

ENROLLED ORDINANCE 179-49

TEXT AMENDMENTS TO THE WAUKESHA COUNTY ZONING CODE AND THE
WAUKESHA COUNTY SHORELAND PROTECTION ORDINANCE RELATING TO THE
FARMLAND PRESERVATION ZONING RECERTIFICATION
(RZ150)

WHEREAS, the Waukesha County Board of Supervisors enacted the Waukesha County Zoning Code (Zoning Code) on February 26, 1959; and

WHEREAS, the Waukesha County Board of Supervisors may make amendments to the Zoning Code pursuant to Section 59.69, Wisconsin Statutes; and

WHEREAS, the Waukesha County Board of Supervisors enacted the Waukesha County Shoreland Protection Ordinance (Shoreland Protection Ordinance) on June 23, 1970; and

WHEREAS, the Waukesha County Board of Supervisors may make amendments to the Shoreland Protection Ordinance pursuant to Section 59.692, Wisconsin Statutes; and

WHEREAS, the Waukesha County Department of Parks and Land Use held a public hearing on September 19, 2024; and

WHEREAS, the proposed amendments have been duly referred, considered and approved by the Waukesha County Park and Planning Commission at its meeting of September 19, 2024; and

WHEREAS, the Waukesha County Park and Planning Commission forwarded the proposed amendments and the Staff Report and Recommendation to the Land Use, Parks and Environment Committee and to the Waukesha County Board of Supervisors with its recommendation that the proposed amendments be approved.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Waukesha County Zoning Code and the Waukesha County Shoreland Protection Ordinance are hereby amended as 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 and are hereby approved.

BE IT FURTHER ORDAINED that Sec. 3.04(2) of the Zoning Code be repealed and recreated to read:

(2) Buildings or Creation of Lots on a Private Street or Way:

The intent of this provision is to discourage the creation of lots and placement of Structures which do not have adequate access for emergency vehicles and equipment and to provide a right-of-way width which could accommodate a public right-of-way, if necessitated in the future. Subject to the approval of the Plan Commission and the County Zoning Agency, a parcel may be created and a Building may be permitted on a tract of land which does not abut or have direct frontage on a public street or officially approved way (frontage on a controlled access Highway or a freeway where vehicular access is prohibited does not constitute access or frontage for the purposes of this provision) provided such tract of land is at least three (3) acres in area and has a minimum average width of two hundred (200) feet, has access by a permanent easement at least thirty-three (33) feet in width to a public street or way, will have a paved or gravel driveway width of

at least twelve (12) feet and does not conflict with the plans for the future development of Streets in the area.

For lots zoned FLP, the tract of land shall be at least one (1) acre in area and have a minimum average width of one hundred and fifty (150) feet. All other provisions of Section 3.04(2) shall apply.

Typical or normal lots with Lot Lines radiating from the terminus or center of a public cul-de-sac street are not affected by this provision that requires minimum road frontage on a public street. In a situation where more than one (1) principal Residence or parcel is proposed, the easement for access shall be at least sixty-six (66) feet in width and the paved or gravel drive shall be sixteen (16) feet in width, unless required to be greater, pursuant to a local Ordinance. Where such a Lot has a narrow strip of land as part of the Lot (not as an approved easement) extending to the public road from the main part of the Lot where the Building could lawfully be placed (flag lot), such narrow portion shall not constitute frontage or part of the required lot size unless that narrow portion of the Lot is as wide as the required minimum average width for the District in which it is located. Not more than two (2) such parcels or Buildings shall be permitted unless necessitated by exceptional circumstances.

BE IT FURTHER ORDAINED that Sec. 3.04(5)(A) of the Zoning Code be repealed and recreated to read:

(5) Preservation of topography:

In order to protect the property owner from possible damage due to change in the existing grade of adjoining lands, and to aid in preserving and protecting the natural beauty and character of the landscape, no change in the existing topography of any land shall be made which would result in increasing any portion of the slope to a ratio greater than three (3) horizontal to one (1) vertical, within a distance of twenty (20) feet from the property line, except with the written consent of the abutting property owner and with the approval of the plan commission; or which would alter the existing drainage or topography in any way as to adversely affect the adjoining property. In no case shall any slope exceed the normal angle of slippage of the material involved and all slopes shall be protected against erosion.

(A) The construction of a Retaining Wall (stone, ties, brick or other material), less than five (5) feet from a property line, may be specifically authorized by the Plan Commission and County Zoning Agency and on agreement made between the Plan Commission, County Zoning Agency and Applicant stating the method and purpose of construction and will not in any way adversely affect drainage or the aesthetics of the adjacent lot. A Retaining Wall five (5) feet or greater from a property line, may be allowed pursuant to issuance of a Zoning Permit (Minor Grading Permit) and an agreement being made between the owner and the Town Planning Commission and the County Zoning Administrator which will serve to promote the purpose and intent as stated in this Ordinance.

Fill or grading considered by the zoning administrator to be necessary backfill and/or excavation for an otherwise permitted Structure may be permitted without the necessity of securing a conditional use permit as long as said fill or grading is accessory to said construction and does not create slopes greater than three (3) horizontal to one (1) vertical and does not extend to a distance greater than thirty (30) feet from the foundation and does not divert runoff directly onto adjacent property or adversely affect adjoining property. In order to make such a determination, the property owner shall submit a grading plan of existing and

proposed grades on the subject Lot and adjacent lands where said accessory fill and/or grading is closer than twenty (20) feet to a property line.

