any reason, including for compliance with Wisconsin's Open Records law, unless ordered to do so by a court of competent jurisdiction and notice is given to the person who provided the document to the Town. Specifically, any medical records regardless of source, including statements of medical providers, shall not be subject to disclosure. For any other type of document, such as an application or determination, the document may be subject to disclosure, but only after the nature or description of the person's disability or medical condition is redacted by the Town's attorney. A statement regarding the Town's handling of information subject to this provision should be included in the decision document.
- (3) *Nature of approval.* Any accommodation approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.

- (4) *Imposition of conditions.* The reviewing authority may impose conditions of approval deemed necessary to uphold the overall intent of the zoning regulations. Typical conditions of approval include, but are not limited to, the following:
- (i) periodic inspection of the property to verify compliance with this section and any conditions of approval;
  - (ii) removal of the improvements, where removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;
  - (iii) time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;
  - (iv) recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;
  - (v) measures to reduce the impact on surrounding properties and uses;
  - (vi) measures in consideration of the physical attributes of the property and structures; and
  - (vii) other conditions necessary to protect the public health, safety, and welfare.
- (5) *Written decision.* The reviewing authority shall issue a written decision to document the findings made pursuant to this section, and any conditions imposed on any approval granted pursuant to this section.

SECTION 5. SUBMITTAL TO WAUKESHA COUNTY. 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 6. SEVERABILITY. Several sections this ordinance are declared to be severable and if any section or portion thereof shall be declared by a decision of the 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 which shall remain. The remainder of the ordinance shall remain in full force and effect and any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

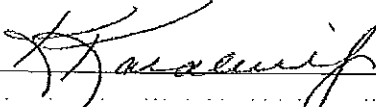
SECTION 7. EFFECTIVE DATE. This ordinance shall take effect immediately upon passage and posting or publication as provided by law following approval by the Waukesha County Board of Supervisors.

Adopted this 19th day of February, 2014

TOWN OF MUKWONAGO

  
\_\_\_\_\_  
David Dubey, Town Chairman

ATTEST:

  
\_\_\_\_\_  
Kathy Karalewitz, Town Administrator/Clerk

Published and posted this 6 day of March, 2014

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-05/27/14

(ORD) NUMBER-1690006

- |                          |                          |
|--------------------------|--------------------------|
| 1 R. KOLB.....AYE        | 2 D. Zimmermann.....AYE  |
| 3 R. MORRIS.....AYE      | 4 J. BATZKO.....AYE      |
| 5 J. BRANDTJEN.....AYE   | 6 J. WALZ.....AYE        |
| 7 J. GRANT.....AYE       | 8 E. HIGHUM.....AYE      |
| 9 J. HEINRICH.....AYE    | 10 D. SWAN.....AYE       |
| 11 C. HOWARD.....AYE     | 12 P. WOLFF.....AYE      |
| 13 P. DECKER.....AYE     | 14 C. PETTIS.....AYE     |
| 15 W. KOLB.....AYE       | 16 M. CROWLEY.....AYE    |
| 17 D. PAULSON.....AYE    | 18 L. NELSON.....AYE     |
| 19 K. CUMMINGS.....AYE   | 20 T. SCHELLINGER....AYE |
| 21 W. ZABOROWSKI.....AYE | 22 P. JASKE.....AYE      |
| 23 K. HAMMITT.....AYE    | 24 S. WHITTOW.....AYE    |
| 25 G. YERKE.....AYE      |                          |

TOTAL AYES-25

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-25