

ENROLLED ORDINANCE 171-44

AMEND THE TEXT OF THE TOWN OF WAUKESHA ZONING CODE BY REPEALING
AND RECREATING SECTION 13-2-10(d)(7) RELATING TO ACCESSORY BUILDING
WAIVER AND MODIFICATION PROVISIONS (ZT-1839)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Waukesha Town Board on July 14, 2016, and

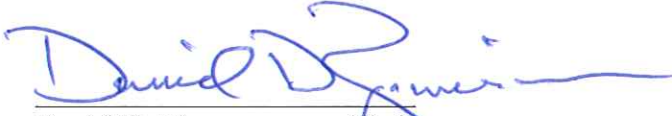
WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.62, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Waukesha Zoning Code, adopted by the Town of Waukesha on June 24, 1979, is hereby amended to repeal and recreate Section 13-2-10(d)(7) relating to accessory building waiver and modification 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 ZT-1839, 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 Waukesha.

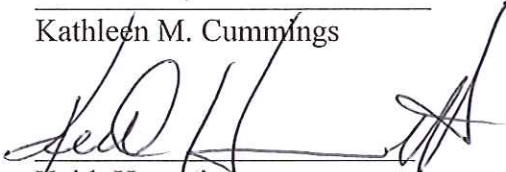
AMEND THE TEXT OF THE TOWN OF WAUKESHA ZONING CODE BY REPEALING AND RECREATING SECTION 13-2-10(d)(7) RELATING TO ACCESSORY BUILDING WAIVER AND MODIFICATION PROVISIONS (ZT-1839)

Presented by:
Land Use, Parks, and Environment Committee



David D. Zimmermann, Chair

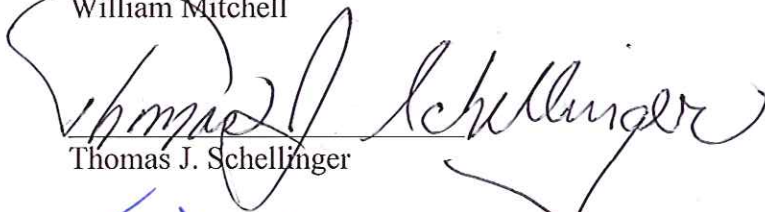
ABSENT

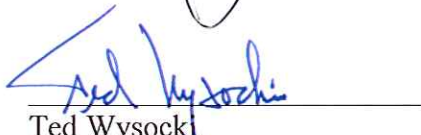
Kathleen M. Cummings


Keith Hammitt



Robert L. Kolb


William Mitchell


Thomas J. Schellinger


Ted Wysocki

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

Date: 10/25/16, 
Kathleen Novack, County Clerk

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

Approved: X

Vetoed: _____

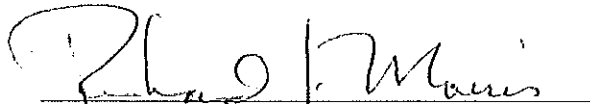
Date: 10/31/16, 
Paul Farrow, County Executive


COMMISSION ACTION


The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Waukesha Zoning Code hereby recommends approval of ZT-1839 (Text Amendment) in accordance with the attached "Staff Report and Recommendation".