Land Altering Activities extending greater than thirty (30) feet from the foundation may be allowed subject to issuance of a minor grading permit (zoning permit) without benefit of a Conditional Use Permit unless the quantities and the area of fill exceeds three thousand (3,000) square feet and fifteen (15) cubic yards. This provision excludes the area normally associated with septic system installation, backfilling and grading around the foundation, as above, and normal driveway construction as determined by the Zoning Administrator. Further, no fill or alterations on existing topography shall be allowed under any circumstances which will alter the drainage or topography in a way which will adversely affect the surrounding lands. In making such a determination, the Zoning Administrator shall have the authority to determine the affect of the construction or fill on surrounding property and require improvements and/or facilities as may be in the best interest of preserving the topography and drainage system and which will have the effect of lessening the impacts on either upstream, downstream or adjacent properties. In case of a dispute or question arising as to the adversity or effect of the project on either the property owner, adjacent owners or the general public, said question shall be submitted to the County Board of Adjustment pursuant to the procedures for appeal as enumerated in Section 19. Land Altering Activities may also be subject to locally adopted or state mandated Erosion and Sediment Control Ordinances in addition to the requirements set forth herein.

BE IT FURTHER ORDAINED that Sec. 3.08(7)Q7 of the Zoning Code be created to read:

7. A caretaker's quarters/living unit Farm Residence provided in conjunction with a commercial Boarding Stable shall not count toward the density provisions of Section 6.1. The Plan Commission and Zoning Agency shall determine the acceptable number of caretaker's units based upon the nature of the boarding operation, the property setting and availability of adequate parking and septic facilities. A deed restriction may be required in conjunction with the approval of the Conditional Use restricting the use of the caretaker's quarters/living unit Farm Residence.

BE IT FURTHER ORDAINED Sec. 3.08(7)(Z) of the Zoning Code be repealed and recreated to read:

(Z) In-Law Unit:

In any Residential, Agricultural, B-1 or B-2 zoning district, except FLC, subject to the following. Such uses in the FLP District shall not count toward the density provisions of Section 6.1, and are subject to the following:

1. The location, building plan, and site plan and plan of operation shall be submitted to and approved by the Plan Commission and the County Zoning Agency.
2. The Waukesha County Department of Parks and Land Use, Division of Environmental Health, shall certify that the septic system will accommodate the proposed use and is in accordance with COMM 83, County and State Sanitary Codes.

3. Maximum living area of the In-law Unit shall not exceed one thousand (1,000) square feet and shall contain no more than two (2) bedrooms. There shall be an additional parking space for the In-law Unit. There shall be no more than one (1) In-law Unit per single family lot.
4. Architecture of the Residence shall be compatible with the adjacent residential neighborhood and shall appear to be a single family residence. All other appropriate zoning district requirements for the principle living unit shall be complied with. A common entrance to the Residence and In-law Unit should be designed into the Structure so that a separate front entrance, off of the common entrance, is available and the Structure does not appear to be a duplex.
5. The Plan Commission and the County Zoning Agency shall determine if it is appropriate to have an interior door between the In-law Unit and the principal Residence.
6. A Deed Restriction shall be filed in the Waukesha County Register of Deeds office and a copy of the recorded document presented to the Planning and Zoning Division prior to issuance of the Zoning Permit. This Deed Restriction shall state that the In-law Unit is to be occupied by persons related by blood or marriage to the Family occupying the principal unit and that the Conditional Use is not transferable without formal approval of the County Zoning Agency without necessity of a public hearing and that the unit will be used as intended and shall not be rented as a separate dwelling unit.

BE IT FURTHER ORDAINED Sec. 3.11(4)(C) of the Zoning Code be repealed and recreated to read:

- (C) Farm Consolidation exception. For farm consolidations that exceed the maximum accessory building footprint limitation with existing buildings and structures, the Plan Commission and County Zoning Agency may approve an exception for Lots that are designated in the Farmland Preservation County Development Plan category that have been rezoned to the R-1 Residential District pursuant to Section 6.19. Exceptions for replacement buildings may also be considered by the Plan Commission and County Zoning Agency, provided that replacement buildings are no larger than the building being replaced and that the replacement structures are similar in terms of use and complimentary to the rural setting. Exceptions for new buildings may be considered by the Plan Commission and County Zoning Agency if the exempted accessory structures are of Agricultural or Farm Use.

BE IT FURTHER ORDAINED Sec. 6.03(6) of the Zoning Code be repealed and recreated to read:

- (6) Private Clubs and Resorts (including commercial Boarding Stables), except that such use may be allowed only if incidental to and compatible with the continued long term Agricultural Use of the lands (i.e., private hunt clubs during the non-growing season, for example). A caretaker's quarters/living unit Farm Residence provided in conjunction with a commercial Boarding Stable shall not count toward the density provisions of Section 6.1. The Plan Commission and Zoning Agency shall determine the acceptable number of caretaker's units based upon the nature of the boarding operation, the property setting and availability of adequate parking and septic facilities. A deed restriction may be required in conjunction with the approval of the Conditional Use restricting the use of the caretaker's quarters/living unit Farm Residence.

BE IT FURTHER ORDAINED Sec. 6.03(9) of the Zoning Code be repealed and reserved for future use.

BE IT FURTHER ORDAINED Sec. 6.14(2)(A) of the Zoning Code be repealed and recreated to read:

- (A) Caretaker's quarters/living unit Farm Residence if the unit is within 200 feet of the existing cluster of farm buildings, is served by a common driveway, and is intended and necessary for the farm operation and provides a living unit or quarters for hired employees of the farming operation and their immediate Family. Only one Farm Residence is permitted on a Lot and it shall count toward the density provisions of Section 6.1 and be tracked in the same manner as provided for in Section 6.19(2)(D), except as exempted in Section 6.15(3)(H) as it applies to commercial Boarding Stables. An In-law Unit requires a conditional use permit.

BE IT FURTHER ORDAINED Sec. 6.14(2)(D) of the Zoning Code be repealed and recreated to read:

- (D) Barnyards and feedlots that are not located within a floodland, nor closer than one hundred (100) feet to any navigable watercourse, nor closer than one hundred (100) feet to an existing adjacent dwelling on an adjacent property. Also, farm buildings housing animals that are not located within a floodland, nor closer than one hundred (100) feet to any navigable watercourse, nor closer than fifty (50) feet to a lot line, and a minimum of ten (10) feet from an existing dwelling on the subject property.

BE IT FURTHER ORDAINED Sec. 6.15(3) of the Zoning Code be repealed and recreated to read:

- (3) The list of Conditional Uses that may be applied for within the FLP District is as follows and must comply with Section 3.08:

BE IT FURTHER ORDAINED Sec. 6.15(3)(H) of the Zoning Code be repealed and recreated to read:

- (H) Private Clubs and Resorts (including commercial Boarding Stables), except that such use may be allowed only if incidental to and compatible with the continued long term Agricultural Use of the lands (i.e., private hunt clubs during the non-growing season, for example). A caretaker's quarters/living unit Farm Residence provided in conjunction with a commercial Boarding Stable shall not count toward the density provisions of Section 6.1. A deed restriction may be required in conjunction with the approval of the Conditional Use restricting the use of the caretaker's quarters/living unit Farm Residence.

BE IT FURTHER ORDAINED Sec. 6.15(3)(K) of the Zoning Code be repealed and recreated to read:

- (K) In-law Units, pursuant to Section 3.08(7)(Z), and which shall not count toward the density provisions of Section 6.1.

BE IT FURTHER ORDAINED Sec. 6.19(1) of the Zoning Code be repealed and recreated to read:

6.19 New Residences and Lots.

New Lots or parcels of less than thirty-five (35) acres and new Residences shall be prohibited on lands zoned FLP District and shall only be authorized if in accordance with the following requirements:

(1) Rezoning required.

New Lots or parcels of less than thirty-five (35) acres in area are not permitted within the FLP District without the benefit of rezoning. New Residences are not permitted within the FLP District without the benefit of rezoning. If a new Residence or Lot of less than thirty-five (35) acres is proposed for lands currently zoned FLP District, the land must first be rezoned to the R-1 Residential District where farm or Nonfarm Residences are a Permitted Use. Lands to be rezoned must comply with the density parameters of the Comprehensive Development Plan for Waukesha County that are described in detail in Section 6.19(2) below. Prior to submitting an application to rezone lands currently zoned FLP District, petitioners shall participate in a concept review meeting to be held with the respective Town Planner and Waukesha County Planning and Zoning Staff to discuss proposed density and lot siting and compliance with the below stated requirements of this section.

If a Lot of less than 35 acres is permitted via the rezoning process, the remnant lands can be less than 35 acres in area provided that a deed restriction is recorded against said lands prohibiting construction of Residences or nonfarm buildings.

New Nonfarm Residences must also comply with the standards set forth in Chapter 91 of the Wisconsin Statutes.

BE IT FURTHER ORDAINED Sec. 6.19(3)(D) of the Zoning Code be repealed and recreated to read:

- (D) New Residences or Lots may be permitted within upland Environmental Corridor areas that are zoned FLP District with an EC Environmental Corridor Overlay District designation provided that (1) the area to be disturbed is rezoned to the R-1 District and provided that (2) the respective town and County have made a determination that the building site within the Environmental Corridor is acceptable. If such a determination in (2) above is made, the maximum area of Environmental Corridor disturbance shall be 15,000 square feet per Lot, excluding normal driveway construction as determined by the Zoning Administrator, septic sites, building sites and any other area to be disturbed. In addition, any authorized disturbance within the Environmental Corridor shall comply with County Comprehensive Development Plan recommendations which call for no more than one dwelling unit per five acres of upland area. A deed restriction shall be recorded in the office of the Register of Deeds identifying and describing the permitted area of Environmental Corridor disturbance prior to Zoning Permit issuance.

BE IT FURTHER ORDAINED Sec. 6.19(3)(F) of the Zoning Code be created to read:

- (F) For Buildings or Creation of Lots on a Private Street or Way, refer to Section 3.04(2).