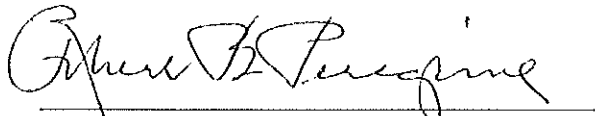
PARK AND PLANNING COMMISSION

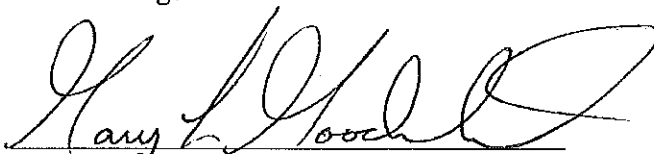
September 15, 2016

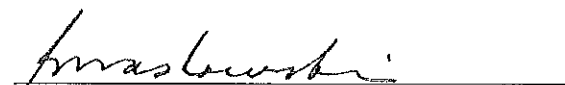

Richard Morris, Chairperson



James Siepmann, Vice Chairperson


William Mitchell, Secretary


Robert Peregrine


Gary Goodchild


William Maslowski


Keith Hammitt

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

DATE: September 15, 2016

FILE NO.: ZT-1839

PETITIONER: Town of Waukesha Board
W250 S3567 Center Road
Waukesha, WI 53189

NATURE OF REQUEST:
Repeal and re-create Section 13-2-10(d)(7) of the Town of Waukesha Zoning Code regarding requests for waiver or modifications relating to accessory buildings.

PUBLIC HEARING DATE:
July 14, 2016.

PUBLIC REACTION:
One resident asked about costs to residents as a result of the proposed amendment. The Town Clerk responded that the cost to appear before the Plan Commission is \$65.00 whereas the Zoning Board of Appeals fee is \$300.00, so the changes would result in cost savings for petitioners.

TOWN PLAN COMMISSION:
The Town of Waukesha Plan Commission unanimously recommended approval of the proposed request on July 14, 2016 to the Town Board.

TOWN BOARD ACTION:
The Town of Waukesha Board unanimously approved the proposed request on July 14, 2016.

OTHER CONSIDERATIONS:
The Town of Waukesha is proposing an amendment to the accessory building waiver and modification provisions of the Town Zoning Code. The provisions allow for accessory building size, quantity and location standards to be waived or modified upon petition by property owners provided that a determination is made that a waiver will not cause negative effects. The existing code language requires that the Town Board of Appeals hear and consider such requests. The proposed amendment would transfer that authority to the Town Board. The Town Plan Commission would make a recommendation to the Town Board. Written notice of such waiver/modification requests would continue to be provided to those within 300' of a subject property. The criteria that must be considered during consideration of such requests remain unchanged.

STAFF RECOMMENDATION:
It is the opinion of the Planning and Zoning Division Staff that this request be **approved**. The proposed amendment is minor in nature and preserves notice to potentially affected neighbors while lowering application costs for Town residents relative to accessory building waiver requests.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning Manager

Attachments: Town Ordinance (2016-10)

RECEIVED

ORDINANCE NO. 2016-10

SEP 07 2016

AN ORDINANCE TO REPEAL AND RECREATE § 13-2-10(d)(7)
REGARDING REQUESTS FOR WAIVER OR MODIFICATIONS
RELATED TO ACCESSORY BUILDINGS

DEPT OF PARKS & LAND USE

WHEREAS, this zoning amendment was duly commenced pursuant to Section 13-2-22(a) for text amendments to the Town of Waukesha Zoning Code, and

WHEREAS, the Town Clerk scheduled a public hearing to be held jointly by the Town Plan Commission and the Town Board on July 14, 2016 pursuant to Section 13-2-22(d), and

WHEREAS, the Town Clerk for the Town of Waukesha has properly transmitted notice to the Town Plan Commission, Town Board, and to the Waukesha County Park and Planning Commission, pursuant to Section 13-2-22(d)(2) of the Town of Waukesha Zoning Code; and

WHEREAS, the Plan Commission considered the testimony taken at the public hearing, along with other pertinent technical information and made a recommendation to the town pursuant to Section 13-2-22(d)(3) of the Town of Waukesha Zoning Code; and

WHEREAS, the Town Board for the Town of Waukesha, after carefully reviewing the recommendation of the Plan Commission for the Town of Waukesha 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, morals, comfort, prosperity and general welfare of the Town of Waukesha 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 amendments will serve the public health, safety morals, comfort, prosperity and general welfare of the Town of Waukesha, and that such amendments are intended to provide for adequate light, air, convenience of access, and safety from fire and other dangers; to promote the safety and efficiency of the public streets and highways; to aid in conserving and stabilizing the economic values of the community; to promote the orderly development of land; to preserve and promote the general attractiveness and character of the community environment; to guide the proper distribution and location of population and of the various land uses; and otherwise provide for the healthy and prosperous growth of the community, and that such amendments 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.