BE IT FURTHER ORDAINED that Section 3(d)2 of the Shoreland Protection Ordinance be repealed and recreated to read:

2. Buildings or Creation of Lots on a Private Street or Way: The intent of this provision is to discourage the creation of lots and placement of structures which do not have adequate access for emergency vehicles and equipment and to provide a right-of-way width which could accommodate a public right-of-way, if necessitated in the future. Subject to the approval of the Plan Commission and the County Zoning Agency, a parcel may be created and a Building may be permitted on a tract of land which does not abut or have direct frontage on a public street or officially approved way (frontage on a controlled access highway or a freeway where vehicular access is prohibited does not constitute access or frontage for the purposes of this provision) provided such tract of land is at least three (3) acres in area and has a minimum average width of two hundred (200) feet, has access by a permanent easement at least thirty-three (33) feet in width to a public street or way, will have a paved or gravel driveway width of at least twelve (12) feet, unless a local ordinance is in effect which requires a greater width, and does not conflict with the plans for the future Development of streets in the area.

For lots zoned FLP, the tract of land shall be at least one (1) acre in area and have a minimum average width of one hundred and fifty (150) feet. All other provisions of Section 3(d)2 shall apply.

Typical or normal lots with lot lines radiating from the terminus or center of a public cul de sac street are not affected by this provision that requires minimum road frontage on a public street. In a situation where more than one (1) principal residence or parcel is proposed, the easement for access shall be at least sixty-six (66) feet in width and the paved or gravel drive shall be sixteen (16) feet in width, unless required to be greater pursuant to a local ordinance. Where such a lot has a narrow strip of land as part of the lot (not as an approved easement) extending to the public road from the main part of the lot where the Building could lawfully be placed (flag lot), such narrow portion shall not constitute frontage or part of the required lot size unless that narrow portion of the lot is as wide as the required minimum average width for the District in which it is located. Not more than two (2) such parcels or Buildings shall be permitted unless necessitated by exceptional circumstances.

BE IT FURTHER ORDAINED Section 3(d)5.B of the Shoreland Protection Ordinance be repealed and recreated to read:

- B. No change in the existing topography or drainage courses on any land shall be allowed which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. The construction of a retaining wall (stone, ties, brick or other material) five (5) feet or less from a property line may be specifically authorized by the plan commission and zoning agency and an agreement made between said plan commission and zoning agency and Applicant stating that the method and purpose of construction will not in any way adversely affect drainage or aesthetics of the adjacent lot. A retaining wall five (5) feet or greater from a property line may be allowed pursuant to issuance of a zoning permit as long as said wall will serve to promote the purpose and intent as stated in this Ordinance. All retaining walls shall be set back at least seventy-five (75) feet from the Ordinary High Water Mark of a navigable body of water and outside of the conservancy District. Retaining walls cannot be averaged with the setbacks of other Buildings or Structures.

Fill or grading considered by the zoning administrator to be necessary backfill and/or excavation for an otherwise permitted structure may be permitted without the necessity of securing a conditional use permit as long as said fill or grading is accessory to said construction and does not create slopes greater than three (3)

horizontal to one (1) vertical and does not extend to a distance greater than thirty (30) feet from the foundation and does not divert runoff directly onto adjacent property or adversely affect adjoining property. In order to make such a determination, the property owner shall submit a grading plan of existing and proposed grades on the subject lot and adjacent lands where said accessory fill and/or grading is closer than twenty (20) feet to a property line. The fill must be located outside of an area designated as Wetland.

Land altering activities extending greater than thirty (30) feet from the foundation, or not considered by the zoning administrator to be necessary backfill, may be allowed without the benefit of a conditional use permit, subject to issuance of a minor grading permit (zoning permit) as long as the fill, excavation, or other land altering activities do not exceed 15 cubic yards of material or three thousand (3,000) square feet of area and the fill, excavation, or other land altering activities are not located in a wetland. This provision excludes the area normally associated with septic system installation and normal driveway construction as determined by the Zoning Administrator.

Further, no fill or alterations on existing topography shall be allowed under any circumstances, which will alter the drainage or topography in a way, which will adversely affect the surrounding lands. In making such a determination, the zoning administrator shall have the authority to determine the effect of the construction or fill on surrounding property and require improvements and/or facilities as may be in the best interest of preserving the topography and drainage system and which will have the effect of lessening the impacts on either upstream, downstream or adjacent properties. In case of a dispute or question arising as to the adversity or effect of the project on either the property owner, adjacent owners or the general public, said question shall be submitted to the Board of Adjustment for resolution to the question. Land altering activities may also be subject to locally adopted or State mandated Erosion and Sediment Control ordinances in addition to the requirements set forth herein.

BE IT FURTHER ORDAINED Section 3(j)4.A.iii of the Shoreland Protection Ordinance be repealed and recreated to read:

- iii. Farm consolidation exception. For farm consolidations that exceed the maximum accessory building footprint limitation with existing building and structures, the Plan Commission and County Zoning Agency may approve an exception for Lots that are designated in the Farmland Preservation County Development Plan category that have been rezoned to the R-1 Residential District pursuant to Section 11(i). Exceptions for replacement buildings may also be considered by the Plan Commission and County Zoning Agency, provided that replacement buildings are no larger than the building being replaced and that the review agencies find the replacement structures to be similar in terms of use and complimentary to the rural setting. Exceptions for new buildings may be considered by the Plan Commission and County Zoning Agency, provided the review agencies find the new buildings are for Agricultural or Farm Use and complimentary to the rural setting.

BE IT FURTHER ORDAINED Section 4(g)13 of the Shoreland Protection Ordinance be repealed and recreated to read:

13. In-Law Unit: In any Residential, Agricultural, DOD Downtown Okauchee, B-1 or B-2 zoning districts, except the FLC District, subject to the following. Such uses in the FLP

District shall not count toward the density provisions of Section 11, and are subject to the following:

- A. The location, building plan, and site plan and plan of operation shall be submitted to and approved by the Plan Commission and the County Zoning Agency.
- B. The Waukesha County Department of Parks and Land Use, Environmental Health Division shall certify that the septic system will accommodate the proposed use and in accordance with SPS 383, county and State Sanitary Codes.
- C. Maximum living area of the in-law unit shall not exceed one thousand (1,000) square feet and shall contain no more than two (2) bedrooms. There shall be an additional parking space for the in-law unit. There shall be no more than one (1) in-law unit per single-family lot.
- D. Architecture of the residence shall be compatible with the adjacent residential neighborhood and shall appear to be a single-family residence. All other appropriate zoning district requirements for the principal living unit shall be complied with. A common entrance to the residence and in-law unit should be designed into the structure so that a separate front entrance off of the common entrance is available and the structure does not appear to be a duplex.
- E. The Plan Commission and the County Zoning Administrator shall determine if it is appropriate to have an interior door between the in-law unit and the principal residence.
- F. A Deed Restriction shall be filed in the Waukesha County Register of Deeds Office and a copy of the recorded document presented to the Planning and Zoning Division prior to issuance of the Zoning Permit. This Deed Restriction shall state that the in-law unit is to be occupied by persons related by blood or marriage to the family occupying the principal unit and that the Conditional Use is not transferable without formal approval of the Plan Commission and the County Zoning Agency without necessity of a public hearing and that the unit will be used as intended and in addition shall not be rented as a separate dwelling unit.

BE IT FURTHER ORDAINED Section 4(g)23.G of the Shoreland Protection Ordinance be created to read:

- G. A farm employees living quarters provided in conjunction with a commercial Boarding Stable shall not count toward the density provisions of Section 11. The Plan Commission and Zoning Agency shall determine the acceptable number of farm employees living quarters based upon the nature of the boarding operation, the property setting and availability of adequate parking and septic facilities. A deed restriction may be required in conjunction with the approval of the Conditional Use restricting the use of the farm employees living quarters.

BE IT FURTHER ORDAINED Section 10(c)6 of the Shoreland Protection Ordinance be repealed and recreated to read:

- 6. Private Clubs and Resorts (including commercial Boarding Stables), except that such use may be allowed only if incidental to and compatible with the continued long term Agricultural Use of the lands (i.e., private hunt clubs during the non-growing season, for example). A farm employees living quarters provided in conjunction with a commercial Boarding Stable shall not count toward the density provisions of Section

11. The Plan Commission and Zoning Agency shall determine the acceptable number of farm employees living quarters based upon the nature of the boarding operation, the property setting and availability of adequate parking and septic facilities. A deed restriction may be required in conjunction with the approval of the Conditional Use restricting the use of the farm employees living quarters.

BE IT FURTHER ORDAINED Section 10(c)9 of the Shoreland Protection Ordinance be repealed and reserved for future use.

BE IT FURTHER ORDAINED Section 11(d)2.A of the Shoreland Protection Ordinance be repealed and recreated to read:

- A. Living quarters for full-time farm employees if the unit is within 200 feet of the existing cluster of farm buildings, is served by a common driveway, and is intended and necessary for the farm operation. Occupancy of such living quarters is limited to full-time hired employees of the farming operation and their immediate family. Such living quarters may not be inhabited by the farm owners. Only one such quarters for full-time farm employees is permitted on a lot and it shall count toward the density provisions of Section 11 and be tracked in the same manner as provided for in Section 11(i)2.D, except as exempted in Section 11(e)3.H as it applies to commercial Boarding Stables. An In-Law Unit requires a conditional use permit.

BE IT FURTHER ORDAINED Section 11(d)2.D of the Shoreland Protection Ordinance be repealed and recreated to read:

- D. Barnyards and feedlots that are not located within a floodland, nor closer than one hundred (100) feet to any navigable water course, nor closer than one hundred (100) feet to an existing adjacent dwelling on an adjacent property. Also, farm buildings housing animals that are not located within a floodland, nor closer than one hundred (100) feet to any navigable water course, nor closer than fifty (50) feet to a lot line, and a minimum of ten (10) feet from an existing dwelling on the subject property.

BE IT FURTHER ORDAINED Section 11(e)3 of the Shoreland Protection Ordinance be repealed and recreated to read:

- 3. The list of Conditional Uses that may be applied for within the FLP District is as follows and must comply with Section 4(g):

BE IT FURTHER ORDAINED Section 11(e)3.H of the Shoreland Protection Ordinance be repealed and recreated to read:

- H. Private Clubs and Resorts (including commercial Boarding Stables), except that such use may be allowed only if incidental to and compatible with the continued long term Agricultural Use of the lands (i.e., private hunt clubs during the non-growing season, for example). A farm employees living quarters provided in conjunction with a commercial Boarding Stable shall not count toward the density provisions of Section 11. The Plan Commission and Zoning Agency shall determine the acceptable number of farm employees living quarters based upon the nature of the boarding operation, the property setting and availability of adequate parking and septic facilities. A deed restriction may be required in conjunction with the approval of the Conditional Use restricting the use of the farm employees living quarters.