THE TOWN BOARD OF THE TOWN OF WAUKESHA DO ORDAIN AS FOLLOWS:

SECTION 1: Title 13 of the Town of Waukesha Town Code entitled "Zoning," Chapter 2 entitled "General Provisions," Section 13-2-10 entitled "Building Location," subsection (d) entitled "Accessory Buildings," subsection (7) entitled "Request for Waiver or Modification," is hereby repealed and recreated as follows:
SEC. 13-2-10(d)(7) REQUEST FOR WAIVER OR MODIFICATION.

- (7) Request for waiver or modification. A petitioner may request that the Town Board, upon receipt of a recommendation from the Town Plan Commission, waive enforcement or modification of one or more provisions of this chapter dealing with size, quantity and location limitations stated in this section as follows:
 - a. Written request. In addition to the accessory building application, the petitioner shall submit a written request for a waiver or modification to the Town Clerk which shall include: a statement specifying the specific provision that the petitioner requests the Town Board to waive or modify and what, if any, substantial reasons exist for the request for waiver or modification; what, if any, effect

the proposed accessory building will have on the subject property and adjacent property; and whether or not the proposed accessory building is consistent with the general neighborhood.

- b. Procedure. Upon receipt of such request for a waiver or modification, the Town Clerk shall place the matter on a Town Plan Commission and Town Board agenda within a reasonable time and shall give written notice of the request for waiver or modification to all property owners within 300 feet of the property being discussed.
- c. Considerations. The Town Board, upon receipt of a recommendation from the Town Plan Commission, shall make a determination which shall include consideration, but not necessarily an affirmative finding, of the following factors:
 - 1. Whether the request is inconsistent or contradictory to the purpose, spirit or intent of the zoning ordinance.
 - 2. Whether the request violates the spirit or general intent of this chapter.
 - 3. Whether the request is contrary to the public health, safety, or welfare.
 - 4. Whether the request is hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, traffic congestion, odor or other similar factors.
 - 5. Whether, for any other reason, the request will cause substantial adverse effect on the property values and general desirability of the neighborhood.
 - 6. Whether the request is incompatible to the surrounding land uses.
- d. Grant or denial of request for waiver or modification. After considering the above-listed factors and any other factors that may be relevant to the matter, the Town Board, upon receipt of a recommendation from the Town Plan Commission shall then determine whether it is objectively reasonable to grant the request for a waiver or modification. A request for a waiver or modification may be granted without making an affirmative finding concerning any one or more of the above-listed factors if, on the whole, it is objectively reasonable to do so.
- e. Past noncompliance not waived. A waiver or modification that is granted pursuant to a written request as described in this Section shall not waive or modify any fines, forfeitures or other penalties that may have accrued due to violations of this chapter that took place prior to the date of the request for waiver or modification being granted, unless specifically stated otherwise in the decision of the Town Board.

SECTION 2: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

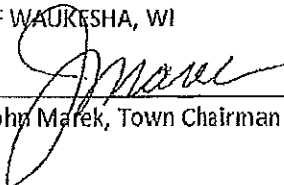
SECTION 3: EFFECTIVE DATE.

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


Passed and approved this 14 day of July, 2016.

TOWN OF WAUKESHA, WI

By:


John Marek, Town Chairman

ATTEST:


Kathy Nickolaus, Town Clerk-Treasurer

Roll Call	Discussion	Voting...	Results	Agenda	Setup	Options
D1 - Kolb			(2) 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			Notified	D20 - Schellinger		AYE
D8 - Michalski			AYE	D21 - Zaborowski		AYE
D9 - Heinrich			AYE	D22 - Wysocki		AYE
D10 - Swan			AYE	D23 - Hammitt		AYE
D11 - Howard			AYE	D24 - Whittow		AYE
D12 - Wolff			AYE	D25 - Johnson		AYE
D13 - Decker			AYE			
171-O-043	Passed (24 Y - 0 N - 1 Absent)			Majority Vote		