BE IT FURTHER ORDAINED Section 11(e)3.K of the Shoreland Protection Ordinance be repealed and recreated to read:

- K. In-law units, pursuant to Section 4(g)13, and which shall not count toward the density provisions of Section 11.

BE IT FURTHER ORDAINED Section 11(i)1 of the Shoreland Protection Ordinance be repealed and recreated to read:

1. Rezoning required. New lots or parcels of less than 35 acres in area are not permitted within the FLP District without the benefit of rezoning. New Residences are not permitted within the FLP District without the benefit of rezoning. If a new Residence or lot of less than 35 acres is proposed for lands currently zoned FLP District, the land must first be rezoned to the R-1 Residential District where farm or residences are a permitted use. Lands to be rezoned must comply with the density parameters of the Comprehensive Development Plan for Waukesha County that are described in detail in Section 11(i)(2) below. Prior to submitting an application to rezone lands currently zoned FLP District, petitioners shall participate in a concept review meeting to be held with the respective Town Planner and Waukesha County Planning and Zoning Staff to discuss proposed density and lot siting and compliance with the below stated requirements of this section.

If a lot of less than 35 acres is permitted via the rezoning process, the remnant lands can be less than 35 acres in area provided that a deed restriction is recorded against said lands prohibiting construction of residences or non-farm Buildings.

New Nonfarm Residences must also comply with the standards set forth in Chapter 91 of the Wisconsin Statutes.

BE IT FURTHER ORDAINED Section 11(i)3.D of the Shoreland Protection Ordinance be repealed and recreated to read:

- D. New Nonfarm Residences or lots may be permitted within upland Environmental Corridor areas that are zoned FLP District with an EC Environmental Corridor Overlay District designation provided that (1) the area to be disturbed is rezoned to the R-1 District and (2) provided that the respective town and County have made a determination that the building site within the Environmental Corridor is acceptable. If such a determination in (2) above is made, the maximum area of Environmental Corridor disturbance shall be 15,000 square feet per lot, excluding normal driveway construction as determined by the Zoning Administrator, septic sites, building sites and any other area to be disturbed. In addition, any authorized disturbance within the Environmental Corridor shall comply with County Comprehensive Development Plan recommendations which call for no more than one dwelling unit per five acres of upland area. A deed restriction shall be recorded in the office of the Register of Deeds identifying and describing the permitted area of Environmental Corridor disturbance prior to Zoning Permit issuance.

BE IT FURTHER ORDAINED Section 11(i)3.F of the Shoreland Protection Ordinance be created to read:

- F. For Buildings or Creation of Lots on a Private Street or Way, refer to Section 3(d)2.

BE IT FURTHER ORDAINED that the provisions of these ordinances shall be included and incorporated in the Waukesha County Code of Ordinances and may be appropriately renumbered to conform to the numbering system contained therein.

BE IT FURTHER ORDAINED that this Ordinance shall become effective upon passage and publication.

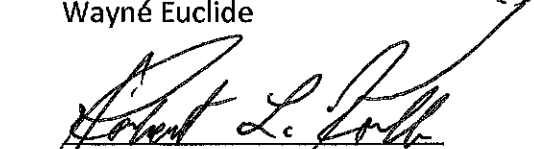
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with each of the town clerks within Waukesha County.

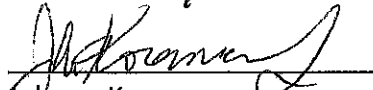
TEXT AMENDMENTS TO THE WAUKESHA COUNTY ZONING CODE AND THE WAUKESHA COUNTY
SHORELAND PROTECTION ORDINANCE RELATING TO THE
FARMLAND PRESERVATION ZONING RECERTIFICATION (RZ150)

Presented by:
Land Use, Parks, and Environment Committee

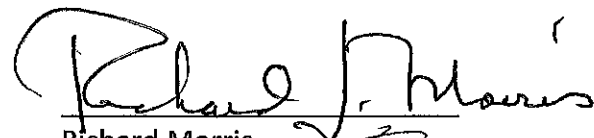

Christine M. Howard, Chair

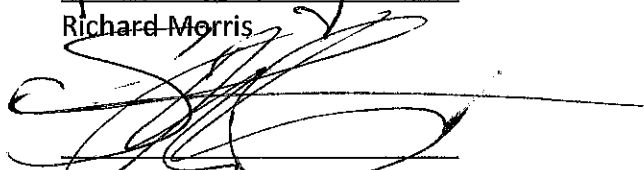

Wayne Euclide


Robert L. Kolb


Johnny Koremenos


Brian Meier


Richard Morris


Steve Styza

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

Date: 12/3/24, 
Margaret Wargunan, County Clerk

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

Approved: X
Vetoed: _____

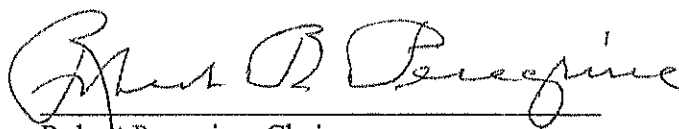
Date: 12/3/2024, 
Paul Farrow, County Executive

COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Waukesha County Shoreland Protection Ordinance and Waukesha County Zoning Code, hereby recommends approval of **(RZ150 Waukesha County Park and Planning Commission – SPO and ZC Farmland Preservation Text Amendments)** in accordance with the attached “Staff Report and Recommendation.”

PARK AND PLANNING COMMISSION

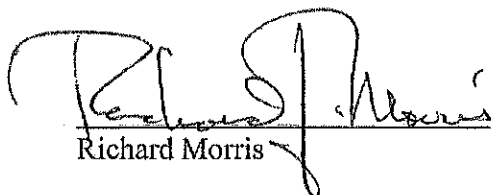
September 19, 2024



Robert Peregrine, Chairperson



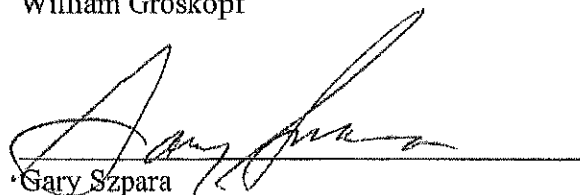
James Siepmann



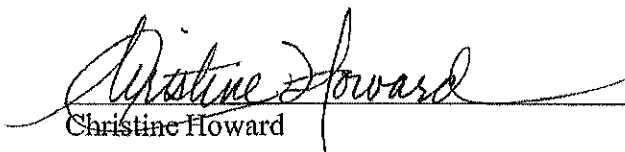
Richard Morris

Absent

William Groskopf



Gary Szpara



Christine Howard

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

FILE NO: RZ150

DATE: September 19, 2024

PETITIONER: Waukesha County Department of Parks and Land Use,
Waukesha County Park and Planning Commission
515 W. Moreland Blvd.
Waukesha, WI 53188

LOCATION:

The text amendments to the Zoning Code predominantly affect the Towns of Oconomowoc, Ottawa and Eagle (shoreland areas only) as it is the areas of those towns that are planned for Farmland Preservation. However, there are a few other minor proposed amendments that also affect lands within the three above-referenced towns that are located outside of farmland preservation areas, as well as similar amendments in the Shoreland Protection Ordinance that affect all of the shoreland towns.

PROPOSED ZONING:

Text amendments to the Waukesha County Zoning Code and the Waukesha County Shoreland Protection Ordinance that are being proposed in order to recertify two zoning districts, the FLP Farmland Preservation District and the FLC Farmland Conservancy District, in the two codes and ensure they are in conformance with current farmland preservation law. Additional minor amendments are proposed in related sections throughout the two codes. The draft text amendments are available for viewing on the Waukesha County Planning and Zoning Division website at <https://www.waukeshacounty.gov/landandparks/planning-and-zoning/zoning-ordinances/> under the Draft County/Town Ordinances tab.

PUBLIC HEARING DATE: September 19, 2024

COMPLIANCE WITH THE TOWN OF OCONOMOWOC AND THE TOWN OF OTTAWA COMPREHENSIVE DEVELOPMENT PLANS AND THE WAUKESHA COUNTY COMPREHENSIVE DEVELOPMENT PLAN:

The proposed text updates implement the farmland preservation and natural resource protection recommendations of the County Development Plan. The proposed text revisions will continue to provide for 35 acre density within farmland preservation areas, consistent with regional, County and local plan recommendations. Farmers will continue to be able to create limited new lots provided that 35 acre density is maintained, which will enable them to either create parcels for family members or create additional income via sale of limited lots. The proposed maximum lot size and lot siting standards will ensure that new lots are arranged in the least disruptive manner possible.

STAFF ANALYSIS:

The State's farmland preservation laws require counties to seek re-certification of their farmland preservation plans and zoning ordinances every ten years. The more urbanized counties, including Waukesha County, must act to update said documents earlier than the more rural counties. After

receiving a two year extension, Waukesha County updated the 2011 Farmland Preservation Plan in 2023. The plan continued the scheme of identifying major blocks of productive farmland (five square miles or more in area) for preservation. The northerly part of the Town of Oconomowoc (north of CTH K) and the parts of Ottawa and Eagle that are west of the Kettle Moraine State Forest were re-affirmed as meeting the basic area and required soils and parcel size criteria. Accordingly, the updated County Farmland and County Development Plans recommended that these areas continue to be planned for farmland preservation.

The existing farmland preservation zoning provisions were adopted into the County Zoning Code in 2015. Farmland Preservation zoning allows eligible landowners to claim a tax credit on a per acre basis. Within the farmland preservation areas of the Town of Oconomowoc, enhanced tax credits are available because the Town is part of an Agricultural Enterprise Area (AEA). AEAs are areas that are targeted for agricultural investment and the Oconomowoc AEA was unique in being the first in the State and also unique in that the project boundaries transcend both county and town lines, as the AEA also includes lands in the Town of Ashippun in Dodge County.

For the 2024 zoning ordinance updates, Waukesha County convened a workgroup of the town planners from the two towns (Oconomowoc and Ottawa) that are subject to County zoning and have lands planned for farmland preservation as well as Waukesha County Planning and Zoning Division staff. One of the County staff members had worked on updating the Farmland Preservation Plan in 2023. In addition, Town of Eagle Planning Staff is coordinating re-certification of the Eagle Zoning Ordinance and is collaborating with County staff regarding the subject amendments.

The workgroup examined the data from the updated plan, assessed the effectiveness of the existing zoning provisions over the past ten years, and discussed zoning administration issues in particular that have emerged over time in the areas planned or zoned for farmland preservation. These issues included flexibility for FLP lots not abutting a public road; clarifying some existing setback language for farm buildings housing animals; providing additional exceptions for accessory buildings that are part of farm consolidations; clarifying density and other in-law unit provisions; clarifying density and commercial horse boarding caretakers units/ farm employees living quarters; clarifying wording in the new lots and new residences section of FLP for ease of administration; adding flexibility of siting standards in the Primary Environmental Corridor in the FLP District; and addressing buildings and the creation of lots on a private street or way as they relate to the FLP District. After brainstorming various ways to update the ordinances, the workgroup settled on the best alternatives and amended the existing language accordingly. The proposed amendments reflect the minor changes submitted. There are no new farmland preservation zoning districts proposed for recertification.

There are no zoning map changes proposed as part of this project. Since 2011, the existing farmland preservation rezoning provisions have accommodated the creation of 17 new residential parcels encompassing 48 acres consistent with the lot siting standards of the code. The rezoning process is not proposed to change as part of this update.

The workgroup recommended several minor amendments to the zoning ordinances that are now being advanced for recertification in order to have updated zoning ordinances that are easier to administer for staff and understand for both the agricultural landowners and the general public.

The following is a summary of the changes proposed in the FLC and FLP Districts and in related sections throughout the two codes:

- Provided more flexibility for flag lots or land locked parcels by adding language in the Buildings and Creation of Lots on a Private Street or Way section, for lots zoned FLP, the tract of land shall be at least one (1) acre in area and have a minimum average width of one hundred and fifty (150) feet.
- Expanded the exceptions allowed in the Accessory Buildings section for farm consolidations.
- Clarified the existing setback language for farm buildings housing animals in the Permitted Use section of the FLP District.
- Clarified that in-law units do not count toward density and made other minor edits to the in-law unit Conditional Use section including increasing the maximum in-law dwelling unit size from 800 square feet to 1000 square feet.
- Clarified that commercial horse boarding caretakers units/farm employees living quarters do not count toward density.
- The FLP District defines when, how and where non-farm residences may be permitted. The district caps maximum lot size at three acres, unless a farm consolidation is proposed. The district also requires compliance with siting standards that directs development to uncultivated lands and non-prime soils, and requires clustering, to the maximum extent possible, among other parameters. The district provides flexibility for farmers allowing for the possibility of non-farm lots in wooded/environmental corridor areas and for the creation of residential lots for non-family members. In 2024, staff determined there was a need to clarify the wording in the new lots and new residences section for ease of administration, provide flexibility in the siting standards in Primary Environmental Corridors, and also address buildings and the creation of lots on a private street or way as they relate to the FLP District.

DATCP has reviewed the draft ordinances and has indicated that the amendments meet the requirements of the farmland preservation program.

STAFF RECOMMENDATION:

It is the opinion of the Planning and Zoning Division Staff that this request be **approved**, subject to the following condition:

1. This approval is contingent upon the final review of the Waukesha County Corporation Counsel and any edits deemed necessary shall be incorporated, as necessary. Corporation Counsel edits will be incorporated prior to advancement of the ordinance to the County Board.

The proposed text amendments were prepared to maintain the County Zoning Code's certified standing with the State farmland preservation program requirements which makes landowners eligible to claim tax credits. DATCP has made a determination that the proposed amendments are acceptable. The workgroup that guided the amendments agreed that the siting standards appear to be working very well in that encroachment into farmland preservation lands and land use conflicts are minimal. In addition, the rezoning process for the creation of limited new lots has been successful in allowing landowners to create new parcels while maintaining the integrity of the farms. The zoning regulations ensure that farms in these areas are not encroached upon by urban land use conflicts. The subject amendments are minor in nature and largely provide some additional flexibility for incidental uses such as caretakers quarters and in-law dwelling units. The towns that contain

farmland preservation zoning reiterated their support for farmland preservation in both the 2023 update of the farmland preservation plan and in supporting the subject minor changes to the farmland preservation provisions of the Zoning Code and Shoreland Protection Ordinance.

Respectfully submitted,

Sandra L. Scherer

Sandy Scherer
Senior Planner

Enclosures: Draft Amendments to the County Zoning Code and County Shoreland Protections Ordinance (see <https://www.waukeshacounty.gov/landandparks/planning-and-zoning/zoning-ordinances> and click on the Draft County/Town Ordinances tab.

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VOTE RESULTS

Ordinance 179-O-046

Ordinance 179-O-046

23

YES

0

NO

0

ABSTAIN

2

ABSENT

 **Passed By Majority Vote**

D1 - Styza	AVE	D10 - Thieme	AVE	D19 - Enriquez	AVE
D2 - Euclide	AVE	D11 - Howard	ABSENT	D20 - Schellinger	AVE
D3 - Morris	M AVE	D12 - Wolff	AVE	D21 - Gaughan	AVE
D4 - Batzko	AVE	D13 - Leisemann	AVE	D22 - Szpara	AVE
D5 - Grant	AVE	D14 - Mommaerts	AVE	D23 - Hammitt	AVE
D6 - Walz	AVE	D15 - Kolb	AVE	D24 - Bangs	AVE
D7 - LaFontain	AVE	D16 - Crowley	ABSENT	D25 - Johnson	AVE
D8 - Koremenos	AVE	D17 - Meier	S AVE		
D9 - Heinrich	AVE	D18 - Nelson	AVE		

9th Meeting, 179th Year of the County Board of Supervisors - November 26 2024 07:07:58 PM

